

July 31, 2020

VIA EMAIL (12CCC@ar.parlamento.pt)

RE: Facebook written opinion requested by the Parliament of Portugal on the draft Law n.º4-4/XIV/1ª transposing the EU Directive 2018/1808 (Audiovisual Media Services Directive)

Facebook thanks the Parliament of Portugal, through its Culture and Communication Committee, for the invitation to contribute to the consultation on the draft Law n.44/XIV/1ª (hereinafter, the draft Law) transposing the EU Audiovisual Media Services Directive (hereinafter, AVMSD)¹.

Facebook has studied the proposed amendments put forward by the draft Law and wishes to share the below observations. For practical reasons, this submission has been drafted in English. We hope that this is acceptable to the Culture and Commission Committee and thank you in advance for your understanding.

In this submission, Facebook focuses primarily on the proposed amendments to the existing Portuguese Law n.º 27/2007 on the provision of audiovisual services (hereinafter, the draft Audiovisual Law) aimed at regulating video-sharing platforms, as the new area of regulation under the revised AVMSD.

Facebook's mission is to give people the power to build communities and bring the world closer together. Building on this mission, Facebook's platforms and products are designed to allow people to interact with family, friends and communities using the type of content which is most meaningful and appropriate for them, which includes text, photos, stickers and video. Video-sharing on our platform is one aspect of a multimedia experience.

Facebook has long called for appropriate regulatory standards across the internet, so private companies aren't making important and challenging decisions involving freedom of expression

¹ Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) in view of changing market realities.

and protection from online harms alone. In this sense, we welcome AVMSD bringing a common approach to regulation of video-sharing platforms across the EU.

Facebook appreciates the work that has clearly gone into seeking to ensure that the draft Law reflects the positions taken in the AVMSD, in particular as regards to the points detailed below:

- **Country of origin.** Facebook is pleased to observe that the draft Law (in particular Article 3.1.c) of the draft Audiovisual Law) clearly sets out that only video-sharing platform services provided under Portuguese jurisdiction are subject to the provisions of the Audiovisual Law. We also appreciate that the draft Law rules to determine jurisdiction as provided in Article 3.2.b) of the draft Audiovisual Law directly defer to the provisions of Article 28a of AVMSD, thus ensuring full alignment with the AVMSD provisions. Facebook would like to underscore that adhering to those provisions is necessary for a correct implementation of the country-of-origin regime enshrined in the AVMSD. Country-of-origin is a cornerstone principle of the AVMSD ensuring that the provision of online services, usually characterized by its cross-border nature, are subject to minimum regulatory barriers in the EU.
- **Definitions.** Facebook appreciates the efforts by the Portuguese authorities to align the definition of video-sharing platform service provided in Article 2.1.bb) of the draft Audiovisual Law with the corresponding term in Article 1.1.(aa) AVMSD. Full alignment of national definitions with the AVMSD terms is the basic pillar for a harmonized approach to the regulation of video-sharing platforms services across the EU. However, we note that the types of services that will fall within the definition of video-sharing platform service is highly dependent on how the interpretation of the ‘essential functionality’ criterion, part of the video-sharing platform definition, will be made. We welcome in this regard the explicit reference to the consideration of the European Commission Guidelines on the ‘essential functionality’ criterion, in accordance with the Recital 5 of AVMSD, and would encourage the Portuguese regulatory authority to work within ERGA (the European Regulators Group for Audiovisual Media Services) towards a harmonized interpretation of this concept across Member States.
- **Provisions applicable to video-sharing platforms.** Facebook is pleased to confirm that the regulatory regime applicable to video-sharing platforms as proposed in the draft Law is in line with Article 28b of AVMSD. We appreciate in particular the proper promotion in Article 69-E of the draft Audiovisual Law of self and co-regulatory models for the implementation of measures on video-sharing platforms, as encouraged by Article 28b.2 and Recital 49 of the AVMSD. Facebook would also like to note that despite full alignment with the AVMSD provisions, lack of harmonization might still occur due to a divergent implementation of the same general provisions by different national regulatory authorities across Member States. Alongside the AVMSD country-of-origin principle, a harmonized interpretation of the AVMSD principles would contribute to European

citizens benefitting from the same level of protection across the EU. We trust that ERGA will play a key role in ensuring such a coordinated approach.

- **E-Commerce Directive.** Facebook does also welcome the reference in the draft Law (Article 1-A.1 of the draft Audiovisual Law) to the application of the e-Commerce Directive², as transposed in Portugal through the Decree-Law no. 7/2004, to video-sharing platform services. We are in particular appreciative of the confirmation under the draft Law (Article 69-A of the draft Audiovisual Law) that the regulation of video-sharing platforms should be without prejudice to the exemptions from liability and to the no general obligation to monitor content established in Articles 12 to 15 of the e-Commerce Directive, transposed in Portugal through Articles 12 to 16 of the Decree-Law no. 7/2004.

² Directive 2000/31/EC of the European Parliament and of the Council, of 8 June 2000, on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce)