

Response to Consultation and Decision:

Application of the Online Safety Code to the Category of VSPS

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Introduction

This document sets out Coimisiún na Meán's (the "**Commission's**") response to consultation and decision on the application of the Online Safety Code published on 21 October 2024 (the "**Code**") to the category of relevant online services, being video-sharing platform services ("**VSPS**") the providers of which are under the jurisdiction of the State (the "**Category**").¹

The Commission adopted the Code on 10 October 2024 in accordance with section 139K of the Broadcasting Act 2009 (the "**Act**"). The Code can be accessed [here](#). The background and legislative context for the final decision taken with regard to the adoption of the Online Safety Code has been published on the Commission's website.

In accordance with the requirements of section 139L of the Act, and as further explained below, the Commission has determined that the Code shall apply to the Category. The Commission's determination to apply the Code to the Category is set out at **Annex 1** of this document. In summary, the Code will apply to the Category of VSPS, **28 days** following the publication of this determination to apply the Code, that is, on **19 November 2024**.

VSPS providers must implement the requirements of:

- Part A of the Code by **19 November 2024**; and
- Part B of the Code by **21 July 2025**.

Annex 2 contains a final Statement of Reasons for the Commission's determination.

The remainder of this document describes the consultation process followed and sets out the Commission's response to submissions made during that process taking account of the matters to which the Commission is required to have regard under section 139L(3) of the Act.

The publication of this Response to Consultation and Decision document on the Commission's website fulfils the requirement to give notice under section 139L(1)(b) of the Act and commences the notice period under section 139L(2) of the Act.

1. Requirements for application of the Code

Before the Code can apply to any online service or designated category of services, the Commission must make a determination under section 139L(1) of the Act that it will apply.

Ahead of making such a determination, the Commission must, under section 139L(4), consult:

- where the Code is to apply to a designated named service, the provider of that service;

¹ The Category was designated under section 139E and section 139G of the Act, effective 11 September 2023: <https://www.cnam.ie/designation-notices/>.

- where the Code is to apply to a designated category of services, an organisation representative of services falling within the category, and (insofar as possible) the providers of those services;
- any advisory committee established under section 19 of the Act; and
- any other person the Commission considers appropriate.

The Commission must also have regard to the matters listed in section 139L(3) of the Act. Those matters are addressed in the remainder of this response to consultation document and in the final Statement of Reasons (Annex 2). The Commission confirms that it has had due regard to these matters in reaching its determination to apply the Code to the Category.

2. Consultation process followed

Consultation with Technology Ireland and named VSPS providers

On 2 July 2024, the Commission invited submissions from Technology Ireland, as the relevant representative organisation, in respect of the application of the Code to the Category. Technology Ireland submitted a written response.

On the same date, the Commission invited submissions from the providers of the ten services that had been designated as named VSPS the providers of which are under the jurisdiction of the State (and presently falling within the Category),² in respect of each of: (a) the application of the Code to the Category, and (b) the application of the Code to the relevant named service(s) that they provide.

The Commission received written responses, addressing both the application of the Code to the Category and to the relevant named services, from the following providers:

- Automattic Inc., on behalf of Tumblr Incorporated, the provider of the service **Tumblr**;
- Google Ireland Limited, the provider of the service **YouTube**;
- LinkedIn Ireland Unlimited Company, the provider of the service **LinkedIn**;
- Meta Platforms Ireland Limited, the provider of the services **Facebook** and **Instagram**;
- Pinterest Europe Limited, the provider of the service **Pinterest**;
- Reddit Ireland Limited, on behalf of Reddit Incorporated, the provider of the service **Reddit**;
- TikTok Technology Limited, the provider of the service **TikTok**; and
- Twitter International Unlimited Company, the provider of the service **X**.

As part of the consultation process the Commission facilitated (separate) meetings with Technology Ireland and a number of the named VSPS providers. Parties were requested to submit all comments in writing and the Commission has taken account only of written responses in responding to this consultation.

² The VSPS were designated under section 139E and section 139G(2) of the Act, effective on various dates in December 2023: <https://www.cnam.ie/designation-notices/>

No written response was received from the provider of the service **Udemy**, although Udemy Ireland Limited attended a meeting facilitated by the Commission.

Engagement with the Youth Advisory Committee

The Commission has established a Youth Advisory Committee under section 19 of the Act, which assists and advises the Commission on the exercise of its online safety functions relating to the interests of children and people 25 and under, and on such other matters as the Commission may determine.

The Commission consulted with its Youth Advisory Committee on 17th January 2024 and 28 May 2024 in relation to the application of the Code to the Video Sharing Platform Services.³

Conclusion on submissions received

In accordance with the Consultation Guidelines published by the Commission in June 2023⁴ the Commission is publishing this response to consultation following its consultation process.

The Commission has considered and taken account of the written submissions it has received and the views of its Youth Advisory Committee in making its determination and in preparing its final Statement of Reasons. Non-confidential versions of the submissions received will be published on the Commission's website.

The Commission notes that, at the time of consultation, the (then) draft Online Safety Code published on 27 May 2024⁵ following the Commission's formal consultation on the contents and application of an Online Safety Code published in December 2023 (the "**December 2023 Consultation**") was the subject of a notification to the European Commission under the TRIS procedure. The public record of notification can be accessed [here](#). The Commission considered it appropriate to consult on the basis of that draft online safety code as if it were the final code, as it contained the Commission's published position and the Commission did not expect the final code to depart in any material respect from that draft. The Commission confirms that, in adopting the final Code, it has not made any material changes to the draft published on 27 May 2024.

The Commission observes that four parties submitted comments for the attention of the European Commission and Member States during the TRIS procedure, namely: Computer & Communications Industry Association (CCIA Europe); Technology Ireland (IBEC); the Children's Rights Alliance; and Foróige. The foregoing comments did not prompt comments from the European Commission or the Member States. In all cases the submissions are largely repetitive of points addressed in the Commission's response to the December 2023 Consultation published on 27 May 2024. Accordingly, these particular submissions have not been addressed by the Commission in this response to consultation on the application of the Code.

³ The meeting reports can be consulted [here](#) and [here](#).

⁴ https://www.cnam.ie/wp-content/uploads/2023/06/ConsultationGuidelines_June-2023-1.pdf

⁵ https://www.cnam.ie/wp-content/uploads/2024/05/Online-Safety-Code_vFinal.pdf

However, the Commission notes that the response to consultation on the application of the Code submitted by Technology Ireland incorporated by reference, its comments on the Code submitted to the European Commission during the TRIS procedure. To the extent that Technology Ireland's response to consultation on the application of the Code is required to be read together with its comments submitted during the TRIS procedure in order to be properly understood, the Commission has so read it, and has duly had regard to its comments submitted during the TRIS procedure for that purpose.

Scope of the consultation and response

Application of the Code to the Category and application of the Code to named VSPS

This response to consultation relates to the Commission's determination to apply the Code to the Category. The Commission will correspond separately with the named VSPS providers falling within the Category in relation to submissions made on the application of the Code to each of their services and the Commission's determinations in that regard. It shall publish notice of its determinations on its website.

Because the submissions received in consultation were referable both to (a) the application of the Code to the Category and (b) the application of the Code to individual named VSPS, the Commission has considered the submissions as a whole in assessing the application of the Code to the Category. This reflects the fact that submissions made by a named VSPS provider in respect of the characteristics of its particular service, being a member of the Category, may also be relevant to the assessment of, and the application of the Code to, the Category as a whole.

Responses to consultation containing submissions both on application of the Code and on the substance of the Code

The invitations to consult issued to Technology Ireland and the named VSPS providers clearly defined the scope of the consultation.

Briefly, the invitations to consult relating to the application of the Code to the Category under section 139L(4)(b) of the Act:

- appended a Statement of Reasons which summarised the Commission's reasoning in reaching its preliminary conclusion on the application of the Code to the Category;
- invited comments on the Commission's preliminary conclusion on the application of the Code to the Category; and
- noted that the consultation on the substance of the draft Code had closed and the Commission did not invite comments on the content or drafting of the revised draft Code or the final Code, in circumstances where the Commission's response to those aspects of the December 2023 Consultation was published on 27 May 2024 and is available on the Commission's website.

The invitations to consult relating to the application of the Code to the named VSPS under section 139L(4)(a) of the Act noted that the Commission had reached the preliminary conclusion that it was appropriate to apply the final Code to the individual named VSPS, on the basis on that each named VSPS is a designated VSPS falling within the Category, and to which the Commission has concluded it is appropriate to apply the final Code. The Commission's reasons for applying the final Code to the Category are very relevant to the application of the final Code to each named VSPS. Similarly to the invitation to consult on the application of the Code to the Category, the Commission did not invite comments on the content or drafting of the revised draft Code or the final Code.

Accordingly, the consultation did not re-open engagement on the substance of the Code, which at that stage was still undergoing the TRIS procedure following the submission of the draft Code to the European Commission.

However, a number of responses to the consultation nonetheless contained submissions related to the substance of the Code. Notwithstanding the view of the Commission that a number of such submissions fell more properly within the consultation (now closed) in relation to the substance of the Code, and were, to an extent, repetitive of points addressed in the Commission's response to consultation document in respect of the December 2023 Consultation published on 27 May 2024,⁶ the Commission has considered it appropriate that the submissions nonetheless be addressed briefly by this response to consultation document read with its Response to the December 2023 Consultation published on 27 May 2024.

Summary and consideration of responses received

This response is structured in line with the preliminary statement of reasons contained in the invitations to consult issued to named VSPS providers and to Technology Ireland on 2 July 2024. It addresses submissions received on:

- (A) Part I - legal obligations supporting the application of the Code;
- (B) Part II - matters to which the Commission must have regard under section 139L(3) of the Act; and
- (C) Part III - other matters, including timeframes for compliance.

The Commission has had regard to all relevant submissions received. To the extent that submissions received were not clearly referable to specific sections of the preliminary statement of reasons, the Commission has considered and addressed them where it appeared to the Commission to be most appropriate. The failure to refer to any specific issue should not be taken as failure on the part of the Commission to have regard to any particular submissions or the submissions as a whole. The Commission will further set out the reasons for the application of the Code to each named VSPS by way of individual correspondence with the VSPS concerned.

⁶ https://www.cnam.ie/wp-content/uploads/2024/05/Response-to-Consultation_vFinal-3.pdf

A. Responses on Part I: Legal obligations supporting the application of an Online Safety Code to the category of VSPS

The preliminary statement of reasons explained that the application of the Code to the Category is required by sections 139K(3) in conjunction with section 139G of the Act.

No respondent disagreed with the Commission's assessment of the legal basis for or necessity of applying the Code to the Category, although a number of respondents expressed reservations or concerns about the application of the Code to named VSPS providers.

B. Responses on Part II: Matters to be considered, in particular, under section 139L(3) of the Act

The below refers to the matters to be considered under section 139L(3) of the Act.

B(a) Nature and scale of service, or services within the category

Overview of comments

It was submitted that the Commission should take a “*tiered*” and “*tailored*” approach to the application of the Code, both in relation to the resources available to providers and to the differences between services in the Category and the role video plays in each.

Respondents made submissions in relation to the differing levels of resources available to providers within the Category. It was argued that the Commission's implementation of the Code should reflect the “*vastly*” different means of the designated services, and the ability of some to develop and deploy proprietary technology to meet compliance requirements rather than have to procure and integrate third-party solutions. Respondents submitted that the failure by the Commission to adopt a tailored approach would be contrary to the Audio-Visual Media Services Directive (the “**AVMS Directive**”) and the need for appropriate measures to be both “*practicable*” and “*proportionate*”. It was further submitted by one respondent that even platforms with a “*large*” user base may have vastly different resources and capabilities than other “*large*” platforms due to differences in their business models or stages of development.

Respondents submitted that various differences between services within the Category and the role of video-sharing functions on those services should require the Commission to tailor its approach. These included, for example, differences where services are wholly premised on video-consumption and where video-consumption is alleged to be “*peripheral*” to the core user-experience; differences in the volume of video content on services; differences in the amount of video content watched on services; when services have constructed their entire service architecture to facilitate video content as a mode of content delivery and associated moderation demands and when they have not; the differences and implications of native and non-native video for content moderation; the fact some services may be VLOPs⁷ and some may not; differences in the prominence of video content on services; differences in the number of users between

⁷ Very Large Online Platforms.

services; the fact that some services allow users to post adult-only videos and others do not; differences in the risk profile between services, including where aspects of services are focused on or target children.

One respondent highlighted how the proportionality of the Code's measures may be assessed by taking account of a range of factors, including the size of a platform, its functionalities and use cases, the risk to users, existing mitigation measures, relevant industry standards, users' rights and the platform's resources compared to the cost and effectiveness of the proposed measures. It submitted that the Code should allow flexibility for platforms to implement safety measures that are practical and effective in light of their unique designs and risk profiles, and to do so in a manner that is suited to the features and functionality of their platforms.

One respondent submitted that the overall risk profile is lower for a "real identity" service, being a service where the terms require that members be real people and use their real or preferred names.

Commission response

Having considered these submissions, the Commission's preliminary views have not changed.

As a preliminary point (responding to a theme running through many submissions and relevant to all of the matters to be considered), the Commission notes that its decision to apply the Code to the Category of VSPS (and in turn to the providers of individual services within that Category) is a distinct issue from the approach it will take to exercising the supervision and enforcement functions with which it is tasked once the Code applies. The Commission clearly explained the effect of its decision to apply the Code in its preliminary statement of reasons (at Part II(e)): "*Once applied, the Code will be binding on all VSPS within the Category*". After the Code is applied the Commission will use its supervisory and enforcement powers to ensure that service providers meet their obligations to comply with it, in particular, to protect minors. The Statement of Reasons already recognises (at Part II(b)) that existing measures taken by providers reduce the availability of harmful online content.

The Statement of Reasons also already recognises that the nature and scale of services in the Category varies (at Part II(a)). In circumstances where a service satisfies the definition of a VSPS, the differences highlighted by certain respondents, such as functionality differences, the volume of video content, variances in the number of users, do not obviate the basic need for providers to provide protections for minors and the general public in the manner provided for in the Code. What measures taken by providers look like in practice may naturally vary from service to service, depending on the provision at issue. Some providers may need to take certain measures while others may not; some may take measures differently than others owing to the characteristics of the services they provide; and some may need to implement measures to a higher standard than others, in light of the risks their services present, including risks to minors. In all cases the need for the providers to take measures to protect minors and the general public remains.

The Commission has amended the Statement of Reasons to include updated statistics on the scale of the services within the Category and notes that the updated statistics confirm its preliminary assessment of the scale of those services.

The Commission notes the submission in relation to “*real identity*” services and its applicability to more than one VSPS falling within the Category. While this has not altered the Commission’s overall conclusions, the Commission has amended Part II(a) of the Statement of Reasons to reflect that this feature may reduce the risk profile in relation to certain VSPS.

B(b) Levels of availability of harmful content on the service/services within the category

Overview of comments

It was submitted that certain research findings taken into account by the Commission do not align directly with the categories of harmful content regulated by the Code. The Commission was urged, in particular, by Technology Ireland to review any determinations which it has made in order to ensure that they relate directly to the types of content regulated by the Code.

A number of respondents disputed the Commission’s conclusion on the levels of availability of harmful content. One respondent disagreed with the Commission’s conclusion that harmful online content is widely available on VSPS within the Category. It submitted that such content is not readily available on its service and noted that other VSPS providers also ban some or all categories of harmful content. Respondents also made submissions addressing (a) the limited amount of video content available on the smallest services within the category, and (b) qualities of the services that reduced the risk profile of the services.

Commission response

The research the Commission has taken into account relates to the content regulated by the Code. The definition of “*harmful online content*” in the Act includes content that gives rise to any risk to a person’s life or significant harm to a person’s physical or mental health, where the harm is reasonably foreseeable, and includes cyberbullying, promotion of eating or feeding disorders, and the promotion of self-harm and suicide. The research relied on by the Commission that shows users becoming uncomfortable, upset or having negative feelings is indicative of negative impacts on users’ mental health from using VSPS and the presence of content that may be harmful online content.

The Commission has now included in its Statement of Reasons additional examples of harmful online content from its research, tailored to specific forms of harmful online content.

The Commission has also considered individual respondents’ submissions on the levels of availability of harmful content on their services (and by extension on services within the Category), noting that the Statement of Reasons (at Part II(b)) already recognises that existing measures taken by providers reduce the availability of harmful online content. The Commission has confirmed its preliminary views on this matter, but the final Statement of Reasons now expressly notes that the levels of availability of harmful online content on different services in the Category vary from service to service.

B(c) Levels of risk of exposure to harmful content on the service/services within the category

Overview of comments

A number of respondents highlighted differences between services within the Category and, consequently, differing levels of risk of exposure. For example, one respondent noted that its service poses a comparatively low risk due to the nature of its user and content policies, and the fact that its video content is “*vanishingly small*” compared to others in the Category. Other respondents’ submissions as summarised at point (b) above are also relevant.

Commission response

The preliminary statement of reasons explicitly acknowledged that the risk of exposure will vary as between VSPS within the Category. Having considered the submissions, the view of the Commission remains that there is a high degree of risk of exposure with the use of VSPS in the Category. Accordingly, it has not made any changes to Part II(c) of the Statement of Reasons.

B(d) Levels of risk of harm, and in particular harm to children, from the availability of harmful online content or exposure to it on the service/services within the category

Overview of comments

Respondents disagreed with the Commission’s statement in the preliminary statement of reasons that “*none of the services in the Category have barriers that could meaningfully prohibit determined minors from accessing the freely available content within their core user-experience*” and invited the Commission to limit its wording.

The submissions of respondents in relation to the nature of their policies and the limited reach of their platforms (described at points (a) – (c) above) are also relevant to this aspect of the Commission’s assessment.

Commission response

The Commission made its observation about the absence of barriers on the basis that it is possible to create an account on these services and to self-report an age where one is requested. It is a known issue that children may not always be truthful about their real age. Some services in the Category that do not require accounts to access the freely available content within their user-experience lack even this level of basic protection. Even where an account sign-up requires an age or related confirmation, the age a provider sets for its service in its terms and conditions has no objective bearing on the functional difficulty a minor encounters when attempting to gain access to a service.

The preliminary statement of reasons acknowledged that VSPS providers in the Category take measures, to greater or lesser degrees, to protect minors, and that they implement restrictions and checks. These

factual observations by the Commission are distinct from the question of whether such measures are appropriate within the meaning of the Act or the AVMS Directive.

Having considered respondents' general representations on the limited reach of their services, the Commission has no reason to depart from its preliminary views on the overall levels of risk of harm, and in particular harm to children, from the availability of harmful online content or exposure to it on the services within the Category. However, as noted under point (b) above, the final Statement of Reasons now expressly notes that the levels of availability of harmful online content on different services in the Category may vary from service to service.

B(e) Rights of the provider of the service/providers of services within the category

Overview of comments

As noted under point (a) above, a number of respondents emphasised the different levels of resources available to different services within the Category. In light of this, they raised concerns about the potentially disproportionate burden of compliance with obligations under the Code on smaller services.

The Code's potential to disincentivise innovation was also raised. One respondent submitted that the Commission must ensure the Code does not inadvertently favour the largest companies to the detriment of innovation, competition, and consumer choice. It suggested that if the Code is applied without due regard to the factors discussed, it would disincentivise platforms from experimenting with video-related offerings in the EU. One respondent submitted that in order for small- and medium-sized platforms to continue to innovate and grow, it is important that these platforms not be required to take steps that are unnecessary to improve their users' safety, considering the substantial aggregate costs of compliance with the Code's measures.

Some respondents made representations on Section 17.3 of the Code (on reporting to the Commission), submitting that this obligation should not be applicable to VSPS until the Commission has further specified the manner in which VSPS providers should report to it. Respondents also commented that the reporting obligations had the potential to become overly burdensome and would require an investment of time and resources disproportionate to the provider's resources, user number and complaint volumes; and that complaints reporting should be limited to purposes required for the Commission to assess compliance with the requirements of the Code as envisaged by the Act, and should not extend to transparency reporting requirements.

The Commission notes that there was broad agreement from members of the Youth Advisory Committee that the fact that VSPS providers' implementation of some of the minor protection measures could potentially drive users to other services should not stop the Commission from applying the Code.

Commission response

The Commission's preliminary statement of reasons noted that the measures in the Code will allow providers to harness the benefits of the country-of-origin principle, while acknowledging more broadly that

applying the Code will lead to burdens for providers obliged to comply with it including restrictions on the ability to provide services in a manner that does not comply with the Code. It also explicitly accepted that the different resources available to providers will, to some extent, influence the form of measures they take. The Commission has now also expressly clarified in Part II(e) of the Statement of Reasons that it has had regard to the matters raised by providers regarding their means in making its determination.

The Commission has considered respondents' submissions on these matters as part of the totality of its determination to apply the Code, including the rights of service providers and of users of services (under factor (f)). Its conclusion remains that its determination is justified.

The final Statement of Reasons expressly acknowledges the benefits of innovation under factors (e) and (f). The Commission is of the view that the Code will help to ensure that when providers are innovating, they do not harm minors and the general public.

The Commission confirms, in response to submissions in relation to section 17.3 of the Code, that it intends to engage further with the VSPS providers specifying the manner in which it expects reports to be made in advance of the expiry of the implementation period for Part B. The Commission notes that the focus of Section 17.3 is to promote compliance with the Code.

B(f) Rights of users of the service / users of services within the category

Overview of comments

Respondents' comments on the rights of users – including the benefits of innovation, competition, and consumer choice - overlap with comments on the rights of the providers of the services and are addressed at (e) above.

The Commission notes observations from the Youth Advisory Committee in relation to age assurance and the protection of minors, in particular that the user experience of age assurance will vary by platform and that, while any change will be met with some frustration from users, the measures in the (at the time of discussion, draft) online safety code were justified. Issues were noted with cross-platform sharing and screen recording as responses to be anticipated when services put minor protection measures in place, along with the potential that measures may drive users to competitors with similar service offerings who are not similarly regulated. Committee Members felt overall that the positives for age assurance outweighed these issues.

Commission response

As noted above, the final Statement of Reasons expressly acknowledges the benefits of innovation under factors (e) and (f).

Having considered the submissions and comments from the Youth Advisory Committee, the Commission concludes that the application of the Code to the Category will have an overall positive effect on users' rights. Accordingly, it has not made any other changes to Part II(f) of the Statement of Reasons.

C. Responses on Part III: Other factors relevant to the Commission’s determination

C(a) Interplay with other legal instruments

Overview of comments

A number of respondents made submissions in relation to the substance of the Code and its interplay with the EU Digital Services Act (“**DSA**”) and the General Data Protection Regulation (“**GDPR**”). In particular, respondents submitted that certain obligations in the Code were duplicative of the DSA. Technology Ireland’s response to consultation emphasised that the application of the Code must not disturb the careful balance struck by the EU legislature between the protection of EU citizens’ fundamental rights in its adoption of the DSA and AVMS Directive, or conflict with requirements or terms of the DSA and AVMS Directive, respectively.

Commission response

The preliminary statement of reasons sets out the Commission’s view that it is a matter for VSPS providers to determine how they will satisfy other legal obligations when complying with the Code. It also explained that the obligations imposed under those separate measures did not obviate the need to apply the Code to the Category, which in any event was implementing a regime envisaged by the AVMS Directive. The Commission’s preliminary position has not changed in light of the submissions received and the relevant section of Part III of the Statement of Reasons reflects the preliminary statement of reasons.

For completeness, and as recorded in Part III of the Statement of Reasons:

- The Commission has had due regard to the representations made by VSPS providers regarding practical difficulties they perceive they may experience in complying with the Code and has amended the Code’s contents to ensure greater harmony and alignment with other legal obligations to which VSPS providers are subject. In particular, the Commission has amended the contents of the Code (from the December 2023 consultation draft) to ensure greater harmony with the DSA. The Commission’s reasoning in this respect is described in its Response to Consultation on the making of the Code (May 2024).
- The Commission has considered the revisions to the draft Code together with the contents and the objectives of those other EU measures and concludes that it is appropriate to apply the Code to the Category.

The Commission notes that it has also previously considered submissions on the scope of the Code and the potential for overlap of obligations with those under the DSA in its response to consultation document in respect of the December 2023 Consultation published on 27 May 2024. In that context, the Commission noted the submissions made by respondents in relation to the DSA, and recognised that the DSA was a maximum harmonisation measure that applied without prejudice to the AVMS Directive. The response to consultation document published on 27 May 2024 also highlighted aspects of the DSA that had influenced the revision of the Code. The submissions of VSPS providers that certain obligations in the Code were

duplicative of the DSA have therefore been examined by the Commission and have contributed to the Commission's overall approach to the design of the Code.

C(b) Responses containing submissions relating to aspects of the substance of the Code

Overview of Comments

As noted above, a number of responses to the consultation addressed matters relating to the substance, content and drafting of the Code. The Commission's views relating to the submissions made by VSPS providers that fall within that description are summarised below.

The use in the Code of the terms "children" and "minor"

The Commission notes that submissions were made relating to the use of the terms "children" and "minor" in the Code. The submission was made specifically by Technology Ireland (incorporating by reference points it made in its submission on the TRIS procedure in respect of the Code) that, while "children" is a defined term under the Code (albeit under Part B), meaning persons under the age of 18, the AVMS Directive applies in respect of "minors", which is not a defined term under the Code or the AVMS Directive. It submitted that the adoption of the term "minors" throughout the Code would grant providers more flexibility and would align with the actual AVMS Directive wording. It submitted, further, that applying certain measures under the Code to older children may be disproportionate, and the Code should allow for differential treatment for age groups under 18 (for example, 0 to 12 yrs, 13 to 15 yrs, 16 to 18 yrs).

Commission response

The Commission notes that the use of the term "*child*" and "*children*" in the Code to refer to a person under the age of 18 years aligns with the use of the term generally in Irish law. Similarly, under Irish law, a "*minor*" ordinarily means a person under the age of 18 years. Moreover, as previously noted in the response to consultation document in respect of the December 2023 Consultation dated 27 May 2024, in recognition of the differences between children of varying ages, and in recognition of the evolving capacities of children, Part B of the Code specifies that parental control systems should only be implemented in respect of users under the age of 16 years (that is, 15 years and under). This is intended to apply Part B's requirements in a more proportionate way only to those VSPS which permit users under the age of 16 years. The Commission is satisfied that the point raised by the submissions on this issue has been appropriately considered by the Commission in its drafting of the Code. As regards compliance with Part A of the Code, if it is appropriate for VSPS providers to differentiate between age groups of minors in the measures they take, then they may do so; if it is not, then they may not. The Commission's published online safety guidance materials dated 21 October 2024 clarify that the terms "*child*" and "*children*" are used interchangeably with "*minor*" and "*minors*".

The alignment of the parental control obligations in the Code with EU law

The Commission notes it was submitted in the consultation that the application of the Code should reflect and support the requirements on parental controls and obligations as outlined in the AVMS Directive,

Article 8(1) GDPR and Articles 28, 34 and 35 of the DSA. This submission was made specifically by Technology Ireland, which referred to and incorporated by reference points it made in its submission to the TRIS procedure in respect of the Code. It was also submitted by one respondent that prescriptive parental control measures should only apply as appropriate/proportionate and be directed to content considered to be harmful in respect of the physical, mental and moral development of children.

Commission response

The Commission is satisfied that it had adequate regard to the alignment of the parental control obligations of the Code with EU law, including, in particular, the DSA and the GDPR. The Commission notes that the DSA is without prejudice to the AVMS Directive, and the parental control obligations of the Code transpose the requirement that VSPS take appropriate measures, including parental control systems that are under the control of the end-user with respect to content which may impair the physical, mental or moral development of minors, as provided for by the AVMS Directive. The AVMS Directive contains rules specifying and complementing the harmonised rules set out in the DSA, and the Commission does not consider that the submissions to which reference is made above substantiate the view that the parental control obligations of the Code are in conflict with Articles 28, 34, or 35 of the DSA. Further, the Commission does not consider the submissions made as to the divergence of the age of consent to processing of personal data by information society services (“ISS”) provided directly to a child under Article 8(1) GDPR in different Member States to be persuasive. The AVMS Directive requires VSPS to take appropriate measures for the protection of “minors”, notwithstanding the age of consent for processing of personal data by ISS that may apply under the GDPR. The Commission further notes that concerns as to the alignment of the Code with EU law did not emerge from the European Commission or Member States during the TRIS procedure. The Commission further notes that Section 14 of the Code provides for VSPS to implement parental control systems that are under the control of the end-user with respect “to video content and audiovisual commercial communications which may impair the physical, mental or moral development of children”, and it is satisfied that the requirements of Section 14 align with the requirements of Article 28b AVMS Directive.

The alignment of the obligations relating to suspension of accounts with EU law

One respondent expressed the concern that obligations relating to suspension of accounts in the Code are potentially duplicative of those contained in the DSA and requested guidance on how the suspension of accounts provisions are to apply in practice, including interplay with the DSA.

Commission response

As was acknowledged by the submission to which reference is made above, the Code provides that the obligations relating to suspension of accounts “shall apply only insofar as the consequences for the user are not covered by measures adopted pursuant to Articles 23 and 35(1)(b) of Regulation (EU) 2022/2065 (Digital Services Act).”

The alignment of obligations relating to terms and conditions with EU law

Technology Ireland noted, incorporating by reference, points it made in its submission to the TRIS procedure in respect of the Code, that the Code required VSPS to preclude users from uploading or sharing certain content falling under the category of “*restricted video content*” and “*restricted indissociable user-generated content*” within their terms and conditions. It expressed the concern that these restrictions apply to all users, and not just where the user is a minor, while the AVMS Directive only requires that appropriate measures be put in place in terms and conditions to protect minors from content which may impair their physical, mental or moral development. It submitted that the outright prohibition of this content exceeded the requirements of the AVMS Directive, which requires “*appropriate measures*” to be taken to protect minors, in light of the matters to which reference is made in Article 28b(3) AVMS Directive.

Commission response

The definitions of “*restricted video content*” and “*restricted indissociable user-generated content*” are included in the Code in order to address both the requirements of Article 28b(1)(a) AVMS Directive relating to the protection of minors, and the requirements of Article 28b(1)(b) and (c) AVMS Directive relating to the protection of the general public (which includes minors and adults). The definitions address the harmful online content specified in section 139A(1)(b) and 139A(3) of the Act which are capable of posing risks both to minors and the general public which the Commission considers should be regulated by the Code in the exercise of its powers under section 139K(2) and (3) of the Act. To protect minors, it is both appropriate and necessary to preclude users from uploading or sharing bullying content, content relating to eating or feeding disorders and content which relates to self-harm or suicide, as specified in the definition of restricted video content. Even video-sharing platform services with strict control measures may be shown to minors or have access facilitated to them by adults. A more restrictive approach to such content than that taken with respect to adult only content, as specified in the Code, is necessary, given the significant risk such content may pose to minors.

The alignment of the reporting and flagging obligations in the Code with EU law

Respondents requested the Commission to consider the impact of provisions in the Code requiring VSPS providers to establish and operate reporting and flagging mechanisms for all users in relation to content which may impair the physical, mental or moral development of minors. It was further submitted by Technology Ireland that the Code’s application should align with Article 14 of the DSA which exhaustively harmonises a platform’s obligations with respect to their terms and conditions.

Commission response

The Commission is satisfied that the reporting and flagging obligations in the Code do not give rise to a concern that its provisions may be in conflict with obligations relating to notice and action mechanisms under the DSA, or with obligations relating to terms and conditions under Article 14 DSA, and notes again in this regard that no concerns as to the alignment of the Code with EU law were raised during the TRIS procedure. The submissions relating to the content to which the reporting and flagging obligations relate have been addressed above in the Commission’s response relating to the submissions of Technology Ireland on the terms and conditions obligations in the Code. The Commission further notes that similar submissions made relating to the reporting and flagging observations in the Code were duly addressed in

its response to consultation document published in respect of the December 2023 Consultation on 27 May 2024.

Technological changes in respect of age assurance techniques

One respondent noted that age assurance technologies, particularly those implementing necessary protection of user privacy, are still at an early stage of development, with a small number of vendors in the market. It noted that in future, it was possible that age assurance may be implemented at the operating-system level “*at the point of entry to the eco-system*”, in a manner that would enable assurance of a user’s age to be communicated to all relevant services, such that an underage user would not be able to circumvent safety measures, a solution which, in the view of the respondent, would produce a number of benefits.

Commission response

The Commission acknowledges that different age assurance technologies may be more or less effective and that the adoption of such measures will require careful consideration by VSPS providers. Providers will have to choose what specific technologies they use to comply with the Code. The Commission will then assess the appropriateness of the measures taken. The potential availability of enhancements to age assurance technologies in the future does not, however, obviate the need for VSPS providers to take appropriate measures to protect minors from the date of application of the Code, in compliance with the requirements of the AVMS Directive.

The interaction between Part A and Part B of the Code

Respondents requested that the Commission clarify the interaction between Part A and Part B of the Code and what amounts to an appropriate measure under the Code. In particular, one respondent submitted that a number of measures outlined in Part B of the Code relate to requirements that are also broadly set out in Part A of the Code, as appropriate measures that VSPSs may be required to take. It submitted that the Commission should clarify the extent to which meeting a requirement under Part B of the Code would be sufficient to meet any corresponding requirement under Part A of the Code.

Commission response

It is clear from the provisions of the Code that Part A and Part B will create obligations on providers that exist separately and concurrently once applied.

Part A of the Code places general obligations on VSPS providers to provide the protections for minors and the general public required by Article 28b AVMS Directive. Having regard to the timescale for implementation, prior to the application of the specific measures provided for under Part B, VSPS shall be obliged to take such appropriate measures, set out in Article 28b(3)(a)-(j), as are practicable and proportionate, having regard to the implementation period to provide the protections required by Articles 28b(1)(a), (b) and (c) AVMS Directive. VSPS providers are required to have in place appropriate measures

to comply with Part A of the Code within 28 days from the publication of the Code, that is, by **19 November 2024**.

The specific obligations in Part B of the Code are the obligations the Commission has determined are the appropriate measures which all VSPS providers should have in place by the end of the implementation period for Part B, that is, by **21 July 2025**.

Summary of Commission response

While the Commission has considered the submissions received in response to the consultation relating to aspects of the substance of the Code, insofar as relevant to its determination on the application of the Code to the Category, and to individual named VSPS, the Commission does not consider, on the review of the submissions overall, that the matters addressed above would warrant that it alter its preliminary view on the appropriateness of the application of the Code to the Category. It is important to record, however, that the Commission has arrived at its view on the need for an implementation period in relation to Part B of the Code (addressed below) having regard to the totality of the considerations arising from the submissions received in response to the consultation on the application of the Code including those relating to technical build and the adaption of moderation systems, as well as those relating to the substance of the Code, and the nature of the obligations it imposes on VSPS providers.

C(c) Timeframes for compliance with the Code

Overview of comments

The Commission indicated in its preliminary conclusion on the application of the Code that it had not been persuaded by the arguments made by VSPS providers in relation to any transition period for the implementation of the Code.

This issue was a focus of most written responses. A number of respondents disagreed with the Commission's preliminary view that a transition period should not be provided for by the Code, mainly on the grounds that it would be disproportionate and/or unfair. One respondent raised the point that services need time to consider the technological measures they will implement. Other respondents expressed the view that a transition period was required in particular for the obligations arising under Part B of the Code.

The minimum specific transition period proposed by respondents was 12 months. The general principle emerging from responses was that providers needed time that was reasonable to implement the necessary measures. One respondent suggested that the Commission could exercise its discretion regarding enforcement in lieu of a formal transition period.

As against this, the Commission notes that there was universal agreement at the Youth Advisory Committee meeting that the Code should be implemented immediately. Taking into account a long process up to this point, members of the Committee asserted that VSPS providers have had sufficient time to prepare and have demonstrated capability to move quickly where it is in their commercial interest. It was

also asserted that it is essential the Code is applied and that VSPS providers do not determine timelines for compliance with it.

Commission response

The Commission acknowledges both the 28-day notice period for application of the Code to the Category required by section 139L(2) of the Act, and, further, that it is likely that VSPS providers may require a further implementation period to come into compliance with the requirements of Part B of the Code. The Commission further recognises that the requirements of Part B may have different practical effects for different VSPS providers within the Category.

Accordingly, and having taken into account the submissions received in response to the consultation, the Commission has determined that the timeline for the adoption and implementation of the Code shall be as follows:

- The Code was adopted on **10 October 2024**
- The Code will be published by the Commission on **21 October 2024**.
- The Commission will publish notice of its determination to apply the Code to the Category on **21 October 2024**.
- The Code will apply to the Category of VSPS, **28 days** following the publication of the determination to apply the Code, that is, on **19 November 2024**.
- Notice of determinations to apply the Code to individual named VSPS will be served directly on those providers to align with the notice period above.
- The dates by which VSPS providers must have put in place the measures applying to them further to Part A (where appropriate) and Part B (as required by the specific provisions) of the Code shall be as follows:
 - The deadline for implementation of **Part A** of the Code shall be: **19 November 2024**.
 - The deadline for implementation of **Part B** of the Code shall be **9 months** following publication of the Code: **21 July 2025**.

In the event that it is not possible for a VSPS provider to implement a specific provision(s) of Part B of the Code within the implementation deadline, the Commission may consider a reasoned request for an extension to the implementation deadline in relation to one or more specific provision(s) of Part B of the Code. However, such extension may be granted only in exceptional circumstances, and, if exceptional circumstances are established, only where the VSPS provider satisfies the Commission that a specific provision(s) will not be possible to implement within the deadline, despite making every effort to do so.

The following matters have informed the Commission's reasoning on the implementation period for application of Part B of the Code:

- The responses to consultation indicating an implementation period is required, where some respondents submitted that 12 months or more would be required to fully implement the requirements of the Code;
- The diversity of internal requirements for implementation by VSPS of differing size and scale;
- The absence of detail furnished by VSPS concerning their internal requirements for implementation, in circumstances where, despite the opportunity afforded to them to provide such detail in the response to consultation, VSPS did not provide detail on the specific work required for compliance with Part B of the Code;
- The individual harm to minors and the general public and the societal harm caused by harmful online content and other forms of content addressed by Article 28b on VSPS and the consequent need to bring the Code into operation with all necessary expedience;
- The Commission's consideration of its public law duties, including to act lawfully, rationally, proportionately, and fairly when engaging with providers regarding the Code's implementation;
- The requirement of service providers for a period for the implementation of Part B measures to ensure an opportunity for compliance before the commencement of enforcement action(s);
- The nature of the obligations in the Code itself (in particular, the obligations on VSPS under Part A and Part B of the Code), in particular where the implementation of Part B requires the implementation of specific obligations determined by the Commission to be appropriate measures to provide the protections required by Article 28b AVMS Directive, and
- The possibility, in exceptional cases, for VSPS providers to request an extension to the implementation deadline in respect of Part B of the Code in exceptional and specific circumstances.

The Commission has, in particular, reflected on the reasons for its determination to apply Part A of the Code 28 days following its publication and the giving of notice of the determination to apply the Code to the Category. As is clear from the above, the Commission does not consider that a period longer than 28 days is necessary for implementation of Part A of the Code. The following further considerations have informed the Commission's view on this issue:

- The general obligations contained in Part A of the Code place an ongoing duty on providers to provide protections to address the risks posed by their service in the fields coordinated by the AVMS Directive, rather than imposing obligations setting uniform standards;
- The obligations specified in section 10 of the Code, including those that relate to audiovisual commercial communications, derive from unambiguous wording from the AVMS Directive itself, and the Commission's position remains that providers have had adequate notice to put in place measures to comply with these obligations. VSPS have been aware of the requirements of the AVMS Directive and the need to take appropriate measures under Article 28b for a significant period of time since the enactment of Directive (EU) 2018/1808;
- Accordingly, in light of the nature of obligations arising in Part A, the Commission has concluded that it is appropriate to provide for an implementation date of 19 November 2024 for Part A of the Code.

The Commission has reflected these conclusions in the final Statement of Reasons and in the final determination.

C(d) Guidance on the Code

Overview of comments

Responses to the consultation also contained requests for further guidance, including on the obligation to implement complaint-handling procedures and on the factors the Commission will take into consideration when assessing the “*appropriateness*” of measures taken by VSPS providers. A number of submissions called for further consultation on the Code and on online safety guidance materials, and for the Commission to reconsider an earlier statement that a failure to follow guidance may be taken into account in deciding whether to open an investigation or whether there has been an infringement.

Commission response

The Commission notes that online safety guidance materials adopted to accompany the Code contain guidance in relation to complaints handling and the Commission's approach to assessment of the appropriateness of measures. The Commission refers respondents to separate communications in respect of the adoption of the final Code and statutory guidance materials.

Conclusion

Having considered and taken account of the written submissions it has received and the views of its Youth Advisory Committee, and taking account in particular of the matters at section 139L(3) of the Act, the Commission has determined that it is appropriate to apply the Code to the Category as set out in the attached determination and final Statement of Reasons.

Annex 1: Determination under section 139L

Coimisiún na Meán (the “Commission”), in exercise of the powers and duties conferred on it by section 139L of the Broadcasting Act 2009 (the “Act”), after consultation with the persons specified in section 139L(4)(b) and (c) of the Act, and having had regard to the matters set out in section 139L(3) of the Act, has determined on 17 October 2024 to apply the online safety code made on 10 October 2024 and known as the “Online Safety Code” to the category of relevant online services being video-sharing platform services the providers of which are under the jurisdiction of the State (the “Category”).

Pursuant to Section 139L(2)(b) of the Act, this determination becomes effective at the end of the period of 28 days after the date of publication of notice of the determination on the Commission’s website.

The Commission further determines that the deadline for implementation of **Part A** of the Online Safety Code by providers falling within the Category is **19 November 2024**.

The Commission further determines that the deadline for implementation of **Part B** of the Online Safety Code by providers falling within the Category is **21 July 2025**.

Niamh Hodnett

Online Safety Commissioner

Coimisiún na Meán

17 October 2024

Annex 2 – Statement of Reasons

COMMISSION’S DETERMINATION TO APPLY THE ONLINE SAFETY CODE TO THE CATEGORY OF VIDEO-SHARING PLATFORM SERVICES THE PROVIDERS OF WHICH ARE UNDER THE JURISDICTION OF THE STATE

STATEMENT OF REASONS

This document sets out the reasons for the Commission’s determination that the Online Safety Code adopted on 10 October 2024 (the “**Code**”) is to apply to the category of video-sharing platform services (“**VSPS**”) the providers of which are under the jurisdiction of the State (the “**Category**”), as well as to the designated named services within the Category.

The Category was designated by the Commission under sections 139E and 139G(1) of the Broadcasting Act 2009 (the “**Act**”) as a category of relevant online services on 14 August 2023.

The Commission has made a determination to apply the Code to the Category, as well as to the designated named services within the Category, under section 139L(1) of the Act.

This statement is structured in four parts:

- In **Part I** the Commission describes its legal obligations supporting the application of an online safety code.
- In **Part II** the Commission considers the matters to which, according to section 139L(3) of the Act, it must have regard in particular before making a determination.
- In **Part III** the Commission considers other factors relevant to its determination.
- In **Part IV** the Commission sets out its conclusion.

Part I: Legal obligations supporting the application of the Code

Section 139K(3) of the Act in conjunction with section 139G requires the Commission to make an online safety code to apply to VSPS. The Commission is required to consult separately on the application of an online safety code to a designated service or category of services.

The Commission's Code has been prepared specifically for the purpose of application to VSPS and not to any other category of services. It is the result of a lengthy process of preparation and engagement, all tailored to the characteristics of video-sharing platforms and the associated risks for users. All known VSPS providers had an opportunity to engage in that process.

In particular, the Commission notes that the subject-matter of the Call for Inputs published in July 2023 (entitled "Developing Ireland's First Binding Online Safety Code for Video-Sharing Platform Services") and of the formal consultation on the contents and application of an Online Safety Code published in December 2023 (the "**December 2023 Consultation**") was VSPS.

Likewise, the evidence commissioned and considered by the Commission in preparing the Code focused on available evidence pertaining to online harms on video-sharing platforms, and not to other relevant online services; the Commission refers in particular to the Online Harms Evidence Review, undertaken by PA Consulting (the "**PA Harms Report**") (September 2023).

Part II: Matters to be considered, in particular, under section 139L(3) of the Act

The Commission has had regard, in particular, to the matters set out in section 139L(3) of the Act.

For clarity, it should be noted that while each of the factors identified in section 139L(3) must be considered, it is clear that these factors are not conditions, which have to be satisfied in the case of every service to which the Code applies.

(a) the nature and the scale of the service, or of services within the category

The Category consists of VSPS the providers of which are under the jurisdiction of the State.

VSPS are services the principal purpose of which (or of a dissociable section of which), or an essential functionality of which, is devoted to providing audio-visual programmes and/or user-generated videos over electronic communications networks to the general public in order to inform, entertain or educate. The service providers determine the organisation of the programmes and videos but do not have effective control over their selection.

The Commission has identified ten services which fall within the Category (designated as of December 2023). In considering the nature and scale of the services within the Category for the purposes of its assessment, the Commission has considered the nature and scale of the ten named VSPS as well as the

general characteristics of VSPS. More services may be designated as VSPS falling within the Category in due course.

The named VSPS satisfy core common elements of VSPS contained in the definition but range in size and have different characteristics. In light of the size and nature of VSPS currently within the Category as detailed below, the Commission's view is that applying the Code to the Category is necessary to minimise the availability of and risks arising from harmful online content and other forms of content addressed by Article 28b of the Audio-Visual Media Services Directive (the "**AVMS Directive**").

Nature of the services

The majority of the named VSPS falling within the Category are designed to appeal to a broad range of interests and provide audiovisual programmes and/or user-generated videos (both referred to as "**video content**") to inform, entertain and/or educate their users as part of their core user-experience at no direct monetary cost or with the option of accessing the service on that basis. Two of the services have a more limited focus on professional and educational content.

The overall architecture and layout of TikTok and YouTube is designed to encourage users to view video content that informs, entertains and/or educates rather than other forms of content. For example, the services' main functions either exclusively or predominantly supply video content to users.

The overall architecture and layout of Facebook, Instagram, X, Tumblr, Reddit and Pinterest is designed to encourage users to view different forms of content that informs, entertains and/or educates. In these services, the providers integrate video content with other forms of content on the services' core functions and make it an integral part of the services' user-experience.

LinkedIn is functionally similar to these services, but its overall user-experience is focused almost exclusively on professional interaction. By virtue of the current nature of the content on this service and its overall user-experience, it is not likely to be one that is attractive to children. Content relates almost exclusively to that of a professional nature and/or is shared in a professional context, e.g., videos about management scenarios, job-hunting, online learning. However, the service is one in which audiovisual commercial communications are prominent and frequent.

Udemy primarily provides videos to educate users (rather than to inform or to entertain them). Udemy organises content based on subjects and user interests, using algorithms to recommend educational courses tailored to individual learning preferences and browsing history. Like LinkedIn, this service is not one that is likely to be attractive to children generally, but the service does provide specific courses for children.

The Commission notes that some of the services (LinkedIn and Facebook) are "*real identity*" services, meaning that the terms of those services require that members be real people and use their real or preferred names.

The Commission notes that a number of the services currently within the Category permit the sharing of content that presents an increased risk of harm to children, and that may constitute pornography or gratuitous violence. In particular, Reddit and X currently permit users to post (with conditions) types of sexually explicit and other adult material.

The providers make the services available through different user-interfaces and devices, including desktop web browsers and mobile apps, to optimise how users experience them, to increase their general availability and to encourage users to view more content, including video content.

Revenue is mainly generated on the services from providing advertising, including audiovisual commercial communications, in connection with content. Some services allow users to pay subscriptions to access enhanced features. Udemý mainly generates revenue from charging a fee to access educational videos.

Scale of the services

The services vary in scale based on their user numbers:

- **Facebook** has an average of 260.7 million monthly users in the EU (Transparency Report, [April 2024](#)).
- **Instagram** has an average of 264.3 million monthly users in the EU (Transparency Report, [April 2024](#)).
- **LinkedIn** has an average of 47.9 million signed-in monthly users in the EU and an additional 178.2 million signed-out monthly users in the EU. (Transparency Report, [April 2024](#)).
- **Pinterest** has an average of 82.2 million monthly users in the EU (Transparency Report, [October 2024](#)).
- **Reddit** has 'no more than' 15.9 million monthly users in the EU (DSA information page, [July 2024](#)).
- **TikTok** has an average of 150 million monthly users in the EU (EU Monthly Active Recipients Report, [July 2024](#)).
- **Tumblr** has an average of 'less than half of 45 million' monthly users in the EU (DSA transparency page, [June 2024](#)).
- **Udemý** has an average of 4.1 million monthly users in the EU (DSA information page, [June 2024](#)).
- **X** has an average of 105.9 million monthly users in the EU (EU Active Recipients Report, [July 2024](#)).
- **YouTube** has an average of 433.8 million signed-in monthly users in the EU and an additional >500 million signed-out monthly users in the EU (EU Monthly Active Recipients Report, [August 2024](#)).

Assessment

The nature of the services in the Category varies based on a number of factors such as their appearance, layout, features, the interests of their users and the ways in which they generate revenue. The Commission notes that some of the services are “*real identity*” services; this feature may reduce the risk profile in relation to such services (LinkedIn and Facebook).

Nevertheless, the services share the common characteristic of frequently exposing their users to autonomously enjoyable items of video content of different kinds that inform, entertain and/or educate them. Most of the services do this through content feeds that recommend popular videos to users and these feeds are displayed prominently and throughout the services’ user-interfaces.

There are significant differences in the scale of the services in the Category based on their user numbers, with the lowest figure being 4.1 million monthly users on Udemy and the highest being 433.8 million signed-in monthly users on YouTube with >500 million signed-out monthly users. The Commission notes that 4.1 million monthly users is a large number of people in an absolute sense despite being small relative to other services in the Category.

The Commission is of the view that the nature and scale of the services in the Category favours the application of its Code to the Category. At their core, the services provide video-sharing functions that inform, entertain and/or educate a significant number of people with the capacity to influence the opinions of users or to cause harm. The Code appropriately takes the differences between services in the Category and the risks they present into account; see the analysis under factor (e) below.

(b) levels of availability of harmful online content on the service, or on services within the category

The Commission’s determination to apply the Code to the Category is informed by the evidence, insofar as relevant, it has gathered through consultations and research that have shaped and formed the contents of that Code, in particular:

- The July 2023 Call for Inputs entitled “Developing Ireland’s First Binding Online Safety Code for Video-Sharing Platform Services” and the responses thereto, as well as the summary of the responses to same which was independently prepared by CommSol.
- The PA Harms Report (September 2023).
- The Online Safety Research 2023 conducted by Ipsos B&A on behalf of the Commission (November 2023).
- The December 2023 Consultation, which related to the substance of the draft Code and its proposed application to the Category. The Commission’s response to that consultation was published on 27 May 2024, as were the submissions received to that consultation plus a summary of the submissions (prepared by Wagner-Hatfield). As part of that consultation, the Commission published the CommSol summary, PA Harms Report and Ipsos B&A research referred to above.

- The Commission’s January 2024 consultation with the Youth Advisory Committee on the Code; its Guidance and the application of the Code to the category as well as its May 2024 consultation with that Committee in relation to the application of the Code to the Category and to the named video-sharing platform services.

The Commission, from the available evidence, concludes that harmful online content is widely available on VSPS within the Category. That includes online content on bullying, eating/feeding disorders, self-harm or suicide, incitement to hatred or violence, terrorist content, child sexual abuse material and other harmful online content which impairs the physical, mental, or moral development of minors. Harmful online content associated with audiovisual commercial communications is also available.

For example, the Online Safety Research 2023 found that 36% of respondents said they had experienced, in the last week, seeing a video on social media that made them feel uncomfortable, upset, or negative in some way; 49% said they experienced this in the last month; and 62% said they had experienced this in the last year. 87% of respondents said that social media companies did not do enough to keep social media users safe.

In addition, the Commission notes the following evidence:

- *“In the 2022 Samaritans report [entitled ‘How social media users experience self-harm and suicide content’], 83 percent of participants had reported that they saw self-harm or suicide content on social media despite not searching for it.” (5.5.1 PA Harms Report)*
- *“In its 2021 Annual Report, the IWF noted a 168 percent increase from 2020 to 2021 in the proportion of ‘actioned web pages’ displaying ‘self-generated’ imagery. It noted the issue arising ‘via a growing number of platforms’ including livestreaming services.” (5.10.1 PA Harms Report)*
- *“Live-streaming functionality is a significant risk factor for CSA because detection relies on proactively monitoring live-streams to detect CSA content in real-time.” “The general failure to prevent the live-streaming or publication of child sexual abuse imagery on VSPs [...] increases the risk and potential scale of re-sharing before detection.” (5.10.3 PA Harms Report)*
- *“An EU survey of 34,948 over-16s found that in Ireland, 13 percent of all respondents had experienced cyber harassment in the past five years. When broken down on the basis of young people between the ages of 16 and 29, the number rose to 25 percent, and 30 percent of young women specifically. The observation that younger age groups were more likely to experience cyber harassment is present across the survey data of all participating EU countries.” (5.11.1 PA Harms Report)*
- *“In a study by Social and Emotional Learning for Mutual Awareness (SELMA), conducted on a total of 776 teens and 333 teachers across Denmark, the UK, Greece, Germany, and other EU countries, 57 percent of teens encountered hate speech online once or several times in the three months to October*

2018. Where respondents encountered hate speech online, it most often happened on mainstream social media platforms, websites, or apps.” (5.7.1 PA Harms Report)

The Commission recognises that existing measures taken by providers in the fields coordinated by the AVMS Directive reduce the availability of harmful online content on the VSPS they provide, including the related risk of exposure and risk of harm associated with that content. It also recognises that the levels of availability of harmful online content on services in the Category vary from service to service.

The Commission’s decision to apply the Code to the Category will bring the existing measures providers take in the fields coordinated by the Directive into a framework of statutory oversight to ensure they are effective.

(c) levels of risk of exposure to harmful online content when using the service, or services within the category

Respondents to the Call for Inputs and the December 2023 Consultation highlighted a range of ways in which users can be exposed to harmful online content while using VSPS. In addition, the PA Harms Report at section 7.4 outlines a summary of evidence in relation to the availability, risk of exposure, and risk of harm from harmful online content. In relation to risk of exposure, the PA Harms Report states that risk of exposure can be created, reduced, or removed by VSPS features.

The Commission notes that most of the services in the Category have content feeds that recommend popular videos to users and these feeds are displayed prominently and throughout the services’ user-interfaces. The feeds allow users to consume videos on the feeds themselves or on video-players users can click through to. To promote the consumption of video content, services use auto-play and have various mechanisms to encourage and facilitate users engaging with videos (e.g. through rating, comments). Such mechanisms increase the risk of exposure to harmful online content when using VSPS platforms.

The Commission acknowledges that the specific risk of exposure will vary as between platforms within the Category, including by reference to the content typically available on each platform and the mechanisms put in place to allow users to control or curate the content available to them. Nevertheless, the Commission concludes that there is a high degree of risk of exposure to harmful online content associated with the use of VSPS in the Category.

(d) levels of risk of harm, and in particular harm to children, from the availability of harmful online content or exposure to it on the service, or on services within the category

The Commission notes that respondents to the Call for Inputs and the December 2023 Consultation highlighted a range of ways in which users, including children, risk encountering harm through online content or exposure thereto.

The PA Harms Report set out, for each harm profile, the risk of harm, the features that can enable the risk of harm occurring on VSPS, and specific response measures to address harms. Section 7.4 of the Report also outlines a summary of evidence in relation to the availability, risk of exposure, and risk of harm from harmful online content. In relation to risk of harm, the Report highlights the contribution of circumstantial and personal factors, including family, community, culture, education and awareness, regulatory interventions, disability, age, and socio-economic status.

The Commission acknowledges that VSPS services within the Category, to lesser or greater degrees based on the nature of their service and the risks they present, have existing policies and take measures to protect minors from content that may impair their physical, mental or moral development and to protect them and the general public from harmful online content (including content that incites hatred and/or violence and content the dissemination of which constitutes a criminal offence under EU law). However, the risk of harm, in particular to children, from exposure to harmful online content on VSPS remains.

None of the services in the Category have barriers that could meaningfully prohibit determined minors from accessing the freely available content within their core user-experience. This is evident from the fact that it is possible to create an account on the services and self-report any age, where one is requested. Accordingly, all the freely available content within these services' core user-experiences may be available to minor users, subject to the frequency of restrictions and checks implemented by service providers and the capacity and determination of any individual minor to circumvent those measures.

The Commission concludes that there is a risk of harm to users from the availability of harmful online content or exposure to it on VSPS within the Category. That risk of harm is elevated in the case of children. Accordingly, the Commission considers it necessary to apply the Code to the Category in order to ensure that VSPS take measures to minimise the risk of harm from exposure to such content.

(e) the rights of the provider of the service, or providers of services within the category

Once applied, the Code will be binding on all VSPS within the Category. Service providers will be obliged to adopt new measures to comply with the Code, adapt existing measures to conform with the Code, and/or maintain existing measures which satisfy a standard set in the Code.

Part A of the Code takes a primarily principles-based approach to regulating VSPS. This means that while the regulatory obligation imposed on a given provider is objectively determined, the means by which the operator must comply may vary based on the context, including in light of the nature of the content available and the harm it may cause.

Part B of the Code contains more specific measures that providers must take. For example, the Code contains a requirement to implement effective age-assurance measures and content rating systems where the terms and conditions of a service do not preclude the uploading or sharing of adult-only video content. VSPS will also be required to prohibit certain audiovisual commercial communications.

VSPS may be impacted in a number of ways, including:

- restriction on ability to provide services in a manner that does not comply with the Code;
- requirement to engage additional content moderation staff and/or compliance and/or trust and safety staff;
- requirement to amend service design and IT build;
- requirement to update compliance reporting; and
- associated expenses.

The Commission acknowledges the benefits of innovation for VSPS providers and for the users of their services. It considers that the burdens imposed on VSPS providers by virtue of its applying the Code to the Category will be proportionate and commensurate to the risks posed by services in the Category. The Commission has taken specific account of the responses from designated VSPS and Technology Ireland to the December 2023 consultation in drafting its Code and in light of the nature and scale of the services in the Category. It has also had regard to the submissions of VSPS providers in response to the July 2024 consultation on application of the Code in respect of the means/resources available to VSPS providers.

The Commission accepts that it is generally more likely that VSPS with a large user base will be required to moderate content more frequently than VSPS with a smaller user base. Some VSPS, by virtue of the topics their users discuss, even if they have a smaller user base, will be more likely to experience certain kinds of content moderation issues than others (e.g. incitement to hatred where users discuss news and current affairs content through videos). Services which cater to users under the age of 16 (regardless of their user base) will be required to introduce parental control systems and take measures in respect of adult-only content. In all cases the regulatory obligations imposed in the Code are proportionate and commensurate to the risk of harm. The Commission accepts that the different resources available to providers will, to some extent, influence the form of measures they take.

The Commission considers that the application of the Code will be a positive development for VSPS within the Category by defining a clear set of principles and rules that allows service providers to realise the benefits of the country-of-origin principle enshrined in the AVMS Directive.

(f) the rights of users of the service, or users of services within the category

The Commission has considered the Code's potential effects, both positive and negative, on the rights of users. In doing so it has taken account of the evidence identified at point (b) above, including in particular section 7.5 of the PA Harms Report and the submissions by users of VSPS and by civil society groups to the Call for Inputs and the December 2023 Consultation.

The application of the Code to VSPS within the Category will result in two principal types of limitation for users:

- The Code will restrict the kinds of content users can upload or share, for example by requiring VSPS providers to prohibit the uploading or sharing of restricted video content as defined in the Code. Insofar as the Code requires providers to take measures in respect of illegal content, the Code enhances existing regulatory obligations VSPS providers have under the Digital Services Act (“**DSA**”) by requiring them to take appropriate measures to address this content and to report on same to the Commission.
- The Code will restrict how users can access VSPS. For example, if a VSPS provider suspends a user’s account pursuant to the Code, the user will no longer be able, during the period of suspension, to access the service concerned or interact with users through that account. The age-verification mechanisms, content rating mechanisms and parental control mechanisms provided for in the Code, when implemented appropriately by VSPS providers, will have the systemic effect of restricting the kinds of content minor users can access (such as pornography or gratuitous violence).

The Commission refers to Section 7.5 of the PA Harms Report which sets out the full range of the most relevant rights likely to be impacted by the Code, both positively and negatively, including: Human dignity, and physical and mental integrity; Liberty and security of person; Privacy; Protection of personal data; Freedom of expression; Academic freedom; Protection of children; Access to the internet; Assembly, association, and participation and ‘Rights to remedy’.

The Commission acknowledges the benefits of innovation for VSPS providers and for the users of their services, and how this facilitates the development of new products and services, and, in turn, new ways for users to express themselves and to associate online. It accepts that the Code will limit, to some extent, users’ rights on platforms, particularly their right to freedom of expression and related rights to access to information. The Commission also notes that the Code will have an impact on users’ rights to the extent that it requires providers to take measures they otherwise may not have taken in respect of users’ personal data (e.g. to protect minors from adult only content). The Commission notes the Code contains a complaints mechanism for users to raise concerns they may have about the way providers have chosen to comply with it and its impact on their rights. The Commission also notes those providers will be obliged to report to the Commission on complaints and other matters raised by users.

Despite the limitations imposed by the Code, the Commission considers that the application of the Code to the Category will have an overall positive effect on users’ rights. The harm addressed at points (b) to (d) above could have serious negative consequences for users’ rights including liberty, security, privacy and the protection of minors. The Code is designed to support users of VSPS to safely participate on those services and to protect the general public and minors from the harmful effects of content available on VSPS.

Part III: Other factors relevant to the Commission’s determination

In addition to matters raised in response to the July 2024 consultation on the application of the Code, the Commission has also considered matters raised in response to the December 2023 Consultation which

have not otherwise been addressed elsewhere in this Statement of Reasons; and matters raised in response to the consultation on the application of the Code that have not otherwise been addressed elsewhere in this Statement of Reasons, or, through amendments made to the Code itself.

DSA/AVMS Directive alignment, including with other legal instruments

In their responses to the December 2023 Consultation, VSPS providers identified the difficulties they perceive they may experience in complying simultaneously with the Code, the DSA and related legal instruments such as the General Data Protection Regulation (“**GDPR**”).

The Commission acknowledges that there are a number of obligations of EU origin which intersect with how providers of VSPS moderate content or otherwise provide these services, including the DSA, the Terrorist Content Online Regulation and the GDPR.

The Commission has had due regard to the representations made by VSPS providers regarding practical difficulties they perceive they may experience in complying with the Code and has amended the Code’s contents to ensure greater harmony and alignment with other legal obligations to which VSPS providers are subject. In particular, the Commission has amended the contents of its Code to ensure greater harmony with the DSA. The Commission’s reasoning in this respect is described in its Response to Consultation document in respect of the December 2023 Consultation published on 27 May 2024, and in its response to consultation document on the application of the Code.

The Commission has considered the revisions to the Code together with the contents and the objectives of those other EU measures and concludes that it is appropriate to apply the Code to the Category. The Commission further notes that concerns as to the alignment of the Code with EU law did not emerge from the European Commission or Member States during the TRIS procedure.

The Commission’s view is that it is a matter for VSPS providers to determine how they will satisfy other legal obligations to which they are subject when complying with the Code. It does not consider that the obligations imposed on VSPS providers under measures such as the DSA or GDPR obviate the need to apply the Code to the Category. Furthermore, the Code aims to implement the AVMS Directive, a distinct source of legal obligations for VSPS providers.

Timeframes for Compliance with the Code

The Commission has considered requests from VSPS providers in the Category and their representative organisation for staged periods for the implementation of the Code.

The Commission acknowledges both the 28-day notice period for application of the Code to the Category required by section 139L(2) of the Act, and, further, that VSPS providers may require a further implementation period to come into compliance with the requirements of Part B of the Code. The

Commission further recognises that the requirements of Part B may have different practical effects for different VSPS providers within the Category.

Accordingly, and having taken account of the submissions received in response to the consultation, the Commission has determined that the timeline for the adoption and implementation of the Code shall be as follows:

- The Code was adopted on **10 October 2024**.
- The Code will be published by the Commission on **21 October 2024**.
- The Commission will publish notice of its determination to apply the Code to the Category on **21 October 2024**.
- The Code will apply to the Category of VSPS **28 days** following the publication of the determination to apply the Code, that is, on **19 November 2024**.
- Notice of determinations to apply the Code to individual named VSPS will be served directly on those providers to align with the notice period above.
- The dates by which VSPS providers must have put in place the measures applying to them further to Part A (where appropriate) and Part B (as required by the specific provisions) of the Code shall be as follows:
 - The deadline for implementation of **Part A** of the Code shall be: **19 November 2024**.
 - The deadline for implementation of **Part B** of the Code shall be **9 months** following publication of the Code: **21 July 2025**.

In the event that it is not possible for a VSPS provider to implement a specific provision(s) of Part B of the Code within the implementation deadline, the Commission may consider a reasoned request for an extension to the implementation deadline in relation to one or more specific provision(s) of Part B of the Code. However, such extension may be granted only in exceptional circumstances, and, if exceptional circumstances are established, only where the VSPS provider satisfies the Commission that a specific provision(s) will not be possible to implement within the deadline, despite making every effort to do so.

The following matters have informed the Commission's reasoning on the implementation period for application of Part B of the Code:

- The responses to consultation indicating an implementation period is required, where some respondents submitted that 12 months or more would be required to fully implement the requirements of the Code.

- The diversity of internal requirements for implementation by VSPS of differing size and scale.
- The absence of detail furnished by VSPS concerning their internal requirements for implementation, in circumstances where, despite the opportunity afforded to them to provide such detail in the response to consultation, VSPS did not provide detail on the specific work required for compliance with Part B of the Code.
- The individual harm to minors and the general public and the societal harm caused by harmful online content and other forms of content addressed by Article 28b on VSPS and the consequent need to bring the Code into operation with all necessary expedience.
- The Commission's consideration of its public law duties, including to act lawfully, rationally, proportionately, and fairly when engaging with providers regarding the Code's implementation.
- The requirement of service providers for a period for the implementation of Part B measures to ensure an opportunity for compliance before the commencement of enforcement action(s).
- The nature of the obligations in the Code itself (in particular, the obligations on VSPS under Part A and Part B of the Code), in particular where the implementation of Part B requires the implementation of specific obligations determined by the Commission to be appropriate measures to provide the protections required by Article 28b AVMS Directive.
- The possibility, in exceptional cases, for VSPS providers to request an extension to the implementation deadline in respect of Part B of the Code in exceptional and specific circumstances.

The Commission has, in particular, given consideration to the appropriateness of applying Part A of the Code 28 days following the publication of the Code and the giving of notice of the determination to apply the Code to the Category. The Commission does not consider that a period longer than 28 days is necessary for implementation of Part A of the Code. In light of the nature of obligations arising in Part A, the Commission considers that an implementation date of 19 November 2024 for Part A of the Code is appropriate.

The considerations taken into account by the Commission in this regard are further outlined in its response to consultation document on the application of the Code.

Part IV: Conclusion

In light of all of the considerations above, the Commission has reached the determination that it is appropriate to apply the Code to the Category. The Commission considers this necessary to ensure the effective implementation of Article 28b of the AVMS Directive.

In particular, the Commission considers that, taking account of all the factors set out in section 139L(3) of the Act, it is necessary and proportionate to apply the Code to the Category.

The Code is designed to protect users of VSPS, the general public and minors from harmful online content and the other forms of content addressed by Article 28b while not imposing a disproportionate or unfair burden on VSPS providers.

The nature and scale of the services in the Category warrants the Code's application to ensure providers of VSPS provide the protections contained in Article 28b and to ensure such measures are brought within a framework of statutory oversight as envisioned by S139K(3) of the Act.

The contents of the Code have been determined following a thorough consideration of the responses to its December 2023 Consultation, including those from VSPS providers and Technology Ireland. The combination of a mainly principles-based approach to regulation in Part A of the Code and regulation relating to specific measures in Part B, as discussed under factor (e) above, ensures the Code remains effective and proportionate despite variations in the nature and scale of VSPS in the Category and the levels of availability, risk of exposure and the risk of harm arising from harmful online content as well as other content addressed by Article 28b on those services.

The Commission has considered the rights of VSPS providers and users in forming its overall view. The Commission is satisfied that it has achieved an appropriate balance between all rights relevant to making its determination for the reasons it has stated.