



Coimisiún
na Meán

Draft Media Service Code

Short News Reporting

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Contents

1. Introduction	3
2. Scope and Jurisdiction	3
3. Purpose and Preparation of the Code	3
4. Regulatory Principles Relevant to the Code	3
5. Severability	4
6. Waiver	5
7. Compliance and Enforcement	5
8. Complaints	5
9. Guidance	6
10. Definitions	6
11. Access to short news extracts	7
12. Events of high interest to the public	7
13. General news programmes	8
14. Use of extracts	8



1. Introduction

- 1.1 Pursuant to Section 46N(1) of the Broadcasting Act 2009, as amended by the Online Safety and Media Regulation Act 2022 (the “**Act**”) Coimisiún na Meán (the “**Commission**”) may make codes (“**media service codes**”) governing the standards and practices of broadcasters and providers of audiovisual on-demand media services.
- 1.2 Pursuant to Section 46N(5) of the Act, the Commission shall make media service codes providing for the matters required to be provided for by Article 15 of Directive (EU) 2010/13 (as amended by Directive (EU) 2018/1808) (the “**Audiovisual Media Services Directive**”).
- 1.3 In accordance with its statutory duties and obligations set out above, the Commission has prepared this media service code relating to short news reporting (the “**Code**”).

2. Scope and Jurisdiction

- 2.1 The Code gives effect to Article 15 of the Audiovisual Media Services Directive in Ireland, in so far as it relates to audiovisual media services, namely, television broadcasting services and audiovisual on-demand media services.
- 2.2 The Code applies to media services providers under the jurisdiction of the State within the meaning of Section 2A of the Act.

3. Purpose and Preparation of the Code

Purpose

- 3.1 The purpose of the Code is to ensure that media service providers that are under the jurisdiction of the State comply with the requirements of Article 15 of the Audiovisual Media Services Directive.

Preparation of the Code

- 3.2 The Code has been prepared in accordance with the procedures provided for by Section 46Q of the Act.

4. Regulatory Principles Relevant to the Code

- 4.1 In its interpretation, application and enforcement of the Code, the Commission must, in accordance with its public law duties, act lawfully, rationally and fairly.
- 4.2 More particularly, the Commission must act in accordance with:
 - its general statutory objectives and functions under the Act.

- the rights conferred by the Constitution, the Charter of Fundamental Rights of the European Union, the European Convention on Human Rights insofar as applicable under the European Convention on Human Rights Act 2003 and the EU Treaties.
- 4.3 Section 7(2) of the Act provides that, in performing its functions, the Commission shall endeavour to ensure that the democratic values enshrined in the Constitution, especially those relating to rightful liberty of expression, are upheld, and that the interests of the public, including the interests of children, are protected, with particular commitment to the safety of children. The Commission shall also endeavour to ensure the Commission's policies in relation to broadcasting services and audiovisual on-demand media services best serve the needs of the people of the island of Ireland.
- 4.4 In addition, the Commission must endeavour to ensure that its regulatory arrangements (i) address programme material and other content which are harmful or illegal; (ii) take account of technological and societal change; and (iii) operate proportionately, consistently and fairly.
- 4.5 Section 7(3) of the Act provides that, in addition, the Commission shall, inter alia:
- stimulate the provision of high quality, diverse, and innovative programmes by providers of broadcasting services.
 - engage in evidence-based decision-making in the exercise of its functions, and promote evidence-based decision-making by those with which it consults.
 - encourage compliance with the provisions of the Act, and the provisions of any code, rule or other statutory instrument made under it, in any manner the Commission considers appropriate, including by the publication of guidance as to how those provisions may be complied with.
- 4.6 Pursuant to Section 7(4) of the Act, in performing its functions, the Commission shall have regard to: the safety of children, and published policies of the Minister for Children, Equality, Disability, Integration and Youth in respect of that matter; the regulation of gambling, and published policies of the Minister for Justice in respect of that matter; climate change and environmental sustainability, and published policies of the Minister for the Environment, Climate and Communications in respect of that matter; and published policies of the Government in respect of any of those matters.

5. Severability

- 5.1 If any provision of the Code is found to be unlawful, invalid, prohibited, unenforceable or inapplicable (either generally or with respect to a particular media service provider(s)) in any respect, on the basis of any law (including the Constitution and European law), such finding shall not affect the lawfulness, validity, enforceability or applicability of any other provision of the Code or part thereof, unless the finding is declared to be applicable to such other provision or part thereof, or the same is the subject of the relief granted by a court.

- 5.2 Without prejudice to the foregoing, all of the other provisions and/or parts of the Code shall remain fully effective, applicable and enforceable. To the extent necessary any provision or part of the Code found to be unlawful, invalid, prohibited, unenforceable or inapplicable, shall be severed from the Code.

6. Waiver

- 6.1 The fact that the Commission does not respond to or comment upon any submission, assessment, proposal, report, compatibility statement or any analogous document submitted to it by a media service provider shall not be deemed to be an acceptance or approval of the contents of any part of the same and shall not imply that the provider has complied with its obligations under the Act and/or the Code.
- 6.2 Without prejudice to the foregoing, the fact that the Commission does not respond or comment on any such document shall not create an estoppel against, or constitute a waiver by, the Commission of any of its powers or rights pursuant to the Act and/or the Code.

7. Compliance and Enforcement

- 7.1 Pursuant to Section 46N(10) of the Act, a failure by a broadcaster to comply with the Code shall be a contravention for the purposes of Part 8B of the Act.
- 7.2 A broadcaster shall ensure that they have systems and controls in place to demonstrate compliance with the obligations contained in this Code.
- 7.3 Pursuant to Section 47(3) of the Act, broadcasters are required to prepare and implement a code of practice for the handling of complaints relating to the failure of the broadcaster to comply with a media service code.

8. Complaints

- 8.1 A person may make a complaint if they believe a broadcaster has not complied with this Code. Coimisiún na Meán advises complainants to make their complaint to the broadcaster in the first instance as this is the quickest way to have a complaint considered and responded to.

Information on the complaints handling process, including Coimisiún na Meán's process, is available on our website (www.cnam.ie) or you can contact Coimisiún na Meán on + 353 1 963 7755 or at usersupport@cnam.ie.

9. Guidance

- 9.1 The Commission may provide general non-binding guidance regarding the provisions of the Code on request or as and when it is deemed necessary. The Commission reserves the right to publish and amend guidance from time to time as it sees fit.
- 9.2 Requests for guidance must include the relevant material linked to the request for guidance. The request should clearly state the section(s) of the Code, which the requestor believes are relevant, and set out the specific question about which the requestor would like a view. The Commission accepts no liability for any decision (or consequences arising therefrom) made following receipt of non-binding general guidance from the Commission.

10. Definitions

“Audiovisual media service” means

(i) a service as defined by Articles 56 and 57 of the Treaty on the Functioning of the European Union, where the principal purpose of the service or a dissociable section thereof is devoted to providing programmes, under the editorial responsibility of a media service provider, to the general public, in order to inform, entertain or educate, by means of electronic communications networks within the meaning of point (a) of Article 2 of Directive 2002/21/EC; such an audiovisual media service is either a television broadcast or an on-demand audiovisual media service.

(ii) audiovisual commercial communication.

“audiovisual on-demand media service (on-demand service)” means an audiovisual media service provided by a media service provider for the viewing of programmes at the moment chosen by the user and at his individual request on the basis of a catalogue of programmes selected by the media service provider.

“broadcaster” means a media service provider of television broadcasts.

“media service provider” means the natural or legal person who has editorial responsibility for the choice of the audiovisual content of the audiovisual media service and determines the manner in which it is organised.

“programme” means a set of moving images with or without sound constituting an individual item, irrespective of its length, within a schedule or a catalogue established by a media service provider, including feature-length films, video clips, sports events, situation comedies, documentaries, children's programmes and original drama.

“short news extract” is an extract of coverage of an event that is of high interest to the public which is retransmitted by a television broadcaster which does not hold the rights to the broadcast of that event.

“television broadcasting” or “television broadcast” (i.e. a linear audiovisual media service) means an audiovisual media service provided by a media service provider for simultaneous viewing of programmes on the basis of a programme schedule.

11. Access to short news extracts

- 11.1 With a view to satisfying the right of the public to be informed about public events, a broadcaster under the jurisdiction of the State that has acquired exclusive television broadcasting rights for an event that is of high interest to the public shall ensure that other broadcasters established in the State or in another EU Member State have access to short extracts for inclusion as a short news report in general news programmes.
- 11.2 A broadcaster that has acquired exclusive broadcasting rights for an event that is of high interest to the public shall ensure access to short extracts on a fair, reasonable and non-discriminatory basis.
- 11.3 Access is guaranteed by allowing television broadcasters to freely choose short extracts from the transmitting television broadcaster’s signal.
- 11.4 In the case of a broadcaster seeking to use short news extracts, the extract shall be chosen first from a broadcaster established in the State having exclusive rights to the event of high interest to the public. If this is not possible, the extract shall be chosen from the relevant broadcaster established in another EU Member State, in which case the law of the EU Member State where the broadcaster supplying the initial signal (that is, giving access) is established shall apply.
- 11.5 Access to short news extracts shall be free of charge.

12. Events of high interest to the public

- 12.1 The Commission considers events of high public interest to include, among other things, those events that are newsworthy and/or those which would appeal to a large number of people and/or those that are of interest to people other than those who usually follow events of a similar nature. This also includes events which, by their nature, may be expected to have a significant impact on the interests of citizens. It also includes those sporting and cultural events designated by the Minister for Tourism, Culture, Arts, Gaeltacht, Sport and Media as being of major importance to society.
- 12.2 Notwithstanding the above, the Commission acknowledges that a determination as to what constitutes an event of high public interest is an editorial decision that will be made on a case-by-case basis by a broadcaster. For this reason, the Commission will, in determining any complaint received in respect of this Code, have regard to the editorial criteria used by the broadcaster and to the characteristics set out in section 12.1.

13. General news programmes

- 13.1 A general news programme is characterised by the fact that it comprises newsworthy events and discusses more than one topic or one event during the programme.

14. Use of extracts

The exercise of the right to produce short news reports shall be subject to the following conditions:

- 14.1 A broadcaster which has been granted right of access, may freely select the parts of the programme it intends to broadcast in a short news report. However, the extracts may not be used to compile programming for entertainment purposes.
- 14.2 The permitted length of short news reports will depend on the amount of time needed to convey the newsworthy information but should not exceed 90 seconds except by agreement between the broadcaster and the rights holder.
- 14.3 The right to use short news extracts shall not arise until transmission of the event, from which short extracts are derived, has ended.
- 14.4 Short news extracts may be used for as long as they are newsworthy. However, the extracts may not be sold and while they may be included in the archive of the broadcaster who has used the extracts, the broadcaster must put measures in place to ensure that they are not sold or reused after their newsworthiness has ended.
- 14.5 The broadcaster benefiting from the right to use a short news extract shall clearly identify the source, unless this not possible for reasons of practicality.
- 14.6 Short news extracts shall be used solely for general news programmes and may be used in on-demand audiovisual media services only if the same programme is offered on a deferred basis by the same media service provider.
- 14.7 The conditions set out in this Code for the use of short news extracts do not restrict broadcasters and rightsholders from reaching agreements once such agreements do not infringe on the public interest objectives of this Code or the rights of rightsholders.

