

New AVMS Directive: European Commission guidance on essential functionality criterion (video-sharing platforms)

Rules for video-sharing platforms of the new Audiovisual Media Services Directive also cover social media that provide programmes or user-generated content to entertain, inform or educate the general public as “*an essential functionality*”.

To help NRAs assess if the audiovisual content functionality of a service is essential, the Commission guidelines of 2 July 2020 propose a set of **15 indicators**.

NRAs should:

- ✓ Inform providers of ongoing assessment
- ✓ Consider the nature and the role played by the audiovisual content in the service

EC guidance is:

- ✓ Non-binding
- ✓ Without prejudice to future CJEU rulings
- ✓ As a toolbox – not cumulative

 Relationship with main economic activity	 Relevance (quantitative and qualitative)
<ul style="list-style-type: none"> ✓ Overall character, architecture and external layout Prominent video-sharing feature (live broadcasting, video categories, take a video button, video suggestion) ✓ Specific functionalities (features) tailored for videos Auto-play, livestreaming, video search/filter and other features that attract/engage users towards videos ✓ Stand-alone nature of audiovisual content Video watched for its informational, entertaining or educational value ✓ Positioning on market and market segment Reference to video offer in marketing/advertising, service branded as a VSP 	<ul style="list-style-type: none"> ✓ Amount of audiovisual content Significant amount of videos based on meaningful/reliable evidence (quantitative assessment preferred) ✓ Use of audiovisual content Users make substantial use of videos available (quantitative assessment preferred) ✓ Reach of the audiovisual content Presence of popular video (may reach large numbers of users) and sensitive target audience (e.g. minors)
 Monetisation/revenue generation	 Tools to enhance visibility/ attractiveness
<ul style="list-style-type: none"> ✓ Advertising in or around audiovisual content Including if not sold by platform ✓ Paying access to audiovisual content Including if monetisation is not managed by platform ✓ Sponsorship agreements by uploaders Or product placement, including if platform does not participate directly ✓ Tracking of users' platform activities Users' interaction with video is tracked for marketing/commercial purposes or data-sharing agreements 	<ul style="list-style-type: none"> ✓ Features/actions prompting video consumption Videos are suggested or shown on the main page without any user request ✓ Tools to attract/encourage interaction with videos Filters, sharing options, live chats, watch parties within or around the video ✓ Tools for users to have a say on content offer Usually questionnaires and samples ✓ Tools for video uploaders Tools or systems to track the performance of the content uploaded or to manage it