

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