



Coimisiún  
na Meán



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# Foreword

The adoption of Coimisiún na Meán's Online Safety Code is an important step in changing our society's approach to keeping people safe online. The era of self-regulation in the tech sector is over, and the Online Safety Code, along with the other elements of our Online Safety Framework, will hold online platforms accountable for keeping their users, especially children, safe online. Three different pieces of legislation form the Online Safety Framework – the Online Safety and Media Regulation Act 2022, the basis for our Code, the EU Digital Services Act and the EU Terrorist Content Online Regulation. The Framework gives us the tools to address the root causes of harm online, including the availability of illegal content, the harmful impacts of recommender systems, and inadequate protections for children on social media services. Social media companies can and should do more to make their platforms safer, moving to a safety-by-design approach.

I was appointed as Ireland's first Online Safety Commissioner in March of last year and the development of the Online Safety Code has been a main priority for myself and Coimisiún na Meán. My colleagues and I have had the privilege of meeting so many who have been affected by online harms and we have learned from their often-harrowing experiences. We had the pleasure of setting up our Youth Advisory Committee and hearing first-hand from them about how they use social media and how the Online Safety Code could address the harmful experiences they have online.

A huge amount of hard work has gone into the development of the Online Safety Code since the establishment of Coimisiún na Meán in March 2023. We received thoughtful responses to our initial Call for Inputs in summer 2023 and there were almost 1400 submissions to our Consultation on the draft Code and guidance which ran from December 2023 to January 2024. We are grateful to all the individuals and groups who took the time to share their perspectives and expertise with us.

We then published a revised draft Code, taking into account the submissions and working closely with the European Commission to ensure alignment in the online safety approach between the Digital Services Act (DSA) and the Online Safety Code. We then notified the Code to the European Commission in May through a required TRIS process. We were delighted to receive no comments or opinion from the European Commission or other Member States through this process and can now proceed to adopt the final Code.

The Code applies to video-sharing platform services, many of which are household names and services we use every day. It requires these platforms to restrict certain categories of video and associated content, so that users cannot upload or share the most harmful types. The restricted categories include cyberbullying, promotion of eating and feeding disorders, promotion of self-harm and suicide, dangerous challenges, and incitement to hatred or violence on a range of grounds including

gender, political affiliation, disability, ethnic minority membership, religion and race. Restrictions also include criminal content such as child sex abuse material, terrorism, racism and xenophobia.

The Code protects children from pornography and extreme or gratuitous violence by requiring platforms that permit this content to use an effective method of age assurance so that children are not normally able to see it. Merely asking users whether they are over 18 will not be enough. Platforms will also need to use appropriate forms of age verification, depending on their size and nature, to protect children from video and associated content which may impair their physical, mental or moral development.

The Code requires platforms to give parents the tools to help their children stay safe, including limiting the time they spend online, what types of content they see and who can see their child's content online.

Online safety needs a whole of society approach, and we all have a role to play. Just as we do in the real world, all of us can think about how we behave online and about the impact of what we say and do on others. The internet is not a lawless space, and An Garda Síochána will deal with criminal behaviour online, just as they do offline. We need to ensure that parents, carers, teachers and children are aware of their rights online and how to use them. We will work to raise awareness of people's rights under the Online Safety Framework, and we have

prepared educational materials which we have shared with schools, as well as public-facing campaigns.

As we look to the future, we are committed to continuing our work to protect people in Ireland and across Europe from online harm. The adoption of the Online Safety Code is an important milestone and ensures that there is now a comprehensive regulatory framework in place. We will remain vigilant in our efforts so that we can continue to enjoy the many positive aspects of the Internet which benefit society.

### **Niamh Hodnett**

Online Safety Commissioner, on behalf of Coimisiún na Meán



L-R Rónán Ó Domhnaill, Media Development Commissioner; Niamh Hodnett, Online Safety Commissioner; Jeremy Godfrey, Executive Chairperson; Aoife MacEvilly, Broadcasting and Video-on-Demand Commissioner; John Evans, Digital Services Commissioner.





# Part A

## 1. Introduction

- 1.1. Pursuant to Section 139K of the Broadcasting Act 2009, as amended by the Online Safety and Media Regulation Act 2022 (the “**Act**”), Coimisiún na Meán (the “**Commission**”) may make codes (“online safety codes”) to be applied to designated online services in accordance with Section 139L of the Act. In accordance with its statutory duties and obligations under the Act, the Commission has prepared this online safety code (the “**Code**”).
- 1.2. The Code is divided into two parts: **Part A** and **Part B**.
- 1.3. **Part A** of the Code sets out the legislative and regulatory context for the Code and provides for the general obligations of video-sharing platform service providers pursuant to Section 139K of the Act and Article 28b of Directive (EU) 2010/13 (as amended by Directive (EU) 2018/1808) (the “**Audiovisual Media Services Directive**” or the “**Directive**”). This includes the measures that video-sharing platform service providers shall take, as appropriate, to protect the general public and children.
- 1.4. **Part B** of the Code makes provision for more specific obligations of video-sharing platform service providers and sets out the appropriate measures that video-sharing platform service providers shall take to provide the protections for children and the general public required by Article 28b(1)(a), (b) and (c) of the Directive, and to comply with the requirements of Article 9(1) of the Directive.
- 1.5. The entirety of this Code is binding for the video-sharing platform services regulated by the Code. The provisions of the Code apply to all such services. This shall not preclude the Commission, in considering compliance with the Code in accordance with Section 9 of this Code below, taking into account the size of the video-sharing platform service and the nature of the service that is provided.

## 2. Scope and Jurisdiction

- 2.1. The Code gives effect to Article 28b of the **Audiovisual Media Services Directive** in the State.
- 2.2. This Code applies to all video-sharing platform services which are under the jurisdiction of the State within the meaning of Section 2B of the Act, being services that are within the category of relevant online services designated by the Commission.
- 2.3. The Code applies to named online services that have been designated by the Commission in accordance with the Act as video-sharing platform services under the jurisdiction of the State.<sup>1</sup>

## 3. Purpose, Preparation and Application of the Code

- 3.1. The purpose of the Code is to give effect to the obligation of the Commission under Section 139K(3) of the Act to use its powers to make online safety codes with a view to ensuring that video-sharing platform service providers:
  - take measures that are appropriate to provide the protections set out in Article 28b(1)(a), (b) and (c) of the Audiovisual Media Services Directive including appropriate measures referred to in Article 28b(3);
  - comply with the requirement set out in Article 9(1) of the Audiovisual Media Services Directive with respect to audiovisual commercial communications that are marketed, sold or arranged by them; and
  - take appropriate measures to comply with the requirements set out in Article 9(1) of the Audiovisual Media Services Directive with respect to audiovisual commercial communications not marketed, sold or arranged by them, taking into account the limited control they exercise over those communications.
- 3.2. The Commission has prepared the Code having regard to the provisions of Section 139M of the Act and in accordance with the procedures set out in Section 139N of the Act.

1. The register of named online services designated as video-sharing platform services is published by the Commission on its website: <https://www.cnam.ie/>.



- 3.3. The Commission will apply the Code to video-sharing platform services in accordance with Section 139L of the Act.
- 3.4. As this Code applies to video-sharing platform services, the Commission engaged in consultation for the purposes of Section 139L and consultation for the purposes of Section 139N of the Act.

## 4. Regulatory Principles Relevant to the Code

- 4.1. In its interpretation, application and enforcement of this Code, the Commission must, in accordance with its public law duties, act lawfully, rationally and fairly.

More particularly, the Commission must act in accordance with:

- its general statutory objectives and functions under the Act;
- the statutory objectives set out in Article 28b of the Audiovisual Media Services Directive; and
- the rights conferred by the Constitution, the Charter of Fundamental Rights of the European Union, and the European Convention on Human Rights having regard to its duty under Section 3(1) of the European Convention on Human Rights Act 2003.

### General Statutory Objectives and Functions

- 4.2. Sections 7(2)(a) and 7(2)(b) of the Act provide that, in performing its functions, the Commission shall endeavour to ensure that the democratic values enshrined in the Constitution, especially those relating to rightful liberty of expression, are upheld, and that the interests of the public, including the interests of children, are protected, with particular commitment to the safety of children.
- 4.3. In addition, under Section 7(2)(d) of the Act, the Commission must endeavour to ensure that its regulatory arrangements:
- address programme material, user-generated content, and other content, which are harmful or illegal;
  - take account of technological and societal change;
  - operate proportionately, consistently and fairly.

- 4.4. Section 7(3) of the Act provides that the Commission shall (*inter alia*):
- engage in evidence-based decision-making in the exercise of its functions, and promote evidence-based decision-making by those with which it consults;
  - encourage compliance with the provisions of the Act, and the provisions of any code, rule or other statutory instrument made under it, in any manner the Commission considers appropriate, including by the publication of guidance as to how those provisions may be complied with.
- 4.5. Pursuant to Section 7(4) of the Act, in performing its functions, the Commission shall have regard to: the safety of children, and published policies of the Minister for Children, Equality, Disability, Integration and Youth in respect of that matter; the regulation of gambling, and published policies of the Minister for Justice in respect of that matter; climate change and environmental sustainability, and published policies of the Minister for the Environment, Climate and Communications in respect of that matter; and published policies of the Government in respect of any of those matters.

## 5. E-Commerce Compliance Strategy

- 5.1. Section 139ZF of the Act requires the Commission to prepare an e-Commerce Compliance Strategy setting out its approach to ensuring that online safety codes, online safety guidance materials and advisory notices are consistent with Articles 4, 5, 6 and 8 of Regulation (EU) 2022/2065 (Digital Services Act).
- 5.2. In accordance with its statutory powers and having had regard to its statutory duties, the Commission published its e-Commerce Compliance Strategy on 6 October 2023. A copy of the Strategy is available on the Commission's website – <https://www.cnam.ie>.
- 5.3. No provision of this Code necessitates, or shall be construed to necessitate, general monitoring of information transmitted or stored by providers or generally taking active steps to seek facts or circumstances indicating illegal activity contrary to Article 8 of Regulation (EU) 2022/2065 (Digital Services Act).

## 6. Statutory Guidance

- 6.1. This Code may be accompanied by statutory guidance issued by the Commission in accordance with and following the procedures set out in Section 139Z of the Act.

## 7. Severability

- 7.1. If any provision of this Code is found to be unlawful, invalid, prohibited, unenforceable or inapplicable (either generally or with respect to a particular video-sharing platform service provider(s)) in any respect, on the basis of any law (including the Constitution and European law), such finding shall not affect the lawfulness, validity, enforceability or applicability of any other provision of this Code or part thereof, unless the finding is declared to be applicable to such other provision or part thereof, or the same is the subject of the relief granted by a court.
- 7.2. Without prejudice to the foregoing, all of the other provisions and/or parts of this Code shall remain fully effective, applicable and enforceable. To the extent necessary any provision or part of the Code, found to be unlawful, invalid, prohibited, unenforceable or inapplicable, shall be severed from the Code.

## 8. Waiver

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

## 9. Compliance and Enforcement

- 9.1. Pursuant to Section 139Q of the Act, a failure by a video-sharing platform service to comply with the Code shall be a contravention for the purposes of Part 8B of the Act.
- 9.2. When considering whether or not a video-sharing platform service provider has failed to comply with a provision of the Code within the meaning of Section 139Q of the Act, and/or any enforcement steps to be taken as a consequence, the Commission shall have regard to whether it has been demonstrated to the satisfaction of the Commission that an obligation, or in the particular circumstances, compliance with an obligation, under this Code would not be practicable or proportionate in its application to the video-sharing platform service, taking into account the size of the video-sharing platform service and the nature of the service that is provided.
- 9.3. A video-sharing platform service provider shall ensure that they have systems and controls in place to demonstrate compliance with the obligations contained in this Code.

## 10. Obligations pursuant to the Audiovisual Media Services Directive and the Online Safety and Media Regulation Act

- 10.1. Pursuant to **Article 28b(1)** of the Audiovisual Media Services Directive and **Section 139K** of the Act, a video-sharing platform service provider shall take appropriate measures to protect:
- a. children from programmes, user-generated videos and audiovisual commercial communications which may impair their physical, mental or moral development in accordance with Article 6(a)(1) of the Audiovisual Media Services Directive;
  - b. the general public from programmes, user-generated videos and audiovisual commercial communications containing incitement to violence or hatred directed against a group of persons or a member of a group based on any of the grounds referred to in Article 21 of the Charter of Fundamental Rights of the European Union;

c. the general public from programmes, user-generated videos and audiovisual commercial communications containing content the dissemination of which constitutes an activity which is a criminal offence under Union law, namely public provocation to commit a terrorist offence as set out in Article 5 of Directive (EU) 2017/541, offences concerning ‘child pornography’ as set out in Article 5(4) of Directive 2011/93/EU of the European Parliament and of the Council<sup>2</sup> and offences concerning racism and xenophobia as set out in Article 1 of Framework Decision 2008/913/JHA.

- 10.2. Pursuant to **Article 28b(2)** of the Audiovisual Media Services Directive and **Section 139K** of the Act, a video-sharing platform service provider shall comply with the requirements set out in Article 9(1) of the Audiovisual Media Services Directive with respect to audiovisual commercial communications that are marketed, sold or arranged by that video-sharing platform provider.
- 10.3. Pursuant to **Article 28b(2)** of the Audiovisual Media Services Directive and **Section 139K** of the Act, a video-sharing platform service provider shall ensure that they take appropriate measures to comply with the requirements set out in Article 9(1) of the Audiovisual Media Services Directive with respect to audiovisual commercial communications that are not marketed, sold or arranged by that video-sharing platform service provider, taking into account the limited control exercised by that video-sharing platform service provider over those audiovisual commercial communications.
- 10.4. Pursuant to **Article 28b(2)** of the Audiovisual Media Services Directive and **Section 139K** of the Act, a video-sharing platform service provider shall ensure that they clearly inform users where programmes and user-generated videos contain audiovisual commercial communications, provided that such communications are declared or the provider has knowledge of that fact.
- 10.5. To achieve the requirements of Section 10 of this Code, a video-sharing platform service provider shall, pursuant to **Section 139K**, implement the measures set out in Article 28b(3)(a) – (j) of the Audiovisual Media Services Directive, as appropriate.

2. The Commission notes and recognises that the term “child sex abuse material” is the more appropriate description of the content covered by Article 5(4) of Directive 2011/93/EU. The use of the term “child pornography” is used in this instance to reflect the legal definitions in the Directive.



### Appropriate Measures

- 10.6. Pursuant to **Section 139K(3)** of the Act and **Article 28b(3)** of the Audiovisual Media Services Directive, a video-sharing platform service provider shall, as appropriate, take the following measures to protect children and the general public:
- a. A video-sharing platform service provider shall include and apply in their terms and conditions of the service requirements to take appropriate measures to protect the general public and children from the content referred to in Article 28b(1)(a)-(c) of the Audiovisual Media Services Directive;
  - b. A video-sharing platform service provider shall include and apply in their terms and conditions of the service the requirements set out in Article 9(1) of the Audiovisual Media Services Directive for audiovisual commercial communications that are not marketed, sold or arranged by the video-sharing platform provider;
  - c. A video-sharing platform service provider shall have a functionality for users who upload user-generated videos to declare whether such videos contain audiovisual commercial communications as far as the users know or can be reasonably expected to know;
  - d. A video-sharing platform service provider shall establish and operate transparent and user-friendly mechanisms for users of a video-sharing platform to report or flag to the video-sharing platform provider content referred to in Article 28b(1)(a)-(c) of the Audiovisual Media Services Directive provided on its platform;
  - e. A video-sharing platform service provider shall establish and operate systems through which the video-sharing platform service provider can explain to users of the service what effect has been given to the reporting and flagging referred to in point (d);
  - f. A video-sharing platform service provider shall establish and operate age verification systems for users of video-sharing platforms with respect to content which may impair the physical, mental or moral development of minors;<sup>3</sup>
  - g. A video-sharing platform service provider shall establish and operate an easy-to-use content rating system allowing users of the video-sharing platform to rate the content referred to in Article 28b(1)(a)-(c) of the Audiovisual Media Services Directive;

3. For the purpose of Part A, the term “age verification” includes effective age assurance measures including age estimation. An age assurance measure based solely on self-declaration of age by users of the service shall not be an effective measure for the purposes of Part A.

## Part A

- h. A video-sharing platform service provider shall provide for 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;
  - i. A video-sharing platform service provider shall establish and operate transparent, easy-to-use and effective procedures for the handling and resolution of users' complaints to the video-sharing platform provider in relation to the implementation of the measures referred to in points (d) to (h);
  - j. A video-sharing platform service provider shall provide for effective media literacy measures and tools and raising users' awareness of those measures and tools.
- 10.7. If any issue arises as to the appropriateness of the measures, it will be a matter for the Commission to determine the same.
- 10.8. Pursuant to **Section 139K(3)** of the Act and **Article 28b(3)** of the Directive, the appropriate measures taken by a video-sharing platform service provider pursuant to Section 10.6 of this Code shall be measures that the Commission is satisfied are practicable and proportionate, taking into account the size of the video-sharing platform service and the nature of the service that is provided. For the purposes of the protection of minors, provided for in Article 28b(1)(a) of the Directive, the most harmful content shall be subject to the strictest measures.
- 10.9. Pursuant to **Section 139K(3)** of the Act and **Article 28b(3)** of the Directive, a video-sharing platform service provider shall not process for commercial purposes (such as direct marketing, profiling and behaviourally targeted advertising) the personal data of minors collected or otherwise generated by providers pursuant to points (f) and (h) of Section 10.6.
- 10.10. Pursuant to **Section 139ZD** of the Act and **Article 28b(7)** of the Directive, a video-sharing platform service provider may provide for out-of-court redress mechanisms including mediation to be available for the settlement of disputes between users and that video-sharing platform provider relating to the application of paragraphs 1 and 3 of Article 28b of the Directive. Such mechanisms may enable disputes to be settled impartially and shall not deprive the user of the legal protection afforded by national law. For the avoidance of doubt, nothing in this Code shall affect the rights of users to assert their rights before a court in accordance with the law.





# Part B

Without prejudice to the generality of the requirements set out in Section 10 of Part A of the Code, from the date determined by the Commission for the application of Part B of the Code, Section 11 to Section 17 of Part B of the Code shall apply to a video-sharing platform service provider.

## 11. Definitions

**“adult-only video content”** means:

- video content consisting of pornography,
- video content consisting of realistic representations of, or of the effects of, gross or gratuitous violence or acts of cruelty.

**“age assurance measure”** means a process used to restrict access to a service or to particular features or content of a service that involves estimating or verifying a user’s age.

**“audiovisual commercial communication”** means a commercial communication consisting of images with or without sound which are designed to promote, directly or indirectly, the goods, services or image of a natural or legal person pursuing an economic activity; such images accompany, or are included in, a programme or user-generated video in return for payment or for similar consideration or for self-promotional purposes. Forms of audiovisual commercial communication include, inter alia, television advertising, sponsorship, teleshopping and product placement.

**“audiovisual commercial communications harmful to children”** means:

- audiovisual commercial communications that directly exhort children to buy or hire a product or service by exploiting their inexperience or credulity,
- audiovisual commercial communications that directly encourage children to persuade their parents or others to purchase the goods or services being advertised,
- audiovisual commercial communications which exploit the special trust children place in parents, teachers or other persons,

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- audiovisual commercial communications which unreasonably show children in dangerous situations, and
- audiovisual commercial communications for alcohol aimed specifically at children.

**“audiovisual commercial communications harmful to the general public”** means:

- audiovisual commercial communications which prejudice respect for human dignity,
- audiovisual commercial communications which include or promote any discrimination based on: sex, racial or ethnic origin, nationality, religion or belief, disability, age, or sexual orientation,
- audiovisual commercial communications which encourage behaviour prejudicial to health or safety,
- audiovisual commercial communications which encourage behaviour grossly prejudicial to the protection of the environment,
- audiovisual commercial communications for cigarettes and other tobacco products, as well as for electronic cigarettes and refill containers,
- audiovisual commercial communications which encourage immoderate consumption of alcoholic beverages,
- audiovisual commercial communications for medicinal products and medical treatment available only on prescription in the State.

**“child/children”** means a person(s) under the age of 18 years.

**“indissociable user-generated content”** means user-generated content comprising any text, symbol, image or caption accompanying any user-generated video, provided such text, symbol, image or caption is indissociable from the user-generated video.

**“media literacy”** means public understanding of material published in print, broadcast, online or other media, including understanding of:

- the nature and characteristics of published material,
- how material is selected, or made available, for publication,
- how individuals and communities can create and publish material, and
- how access to published material is or can be regulated.



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

“**restricted audiovisual commercial communications**” means:

- a. audiovisual commercial communications containing incitement to violence or hatred directed against a group of persons or a member of a group based on any of the grounds referred to in Article 21 of the Charter of Fundamental Rights of the European Union,<sup>4</sup> namely sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age, sexual orientation.
- b. audiovisual commercial communications, the dissemination of which constitutes:
  - i. a public provocation to commit a terrorist offence as set out in Article 5 of Directive (EU) 2017/541,
  - ii. an offence concerning ‘child pornography’<sup>5</sup> as set out in Article 5(4) of Directive 2011/93/EU of the European Parliament and of the Council, and
  - iii. an offence concerning racism and xenophobia as set out in Article 1 of Framework Decision 2008/913/JHA.

“**restricted indissociable user-generated content**” means indissociable user-generated content which, taken together with the user-generated video to which it relates, is:

- a. indissociable user-generated content by which a person bullies or humiliates another person,
- b. indissociable user-generated content by which a person promotes or encourages behaviour that characterises a feeding or eating disorder,
- c. indissociable user-generated content by which a person promotes or encourages self-harm or suicide (to include video content which encourages behaviour prejudicial to the health or safety of children, including dangerous challenges),
- d. indissociable user-generated content by which a person makes available knowledge of methods of self-harm or suicide (to include video content which encourages behaviour prejudicial to the health or safety of children, including dangerous challenges).

where in the case of points (a)-(d) such content meets the risk test as defined in this Code.

4. Including, but not restricted to, membership of the Traveller community or Roma communities.  
5. The Commission notes and recognises that the term “child sex abuse material” is the more appropriate description of the content covered by Article 5(4) of Directive 2011/93/EU. The use of the term “child pornography” is used in this instance to reflect the legal definitions in the Directive cited.

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- e. indissociable user-generated content containing incitement to violence or hatred directed against a group of persons or a member of a group based on any of the grounds referred to in Article 21 of the Charter of Fundamental Rights of the European Union,<sup>6</sup> namely sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age, sexual orientation,
- f. indissociable user-generated content the dissemination of which constitutes a public provocation to commit a terrorist offence as set out in Article 5 of Directive (EU) 2017/541,
- g. indissociable user-generated content the dissemination of which constitutes an offence concerning ‘child pornography’ within the meaning given to the term in Article 5(4) of Directive 2011/93/EU of the European Parliament and of the Council, and
- h. indissociable user-generated content the dissemination of which constitutes an offence concerning racism and xenophobia as set out in Article 1 of Framework Decision 2008/913/JHA.

“**restricted video content**” means:

- a. video content by which a person bullies or humiliates another person,
- b. video content by which a person promotes or encourages behaviour that characterises a feeding or eating disorder,
- c. video content by which a person promotes or encourages self-harm or suicide, (to include video content which encourages behaviour prejudicial to the health or safety of children, including dangerous challenges).
- d. video content by which a person makes available knowledge of methods of self-harm, or suicide (to include video content which encourages behaviour prejudicial to the health or safety of children, including dangerous challenges).

where in the case of points (a)-(d) such content meets the risk test as defined in this Code.

- e. video content containing incitement to violence or hatred directed against a group of persons or a member of a group based on any of the grounds referred to in Article 21 of the Charter of Fundamental Rights of the European Union,<sup>7</sup> namely sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age, sexual orientation.

6. Including, but not restricted to, membership of the Traveller community or Roma communities.

7. Including, but not restricted to, membership of the Traveller community or Roma communities.

## Part B

- f. video content the dissemination of which constitutes:
  - i. a public provocation to commit a terrorist offence as set out in Article 5 of Directive (EU) 2017/541,
  - ii. an offence concerning ‘child pornography’ within the meaning given to the term in Article 5(4) of Directive 2011/93/EU of the European Parliament and of the Council, and
  - iii. an offence concerning racism and xenophobia as set out in Article 1 of Framework Decision 2008/913/JHA.

“**risk test**” means content that gives rise to:

- a. any risk to a person’s life, or
- b. a risk of significant harm to a person’s physical or mental health, where the harm is reasonably foreseeable.

“**subliminal techniques**” means any technical device, which, by using images of very brief duration or by any other means, exploits the possibility of conveying a message to, or otherwise influencing the minds of, members of an audience without their being aware or fully aware of what has been done.

“**surreptitious commercial communications**” means the representation in words or pictures of goods, services, the name, the trade mark or the activities of a producer of goods or a provider of services in programmes when such representation is intended by the media service provider to serve as advertising and might mislead the public as to its nature. Such representation shall, in particular, be considered as intentional if it is done in return for payment or for similar consideration.

“**terms and conditions and related obligations**” means all clauses, irrespective of their name or form, which govern the contractual relationship between the provider of intermediary services and the recipients of the service.

“**user-generated content**” means content created by a user of a service and uploaded to the service by that user or any other user, where the service is a video-sharing platform service.

“**user-generated video**” means user-generated content consisting of a set of moving images with or without sound constituting an individual item, irrespective of its length, that is created by a user and uploaded to a video-sharing platform by that user or any other user.

“**video content**” refers to:

- a. user-generated video,
- b. any programme.

“**video-sharing platform service**” means:

- a service as defined by Articles 56 and 57 of the Treaty on the Functioning of the European Union, where the principal purpose of the service or of a dissociable section thereof or an essential functionality of the service is devoted to providing programmes, user-generated videos, or both, to the general public, for which the video-sharing platform provider does not have editorial responsibility, in order to inform, entertain or educate, by means of electronic communications networks within the meaning of point (a) of Article 2 of Directive 2002/21/EC and the organisation of which is determined by the video-sharing platform provider, including by automatic means or algorithms in particular by displaying, tagging and sequencing.

“**video-sharing platform service provider**” means the natural or legal person who provides a video-sharing platform service.

## 12. Specific Obligations of Video-sharing Platform Services - Content

### Terms and Conditions and Related Obligations – Content

- 12.1. A video-sharing platform service provider shall include, in the terms and conditions and related obligations of the service, restrictions that preclude users from: -
- uploading or sharing restricted video content as defined in this Code, and
  - uploading or sharing restricted indissociable user-generated content as defined in this Code.

- 12.2. A video-sharing platform service provider shall include, in the terms and conditions and related obligations of the service, either:
- a. a restriction that precludes the uploading or sharing of adult-only video content as defined in this Code; or
  - b. a restriction that a user who uploads adult-only video content as defined in this Code must rate the content as not suitable for children using the mechanism developed by the video-sharing platform service provider further to Section 12.11.
- 12.3. A video-sharing platform service in respect of which the principal purpose of the service, or a dissociable section thereof, is devoted to providing programmes, user generated videos or both which consist of adult-only video content as defined in this Code, shall include, in the terms and conditions and related obligations of the service, a requirement precluding the use by children of the service or the dissociable section thereof, as the case may be, and an obligation that adult users ensure that their accounts on the service are not used by children.
- 12.4. A video-sharing platform service provider shall include in the terms and conditions and related obligations of the service a requirement that users comply with and do not attempt to circumvent age assurance and content rating obligations set out in Sections 12.10 and 12.11 of this Code.
- 12.5. A video-sharing platform service provider shall include in the terms and conditions and related obligations of the service a requirement that users comply with and do not attempt to circumvent the terms and conditions and related obligations set out under Sections 12.1-12.4 of the Code.

### **Suspension of Accounts**

- 12.6. A video-sharing platform service provider shall apply the provisions of their terms and conditions and related obligations that give effect to this section of the Code and, where appropriate and after having issued a prior warning, suspend for a reasonable period of time the provision of their services to users of the service that they have determined to have frequently infringed terms and conditions and related obligations of the service set out in sections 12.1-12.4.



- 12.7. When deciding on suspension, a video-sharing platform service provider shall assess, on a case-by-case basis and in a timely, diligent and objective manner, whether the user infringed the terms and conditions and related obligations of the service as set out in sections 12.1-12.4, taking into account all relevant facts and circumstances apparent from the information available to the provider of video-sharing platform services.
- 12.8. When deciding on suspension, a video-sharing platform service provider shall have due regard to the rights and legitimate interests of all parties involved, including the fundamental rights of the recipients of the service, such as the freedom of expression, freedom and pluralism of the media, and other fundamental rights and freedoms as enshrined in the Charter of Fundamental Rights of the European Union.
- 12.9. Sections 12.6, 12.7 and 12.8 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).

### Age Assurance and Adult-Only Video Content

- 12.10. A video-sharing platform service provider whose terms and conditions do not preclude the uploading or sharing of adult-only video content as defined in this Code shall implement effective age assurance measures as defined in this Code to ensure that adult-only video content cannot normally be seen by children. An age assurance measure based solely on self-declaration of age by users of the service shall not be an effective measure for the purposes of this section.

### Content Rating

- 12.11. A video-sharing platform service provider whose terms and conditions do not preclude the uploading or sharing of adult-only video content as defined in this Code shall establish an easy-to-use content rating system allowing users who upload user-generated videos to rate such content. The content rating mechanism shall enable users to rate the content as not suitable for children because the video content is adult-only as defined in this Code and to tag such video content accordingly to ensure transparency for users viewing this content.

- 12.12. Section 12 of this Code shall not be interpreted as precluding the uploading or sharing of video content that contains violent or distressing imagery where such content has been uploaded or shared as a contribution to civic discourse on a matter of public interest, provided such content cannot ordinarily be seen by children and this is achieved using measures appropriate to achieve this outcome, such as content rating, age assurance or parental controls.

## 13. Obligations of Video-sharing Platform Service Providers – Audiovisual Commercial Communications

### Terms and Conditions and Related Obligations – Audiovisual Commercial Communications

Audiovisual commercial communications that are not marketed, sold or arranged by the video-sharing platform service

- 13.1. A video-sharing platform service provider shall, in the case of audiovisual commercial communications not marketed, sold, or arranged by them, include and apply in the terms and conditions and related obligations of the service restrictions that preclude users from:
- uploading and sharing audiovisual commercial communications harmful to the general public as defined in this Code,
  - uploading and sharing audiovisual commercial communications harmful to children as defined in this Code,
  - uploading and sharing restricted audiovisual commercial communications as defined in this Code.

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- 13.2. A video-sharing platform service provider shall, in the case of audiovisual commercial communications not marketed, sold, or arranged by them, include and apply in the terms and conditions and related obligations of the service a requirement to ensure that audiovisual commercial communications as defined in this Code are readily recognisable as such.
- 13.3. A video-sharing platform service provider shall, in the case of audiovisual commercial communications not marketed, sold, or arranged by them, include and apply in the terms and conditions and related obligations of the service a restriction precluding surreptitious audiovisual commercial communications as defined in this Code and the use in audiovisual commercial communications of subliminal techniques as defined in this Code.
- 13.4. A video-sharing platform service provider shall include in the terms and conditions and related obligations of the service an obligation for users to declare when they are uploading user-generated videos that contain audiovisual commercial communications as far as users know or can be reasonably expected to know.
- 13.5. A video-sharing platform service provider shall include in the terms and conditions and related obligations of the service a requirement that users comply with and do not attempt to circumvent the terms and conditions and related obligations set out under Sections 13.1-13.4 of the Code.

### Suspension of Accounts

- 13.6. A video-sharing platform service provider shall apply the provisions of their terms and conditions and related obligations that give effect to this section of the Code and, where appropriate and after having issued a prior warning, suspend for a reasonable period of time the provision of their services to users of the service that they have determined to have frequently infringed terms and conditions and related obligations of the service set out in sections 13.1-13.4.
- 13.7. When deciding on suspension, a video-sharing platform service provider shall assess, on a case-by-case basis and in a timely, diligent and objective manner, whether the user infringed the terms and conditions and related obligations of the service as set out in sections 13.1-13.4, taking into account all relevant facts and circumstances apparent from the information available to the provider of video-sharing platform services.

- 13.8. When deciding on suspension, a video-sharing platform service provider shall have due regard to the rights and legitimate interests of all parties involved, including the fundamental rights of the recipients of the service, such as the freedom of expression, freedom and pluralism of the media, and other fundamental rights and freedoms as enshrined in the Charter of Fundamental Rights of the European Union.
- 13.9. Sections 13.6, 13.7 and 13.8 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).

### **Audiovisual commercial communications that are marketed, sold or arranged by the video-sharing platform service**

- 13.10. A video sharing platform service provider shall not market, sell or arrange:
- audiovisual commercial communications harmful to the general public as defined in this Code,
  - audiovisual commercial communications harmful to children as defined in this Code, or
  - restricted audiovisual commercial communications as defined in this Code.
- 13.11. A video-sharing platform service provider shall, in the case of audiovisual commercial communications that are marketed, sold or arranged by that video-sharing platform provider, ensure that audiovisual commercial communications are readily recognisable as such.
- 13.12. A video-sharing platform service provider shall not market, sell or arrange surreptitious audiovisual commercial communications as defined in this Code or include in audiovisual commercial communications the use of subliminal techniques as defined in this Code.

### Alcohol

- 13.13. A video-sharing platform service provider shall not be restricted from marketing, selling or arranging, and (in the case of audiovisual commercial communications not marketed, sold, or arranged by them) shall not be required to preclude audiovisual commercial communications for alcohol provided that such content cannot normally be seen by children and this is achieved using measures appropriate to achieve this outcomes, such as content rating, age assurance and parental controls.

### Declaration of audiovisual commercial communications for user-generated video

- 13.14. A video-sharing platform service provider shall put in place a functionality for users who upload user-generated videos to declare whether such video content contains audiovisual commercial communications as far as the users know or can be reasonably expected to know.
- 13.15. Where a user has declared that a user-generated video contains audiovisual commercial communications or where the video-sharing platform service provider has knowledge of that fact, the video-sharing platform service provider shall ensure users of the service are clearly informed of the declaration or fact that the user-generated video contains audiovisual commercial communications in a manner that is transparent for users of the service.

## 14. Parental Controls

- 14.1. A video-sharing platform service provider whose terms of service permit users under the age of 16 (that is, 15 and under) shall provide for 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.
- 14.2. The parental control systems shall assist parents or guardians to exercise their judgment about how best to protect the physical, mental and moral development of their children from video content and audiovisual commercial communications.
- They shall, at a minimum, have the following functions: -
- a. enable parents or guardians to restrict a child from viewing video content uploaded or shared by users that are unknown to the child;



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- b. enable parents or guardians to restrict viewing of video content uploaded or shared by the child by users that are unknown to the child;
  - c. give parents or guardians the ability to restrict a child from viewing video content or audiovisual commercial communications based on language terms contained in the description of the video or commercial communication or based on metadata about the video or commercial communication; and
  - d. enable parents or guardians to set time limits in respect of viewing of video content.
- 14.3. A video-sharing platform service provider shall provide information that explains to users, including children, how parental control systems operate.
- 14.4. A video-sharing platform service provider shall draw, by appropriate means, users' attention, including children, to parental control systems that they make available.
- 14.5. A video-sharing platform service provider shall ensure that where parental control systems are offered as a requirement under this section of the Code, such systems shall be provided as an option to new users on account sign-up for the service.

## 15. Reporting and Flagging

- 15.1. A video-sharing platform service provider shall establish and operate transparent and user-friendly mechanisms for users of a video-sharing platform to report or flag to the video-sharing platform service provider:
- restricted video content as defined in this Code,
  - restricted indissociable user-generated content as defined in this Code,
  - adult-only video content that has been uploaded or shared in breach of the terms and conditions and related obligations of the service as defined in this Code,
  - audiovisual commercial communications harmful to the general public as defined in this Code,
  - audiovisual commercial communications harmful to children as defined in this Code,
  - restricted audiovisual commercial communications as defined in this Code,
  - audiovisual commercial communications that do not meet the requirements of Section 13.4.

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- 15.2. A video-sharing platform service provider shall establish and operate systems by which providers explain to users of the video-sharing platform what effect has been given to the reporting and flagging of content using the reporting and flagging mechanisms referred to in this section, for example, the removal of such content.
- 15.3. When informing a notifier of its decision about content reported or flagged, a video-sharing platform service provider shall inform the notifier that they can use the complaint handling procedures established by the service provider in accordance with Section 16 if they are dissatisfied with the decision and shall provide clear and transparent information about complaint handling systems to users.

## 16. Complaints

- 16.1. A video-sharing platform service provider shall establish and operate transparent, easy-to-use and effective procedures for the handling and resolution of complaints made by users to the video-sharing platform service provider in relation to the implementation of measures relating to age assurance, content rating, parental controls and reporting and flagging.
- 16.2. The requirement referred to in 16.1 shall exclude the handling and resolution of complaints in relation to decisions that are listed in Article 20(1), points (a) to (d) of Regulation (EU) 2022/2065 (Digital Services Act).
- 16.3. Information on the complaints handling procedures should be prominent, accessible and easily identifiable for users of the video-sharing platform service.
- 16.4. A video-sharing platform service provider shall handle complaints in a diligent, timely, non-discriminatory, and effective manner.

## 17. Obligations of Video-sharing Platform Service Providers - Other

### Media Literacy – Measures and Tools

- 17.1. Each video-sharing platform service provider shall publish an action plan specifying the measures it will take to promote media literacy. The plan shall be updated annually.

### Personal Data – Children

- 17.2. A video-sharing platform service provider shall ensure that personal data of children collected or otherwise generated by them when implementing obligations in this Code relating to age verification and parental controls is not processed for commercial purposes, such as direct marketing, profiling and behavioural targeted advertising.

### Reporting on Measures

- 17.3. Pursuant to Section 139K(6) of the Act, each video-sharing platform service provider shall provide a report to the Commission, every 3 months or at such other intervals as may be specified by the Commission either generally or with regard to a particular video-sharing platform service provider, in the manner to be further specified by the Commission from time to time, on the service provider's handling of communications from users raising complaints or other matters.

