



## **Media Board submission to the consultation on the Digital Fairness Act (DFA)**

**About the Media Board:** The European Board for Media Services - hereafter the Media Board - as established by the European Media Freedom Act (2024), is an independent advisory body at the European Union level composed of national regulatory authorities and bodies (NRAs) of the media and audiovisual sector. It builds upon and replaces the European Regulators' Group for Audiovisual Media Services (ERGA), which was created in 2014.

**Executive summary:** the present submission includes the following recommendations:

- The upcoming ex-post evaluation of the AVMSD should take into consideration the gaps identified in the DFA consultation instead of introducing new legislation.
- The AVMSD should remain the main EU legislation with regards to content rules and provisions on commercial communications. Any rules with that regard, if any, must be implemented as part of the existing audiovisual legal framework for which media regulators are competent.
- Avoid overlaps and contradictory provisions in the DFA with existing EU legal instrument such as the AVMSD, the AI act, and the DSA.
- Assess gaps thoroughly before proposing additional measures to ensure effective and non-redundant oversight.
- Simplification measures should not lead to the lowering of users' protection, in particular vulnerable ones such as minors.

## **1. General comments**

The European Commission's **Fitness Check of EU consumer law**<sup>1</sup> on digital fairness recognised the role of the AVMSD and of the DSA in regulating provisions that were emphasised in the consultation on the DFA. Notably, **the AVMSD prohibits the use of subliminal techniques** in audiovisual commercial communications provided by media service providers and video-sharing platforms. This prohibition limits the exploitations of vulnerabilities through television, on-demand audiovisual media services, and certain types of online services. It also stresses that **several Member States have adopted or updated laws and guidelines that contain definitions and specific obligations for influencers and traders that work with them**, by leveraging the AVMSD rules applicable to influencers. The AVMSD also establishes limitations for audiovisual commercial communications, providing a framework that safeguards consumers from potentially harmful or deceptive practices. The 2018 revision further clarified the scope of these rules and introduced additional regulations for media service providers and video-sharing platforms. These include the necessity to **disclose commercial communications** and the **prohibition of certain types of ad content, such as advertising for tobacco products, electronic cigarettes, prescription medicinal products or treatments, and alcohol targeted at minors**. The revision also emphasises the importance of protecting minors from harmful content and mandates functionalities for users uploading user-generated videos to declare the presence of commercial communications.

We therefore highlight the Commission's evaluation in its refit, which maintains that ***“the AVMSD remains the main EU legislation regulating specific content requirements for influencers' audiovisual commercial communications and complements EU consumer law on influencers marketing practices. It is important that full complementarity and alignment are ensured between EU consumer law initiatives and new content requirements for influencers that may be introduced in the AVMSD during the ex-post evaluation of the Directive, which is meant to take place by 19 December 2026”***.

**The Commission's Fitness Check also recognised the role of the Digital Services Act (DSA) in regulating many of the provisions suggested in the DFA consultation.** In line with recital 10 DSA, the DSA is without prejudice to other acts of Union law regulating the provision of information society services in general, regulating other aspects of the provision of intermediary services in the internal market or specifying and complementing the harmonised rules set out in the DSA, such as Directive 2010/13/EU.

In addition, the new AI act prohibits AI systems that exploit vulnerabilities of the user or subliminal/manipulative techniques. AI generated content and deepfakes needs to be labelled and disclosed.

As rightly noted by the Commission in the introduction of the consultation, in recent years the EU has significantly reinforced its digital rulebook, in addition to the Audiovisual Media Services Directive ('AVMSD'), the Artificial Intelligence Act (AI act) and Digital Services Act (DSA), amongst others. **The application of consumer protection rules in**

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<sup>1</sup> Staff working document: [707d7404-78e5-4aef-acfa-82b4cf639f55\\_en](#)

**the digital area in conjunction with other legislation is complex. Despite the professionalisation of influencers and their increasing reliance on specialised agencies, it should be considered that influencers typically operate with fewer professional resources and limited legal support compared to traditional audiovisual media.** This makes regulatory requirements disproportionately burdensome and complex for them. **In many Member States, influencer regulation based on the AVMSD is still in its early stages, meaning influencers are only now beginning to engage with regulators for the first time.** Moreover, a proposed legislation that would fall under the jurisdiction of another regulatory body in some Member States is bound to add further complexity and making compliance even more challenging. **Therefore, we consider that instead of adding to these complexities with an additional legislation, sector specific rules should be revised if needed. Namely any gaps in the influencer legal provisions should be analysed by the ex-post AVMSD evaluation and if necessary, addressed by a review of the Directive.**

Any call for simplification should not lead to the lowering of users' protection, in particular vulnerable ones such as minors.

**Recommendations:** several of the issues to be addressed by the Digital Fairness Act are already addressed by other EU legal instruments, such as the AVMSD, the AI act and the DSA. Any overlaps should be avoided. The upcoming ex-post evaluation of the AVMSD should take into consideration the gaps identified by this consultation instead of introducing new legislation. If further measures are adopted, they should only complement the existing framework and not contradict it.

## **2. Detailed comments**

### **2.1. Influencers (section 5)**

The AVMSD already regulates commercial communications and influencers, including through national transpositions and NRAs' national approaches.

- On the inclusion of influencers in the scope of the AVMSD:

In the NRAs' understanding, the AVMSD applies to influencers as long as they qualify as audiovisual media services<sup>2</sup>, which is done on a case-by-case basis, or their content hosted on video sharing platforms<sup>3</sup>. According to the 2021 ERGA report on vloggers<sup>4</sup>, while the regulatory principles for vloggers when constituting on-demand audiovisual media services, and for video sharing platforms, is adapted to the nature of the respective service, they are common. They include the identification of commercial

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<sup>2</sup> 2020 ERGA report (p. 8-9)

<sup>3</sup> 2020 ERGA report (p. 4)

<sup>4</sup> 2021 ERGA report (p. 25)

communications, protection of minors, ban of incitement to hatred and terrorist content, and the preservation of human dignity. Relevant AVMSD provisions<sup>5</sup> include:

- 2010 AVMSD: Art. 18(1)(a), Art. 18(1)(b), Art. 18(1)(c), Art. 18(1)(g), recitals 21-29
- 2018 AVMSD: recital 1, 3-4

The 2021 ERGA report on vloggers<sup>6</sup> quotes recital 3 of the 2018 AVMSD as acknowledging that channels created and offered on a video-sharing platform by vloggers can constitute audiovisual media services and consequently are under the editorial responsibility of a provider when it says that: *“As such, channels or any other audiovisual services under the editorial responsibility of a provider can constitute audiovisual media services in themselves, even if they are offered on a video-sharing platform which is characterised by the absence of editorial responsibility. In such cases, it will fall to the providers with editorial responsibility to comply with Directive 2010/13/EU”*.

- On the application of the AVMSD rules to influencers:

The AVMSD prohibits subliminal techniques in audiovisual commercial communications and sets limitations to protect consumers from harmful practices. The 2018 revision clarified these rules, mandating the disclosure of commercial communications and prohibiting certain ad content, such as those targeting minors with tobacco, e-cigarettes, prescription medicines, or alcohol. On the other hand, the excessive intake of foodstuffs, dietary supplements or beverages containing nutrients or substances with nutritional or physiological effects — such as fats, trans fatty acids (TFA), sugars, sodium and salt — in the overall diet shall not be encouraged. It also emphasises measures for the protection of minors and requires functionalities for declaring commercial content in user-generated videos.

Article 1(h) of the Directive defines thoroughly audiovisual commercial communications, including those accompanying or included in user-generated video in return for payment or for similar consideration or for self-promotional purposes.

Many of the NRAs have developed guidelines to provide more clarity and legal certainty to vloggers regarding the AVMSD rules transposed at national level.<sup>7</sup>

Furthermore, the regulation of influencers is a complex issue. As demonstrated in the 2022 ERGA report, different types of commercial communication and business models exist (depending on the type, and source and level of control over the audiovisual commercial communications i.e. initiated and/or controlled by the provider or by the VSP).<sup>8</sup>

ERGA is tasked by the 2018 AVMSD<sup>9</sup> to provide technical advice on any regulatory matter related to the audiovisual media services framework, including in the area of hate speech and the protection of minors, as well as on the content of audiovisual commercial communications for foods high in fat, salt or sodium and sugars. In order to ensure the

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<sup>5</sup> 2021 ERGA report (p. 10-14)

<sup>6</sup> 2021 ERGA report (p. 33)

<sup>7</sup> 2023 ERGA report (p.15)

<sup>8</sup> 2022 ERGA report

<sup>9</sup> Recital 58 of the 2018 AVMSD

consistent application of rules, ERGA has provided guidance on the application of the AVMSD rules to influencers via numerous reports (see annex). Precisely, the specific requirements related to advertising transparency and protection of vulnerable groups (in particular minors) can apply both in the scenario where an influencer could be considered as a provider of audiovisual media services and in the scenario where an influencer is a user of a video-sharing platform service, but does not fulfil the relevant criteria to qualify as audiovisual media service provider. Therefore, the AVMSD remains the main EU legislation regulating specific content requirements for influencers' audiovisual commercial communications and complements EU consumer law on influencers marketing practices.

The Media Board is continuously working on the topic of influencers and will publish a report<sup>10</sup> at the end of 2025. It aims to be not only a summary of best practices on influencers' regulation in order to update the previous work but, according to Media Board's mission, to focus on the actual difficulties NRAs may have to deal with when tackling the regulation of influencers for application and enforcement of the legal framework for influencers. Article 9 (3), (4) and (5) of the AVMSD encourages the fostering of self-regulation, while recital 14 reminds that it should not constitute a substitute for the obligations of the national legislator, but rather complement them. As pointed out by the 2022 ERGA report on vloggers and as far as the regulation of commercial communication is concerned, it is important to note that in many countries in addition to the AVMSD rules, self-regulatory organisations have developed dedicated rules. EU level initiatives exist, and consumer protection rules apply as well.<sup>11</sup> Naturally, and thanks to their experience and expertise, NRA's are well positioned to provide a comprehensive overview and guidance on those measures.

It is also to be noted that Article 26(2) of the DSA complements the rules on the disclosure of commercial communications outlined in article 28b (3)(c) of the AVMSD by extending its scope to online platforms. The relevance of article 28b (3)(c) of the AVMSD remains key, notably as it does not exempt micro and small enterprises.

**Recommendations:** the AVMSD is and should remain the main EU legislation on content regulation and provisions on commercial communications, including when it comes to content by creators/influencers. Media regulators' extensive experience, as demonstrated in previous ERGA reports, indicates that the status quo should be maintained. New rules, if any, will have to be implemented as part of the existing audiovisual legal framework for which media regulators are competent. It is therefore essential to acknowledge that the appointment of regulatory authorities in the context of the DFA should not add a layer of complexity.

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<sup>10</sup> [EBMS 2025 WG1 Terms of Reference](#)

<sup>11</sup> 2022 ERGA report (p.62)

## **2.2. Dark patterns (section 1)**

Existing legislation already addresses dark patterns through various provisions.

Dark patterns that manipulate consumers are broadly defined in the DSA. Recital 67 explicitly prohibits their use, particularly practices that deceive or nudge recipients of the service, or that distort and impair their autonomy and decision-making through the structure, design, or functionalities of the interface. Article 25 of the DSA explicitly prohibits providers of online platforms from designing interfaces that deceive or manipulate users, thereby impairing their ability to make free and informed decisions, except for practices covered by the 'Unfair Commercial Practices Directive' - UCPD (Directive 2005/29/EC) and GDPR.) The Commission has the authority to issue guidelines on specific practices, such as giving undue prominence to certain choices, repeatedly requesting decisions through intrusive pop-ups, or making service termination procedures more cumbersome than subscription processes. Dark patterns can also be addressed under Article 34 on risk assessment, which requires VLOPs and VLOSEs to analyse and assess systemic risks arising from the design or functioning of their services. Article 35 further obliges them to implement mitigation measures to address those risks. In addition, the Commission's recently published guidelines on Article 28 recommend measures to protect minors against dark patterns.

Moreover, the AVMSD imposes requirements on audiovisual media service providers (including linear and on-demand) and video-sharing platforms when it comes to commercial communication (articles 9(1) and 28b (2) of AVMSD), depending on the level of control they exercise over commercial communications.

Thus, in line with the obligations related to the design, the following requirements apply:

- Art. 9(1)(a): audiovisual commercial communications must be readily recognisable and surreptitious commercial communications are prohibited,
- Art. 9(1)(b): audiovisual commercial communications shall not use subliminal techniques,
- Art. 9(1)(g): audiovisual commercial communications shall not directly exhort minors to buy or hire a product or service by exploiting minors' inexperience or credulity,
- Additionally, article 28b(3)(g) requires video-sharing platforms to take appropriate measures allowing users of video-sharing platforms to rate the content.

Furthermore, article 28b(3)(c) obliges VSPs to have a functionality for users who upload user-generated videos to declare whether such videos contain audiovisual commercial communications.

The Media Board (or ERGA at that time) has examined the implementation of such measures and found that there are currently various ways of presenting commercial communications depending on the business model of the provider.<sup>12</sup> It highlighted the fact that recognising such commercial communications are sometimes challenging due to the lack of definition of what 'readily recognisable' means, and that establishing

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<sup>12</sup> 2022 Report – [How to identify and localise vloggers and regulate their commercial communication?](#)

whether commercial communications are targeting minors is complicated<sup>13</sup>. Dark patterns are considered misleading and the AVMSD aims to counter such behaviours when it comes to commercial communication. The 2021 EC guidance on the Unfair Commercial Practices Directive<sup>14</sup> stresses that capturing the consumer’s attention to view advertising content notably when it is considered as persistent and unwanted solicitation (“*nagging*”). In addition, the OECD<sup>15</sup> also considers that “*the ultimate purpose of dark patterns is to increase business revenue, whether in terms of sales or proceeds of advertising*”. Both reports link dark patterns in advertising with the incentive of sharing of personalised data for personalised advertising.

Finally, as the AVMSD contains prominence provisions in article 7a (services of general interest) to ensuring the appropriate prominence of audiovisual media services of general interest aimed at safeguarding democratic discourse, public service, cultural and linguistic diversity, and media pluralism. Article 13(1) of AVMSD (European works on on-demand audiovisual services) includes the obligation for on-demand services to give prominence to European works in their catalogues, which allow to promote access to European content and the development of European audiovisual industry. Any new definition and requirements on dark patterns and prominent display of content should be without prejudice to these obligations.

In addition, the AI act also covers dark patterns, particularly with regard to articles that prohibits AI systems that exploit vulnerabilities of the user (art. 5(1)b) or subliminal/manipulative techniques (art. 5(1)a). In this regard, AI Act guidelines on “prohibited AI practices” published in February 2025 recognise the complementarity between these articles and Article 25 of the DSA<sup>16</sup>.

**Recommendations:** Given the measures present in existing pieces of legislation, it is essential to assess any existing gaps thoroughly before proposing additional measures to ensure effective and non-redundant oversight.

Further clarification could be necessary in the AVMSD framework regarding existing rules as to the correct labelling and display of advertising, as well as the targeting of minors, in order to ensure the consistent application of rules related to influencers.

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<sup>13</sup> 2023 Report – [Learning from the practical experiences of NRAs in the regulation of vloggers](#)

<sup>14</sup> [2021 EC guidance on the UCPD](#)

<sup>15</sup> [2022 paper on dark commercial patterns](#)

<sup>16</sup> Recital 139 of the AI Act : « *The prohibitions in Article 5(1)(a) and (b) AI Act are also complementary to Regulation (EU) 2022/2065 (the Digital Services Act (‘DSA’) which regulates online intermediary services, such as online platforms and search engines, and ensures transparency and accountability in the provision of those services. Notably, Article 25(1) DSA prohibits dark patterns within the user interface to ensure that providers of online platforms do not mislead or coerce users into actions that may not align with their genuine intentions. Such dark patterns should be understood to constitute an example of manipulative or deceptive techniques within the meaning of Article 5(1)(a) AI Act, when they are likely to cause significant harms.* »

### **2.3 Addictive design (section 2)**

Article 28b (1) point a) AVMSD foresees that VSPs have to take appropriate measures to protect minors from programmes, user-generated videos and audiovisual commercial communications which may impair their physical, mental or moral development. As a result, some Member States specified that addictive features such as infinite scrolling and autoplay could increase the impact and risk of harm.<sup>17</sup>

The DSA moreover provides obligations for platforms (which are not applicable to micro and small enterprises though) to protect minors from addictive designs (article 28 and its recently published guidelines), with stricter obligations for very large online platforms and search engines (articles 34 and 35). The Commission has indeed issued requests for information and opened formal proceedings against platforms on suspicion of design that may stimulate behavioural addictions<sup>18</sup>.

The Media Board's detailed evaluation of the implementation of article 28b(1) point a) and the harms tackled at Member States level is to be published at the end of 2025.

### **2.4 Specific features in digital products, such as video games (section 3)**

Existing legislative and co-regulatory measures already covers gambling and its advertising to a certain extent.

Recital 30 of the 2018 AVMSD mentions the importance of protecting minors from exposure to audiovisual commercial communications relating to the promotion of gambling. It also mentions that use of self- or co-regulatory measures at Union and national level for the promotion of responsible gambling. The AVMSD further stresses in recital 10 that measures taken by a Member State to enforce its national consumer protection regime, including in relation to gambling advertising, would need to be justified, proportionate to the objective pursued, and necessary as required under the Court's case-law. Moreover, video game consoles could be considered as defined as interface providers subject to the obligations of prominence of services of general interest in Member States that have transposed Article 7a of the AVMSD.

The recently published European Media Industry Outlook<sup>19</sup> dedicates a full chapter to the video games sector, identifying it as one of the most dynamic segments of the European media and creative industries. Alongside its economic growth, the report highlights several consumer protection challenges, particularly linked to online advertising practices and monetisation models. Issues include microtransactions and loot boxes, aggressive behavioural advertising targeting minors, and the increasing use of in-game advertising and product placement that may not always be transparent to users. These

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<sup>17</sup> Online Safety Code <https://www.cnam.ie/app/uploads/2024/11/Coimisiun-na-Mean-Online-Safety-Code.pdf> and Consultation response to the Online Safety Code [https://www.cnam.ie/app/uploads/2024/05/202405\\_Summary\\_Consultation\\_vFinal.pdf](https://www.cnam.ie/app/uploads/2024/05/202405_Summary_Consultation_vFinal.pdf)

<sup>18</sup> For example against TikTok : [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_24\\_926](https://ec.europa.eu/commission/presscorner/detail/en/ip_24_926).

<sup>19</sup> <https://op.europa.eu/en/publication-detail/-/publication/0104f736-8935-11f0-9af8-01aa75ed71a1/language-en>



findings underscore the urgency of addressing consumer vulnerabilities in this sector, beyond the narrow scope of gambling-related risks. The convergence between gaming, social interaction, and audiovisual content blurs the lines between different regulatory regimes, making a more holistic, cross-sectoral approach necessary. Also, some gaming services may facilitate the sharing or uploading of user-generated audiovisual content that is harmful to minors or other audiences. As such services could potentially meet the definition of Video-Sharing Platform Service, it may therefore be prudent to explicitly acknowledge a potential overlap between the AVMSD and DFA regimes.

**In-game advertising, both as interstitial ads and as integrated content (e.g. product placement), can blur the line between gameplay and advertising, making it harder for consumers, especially minors, to distinguish between entertainment and commercial communication. Advergaming**, which are games designed primarily as advertising tools, often lack transparency about their promotional intent. This can mislead consumers and undermine informed decision-making.

Regarding the protection of minors regime that can in effect cover also cases of presence of substance/non-substance abuse material and in some Member States, part of the descriptor on substance abuse also covers cases of gambling depictions. This therefore means NRAs have experience partially also in accessing this content.

Some NRAs have experience with assessing the provision of programmes that include gambling or games of chance. This could also be mentioned as there is this type of experience in some NRAs as well.

Potential application of the AVMSD to video games (qualification of video games, in particular where they provide user-generated audiovisual content) including on the protection of minors and commercial communications rules could be considered. Another issue is the qualification of hybrid services which may be considered as VOD while still abiding by many of the codes of video games.

Moreover, it is to be noted that the DSA may apply to some videogames, the latter would be subject to the DSA rules which include the article 25 on dark pattern or the article 28 on protection of minors, The DSA guidelines pursuant to Article 28 related to the protection of minors would also apply to video games “*accessible to minors*” and provide guidance on potential addictive features that may be harmful to minors. Indeed, platforms should ensure that minors are not exposed to “*virtual items such as paid loot boxes, other products, where they offer random or unpredictable outcomes or gambling-like features, and by introducing separation or friction between content and the purchasing of related products*”.

Many gambling or in-game monetisation features may be particularly harmful to vulnerable players such as minors. Videogame content rating systems, such as PEGI in Europe, aims to inform consumers about some of the risks they may encounter while playing like in-game purchases but lack a European legal ground.

<p><b>Recommendations:</b> Explore synergies between the AVMSD, DSA and consumer protection law to ensure consistent safeguards across platforms that combine gaming, streaming, and user-generated content. This would ensure that regulation evolves in step with market trends, tackling not only gambling-like features but also</p>
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broader commercial practices that risk undermining fair consumer treatment and the protection of minors online.

## **2.5 Unfair personalisation practices (section 4)**

Existing legislation already addresses unfair personalisation practices through various provisions, including via specific articles within the AVMSD.

Article 6a of the AVMSD emphasises that the personal data of minors, whether collected or otherwise generated by media service providers, shall not be processed for commercial purposes. This prohibition extends to activities such as direct marketing, profiling, and behaviourally targeted advertising, thereby ensuring that minors' data is protected from exploitation for commercial gains.

Article 28b (3) sub-paragraph 4 of the AVMSD applies a similar obligation to video-sharing platform providers who are prohibited from using data of minors collected or otherwise generated for commercial purposes, such as direct marketing, profiling and behaviourally targeted advertising. This article specifically pertains to data obtained through the establishment and operation of age verification systems and through the provision of parental control systems. These systems are designed to protect minors from content that may impair their physical, mental, or moral development.

Moreover, the AI act prohibits AI systems that exploit vulnerabilities due to the age of the user (art. 5(1)b) or subliminal/manipulative techniques (art. 5(1)a).

Unfair personalisation practices are also addressed by the DSA through several provisions. Article 26(3) prohibits online platform providers from presenting advertisements to recipients of the service based on profiling that uses special categories of personal data, as defined in Article 9(1) of the GDPR. In addition, Article 28(2) prohibits advertising based on profiling when the recipient of the service is a minor. The Commission's guidelines on this article (section 6.5.1) further suggest that recommender systems should not rely on behavioural data of minors derived from their activity on the platforms. For VLOPs and VLOSEs, Article 34(2) may also apply, requiring them to assess how recommender and advertising systems contribute to systemic risks, while Article 35(1) obliges them to implement measures such as adjusting algorithmic systems, including recommender systems.

Similarly to the use of recommender systems that may target users with content based on particular data collected by service providers, the use of data to personalise advertisements can be unfair / risky insofar as the various data collected can be used to make inferences, and those inferences can be used to place certain harmful kinds of advertising for particular users<sup>20</sup>.

**Recommendations:** Given the comprehensive measures present in existing pieces of legislation, it is essential to assess any existing gaps thoroughly before proposing additional measures to ensure effective and non-redundant oversight.

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<sup>20</sup> <https://globalwitness.org/en/campaigns/digital-threats/the-big-tech-business-model-poses-a-threat-to-democracy/>

## **2.7 Simplification measures (section 8)**

The AVMSD is the cornerstone of the EU audiovisual media content legal framework and ensures legal certainty and predictability for both providers and regulators. Its sector-specific rules are vital to safe-guarding and promoting a fair, safe, diverse, and competitive audiovisual media market. The AVMSD allows for a timely and direct intervention by national media regulators in cases of non-compliance, including from video-sharing platforms with harmonised minimum content standards, although it does not impose Member States to organise a sanctions regime. Media regulators have gained extensive experience implementing the AVMSD rules, with the ability to coordinate cross-border cases further reinforced by the EMFA.

A minimum set of audiovisual content-focused rules should apply irrespective of the distribution channel or their size as there is no exemption for smaller VSPs in the AVMSD which is a clear added value of the audiovisual framework compared to the DSA. The VSP inclusion within the scope of the AVMSD in 2018 is indicative that any legal framework imposing rules concerning audiovisual content should also apply in the digital environment. These rules apply consistently across borders through the country-of-origin principle and are now further reinforced through the formal cooperation mechanisms among national regulatory authorities set out in the articles 14 and specifically for VSPs article 15 of EMFA.

The DSA is a pillar of the EU's legal framework for digital intermediary services. It introduced a single set of rules for providers across the EU and strengthened consumer protection, with particular attention to minors using digital services. By establishing rules for the functioning and responsibilities of these services, it complements the AVMSD, and together they provide a robust tool for addressing the measures highlighted in the DFA consultation. However, the application of the DSA, which entered into force in 2022, is still at early stages. Finally, it should be recalled that the AI Act is introducing new rules on AI systems that will also impact AI generated content. It first introduces prohibitions such as deploying subliminal or manipulative techniques or exploiting vulnerabilities of the users for AI systems. High risk AI systems have a full set of risk management measures and, finally, AI generated content needs to be labelled and deepfakes disclosed.

**Recommendations:** The AVMSD is and should remain the main EU legislation on content regulation and provisions on commercial communications.

It is essential to assess any existing gaps, either in the DSA, the AI Act or the AVMSD, thoroughly before proposing additional measures in the DFA to ensure effective and non-redundant oversight, but if they help fixing loopholes in the AVMSD, the AI Act or the DSA. Simplification measures should not lead to the lowering of users' protection, in particular vulnerable ones such as minors.

## **2.8 Horizontal measures (section 9)**

Many of these issues foreseen in the consultation for a DFA are already subject to obligations foreseen by the AVMSD.

Article 28b (3) point f foresees that VSPs shall establish and operate age verification systems for users with respect to content which may impair the physical, mental or moral development of minors. Point h of the same article imposes the introduction of parental control systems.

Article 9(1) point g foresees that audiovisual commercial communications shall not directly exhort minors to buy or hire a product or service by exploiting their inexperience or credulity, directly encourage them to persuade their parents or others to purchase the goods or services being advertised, exploit the special trust minors place in parents, teachers or other persons.

In addition, and in line with article 7a of the AVMSD, Member States may ensure the prominence of audiovisual media services of general interest, and article 13(1) the prominence of European works. In addition, article 20 of the European Media Freedom Act introduces the right to customise the media offering. The Digital Fairness Act should be complementary to these obligations and avoid any contradiction or overlaps with already existing legal framework.

Article 28b(3) point j, and article 33a of the AVMSD introduced obligations for VSPs and Member States to promote media literacy skills. These measures should complement obligations foreseen in the Digital Fairness Act.

Issues such as deceptive design, dark patterns, addictive design, and influencer marketing are related to users' digital, financial, and media literacy skills. As such, it is advisable that EU-level action to address these issues would be accompanied by measures that build on existing initiatives in these domains, but targeting these toward identified populations and issues that may be disproportionately affected or prominent in relation to matters covered by the Digital Fairness Act. Furthermore, it would be preferable to encourage or incentivise relevant service providers to participate in and/or design and promote literacy initiatives at the point of access to service.

### **Recommendations:**

The AVMSD is and should remain the main EU legislation on content regulation and content-related provisions on commercial communications, and the DSA, the main piece of legislation governing platform liability. When addressing horizontal measures, we invite the services of the European Commission to avoid any overlaps with existing legislation, especially with the AVMSD.

It would be beneficial to ensure that the Digital Fairness Act does not interfere with, or is potentially without prejudice to, other Union law specifying or complementing aspects of regulation applying to providers of user interfaces or similar (e.g. Art. 7a AVMSD or Article 20 EMFA) - so that these can be applied independently in furtherance of media pluralism, etc.

## **Annex**

**2020 ERGA report: Regulation of Vloggers on Video-Sharing Platforms** - [https://media-board.europa.eu/document/download/3c2aed4f-7207-48df-bf69-3d258e95d5fb\\_en?filename=ERGA-SG1-Report-Vlogger-Workshop-Sept-2020\\_final.pdf](https://media-board.europa.eu/document/download/3c2aed4f-7207-48df-bf69-3d258e95d5fb_en?filename=ERGA-SG1-Report-Vlogger-Workshop-Sept-2020_final.pdf)

**2021 ERGA report: Analysis and recommendations concerning the regulation of vloggers** - [https://media-board.europa.eu/document/download/2fb79e31-3463-42f8-b8f2-fddc49aed613\\_en?filename=ERGA-SG1-Report-Vloggers.pdf](https://media-board.europa.eu/document/download/2fb79e31-3463-42f8-b8f2-fddc49aed613_en?filename=ERGA-SG1-Report-Vloggers.pdf)

**2022 ERGA Report – How to identify and localise vloggers and regulate their commercial communication?** – [https://media-board.europa.eu/document/download/833be3b9-5fae-4529-a9be-7f9c0b131297\\_en?filename=2022-12-ERGA-SG1-Report-Vloggers-2.pdf](https://media-board.europa.eu/document/download/833be3b9-5fae-4529-a9be-7f9c0b131297_en?filename=2022-12-ERGA-SG1-Report-Vloggers-2.pdf)

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