[HU] Implementation of the AVMSD's rules on video sharing platforms in Hungary

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The Hungarian Parliament implemented the AVMSD's new rules on video-sharing platform services in May. The new rules were incorporated into the e-Commerce Act through Hungarian legislation, thus the rules were not embedded in media regulation, but in the act which implemented the e-Commerce Directive in 2001. In fact, a hybrid solution was created, since the definitions, such as the definition of a video-sharing service platform, were incorporated into the Hungarian Media Act. In the future, the legal framework surrounding video-sharing services is going to be determined by both the Hungarian media acts - Act CIV of 2010 (Smtv.) and Act CLXXXV of 2010 (Mttv.) - and the e-Commerce Act, however the latter will be more significant.

The definition of a video-sharing service, as determined by the Mttv., complies with the definition in the AVMSD. The rules in terms of jurisdiction were incorporated into the e-Commerce Act and these rules implemented the detailed provisions of the AVMSD. Hungarian law requires video-sharing service providers to be registered and it defines the required information which should be submitted by the services during the registration process. Other requirements regarding registration were not determined by law. The competent authority, the Office of the National Media and Infocommunication Authority (NMHH), is mandated to impose a fine of up to 10 million Hungarian forint (HUF), (approximately EUR 30 000), in the case of a violation of the rules in terms of registration.

The law obliges video-sharing platform providers to ensure the protection of interests, as described in 28b. (1) (a)-(c) of the AVMSD, by taking appropriate measures and providing technical solutions, and these have to be included in the service providers' terms and conditions. The most detailed rules from the abovementioned issues are the child protection provisions. Service providers are obliged to establish and operate age verification systems and parental control systems with respect to content which may impair the physical, mental or moral development of minors. The provision is defined in general terms, which gives service providers wide-ranging opportunities to make decisions on the measures to adopt. The Authority has the power to publish a recommendation on best practices in order to orientate the services. The act also obliges services to establish functions which provide appropriate information on content which may

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impair the physical, mental or moral development of minors. Another obligation imposed on services is to establish transparent and user-friendly mechanisms to allow users to report or flag content which may impair the physical, mental or moral development of minors to the video-sharing platform provider concerned. Video-sharing platforms have to establish procedures for the handling and resolution of users' complaints. The legislation extended the scope of protected issues, as defined in 28b. 1 (a)-(c), by adding human dignity and criminal offences, in accordance with Hungarian law. Nevertheless, fewer rules were introduced concerning contents which contain hate speech, the violation of human dignity or criminal offence. Besides including these provisions in their terms and conditions, service providers have to introduce mechanisms that allow users to report or flag such content to the video-sharing platform provider. Video-sharing platform services are obliged to provide transparent information on procedures for the handling and resolution of users' complaints.

As for audiovisual commercial communication on the platforms, the general media law provisions of the Smtv. must be followed. These rules should be included in the service providers' terms and conditions, and services have to provide users who upload user-generated videos with the opportunity to declare whether such videos contain audiovisual commercial communications. Regarding this issue, platforms have to ensure a reporting system on injurious content and operate a transparent compliance process system. The law did not lay down further rules concerning the enforcement of the provisions of the media regulation, which means there are no special rules for a stricter enforcement of the provider's responsibility. Detailed rules were not defined for the media literacy measures and tools which platforms have to provide for users. Interestingly, the legislation did not mandate the Hungarian media authority, *Médiatanács* (Media Council), to enforce the new rules, but the Hivatal (Office) of the integrated regulatory authority, *Nemzeti Média és Hírközlési Hatóság* (National Media and Infocommunications Authority). The problem with this solution is that requirements which could ensure a regulatory body being functionally and effectively independent from the governmentare applied to the Media Council and not the Office. The Office is a traditional administrative body which does not have the appropriate guarantees for the level of independence required by the AVMSD. In the case of an infringement committed by a platform, the Office may use similar sanctions to those used by the Media Council in other cases, including imposing a fine of up to HUF 100 million (approximately EUR 300 000).

The AVMSD's provisions for forcing co-regulation are positioned in the framework of the co-regulation system of the Hungarian media regulation, which was installed in 2010. The law provides very detailed regulations on the framework of cooperation between the Office and the self-regulatory bodies or alternative dispute resolution forums of the video-sharing platforms. This solution seems to reflect the intent of the AVMSD, but many questions arise in the light of the fact

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that the efficiency of the existing co-regulation system in the media landscape has generated serious doubts over the last 10 years. In sum, the new Hungarian regulation on video-sharing platform services defines stricter rules than the AVMSD on a small scale and provides an open space for video-sharing services to create appropriate measures to comply with the rules. However, it widely authorises the Office to evaluate the legality of the measures taken by platforms. The law did not detail the necessary mechanisms to assess the appropriateness of the platforms' measures.

2020. évi XXIV. törvény az elektronikus kereskedelmi szolgáltatások, valamint az információs társadalommal összefüggő szolgáltatások egyes kérdéseiről szóló 2001. évi CVIII. törvény módosításáróL

http://njt.hu/cgi_bin/njt_doc.cgi?docid=219480.382963

Act XXIV of 2020 on the Amendement of the E-Commerce Act CVIII 2001.

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