
Video-sharing platform regulation

Call for Evidence

[Call for Evidence: Video-sharing platform regulation](#) – Welsh translation

CONSULTATION:

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1. Overview

- 1.1 **We are seeking evidence and information related to the new requirements that will apply to video-sharing platforms.**
- 1.2 Video-sharing platforms (VSPs) are a type of online video service where users can upload and share videos. VSPs allow users to engage with a wide range of content and social features and are particularly popular among young people. 90% of adults and 98% of children aged 8-15 who use the internet have used a VSP in the past year¹.
- 1.3 Ofcom will be given new powers this autumn to regulate UK-established VSPs. This will include a duty to ensure that VSPs have in place appropriate measures to protect young people from potentially harmful content and all users from illegal content and incitement to hatred and violence. Services will also need to ensure standards around advertising are met.
- 1.4 This document sets out the background and legislative context to forthcoming VSP regulation in the UK and an overview of the VSP regulatory framework. It also sets out Ofcom’s approach to VSP regulation based around some core principles: protection and assurance; freedom of expression; adaptability; transparency; enforcement; independence; and proportionality.
- 1.5 The closing date for responses is 5pm on Thursday 24 September 2020.

Why is Ofcom calling for evidence?

- **The UK Government has confirmed that Ofcom will be the regulator for VSPs established in the UK.** This is an interim regime until the new online harms framework comes into force.
- **Member States need to implement revised European legislation called the Audiovisual Media Services Directive (AVMSD) this autumn.** This includes the UK during the Brexit transition period. The revised AVMSD also updates requirements for broadcasters and on-demand programme services, which Ofcom already regulate.
- **VSPs will be required to have measures in place to protect young people from harmful content and all users from criminal content and incitement to hatred and violence.** The AVMSD sets out the list of measures that VSPs should consider implementing (depending on the nature of their service and user base). These measures include, for example, having in place and applying terms and conditions, flagging and reporting mechanisms, parental controls, age assurance mechanisms and complaints functions.

¹ Ofcom, [Online Nation 2020 Report](#), 23 June 2020

- **Ofcom will draw up guidance for VSPs on the list of measures set out in the new statutory framework.** To inform our guidance, we are seeking evidence and information on the current use and application of these measures. We are also seeking early views and evidence on a number of other topics to inform our general regulatory approach and other areas of guidance. A list of questions can be found in Annex 1.
- **Through this Call for Evidence we want to engage with industry and other interested parties.** VSP regulation of this nature is new and untested, both in the UK and globally, and it is important that we work constructively with a range of actors to develop solid foundations for online regulation. We welcome views from platforms, experts, users, and other interested organisations on good practice, technical capabilities of services, issues and challenges to support our understanding of the VSP sector and the risks of harm on these platforms.
- **The Government intends to introduce the new statutory framework in legislation this autumn, and once passed the new requirements will be immediately in force.** We are however mindful of the need for an implementation period for industry. We will work with VSPs as they meet their new obligations to ensure that consumers are protected and will issue regulatory guidance for services next year.
- **The Government has said that it is minded to appoint Ofcom as the future online harms regulator.** If confirmed, we will build on VSP regulation to inform our approach to regulation of services under the online harms regime.

2. Video-Sharing Platform regulation

- 2.1 On 12 February 2020 the UK Government confirmed the appointment of Ofcom as the regulator for Video-Sharing Platforms (VSPs) in the UK. This interim framework will be in place until such time as the new online harms regime comes into force.²
- 2.2 The rest of this document sets out the background and legislative context to VSP regulation in the UK, an overview of the VSP regulatory framework, Ofcom’s approach to forthcoming VSP regulation, and next steps with this Call for Evidence.

Background and legislative context in the UK

The new Audiovisual Media Services Directive

- 2.3 The Audiovisual Media Services Directive (“AVMSD” or “the Directive”) sets the regulatory framework underpinning the audiovisual services single market in the European Union and currently applies to television broadcasts and on-demand services. The Directive was revised in 2018 to take into account changes to the media landscape since the last revision of the Directive in 2010, as consumption has shifted increasingly online. The AVMSD 2018 creates a new category of regulated service, VSPs.³ Member States are required to implement the revised Directive by 19 September 2020. The UK Government has committed to transposing EU legislation during the Brexit transition period. The UK Government expects to implement the revised AVMSD by Autumn 2020.
- 2.4 VSPs are defined in the AVMSD as services where “the principal purpose of the service, or of a dissociable section thereof, or an essential functionality of the service is devoted to providing programmes and/or user-generated videos, or both, to the general public, for which the video-sharing platform provider does not have editorial responsibility[...]and the organization of which is determined by the video-sharing platform provider, including by automatic means or algorithms in particular by displaying, tagging and sequencing”. The European Commission has also recently published [guidelines on the practical application of the ‘essential functionality’ criterion](#) of the definition of video-sharing platforms.⁴ These guidelines provide indicators to assess the role that audio-visual content plays on the service.
- 2.5 The new statutory framework will for the first time mean that UK online services which provide access to user-generated videos will fall within the scope of statutory regulation. The AVMSD requires VSPs to take appropriate measures to: protect children from harmful content; protect the general public from illegal content and content that incites violence or hatred; and respect certain obligations around commercial communications.

² DCMS, [Audiovisual Media Services, Government response to public consultations on the government’s implementation proposals](#), 12 February 2020.

³ [The Audiovisual Media Services Directive \(EU\) 2018/1808](#)

⁴ European Commission, [Guidelines on Video sharing platforms](#), 2 July 2020

- 2.6 The revised Directive sets out the criteria for determining jurisdiction of VSPs. As for On-Demand Programme Services (“ODPS”) and linear (TV) services across Europe, this will usually be determined by reference to the Member State in which the service is headquartered. While the UK, and therefore Ofcom, could be likely to have jurisdiction over popular VSPs such as TikTok and Twitch if they fulfil the legal definition of a VSP and the UK establishment criteria, well-known platforms such as YouTube, Facebook and Twitter are expected to fall under Irish jurisdiction should they meet the definition of a VSP.

What happens at the end of the Brexit transition period?

- 2.7 The implementation of the revised AVMSD is required as part of the UK’s obligations arising from its membership of the European Union (EU) and the terms of its departure. Under the terms of the Withdrawal Agreement, the UK is required to implement the revised AVMSD, as its implementation date falls prior to the end of the transition period.
- 2.8 The legislation, in the form of Regulations, will introduce new statutory provisions under the Communications Act 2003 which will be retained in UK law following the end of the Brexit transition period. This means that the VSP regulatory framework will continue to apply from January 2021, however the Government has also stated its intention for VSP regulation in the UK to be superseded by the Online Harms Bill, when that comes into force.
- 2.9 The Government intend to lay a second “fixing” statutory instrument in the Autumn. This statutory instrument will provide clarity as to the basis on which VSPs are deemed to be ‘established’ in the UK after the transition period, and therefore those that are within scope of Ofcom’s regulation.

How has the UK Government approached AVMSD transposition?

- 2.10 In May 2019 the Department for Digital, Culture, Media and Sport (“DCMS”) published a consultation on its approach to implementing the AVMSD.⁵ Here the Government set out its preference to implement the VSP requirements as part of the online harms legislative process.⁶
- 2.11 DCMS subsequently concluded that the online harms White Paper process would not be completed in time and therefore issued a further consultation in July 2019 on an interim regime for VSPs that would be introduced into UK law by the transposition deadline in autumn 2020.⁷ This included a proposal for Ofcom to be appointed as the national

⁵ DCMS, [Consultation on the UK Government’s proposed approach to implementing the Audiovisual Media Services Directive 2018 \(AVMSD\)](#), 30 May 2019

⁶ DCMS, [Online Harms White Paper](#), 8 April 2019

⁷ DCMS, [Requirements for Video Sharing Platforms in the Audiovisual Media Services Directive](#), 19 July 2019

regulatory authority, until the future online harms regime is in place. In February 2020, DCMS issued a response to this consultation confirming Ofcom’s role as the VSP regulator.⁸

- 2.12 The UK Government intends to grant Ofcom new duties and powers over VSPs. It intends to implement the VSP requirements by adhering to the minimum requirements of the Directive, and mirroring the existing framework in place for ODPS as far as possible. A draft of the Regulations was notified to the European Commission in June 2020.⁹ However, these remain in draft form and as such may be subject to amendments ahead of being passed into UK law. We expect the Regulations to be laid in Parliament this autumn, ahead of being made and coming into force after 21 days.
- 2.13 Once the legislation comes into effect, Ofcom will be empowered to begin drawing up and consulting on the necessary guidance documents to prepare for carrying out our new regulatory duties. More information on our plans for these and next steps is included at the end of this chapter.

What happens when the Online Harms Bill passes?

- 2.14 The Government stated in its response to the AVMSD consultation that it is “mindful of the concern that having an interim regime prior to the passage of the Online Harms Bill could create issues for small businesses. Therefore, we will ensure that there is adequate support for those UK-based VSPs in scope of the interim regime, as we incorporate the AVMSD provisions into the wider online harms framework.”
- 2.15 The Government intends to design an Online Harms Bill to address harms across a broad range of online service providers using a comprehensive regulatory framework, which will include UK VSPs. The VSP Regulations look to regulate services established in the UK, whereas the regulation under the online harms regime is likely to extend to services that are not headquartered in the UK. The range of services caught by the online harms framework is also likely to be more expansive, meaning that different types of service beyond video-sharing platforms will also be in scope.
- 2.16 In February 2020 the Government said that it was minded to appoint Ofcom as the new regulator for the online harms framework. Ofcom will work to ensure that it takes a proportionate approach to the interim regime for UK-based VSPs, and, if confirmed as the future online harms regulator, will ensure that there is support for services transitioning from one regime to the next when that legislative process is complete.
- 2.17 Many of the provisions of the AVMSD pertaining to regulation of VSPs complement the Government’s stated proposals for online harms regulation. The earlier introduction of VSP regulation in the UK will deliver protections for consumers on some services in the short-term and our experience in working with online stakeholders will help provide a

⁸ DCMS, [Audiovisual Media Services, Government response to public consultations on the government’s implementation proposals](#), 12 February 2020.

⁹ European Commission, [Notification Detail, Audiovisual Media Services Regulations 2020](#), 15 June 2020

foundation to inform and develop the future online harms regulatory framework, should we be confirmed as the regulator.

The VSP regulatory framework

- 2.18 The high-level regulatory framework for UK-based VSPs is summarised below. The full framework will be finalised once the necessary legislation has been passed, but a draft of the UK Regulations can be accessed on the European Commission website¹⁰.

Services in scope

- 2.19 DCMS commissioned Plum Consulting to carry out a preliminary assessment of the range of services potentially in scope of the UK VSP regime as per the definition set out in the AVMSD (see paragraph 2.4)¹¹. Their report identified six potential VSPs that were likely to come under UK jurisdiction: Twitch, TikTok, LiveLeak, Imgur, Vimeo and Snapchat. In addition, the report identified at least two adult VSPs which could be under UK jurisdiction.
- 2.20 The legislation will define VSPs in accordance with the AVMSD criteria and Ofcom will issue guidance for services to help them understand whether they meet this definition and fall under UK jurisdiction. This guidance, which Ofcom plans to publish in draft form for consultation later this year, will take into account the ‘essential functionality’ guidelines which have been published by the European Commission.
- 2.21 As mentioned above, many VSPs, including some of the most popular services in the UK, will likely fall under the jurisdiction of regulators in different EU Member States. YouTube for example is headquartered in Dublin and therefore likely to be within jurisdiction of the Irish regulator. Ofcom acknowledges the challenges this brings in ensuring consistency and clarity for consumers as well as industry about the regulatory standards that will apply and will be working to ensure the new requirements are well understood. The AVMSD provides a minimum harmonisation framework across Europe, so although there may be some variation in transposition approach across different Member States, the minimum standards set out in the Directive must be met.
- 2.22 During and after the Brexit transition period, Ofcom will continue to work closely with international regulators to understand their approaches to VSP regulation and ensure that consumers in the UK are protected from harmful content across all VSPs, and that we meet our obligations to users of UK-based services. This will require regular dialogue and sharing of best practice between Ofcom and the National Regulatory Authorities in EU Member States, as well as working collaboratively to establish effective mechanisms for handling cross-border issues. Ofcom already has strong working relationships with such regulators, and we aim to build on these as we move into new VSP regulation and any future role we have in online harms regulation.

¹⁰ European Commission, [Notification Detail, Audiovisual Media Services Regulations 2020](#), 15 June 2020

¹¹ Plum consulting, [Understanding video-sharing platforms under UK jurisdiction](#), December 2019

VSPs in scope will be required to notify to Ofcom

- 2.23 The Government has set out that Ofcom should oversee a notification regime for VSPs established in the UK. The notification regime will closely follow the existing model for ODPS under Part 4A of the Communications Act 2003. Under this approach, VSPs will be required to notify Ofcom that they provide a VSP service under UK jurisdiction. Ofcom will also be required to maintain a list of VSPs that we regulate and to document our reasons for determining jurisdiction. It is proposed in the draft Regulations that the new statutory provisions relating to notification will come into force on 6 April 2021 and services will have until 6 May 2021 to notify. Ofcom plans to issue its guidance relating to scope and jurisdiction ahead of 6 April to help services understand if they need to notify.
- 2.24 Government plans to give Ofcom powers to recover its regulatory costs from industry by imposing fees on VSPs that are in scope. Notified services will therefore be required to pay a regulatory fee to Ofcom. Ofcom will publicly consult on an appropriate and proportionate fee structure for VSPs, which will take into account the costs of regulation across the sector. VSPs will be charged regulatory fees from April 2022.¹²

Services will be required to take measures to protect their users

- 2.25 VSPs in scope will be required to have in place measures that are appropriate to protect:
- minors from content which may impair their physical, mental or moral development;
 - the general public from content inciting violence or hatred; and
 - the general public from content constituting criminal offences (public provocation to commit a terrorist offence, offences concerning child sexual exploitation and abuse, and offences concerning racism and xenophobia).
- 2.26 The Directive specifies ten measures in article 28(3)(b) (see Annex 5). These measures, which will be reflected in the new statutory provisions under the Communications Act 2003, include having in place and applying **terms and conditions, flagging and reporting mechanisms, age verification systems, systems to rate the content by the uploaders or users, parental control systems, easy-to-access complaints functions**, and the provision of **media literacy measures and tools**. Two of these measures relate to obligations in relation to advertising and other forms of commercial communications.
- 2.27 In line with the Directive, when considering which measures are needed to adequately protect users, VSPs should take into account the nature of the content in question, the harm it may cause, the characteristics of persons to be protected as well as the rights and legitimate interests of users (such as privacy rights and freedom of expression) and the general public.

¹² Ahead of charging the VSP industry regulatory fees, funding for the set-up of the regime will be from retained Wireless Telegraphy Act receipts in accordance with section 401 of the Communications Act 2003, and not funded by those we currently regulate. The principles under which Ofcom may retain amounts and the costs referable to those amounts are set out in [Ofcom's statement of principles](#)

- 2.28 It will be for VSPs to decide which measures are appropriate and proportionate based on their own assessment of the risk of harm. In doing so, VSPs will be able to take into account the level of resources available to them and will not necessarily need to adopt all 10 measures listed in the Directive.
- 2.29 Government intends to give Ofcom a duty to issue guidance to VSPs on the application of the measures set out in the Directive. This Call for Evidence is primarily seeking information on these measures and the practical and proportionate application of them to inform the development of that industry guidance, as well as views on the regulatory principles and considerations Ofcom should have regard to.
- 2.30 **Annex 1** details the questions that we are seeking evidence and input on. Ofcom is interested in hearing from providers who consider their service(s) might meet the definition of a VSP, plus a broad range of interested stakeholders such as academics, experts, other regulators and user groups. Areas we are seeking information on include:
- **scope** – which services may meet the definition of VSP in UK jurisdiction;
 - **safety tools and measures currently taken to protect users from harm** – including terms and conditions (community standards), advertising rules, reporting and flagging mechanisms, age assurance and verification techniques, content rating functionality, parental controls, complaints handling, and media literacy; and
 - **reporting and evaluation** – including metrics for reporting and processes for evaluating the impact and effectiveness of safety tools.
- 2.31 Our guidance will make clear that VSPs must take into account the freedom of expression of their users in accordance with the AVMSD and under Article 10 of the European Convention on Human Rights when designing and implementing their systems to protect users from the specified areas of harm. We welcome views from stakeholders on how VSPs should take freedom of expression into account and Ofcom’s role in safeguarding this in the development and implementation of the regulatory regime.
- 2.32 The Directive requires VSPs to protect the rights and interests of users through an impartial out of court redress mechanism. This should be made available for the settlement of disputes between users and VSP providers. Given the sheer volume of user-generated content shared on VSPs, it is not practical to establish a complaints-based regime as exists in broadcasting and on-demand regulation. Instead, DCMS propose that a function of the regulator should be to oversee the requirement for VSPs to have an effective and easy to access complaints process and a requirement that they must also have a redress mechanism in place that provides an external independent appeals process. Ofcom is seeking views from industry and stakeholders on what form this should take and will issue guidance on this mechanism following consultation with industry.

Ofcom will monitor and assess VSPs’ compliance with their regulatory obligations

- 2.33 The Government intends to grant Ofcom powers to request information from VSPs to assess compliance with their regulatory obligations. These powers will enable Ofcom to ask

about measures taken, assess whether such measures are appropriate to protect users, and investigate where such measures may have failed to protect users from potentially harmful or age-inappropriate content. Information gathering powers are also proposed to extend to services which have not formally notified, but that Ofcom considers are likely to meet the criteria of a VSP.

- 2.34 Ofcom will proactively monitor the sector to ensure users are adequately protected from harm and to pick up on potential concerns as early as possible. In developing this, Ofcom will draw on its broad experience of monitoring and assessing compliance of different regulated entities across the communications sector. We will also draw on the relevant experience of other UK and international regulators.
- 2.35 Ofcom plans to have regular engagement with VSPs to ensure that services understand their regulatory obligations. Through this industry engagement and an ongoing programme of market research and intelligence, Ofcom intends to stay abreast of developments within the VSP sector to ensure guidance evolves to take into account technological developments and the evolution of harms that occur online over time.
- 2.36 While Ofcom will not resolve individual complaints, members of the public will be able to log issues relating to VSP's regulatory obligations with Ofcom. VSP regulation is focused on whether services have taken appropriate measures to protect users from harm. As in other sectors we regulate, Ofcom will track complaints received to identify systemic trends and possible compliance issues and investigate as appropriate.

Enforcement

- 2.37 Ofcom considers that there are various sources of information that could trigger enforcement action to assess whether a VSP has met its regulatory requirements. These may include for example: a spike in complaints to Ofcom; information received via compliance reporting; consumer research; referrals from interested parties, such as consumer interest organisations or those with specialist understanding of relevant issues; a whistle-blower; or intelligence received through other regulators. We will use information gathering powers to investigate potential contraventions (with the power to enforce these should a VSP fail to respond).
- 2.38 With regards to enforcement and sanctions, Government intends to replicate the sanctions regime in place for ODPS and give Ofcom a range of formal enforcement powers, including:
- Issuing legally binding decisions if a VSP is in breach of its obligations for not taking appropriate measures to protect users;
 - Setting out the steps required to remedy the breach and ensure compliance;
 - Imposing financial penalties of up to 5% of 'applicable qualifying revenue' to ensure deterrence¹³; and

¹³ Ofcom expects to have the power to issue maximum fines of the greater of £250k and 5% of the provider's qualifying revenue, as deemed to be appropriate and proportionate. Financial penalties will be determined in line with Ofcom's [Penalty Guidelines](#).

- Issuing a direction to suspend or restrict the entitlement to provide a VSP.
- 2.39 Ofcom will set out its approach to enforcement, including the procedures it will follow in regulatory investigations, in enforcement guidelines.

Advertising

- 2.40 The AVMSD sets out high level protections for advertising, which apply across all media services covered by the Directive: linear, on-demand and VSPs. These high-level protections include: protection of minors from material which may impair their mental, physical or moral development; protection of the general public from material containing incitement to violence or hatred; and protection of the general public from material the dissemination of which constitutes a criminal offence.
- 2.41 There are also specific requirements to protect against advertising-related harms and to ensure the transparency of advertising of VSPs. These requirements cover issues including the recognisability of advertising, prohibited or restricted products (e.g. prescription-only medicines; cigarettes and tobacco products; alcoholic beverages), and prohibited or restricted practices (e.g. including or promoting discrimination; encouraging behaviour prejudicial to health and safety; causing physical, mental or moral detriment to minors). Regarding transparency, VSP providers must make available a functionality for users who upload content to declare the presence of advertising and to clearly communicate the presence of such advertising to users who engage with that content.
- 2.42 Unlike linear and on-demand services, advertising that appears on VSPs is not always under the control of the provider of the service. Recognising this, the AVMSD aims to secure its objectives through direct requirements placed on VSPs for the advertising they control (i.e. that they market, sell or arrange themselves), and through a requirement to have ‘appropriate measures’ in place for the advertising they do not control. We envisage a regulatory regime that takes account of these different categories of advertising, whilst minimising complexity.
- 2.43 In its announcement naming Ofcom as the regulatory authority with responsibility for UK-established VSPs, the Government set out that it would provide Ofcom with the power to designate a co-regulator. In respect of advertising, it noted our existing co-regulatory relationship with the Advertising Standards Authority (“ASA”) for broadcast and on-demand advertising.
- 2.44 DCMS has set out its preference that Ofcom will be the sole regulator for the overall framework, but we will have the power to designate a co-regulator for an aspect of the regime, such as advertising. We will consider possible co-regulatory approaches to regulating advertising on VSPs.
- 2.45 These measures will be in place until legislation implementing the Online Harms White Paper is in place, at which time, if confirmed as the regulator, we will implement the requirements through that wider regulatory framework. This does not apply to those requirements relating to commercial communications that are not currently in the scope of the proposed online harms regulatory framework. Subject to the outcome of the

Government’s online advertising programme of work, we expect the requirements relating to commercial communications to remain in force. In addition, the ASA is expected to continue regulating online advertising on a self-regulatory basis, as it does at the moment.

Ofcom’s approach to VSP regulation

- 2.46 Ofcom’s approach to VSP regulation will draw on existing experience carrying out regulatory functions where we assess the adequacy of safeguards and processes in other contexts, as well as building on our extensive content regulation experience.
- 2.47 We recognise however that the online space is different to other regulated areas so Ofcom will also adopt proportionate, innovative, agile, and iterative regulatory approaches to reflect this. In delivering protections from online harm, we must also safeguard competition, privacy rights, and free speech. We will need to collaborate with a wide range of stakeholders and third sector organisations in order to deliver good regulatory outcomes in this space. This may include forming new partnerships to harness the capabilities and expertise of the wider ecosystem.
- 2.48 Ofcom will take the responses to this consultation into account and, alongside ongoing research, use this information to develop an evidence-based approach to VSP regulation. The evidence we gather will directly inform the drafting of our guidance for VSPs, but also inform our potential future role as the online harms regulator, should the Government confirm Ofcom taking on functions in this area. We acknowledge that this evidence base may change as the risks of harm, the technological approaches to protections and many other factors evolve over time, and we will review and update our published guidance as part of our regulatory approach.
- 2.49 While VSP regulation is novel, there are key lessons from our experience regulating the Communications Sector which are relevant for VSP regulation and future online harms regulation. Ofcom has previously discussed some of these principles in its September 2018 document “Addressing harmful online content”.¹⁴
- **Protection and assurance** – the AVMSD sets clear statutory objectives as to the risk of harms to be prevented and these objectives reflect societal norms and expectations, such as the protection of minors. VSP regulation will start putting some statutory protections in place for consumers ahead of the broader online harms framework.
 - **Safeguarding freedom of expression** – people should be able to freely share and receive ideas and information without unnecessary interference. Ofcom’s regulatory approach will aim to protect consumers from the most serious harms whilst at the same time recognising the importance of the right to freedom of expression. Ofcom is well-practiced at taking account of freedom of expression in its broadcasting work, but in the online world we will need to take account of the characteristics of user-generated content and to recognise the importance of freedom of speech in a

¹⁴ Ofcom: [Addressing harmful online content](#), 18 September 2018

democracy. Our guidance will set clear expectations for regulated services to safeguard freedom of expression.

- **Adaptability over time** – good regulation should always support rather than hinder innovation, and this is particularly relevant in the online context where there is a fast pace of technological development in rapidly evolving markets. Ofcom’s guidance must therefore offer flexibility for VSPs to adopt the approaches and technologies that are most appropriate for their platform to protect their users. We will do this by taking a principles-based approach to setting guidance. Our regulatory approach should also be able to evolve to reflect changing consumer behaviours and expectations, changes in the types of harm that occur and the ways in which harms materialise, innovation by industry, and established precedents from regulatory decisions.
- **Transparency** - both for regulated services and for the actions and decisions taken by the regulator. Ofcom expects to have powers to collect information from VSPs. We will also continue to carry out and publish our world-leading market research on consumer attitudes, behaviours and experiences online to inform the ongoing public debate.
- **Robust enforcement** – against non-compliance, through proportionate and meaningful sanctions. We intend to work with regulated services to help providers understand their regulatory obligations and Ofcom’s expectations for compliance. However, when significant issues arise or companies refuse to take meaningful steps to come into compliance, we will use our powers to take robust enforcement action. Ofcom’s powers under the draft Regulations will include the ability to issue directions setting out remedies and steps for improvement, fines, and for the most serious breaches, ultimately the power to suspend or restrict a service.
- **Independence** – independent governance and decision-making builds credibility and public trust. The AVMSD and existing UK media legislation recognise that independence is fundamental for regulators such as Ofcom to be able to work in the best interest of the public and to fulfil a role free of actual or perceived bias.
- **Proportionality** – will continue to be a key principle in our regulatory approach. Ofcom is duty-bound to act in a proportionate manner in carrying out its functions and this will be particularly important in the online context. The VSP sector is diverse, with platforms of different size, scale and risk of harm. Our regulation needs to reflect this. Ofcom will also need to be alive to any unintended regulatory impact, such as the risk of distorting or harming competition, for example by raising barriers to entry.

2.50 Through this Call for Evidence we welcome views from stakeholders on these principles, and how the tensions that may sometimes occur between them can be balanced.

The evolving regulatory landscape for online services

2.51 With a potentially complex and inter-related online regulatory landscape emerging, it will be important for regulators to collaborate widely and to provide clarity and certainty to industry about different regulatory regimes. Where appropriate, Ofcom will work with relevant regulators, Government and others to support this. For example, we recognise that VSP regulation will need to interact with the Information Commissioner’s Office (ICO)

Age Appropriate Design Code, which seeks to safeguard children’s personal data on services likely to be accessed by them. Ofcom is also working with the Competition and Markets Authority (CMA) as part of the CMA-led Digital Markets Taskforce to provide government with advice on the potential design and implementation of pro-competitive measures for digital platform markets, including considering how such a regime may interact with regimes such as VSP regulation.

- 2.52 The revised AVMSD also introduces new requirements for ODPS and changes the definitions that determine how services meet the ODPS criteria. Against these changes we recognise that the distinction between different platforms, or services which may be available on different platforms, may at times be complex and the criteria against which a service is judged, for example, to be a VSP or an ODPS, will need to be considered on a case by case basis. Ofcom will be issuing scope guidance to help services interpret the legislative criteria and understand which regime they will be required to notify under and therefore what obligations will apply.
- 2.53 Internationally, regulators across European Member States are also preparing for the new framework set by AVMSD, and in many countries including the UK, governments are planning on introducing broader online legislation. We will continue to work closely with our regulatory counterparts in other countries to share insights and learnings as regimes are developed in parallel.

Why we are launching a Call for Evidence?

- 2.54 As noted above, Ofcom will be required to draw up guidance for VSPs on the application of the ‘appropriate measures’ listed in the Directive. Therefore, to inform draft guidance, we are seeking evidence of the use and application of these measures to protect users from the risks of harms set out in the AVMSD. We are also seeking early views and evidence on a number of other topics to inform our general regulatory approach and other areas of guidance (see below).
- 2.55 VSP regulation of this nature is new and untested, both in the UK and globally, so it is important that Ofcom can work constructively alongside industry to develop the foundations both for this regime and any future online regulation. We need to ensure that Ofcom’s guidance is informed by robust evidence, best practice and an understanding of the current capabilities of different services.
- 2.56 Ofcom has been engaging with a range of online stakeholders for some time and will be stepping up our engagement activity through this Call for Evidence.
- 2.57 We are seeking views from platforms, consumers, experts, users, and other interested parties on good practice, issues and challenges to support our understanding of the sector and the risks of harm on these platforms. The full list of questions and areas we are seeking information around are set out in Annex 1.

Next steps

- 2.58 The Call for Evidence will run from **Thursday 16 July to Thursday 24 September 2020**.
- 2.59 The Government intend to implement the new legislation this autumn. Once passed, Ofcom will be empowered to draw up and consult on the necessary guidance for service providers. We will carefully consider all responses, inputs and information received through this Call for Evidence before issuing draft guidance for consultation. We plan for the full range of regulatory guidance to cover scope and jurisdiction, appropriate measures, user redress, and enforcement processes.
- 2.60 The new requirements apply from the date they come into force so providers who are likely to be providing a VSP as defined in the AVMSD (see 2.3-2.6 above) need to start preparing for this by ensuring they understand the new requirements and take steps to ensure their service is compliant (see 2.25-2.28 above).
- 2.61 We are however mindful of the need for an implementation period for industry after the Regulations have been made and the new statutory requirements on VSPs come into force, as well as an opportunity for public consultation on the various guidance documents Ofcom will produce. We plan to have regulatory guidance documents finalised by Summer 2021. Before that time Ofcom will take the following approach:
- We will work collaboratively with VSPs to help them understand their regulatory obligations and do not generally expect to take formal enforcement action during this period.
 - However, if we become aware of serious instances of egregious or illegal harm from UK-based VSPs and consider it is appropriate to do so, Ofcom will take robust enforcement action. We currently plan on doing so in line with our existing [enforcement guidelines for regulatory investigations](#).
 - We will work with regulators across European Members States to understand their approaches to VSP regulation and work collaboratively to develop and align regulatory approaches where possible.

A1. Call for Evidence questions

- A1.1 This Call for Evidence is seeking information and views from stakeholders in relation to the provisions of Article 28b of the AVMSD. Ofcom wants to hear from a broad range of stakeholders through this Call for Evidence.
- A1.2 Respondents are asked to provide an answer to every question that they consider relevant but are not required to respond to every question as part of their submission. Some questions are targeted specifically at the VSP industry and other online services, while other questions are intended for all respondents. We would like to hear from providers whose services are likely to fall within Ofcom’s scope, as well as other providers whose services are unlikely to be within Ofcom jurisdiction. Ofcom will publish non-confidential responses on its website, but respondents should specify where a response or a part of a response is confidential.
- A1.3 In addition to seeking written submissions from a broad range of interested stakeholders, we will be contacting industry and third sector stakeholders to invite companies and organisations to talk to us about their views, evidence and experiences in relation to the areas we have set out below. If you would like to get in touch with Ofcom about this Call for Evidence, please contact VSPRegulation@ofcom.org.uk.
- A1.4 We are also conducting bespoke consumer research to ensure we have heard from the general public and users of VSPs.

Part A: Questions for industry

Services

Question 1: Are you providing a UK-established service that is likely to meet the AVMSD definition of a VSP?

Please provide details of the service where relevant. The establishment criteria under the AVMSD are set out in annex 5.

Question 2: Is your service able to identify users based in specific countries and do you provide customised User Interfaces (UI), User Experience (UX) functionality or interaction based on perceived age and location of users?

Terms and conditions (Ts&Cs)

Question 3: How does your service develop and enforce policies for what is and is not acceptable on your service? (including through Ts&Cs, community standards, and acceptable use policies)

In particular, please provide information explaining:

- what these policies are and whether they cover the categories of harm listed in the AVMSD (protection of minors, incitement to hatred and violence, and content constituting a criminal offence – specifically Child Sexual Exploitation and Abuse, terrorist material, racism and xenophobia);
- how your service assesses the risk of harm to its users;
- how users of the service are made aware of Ts&Cs and acceptable use policies; and
- how you test user awareness and engagement with Ts&Cs.

Question 4: How are your Ts&Cs (or community standards/ acceptable use policies) implemented?

In particular, please provide information explaining:

- what systems are in place to identify harmful content or content that may breach your standards and whether these operate on a proactive (e.g. active monitoring of content) or reactive (e.g. in response to reports or flags) basis;
- the role of human and automated processes and content moderation systems; and
- how you assess the effectiveness and impact of these mechanisms/ processes.

Advertising

- A1.5 Please note that advertising includes sponsorship, product placement, endorsements and other types of audiovisual commercial communications.

Question 5: Does your service have advertising rules?

In particular, please provide information about any advertising rules your platform has, whether they cover the areas in the AVMS Directive, and how these are enforced. See Annex 5 for a copy of the AVMSD provisions.

Question 6: How far is advertising that appears on your service under your direct control, i.e. marketed, sold or arranged by the platform?

Please provide details of how advertising is marketed, sold and arranged to illustrate your answer.

Question 7: What mechanisms do you have in place to establish whether videos uploaded by users contain advertising, and how are these mechanisms designed, enforced, and assessed for effectiveness?

Reporting and flagging

Question 8: Does your service have any reporting or flagging mechanisms in place (human or automated)?

In particular, please provide information explaining:

- what the mechanisms entail and how they are designed;
- how users are made aware of reporting and flagging mechanisms;

- how you test user awareness and engagement with these mechanisms;
- how these mechanisms lead to further action, and what are the set of actions taken based on the reported harm;
- how services check that any action taken is proportionate and takes into account Article 10 of the European Convention of Human Rights (freedom of expression);
- how users (and content creators) are informed as to whether any action has been taken as a result of material they or others have reported or flagged;
- whether there is any mechanism for users (including uploaders) to dispute the outcome of any decision regarding content that has been reported or flagged; and
- any relevant statistics in relation to internal or external KPIs or targets for response.

Content rating

Question 9: Does your service allow users to rate different types of content on your platform?

Please provide details of any rating system and what happens as a result of viewer ratings.

Age assurance

Question 10: Does your service use any age assurance or age verification tools or related technologies to verify the age of users?

In particular, please provide information explaining:

- how your age assurance policies have been developed and what age group(s) they are intended to protect;
- how these are implemented and enforced;
- how these are assessed for effectiveness or impact; and
- if the service is tailored to meet age-appropriate needs (for example, by restricting specific content to specific users), how this works.

Parental controls

Question 11: Does your service have any parental control mechanisms in place?

In particular, please provide information explaining:

- how these tools have been developed;
- what restrictions they allow;
- how widely they are used; and
- how users of the service, and parents/ guardians if not users themselves, are made aware of and encouraged to use the parental control mechanisms that are available.

Complaints handling

Question 12: Does your service have a complaints mechanism in place? Please describe this, including how users of your service can access it and what types of complaint they can make.

In particular, please provide information explaining:

- any time limits for dealing with complaints;
- how complainants are informed about the outcomes of complaints;
- any appeals processes, how they work, and whether they are independent from the complaints processes; and
- the proportion of complaints which get disputed or appealed.

Media literacy

Question 13: What media literacy tools and measures are available on your service?

In particular, please provide any relevant information about:

- how you raise awareness of media literacy tools and measures on your service;
- how you assess the effectiveness of any media literacy tools and measures provided on your service; and
- how media literacy considerations, such as your users' ability to understand and respond to the content available to them feature in your thinking about how you design and deliver your services, for example in the user interfaces, flagging content and use of nudges.

Reporting and evaluation

Question 14: Do you publish transparency reports with information about user safety metrics?

Please provide any specific evidence and examples of reports, information around the categorisation and measurements used for internal and external reporting purposes, and whether you have measures in place to report at country/ regional level and track performance over time.

Question 15: What processes and procedures do you have in place to measure the impact and effectiveness of safety tools or protection measures?

If not already captured elsewhere in your response, please provide information relevant to all of the measures listed above explaining:

- how you test and review user awareness and engagement with each measure (including any analysis or research that you would be willing to share with Ofcom);

- how often policies and protection measures are reviewed, and what triggers a review; and
- how you test the impact of policies on users and the business more generally, such as how you balance the costs and benefits of new tools.

Question 16: How do you assess and mitigate the risk of inadvertent removal of legal or non-harmful content?

In particular, please provide any information on:

- how freedom of expression is taken into account during this assessment;
- how appeals are handled and what proportion are successful; and
- audits of automated removal systems and, if you have them, any metrics that relate to their effectiveness.

Question 17: Have you previously implemented any measures which have fallen short of expectations and what was your response to this?

Please provide evidence to support your answer wherever possible.

Question 18: How does your service develop expertise and train staff around different types of harm? (e.g. do you have any partnerships in place?)

Part B. Questions for all stakeholders

A1.6 The following questions are intended for industry, academics, experts, and consumer groups, as well as any other interested stakeholders.

Question 19: What examples are there of effective use and implementation of any of the measures listed in article 28(b)(3) the AVMSD 2018?

The measures are terms and conditions, flagging and reporting mechanisms, age verification systems, rating systems, parental control systems, easy-to-access complaints functions, and the provision of media literacy measures and tools. Please provide evidence and specific examples to support your answer.

Question 20: What examples are there of measures which have fallen short of expectations regarding users' protection and why?

Please provide evidence to support your answer wherever possible.

Question 21: What indicators of potential harm should Ofcom be aware of as part of its ongoing monitoring and compliance activities on VSP services?

Please provide evidence to support your answer wherever possible.

Question 22: The AVMSD 2018 requires VSPs to take appropriate measures to protect minors from content which 'may impair their physical, mental or moral development'. Which types of content do you consider relevant under this? Which measures do you consider most appropriate to protect minors?

Please provide evidence to support your answer wherever possible, including any age-related considerations.

Question 23: What challenges might VSP providers face in the practical and proportionate adoption of measures that Ofcom should be aware of?

We would be particularly interested in your reasoning of the factors relevant to the assessment of practicality and proportionality.

Question 24: How should VSPs balance their users' rights to freedom of expression, and what metrics should they use to monitor this? What role do you see for a regulator?

Question 25: How should VSPs provide for an out of court redress mechanism for the impartial settlement of disputes between users and VSP providers? (see paragraph 2.32 and article 28(b)(7) in annex 5).

Please provide evidence or analysis to support your answer wherever possible, including consideration on how this requirement could be met in an effective and proportionate way.

Question 26: How might Ofcom best support VSPs to continue to innovate to keep users safe?

Question 27: How can Ofcom best support businesses to comply with the new requirements?

Question 28: Do you have any views on the set of principles set out in paragraph 2.49 (protection and assurance, freedom of expression, adaptability over time, transparency, robust enforcement, independence and proportionality), and balancing the tensions that may sometimes occur between them?

A2. Responding to this consultation

How to respond

- A2.1 Ofcom would like to receive views and comments on the questions set out in Annex 1, by 5pm on 24 September 2020.
- A2.2 You can download a response form from <https://www.ofcom.org.uk/consultations-and-statements/category-1/video-sharing-platform-regulation>. You can return this by email to the address provided in the response form.
- A2.3 If your response is a large file, or has supporting charts, tables or other data, please email it to VSPRegulation@ofcom.org.uk, as an attachment in Microsoft Word format, together with the [cover sheet](#).
- A2.4 We welcome responses in formats other than print, for example an audio recording or a British Sign Language video. To respond in BSL:
- Send us a recording of you signing your response. This should be no longer than 5 minutes. Suitable file formats are DVDs, wmv or QuickTime files. Or
 - Upload a video of you signing your response directly to YouTube (or another hosting site) and send us the link.
- A2.5 We will publish a transcript of any audio or video responses we receive (unless your response is confidential)
- A2.6 We do not need a paper copy of your response as well as an electronic version. We will acknowledge receipt if your response is submitted via the online web form, but not otherwise.
- A2.7 You do not have to answer all the questions in the consultation if you do not have a view; a short response on just one point is fine. We also welcome joint responses.
- A2.8 It would be helpful if your response could include direct answers to the questions asked in the consultation document. The questions are listed at Annex 1. It would also help if you could explain why you hold your views, and what you think the effect of Ofcom's proposals would be.
- A2.9 If you want to discuss the issues and questions raised in this consultation, please contact VSPRegulation@ofcom.org.uk

Confidentiality

- A2.10 Consultations are more effective if we publish the responses before the consultation period closes. In particular, this can help people and organisations with limited resources or familiarity with the issues to respond in a more informed way. So, in the interests of transparency and good regulatory practice, and because we believe it is important that everyone who is interested in an issue can see other respondents' views, we usually publish all responses on [the Ofcom website](#) as soon as we receive them.

- A2.11 If you think your response should be kept confidential, please specify which part(s) this applies to and explain why. Please send any confidential sections as a separate annex. If you want your name, address, other contact details or job title to remain confidential, please provide them only in the cover sheet, so that we don't have to edit your response.
- A2.12 If someone asks us to keep part or all of a response confidential, we will treat this request seriously and try to respect it. But sometimes we will need to publish all responses, including those that are marked as confidential, in order to meet legal obligations.
- A2.13 Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use. Ofcom's intellectual property rights are explained further in our [Terms of Use](#).

Next steps

- A2.14 Following this consultation period, Ofcom plans to publish a consultation on proposed guidance in the winter.
- A2.15 If you wish, you can [register to receive mail updates](#) alerting you to new Ofcom publications.

Ofcom's consultation processes

- A2.16 Ofcom aims to make responding to a consultation as easy as possible. For more information, please see our consultation principles in Annex 3.
- A2.17 If you have any comments or suggestions on how we manage our consultations, please email us at consult@ofcom.org.uk. We particularly welcome ideas on how Ofcom could more effectively seek the views of groups or individuals, such as small businesses and residential consumers, who are less likely to give their opinions through a formal consultation.
- A2.18 If you would like to discuss these issues, or Ofcom's consultation processes more generally, please contact the corporation secretary: corporationsecretary@ofcom.org.uk

A3. Ofcom's consultation principles

Ofcom has seven principles that it follows for every public written consultation:

Before the consultation

- A3.1 Wherever possible, we will hold informal talks with people and organisations before announcing a big consultation, to find out whether we are thinking along the right lines. If we do not have enough time to do this, we will hold an open meeting to explain our proposals, shortly after announcing the consultation.

During the consultation

- A3.2 We will be clear about whom we are consulting, why, on what questions and for how long.
- A3.3 We will make the consultation document as short and simple as possible, with a summary of no more than two pages. We will try to make it as easy as possible for people to give us a written response. If the consultation is complicated, we may provide a short Plain English / Cymraeg Clir guide, to help smaller organisations or individuals who would not otherwise be able to spare the time to share their views.
- A3.4 We will consult for up to ten weeks, depending on the potential impact of our proposals.
- A3.5 A person within Ofcom will be in charge of making sure we follow our own guidelines and aim to reach the largest possible number of people and organisations who may be interested in the outcome of our decisions. Ofcom's Consultation Champion is the main person to contact if you have views on the way we run our consultations.
- A3.6 If we are not able to follow any of these seven principles, we will explain why.

After the consultation

- A3.7 We think it is important that everyone who is interested in an issue can see other people's views, so we usually publish all the responses on our website as soon as we receive them. After the consultation we will make our decisions and publish a statement explaining what we are going to do, and why, showing how respondents' views helped to shape these decisions.

A4. Consultation coversheet

BASIC DETAILS

Consultation title:

To (Ofcom contact):

Name of respondent:

Representing (self or organisation/s):

Address (if not received by email):

CONFIDENTIALITY

Please tick below what part of your response you consider is confidential, giving your reasons why

Nothing

Name/contact details/job title

Whole response

Organisation

Part of the response

If there is no separate annex, which parts? _____

If you want part of your response, your name or your organisation not to be published, can Ofcom still publish a reference to the contents of your response (including, for any confidential parts, a general summary that does not disclose the specific information or enable you to be identified)?

DECLARATION

I confirm that the correspondence supplied with this cover sheet is a formal consultation response that Ofcom can publish. However, in supplying this response, I understand that Ofcom may need to publish all responses, including those which are marked as confidential, in order to meet legal obligations. If I have sent my response by email, Ofcom can disregard any standard e-mail text about not disclosing email contents and attachments.

Ofcom seeks to publish responses on receipt. If your response is non-confidential (in whole or in part), and you would prefer us to publish your response only once the consultation has ended, please tick here.

Name

Signed (if hard copy)

A5. AVMSD provisions applicable to video-sharing platform services

Article 28a

1. For the purposes of this Directive, a video-sharing platform provider established on the territory of a Member State within the meaning of Article 3(1) of Directive 2000/31/EC shall be under the jurisdiction of that Member State.

2. A video-sharing platform provider which is not established on the territory of a Member State pursuant to paragraph 1 shall be deemed to be established on the territory of a Member State for the purposes of this Directive if that video-sharing platform provider:

(a) has a parent undertaking or a subsidiary undertaking that is established on the territory of that Member State; or

(b) is part of a group and another undertaking of that group is established on the territory of that Member State.

For the purposes of this Article:

(a) “parent undertaking” means an undertaking which controls one or more subsidiary undertakings;

(b) “subsidiary undertaking” means an undertaking controlled by a parent undertaking, including any subsidiary undertaking of an ultimate parent undertaking;

(c) “parent undertaking” means an undertaking which controls one or more subsidiary undertakings;

(d) “subsidiary undertaking” means an undertaking controlled by a parent undertaking, including any subsidiary undertaking of an ultimate parent undertaking;

(e) “group” means a parent undertaking, all its subsidiary undertakings and all other undertakings having economic and legal organisational links to them.

3. For the purposes of applying paragraph 2, where the parent undertaking, the subsidiary undertaking or the other undertakings of the group are each established in different Member States, the video-sharing platform provider shall be deemed to be established in the Member State where its parent undertaking is established or, in the absence of such an establishment, in the Member State where its subsidiary undertaking is established or, in the absence of such an establishment, in the Member State where the other undertaking of the group is established.

4. For the purposes of applying paragraph 3, where there are several subsidiary undertakings and each of them is established in a different Member State, the video-sharing platform provider shall be deemed to be established in the Member State where one of the subsidiary undertakings first began its activity, provided that it maintains a stable and effective link with the economy of that Member State.

Where there are several other undertakings which are part of the group and each of them is established in a different Member State, the video-sharing platform provider shall be deemed to be established in the Member State where one of these undertakings first began its activity, provided that it maintains a stable and effective link with the economy of that Member State.

5. For the purposes of this Directive, Article 3 and Articles 12 to 15 of Directive 2000/31/EC shall apply to video-sharing platform providers deemed to be established in a Member State in accordance with paragraph 2 of this Article.

6. Member States shall establish and maintain an up-to-date list of the video-sharing platform providers established or deemed to be established on their territory and indicate on which of the criteria set out in paragraphs 1 to 4 their jurisdiction is based. Member States shall communicate that list, including any updates thereto, to the Commission.

The Commission shall ensure that such lists are made available in a centralised database. In the event of inconsistencies between the lists, the Commission shall contact the Member States concerned in order to find a solution. The Commission shall ensure that the national regulatory authorities or bodies have access to that database. The Commission shall make information in the database publicly available.

7. Where, in applying this Article, the Member States concerned do not agree on which Member State has jurisdiction, they shall bring the matter to the Commission's attention without undue delay. The Commission may request ERGA to provide an opinion on the matter in accordance with point (d) of Article 30b(3). ERGA shall provide such an opinion within 15 working days from the submission of the Commission's request. The Commission shall keep the Contact Committee duly informed.

Article 28b

1. Without prejudice to Articles 12 to 15 of Directive 2000/31/EC, Member States shall ensure that video-sharing platform providers under their jurisdiction take appropriate measures to protect:

- (a) minors from programmes, user-generated videos and audiovisual commercial communications which may impair their physical, mental or moral development in accordance with Article 6a(1);
- (b) the general public from programmes, user-generated videos and audiovisual commercial communications containing incitement to violence or hatred directed against a group of persons or a member of a group based on any of the grounds referred to in Article 21 of the Charter;
- (c) the general public from programmes, user-generated videos and audiovisual commercial communications containing content the dissemination of which constitutes an activity which is a criminal offence under Union law, namely public provocation to commit a terrorist offence as set out in Article 5 of Directive (EU) 2017/541, offences concerning child pornography as set out in Article 5(4) of Directive 2011/93/EU of the European Parliament and of the Council ^(*) and offences concerning racism and xenophobia as set out in Article 1 of Framework Decision 2008/913/JHA.

2. Member States shall ensure that video-sharing platform providers under their jurisdiction comply with the requirements set out in Article 9(1) with respect to audiovisual commercial communications that are marketed, sold or arranged by those video-sharing platform providers.

Member States shall ensure that the video-sharing platform providers under their jurisdiction take appropriate measures to comply with the requirements set out in Article 9(1) with respect to audiovisual commercial communications that are not marketed, sold or arranged by those video-sharing platform providers, taking into account the limited control exercised by those video-sharing platforms over those audiovisual commercial communications.

Member States shall ensure that video-sharing platform providers clearly inform users where programmes and user-generated videos contain audiovisual commercial communications, provided that such communications are declared under point (c) of the third subparagraph of paragraph 3 or the provider has knowledge of that fact.

Member States shall encourage the use of co-regulation and the fostering of self-regulation through codes of conduct as provided for in Article 4a(1) aiming at effectively reducing the exposure of children to audiovisual commercial communications for foods and beverages containing nutrients and substances with a nutritional or physiological effect, in particular fat, trans-fatty acids, salt or sodium and sugars, of which excessive intakes in the overall diet are not recommended. Those codes shall aim to provide that such audiovisual commercial communications do not emphasise the positive quality of the nutritional aspects of such foods and beverages.

3. For the purposes of paragraphs 1 and 2, the appropriate measures shall be determined in light of the nature of the content in question, the harm it may cause, the characteristics of the category of persons to be protected as well as the rights and legitimate interests at stake, including those of the video-sharing platform providers and the users having created or uploaded the content as well as the general public interest.

Member States shall ensure that all video-sharing platform providers under their jurisdiction apply such measures. Those measures shall be practicable and proportionate, taking into account the size of the video-sharing platform service and the nature of the service that is provided. Those measures shall not lead to any ex-ante control measures or upload-filtering of content which do not comply with Article 15 of Directive 2000/31/EC. For the purposes of the protection of minors, provided for in point (a) of paragraph 1 of this Article, the most harmful content shall be subject to the strictest access control measures.

Those measures shall consist of, as appropriate:

- (a) including and applying in the terms and conditions of the video-sharing platform services the requirements referred to in paragraph 1;
- (b) including and applying in the terms and conditions of the video-sharing platform services the requirements set out in Article 9(1) for audiovisual commercial communications that are not marketed, sold or arranged by the video-sharing platform providers;
- (c) having a functionality for users who upload user-generated videos to declare whether such videos contain audiovisual commercial communications as far as they know or can be reasonably expected to know;
- (d) establishing and operating transparent and user-friendly mechanisms for users of a video-sharing platform to report or flag to the video-sharing platform provider concerned the content referred to in paragraph 1 provided on its platform;

- (e) establishing and operating systems through which video-sharing platform providers explain to users of video-sharing platforms what effect has been given to the reporting and flagging referred to in point (d);
- (f) establishing and operating age verification systems for users of video-sharing platforms with respect to content which may impair the physical, mental or moral development of minors;
- (g) establishing and operating easy-to-use systems allowing users of video-sharing platforms to rate the content referred to in paragraph 1;
- (h) providing for parental control systems that are under the control of the end-user with respect to content which may impair the physical, mental or moral development of minors;
- (i) establishing and operating transparent, easy-to-use and effective procedures for the handling and resolution of users' complaints to the video-sharing platform provider in relation to the implementation of the measures referred to in points (d) to (h);
- (j) providing for effective media literacy measures and tools and raising users' awareness of those measures and tools.

Personal data of minors collected or otherwise generated by video-sharing platform providers pursuant to points (f) and (h) of the third subparagraph shall not be processed for commercial purposes, such as direct marketing, profiling and behaviourally targeted advertising.

4. For the purposes of the implementation of the measures referred to in paragraphs 1 and 3 of this Article, Member States shall encourage the use of co-regulation as provided for in Article 4a(1).
5. Member States shall establish the necessary mechanisms to assess the appropriateness of the measures referred to in paragraph 3 taken by video-sharing platform providers. Member States shall entrust the assessment of those measures to the national regulatory authorities or bodies.
6. Member States may impose on video-sharing platform providers measures that are more detailed or stricter than the measures referred to in paragraph 3 of this Article. When adopting such measures, Member States shall comply with the requirements set out by applicable Union law, such as those set out in Articles 12 to 15 of Directive 2000/31/EC or Article 25 of Directive 2011/93/EU.
7. Member States shall ensure that out-of-court redress mechanisms are available for the settlement of disputes between users and video-sharing platform providers relating to the application of paragraphs 1 and 3. Such mechanisms shall enable disputes to be settled impartially and shall not deprive the user of the legal protection afforded by national law.
8. Member States shall ensure that users can assert their rights before a court in relation to video-sharing platform providers pursuant to paragraphs 1 and 3.
9. The Commission shall encourage video-sharing platform providers to exchange best practices on co-regulatory codes of conduct referred to in paragraph 4.
10. Member States and the Commission may foster self-regulation through Union codes of conduct referred to in Article 4a(2).

^[*1] Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA ([OJ L 335, 17.12.2011, p. 1](#)).’;"