

Consultation Responses to the Draft Online Safety Code

Report by



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Chapter 1: Introduction

Coimisiún na Meán (the Commission) is Ireland’s regulator for broadcasting, video-on-demand, online safety and media development. Coimisiún na Meán was established in March 2023, further to the Broadcasting Act 2009 as amended by the Online Safety and Media Regulation Act 2022 (the “2009 Act as amended” or the “Act”). Coimisiún na Meán has a range of responsibilities, including setting standards, rules, and codes for the different types of media services and relevant online services under the jurisdiction of Ireland.

This document provides a summary of the responses to the public consultation on the draft Online Safety Code (“the draft Code”)¹ launched by the Commission on the 8 December 2023.

The consultation addressed four topics: a draft Online Safety Code; Draft Statutory Guidance Materials; the application of the Online Safety Code to video-sharing platform services and providers (“VSPS” and “VSPS providers”); and proposed supplementary measures for consideration in a future iteration of the Online Safety Code and Guidance Materials.

The purpose of this document is to provide an accessible overview of the responses to the consultation on the draft Code. The objective of this document is not to evaluate responses, nor provide any conclusions or recommendations (legal or regulatory) or to provide or suggest any technological solutions. It provides a summary of the representations made but it should be noted that the Commission has read and evaluated all responses and taken them into account in reaching any decisions.

Close to 1400 responses to the consultation were received and more detail in this regard, including the types of organisations that provided submissions is provided in Annex 1. The full list of respondents and organisational type are listed in a separate document that collates submissions and which is available on the website of Coimisiún na Meán (<https://cnam.ie>). Many of the representations were long and detailed indicating a high level of interest, dedication, and a significant amount of work on the part of respondents to the consultation. The total volume of responses amounted to 2200 pages and given the volume and depth of the responses, it was not possible to comprehensively cover all argumentation and evidence provided in every submission.

The authors of this report have made all efforts to faithfully and fairly present the main findings and opinions expressed by all respondents in their submissions. In most cases, responses are attributed by including the name of the respondent in brackets immediately after the relevant point is made. In some cases, references to the response of an organisation will be identified using the broad categories in the table below. Sometimes multiple respondents have made the same or similar points. In those instances, the point is attributed to multiple respondents by the inclusion of multiple names in brackets following the relevant point.

The document is structured around the 28 questions posed in the consultation document (see Annex 2). Within each chapter of this report, questions dealing with related aspects of the draft Code are addressed, with clear reference to the question number of the consultation. Some responses did not follow the structure of the questions in the consultation, and in those instances the very best effort has been made to ensure that all opinions, principles, priorities, and approaches are reflected in this document, in the most appropriate chapter.

¹ On 8 December 2023, the Commission opened a public consultation on the first draft of the Irish Online Safety Code. https://www.cnam.ie/wp-content/uploads/2023/12/Draft_Online_Safety_Code_Consultation_Document_Final.pdf

It is foreseen that the majority of the individual responses (dependent upon the wishes of the relevant organisations and individuals) will also be published online. These detailed responses will be further examined by the Commission in the process of finalising the Online Safety Code (or “the Code”) and other matters considered as part of the consultation. The availability of the full responses online also allows for the general public and any other interested parties to delve deeper into the argumentation and evidence provided by respondents.

In addition, many organisations summarised, referenced and provided links to a broad range of research and reports relevant to the issues discussed here. It was not possible in the context of this document to summarise or provide any comprehensive overview of research and evidence provided. Including all the footnotes and references would have significantly expanded the size of the document. Hence, it is recommended to refer to the individual responses for the detail on research, and to access the reports and links that can be found in the individual submissions of the various organisations.

Chapter 2: Overall Approach to the Online Safety Code - Introductory Sections (Q.1)

The responses in this chapter refer to Section 1 – 9 of the draft Code and gathers feedback on the introductory sections of the draft Code (Sections 1-9) captured from consultation Question 1.

Consultation Question 1: Do you have any comments on sections 1-9 of the draft Code?

2A. Introduction (Consultation Q.1)

This section explains that the Commission has prepared the Code in accordance with its statutory duties and obligations.

There were no specific responses to Section 1 of the Draft Online Code.

2B. Scope and Jurisdiction (Consultation Q.1)

This section explains that the Code gives effect to Article 28b of the AVMS Directive and specifies the online services to which the Code applies. It states that the Code does not impose any obligation contrary to Article 15 of the e-Commerce Directive or Article 8 of the DSA. This is in line with the Commission’s e-Commerce Compliance Strategy.

The following responses refer to comments and feedback relating to Section 2 of the draft Code.

2B.1 Regulatory complexity

It was suggested that due to the complicated legal environment in which the Code operates and the international and cross-border nature of VSPs, it may be appropriate to provide additional context to the Code so that providers, users and other regulators will know what to expect and where they stand. Specific reference was made to users understanding who the correct and competent regulator is for managing complaints, as well as the country of origin principle, the relationship between the supervision of VSPs and the national supervision of vloggers by other EU regulators, and the existing regulatory cooperation with other media authorities, such as the MoU-procedure agreed by members of ERGA. (CvdM)

2B.2 Regulatory cohesion

It was noted that draft Code primarily focuses on the harms covered by the Audiovisual Media Services Directive (“AVMSD”), including incitement of violence or hatred, but that it will “also consider the potential relevance of the EU Digital Services Act (“DSA”) in relation to content that promotes discriminatory attitudes in collaboration with the European Commission and its counterparts in other Member States”². The Electoral Reform Act provides An Coimisiún Toghcháin with regulatory powers (not yet commenced) in relation to online misinformation, and disinformation and manipulative or inauthentic behaviour in the context of electoral events. The Electoral Reform Act also provides that An Coimisiún Toghcháin shall, in considering the exercise of its powers in this area give due weight to the right to freedom of expression; the right to freedom of association; the right to participate in public affairs; and the obligation on the State to defend and secure the fairness and integrity of elections and referendums as well as having regard to the need to ensure the economic and efficient use of An Coimisiún Toghcháin’s resources and the public harm concerned, as it relates to the overall integrity

² Consultation Document: Online Safety p.14, https://www.cnam.ie/wp-content/uploads/2023/12/Draft_Online_Safety_Code_Consultation_Document_Final.pdf.

and fairness of the election or referendum. Coimisiún Toghcháin looks forward to exploring potential areas for co-operation and engagement with Coimisiún na Meán in relation to its regulatory powers as well as in other areas of its work including education and public engagement. ([An Coimisiún Toghcháin](#))

Industry argued a number of provisions of the draft Code and related materials extend beyond what could be deemed appropriate measures in line with AVMSD requirements and overlap with the DSA, creating additional national requirements which would be pre-empted by the DSA - which could create legal uncertainty and risk undermining the goals of the DSA. Industry also argues that in respect of any matters falling within the scope of the DSA's remit, it is important that the Code's obligations are limited to those appropriate measures for VSPs which are required under AVMSD. ([Technology Ireland](#))

With regard to instances within the draft Code which overlap with DSA requirements and which Industry argue are out of scope of AVMSD or go beyond appropriate measures envisaged by AVMSD, are: Definition of Content; Prohibition on certain content; Account suspension / termination; Transparency Reporting and Audits; Due Process Requirements; Parental Controls; Recommender Systems; Safety by Design; and, Online Safety Supports ([Technology Ireland](#)) as well as User-generated Ancillary Content and content which may potentially be harmful to children, may not necessarily be harmful to adults. ([IAB Ireland](#))

As drafted, some industry representatives noted that the universal application of the draft Code to all designated VSPs is overly expansive and means the Code cannot be said to apply proportionately to platforms which are not harmful. ([Udemy](#))

2B.3 Jurisdiction

Concerns about the jurisdictional remit of the draft Code were raised by Industry who noted that certain obligations of the code reference offences under Irish law and as such are not intended to have EU wide effect, given that the DSA recognises that Member States have the freedom to determine what is illegal under national law. An example provided by industry was that the draft Code defines "illegal content harmful to children" and "illegal content harmful to the general public" in whole or in part by reference to specific Irish criminal statutes. ([Technology Ireland](#), [IAB Ireland](#))

Clarification was sought on whether certain provisions of the draft Code are intended to apply only in Ireland, and other provisions to apply throughout the European Economic Area ("EEA"). ([Google](#), [IAB Ireland](#))

Industry points out that if such a delineation is envisaged, clarification is required around whether other elements of the Code (which Industry believe go beyond the requirements of, or have no basis in, the AVMSD) will also only apply in Ireland, and to such an extent that they are not pre-empted by the DSA. ([Technology Ireland](#))

Industry also argues that, pursuant to Article 9 of the DSA, VSPs have a pre-existing obligation to address notified content which is illegal as a matter of EU law or national Member State law. As such Industry is of the view that the meaning of "illegal content" in the draft Code should be confined to the EU-wide illegal content referenced in Article 28b(1)(c) of the AVMSD, as these are the only categories of illegal content that are required to be addressed by the Code for the purpose of giving effect to the AVMSD. ([Technology Ireland](#))

In relation to working with entities not based in the State, it was suggested that the e-safety commissioner in Australia can still work to minimise harm to child users on platforms that do not have a base in the Australian jurisdiction (despite having no regulatory powers), through activities such as engagement with other regulators, focus on drowning out search results if content can not be removed, and naming and shaming in reports etc. ([Cybersafekids](#))

2C. Purpose, Preparation and Application of Code (Q.1)

Section 3 of the draft Code deals with the purpose of the Code, which reflects section 139K of the Act. It lists the matters at section 139M of the Act to which the Commission has in particular had regard in preparing the Code. This section also confirms that the Code has been prepared in accordance with the procedures at section 139N of the Act. This section further states, as specified in section 139L of the Act, when an online safety code applies to a designated online service, factors to which the Commission must have regard when making or revoking a determination in relation to a named service or a category of services, and the consultation that is required ahead of any determination.

The following responses refer to comments and feedback relating to Section 3 of the draft Code.

2C.1 Purpose of the Code (Section 3.1 of the Code)

Clarity around metrics

The inclusion of specific, measurable metrics for evaluating the effectiveness of the regulation was recommended and terms like "robust" and "effective" should be quantified with clear criteria. ([I.Goldberger](#))

Clarification was sought on what the thresholds are in relation to taking "appropriate measures" and will this be defined in the final Code? ([Cybersafekids](#))

The point was made that risks and harms – notably for children – are not only linked to the availability of content, but that repeated exposure to harmful online content (e.g. promotion to particular groups via recommender systems) can result in different kinds of impact (and risks) that such content may have (immediate and cumulative, acute and mild, direct and indirect). Therefore, it was suggested that in Section 3.1, the first bullet point should be amended to read "take appropriate measures to minimise the availability *and exposure to* harmful online content and risks arising from the availability of and exposure to such content", and a reference to children should be added in the sentence "take any other measures that are appropriate to protect users of their services from harmful online content, *in particular children*". This explicit mention of children would highlight their additional needs and would reflect the wording of the last point of section 3 relating to commercial communications. ([5Rights Foundation](#))

There is a typographical error under "take any measures in relation to commercial communications on their services that are appropriate to protect (instead of project) the interests of users of their services."

2C.2 Preparation of the Code (Sections 3.2-3.3 of the Code)

It was noted as positive that "levels of risk"s are mentioned in Section 3.2 of the Draft Code. ([5Rights Foundation](#))

It was noted that the draft Code required clarity around the objective criteria used to determine "levels of availability", and for specification to be defined in the Guidance to VSPS. ([Irish Traveller Movement](#))

Industry-led co-drafting

It was highlighted by Industry that co-regulation allows for the harnessing of knowledge from industry and the expertise in dealing with harmful content. (Technology Ireland, IAB Ireland)

Industry expressed some concern that the approach that the Commission has adopted to drafting the Code is indicative of a more traditional regulatory approach, whereby the regulator formulates and enforces prescriptive rules. Industry argues that if the Commission were to facilitate industry-led code drafting it would help address practical and proportionality issues. (Technology Ireland)

Industry also points out that the European Commission has recognised³ the value of co- and self-regulation and that co-regulation was also the model adopted in Australia, whereby industry-drafted safety codes must be approved and registered by the Australian eSafety Commissioner. (Technology Ireland)

Industry also noted that while the draft Code seeks to implement the requirements of AVMSD, there are instances where it goes beyond what is required or proportionate. Industry believes that the Code, as currently drafted, is too prescriptive in its implementation of AVMSD, meaning that VSPs are not afforded flexibility in terms of the measures by which they may achieve compliance with the draft Code's objectives. (Technology Ireland)

It was suggested that a more outcomes-based focus would produce better results, as it would facilitate VSPs to identify the most appropriate mechanisms to align with the Code's outcomes. (IAB Ireland)

Implementation / transition period

Industry believed the final Code should have a sensible and proportionate implementation period which will allow providers to effectively implement the relevant measures and suggested an overall minimum period of 18 months for implementation, or alternatively, use a staggered approach so that certain measures could be rolled out earlier, where those measures may not be as challenging to implement. The DSA's implementation period of 15 months for the majority of in-scope services was noted by way of example. (Technology Ireland, Meta Platforms Ireland Limited (MPIL), IAB Ireland)

2C.3 Application of the Code to video-sharing platform services (Sections 3.4- 3.7 of the Code)

In Section 3.6, it was suggested that "including children and young people" could be included in the text referring to consultation around making or revoking a determination. (DCEDIY)

2D. Regulatory Principles Relevant to the Code (Q1)

This section states the principles that apply to the Commission's behaviour and decision-making. It notes various rights, objectives and statutory functions in accordance with which the Commission must act, as well as the specific objectives of the Code. It notes the principles by which the Commission will be guided in its interpretation, application and enforcement of the Code.

The following responses refer to comments and feedback relating to Section 4 of the draft Code.

³ See Commission Staff Working Document: "Reporting on the application of Directive 2010/13/EU "Audiovisual Media Services Directive" as amended by Directive (EU) 2018/1808, for the period 2019-2022", at paragraph 2.8.

2D.1 General observations

The mention of the Charter of Fundamental Rights of the European Union (“EU Charter”) and the European Convention on Human Rights (“ECHR”) was welcomed ([5Rights Foundation, Children’s Rights Alliance](#))

However, to ensure that the Code is rooted in a children’s rights framework, that it names the protected characteristics under both EU and Irish equality law, and that it acknowledges the Public Sector Equality and Human Rights Duty as applies to the Commission, it was proposed that the draft Code should also refer to the core human rights treaties and protocols of the United Nations and of the Council of Europe. ([Belong To, Children’s Rights Alliance](#))

It was suggested that the text should explicitly specify that the Commission must act in accordance with international human rights law, including the UN Convention on the Rights of the Child as elaborated in its General comment No. 25. ([5Rights Foundation, Children’s Rights Alliance](#)) as well as including the Equal Status Acts 2000-2018 and the Irish Human Rights and Equality Commission Act 2014 as rights with which the Commission must act in accordance. ([Belong To](#))

It was also suggested that the text refers to the recently ratified EU Convention on Preventing and Combating Violence against Women and Domestic Violence (the Istanbul Convention) ([Children’s Rights Alliance, RCNI](#)) as well as the GREVIO General Recommendation No. 1 on the digital dimension of violence against women⁴ and Conventions on the Elimination of All Forms of Discrimination against Women (CEDAW)⁵, and the EU Victims Directive⁶. ([RCNI](#))

It was also noted that no specific mention is made of domestic policy or statutory objectives on domestic, sexual and gender-based violence or the rights of victims. A duty to act in accordance with policy in the form of the Third National Strategy on Domestic, Sexual and Gender-based violence and the Criminal Justice (Victims of crime) Act must be included. ([RCNI](#))

The draft Codes should not lack attention and safeguarding measures for individuals above the age of 18, given documented instances of harm extending into adulthood, such as suicide/self-harm, eating disorders, and various forms of cyberbullying. ([HSE NOSP](#))

2D.2 General Statutory Objectives and Functions (Sections 4.3 – 4.6 of the Code)

Harmful commodities

Section 7(2) of the Act provides that, in performing its functions, the Commission shall endeavour to ensure that the democratic values enshrined in the Constitution, especially those relating to rightful liberty of expression, are upheld, and that the interests of the public, including the interests of children, are protected, with particular commitment to the safety of children.

The 2020 WHO-UNICEF-Lancet Commission on the future for the world’s children which noted that “commercial marketing of products that are harmful to children represents one of the most underappreciated risks to their health and wellbeing” was referred to by a number of respondents. It

⁴ Council of Europe Expert Group on Action against Violence against Women and Domestic Violence (GREVIO), General Recommendation No.1 on the digital dimension of violence against women adopted on 20 October 2021.

⁵ UN General Assembly, Convention on the Elimination of All Forms of Violence Against Women, 18 December 1979, United Nations.

⁶ Directive 2012/29/EU of the European Parliament and the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime.

was also noted that the pandemics of obesity, undernutrition, and climate change represent three of the gravest threats to human health and survival.⁷

Commercial advertising and marketing of several products, services and brands are associated with poor health with harmful commodities including but not limited to unhealthy food and beverages, alcohol, drugs, tobacco, e-cigarettes and Breastmilk Substitute products. It was therefore recommended that the heightened risks of, and harms associated with, commercial exploitation and negative impact on development and health that can occur as a result of marketing practices of harmful commodities, must be addressed in the harms as set out in the Codes. (Health Service Executive, Irish Heart Foundation, BFLGI (BFLGI), Safefood, La Leche League of Ireland, HSE Health & Wellbeing, Dr. O. Bartlett, Dr. N. Campbell, Dr. A. Garde, Dr. C. Patton, K. Reilly, Dr. M. Tatlow-Golden)

Best Interests

It was suggested that, as provided for in the Irish Constitution under article 42A, a mention of the rights of the child together with their “best interests” should be included. It was noted that children’s rights are clearly defined in the UNCRC while children’s interests appear vaguer as a term and may indeed be confused with the principle of the best interests of the child under Article 3 of the UNCRC. (5Rights Foundation)

Balancing rights

It was noted that paragraph 4.3 of the draft Code refers to the balancing of the right to freedom of expression with the protection of the public and children, but that the statement does not, however, reflect a prioritisation of the protection of the public or a commitment to ensuring that the right to freedom of expression will not be privileged over the right that the public, and children especially, have to protection from harm. (RCNI)

While the provisions of sections 7(3) and (4) of the Act are quoted in section 4.5 and 4.6 of the draft Code, it was noted that the Commission is empowered by the provisions of Section 7(2) of the Act to ensure that the interests of the public are protected.

It was argued that this allows for the expansion of the statutory objectives to include further areas of protection such as against domestic, sexual and gender-based violence, misogynistic and violent content in videos and related media, exploitation, imaged-based abuse and the non-consensual sharing of images and information.

It was suggested that a vague reference to the EU Charter and other instruments did not adequately highlight the prevalence of the problem and that it was important that the Commission made a commitment to tackling this abuse. Therefore it was argued that the protection of women and children from these forms of violence in the online sphere is within the objective of the protection of the public and should be included and named as a specific objective of the Commission and the Code. (RCNI)

It was noted that domestic, sexual and gender-based violence is recognised as being at extremely high and concerning levels in Ireland and that technology facilitated/online violence is part of this issue, with victims often experiencing both online and offline forms of violence and a recommendation made to add the Third National Strategy on Domestic, Sexual and Gender-based violence (and any future iteration) to the list of policies which the Commission should have regards to in performing its functions. (Women’s Aid)

⁷ Boyd Swinburn et al, The Global Syndemic of Obesity, Undernutrition, and Climate Change: The Lancet Commission report, 2019, Vol: 393, Issue: 10173, Page: 791-846

2D.3 Specific Statutory Objectives (Sections 4.7 – 4.12 of the Code)

It was noted that the purposes and objectives of the Code (Sections 3.1 and 4.8 – 4.12) place a strong emphasis on the protection of children and the prevention of access to illegal and harmful content. However, by obligating all designated services to use mandatory age verification and parental controls (even those who may pose only a limited risk to child users because of the tiny fraction of the user base who are children or because children can only use the platform under direct parental supervision) means the draft Code is overly prescriptive and potentially harmful to business models. ([Udemy](#))

Objective 1 (Section 4.8 of the Code)

As a general point, clarification was sought on the proposed jurisdictional scope of the Code as set out in Section 4.8. In particular, confirmation was sought on whether certain provisions of the Code are intended to apply only in Ireland, and other provisions to apply throughout the EEA. ([Google](#))

It was suggested that the first obligation of Section 4.8 of the draft Code could be strengthened by including comments in videos, as well as content “in” AV programmes etc. for the avoidance of doubt. ([Children's Rights Alliance](#))

It was recommended that the second obligation of Section 4.8 of the draft Code should be reworded to incorporate the Equal Status Acts 2000-2018 in order to ensure that gender, in addition to sex, is considered to be a protected characteristic. It was also argued that incorporating Irish equality law would provide protection for members of the Traveller community, who are not legally designated as a national minority in accordance with the EU Charter. ([Belong To](#))

There was concern that referencing only the grounds of discrimination contained in the EU Charter does not draw attention to some of the most prevalent harms experienced by users in the online space. To address this one recommendation, it was proposed that a specific reference should be made to domestic, sexual and gender-based violence, misogyny, exploitation, intimate image abuse and non-consensual sharing of images and information so that particular attention is paid to these harms and forms of abuse. ([RCNI](#)).

Another suggestion was that an additional objective should be included, to take appropriate measures to combat and prevent online gender-based violence and work towards the eradication of the social and cultural norms that underpin and contribute to it, in line with the State’s obligations under the CEDAW and the Istanbul Conventions and the overarching goal of the Prevention pillar of the Third National Strategy on Domestic, Sexual and Gender Based violence, working towards the eradication of the social and cultural norms that underpin and contribute to gender-based violence.⁸ ([Women’s Aid](#))

It was noted that criminal offences identified within the third obligation of 4.8 of the draft Code have been limited to terrorism, child pornography, racism and xenophobia and it was recommended that the objective of the Code should be amended to protect the general public from all content that constitutes a criminal offence under Irish, European Union and International law without limitation. ([RCNI](#))

To ensure that complementary legislation such as the Harassment, Harmful Communications and Related Offences Act 2020, and the incoming Criminal Justice (Incitement to Violence or Hatred and Hate Offences) Bill 2022 are fully incorporated into the Code, it was suggested incorporating a reference to national criminal law as part of the third obligation of 4.8 of the draft Code. ([Belong To](#))

⁸ ibidem

Objective 2 (Section 4.9 of the Code)

As a general point, clarification was sought on the proposed jurisdictional scope of the Code as set out in Section 4.9. In particular, confirmation was sought on whether certain provisions of the Code are intended to apply only in Ireland, and other provisions to apply throughout the EEA. ([Google](#))

Concern was expressed about the phrase “...taking into account the limited control exercised by those video-sharing platforms over those audiovisual commercial communications” as it stood in second obligation linked to Objective 2. It was felt that it set a dangerous precedent of allowing VSPS to rely on this as an excuse for non-compliance or failure to act timeously. While accepting that VSPS may not have control over the content of commercial communications, the idea that platforms do not have complete control over access to content on their platforms was rejected and it was proposed that it was more a question of allocation of appropriate resources to ensure sufficient monitoring and immediate and appropriate action. ([RCNI](#))

Objective 3 (Section 4.10 of the Code)

As a general point, clarification was sought on the proposed jurisdictional scope of the Code as set out in Section 4.10. In particular, confirmation was sought on whether certain provisions of the Code are intended to apply only in Ireland, and other provisions to apply throughout the EEA. ([Google](#))

To further support the point that content which may be harmful to children would only be made available “in such a way as to ensure that children will not normally see or hear them”, it was suggested that any content which “may impair the physical, mental or moral development of children” (whether included in the categories of regulated or illegal content harmful to children or whether considered to be a contribution to educational/civil discourse – e.g. war/abuse news coverage etc) should not be permitted to be featured in recommender system feeds on VSPS until post-watershed hours (i.e. only between 9pm and 5.30am)

It was argued that this addition could reduce the passive-consumption of anxiety-inducing/negative content and would be beneficial for the mental health of the general public as well as children. ([Well-Aware Campaign](#))

It was noted that Section 4.10 of the draft Code incorrectly indicates that Article 6a of the AVMSD applies solely to commercial communications and it was suggested that this was inaccurate as the relevant point of Article 6a is not limited to commercial communication and that this should be corrected. ([Civil Society Groups](#)⁹)

Concerns were raised about the language used in Objective 3 in relation to acceptable level of proportionality for harms against children. It was argued that any material which could cause harm to children should be subject to absolute restrictions and that no child should gain access to such material. It was noted that platforms must be expected to implement every tool or form of technology available to ensure that children cannot gain access and should their security measures fail then immediate and appropriate action must be taken not only against the user by the VSPS but by the Commission against the VSPS. ([RCNI](#))

Objective 4 (Section 4.11 of the Code)

It was noted that in the interests of clarity and transparency, the ‘appropriate measures’ stated in the draft Code must be clearly defined and publicly accessible. It was also noted that there was no

⁹ The submission of the Civil Society Group represents the views of over sixty organisations, the list of which can be found in Annex 1.

indication of whether the right to protections from harm will be prioritised over the interests of the VSPS and the uploading user. (RCNI)

Objective 5 (Section 4.12 of the Code)

It was requested that the principle of practicable and proportionate measures be applied to measures taken in relation to commercial communications on infant and follow-on formula. (Dairy Industry Ireland).

The sentiment was expressed that current wording does not reflect a prioritisation of the protection of the public, children or those with protected characteristics. (RCNI)

Rights under the Constitution, Charter, ECHR and Treaties (Sections 4.13 – 4.14 of the Code)

It was recommended that Section 4.13 was expanded to include all relevant international human rights treaties, in particular UN and Council of Europe treaties relating to the rights of the child, as well as the Public Sector Equality and Human Rights Duty. To ensure that gender, in addition to sex, is considered to be a protected characteristic and to provide protection for members of the Traveller community, who are not legally designated as a national minority in accordance with the EU Charter, it was proposed that Irish equality law was included in the list of instruments that the Commission should act in accordance with. (Children's Rights Alliance, [Belong To](#))

It was suggested that the current wording does not commit to ensuring that the rights such as the freedom of expression will not be privileged over the right the public, children and those with protected characteristics have to protection from harm. It was suggested that the Commission should be required to act in accordance with the suggested instruments stated in under Section 4.2 above, in addition to the Constitution, the EU Charter, the European Convention on Human Rights and Treaties. (RCNI)

While welcoming that the rights identified under the UN Committee on the Rights of the Child are included in the draft Code, it was queried why the Draft Code appears to prioritise some rights over others.

It was recommended that the description of priority rights in Section 4.14 be expanded to include other rights most relevant to protection from harm, including: the right to life, to be free from torture and humiliating and degrading treatment, the right to private life, the consideration of the best interests of the child, and the right to an effective remedy. It was noted that the UN Committee on the Rights of the Child has recommended that “in all actions regarding the provision, regulation, design, management, and use of the digital environment, the best interests of every child is a primary consideration”¹⁰, a sentiment echoed in The Council of Europe (COE) Guidelines to Respect, Protect and Fulfil the Rights of the Child in the Digital Environment provide that “in all actions concerning children in the digital environment, the best interests of the child shall be a primary consideration”¹¹. (Children's Rights Alliance)

It was argued that the “right to privacy” should be extended to include a child’s right to privacy in childhood and the right to not have their image or personal information shared online on a frequent basis (regardless of parental consent status). It was suggested that sharing of a child’s image and/or personal information (age under 16) should only be permitted on private VSPS accounts, and/or only on an infrequent basis (e.g. no more than for instance once a month) and a recommendation for research be conducted in this area was also made. (Well Aware Campaign)

¹⁰ UN Committee on the Rights of the Child, General Comment no 25 (2021) on children’s rights in relation to the digital environment, CRC/C/GC/25 para 12.

¹¹ *ibid*, 12

Principles (Sections 4.15 – 4.22 of the Code)

The Commission’s approach to being guided by a number of well-established principles in its interpretation, application and enforcement of the draft Code was supported by Industry and it was noted that the principles will also help advertisers better understand what safeguards are in place to reduce the monetisation of different types of content across different platforms, and how well they are working – as well as improving competition in the digital economy by feeding into the way that advertisers assess which platforms and products to invest in. (AAI)

In relation to the principle of proportionality, while it was welcomed as an important addition to the draft Code (Alders Unit Children’s Health Ireland, Specialist Child Sexual Abuse Services), and agreed that any measure should be proportionate, caution was urged in relation to ensuring that the protection from harm should outweigh considerations of expression or commercial interest. (RCNI)

Concern was expressed around the wording of the principle of practicability and it was argued that the term “due regard” required some provisos. While agreeing that the factors highlighted in the principle should be taken into account, they should never outweigh the objectives and responsibilities of the Commission to protect the public. The reference to industry standards was also felt to be problematic as industry standards tend to be set by those in the industry and that the purpose of the Code was to set standards that are in the best interests of those the Code intends to protect not those it is required to monitor. Therefore, it was recommended that the term “industry standards” should be replaced with “standards in the interest of the public good”.

Furthermore, it was argued that the inclusion cost considerations as a factor to influence whether measures are implemented might be used as an excuse for non-compliance. While acknowledging that prohibitive costs should be a consideration, it should only be a factor considered under extraordinary circumstances. (RCNI). Industry also noted this point, particularly in relation to smaller VSPs who might believe that they are excused from compliance if the cost of implementation of measure required by the Code is too high. It was noted that this ambiguity arises in the AVMSD itself and called on the Commission to be clearer that protections must be proportionate to the risk of harm as well as the cost, and that it is unlikely that for the most harmful content, it would be possible to argue that protections should not be implemented on economic grounds alone. (Technology Ireland)

It was recommended that any discretion exercised by the Commission in the enforcement of breaches and any other circumstances should be strictly held to the principle of transparency. (RCNI)

2E. E-Commerce Compliance Strategy Statement

This section sets out the requirements of Section 139ZF(7) of the Act that the Commission prepare an e-Commerce Compliance Strategy, and confirms that the Code does not contain any obligations contrary to Article 15 of the e-Commerce Directive or Article 8 of the DSA.

There were no specific responses to Section 5 of the Draft Online Code.

2F. Statutory Guidance

This section notes that the Code is accompanied by statutory guidance in accordance with Section 139Z of the Act. the Commission is posing consultation questions elsewhere in relation to this draft Guidance: see Section 4 of this consultation document.

There were no specific responses to Section 6 of the Draft Code.

2G. Severability

This section states that if any provision of the Code is found unlawful, invalid or unenforceable, that will not affect the lawfulness, validity or enforceability of any other provision of the Code.

There were no specific responses to Section 7 of the Draft Online Code.

2H. Waiver

This section states that where the Commission does not respond to or comment on anything submitted to it by a VSPS provider that will not be deemed to be an acceptance or approval of the material that has been submitted and will not constitute a waiver of any of the Commission powers or rights.

There were no specific responses to Section 8 of the Draft Code.

2I. Compliance

This section states that, when the Commission is making assessments as to compliance, it will have regard to whether it has been satisfied that a specific obligation would not be practicable or proportionate in its application to the VSPS

Clarity was sought about whether in the event that a VSP is deemed to have demonstrated to the satisfaction of the Commission that a specific obligation under this Code would not be practicable or proportionate, the decision-making around this finding will be made public in the interests of transparency and public interest. It was also suggested that the larger VSPS, the thresholds here should be high given their substantial resourcing. ([Cybersafekids](#))

Chapter 3: Definitions and classifications of harms (Qs.2-5)

The chapter includes consultation responses to Section 10 of the draft Code, covering consultation questions 2, 3, 4 and 5.

Section 10 of the draft Code defines various terms used in the draft Code. Most of the definitions are derived from relevant national and EU legislation. The most important definitions are those which define the scope of content covered by the Code. These are contained in the definitions of:

- Content
- Audiovisual commercial communications harmful to children
- Audiovisual commercial communications harmful to the general public
- Illegal content harmful to children
- Illegal content harmful to the general public
- Regulated content harmful to children
- Regulated content harmful to the general public

The proposed definitions are designed so that the Code requires VSPS providers to take appropriate measures to provide the protections from the range of harms identified in the AVMSD.

3A. User-generated Content Indissociable from User-generated Videos (Q.2)

The following responses refer to comments and feedback relating to user-generated content indissociable from user-generated videos which is dealt with in Section 10 of the draft Code (captured from Question 2).

Consultation Question 2: What is your view on the proposal to include user-generated content that is indissociable from user-generated videos in the definition of content to be covered by the Code?

The proposed definition in the draft Code of “content” includes both user-generated videos and other user-generated content that is indissociable from user-generated video. This would therefore include, for example, descriptions of a video or comments on it (from the uploaders or other users).

3A.1 General views

Respondents to this question were divided over whether the Code should regulate material (such as comments) other than video.

Respondents who were supportive of the proposal to include user-generated content that is indissociable from user-generated videos in the definition of content to be covered by the Code included government departments, charities, regulatory bodies, universities, child organisations and some individuals. It was considered that this would strengthen the Code. (DCEDIY, Department of Health, CvdM, National Parents Council, Belong To, Women’s Aid, Bratislava CMS, Safe Ireland, Children’s Rights Alliance, UEA Centre for Competition Policy, 5Rights Foundation, AgriKids, CybersafeKids, Dublin Rape Crisis Centre, I. Goldberger, Irish Traveller Movement, ISPCC/Webwise, UCD Centre for Digital Policy, NICAM, RCNI, Simon Communities of Ireland, Trust Alliance Group, Bodywhys)

It was pointed out that text, images, videos and interactions all have different capabilities of harming children up to certain ages. Videos and images for instance can be harmful to children from very young ages, starting when basic eyesight is functioning and understanding of the images developing

throughout their childhood. It was felt that the proposed approach could be beneficial to children's safety as long as the content is being evaluated by means of uniform, scientifically based criteria supervised by an independent body or regulator. (NICAM)

It was argued that the context in which content is uploaded is very important. Often an otherwise neutral video is made harmful and/or influences how users interpret the video as a result of the captions, comments, symbols, or other content surrounding it, and the context in which it is later used. This was especially noted in the context of bullying and content targeting minority communities. (Children's Rights Alliance, CVDM, CybersafeKids, ISPCC/Webwise, Simon Communities of Ireland, Irish Traveller Movement). It was pointed out that harmful online content, such as cyberbullying, is often multi-modal in nature and if the code were to cover user-generated videos only, it could risk failing to address the issue effectively. (UCD Centre for Digital Policy)

To justify the inclusion of user-generated content that is indissociable from user-generated videos in the definition of content, it was noted that where the caption implicitly creates harmful/illegal content, as opposed to the video itself, the two are not harmful/ illegal when standing alone but are when treated as one. It was felt that it was important that providers offer measures to cater for the often-indistinguishable nature of these harms. (Trust Alliance Group)

An example was given that a video of a person dancing, fully clothed, does not look abusive in itself. However, when the same video is uploaded with a derogatory or abusive comment and encouraging other users to be leave critical comments, that is abuse. Therefore, it was argued that it was entirely appropriate that user-generated content that is "indissociable" from user-generated videos should indeed be covered by the Code. (Safe Ireland).

It was noted that comments themselves can be harmful and especially to children. A survey was cited which suggested that 70% of parents thought comments should be disabled for videos aimed at children and 22% felt that comments should be effectively monitored. (National Parents Council)

It was also pointed out that high engagement with user-generated videos such as likes and comments can have a cumulative harmful impact and may further normalise the problematic content in the first place. (5Rights Foundation, Irish Travellers Movement) It is within this context where inappropriate comments are placed on innocent videos of children that can lead to the sexualisation of these children. (ISPCC / Webwise) It was noted that it is often the associated content such as comments or associated private information such as names, addresses and other identifying information that can be the most harmful. (RCNI)

The issue of abusive comments remaining visible once the original content was removed was also raised as an issue. (Belong To) It was pointed out that when intimate images/videos are shared online without consent, that identifying information about victims can be shared online via comments and it is extremely important that they are also deleted as a matter of priority when the images/videos are taken down. (Women's Aid)

From a regulatory perspective, the extension of the rules beyond video was considered necessary because even though a video itself may not be illegal, it may become a breeding ground for illegal and harmful non-video material. It was pointed out that a similar approach was adopted in Slovakia, for the Slovak Media Services Act (MSA)¹². (Bratislava CMS)

It was noted that the definition of "content" in the draft Code brings together under one term the three items that both feature in the AVMSD's definition of "video-sharing platform" and in the

¹² <https://www.aspi.sk/products/lawText/1/98963/1/2> (in Slovak only)

provisions outlining for what VSP providers should be held responsible. While this was not foreseen in the AVMSD, it was argued that it appeared to be a logical inclusion given the ruling of the European Court of Human Rights in the *Delfi AS vs Estonia* case (64569/09)¹, which held online publishers responsible for the comments made on their articles. ([UEA Centre for Competition Policy](#))

It was suggested that the term “image” should also be included after “text, symbol, or caption” in part (b) of the definition of content. ([RCNI](#))

It was recommended that all content uploaded by users including links and URLs should be included in the Code because platforms serve as gateways to less moderated areas where harmful content is shared ([I. Goldberger](#))

Respondents who were not supportive of the proposal to include user-generated content that is indissociable from user-generated videos in the definition of content to be covered by the Code were predominantly Industry representatives and some individuals.

Industry representatives argued that the incorporation of non-video, ancillary content into the definition of “content” falls outside the scope of AVMSD and risks creating unworkable requirements, undermining the Commission’s stated goals of practicability and proportionality and may risk conflicting with the DSA requirements. ([MPIL](#), [Google](#), [Tumblr](#), [Pinterest](#), [Technology Ireland](#), [Reddit](#), [TikTok](#))

It was argued that comments and posts associated with user-generated video would always be addressed through VSPs’s terms and conditions or through the DSA (if illegal content). There was also concern that extending certain requirements (such as content rating) to comments was unfeasible. The volume of comments on user-generated video can be in their hundreds or thousands and it is simply impractical (and confusing to users) to rate each comment. Also, comments are indissociable from the video and therefore distinct ratings on each comment would not make sense unless read in the context of the video to which they are attached. ([MPIL](#))

Significant clarification around the definition of indissociable content was called for because the draft Code would capture links, tags, stickers, music as well as comments, symbols and text and cause confusion. Alternatively, the definition of content should just be confined to VSPS audiovisual material in accordance with the AVMSD. ([Pinterest](#))

While it was acknowledged that it was reasonable to expect platforms to protect children from comments that may be illegal or regulated harmful, the proposal to apply the full obligations of the draft Code to comments would be disproportionate. ([Google](#)) It was argued that it was disproportionate to impose extensive obligations on VSPS with respect to non-video content which is merely ancillary to the videos themselves and a clear distinction should be made between the obligations which apply to video content and non-video content.

There was concern that the definitions of regulated content were too vague and would result in the misapplication of the Code. ([Tumblr](#)) Their deployment through other definitions and throughout the draft Code’s obligations goes beyond the position required under the AVMSD and conflicts with DSA requirements. The incorporation of such non-video, ancillary content into the definition of ‘content’ risks creating unworkable requirements, undermining the Commission’s stated goals of practicability and proportionality. The AVMSD does not require Member States to ensure VSPs take appropriate measures in respect of ancillary content. Instead, it specifies that the “appropriate measures” VSPs should take to protect users apply to “programmes, user-generated videos and audiovisual commercial communications”, as opposed to purely ancillary features, such as comments.

In this regard, the draft Code arguably seeks to regulate a broader category of content than that intended under the AVMSD. To the extent that the draft Code covers ancillary, non-video content (such as comments) there should be clarity as to the separate obligations applying to video content and ancillary content. It is burdensome to apply significant obligations on VSPs in relation to content that is only minor, ancillary content to the videos themselves, such as requiring mechanisms to rate comments, to feed back to users on comment reports/flags and to have a complaints mechanism for comments. Applying age-gating to ancillary content is disproportionate and risks the harmonised approach required by the DSA. ([Technology Ireland](#))

There was a view that the Commission should have regard to the approach taken by other EU jurisdictions which have transposed the AVMSD to avoid inconsistencies. It was therefore submitted that the definitions in the Code should align with the corresponding definitions in the AVMSD. Of particular concern was the broader definition of “content” and how this would include indissociable content such as text, symbols and captions. Article 28b of the AVMSD is limited to user-generated videos and there is no reference to such other content. It was suggested that the Commission’s approach goes significantly beyond the AVMSD and would undermine the effectiveness of the Code which requires measures to be proportionate and practicable. Alignment and consistency with the AVMSD are important to ensure the harmonised interpretation of the operative provisions of the AVMSD which the draft Code seeks to give effect to. Deviation from the AVMSD will also increase the risk that the Code regulates matters that fall within the scope of other laws and/or conflicts with other regulatory regimes, importantly, the DSA (in particular, Recital 9¹³). This will result in overlapping rules and create fragmentation in an area where maximum harmonisation is required to increase legal certainty and achieve EU goals. Overall, broadening the draft Code to cover indissociable content will make it practically challenging and risks being disproportionate to the risk of the potential harm. A clear example would, arguably, be the requirement of content rating for text, captions and comments. It was also questioned whether it was the Commission’s intention that users will be able to separately rate individual comments or symbols which might appear under or in association with a video. This could, in theory, result in various differing, and conflicting, ratings being made in respect of the same linked pieces of content e.g. the video is rated as appropriate for all users but one of the thousands of comments linked to the video may be rated as only suitable for a more mature audience. ([TikTok](#))

It was pointed out that that comments and connected ancillary content are typically viewed much less than video content, and therefore pose a lower risk of exposure to the general public and a lower risk of general harm. Existing polices and process (such as reporting tools and removals, ability to turn off or moderate comments) are already in place and ancillary content is already being removed. The example of YouTube was cited where between July and September 2023, it removed over 840 million comments and that it already had age-gating for video to prevent a child from accessing inappropriate material. ([Google](#))

There was a significant concern that extending complaint handling to ancillary features would be disproportionate and place an unnecessary burden on platforms extending it beyond the intended

¹³ “This Regulation fully harmonises the rules applicable to intermediary services in the internal market with the objective of ensuring a safe, predictable and trusted online environment, addressing the dissemination of illegal content online and the societal risks that the dissemination of disinformation or other content may generate, and within which fundamental rights enshrined in the Charter are effectively protected and innovation is facilitated. Accordingly, Member States should not adopt or maintain additional national requirements relating to the matters falling within the scope of this Regulation, unless explicitly provided for in this Regulation, since this would affect the direct and uniform application of the fully harmonised rules applicable to providers of intermediary services in accordance with the objectives of this Regulation.”

remit of the AVMSD. This would also interfere with any harmonised approach required by the DSA. [\(Google\)](#)

It was suggested that the Commission's position, like other parts of the draft Code, failed to comprehend material differences in structure and function amongst platforms. For example, the multi-threaded nature of Reddit comments means that text-based discussion threads prompted by a top-level post (including but not limited to video) may contain thousands of comments branching out into multiple nested threads, a great deal of which will stray far from the content of the original post, which is a mere prompt for wider conversation. This means that comment threads are, by their nature, fundamentally dissociable from their prompting content. This is so much the case, in fact, that the Reddit search function is designed to surface comments as co-equal pieces of content to posts in search results. The outcome is to inhibit speech, and abusive comments are already effectively enforced by content policies and proprietary safety apparatus. Further, it is argued that it is not only absurd but also impossible to apply the Irish Film Classification Office's rating to text. A single video post can spark thousands of comments, branching out into various nested comment threads – many only tangentially related to the original video. [\(Reddit\)](#)

A concern was raised that this proposal would have a chilling effect where VSPS would 'dampen down' discussion and information essential in a proper functioning democracy and that the proposal was disproportionate, possibly in contravention of the Charter of Fundamental Rights of the EU and potentially creating greater polarisation in society. It was also suggested that the Irish economy would suffer because VSPs would relocate to avoid the level of the penalties that would apply to them. [\(FMA\)](#)

It was argued that any video or content could lead to hate being generated in the comments underneath and a distinction should be made in order to create a coherent workable policy. [\(S Hynes\)](#)

It was suggested that the inclusion of user-generated content that is indissociable from user-generated video was both an overreach and a severe limitation of free speech and expression and should not be dealt with under Online Safety Code for videos. [\(J. Buckley\)](#)

3B. Content Harmful to Children (Q.3)

The following representations relate to comments and feedback provided on the definitions of “illegal content harmful to children” and “regulated content harmful to children” in Section 10 of the draft Code (captured in Question 3 of the consultation)

Consultation Question 3: What is your view on the definitions of ‘illegal content harmful to children’ and “regulated content harmful to children”?

The draft Code contains definitions of “illegal content harmful to children” and “regulated content harmful to children”. The definition of “illegal content harmful to children” comprises of relevant categories of offence-based harmful content defined in the Act such as sexual offence involving children, illegal threats, harassment and grossly offensive communications where the victim is a child (or likely to be seen by a child). “Regulated content harmful to children” includes age-appropriate content such as pornography and content depicting gross and gratuitous violence.

3B.1 General views

The draft Code’s approach is welcomed, as it is viewed that, once content is designated harmful, particularly to children, its availability can be regulated. It was only suggested to not only consider the risks of harms, but also the impact of harm on any individual child. [\(Tusla\)](#)

It was suggested that the designation of "regulated content harmful to children" is helpful in distinguishing between the offence-specific categories and categories of harmful online content under 139A of the Online Safety and Media Regulation Act. However, it was pointed out that there may be issues that arise when attempting to classify individual incidents in practice. For example, threatening a teenager with publication of a nude image or publishing a nude image of a teenager without their consent could constitute an example of "illegal content harmful to children." At the same time, such an act and content could be merely one component of a larger bullying incident ("regulated content harmful to children"). In as much as the draft Code stipulates different measures that platforms must adhere to in case of regulated vs. illegal content, classification of such incidents could pose additional challenges for Code enforcement. (UCD, Centre for Digital Policy)

Support for and readiness to work on the development of a classification system for harmful online content related to suicide and self-harm and eating disorders was expressed. This would include clearly defined descriptions of categories of online material that are considered to be harmful in relation to suicide and self-harm, sectioned in line with the types of online content (such as online information sources, search engines, social networks, etc.) in line with categorisation from "The Harmful Impact of Suicide and Self-Harm Content Online: A Review of the Literature"¹⁴ (HSE NOSP)

Other respondents strongly recommended that the Commission ensure consistency with the DSA in terms of definition and interpretations of harm and requested additional clarity such as guidance around what specific terms mean. (Google, MPIL, Technology Ireland, 5Rights Foundation)

Concerns were expressed about influencers (such as Andrew Tate) and the influence they may have on impressionable children in primary school and early teens. It was also pointed out that treating all children the same is problematic since the needs of different aged children can vary significantly. (J Buckley)

3B.2 Overlap with the DSA

The obligation to prohibit the availability of legal but potentially harmful content (which falls within the definition of "*regulated content harmful to children*") is an obligation that goes over and above the requirements of the AVMSD and it was argued that these provisions are pre-empted by the DSA which exhaustively regulates what a VSPS is required to do in relation to legal but harmful content via the systemic risk assessment and risk mitigation regime (Articles 34-35 DSA), what a VSPS is required to include in its T&Cs (Article 14 DSA), and what measures platforms must take to protect minors online (Article 28 DSA). (Technology Ireland, Google)

In particular, the requirement for a VSPS to prohibit legal but potentially harmful content in its terms and conditions and to terminate or suspend users for a violation of these terms and conditions raises concerns as this is a delicate area. This is especially the case given that the classification of content falling within the definition of "*regulated content harmful to children*" is viewpoint-based and highly subjective in nature. As such, it is not appropriate that VSPS would be required to determine that a user would be denied access to its services based on its assessment of whether particular items of content could be classified as falling under the definition of "*regulated content harmful to children*". This point was expressly recognised in the legislative process of DSA where it was recognised that legal but harmful content should not be defined or subject to removal obligations, as this is a delicate area with severe implications for the protection of freedom of expression. Further, given that these

¹⁴ The Harmful Impact of Online Content - a Literature Review, available at: <https://www.hse.ie/eng/services/list/4/mental-health-services/connecting-for-life/publications/the-harmful-impact-of-online-content-a-literature-review.html>

obligations extend beyond AVMSD, should an individual Member State wish for content to be subject to removal obligations, they should proscribe it through their legislative process. (Google)

More broadly, there were concerns about the precedent of jurisdictions imposing legal obligations on online platforms to prohibit legal content in their terms and conditions, particularly in circumstances where the jurisdiction itself is unwilling to proscribe the relevant content as being illegal in national legislation. This mechanism of effectively banning certain types of lawful speech risks being used and abused by jurisdictions seeking to curtail more speech online. In circumstances in which Ireland is a thought-leader in content regulation, it was suggested that there is an opportunity for the Commission to avoid setting such a precedent and creating a model for online censorship elsewhere around the globe. (Google)

3B.3 Illegal content harmful to children

Respondents to this question were divided over the definition of illegal content harmful to children.

Some respondents stated that they were satisfied with, or welcomed, the definitions within this section and appreciated the inclusions of specific threats to children. (The Department of Health, Safe Ireland, AgriKids, Belong To, DCEDIY, ISPCC/Webwise, UCD Centre for Digital Policy, Alders Unit Children's Health Ireland, UEA Centre for Competition Policy, Women's Aid) Although, in one case, some additional clarity on the differences between the two terms and examples of each was requested. (AgriKids)

A survey on the draft Code was conducted by the National Parents' Council. Of the 312 responses received from parents, 150 found the definition to be inclusive of all kinds of harms, 90 believed it did not cover all types of harm and 57 parents found the definition confusing. Suggestions for other types of harm that could be included in the definition were violence, grossly offensive communications, and physical and mental abuse. (National Parents Council)

In general, industry representatives suggested that the definition of illegal content harmful to children was confusing and went further than the AVMSD (Articles 28(b)(1)(a) and (c)) as it lists those activities that are criminal offences in Ireland. (Google, MPIL)

It was noted that across the EU, it is envisaged that VSPS would be regulated by one member state and therefore it was confusing and problematic to include Irish-specific offences in the draft Code. Obligations in respect of national illegal content in the draft Code that went beyond the AVMSD was felt to be unnecessary and that the issue would be addressed, harmonised and regulated under the DSA. (Google, MPIL). It was recommended that references to specific Irish criminal legislation should be removed from the definitions of "illegal content harmful to children". (Google)

The term "illegal content harmful to children" was understood to mean content that is not, in and of itself, illegal but is considered to be seriously harmful. But the definition also includes content representing illegal activities or behaviours which are harmful to children by virtue of the fact that the victim is a child or the content is viewed by a child. As such, it appears that underlying content itself is not illegal and therefore the labelling of such material as "illegal content" is misleading and confusing. (MPIL)

It was argued that there is also a difference between an illegal act and illegal content and uploading a video of an illegal act does not necessarily make such content illegal. Labelling such material as illegal is misleading and inaccurate and gives rise to uncertainty to VSPS providers when implementing the relevant requirements, as well as to users when posting or reporting content. (MPIL)

It was recommended that Commission renamed the term “illegal content harmful to children” to something more appropriate (since it is not in itself “illegal”); to review its definition to include categories of types of content rather than reference offence-specific categories under Irish law or behaviours or who is likely to view content; and to provide workable definitions of the undefined terms included in the definitions of “illegal content harmful to children”. (MPIL)

Greater clarity was called for the offence-specific categories of harmful on-line content (as listed in A-2 of the Annex) in order for the relevant requirements in the Code to be practicable. Specifically, it was unclear when offence-specific categories of harmful online content would be considered to be “likely to be viewed by a child”, which qualifies the harmfulness of the content. In addition, it was argued that it will be very challenging for both human and automated content moderators to make accurate decisions on whether content is harmful, and therefore violating, by virtue of whether it has been seen or is likely to be seen by a child. (MPIL)

3B.4 Regulated content harmful to children

It was welcomed that “content consisting of dangerous challenges that give rise to a risk to life or risk of significant harm” are included in the draft Code. However, it was suggested that this could be expanded upon to include not just physical health but also mental health. (Children’s Rights Alliance). Some additional clarity on the differences between the two terms and examples of each was requested. (AgriKids)

The inclusion of “age-inappropriate online content” (AIOC) under the heading, “regulated content harmful to children” was welcomed, (Safe Ireland) as was the inclusion of content “consisting of realistic representations of, or of the effects of, gross or gratuitous violence or acts of cruelty” (Children’s Rights Alliance). It was noted that consultations with children and young people have shown that they are most disturbed by violent content. (Children’s Rights Alliance) The views of parents collected as part of a survey on the terms used in the draft Code and 68% of parents found the definition of “regulated content harmful to children”, it to be inclusive of all types of harm, 20% have said it does not cover all types of harm, and 9% have found it confusing. (National Parents Council survey)

It was suggested that while the definition of harms to children included alcohol aimed specifically at children, it omits unhealthy foods and breast milk substitutes in regulated content harmful to children in audiovisual commercial communications. (Children’s Rights Alliance)

It was recommended that restrictions on the marketing of high fat, sugar and salt foods, infant formula and follow-on formula and toddler milks is included within the definition “regulated content harmful to children” in line with the definition’s explanatory note on page 14 of consultation document: Online safety “covers a range of content that is included if it poses a risk to the life, physical health, mental health and/or safety of a child: cyber bullying, encouraging eating or feeding disorders...”. (NHCP) It was proposed that the scope of ‘regulated harmful content to children’ should:

- extend beyond EU laws, to prohibit the advertising of follow-on milks and toddler milks due to the similarities with infant formula and follow-on formula logos and branding. Furthermore, marketing communications should not allow any advertisements or cross promotion of products with logos and branding similar to infant formula, follow-on formula and toddler milks. (NHCP)
- also take account of prohibiting the advertising of formula feeding products in Ireland that relevant competent authorities (e.g. FSAI, Saferood and the HSE) deem inappropriate/unsafe for the physical development of the child, e.g. formula preparation machines, UV sterilisers and bottle warmers. (NHCP)

- prohibit incentives, rewards or provision of free samples within advertisements as a means of attracting the user to the website or sign up to a product with logos/branding/similarities to any formula milk or toddler milk product. (NHCP)

The inclusion of pornography in the category of “regulated content harmful to children” was appreciated given the amount of research evidencing the harm pornography does to children and young people and its negative impact on respectful relationships and gender equality. (Women’s Aid)

It was argued that the ease at which (legal) pornography was available to children was harmful in itself due to the misogynistic, violent nature of the content and objectification of women. It was suggested that there was a link between the perpetuation of male entitlement in pornography and that domestic violence and abuse is an expression of the same culture of male entitlement. Therefore, it was recommended that the most stringent of age verification and default non-availability of all pornographic material (legal, as well as material depicting gross and gratuitous violence) for anyone who had not proved their age in line with these stringent measures. (Safe Ireland)

It was noted that the term “pornography” does not appear to be defined in the draft Code or described in the guidelines in relation to content which may impair the physical, mental, and moral development of children. (Children’s Rights Alliance, M Neylon) As a result, for one respondent, platform providers might be overly restrictive. There should be demarcation for content that is artistic or educational compared to other type of material. (M Neylon)

References to “child pornography” are clear because they are, by reference, relevant to Irish or EU legislation. However, given that much sexually explicit material of adults will be self-generated rather than generated by commercial interests, it was suggested there would be value in including a general definition of pornography. Pornography is also carried across many digital platforms, not just those which seek to particularly focus on adult content. (Children’s Rights Alliance)

It was suggested that content ratings or a simple declaration that the material was intended as a contribution to civic discourse would not have the effect of barring access to under 18s. A default of non-availability of violent material was recommended for anyone who has not proved their age in line with stringent age verification measures. (Safe Ireland)

The Commission was urged to consider other potential harms such as the risks associated with algorithm-based recommendations e.g. increased aggression, risky and unhealthy behaviours according to a recent European report. The report further observed that whilst children may feel quite confident in managing risks online, they do not always have good awareness of risk or coping strategies for unfamiliar situations. (Bodywhys)

While it was acknowledged that there was little research on feeding disorders (as opposed to eating disorders) in the online space, the Commission should be aware of this potential harm. (Bodywhys) Given that commercial communications for alcohol/ tobacco products that are not aimed specifically at children or that are not commercial (peers smoking/ drinking) would still be potentially (very) harmful for children, it was suggested that these should be included in the definition of regulated content harmful for children. (NICAM)

Organisations and individuals requested that other terms be included in the definitions of “regulated content harmful to children”. These were:

- ‘deep fake’ (Well-Aware Campaign, CybersafeKids)
- content or any realistic content created using artificial intelligence or CGI” which may impair the mental or moral development of children by compromising their ability to trust that the

voices or images in a video are a true portrayal of real situations and people (this would also be harmful to the general public, but even more so to young children – particularly if the ‘deep-fake’ content uses a likeness of a person known to the child in real life) ([Well-Aware Campaign](#))

- “content which mimics (via AI, CGI, animation or other) or features human/animal-like characteristics, and places them in violent, disturbing or deranged scenarios which may cause trauma to the developing mind of a child.” (e.g. there are some CGI animations online (e.g. on YouTube) which, whilst not featuring illegal or age censored content, are highly inappropriate and often unsettling for children, and yet are shared widely among children) ([Well-Aware Campaign](#))
- content that mimic (via AI, CGI etc which may cause significant harm to children) ([Well-Aware Campaign](#))
- conspiracy theories ([I.Golberger](#))
- grooming ([I.Golberger](#))
- eating disorders ([Respondent to National Parents Council](#))
- feeding disorders ([Bodywhys](#))
- radicalisation ([I.Golberger](#))
- doxxing (act of publicly providing personally identifiable information about an individual) ([I.Golberger](#))
- harm and hate (which do not have an element of incitement) ([I.Golberger](#), [Irish Traveller Movement](#))
- grounds protected should include those under Article 21 (i.e. based on 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 or sexual orientation) ([A. Steen](#), [Irish Traveller Movement](#))
- gore - e.g. post-mortem images, car crashes, train wrecks etc ([CybersafeKids](#))
- violence ([Respondent to National Parents Council](#))
- video and imagery displaying dangerous actions and behaviours relevant to farm life (and other) that could incite or incline viewers to replicate and copy ([AgriKids](#))
- encouraging terrorism (and methods of committing terrorist acts) ([Respondent to National Parents Council](#))
- grossly offensive communications ([Respondent to National Parents Council](#))
- gambling (e.g. the use of ‘loot boxes’ in games is a concern where children by indirect example are encouraged into strategies which reward gambling in those games.) ([Irish Traveller Movement](#))
- sexual offences (and not just those involving children) ([Respondent to National Parents Council](#))
- images of consumption of age-inappropriate products (e.g. tobacco, alcohol and drugs) ([N Cahill](#))

The definition of a child should be extended to include artificially created harmful and/or illegal content, for example, AI-powered software that removes clothing from an image or “deepfakes” that falsely represent someone saying or doing something. There was a concern about any possible loopholes in relation to emerging technologies. ([CyberSafeKids](#)) Specific recommendation was extended to use Section 2(1) of the Education and Welfare Act for defining a child as a person who has reached the age of 6, but not reached the age of 18. ([Tusla](#))

The definition of “regulated content harmful to children” raised broadness and ambiguity concerns. It covers a wide range of content that will be within scope if there is i) any risk to a child’s life and ii) a risk of significant harm to a child’s physical or mental health, where the harm is reasonably

foreseeable. The term “gives rise to risk”, “significant harm”, “reasonably foreseeable” broad and ambiguous and may also lead to unforeseen impacts on freedom of expression. (MPIL)

The draft Code’s requirement (Section 11.2) that VSPs prohibit the uploading and sharing of “regulated content harmful to children” effectively prohibits legal but harmful content to all users. Such a blanket prohibition has no basis in the AVMSD or the Act. Instead, the AVMSD requires VSPs to take “appropriate measures”. (Technology Ireland)

3C. Other Definitions of Content (Q. 4)

The following comments relate to comments and feedback provided on the definitions of “illegal content” and “regulated content” in Section 10 of the draft Code (captured in Question 4 of the consultation)

Consultation Question 4: What is your view on the other definitions of illegal content and regulated content?

The draft Code contains definitions of “illegal content harmful to the general public” and “regulated content harmful to the general public”.

The definitions of illegal and regulated content harmful to the general public include content which is a provocation to commit terrorist offences, content which constitutes a criminal offence relating to child pornography, racism or xenophobia, and content that incites violence or hatred against an individual or group based on 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. These definitions are drawn from the AVMSD and the Act.

3C.1 General views

The definition of “illegal content harmful to the general public” and “regulated content harmful to the general public” including content which constitutes a criminal offence relating to child pornography and content that incites violence or hatred against an individual or group was welcomed. (DCEDIY)

It was noted that the AVMSD requires Member States to ensure that VSPs take measures to protect minors from content that “may impair their physical, mental or moral development”. It was argued that this is not limited to illegal content, just as it is not for audiovisual media services. It is left to the Member State to determine how to define what content is likely to impair minors in those ways. It was suggested that making the distinction between illegal content and regulated content seems a prudent response. As defined in the draft Code, the latter is a somewhat more flexible category that can be adjusted by an order under section 139B of the Act. This appeared to be a sensible approach given the nuanced balances required for protecting the rights of children in the digital age, and the dynamic nature of the responses needed. (UEA Centre for Competition Policy)

Clarification was sought on definitions for Sex; Religion or belief; Political or other opinion; Property, and Birth, as the terms were considered to be too broad. (A. Steen) Further definition of the following terms was requested:

- Incitement to violence
- Incitement to hatred
- Hatred
- Pornography
- gross or gratuitous violence
- gross or gratuitous acts of cruelty

It was suggested that there are links between consuming gratuitous violent pornography against women and real life violent and sexual assaults on women and girls and it was noted that recent research shows that over 50% of internet hate speech is against women. Therefore, further guidance was sought about what/when pornography and gross or gratuitous violence or acts of cruelty will be considered incitement to hatred and violence. (A. Steen)

3C.2 Overlap with the DSA

It was noted that while the draft Code primarily focused on harms covered by the AVMSD, the Commission has also stated that it would consider the potential relevance of the DSA in relation to material which promotes discriminatory attitudes. It was noted that An Coimisiún Toghcháin will have regulatory powers in relation to misinformation, and disinformation and manipulative or inauthentic behaviour in the context of electoral events (while, among other things giving due weight to freedom of expression). The Electoral Reform Act identifies the potential public harm as it relates to the overall integrity and fairness of an election or referendum and there was an expectation that these potential areas for cooperation and engagement would be jointly explored with the Commission in the future. (An Coimisiún Toghcháin The Electoral Commission)

With regards to all definitions and obligations related to illegal content, it was recommended that the Commission bears in mind the need to maintain consistency and avoid contradictions with implementing measures and actions under the DSA, and therefore risk creating confusion in the application of both and making compliance more difficult, which would be especially damaging for vulnerable groups such as children. (5Rights Foundation)

Similarly, it was noted that the draft Code draws a distinction between “illegal content harmful to the general public” and “illegal content harmful to children”, which is not required by either AVMSD or the 2009 Act and it was recommended that the definition of the illegal content should be aligned with Article 28b(1)(c) AVMSD and that no distinction between these two definitions should be made. (TikTok)

It was pointed out that the definition of “illegal content harmful to the general public” goes beyond that provided for by Article 28(b)(1)(c) of the AVMSD as it contains Irish-specific offences. These further obligations are arguably unnecessary since this category is addressed and harmonised under the DSA. (Google)

Given that the draft Code is intended to give effect to the AVMSD provisions, and such provisions are to take EU-wide effect, the Commission was cautioned against including content defined by reference to Irish criminal law offences, as such an approach could undermine the harmonised approach required by the Directive. (MPIL)

3C.3 Illegal Content

The Commission was cautioned against including overly granular categorisations, as what is “illegal” varies from country to country. This is particularly relevant to bear in mind given that many VSPS providers who have their EU establishment in Ireland, provide their services across the EU and the various mechanisms of the Code will also apply to those non-Irish residents, EU users of the service. Accordingly, it was argued, the Commission should define such content with reference to categories of types of content that would fall under such definitions, rather than with reference to specific provisions (e.g., CSAM, CEI, graphic content, etc.). (MPIL)

It was argued that the definition of illegal content is too limited (Women’s Aid) and that illegal content should include all criminal offences without restriction. (RCNI)

It was also argued that the definition of “illegal content harmful to the general public” was too narrow to be effective in the context of online domestic violence and abuse since it is confined to terrorist offences, offences concerning child pornography and racist and xenophobic offences. It was noted that the absence in the definition of illegal content of a number of other offences, which are specified in Schedule 3, and which should also be included under illegal content harmful to the general public, including but not limited to offences under the Domestic Violence Act 2018 and the Harassment, Harmful Communications and Related Offences Act 2020.

It was recommended that the definition of “illegal content harmful to the general public” should accordingly be expanded to include paragraphs 11A, 12, 13, 13A, 35, 36, 37, 38, 39, 40, 41 of Schedule 3. ([Dublin Rape Crisis Centre, Women’s Aid, Safe Ireland](#))

The Commission was strongly urged to include the provisions of Coco’s law in the Code, as they apply to the general public, together with the provisions of Criminal Law (Sexual Offences) Act 2017 which prohibits online content by which a person exposes his or her genitals intending to cause fear, distress or alarm to another person or by which a person intentionally engages in offensive conduct of a sexual nature. ([Dublin Rape Crisis Centre](#))

It was argued that the term “illegal content harmful to the general public” is too restrictive to prevent other forms of online abuse such as cyberbullying (since it is restricted to inciting violence or hatred against a group of persons or one of their members on a number of grounds (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)). ([Safe Ireland](#))

It was suggested that illegal content should be defined as all content and related content that consists of any offence in Irish or European law. ([RCNI](#)) The definition of harm to the general public should also incorporate Irish equality law (e.g. Equal Status Acts 2000-2018) as well as Article 21 of the Charter of Fundamental Rights of the EU. ([Belong To](#)) It was argued that a broad definition protects against the possibility of excluding any offences which would leave victims without protection and ensures the Code would not require constant amendment as legislative changes are made. ([RCNI](#))

With respect to the Code being reviewed “from time to time”, it was recommended that the Code be scheduled for review upon the passage of relevant legislation, for example upon the enactment of the Criminal Justice (Incitement to Violence or Hatred and Hate Offences) Bill 2022. ([Belong To](#))

While acknowledging that all illegal content is harmful to all users (whether it is the general public or minors), a question was raised by Industry about whether the draft Code’s introduction of a “harm” threshold for illegal content is necessary, particularly if such a harm threshold may not be reflected in the specific offences. It was suggested that the benefits of drawing a distinction between minors and the general public in terms of illegal content was unclear and contradictory. It was also pointed out that this distinction risked making content moderation more challenging and less workable in practice. The definition of illegal content harmful to children refers to illegal threats or harassment, either of which are offences which can be committed against an adult or a child. Therefore, it was argued that the primary lens ought to be the illegality of the content (generally) rather than viewing it through the lens a subset of such content might cause to a particular type of user (child/adult). ([TikTok](#))

It was noted that it will be important that the Criminal Justice (Incitement to Violence or Hatred and Hate Offences) Act will synergise with the AVMSD, and the Code especially where these might impact on criminal proceedings in the digital space, and to close the gap on hate speech, while upholding principles of Freedom of Expression. ([The Irish Traveller Movement](#))

It was suggested that the draft Code should be broadened to include the potential impact of aggregate content which it considers can be especially harmful. ([The Irish Travellers Movement](#))

It was noted that the draft Code implied that any video uploaded, where the comment system attracts negative public comments, could allow for that video to be removed. ([L Matthews](#)) and more guidance and definitions of incitement to violence and hatred was requested. ([L. Matthews, A. Steen](#))

There was a request for more guidance in relation to whether gross or gratuitous violence or acts of cruelty against humans and against those of a particular sex e.g. woman, or race or age will also be acts of incitement to violence or hatred.

It was viewed as problematic that the draft Code provided no exceptions to the prohibition to content containing incitement to hatred based on grounds set out in Article 21 of Fundamental Rights of the EU. It was argued that there should be allowance made for reasonable and genuine contribution in relation to subjects like literature, artistic, academic, political and scientific discourse. ([A. Steen](#))

3C.4 Regulated Content

There were concerns that the current definition of “regulated content” was so broad as to be unworkable and that a discussion around a controversial matter could be interpreted as hatred and governments could abuse this power, resulting in a chilling effect on freedom of speech. It was argued that the Commission should not be attempting to regulate this type of discourse on the internet. Clarity was sought on what constituted incitement to violence or hatred and it was suggested that the definition of harms within regulated content needs to be more limited and more explicit about what is and is not allowed. ([J Buckley, S. Hynes](#))

It was suggested that the term “regulated content” is, in itself, confusing as it can correlate to regulated products such as alcohol and tobacco. In addition, whether something is harmful or illegal can depend on the jurisdiction. Therefore, it was recommended that the Commission should use the term “legal but harmful”. ([I Goldberger](#))

3C.5 Protection for All Users

Concerns were expressed that, as currently drafted, the draft Code does not fulfil section 139K of the Online Safety and Media Regulations Act 2022, which indicates that codes should make provisions for ‘all users.’ ([Department of Health, Civil organisations' Letter on Codes for over 18s, NSRF](#))

It was noted that while, legally, children are protected and viewed as minors until they attain the age of 18, the need for similar protections and safeguards does not cease to exist once they turn 18 years old. ([ISPCC/Webwise](#))

It was recommended that the definition of “content harmful to children” which “poses a risk to the life, physical health, mental health and/or safety of a child: cyberbullying, encouraging eating or feeding disorders, encouragement of self-harm or suicide, and information about methods of self-harm or suicide” should be extended to the general public, given that risks to mental health and safety do not cease to exist when a person has turned eighteen years old. ([Department of Health, NSRF, HSE NOSP](#))

The omission of any reference to harmful content related to eating/feeding disorders, self-harm and suicide was noted as a particular concern and while acknowledging that this content is sometimes referred to as ‘legal but harmful’ content, it was recommended that the draft Code needs to be more robust in addressing this content which can be extremely harmful to adults. It was noted that the promotion of suicide and self-harm is a key online harm which should be addressed. ([Department of Health](#))

It was recommended that the Code should address wider categories of harmful online content than those harms addressed in Article 28b of the AVMSD for the protection of all users, not just children. (HSE NOSP) It was pointed out that the Commission has legal authority to apply the Code to each of the 42 criminal offences specified under the Irish law listed in Schedule 3 of the 2009 Act. However, it was noted that only a small fraction of these provisions is covered by the current draft Code and it was recommended that the Commission include all relevant criminal offences in the Code. (Department of Health, Dublin Rape Crisis Centre)

The difference of the definitions of harm outlined by the Minister for the Department of Tourism, Arts, Culture, Gaeltacht, Sports and Media and those in the draft Code were highlighted and it was suggested that the Code should reflect section 139A(3) and 139(D) of the OSMR Act 2022. It was recommended that the disconnect between the legislation, whereby four specific types of content are identified as ‘harmful’ irrespective of age, and the codes where these harms are only listed for children, be amended to ensure continuity of protection. (Samaritans Ireland)

It was argued that the harms identified in regulated content harmful to children are also harmful to adults. Violent pornography and images of violence and cruelty are also harmful to adults and these definitions need to be expanded to include these harms as well as additional harms such as misogyny, domestic, sexual and gender-based violence, exploitation, intimate image abuse and the non-consensual sharing of images and information. (RCNI)

It was proposed that misogyny is a form of discrimination based on sex, and also, that it is appropriate to consider also in this context Article 34 (1) (d) of the DSA which says that very large online platforms (VLOPs) should as part of their risk assessment obligations, consider the risks of “any actual or foreseeable negative effects in relation to gender-based violence, the protection of public health and minors and serious negative consequences to the person’s physical and mental well-being”. Therefore, the question was posed, would not the most effective form of risk assessment and management be to exclude this kind of material in the first place? (Safe Ireland)

Most online abuse in the context of a pattern of domestic violence easily passes the risk test under Section 139A (4) of the Broadcasting Act 2009, in that it gives rise to a risk of significant harm to a person’s physical or mental health, where the harm is reasonably foreseeable. Accordingly, it was recommended that the definition also includes content by which a person bullies or humiliates another person. (Safe Ireland)

It was suggested that if the Commission intends the definition in the draft Code for “regulated content harmful to the general public” to cover some aspects of online gender-based violence, then, as a minimum, the Commission should utilise the form of the Code (or the Statutory Guidance) to make this abundantly clear to both users and VSPS providers. As presently drafted, it was suggested that the draft Code does not appear to extend any substantive protections against various forms of online toxic misogyny and TFGBV which are increasingly prevalent online. It was argued that the Code needs to clearly inform both users and VSPS providers what content/harm is regulated. (Safe Ireland)

It was argued that the draft Code provides for only specific protections for minors and minimal protections for adults and concern was expressed that there was a lack of care and protection for persons over the age of 18 despite the well-documented prevalence of harms extending into adulthood in areas such as, but not limited to suicide/self-harm, eating disorders, and various form of cyberbullying. (Civil organisations' Letter on Codes for over 18s, HSE NOSP)

It was proposed that online harms which amount to criminal behaviour should attract the most stringent risk mitigation measures by VSPS. This includes incitement to hatred on grounds of sexual orientation and gender identity/expression as per the incoming Hate Crime Bill. (NXF)

It was suggested that the definition of “regulated content harmful to the general public” was changed to incorporate Irish equality law and include 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 and/or the Equal Status Acts 2000-2018, namely gender, 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, family status, marital status, and membership of the Traveller community.” (Belong To)

The following list of terms or potential harms were suggested for inclusion in the definition of “regulated content harmful to the general public”:

- specific mention of Travellers and Roma as groups against whom incitement to violence or hatred should not be permitted (Children’s Rights Alliance)
- dangerous behaviour / challenges which would encourage others to replicate and copy , risking mental health as well as physical health (AgriKids, Children’s Rights Alliance)
- glorification of violence against women specifically and protection against misogyny (which is a form of discrimination based on sex) (Dublin Rape Crisis Centre, Safe Ireland)
- content that affects mental health (including that of children) (RCNI)
- anti-LGBT+ content e.g. hatred and misinformation about its community and identity (NXF)
- content by which a person bullies or humiliates another person (Belong To, Department of Health, Civil organisations’ Letter on Codes for over 18s, Safe Ireland)
- content that promotes or encourages behaviour that characterises a feeding or eating disorder (Belong To, Department of Health, Civil organisations’ Letter on Codes for over 18s)
- content by which a person would promote or encourage self-harm and/or suicide (Belong To, Department of Health, Civil organisations’ Letter on Codes for over 18s)
- content by which a person makes available knowledge of methods of self-harm or suicide (Belong To, Department of Health, Civil organisations’ Letter on Codes for over 18s)
- child and human trafficking (Women’s Aid)
- content that depicts or promotes misogyny and domestic, sexual and gender-based violence, exploitation, intimate image abuse, non-consensual sharing of images or information (“Coco’s law”) (RCNI, Dublin Rape Crisis Centre, Women’s Aid)
- exposure of human genitalia with the intension of causing fear, distress or alarm (Criminal Law (Sexual Offences) Act 2017) (Dublin Rape Crisis Centre)
- content which encourages racist and other discriminatory attitudes (The Irish Traveller Movement)
- content consisting of realistic representations of, or of the effects of, gross or gratuitous violence or acts of cruelty’. (Children’s Rights Alliance)

While it was acknowledged that some of these harms are considered offences under Irish law, there are grey areas which can be manipulated and exploited by perpetrators. Therefore, including them under regulated content ensures greater protection. (RCNI)

3D: Other definitions (Q5)

The following responses refer to comments and feedback relating to any other definitions referred to in Section 10 of the draft Code (captured from Question 5).

Consultation Question 5: Do you have any comments on any other definitions in the draft Code?

This section presents a summary of comments and feedback of the definitions used in the draft Code.

3D.1 General Views

It was noted that there appears to be a word missing in the following phrase: “audiovisual commercial communications which show or unreasonably show children in dangerous situations” (DCEDIY)

It was argued that by establishing a robust, clear and comprehensive set of definitions for the Online Safety Code, then no segment of the environment of Video Sharing Platforms should be at a competitive advantage. This is especially so when it comes to the regulation of commercial communications. (Irish Heart Foundation, Safefood, HSE, HSE Health & Wellbeing, Dr. O. Bartlett, Dr. N. Campbell, Dr. A. Garde, Dr. C. Patton, K. Reilly, Dr. M. Tatlow-Golden)

It was suggested that the use of the term “moving images” in the definition of “audiovisual programme” is limited as some videos may include static pictures on rotation, sometimes set to music or with a voiceover. It would be better to broaden the definition to capture a broader range of content. (CybersafeKids)

It was noted that in the consultation paper, the Commission indicated that it “will develop specific additional requirements as they relate to commercial communications, including those relating to the promotion of foods that are high in fat, salt and sugar (“HFSS”) and infant and follow-on formula and these will be applied to commercial communications on platforms falling under the jurisdiction of the Code. This will be done following consultation with the public and with video-sharing platform service providers.” It was suggested that the Online Safety and Media Act provides that the Commission may consult with public health authorities in relation to proposed restrictions or prohibitions. In practice, it is understood that the Department of Health and relevant public health authorities will have lead policy responsibility in this area and any action by the Commission in this regard will only be taken in concert with these bodies. (Department of Health)

In relation to the use of the term “dignity”, it was pointed out that the definition used derives from the wording in the AVMSD and that the word “dignity” is referred to in the text of the Directive, (for instance Article 9(c,i): “audio-visual commercial communications shall not prejudice respect for human dignity”). However, the term human dignity is a term that is frequently referred to in legislation without provision of an explicit, specific and pre-defined meaning, which could potentially pose difficulties for enforcement when such regulation is applied to audiovisual communications and audiovisual commercial communications. (UCD Centre for Digital Policy)

The Commission was urged to provide workable definitions of the undefined terms including “dangerous challenges” and align it to other categories included in the definition of “regulated content harmful to children”. (MPIL) It was also pointed out that the terms were confusing and not ones used in the AVMSD. The draft Code used the category “dangerous challenges” without proving an explanation or the basis for its inclusion. It is also not a category under the definition of “harmful online content” under the Act (section 139B), which contains a specific legislative procedure to be followed to designate such harms. (Technology Ireland)

It was suggested that the definition of “reasonably foreseeable” should be expanded to include potential effects of trauma in childhood which may not manifest until adulthood given that there is extensive published research on the long-term impact of adverse childhood experiences. ([Well-Aware Campaign](#))

It was noted that the Commission intends to consider the potential relevance of the DSA in relation to content that promotes discriminatory attitudes in collaboration with the European Commission and its counterparts in other Member States, also having regards to the upcoming regulatory powers provided for the relevant authority by the Irish Electoral Reform Act in relation to online misinformation, and disinformation and manipulative or inauthentic behaviour in the context of electoral events. In that respect, and while considering that the “public harm” is defined in the Act as ‘any serious threat to the fairness or integrity of an election’, having regards to the right to freedom of expression, association, etc., the welcoming of further collaborative arrangement between the relevant institutions was extended. ([An Coimisiún Toghcháin – Election Commission](#))

It was suggested that the terms “platform” and “services” were not defined, despite the terms being used hundreds of times. It was suggested that if VSPS were defined as products and not services oversight and enforcement would be easier to manage. ([D. O’Boyle](#))

While it was welcomed that live-streaming was defined as a form of user-generated content, it was recommended that this content must be stored by a VSPS, in a manner compliant with privacy and General Data Protection Regulation (“GDPR”), to allow for investigation, for example where content in the live-stream is alleged to amount to incitement to hatred. ([Belong To](#))

The term “Incitement to violence or hatred” was deemed too ambiguous and open to abuse by online communities, while the draft Code would leave it in the hands of private companies to decide what is suitable for the public to view. ([L. Matthews](#))

It was suggested that all harmful content be prohibited online for children and adults. ([A. G. Smith](#))

It was also suggested that the use of undefined terms such as “gives rise to risk”, “significant harm”, “reasonably foreseeable”, and “dangerous challenges” are too broad and ambiguous, not only making it difficult to understand for different types of users, but it also making it challenging to implement and enforce for VSPS providers. Furthermore, such undefined terms may also lead to potentially unforeseen impacts on certain fundamental rights, including the right to freedom of expression. ([MPIL](#))

3D.2 Definition of a child

The definition of a child being “a person under the age of 18” was welcomed in line with the UNCRC. ([5Rights Foundation](#))

However, it was also argued that there was a potential inconsistency in what is considered to be a child. The draft Code encourages providers to engage with existing non-statutory guidelines (e.g. ASAI’s guidance on HFSS food and drink for under 15), however the draft Code defines children as under 18. It was argued that any regulatory body that purports to protect children should use the Convention on the Rights of the Child definition which is individuals under the age of 18. It was further argued that it is not acceptable to have a situation where policy deems older children’s rights less worthy of strong protection, as this creates hierarchies in the protection of children and undermines the need for comprehensive regulation. ([Irish Heart Foundation](#), [Safefood](#), [HSE](#), [HSE Health & Wellbeing](#), [Dr. O. Bartlett](#), [Dr. N. Campbell](#), [Dr. A. Garde](#), [Dr. C. Patton](#), [K. Reilly](#), [Dr. M. Tatlow-Golden](#))

A definition of a child being under 18, as it was argued, left little room for distinction between children in different development stages (e.g., what is harmful for a 9-year-old boy might differ greatly for a 16- or 17-year-old.) (NICAM) Similarly, a concern was expressed that the definition of a child was inconsistent with the digital age of consent in Ireland and it would disproportionately impact older teenagers' right to freedom of information and expression. The definition, as suggested, should be amended to refer to the relevant GDPR digital age of consent. (Google)

3D.3 Audiovisual commercial communications harmful to children

It was noted that the current definition of audiovisual commercial communications harmful to children is narrow and limited. (Children's Rights Alliance)

It was believed that the definition of "audiovisual commercial communications harmful to children" should include reference to their image or personal information being exploited for commercial purposes e.g. by a social media influencer. This, it was argued, infringes children's privacy. (Well-Aware Campaign)

The inclusion of content 'consisting of realistic representations of, or of the effects of, gross or gratuitous violence or acts of cruelty' in the definition of regulated content harmful to children includes and suggested to keep it in the adoption procedure. (Children's Rights Alliance)

It was suggested adding as last point a residual category of "audiovisual commercial communications that otherwise exploit children's specific vulnerabilities, notably with techniques that lead children into making unintended, unwilling and potentially harmful decisions", to the definition of "audiovisual commercial communications harmful to children". (5Rights Foundation)

A number of concerns were raised regarding the absence of HFSS foods and drinks, as well as breast milk substitutes from the definition of "Audiovisual commercial communications harmful to children" in the draft Code. (Children's Rights Alliance, Friends of Breastfeeding, Irish Heart Foundation, Safefood, HSE, BFLGI, Dr C McGowan, Senator M Sherlock, HSE Health & Wellbeing, Dr. O. Bartlett, Dr. N. Campbell, Dr. A. Garde, Dr. C. Patton, K. Reilly, Dr. M. Tatlow-Golden) (See Sections 4D and 4D5 of this report for more detail)

As the marketing of unhealthy foods and breast milk substitutes could reasonably be seen as promoting or encouraging behaviour that characterises a feeding or eating disorder, and because the Act permits inclusion of such products in regulation, the Commission was encouraged to consider using its discretion to include them in the Code. (Children's Rights Alliance)

It was argued that the Commission has the power to include these products in the definitions of "Audiovisual commercial communications harmful to children". It was further argued that the Commission could go beyond the requirements of Article 9(1) of the Audiovisual Media Services Directive, so long as the rules are compatible with the general principles of EU free movement law, which given the public health interests of children, would be considered appropriate and necessary for protecting public health. (Irish Heart Foundation, Safefood, HSE, BFLGI, HSE Health & Wellbeing, Dr. O. Bartlett, Dr. N. Campbell, Dr. A. Garde, Dr. C. Patton, K. Reilly, Dr. M. Tatlow-Golden)

3D.4 Breast Milk Substitutes and Follow-on formulae

It was noted with concern that breast milk substitutes were not included in the definition of "Audiovisual commercial communications harmful to children" in the draft Code. (Children's Rights Alliance, Friends of Breastfeeding, Irish Heart Foundation, Safefood, HSE, BFLGI, Dr C McGowan, HSE Health & Wellbeing)

It was recommended that baby formula and follow-on formula included in “audiovisual commercial communication harmful to the general public” should be explicitly included in “audiovisual commercial communication harmful to children”. (Dr L O’Sullivan, Safefood, Friends of Breastfeeding, HSE, Irish Heart Foundation, CUIDIÚ, Breastfeeding support group, HSE Health & Wellbeing)

It was suggested that the Code should protect all children, not just those old enough to have digital access. It was argued that babies and infants are our most vulnerable children and their protection should be extended through the caregiver by shielding the caregiver from infant formula marketing messages. The UN Convention on the Rights of the Child identifies implementation of the International Code of Marketing of Breast-milk Substitutes and strengthening the State’s regulatory framework for industries and enterprises to ensure that their activities do not have adverse impacts on children’s rights as crucial steps to upholding the Convention on the Rights of the Child. (Safefood)

The establishment of the Commission represents a significant opportunity to drive policy objectives of Healthy Ireland, further fostering the cooperation with relevant organisations, building on the ongoing activities related to the development of specific additional requirements and having regard to the Act’s prohibition or restriction of the inclusion in programmes or user-generated content of commercial communications: infant formula, follow-on formula or those foods or beverages which contain fat, trans-fatty acids, salts or sugars. (Department of Health, BFLGI)

A number of concerns were raised about the online promotion of baby formula or breastmilk substitutes which directly targets pregnant women, deemed as misleading and undermining public health messaging about the importance of breastfeeding. (ACLI, BFLGI, CUIDIÚ, Safefood, Irish Heart Foundation, UNICEF, Dr O’Sullivan, La Leche League of Ireland, Dr C McGowan, NHCP, HSE, HSE Health & Wellbeing, Dr. O. Bartlett, Dr. N. Campbell, Dr. A. Garde, Dr. C. Patton, K. Reilly, Dr. M. Tatlow-Golden) Aligning the regulation with the International Code of Marketing of Breastmilk Substitutes was recommended. (ACLI)

There was support for stronger restrictions to commercial milk formula marketing influences which, it was argued, can dilute and undermine the information and services available to parents provided impartially by HSE and the Department of Health. (NHCP)

It was argued that the negative impact on development and health, and harms that can occur, as a result of the digital marketing of commercial milk formulas must be addressed in the harms as set out in the Codes. (ACLI) Therefore, it was recommended that marketing communications or promotions (e.g. incentive, reward schemes, free samples, etc.) and goods (e.g. formula preparation machines, UV sterilisers and bottle warmers) and services (such as baby clubs) with logos and branding similar to infant formula, follow-on formula should not be allowed. (FSAI, Safefood, NHCP, HSE)

The Commission was urged to go beyond the requirements of the AVMSD related to commercial communications (Friends of Breastfeeding), and urged to review its enforcement approach to ensure that marketing strategies by the industry are not developed to circumvent the legislation and regulation (noting the reports indicating that, at present, the monitoring and enforcement of the marketing and promotion of formula milks is ineffective in Ireland), with the Commission now having the opportunity to display the “legislative teeth” as Minister Donnelly stated, ensuring babies, children, and families are protected from aggressive and inappropriate online marketing and promotion. (Dr L O’Sullivan)

The draft Code was seen as potentially the one and only chance to subject Commercial Milk Formulas (“CMF”) (and HFSS foods) advertising to meaningful legal controls, averting the researched indicators

showing the link between breastfeeding and obesity for babies who were never breastfed or were breastfed for a short period. ([SafeFood](#), [BFLGI](#), [HSE](#))

The Commission was urged to ensure that a fair and responsible regulation is in place to monitor the advertising and online communications from the infant formula industry. ([La Leche League of Ireland](#))

The Commission was advised to prohibit the marketing of all commercial milk formula up to 36 months, based on relevant WHO analyses. It was recommended that marketing practices, whether digital or otherwise, undermining public health and infringing on fundamental rights as enshrined in the Convention on the Rights of the Child should be explicitly addressed in the draft Code. It was suggested that the recommendations regarding the regulating the marketing of commercial milk formula up to 36 months from the draft Code do not reflect the provisions of the Act and fall short of aligning the obligations with the International Code of Marketing of Breastmilk Substitutes and subsequent resolutions, an obligation stemming from Ireland’s membership with WHO. ([UNICEF](#))

It was noted that in 2022 the WHO’s comprehensive analysis on the Scope and Impact of Digital Marketing Strategies for Promoting Breast-milk Substitutes – Marketing a \$55 billion Formula Milk Industry, revealed alarming trends and the urgent need for stringent regulation. It was argued that digital marketing, now dominant in many countries, requires meticulous monitoring and regulation, as it facilitates targeted marketing to vulnerable populations. This sophisticated marketing strategy must not be left solely to industry self-regulation. Following on from this research, the WHO developed Guidance on regulatory measures aimed at restricting digital marketing of breast-milk substitutes for Member States. ([UNICEF](#))

On the other hand, it was stated that related industry producers operate in adherence to legislation and cooperation with relevant authorities with respect to breastmilk substitutes. Members of the dairy Industry do not agree that infant and follow-on formula should be included in the definition of “audiovisual commercial communications harmful to the general public” within the same context of “all harm to their physical, mental or moral development”. In particular, this encompasses the concepts of “prejudice respect for human dignity”, “discrimination”, “behaviour prejudicial to health or safety”, “behaviour grossly prejudicial to the protection of the environment...”, as per the definitions of Section 10 of the proposed Code. Reference to harm in any such context is at minimum incorrect and misleading, and at worst has the potential to undermine trust in these legitimate, safe, nutritionally complete products. ([The Dairy Industry Ireland](#), [Danone Ireland](#))

It was suggested that reference to infant and follow-on formula in Section 3.3.4 of the Consultation (“Audiovisual commercial communications harmful to children” include communications for alcohol specifically aimed at children and commercial communications in contravention of Irish and European law on the promotion of infant and follow-on formula”) was an error as it does not reflect the definition for audiovisual commercial communications harmful to children set out in page 45 of the Consultation. ([Danone Ireland](#))

It was noted that Article 28b(6) of the AVMSD permits Member States to impose, on video-sharing platform providers, measures that are stricter or more detailed than the measures referred to in paragraph 3 of that Article. However, this provision concerns the regulatory measures which can be imposed, not the type of content and audiovisual commercial communication which can be subject to regulation. Accordingly, there are question marks over the Commission’s inclusion of this type of audiovisual commercial communication within a legislative measure which purports to transpose the revised AVMSD. Moreover, as it falls outside the scope of the AVMSD, any such provision cannot benefit from the country-of-origin principle under same. This means that the measure can only have

affect in Ireland, leading to a fragmentation of the EU's internal market (see further below in relation to the DSA). It is clear from the EU legislation governing the marketing of baby formula, that Member States can only regulate within their own jurisdictions and not across other Member States. (Danone Ireland)

It was noted that the proposal to include infant and follow-on formula in the definition of audiovisual commercial communications harmful to the general public raised questions with regards to compliance with the DSA and that the General Scheme of the OSMR Act, which was originally notified to the European Commission for approval, did not contain any reference to infant and follow-on formula. (Danone Ireland)

It was pointed out that any decision to prohibit the audiovisual commercial communications relating to infant formula or follow-on formula in the Code is discretionary and must be:

- in accordance with law; and
- based on the fact that the Commission considers it the subject of public concern.

It was noted that the Commission provided no evidence to support the view that the illegal advertisement of infant formula or follow-on formula on VSPS is the subject of public concern or that the illegal advertisement of infant formula or follow-on formula on VSPS is an issue at all.

Therefore, the effectiveness of the proposal and whether it would satisfy the principle of proportionality was questioned. If such evidence does exist, it has not been set out in the Consultation to allow for meaningful commentary on same. (Danone Ireland)

3D.5 HFSS food and drinks

A number of concerns were raised regarding the absence of HFSS foods and drinks, from the definition of "Audiovisual commercial communications harmful to children" in the draft Code. (Children's Rights Alliance, Friends of Breastfeeding, Irish Heart Foundation, Safefood, HSE, BFLGI, Dr C McGowan, Senator M Sherlock, HSE Health & Wellbeing, Dr. O. Bartlett, Dr. N. Campbell, Dr. A. Garde, Dr. C. Patton, K. Reilly, Dr. M. Tatlow-Golden)

It was argued that food marketing has a harmful impact on children's food choice and their dietary intake (Dr C McGowan) and that audiovisual commercial communications of HFSS products are harmful to children, and so should fall within the scope of "audiovisual commercial communications harmful to children (Safefood, Irish Heart Foundation, HSE Health & Wellbeing, Dr. O. Bartlett, Dr. N. Campbell, Dr. A. Garde, Dr. C. Patton, K. Reilly, Dr. M. Tatlow-Golden)

It was suggested that the inclusion, and recognition, of HFSS food and drink advertising as commercial communications harmful to children is proportionate to the scale of childhood overweight and obesity in Ireland, and the consequences for life and long-term health and protection of public health. (HSE, Friends of Breastfeeding)

Unhealthy food marketing is, as health data presented, a silent, slow-burn killer and shortening the lives of a third of the population, while masquerading as family- and child-friendly source of pleasure, which is why it was expressed that the draft Code may be the only opportunity to subject HFSS food and audiovisual commercial communications to meaningful legal controls, proportionate to the scale of childhood overweight and obesity in Ireland, and the consequences for life and long-term health. (Irish Heart Foundation, Safefood, HSE Health & Wellbeing, Dr. O. Bartlett, Dr. N. Campbell, Dr. A. Garde, Dr. C. Patton, K. Reilly, Dr. M. Tatlow-Golden)

Food marketing is increasingly recognised as a children’s rights concern, given its negative impact on several of the rights enshrined in the UN Convention on the Rights of the Child, where the WHO recommends mandatory restrictions to protect children of all ages. (Dr C McGowan)

Criticism was made of self-regulatory measures for restriction of HFSS food and drink promotion, (Dr C McGowan, HSE) and objections provided against self-regulatory bodies becoming nominated bodies. (Dr C McGowan). Self-regulatory mechanisms being given credibility and support by the draft Code was seen as extremely problematic, as this not only gives the ASAI codes moral authority and weight from the Commission, but it also then means that their complaint and enforcement systems will be used, whereas, as stated, even if enforced rigorously, self-regulatory mechanisms do not cover a great deal of harmful advertising techniques. (HSE)

3D.6 Alcohol, tobacco and nicotine

The draft Code’s recognition that alcohol was harmful to children was welcomed and the Commission was encouraged to take a strong and unequivocal stance in relation to the online tactics used by the industry to capture young people’s attention, especially the dark and novel forms of marketing normalising underage drinking. It was recommended that the Commission considers alcohol when it comes to monitoring and prohibiting “audiovisual commercial communications which encourage behavioural prejudicial to health or safety”. (Alcohol Action Ireland)

The Commission was also urged to consider expanding the designation from advertising of alcohol products aimed specifically at children to alcohol products which are likely to be attractive to children. (Children’s Rights Alliance)

It was argued that commercial communications for alcohol/ tobacco products that are not aimed specifically at children or that are not commercial (peers smoking/ drinking) would still be potentially (very) harmful for children, and these should be included in the definitions. In addition, social media platforms contain non-commercial content that encourages the consumption of alcohol, illegal drugs, tobacco, vaping etc. and it should be included since they pose big health risks to children, especially for content creators perceived by children as peers. (NICAM)

It was claimed (with some examples provided) that the tobacco industry and its associated industries has a history of exploiting ambiguities in the legislation. It was therefore suggested that consideration is given to the expansion of the definition of electronic cigarettes to counter the development, promotion, and communication via audiovisual commercial communications of any novel nicotine and non-nicotine products produced by tobacco and e-cigarette companies. It was noted that as guidance, the WHO, when describing electronic cigarettes, define these products as “Electronic nicotine delivery systems and electronic non-nicotine delivery systems”¹⁵. The point was made that when reference was made to nicotine, that this should include synthetic nicotine as well as natural nicotine. (Irish Heart Foundation, HSE Health & Wellbeing)

Under “audiovisual commercial communications harmful to the general public”, it was suggested deleting “electronic cigarettes and refill containers” and replacing it with “Electronic nicotine delivery systems and electronic non-nicotine delivery systems (ENDS/ENNDS), refill containers, oral nicotine products and other nicotine delivery systems.” (Irish Heart Foundation, HSE Health & Wellbeing)

¹⁵ WHO. (2021). WHO REPORT ON THE GLOBAL TOBACCO EPIDEMIC, 2021. Addressing new and emerging products. [Online] Available here: <https://iris.who.int/bitstream/handle/10665/343287/9789240032095-eng.pdf?sequence=1>

3D.7 Audiovisual commercial communications harmful to the general public

It was proposed that the definition of “audiovisual commercial communications harmful to the general public” should incorporate Irish equality law. ([Belong To](#))

It was recommended that mental health as well as physical health should be included in relation to regulated content. ([Children’s Rights Alliances](#))

As people with mental health problems, and notably people with eating disorders, have a heightened lifetime risk of, and vulnerability to, suicide, self-harm and eating disorders, it was recommended that the Commission consider extending the definition of content harmful to the general public to include these harms. This would align with the references to these harms in the draft Code’s definition of “regulated content harmful to children”, as, it was argued, these risks to mental health and safety do not cease to exist when a person has turned eighteen years old, hence, the “regulated content harmful to the general public” and the “regulated content harmful to children” should be aligned when it comes to content that “poses a risk to the life, physical health, mental health and/or safety of a child: cyber-bullying, encouraging eating or feeding disorders, encouragement of self-harm or suicide, and information about methods of self-harm or suicide.” ([Department of Health](#))

It was also suggested that the HFSS food should be included in the Code’s definitions of categories under “audiovisual commercial communication harmful to the general public”. ([HSE, ACLI](#))

3D.8 Terms used within commercial communications definitions

It was suggested that the definition of “commercial communication” should be redrafted to ensure it captured the provision of goods and services for free. This would allow for clarity over whether users should identify whether they have been given goods and services for free or been invited by the company to sample their products, taking into consideration the examples of ‘influencers’ or ‘content creators’ being gifted goods, invited to restaurants or provided with services for free, without direct payment or partnership by the brand involved. ([Belong To](#))

A number of definitions of harmful audiovisual commercial communications taken from the AVMSD were deemed vague and ambiguous, reflecting subjective concepts, and exceedingly difficult to apply to advertising content hosted by online platforms. It was therefore suggested that the related definitions be revised and the Commission more clearly defines the types of products and advertising practices being targeted, so that platforms can implement the Code objectively and consistently in order to avoid either unnecessary regulation of legitimate commercial communications, or potential liability to platforms that are moderating advertisements in good faith. ([Pinterest](#))

The Code should also make clear that the list of discriminatory characteristics (e.g. sex, racial or ethnic minority) is not exclusive, since platforms may wish to exclude other types of content in their own guidelines. ([Pinterest](#))

It was viewed that references to specific Irish criminal legislation should be removed from the definitions of “illegal content harmful to children” and “illegal content harmful to the general public”. ([Google](#)) While looking forward to receiving guidance on the various terms used in the definitions included for audiovisual commercial communication, it was noted that the draft Code does not define what is “an audiovisual commercial communication not marketed, sold or arranged by a VSPS provider”, as opposed to “an audiovisual commercial communication marketed, sold or arranged by a VSPS provider”. In order to avoid any uncertainty as to which requirements should apply to each type of commercial communication, it was suggested that the final version of the Code clarifies these definitions. ([MPIL](#))

Clarification or further definition was required for the following terms:

- “an audiovisual commercial communication not marketed, sold or arranged by” a VSPS as opposed to “an audiovisual commercial communication marketed, sold or arranged by” a VSPS provider. ([IAB Ireland, MPIL](#))
- “audiovisual commercial communications harmful to the general public” ([Pinterest](#))
- “audiovisual commercial communications which prejudice respect for human dignity” ([Pinterest](#))
- “audiovisual commercial communications which encourage behaviour prejudicial to health or safety” ([Pinterest](#))
- “audiovisual commercial communications which encourage behaviour grossly prejudicial to the protection of the environment” ([Pinterest](#))
- “audiovisual commercial communications which encourage immoderate consumption of alcoholic beverages” ([Pinterest](#))
- “audiovisual commercial communications harmful to children” ([Pinterest](#))
- “audiovisual commercial communications that directly exhort children to buy or hire a product or service by exploiting their inexperience or credulity” ([Pinterest](#))
- “audiovisual commercial communications that directly encourage children to persuade their parents or others to purchase the goods or services being advertised” ([Pinterest](#), [IAB Ireland](#))
- “audiovisual commercial communications which exploit the special trust children place in parents, teachers or other persons” ([Pinterest](#), [IAB Ireland](#))
- “audiovisual commercial communications which or unreasonably show children in dangerous situations” ([Pinterest](#), [IAB Ireland](#))

3D.9 Media Literacy

It was suggested that it would be helpful if the Commission could possibly cite the source of the definition provided in the document for public guidance. Broadening the scope of the definition of media literacy as currently presented in the consultation document was also recommended and placing a stronger emphasis on the digital component of media literacy definition (also referred to as digital media literacy¹⁶, which is a broader concept than digital skills¹⁷). It was argued that it is important that such education includes an understanding of commercial interests of (especially large) online platforms and the implications that these have on safety, privacy, inequality, discrimination, disinformation, freedom of expression and democracy. These topics are sometimes covered under digital citizenship¹⁸ education which could also be considered as a component of media literacy education¹⁹. Furthermore, rapidly developing technologies such as generative Artificial Intelligence and the role of large platforms in funding their development is an increasingly important component of media literacy education²⁰. While one could argue that these topics might fall under the scope of other pieces of legislation such as the EU AI Act²¹, it was suggested that these topics are inextricably linked to the concept of media literacy and the remit of the Commission.

¹⁶ See e.g. De Abreu, B. S., Mihailidis, P., Lee, A. Y., Melki, J., & McDougall, J. (Eds.). (2017). *International handbook of media literacy education*. Taylor & Francis

¹⁷ Livingstone, S., Mascheroni, G., & Stoilova, M. (2023). The outcomes of gaining digital skills for young people’s lives and wellbeing: A systematic evidence review. *New media & society*, 25(5), 1176-1202.

¹⁸ Jones, L. M., & Mitchell, K. J. (2016). Defining and measuring youth digital citizenship. *New media & society*, 18(9), 2063-2079.

¹⁹ Mihailidis, P., & Thevenin, B. (2013). Media literacy as a core competency for engaged citizenship in participatory democracy. *American Behavioral Scientist*, 57(11), 1611-1622.

²⁰ Widder, D. G., West, S., & Whittaker, M. (2023). Open (for Business): big tech, concentrated power, and the political economy of open AI. *Concentrated Power, and the Political Economy of Open AI* (August 17, 2023).

²¹ <https://www.europarl.europa.eu/news/en/press-room/20231206IPR15699/artificial-intelligence-act-deal-on-comprehensive-rules-for-trustworthy-ai> ([UCD Centre for Digital Policy](#))

Acknowledging that platforms may not be realistically expected to teach/provide educational materials with such a broad definition of media literacy it was recommended that the Commission facilitates such education, if at all possible. ([UCD Centre for Digital Policy](#))

It was suggested that there should be a glossary of definitions clearly stated for groups covered by Article 21 of the EU Charter, while equipping VSPS providers to understand the concept of harm which is racist or discriminatory towards specific groups (e.g. Roma is a term to describe Travellers and are a protected groups and this is frequently misunderstood.) ([Irish Traveller Movement, Children's Rights Alliance](#))

3D.10 Age verification/assurance/estimation

There was, as noted, no definition of “age verification” (or the related terms “age assurance” and “age estimation”), although the Commission refers to “age verification” throughout the consultation document, rather than the broader term of age assurance which is defined by emerging international standards such as ISO 27566 as to include both age verification and age estimation techniques. It was for that reason asserted that Irish guidance would use language inconsistent with those standards and the language used by the United Kingdom. ([Age Verification Providers Association](#))

Defining the verification /confirmation of age was recommended and the UK Online Safety Act (2023) was noted as defining it “any measure designed to verify the exact age of users of a regulated service” and/or age estimation, defined as “any measure designed to estimate the age or age range of users of a regulated service”. ([CybersafeKids](#))

3D.11 Pornographic content

It was noted that the term “pornography” does not appear to be clearly defined making clear demarcation more difficult between content that is either artistic or educational versus other types of content. ([M.Neylon](#))

It was suggested that defining “pornography” would help to ensure that sexually explicit content which a child may encounter on a site not devoted to adult content is covered. ([Children's Rights Alliance](#))

There are references to “child pornography” throughout the draft Code but the term “Child Sexual Abuse Material (CSAM)” should be used more consistently in the body of the text and the term “child pornography” perhaps used at the footnote. ([Alders Unit Children's Health Ireland, Specialist Child Sexual Abuse Services](#)) It was also suggested that use of the term “child pornography” implied a sub-category of legally acceptable pornography rather than a form of child abuse and a crime. ([RCNI](#))

Chapter 4: Obligations of Video-sharing Platform Services - Content (Q.6-13)

The consultation responses in this chapter refer to comments and feedback on Section 11 of the draft Code prescribing obligations relating to content captured from consultation questions 6 to 13. This was the part of the consultation that received the most comments and responses, in particular with regard to reporting and flagging of content measures (Question 8), age verification measures (Question 9) and content rating measures (Question 10).

4A. Terms and Conditions of Video-sharing Platform Services (Q.6)

The following responses refer to Section 11.1 to 11.9 of the draft Code that deals with what a VSPS provider must include in its terms and conditions. These comments were mostly gathered from answers to question 6 in the consultation.

Consultation Question 6: What is your view on the obligations in the draft Code that relate to what a VSPS provider must include in its terms and conditions?

This section brings together opinions and comments on the new obligations set out in sections 11.1 to 11.9 of the draft Code relating to the Terms and Conditions and Related Obligations to be adopted by VSPS providers to restrict the uploading of certain categories of content. The scope of the prohibition and the degree of associated preventive and protective measures, such as age verification measures, varies according to the nature of the service offered by the platform. The underlying objective pursued by the Commission is to achieve effective protection for children with as little impact as possible on adults who wish to upload, share or consume lawful content.

4A.1 General Views

This question attracted comments from over thirty respondents, mainly from children's, girls' and women's protection organisations, as well as industry representatives. Although several participants expressed satisfaction with the measures set out in the draft Code, many urged more accessible, stricter measures, while others called for clearer, more flexible measures. Several respondents welcomed the obligations in the draft Code on terms and conditions, whereby VSPS providers are required to prohibit certain matters and to which anyone opening an account on a VSPS is asked to agree ([CPPLU](#), [Department of Health](#), [M. Neylon](#))

Some welcomed the pragmatism of highlighting the difference between children and the general public, as treating all uploaded content at the same threshold applied to children would constitute a restriction of the freedom of expression ([Trust Alliance Group](#)). Others expressed concern that overly protective measures would have an excessively negative impact on adults and on their freedom of expression and privacy. ([S. Hynes](#))

4A.2 Accessibility and prominence

Several child protection organisations and individuals stressed the need for the terms and conditions to be more accessible and prominent, as this was considered a vital part of making platforms safer. It was recommended that the terms and conditions should clearly specify the rights of the user, especially in terms of data protection and that format should also be prescribed and should follow the requirements of the DSA: concise, prominent and written in clear language and in a way that can be easily understood by all users, and children and young people in particular ([5Rights Foundation](#), [CybersafeKids](#), [A. Fitzpatrick](#), [ISPC](#) / [Webwise](#), [E.Kilgallon](#) / [K.Ryan](#) / [O.Delaney](#), [Belong To](#), [Bodywhys](#)).

Research was cited showing that 84% of 8 to 12-year-olds have at least one social media and/or instant messaging account. (CybersafeKids) Therefore, it was suggested that consideration should be given to factors such as language, length, format, navigability, timing and accessibility, to help attract the attention of the users (ISPCC / Webwise, 5Rights Foundation), and ensure that users are given meaningful choices (Belong To), which contribute to obtaining meaningful consent of their terms and conditions. (5Rights Foundation)

It was pointed out that for members of the Webwise Youth Advisory Panel this is an important issue and one that would benefit from proper consultation with young people and other vulnerable groups. It was also suggested by a member of the Webwise Youth Panel that there should be questions to be answered at the end in order to prove that the terms and conditions have been acknowledged, not just clicked through. (ISPCC/Webwise)

It was argued that users must be made aware of all prohibited content and what the processes will be for infringement and the impact of such harms on other users and themselves. Making acceptance of the terms and conditions conditional on completion of a training module was also recommended (RCNI). It was also suggested that the terms and conditions should clarify how flagging and reporting tools can be used in case of illegal or regulated content, as many children are unaware of how to use such tools. (5Rights Foundation)

4A.3 Need for greater clarity, standards and detailed definitions

It was agreed that it must be clear in a VSPS provider's terms and conditions that any uploading or sharing of illegal content harmful to the general public and regulated content harmful to the general public should be prohibited, as well as illegal content harmful to children should be prohibited. (DCEDIY, CPPLU)

It was suggested that the draft Code relies on the regulated platforms to set standards, terms and conditions, reporting mechanisms, and baselines and making it difficult for the public to understand what is enforceable from one platform to another, and even more difficult for the regulator to assess the effectiveness of the measures. (Children's Rights Alliance)

A survey of parents was referenced which showed that 80% were in favour of the draft Code setting out specific regulations and measures that VPS providers should adhere to in their terms and conditions, while only 8% were in favour of VPS providers being able to choose their own regulations and measures (National Parents Council).

Several stakeholders stressed the need for greater clarity and more precise definitions. It was felt that if the draft Code was more detailed and prescriptive, encompassing both protective and preventive measures, it would be more understandable to users, leading to a more effective ability to lodge complaints and enforce compliance. (Children's Rights Alliance).

It was recommended that the definitions in Section 11.1 be expanded and the specific offences and prohibited content should be specifically named and not referenced as "as defined in the Code" and it was requested that the Code should specifically name and define infringements directly in the terms and conditions. (RCNI)

However, Industry representatives requested that the Commission refrain from including overly granular categories of "harmful" content and requested realistic definitions to be provided of undefined terms in the relevant definitions (MPIL). It was argued that a granular approach would have a negative impact on the readability and clarity of the terms and conditions and would therefore not be user-friendly. (MPIL, Technology Ireland)

In a similar vein, Industry encouraged the Commission not to define these categories by reference to Irish criminal offences (MPIL, Technology Ireland). They argued that as their policy was global in nature, if they had to adapt to local legislation in each country, they would not be able to effectively exploit a

global model, which would result in a much slower, disparate and less accurate enforcement, as their content moderators and classifiers were trained on policies and not on local laws. (MPIL).

Section 11.9 of the draft Code was described as vague and insufficient. It was recommended that the Code sets out the definitions of “fair procedures” and what constitutes “appropriate”, as well as setting out what procedures are to be applied including specific time-limits for responses to flagged content and after how many infringements an account should be suspended and ultimately terminated. (RCNI).

It was recommended that the term “repeatedly”, was redefined as “on any subsequent occasion, including the next occasion”, so that the user should be formally warned on the first offence that any repeated offence will result in suspension or termination of the account (Safe Ireland). It was pointed out that national rules for commercial communications and the protection of minors may still be applicable for vloggers and that users should be aware that certain national rules might apply and with which national regulator they can file a complaint. (CvdM).

4A.4 Additional suggestions for the Terms and Conditions

It was noted that the Code is mainly focused on defining 18+ content and creating 18+ accounts with terms and conditions and that the general responsibilities for the protection of minors appeared to lay with users and parents, rather than the platforms via the provision of content information / warnings. It was argued that setting up age verification techniques at 18 years, will not stop children from using VSPS. (NICAM).

It was recommended that effective content moderation should ensure that the burden is not primarily placed on users to address harmful content through flagging mechanisms, in particular, to report content unsuitable for children (Belong To).

As a result, it was recommended that the terms and conditions should also include:

- Measures against the promotion of dangerous and reckless behaviour, in the form of warnings to raise awareness of the dangers involved and dissuade users from downloading this type of content. (AgriKids)
- Obligation for vloggers and content creators active in the EU to classify their content according to their national age rating system, where applicable. (CvdM, NICAM)
- Provision of content rating and the showing of national age ratings should be an integral part of these services. (NICAM)
- Prohibition on VSPs making available or promoting mechanisms that can assist users in circumventing age verification such as Virtual Private Networks and other location-spoofing tools. (Age Verification Providers Association)
- An obligation on vloggers to disclose their country of establishment. (CvdM)
- A specific reference to Intimate Image Abuse (IIA) as harmful content that is prohibited to upload. (Women’s Aid)
- A commitment to combat the spread of online GBV and misogyny and that such content will be an infringement of Terms and Conditions possibly giving raise to termination or suspension of the account. (Women’s Aid)

4A.5 Non-consensual content, Intimate Image Abuse and "Deepfakes"

Concern was expressed that the main body of the draft Code did not contain any meaningful reference or measures to prevent intimate or image-based sexual abuse. It was argued that it is one of the most harmful and pernicious forms of online harm, particularly for young people. Non-consensual sharing of intimate images is explicitly illegal under Irish law, and therefore there should be a strong requirement on providers to ensure such material is not published on their platforms, or if it is, then it is swiftly and effectively removed in all cases. It was recommended that explicit reference is made to

non-consensual sharing of intimate images as a serious form of harmful content in Section 11 of the Code, with a requirement that the terms and conditions of providers must specifically name this form of harm as a forbidden form of content. ([SpunOut](#), [Women's Aid](#))

It was argued that non-consensual sharing of intimate images, misogynistic content and content promoting gender-based violence should be prohibited ([SpunOut](#)) and should be a reason for termination or suspension of the account ([Women's Aid](#)). Similarly, it was suggested that the uploading or sharing of pornographic or violent content which contains or appears likely to contain 'deep-fake' likenesses of real people generated by Artificial Intelligence ("AI") or CGI, which should be listed as a fifth category of harmful content to the general public or children under Section 11.9, 11.10, 11.11 and 11.12. ([Well-Aware Campaign](#)).

It was recommended that a subsection should specifically regulate the upload of intimate images, including deep-fakes, and provide for a number of preventive measures, such as:

- An obligation for VSPs to require user verification before the uploading of such content ([Women's Aid](#)) as well as the introduction of a licensing system that will be required to create and distribute AI-generated content. ([Well-Aware Campaign](#));
- The inclusion of functionality enabling users to declare that they are uploading such content with the consent of all the people depicted. ([Women's Aid](#));
- Measures informing users that non-consensual sharing is a criminal offence and that the platform will take action against users who act in this way. ([Women's Aid](#));
- A notification system which could flag to users in a clear way that the content is suspected of having been created using AI-generated or realistic CGI likenesses of real people or situations. ([Well-Aware Campaign](#)) A proposal that responses to Intimate Image Abuse (IIA) complaints must be immediate, in order to protect the victim/survivor from the risk of repeat victimisation. ([RCNI](#))

4A.6 Distinction between effective and robust age verification systems

There were objections to the downgrading of the age verification requirement from "robust" to "effective" for platforms where neither the main purpose nor a dissociable part is to provide access to pornographic content or realistic depictions of serious or gratuitous violence or acts of cruelty. It was argued that children were likely to be viewing most of the harmful content on more general platforms rather than accessing specific pornography sites. Concern was expressed that the standard of age verification required is reduced for more general VSPs - the very places where children have the most access, it was suggested. ([RCNI](#), [Association of Age Verification Providers](#)) It was proposed that the Code should state that this type of content should only be made available via dedicated platforms which clearly identify this as their principal purpose. ([Well-Aware Campaign](#), [RCNI](#))

There was opposition to the provision allowing users to rate their own content. It was argued that this provision would be open to abuse and would require other users to flag the content by which time it could have been viewed by numerous children. It was also noted that the draft Code did not require any sanction for the content uploaders failure to accurately label their content. ([RCNI](#))

Requests for clarity were made on the definition of "Robust Age verification measures" and "Effective age verification measures" under section 11.2, 11.3, 11.4 of the draft Code ([Age Verification Providers Association](#)). It was recommended that the provisions in the Statutory Guidance should be included in the Code as well the specific parameters for the measures that must meet the "robust" and "effective" standards. ([RCNI](#))

Noting that some of the major pornography websites currently utilise an easily avoidable age checkbox, or age-gating system, a regulatory tightening of this system across the industry was seen commendable. ([Trust Alliance Group](#))

4A.7 Scope, Jurisdiction and Flexibility

It was noted by Industry that the AVMSD does not require a provider's terms and conditions to prohibit the uploading of illegal or harmful content on a VSPS - noting in particular that a platform's terms and conditions tend to be global and content which is illegal in one country is not necessarily illegal in another. Rather, the provider is required to take "appropriate measures" in its terms and conditions that are practical and proportionate, taking account of the rights and legitimate interests at stake. (Google, Technology Ireland, TikTok). Imposing an obligation to outright prohibit a certain category of content may have practical effect of banning such content across multiple jurisdictions both inside and outside the EEA (TikTok). It was also noted that content moderators and classifiers are trained on policies and not on local laws. (MPIL)

It was argued that the strictest access control measures detailed in Article 28b(3) are to apply to "the most harmful" content to protect minors. Accordingly, a more graduated approach depending on the severity of the harmful content was proposed, given that the measures as they stand in the Draft Code were believed to constitute disproportionate ex ante control measures that are currently prohibited by the AVMSD (Google, Technology Ireland). Concerns were expressed that the provisions of the draft Code are already pre-empted by the new regulatory measures put in place by the DSA. (Google).

It was recommended that the Commission should refrain from including overly granular categorisations of "harmful" content. It should provide workable definitions of the undefined terms included in the definitions of "illegal content harmful to children" and "regulated content harmful to children" which VSPS providers are required to prohibit in their terms under this requirement of the draft Code. The Commission was also encouraged to provide explanations in layman's terms to the benefit of both platforms and users alike and it was argued that to the extent that existing terms and conditions cover the relevant categories of the Code, this should be sufficient (noting also the requirements of Article 14 DSA in this regard). (MPIL)

Industry also called for greater flexibility in how obligations are incorporated into VSPs' terms and conditions (Google, MPIL, Technology Ireland), arguing that they should be able to implement their own content moderation practices and graduated responses to the uploading of content that breaches their terms and conditions, depending on the objectives to be achieved. (Google)

It was also stated by Industry that their current policies and terms and conditions already prohibit a wide range of objectionable or harmful content that is likely to fall within the scope of the draft Code's definitions of harmful content (MPIL²²) The current policies of VSPS, combined with ex ante quality controls prior to publication, prevent the uploading of harmful content and they therefore consider that they do not need any additional conditions over and above what is already provided for in their terms and conditions and in the DSA. (Udemy)

There were calls for taking into account the nature and profile of risk (including, for example, the purpose and user base of the service), as a number of the proposed requirements will not be appropriate, proportionate or practicable for some VSPS. (LinkedIn)

With regard to the prohibition of regulated content harmful to the general public and, secondarily, the measures for suspending or terminating accounts, concern was expressed that the classification of content as such is very narrow and highly subjective in nature. It was highlighted that this was expressly recognised during the DSA legislative process, as this is a sensitive area with serious implications for the protection of freedom of expression. Concern was also expressed about the precedent of jurisdictions imposing bans on lawful content in their terms and conditions as it was feared this

²² <https://transparency.fb.com/policies/community-standards/>

mechanism could be used and abused by jurisdictions seeking to restrict freedom of expression online. It was proposed that, as Ireland is a thought-leader in content regulation, there was an opportunity for the Commission to avoid setting such a precedent and creating a model for online censorship elsewhere around the globe. ([Google](#))

It was recommended that the Commission should set out in the Code the full range of VSPS compliance obligations and require each provider to comply with all such obligations that are appropriate, practicable and proportionate given the nature and risk profile (including, for example, the service's purpose and user base) of that service. ([LinkedIn](#))

4B. Suspension and termination (Q. 7)

The following responses refer to Section 11.10 of the draft Code that deals with the requirement in the draft Code for a VSPS provider to suspend or terminate an account in certain circumstances. These comments were mostly gathered from answers to question 7 in the consultation.

Consultation Question 7: What is your view on the requirement in the draft Code for a VSPS provider to suspend or terminate an account in certain circumstances?

Under Section 11.10 of the draft Code, video-sharing platform service providers shall, where appropriate and following fair procedures, suspend or terminate accounts which they have determined to have repeatedly infringed terms and conditions of the service relating to:

- illegal content harmful to the general public,
- regulated content harmful to the general public,
- illegal content harmful to children,
- regulated content harmful to children,

that video-sharing platform service providers are obliged to apply and implement under this Code.

4B.1 General Views

Satisfaction was expressed with Section 11.10 of the Code. ([CybersafeKids](#), [ISPC / Webwise](#), [Well-Aware Campaign](#), [Belong To](#), [Department of Health](#), [DCEDIY](#), [UDEMY](#), [NSRF](#), [AgriKids](#)) It was considered that suspending or terminating accounts can be a protective approach to eliminating and reducing the impact and sharing of harmful content. ([Bodywhys](#))

It was noted that harmful material in relation to children, as set out in the Broadcasting Act 2009 includes seriously harmful and illegal actions including sexual grooming of a child, child sexual abuse, trafficking, sharing or threatening to share intimate images, as well as harmful content which encourages or drives a person to engage in harmful behaviour. It was recommended that it is essential that in these circumstances, the platforms take immediate steps to remove and take down the harmful material. ([Children's Rights Alliance](#))

It was argued that the Code should go further and extend this section of the Code to permit the immediate removal of material on a permanent or temporary basis upon becoming aware of it, particularly where the offence includes seriously harmful and illegal content. ([Children's Rights Alliance](#), [Tusla](#)) Reference was made to the Council of Europe Guidelines²³, which provide guidance on what constitutes an effective remedy, including the immediate removal of illegal content. ([Children's Rights Alliance](#))

²³ Council of Europe, Recommendation CM/Rec(2018)7 of the Committee of Ministers to Member States on Guidelines to respect, protect and fulfil the rights of the child in the digital environment (COE 2018), <https://rm.coe.int/guidelines-to-respect-protect-and-fulfil-the-rights-of-the-child-in-th/16808d881a>

The results of a survey of parents showed that 99% of parents questioned were in favour of imposing a strict deadline on VSPS for the removal of content harmful to children, with 79% demanding a 24-hour deadline. (National Parents Council)

It was also suggested that platforms display warnings before uploading content (identified by algorithms, for example) that may be considered to be in breach of the terms and conditions. Similarly, it was believed that publication of the sanctions imposed on users who have breached the terms of use can have a dissuasive effect on potential offenders. (National Parents Council) In addition, some suggested that a first offence should result in account suspension until the user has completed a training module explaining the reason for the offence and the potential harm such an offence could cause. (RCNI)

4B.2 Industry Views

There was support for transparent mechanisms from some Industry representatives, noting that some VSPS currently follow a linear escalation of sanctions for each reported violation, starting with a warning for the first violation and culminating in a ban. (Udemy)²⁴ Repeated strikes²⁵ and violations can lead to read-only feature limits or restrictions on specific products and, in the most serious cases, termination of the user's account²⁶. Analysis from Meta found that nearly 80% of users with a low number of warnings do not continue to violate the standards within 60 days, showing that most people respond well to a warning. (MPIL)

Other industry representatives have argued that such measures exceed the AVMSD requirements, as it is not prescribed in the list of appropriate measures of Article 28b (3) of the AVMSD and constitutes a disproportionate interference with adult users' freedom of expression/access to information. (Google, TikTok, Technology Ireland) They considered it would not be appropriate for a VSPS to be legally required by a Member State to terminate a user account on the basis that the user repeatedly uploaded legal content. (Google, TikTok) Concerns have also been raised that Section 11.10 refers to all categories of harmful content in a uniform manner, thereby appearing to require equal application by VSPS to all forms of regulated and illegal content, whereas section 28b (3) of the AVMSD specifically prescribes a graduated and proportionate approach. (TikTok)

It was argued that it is not appropriate that VSPS would be required to determine that a user would be denied access to its services based on its assessment of whether particular items of content could be classified as falling under the definition of "regulated content harmful to children". This point was expressly recognised in the legislative process of DSA where it was acknowledged that legal but harmful content should not be defined or subject to removal obligations, as this is a delicate area with severe implications for the protection of freedom of expression. Further, given that these obligations extend beyond AVMSD, should an individual Member State wish for content to be subject to removal obligations, they should proscribe it through their legislative process. (Google)

More broadly, there were concerns about the precedent of jurisdictions imposing legal obligations on online platforms to prohibit legal content in their terms and conditions, particularly in circumstances where the jurisdiction itself is unwilling to proscribe the relevant content as being illegal in national legislation. This mechanism of effectively banning certain types of lawful speech risks being used and abused by jurisdictions seeking to curtail more speech online. In circumstances in which Ireland is a thought-leader in content regulation, it was suggested that there is an opportunity for the Commission

²⁴ See for instance, Escalation Process for Policy Violations and Student Content and Behavior Rules, <https://support.udemy.com/hc/en-us/articles/229233047-Escalation-Process-for-Policy-Violations>

²⁵ <https://transparency.fb.com/en-gb/enforcement/taking-action/counting-strikes/>

²⁶ <https://transparency.fb.com/en-gb/enforcement/taking-action/restricting-accounts/>

to avoid setting such a precedent and creating a model for online censorship elsewhere around the globe. (Google)

A conflict was noted with Article 23 of the DSA which only pertains to “recipients of the service that frequently provide manifestly illegal content”. (Technology Ireland, Google, MPIL, TikTok) The Commission was advised to keep such overlapping regulatory measures in mind to ensure coherence and clarity (MPIL, Technology Ireland) and it was argued that obligations in respect of account suspensions should continue to be dictated solely by the DSA regulatory framework. (Google, TikTok) It was also pointed out that Article 14 of the DSA expressly leaves it up to the VSPS to assess the action to be taken in the event of a breach of the terms and conditions and recommended that greater flexibility be given to VSPS with regard to the implementation and application of suspension or termination procedures. (Technology Ireland)

4B.3 Specific Recommendations

A number of amendments and improvements were suggested for consideration:

- It was proposed that the notion of "repeatedly infringed" should be better defined (CybersafeKids, Women's Aid, Belong To), with specific thresholds and conditions identified that would lead to a suspension or termination procedure – such as a threshold for the frequency with which content or an account is reported as harmful or illegal, or that the infringement has been reported by a Trusted Flagger,²⁷ in which case the account should be immediately suspended/terminated, pending a review. (CybersafeKids)
- It was suggested that the Guidance should detail specific benchmarks for the number of breaches of terms and conditions which will lead to suspension for each of the following categories: “illegal content harmful to the general public”; “illegal content harmful to children”; “regulated content harmful to the general public” and “regulated content harmful to children” and also set out parameters for time limits on responding to reported content, handling a user’s report, and suspending or removing an account. (Belong To)
- It was argued that the terms and conditions should explicitly set out under which conditions accounts will be suspended or terminated and set out redress mechanisms (5Rights Foundation) and it was pointed out that such mechanisms are already in place on certain platforms, which allow users who have had their accounts restricted to request a review of these decisions. (MPIL)
- The level of suspension or termination should depend on the repetition of the infringement (CPPLU, RCNI) and the potential harm it causes or is likely to cause (Children’s Rights Alliance, AgriKids, Women’s Aid). It was suggested that a distinction be made between users who have infringed and users who have repeatedly infringed the terms and conditions of the service – with suspension of the account appropriate for the former group and termination of the account may be appropriate for the latter group. (CPPLU) It was suggested that the Guidance should advise that breaches of terms of conditions on the basis of “illegal content harmful to the general public” and “illegal content harmful to children” should lead to the immediate suspension of a user’s account. (Belong To)
- VSPs should be given the flexibility to structure their systems considering the specific types and severity of different harms that may be available on their platforms. (MPIL)
- Procedures to suspend or terminate accounts should not only follow fair but also appropriate procedures (5Rights Foundation), and what constitutes fair procedures should be better defined. (RCNI)
- Measures must be taken to ensure that a user subject to such a procedure cannot simply open a new account under a different name. (Women's Aid)

²⁷ i.e. School or another recognised body that CNAM will need to clearly define.

- Intimate image abuse and misogynistic content should be explicitly named as content warranting suspension or termination of the account. ([Women's Aid](#))
- There should be time-bound commitments on when an account would be suspended or terminated, as the current wording of 'suspend or terminate accounts which they have determined to have repeatedly infringed terms and conditions of the service' is not specific in this regard. ([HSE NOSP](#))

4C. Reporting and Flagging (Q.8)

The following responses refer to Sections 11.11 to 11.15 of the draft Code that deals with the requirement in VSPS providers to establish and operate reporting and flagging mechanisms. These comments were mostly gathered from answers to question 8 in the consultation.

Consultation Question 8: What is your view on the requirements in the draft Code in relation to reporting and flagging of content?

Sections 11.11 to 11.15 of the draft Code require VSPS to establish and operate transparent and user-friendly mechanisms to enable users of a VSPS to report or flag illegal or regulated content that is harmful to the general public or children. These mechanisms and their effects must be explained to users by the VSPS, who must also inform the user of their option to use the complaints system if they disagree with the decisions taken. Targets for the timeliness and accuracy of the reporting and flagging mechanisms must be set and published by the VSPS, who must also assess and report their performance against these targets to the Commission every three months.

4C.1 General Views

The measures in Sections 11.11 to 11.15 of the draft Code generated a significant amount of feedback and suggestions, which were divided and complex.

The measures were generally welcomed, with some amendments proposed. ([ISPCC / Webwise](#), [Irish Traveller Movement](#), [NSRF](#), [Simon Communities of Ireland](#), [5Rights Foundation](#), [A. Fitzpatrick](#), [Bodywhys](#)) However, respondents, in particular women's and children's rights organisations and individuals, criticised the lack of common standards and criteria in this section which, it was felt, left too much flexibility for VSPS to implement these measures. It was argued that established timelines, prescribed by the Commission, are vital in terms of reporting and flagging content. ([RCNI](#), [E.Kilgallon](#), [K.Ryan](#), [O.Delaney](#), [Safefood](#)) These should be prescriptive so that there is a clear standard to which the VSPS must adhere. ([CybersafeKids](#))

Several responses highlighted the inadequacy of these measures in terms of the child's interests and the requirements relating to their protection. The Council of Europe guidelines²⁸ were referenced in relation to how that "in all actions concerning children in the digital environment, the best interests of the child shall be a primary consideration", ([Children's Rights Alliance](#))

It was argued that non-consensual sharing of intimate images or gender-based violence content should be specifically named in these sections and be considered as categories of content separately reported on, so that victims of this crime know they have a right to report this content and request its removal. In addition, specific flagging and take-down measures were recommended for this type of harm,

²⁸ Council of Europe, Recommendation CM/Rec(2018)7 of the Committee of Ministers to Member States on Guidelines to respect, protect and fulfil the rights of the child in the digital environment (COE 2018), <https://rm.coe.int/guidelines-to-respect-protect-and-fulfil-the-rights-of-the-child-in-th/16808d881a>

because in such cases time is of the essence to prevent the material going viral and its uncontrollable spread across the internet and social media, causing exponentially increasing harm. ([Women's Aid](#))

Concerns were also expressed that platforms place a disproportionate burden on users to report or spot content, and whether these reports will actually be dealt with. It was argued that the responsibility should lay with VSPS, who should be bound by a duty of care to their users by dealing with harmful content before it reaches a critical mass of users. ([Belong To](#))

It was recommended that the Commission considers proposals from the OSCE for strengthened provisions on combating tech-facilitated trafficking in persons and on reducing the demand that fosters trafficking for sexual exploitation by mandating VSPS to:

- Implement age and consent verification mechanisms for individuals depicted in sexually explicit content;
- Create content-removal request mechanisms for non-consensual, sexually explicit materials;
- Conduct due diligence of their operations and systems to identify risks of misuse of their platforms for the purpose of trafficking in human beings, and mitigate those risks; and
- Report illegal content to competent authorities, remove it, and preserve it for investigations and prosecutions of illegal acts. ([IHREC](#))

While reporting requirements and complaint mechanisms were regarded in principle as important measures, caution was advised that they do not replace ex ante (i.e. prior), and even substantive (i.e. prohibitive), safeguards. ([EDRI](#))

Contrary to those views suggesting that the draft Code offered VSPS too much flexibility, Industry representatives considered some of the measures to be disproportionate, exceeding the requirements of the AVMSD and overlapping with the new requirements of the DSA.

Industry recognised that reporting and alert mechanisms are an important tool to enable users of video sharing platform services to report potential instances of illegal or harmful content. They described the reporting and alert mechanisms already in place on its platforms with some indicating that extensive content moderation has already been implemented on their platforms:

- Udemey explained the quality review process that each course must undergo before being published its platform. It was pointed out that video content on Udemey is educational content created as a result of advance planning by the creators and is published only after prior publication control and quality control based on human review by Udemey. ([Udemey](#))
- Meta explained that they have ensured that their platforms have reporting and flagging mechanisms in place for content or accounts which violate their policies which are designed to be user-friendly and easy to understand. They have also developed mechanisms for illegal content in line with Article 16 of the DSA. ([MPIL](#))

Some of the obligations in Section 11 of the draft Code were considered as generally incompatible with the obligations imposed by the DSA ([Google](#), [MPIL](#), [TikTok](#)), and more particularly for the smaller platforms which do not have the resources that larger platforms might to customise their procedures for each jurisdiction. It was recommended that more flexibility should be added to the requirements to set targets for timelines and accuracy and report on performance against these targets. ([Tumblr](#)) Concerns were also expressed that the imposition of these requirements would be repetitive and likely to give rise to legal uncertainty. ([Udemey](#))

A particular concern was noted with the requirement to offer flagging in respect of appropriate age-rating of any content due to the subjective nature of age rating and it that it was disproportionate to apply age-rating requirements to non-video content, such as comments on YouTube videos. (Google)

4C.2 Transparency, Accessibility and Clarity (Section 11.11)

Transparency was raised by respondents on several occasions. It was suggested that a more transparent procedure would encourage the public to make greater use of this type of mechanism, and that it would inspire greater confidence in the preservation of personal safety. (AgriKids, Bodywhys) The lack of transparency with regard to flagging and take down was also highlighted as an ongoing problem, as it leads to uncertainty around existing response times. (CybersafeKids)

The importance of these mechanisms being child-friendly when the user is a child was underlined (DCEDIY, UCD Centre for Digital Policy, 5Rights Foundation), and it was stressed that it should not be expected or assumed that a child will be able to identify or report content or conduct which is against a service's community guidelines. (Children's Rights Alliance)

It was suggested that the design of the platform homepage should facilitate easy access to reporting mechanisms and reporting tools enabling complaints to be lodged. (National Parents Council) It was also recommended exploring accessibility-by-design reporting tools enabling complaints (e.g. inclusion of voice-activated option), whilst establishing a central place (hub) on-platform to provide end-user guidance on process, steps, associated timeframes, and feedback loop. (ISPCC / Webwise).

The flagging system of the UK Children's Code regarding the protection of children's data online was mentioned as a good example, as it requires platforms to provide prominent and accessible tools to help children exercise their data protection rights and report concerns. (Children's Rights Alliance)

The Istanbul Convention and the GREVIO general recommendations,²⁹ were also mentioned with regard to the recommendation to "incentivise internet intermediaries including ISPs, search engines and social media platforms to ensure robust moderation of content" and particularly to "provide easily accessible user guidance to flag abusive content and request its removal". (Women's Aid) It was also suggested that the Code should contain a provision on the linguistic accessibility of the measures put in place. (Bratislava CMS, RCNI, Women's Aid)

It was suggested that in the Code there should be a provision on language accessibility of the measures. This could be a general provision put in place in all official EU languages or one specifically for relevant sections. The example was given of amending "transparent and user-friendly mechanisms accessible in the preferred local language of the user" for reporting and flagging in 11.11 of the draft Code. (Bratislava CMS)

Some also recommended that the Code should clarify what is meant by the terms "transparent", "user-friendly" and "accuracy of reporting". (RCNI)

It was recommended that the Commission sets out definitions and/or processes for determining the categorisation of types of harms and associated complaints, against which targets can be set. It was argued that in this way, a number of benefits may be obtained, such as access to a harmonised data set across which the timeliness of services in responding to complaints can be assessed. In addition, it was suggested that the Commission could also more readily compare that timeliness across types of complaint within an individual service and throughout the industry. It was noted that smaller services

²⁹ General Recommendation No.1 on the digital dimension of violence against women, <https://www.coe.int/en/web/istanbul-convention/general-recommendation>

with less resource and experience in content moderation and categorising complaints compliance could be supported to implement a system which they can readily report on to the Commission. It was also suggested that standardising complaint types and the associated time targets would enable better assessment of efficacy over time and may limit the degree to which VSPS providers reorganise their complaint types to conceal underperformance. (Trust Alliance Group)

It was recognised that some suicide and self-harm content is in the ‘grey’ area and is not easily defined and any technological interventions to tackle harmful suicide and self-harm content must be underpinned by effective and nuanced human moderation. It was recommended that the Code should seek to empower moderators to contribute to a safer, less harmful environment by acting on both content but also algorithms which generate user issues. To ensure reporting and flagging of content is being done in a safe and ethical way, any requirements around flagging/report should also take account of the health and wellbeing of content moderators both to protect and support a specific vulnerable or ‘at risk’ group but also to improve the standard of the moderation itself, avoiding relevant personnel being desensitised or burnt out and thereby less able to appropriately moderate making the internet less safety. (Samaritans Ireland)

It was also suggested that it would be of great benefit to users (and the emotional resilience of moderation staff) if expectations were placed on services to effectively signpost users to mental health support, where needed. (Trust Alliance Group)

It was argued that there were not sufficient positive measures being considered and it was suggested that positive mental health content should be promoted on platforms for the benefit of the users at large and that trained therapists such as betterhelp.com could be funded by the platform operator or a levy on them to fund same. (S. O’Cathain)

4C.3 A general call for specific standards laid down in the Code

Significant concerns were expressed that the draft Code, instead of defining a coherent reporting and notification system with detailed timelines, processes, complaint handling procedures, leaves this to the discretion of each platform. (Department of Health, Children’s Rights Alliance, CybersafeKids, HSE, RCNI, Women’s Aid, Safefood, Dr. O. Bartlett, Dr. N. Campbell, Dr. A. Garde, Dr. C. Patton, K. Reilly, Dr. M. Tatlow-Golden)

It was noted that no mention was in the draft Code of the creation and sharing of child abuse material, intimate image abuse and the non-consensual sharing of intimate images and information, nor was there any reference to specific procedures for victims of these offences. It was argued that specific procedures and protections need to be established and laid out clearly within the Code to ensure that abuse of this kind is dealt with quickly and effectively by VSPS. (RCNI)

It was recommended that the Code puts in place a number of moderation and reporting systems, including take down mechanisms and flagging mechanisms which would become standards for VSPS. (Children’s Rights Alliance, RCNI). It was felt that such consistency would ultimately result in greater uniformity, which would have a positive impact on the user experience, as they would not be hindered by unfamiliar processes. (Trust Alliance Group) Concern was expressed that the current inconsistencies in the application of community guidelines could result in people giving up trying to flag harmful content. (Belong To) In the same vein, it was also recommended that an independent organisation should be responsible for overseeing the reporting and complaints procedure, as this is in the public interest and enhances the reliability of the system. (NICAM, Dr Liz O’ Sullivan)

It was strongly argued that self-regulation was not working, (BFLGI) with evidence provided to the Oireachtas hearings on this issue highlighting the delays and lack of transparency around opt-out procedures and responses to complaints. (CybersafeKids, A. Fitzpatrick, E.Kilgallon, K.Ryan, O.Delaney) The handling of complaints by the ASAI was cited as an example of self-regulation lacking systematic

or systemic control and it was recommended that video sharing platforms are not allowed to set their own targets and standards and that there must be an independent regulator setting the standard, to whom the video sharing platforms are accountable. ([Dr L O’Sullivan](#))

The current system of flagging and reporting, as well as platform response times, was criticised and considered to be inadequate. ([CybersafeKids](#)) The results of a survey of known experiences of reporting anti-LGBTQ+ hate content and harassment³⁰ were shared and showed that 21% of LGBTQ+ young people who had flagged a harmful content saw any action from the social media platform concerned, while the remaining 79% of LGBTQ+ young people were told that no breach of community guidelines had been found or received no response from the platform. ([Belong To](#))

4C.4 Factors to be considered when developing flagging and reporting measures

In line with the Council of Europe Guidelines, it was recommended that the different levels of maturity and understanding that children have at different ages should be taken into consideration when adopting policies in this area. ([Children's Rights Alliance](#)).

It was recommended that reporting and flagging mechanism should allow users to tailor their notification appropriately for different forms of harmful or illegal content. ([Trust Alliance Group](#)) Moreover, according to 284 parents consulted, 251 agreed that the mechanisms should include a range of default options for different kinds of harmful or illegal content / audiovisual commercial communication on the service in question, and 244 agreed that the mechanisms should adhere to national and European requirements with respect to accessibility for people with a disability. ([National Parents Council](#))

Industry expressed concerns that it would be disproportionate to introduce granular reporting requirements in relation to specific categories of violent content. It was felt that it was unclear whether Section 11.11 of the Code required a VSPS to give users the ability to report content by reference to the specific categories of infringing content set out in Section 11.11. In their view, such requirements could prove confusing for users, particularly users based in EEA jurisdictions. They felt that it should be sufficient to report content as being against the law or not. ([Google](#))

Further clarity was sought with regard to the Commission’s accompanying Statutory Guidance regarding the features it considers reporting and flagging mechanisms should have, notably, on how the Commission envisions the tailored notification. ([MPIL](#))

4C.5 Overlap with the DSA

It was pointed out that the measures in 11.11 also apply to illegal content and as such was believed to be a duplication of the requirement in Article 16 of the DSA, as illegal content could in theory be reported under both mechanisms. This was seen as inefficient and a source of legal uncertainty for VSPS providers and considerable confusion for users as to which mechanism to use and which category to report. ([NFX](#), [MPIL](#), [Google](#))

Some suggested the notification mechanism for illegal content in Article 16 of the DSA should be incorporated into the Code ([NFX](#)), or that the Commission should clarify that VSPS providers can comply with this requirement in relation to illegal categories of content by complying with Article 16 of the DSA. ([MPIL](#))

³⁰ Pizmony-Levy, O. (2022) The 2022 Irish School Climate Survey. Research Report. Global Observatory of LGBTQ+ Education and Advocacy. Dublin and New York: Belong To and Teachers College, Columbia University. Available here: <https://www.belongto.org/87-of-lgbtq-youth-report-hate-and-harassment-online/>

4C.6 Specific recommendation on mechanisms

In addition to the various comments above, a number of specific recommendations were made on the form that the mechanisms should take, as well as suggestions on the functionalities that should accompany them:

- A mechanism whereby children can indicate that their complaint or request is urgent, to facilitate appropriate prioritisation and the implementation of swift action in relation to ongoing safeguarding issues, as it is currently recommended by the Information Commissioner’s Office (ICO)’s guidance³¹. ([Children's Rights Alliance](#))
- A content-removal request mechanism for non-consensual, sexually explicit materials. ([IHREC](#))
- A mechanism to facilitate cooperation between the various VSPS to ensure that they are all informed of illegal or harmful content, which can then be removed from all platforms, given that the abuse suffered by users often occurs on several platforms. ([RCNI](#), [5Rights Foundation](#))
- A mechanism to facilitate cooperation between relevant agencies (e.g., in health services) and VSPS providers, to inform how they design, prioritise and address content moderation issues and potential timescales for moderation decisions and action. ([HSE NOSP](#))
- An option for comments to be moderated by the original poster prior to their going live on the platform itself. For example, in the case of a 17-year old publishing a video of themselves on their social media profile, they should have the option to pre-approve and/or report comments before they go live. ([SpunOut](#))
- Information to users on an ongoing basis by VSPs on whether their online activity/behaviour is being tracked or analysed by any system, including AI, and a quick and simple function for the user to opt out. In addition, AI functionality must not be integrated into VSPS services or devices in such a way that users cannot opt out. ([Well-Aware Campaign](#))
- The draft Code should establish a flagging and complaint mechanism directly to the Online Safety Commission. ([Tusla](#))
- The bodies such as the Child and Family Agency Tusla should be provided with a trusted flagger status. ([Tusla](#))
- The appointment of trusted flaggers, as a recent report examining the likely effectiveness of the DSA with regards to regulating highly viral online content found that this was one of the keys to moderation success.³² ([Samaritans Ireland](#))
- Options to liaise with An Garda Síochána (for example retaining and providing evidence that VSPS might in their systems) where appropriate. ([Women’s Aid](#))
- Activation of triggers for potentially harmful content and the requirement for monitoring and regulation of online videos containing suicide methods.³³ ([NSRF](#))
- A mechanism for the removal of pro-suicide videos encouraging the use of high lethality methods³⁴ and facilitating online social contagion.³⁵ ([NSRF](#))
- Localised support services to victims of Intimate Image Abuse in a safe way, which are accessible to all users including in different languages. ([Women’s Aid](#))
- Referrals to mental health support services if necessary ([Trust Alliance Group](#))

³¹ Information Commissioner’s Office, ‘Age Appropriate Design: A Code of Practice for Online Services’

³² Schneider, Philipp J., and Marian-Andrei Rizoiu. “The Effectiveness of Moderating Harmful Online Content.” Proceedings of the National Academy of Sciences 120, no. 24 (2023).

³³ The Samaritans, 2020 ; Chang et al. 2015

³⁴ Gunnell et al. 2015

³⁵ Brown et al. 2018

4C.7 Effects of the measures (Section 11.12)

Regarding the creation of mechanisms for parents and children to monitor the progress of their reported concern, the recommendation of the Information Commissioner's Office (ICO)'s guidance³⁶ was echoed, calling for the VSPS to provide information on the timescales for responding to requests and that these should be dealt with within the timescales set out in Article 12(3) of the GDPR. (Children's Rights Alliance)

Industry expressed concern that the provisions of Section 11.12 duplicate the procedural requirements set out in the DSA and are therefore pre-empted by the provisions of the DSA on notice and action mechanisms, statement of reasons and internal complaint-handling system (Articles 16, 17 and 20 DSA) as well as the provisions on systemic risks in relation to harmful content (Articles 34-35 DSA) insofar as they apply to a broader range of content than covered by Article 28b(1) AVMSD. (Technology Ireland)

It was requested that the Code specifies that the explanation to users should be "in a child-friendly manner where the user is a child". (DCEDIY)

4C.8 Complaint handling (Section 11.13)

It was requested that the Code specify "child-friendly complaint mechanisms, where the user is a child". (DCEDIY)

A recommendation was made for a means of informing users that if they believe the VSPS complaint handling procedures are not satisfactory, then they have recourse to the Commission's complaint handling procedures. (RCNI) It is also essential that users are sufficiently informed to follow a complaint through to its conclusion by understanding what assessment is being undertaken, what outcomes they can expect and how they can appeal a result. (Trust Alliance Group)

It was also recommended that the complaint be dealt with by a person rather than automated moderation tools. (National Parents Council) Ideally, the person dealing with the complaint is trained in dealing with victims of DSGBV and other forms of abuse and violence (RCNI), or forms of gender-based violence and IIA. (Women's Aid)

It was suggested that a system should be created whereby requirements, deadlines and potential sanctions are clear and transparent, and combined with a means of escalation in the form of an independent complaints commission followed by an appeals commission and publication of decisions. (NICAM)

Concern was also expressed about the risk of malicious users flagging up legitimate content as a form of attack, doubting whether video service providers have sufficient human resources to deal with all flagged-up content, which would then risk being subject to excessively censored automated moderation or letting some inappropriate content through. It was suggested that a better approach would be to focus on applying filters, blocks and parental controls on the device/app/browser level, in combination with automated content negotiation APIs supplied by VSPS providers. (J. O'Connor)

It was argued that in cases where VSPS fail to meet the response deadline and the content has subsequently been reported to the Commission through the proposed individual complaint mechanism, and the Commission agrees that the offending content should be removed, the takedown notice issued by the Commission should also be time-limited, with a deadline of 24 hours. It was noted

³⁶ Information Commissioner's Office, 'Age Appropriate Design: A Code of Practice for Online Services'

that this is a model that has proved successful in other jurisdictions - for example, it complies with the Australian Online Safety Act 2021. (CybersafeKids)

4C.9 Targets on timelines and accuracy (Section 11.14)

Serious concerns were expressed about VSPS setting their own targets with a particular concern being that arbitrary or unachievable targets would be set. (Department of Health, Children's Rights Alliance, CybersafeKids; RCNI, Women's Aid, Belong To, SpunOut, A. Fitzpatrick, BFLGI, HSE, Irish Heart Foundation, Safefood, Dr L O' Sullivan, HSE Health & Wellbeing, Dr. O. Bartlett, Dr. N. Campbell, Dr. A. Garde, Dr. C. Patton, K. Reilly, Dr. M. Tatlow-Golden) It was also suggested including a mechanism to assess whether the targets set by companies for reporting and flagging content are ambitious and reflect at least existing best practices and minimum standards at industry level. (5Rights Foundation, Bratislava CMS)

It was proposed that platforms should report on related metrics, like rates of user flags being enforced against (for example, 90% of user flags were removed). This will signal that the platform policies are clear. If the rates are significantly low, it may suggest that users do not understand the policies correctly and they may need to be clarified or changed. (I. Goldberger)

It was recommended that the draft Code specifies clear timelines for VSPS providers' decisions and the removal of reported harmful content. Prescribing timelines is seen as a key measure for moderation success (Samaritans Ireland), and its absence is perceived as a risk to the Code's implementation and enforceability, as well as to the ability to put in place an effective mechanism for dealing with individual complaints. (CybersafeKids).

It was suggested that information on the ongoing process should be provided in a timely and age-appropriate manner and that response time should be appropriate to the issue and information should be provided on the actions being taken. It was recommended that the Guidance should advise as to maximum timeframes for informing a notifier of a decision following a report or flagged content. (5Rights Foundation)

The importance of the swiftness with which reported content must be reviewed and, if necessary, removed was emphasised, especially in cases of a gross infringement impacting on safety and wellbeing. (Department of Health, AgriKids, Simon Communities of Ireland)

A significant level of dissatisfaction with the platforms' response times or lack of response altogether was expressed. It was noted that not knowing timeframes for actions potentially increased frustration and trauma by users. (Women's Aid) Similar experiences were highlighted with instances noted of users reporting content and often receiving poor responses with limited support provided and little or slow action to remove or address the reported content. The results of a 2023 empirical investigation which determined the lifespan of social media posts on different platforms was shared which showed: Snapchat (0 min), Twitter (24 min), Facebook (105 min), Instagram (20 h), LinkedIn (24 h), YouTube (8.8 d), and Pinterest (3.75 mo).³⁷ A lower lifespan means that most harm happens right after the content is posted, which shows that content moderation needs to be performed quickly to be effective. (Samaritans Ireland)

4C.10 Factors and parameters to consider when prescribing timelines

It was proposed that the Code should provide minimum timeframes for response to reports/flagging, which can be different depending on the type of content and level of harm and it was suggested that when determining the timeframe and setting up procedures, the threat posed by the content should be taken into account. (Women's Aid)

³⁷ Graffius, Scott. (2023). Lifespan (Half-Life) of Social Media Posts: Update for 2023. 10.13140/RG.2.2.19783.98722.

It was recommended that particular attention be paid to dangerous content and suspected suicidal behaviour. (Department of Health, HSE NOSP) The harm involved in the creation and sharing of child abuse material, intimate image abuse and the non-consensual sharing of intimate images and information was also highlighted. (RCNI)

A maximum takedown timeframe for all providers was recommended for inclusion in the Code, with strong incentives and encouragement for providers to exceed this goal. There was concern that the ultimate level of acceptable responsiveness will end up entirely based on platforms' own response times rather than on clear direction as to what would be considered acceptable by the Commission. (SpunOut)

With regard to timelines, it was argued that 48 hours should be the limit for a substantive response - not for a holding response – which it was argued is proportionate given the resources available to VSPS. (CybersafeKids)

A strict 24-hour rule was proposed for the removal of images, account suspension, information and cooperation with other VSPS to ensure the removal of images from all platforms and the reporting of the incident to the police. (RCNI)

4C.11 Targets and timelines – Industry's view

While Industry welcomed the decision not to mandate rigid targets for timeliness and accuracy of decision-making following user reports, concern was expressed that the draft Code required VSPS to set and publish such targets, and measure and report their performance against those targets. (TikTok)

It was suggested that the ability of VSPS to implement reporting mechanisms is highly dependent on their size, hence the need to consult industry experts on the appropriateness of these timescales. (S. Hynes)

It was also pointed out that the introduction of targets in the manner envisaged by the draft Code is not a core obligation of Article 28b of the AVMSD, and in fact seems to create an obligation which goes beyond even the current requirements of the DSA. It was recommended that the Commission should consider adopting the approach taken in the DSA i.e. to require VSPS to respond in a timely manner, as opposed to obliging VSPS to self-impose targets for dealing with user complaints. (TikTok)

Aside from concerns in relation to overlap with the DSA, it was suggested that there was also an inherent flaw in relation to the requirement to set targets with regard to the number of children who are wrongly identified as adults through an age verification mechanism. It was argued by Industry that it was unclear how they would in practice set that target or what mechanism could be introduced in order to satisfy this requirement operationally (or indeed what the point of such a mechanism would be). It was further argued that the setting of targets in these areas also risks the creation of unintended incentives. For example, if the Commission's intention is for a VSPS to ensure that it stays below a certain target of underage users identified, VSPS may be discouraged to utilise measures to uncover such accounts. (TikTok)

4C.12 Turnaround Times

It was further noted that the AVMSD did not prescribe any requirement of turnaround times for content moderation and related reporting obligations, and that such response times (and transparency reporting) are pre-empted by the DSA. (Google, MPIL, Technology Ireland). On the other hand, the DSA leaves turnaround times to the discretion of intermediary services instead disapplying the safe harbour provisions where an intermediary has actual knowledge of illegal content and does not act "expeditiously" to remove it. Accordingly, it was argued that the Code cannot create a requirement for VSPS to set target turnaround times, and require VSPS to report against them, without fragmenting

the AVMSD regime and imposing obligations in respect of matters which are fully harmonised under the DSA. (Google)

Concerns were also expressed that mandatory turnaround times might increase the risk of over-moderation and thus threaten freedom of expression. Hence, there were recommendations from Industry to add more flexibility to the requirements and to explicitly account for the size, risk profile and resources of each VSPS (Tumblr), as they believed some carry a very low to negligible risk of harmful content circulation due to the specific nature of the service they offer. (Udemy) It was also suggested introducing a standard such as requiring removal “without undue delay” allows for the flexibility to review more complex cases and fully evaluate context and the law. (Technology Ireland)

While acknowledging the importance of ensuring that turnaround times for content moderation are not excessive, Industry also argued that turnaround times for content moderation are not necessarily the best measurement for establishing a VSPS effectiveness at reducing users’ exposure to illegal or harmful content. (Google, MPIL, Technology Ireland)

It was explained that even when two videos are removed within the same 24-hour period, it will not have the same impact if one had one hundred views while the other had one million. In response to the shortcomings of turnaround times as a metric, the YouTube metric called Violative View Rate (VVR)³⁸ was cited as a mechanism which estimates the percentage of total views on YouTube that are of violative videos. To illustrate their argument, YouTube’s latest VVR (i.e. the percentage of the views on YouTube that come from content which violates YouTube’s Community Guidelines), as published in their Transparency Report³⁹ for Q3 2023 was 0.11%. This means that for every 10,000 videos viewed on YouTube, 11 views were of videos containing violative content. (Google)

It was also pointed out that setting specific response times, even if just in target form, does not account for the necessary nuance in assessing cases with differing levels of complexity, as well as the need for a balancing assessment regarding the rights of affected individuals with respect to each removal or disabling of content as specifically required under the DSA. (MPIL)

It was argued that requiring VSPS providers to set and comply with turnaround times has a real potential to create unintended consequences and/or incentives and reduce the efficacy of report/flagging handling. In particular, it was suggested that it may serve to disincentive VSPS providers from properly considering the more complex issues that could be raised and it may lead to underenforcement or overenforcement, with negative impact to free speech. The Commission was urged to consider allowing VSPS providers to establish more flexible or tiered target turnaround times for a percentage of total actions. (MPIL)

4C.13 Reporting obligations (Section 11.15)

It was suggested that the Code should require VSPS to report quarterly on how many reports led to removal /blocking of content, suspension or account or other action, what type of content was removed and in which timeframe. (Women’s Aid) It was further suggested that platforms should also report on the number of moderators and their specific gender-based violence training. (Women’s Aid) Further, it was recommended that Code should require VSPs to provide the Commission with transparent data in an appropriate format and manner in order to enable the Commission to conduct its role effectively. (Dr. O. Bartlett, Dr. N. Campbell, Dr. A. Garde, Dr. C. Patton, K. Reilly, Dr. M. Tatlow-Golden)

³⁸ <https://transparencyreport.google.com/youtube-policy/views>.

³⁹ Ibid.

With regard to carry-over obligations under Section 11.15, it was suggested that fulfilment of these targets should be made in a predetermined format and structure of the data shared to ensure comparability at the individual national level to avoid inconsistency of performance by the platforms in smaller countries. (Bratislava CMS) More clarity was requested on the specificities of the expected contents of such reports. (MPIL, TikTok) It was also recommended that the Code should give the opportunity to VSPS to highlight where compliance with particular reporting requirements is not technically feasible, or where it would involve a disproportionate burden, and instead propose a more appropriate alternative. (TikTok)

4C.14 Frequency of reporting

The establishment of a consistent mechanism or requirement for VSPS providers to report routinely was considered particularly beneficial. (HSE NOSP) Contrary to this view, industry representatives suggested that the draft Code's proposed requirement of quarterly reporting places an unnecessary and excessive burden on platforms, with regard to the complexity of the reporting request and the work involved, particularly on platforms with a smaller employee base (Pinterest, Udemy). It was also pointed out that these reporting requirements go beyond what is envisaged by the AVMSD (Google, MPIL, TikTok) and clarification was requested in relation to the necessity for this frequency and the proposed contents of such reports, especially in light of the consistency proposed at a European level by DSA reporting. (Technology Ireland)

It was stressed that these requirements at the proposed frequency will impose significant regulatory costs on VSPS (Google, MPIL, TikTok), which will not be borne by VSPS under the jurisdiction of other Member States whose services can lawfully be available in Ireland, hence this measure will impact the internal market. (Google) It was also argued that progress will be challenging to demonstrate at such regular intervals. (Technology Ireland, MPIL, LinkedIn)

It was also underlined that transparency reporting and auditing requirements were already prescribed and harmonised under the Articles 15, 24 and 42 of the DSA. (Google, Technology Ireland, MPIL, TikTok)

In addition, it was noted that the European Commission is in the process of creating standardised reporting templates for bi-annual transparency reports, and concerns were expressed about the harmonisation of both the categorisation of information presented and reporting periods. (Google)

It was also mentioned that under the reporting obligations of the DSA and the Code of Practice on Disinformation and other laws, platforms require time, outside of the reporting period, to validate the metrics and ensure they are robust before disclosing. (TikTok)

In the light of these arguments, the following changes were suggested by Industry:

- The Code should not introduce the requirements of Section 11.15, as the Commission will have access to the relevant information through the reports developed and published pursuant to the DSA once it is established as Ireland's Digital Services Coordinator. (Google) Alternatively, VSPS that are subject to the relevant DSA transparency reporting obligations should be permitted to submit their DSA reports as a valid response to this obligation. (TikTok)
- The delay for such reporting should be extended, with annual or semi-annual intervals suggested (Pinterest) or on an annual basis as it would be more appropriate for the reporting required under Section 11.15 of the draft Code as it would allow for more meaningful progress or change in patterns to be identified. (LinkedIn)
- The additional reporting under the Code should focus only on obligations applicable to VSPS under the AVMSD. (Technology Ireland)

- These reporting measures should follow the DSA approach of a six-month cadence for very large online platforms (“VLOPs”) and yearly for other intermediary services. (MPIL)
- The Code should limit this reporting requirement to those platforms which hit certain thresholds (such as VLOPs), based on their size, user base, likelihood of harmful content and children on its platforms. Overall, these requirements should be limited in application to more high-risk platforms which do not carry out ex ante content moderation and therefore rely on customer flagging and reports for the removal of problematic content. (Udemy)

4D. Age Verification (Q.9)

The responses in the section refer to Section 11.6 to 11.20 of the draft Code which deals with age verification. The comments are mostly gathered from question 9 in the consultation. This was the question that generated the most responses and comments.

Consultation Question 9: What is your view on the requirements in the draft Code in relation to age verification?

Sections 11.16 and 11.17 provide for effective age verification measures to be put in place by platforms, by means of technical measures going beyond simple self-declaration, for cases where platforms provide for a minimum age as a requirement for account opening (section 11.16) and for ensuring that content rated as not suitable for children cannot normally be seen by children (section 11.17). Content warning is considered as an effective measure for violent or distressing content shared as a contribution to civic discourse on a matter of public interest. Section 11.18 specifies that VSPS providers must adopt a mechanism following a series of requirements describing and evaluating how age effective age verification measures are used, implemented, and made efficient. Section 11.19 requires platforms whose main purpose or a dissociable section provides access to pornographic content or violent content to use robust age verification mechanisms prior to the creation of the account, or each time the content is accessed. Section 11.20 specifies that VSPS providers must adopt a mechanism following a series of requirements describing and evaluating how age robust age verification measures are used, implemented and made efficient. Finally, Section 11.21 requires VSPS providers to report on the accuracy and effectiveness of the age verification measures arising from the evaluation undertaken under Section 11.18 and 11.20 every three months to the Commission.

4D.1 Overview

The respondents in this section represent a wide cross-section of society industry, individuals, civil organisations and others. Most respondents called for the utmost caution to be paid to the data protection and privacy risks raised with the processing of personal data related to the implementation of age verification measures. Many of them spoke out against the use of these measures and suggested a combination of other tools that they considered safer and less intrusive.

This section is structured so that the ‘views, recommendations and concerns about age verification from individuals are presented together, followed by a more ‘general views and recommendations on age verification measures’, before considering ‘general concerns on age verification measures’ and finally ‘Section specific comments’.

4D.2 Views, recommendations and concerns about age verification from Individuals

This question elicited many responses from individuals. While many of them have acknowledged the importance of these measures and that self-reporting measures are not sufficient, they expressed a significant opposition to the robust age verification measures set out in Section 11 of the draft Code,

mainly out of concern about the use of the data collected by such measures, for security and privacy reasons. It was believed by some that the measures would require them to upload official identity documents and use biometric processing for age verification before accessing platforms governed by this Code, including those that are not required to implement robust age verification measures. This sub-section summarises their views, concerns and recommendations. (M. Neylon, A. Conway, A. Smith, A. Burns, A. Madirazza, Barry, B. Chamberlain, B. Daly, B. Nisbet, C. Connolly, C. Ryan, C. Mac Mahon, C. O'Sullivan, C. Sheehan, C. Bradley, C. Dillon, C. Power, C. Egan, C. Malone, D. Cussen, D. Litvak, D. Earley, D' O'Neill, D. Dowling, D. Connolly, F. Kelleher, H. Tuohy, I. Hunter, I. Mc Nally, I. Sowunmi, I. O'Connell, J. Behan, J. O'Connor, J. Ryan, J. Edwards, J. Kavanagh, J. Steinmann, L. Laughey, L. Matthews, L. Bayes, M. Dennehy, M. Lordan, M. Mac Carthy, M. O'Brien, M. Corcoran, Noob CJ, O. Kyne, P. Fahy, P. Cunningham, P. O Leary, R. Jensen, R. Griffiths, Rory, S. Fagan, S. Hynes, S. O'Toole, S. Laide, S. Spillane, T. Malone, T. Hamilton, V. Milas, Vex Snt, W. Harold, G. Obrien, I. Goldberger, J. Buckley, S. MacDiarmada, T. Toth).

The responses from individuals highlighted the following main safety concerns:

- Sensitive information will be supplied to platforms that will have to store and secure it, and some fear that they may be tempted to use this data to exert undue pressure and influence.
- Data could then be supplied/sold to third-party companies without their consent.
- Data could be disclosed in the event of massive data breaches, which, as many people have pointed out, are a very real and frequent risk that can have a significant impact on the rights and freedoms of individuals. This leak of data can in turn lead to targeted scams, black mail, identity theft.
- These measures may encourage people and children to turn to VPN systems or websites that do not comply with the rules introduced in the Code, which may further harm children as they are exposed to darker and less moderate content.
- Users may be confused and not be able to discern a regulated platform requesting age-verification, from an unregulated phishing site that looks identical and require the same data.
- These measures will normalise the practice of providing sensitive information on the Internet.
- There could be the creation of an unlimited number of partial copies of a biometric database comprising the primary identification documents and photographs of every EU citizen, including minors, which will be held in the private sector by companies located in various jurisdictions around the world.
- There was no mention of an international standard applied to age verification, as the manner in which this is done is entirely at the discretion of the VSPS providers.

Concerns have also been expressed about the right to privacy, with some believing that these measures could lead to draconian surveillance of individuals and their private online activities, and that such restrictions are a step towards limiting free access to all information, which opens the door to abuse. It was noted that one of the fundamental aspects of the Internet is the possibility of anonymity which may be a reason that people may be hesitant to share personal details and other sensitive information. In addition, excessive restrictions may fundamentally change the nature of the Internet from an open platform for the exchange of ideas to one limited by top-down control.

Other concerns about the implementation and efficiency of these measures were also raised:

- Requiring means of identification could lead to the exclusion of vulnerable people who do not have identification documents.
- Strict age verification measures can lead to over-censorship, by blocking content that might be appropriate for certain age groups but is wrongly categorised as inappropriate.

- The group targeted by these measures is extremely technically literate and quick to learn new tools, hence the fear that they will share any effective circumvention methods among themselves, and that the most determined users may find ways to bypass them and use false or borrowed identification.
- Third-party identity verification for websites relies heavily on machine learning, which can prove to be rather inefficient.
- With the rapid progress of artificial intelligence, current verification and authentication methods will soon become easy to falsify.

In the light of these arguments, there were suggestions about other methods of protection that were considered less intrusive and safer:

- A stronger emphasis on educational initiatives to teach both parents and children about responsible online behaviour and safe online activities.
- Default systems built into certain mobile phones, prohibiting access to sites that are forbidden to under-18s and where the restriction is lifted by an in-store in-person check without identity data being stored.
- Verification of age by means of small online credit/debit card transactions, which will then be reimbursed by the platform, or proving credentials anonymously by using tokens in a digital wallet.
- Requiring websites to host under a specific TLD like .xxx which will enable an easy blocking of those domains by parents in their own homes.
- The development of a government-run digital passport system, specifically designed for age verification purposes, under the direct supervision of the Irish Government, ensuring a higher level of security and privacy.
- Creation of dedicated children's versions of popular platforms, such as YouTube Kids.
- Requiring ISPs and mobile networks to allow their customers to filter traffic for their accounts using a whitelist approach (filters are enabled by default) with a simple interface that would allow sufficient control to manage different filters for different devices.
- An online platform, managed by a credible third party, for example a government institution, which is accessible to both users and VSPS providers, can perform all the necessary verification functions.

4D.3 General views and recommendations on age verification measures

This section collates the views and recommendations given in question 9 on age verification measures in general, and recommendations on factors to be taken into account for design and implementation.

General remarks and recommendations

Industry representative and other stakeholders welcomed the draft Code's general approach to age assurance, which gives flexibility to VSPS providers as to how they achieve the objectives of the Code. ([Google](#), [MPIL](#), [Pinterest](#), [Technology Ireland](#), [TikTok](#), [Trust Alliance Group](#), [DCEYI](#), [NSRF](#)), but they highlighted several important aspects to be taken into consideration elaborated further in this Chapter.

A survey of parents was referenced which showed that 96% of the parents surveyed believed that it was important that the Draft Code would require VSPS providers to take effective measures to verify the age of children and ensure that children do not view content aimed at adults. When asked about the type of verifications techniques that should be included by VSPS providers, 183 out of the 312 parents surveyed, wanted Age Verification through hard identifiers or the use of Tokenised Age Checking using Third Parties. Further, when asked if VSPS providers should restrict content to all children under the age of 18 in the same way, 51% believed that content should be restricted to all

children regardless of their age while 46% believed that restrictions of content should vary depending on the child's age. Furthermore, 70% believed it would be effective to have a range of different age bands (e.g. 4-8, 8-13, 14-17), where content is either accessed or restricted based on how old the child is. (National Parents Council)

It was recommended that at a minimum, the potential risks and harms of age verification and estimation methods should be explicitly mentioned in the Code. By presenting the use of age verification and estimation tools as only a mitigation measure, rather than as a potential risk in themselves too, it was believed that the Code missed an important opportunity to ensure that such tools are used in a way which respects the rights of children and adults online. (EDRI)

Concerns were expressed about the age verifications measures proposed and it was argued that each of the five listed methods of age verification have serious issues in terms of practical application. (SpunOut) It was noted that any reliance on self-verification, in particular, likely to be ineffective and as it does not actually verify someone's age and can easily be circumvented (CvdM) and have the unwelcome effect of shifting responsibility for avoiding online harms onto young people and parents themselves, rather than ensuring service providers and regulators provide workable solutions. It was argued that requirements for self-verification of age can incentivise underage persons to lie about their age which can seriously undermine attempts to make online and video-sharing spaces safer for children, as won't be possible to know how many children are actually on a platform. It was suggested that prioritising effective methods of age verification, other than self-declaration, is vital to ensure an effective Code. (SpunOut)

Regret was expressed that the draft Code does not set standards for age verifications measures, and exercise control over age verification processes and it was suggested that at a minimum, no access should be granted to either explicitly sexual or grossly and gratuitously violent content without the prospective viewer having to provide sight of a valid passport or other official identification document with a photograph and that age verification should always be a two-stage process. (Safe Ireland)

It was believed that age verification techniques should consider existing users of a platform and retroactive actions should be taken. (Irish Travellers Movement ITM) Also suggested was the use of facial recognition along with other age determining factors age may have to be considered to reduce the likelihood of minors getting access to regulated harmful content. (AgriKids)

In the same vein, it was suggested that designated trusted independent providers of age verification, such as Yoti⁴⁰, could be used as a single point of verification across multiple online services, which would minimise the collection of data by VSPS providers from minors and the risks involved. (SpunOut, CvdM) It was further suggested that there should be an additional duty on VSPS providers for independent auditing prior to the deployment of age assurance techniques, independent auditing seen as necessary for being able to effectively assess effectiveness of age verification technique used by VSPS providers. (Yoti)

Age Assurance

It was recommended that the Code use the term "age assurance" as it was considered as an umbrella term defined by emerging international standards such as ISO 27566 as to include both age verification

⁴⁰ Age verification tools for online customers and custom-built apps · Yoti
<https://www.yoti.com/business/age-verification/>

and age estimation techniques. It was noted that age estimation provides an estimate of a user's age and often relies on user behaviours or artificial intelligence and machine learning techniques. A key benefit of age estimation is its ability to provide fast and accurate results with minimal customer data and interaction. ([Age Verification Providers Association, VerifyMy](#)) and, it was argued, was a more appropriate term to use to ensure consistency of terms in use across the industry. ([Technology Ireland, TikTok](#))

Other reasons for using the term “Age assurance” included the belief that the age of a user should not be verified in every instance, seeing only the initial verification of the age more proportionate in terms of privacy and data protection. ([Yoti](#)) It was suggested that it would be more appropriate to group the list of techniques under “age assurance measures” which can include both estimating and verifying. ([Trust Alliance Group](#))

Proportionality and Flexibility

The flexibility given to VSPS providers was welcomed, including the way the draft Code makes references to the effectiveness of age verification measures instead of simply prescribing specific techniques that must be used. ([VerifyMy, Trust Alliance Group](#)) It was suggested that specifying such measures and being too prescriptive would stifle innovation ([Age Verification Providers Association, TikTok, Google](#)) and that companies should be free and encouraged to innovate and provide for solutions that are effective, privacy-preserving and proportionate, notably in view of the level of risk and other mitigation measures that might be in place or more effective. ([5Rights Foundation](#))

It was emphasised that, while age assurance is a useful tool for serving children age-appropriate experiences, it is not sufficient alone for making a service age-appropriate for children. ([5Rights Foundation](#)) In this line, the Commission should consider the significance of the links between its age verification and parental control measures, as empowering parents to provide consent for the processing of their child’s data was believed to be the key, in line with GDPR, ensuring the appropriate adult’s access to the parental control measures put forward in the Code. ([Trust Alliance Group](#))

Furthermore, it was believed that the user should be given the widest possible choice, especially to not exclude those who do not possess formal identification documents. ([VerifyMy](#)) This fosters a heightened sense of trust in services offered and empowers users. ([Yoti](#))

The issue of proportionality of age verification measures based on risk was also raised by child protection organisations, advocating for measures to restrict a child’s access to a service or a part of a service when a service is not designed in a safe and age-appropriate way. It was recommended that the Code should specify that the level of assurance should be calibrated to the nature and level of risk presented by a product or service ([5Rights Foundation](#)) and in relation to the age of the child, while the cumulative nature of risk must be considered, as multiple design features or different parts of a user’s journey create greater risks.⁴¹ ([Children's Rights Alliance](#))

VSPS providers should be obliged to use age verification techniques to ensure that the age cited on a profile, is the true age of that service user. Support for obliging VSPSs to obtain adequate user contact information was extended, arguing that the level of contact data should be appropriate to enable a regulatory body, or An Garda Síochána, to readily identify and contact, users who are suspected of rule, or legislative breaches. Accordingly, VSPSs should be obliged to use only the highest available technological means of age verification. ([Tusla](#))

⁴¹5Rights Foundation, ‘Pathways: How digital design puts children at risk’.

It was pointed out by Industry representatives that, in view of the potential impact, age verification solutions must be proportionate, risk-based and equitable, bearing in mind there is not a one-size fits all solution, and instead offer a range of accessible tools and options ([Google](#)). Focus on wholesale age verification for specific content types (which are already subject to moderation) was seen as either privacy invasive or not effective as it would require training sets that VSPS providers are unlikely to have access to and may be more easily circumvented or subject to fraud which could be more harmful for users. ([MPIL](#)) Some mentioned adopting their own risk-based approach to age verification by considering factors such as developing and enforcing strong Community Guidelines and prohibiting various types of content that may be harmful to users of all ages, which contribute to ensuring the provision of a safe experience for all users. Hence requiring additional age verification would be disproportionate to the risk of harm and would require collection of sensitive user information without any corresponding improvement in user safety. ([Pinterest](#))

In addition, Industry emphasised the fact that age verification methods should be more closely aligned with the level of risk arising from the nature of the content or the service provided. Some platforms explained their reasoning by describing their services and content provided:

- LinkedIn prohibits anyone under 16 from having an account; the nature of the service is not generally interesting to minors; there is no minors-oriented/featured marketing. ([LinkedIn](#))
- UDEMY is a professional skill learning platform where content providers undergo a vetting process and an identity verification process, all subject to a prior quality review process. Registration and paid subscription for majority of content minimises the potential risks. Request for exclusion from applicability of this section of the Code was submitted to the Commission as the otherwise was seen to disproportionately affect its business, requiring it to make large-scale and cumbersome technical changes. ([UDEMY](#))
- Mastodaoine CLG explained that the applicability of the existing proposal's age verification elements was impossible for a small web-style organisation to meet, given the technical, legal and organisational consequences of collecting, securing and analysing secure copies of passports, of creating and maintaining a secure upload facility for biometric-quality selfies. ([Mastodaoine CLG](#))

Moreover, the industry advocated against more invasive age verification technologies (such as identity document verification or facial scanning) which could risk user privacy and unnecessarily burden smaller platforms (with low incidence of video), or platforms that do not generally appeal to underage users. Implementing these requirements would be extremely burdensome and costly for smaller, non-video focused platforms like Tumblr, particularly in light of the de minimis revenue that it states that it indirectly derives from video content. ([Tumblr](#)) In addition, such measures would require them to collect more personal data about users than is needed for the operation of the service, which would be disproportionately privacy invasive given the nature of certain platforms' services. ([LinkedIn](#)) Also, the Code should acknowledge that not all services are able to effectively estimate age based on use of the service, as some services do not encourage the sharing of personal data. ([Pinterest](#))

It was suggested that platforms operating on a fediverse⁴² model would have particular implementation challenges. In such cases, content may be published into the timeline of an 'instance' such as Mastodon.ie which originates from an entirely different 'instance' or platform. Existing moderation protocols on Mastodon.ie block certain servers/instances that have been reported as publishing content which would breach community guidelines. However, it was noted that this is not an infallible control as the nature of federated content and open-source platforms is that new instances

⁴² A federated model, i.e. a network of independently operated servers or instances, where each instance serves as a community hub, hosting user accounts and content within its defined sphere.

and servers can be created by content creators which would bypass any blocks until such time as moderators are notified and can take appropriate action to block new instances. ([Mastodaine CLG](#))

The industry recommended a minimum of 18-months implementation period for VSPS providers, due to necessary build-up, testing and training of systems. ([MPIL](#))

Existing Age Verification Measures

The importance was noted of the draft Code retaining the flexibility envisioned by the “appropriate measures” outlined in the AVMSD, as different VSPS providers may have different processes in place. ([Google](#)).

Various examples were provided of similar measures to those envisaged by the draft Code, such as:

- YouTube uses machine learning to identify underage users, and when detected, they take steps to ensure that they are in an age-appropriate experience. YouTube requires users under the relevant digital age of consent to access YouTube through a parent-enabled supervised experience, which does not currently allow users to upload content. In addition, they use classifiers to find signals on YouTube channels that indicate that the account operating the channel may be owned by users under 13. These classifiers train on the audio and visual patterns and characteristics common across confirmed underage accounts (e.g. high-pitched voices) and use those signals to identify other channels on YouTube that feature similar characteristics. YouTube reviews these channels and steps are taken to ensure that users are in an age-appropriate experience when a user is identified as likely to be underage. ([Google](#))
- A combination of different measures, such as neutral age registration, automated tools to prevent registration, reporting, alerts and verification (where appropriate) and age-appropriate experiences, were highlighted as best practices to detect and remove under-age users and ensure that minors who use MPIL’s services have age-appropriate experiences on MPIL’s services, whilst preserving user’s privacy. Such measures include for instance age modelling, a combination of predictive technology and human review – to estimate the age of users. Predictive technology is trained and evaluated using multiple signals, such as people wishing the user happy birthday and the age written in those messages. ([MPIL](#))
- TikTok has designed a range of strategies and tools to keep the platform a place for people who are 13 and older. This includes industry-standard age-gate that requires people to fill in their complete birth date when signing up for TikTok, as well a number of additional approaches to identify and remove suspected underage account holders by training their safety moderation team to be alert to signs that an account may be used by a child under the age of 13 or using information provided by their users such as keywords and in-app reports.⁴³ ([TikTok](#)).

The example of Samaritans’ Online Excellence Programme in the UK was highlighted as an example of how platform design, systems and processes can be shaped to enhance the safety of their users, including using age and sensitivity warnings, prioritising and promoting positive and helpful content, and effective moderation processes. ([Samaritans Ireland](#))

Technical solutions were offered including both facial age estimation and age estimation based on a user’s email address, both of which were tested to demonstrate a better than 99% probability that the user meets a minimum age requirement. The VerifyMy’s email address solution is not biased by e.g. gender or skin tone as it does not require any biometric data but rather relies on a range of data points to determine the user’s minimum age using their email address. ([VerifyMy](#))

⁴³ <https://support.tiktok.com/en/safety-hc/report-a-problem/report-underage-accounts-on-tiktok>

Other regulatory texts and guidance

It was recommended that the design and implementation of the Code's measures should be carried out in compliance with existing international laws and regulations and should also take account of existing standards and guidelines in this area in order to ensure that these measures do not contravene children's rights as well as privacy and data protection rights ([Children's Rights Alliance](#)). In particular, the Code should consider the following:

- Proposals from the OSCE for strengthened provisions on combating tech-facilitated trafficking in persons, and on reducing the demand that fosters trafficking for sexual exploitation including the mandating online platforms to implement age and consent verification mechanisms for individuals depicted in sexually explicit content. ([IHREC](#))
- Council of Europe Guidelines⁴⁴ to respect, protect and fulfil the rights of the child in the digital environment which states that age verification and assurance systems should use methods that are in line with the principle of data minimisation. ([Children's Rights Alliance](#))
- The UN Convention on the Rights of the Child⁴⁵ to freedom of expression, and more specifically consideration should be given to age verification measures that require the input and/or consent of a parent, carer or guardian, taking into account the freedom of expression, thought, conscience and religion, association and access to appropriate information, when the child has reached the age of numerical majority (16) ([Belong To](#)) The referenced Council of Europe Recommendation notes that digital practices, such as automated data processing, profiling, behavioural targeting, mandatory identity verification, information filtering and mass surveillance are becoming routine. ([Children's Rights Alliance](#))
- The Law Reform Commission and its report on the Age of Majority, family law and medical treatment, and other issues might assist the Commission in their work related to age (as age has a variety of different treatments under the Irish law). ([Youth Work Ireland](#))
- The technical standards on age verification that are being developed by the Institute of Electrical and Electronics Engineers (IEEE) and International Standardisation Organisation and guidance is being developed at EU level, which should set out a framework for the design, specification, evaluation and deployment of age verification systems. The protection of privacy must be considered a necessary condition for any age verification technique to be considered "effective". They must be used in accordance with data minimisation and purpose limitation standards and, once established, the data must be stored or disposed of in a transparent and secure manner. ([5Rights Foundation](#))
- The UK Online Safety Act (2023) provides definitions of age verification as “any measure designed to verify the exact age of users of a regulated service” and age estimation as “any measure designed to estimate the age or age range of users of a regulated service”. ([CybersafeKids](#))
- Guidance from the Information Commissioner’s Office ([the ICO](#)) and their Opinion on age assurance for the Children’s Code⁴⁶. ([TikTok](#))
- The Irish Data Protection Commission (the IDPC) Fundamentals for a Child-Oriented Approach to Data Processing (the Fundamentals)⁴⁷ which points out that there was no “one-size-fits-all” solution, that measures should be proportionate and risk-based, while appropriate age verification mechanisms vary depending on factors such as the type of service, the sensitivity of the data processed. ([TikTok](#))

⁴⁴ Council of Europe, Guidelines to respect, protect and fulfil the rights of the child in the digital environment (2018) Recommendation CM/Rec(2018)7 of the Committee of Ministers

⁴⁵UN Committee on the Rights of the Child, General Comment no 25 (2021) on children’s rights in relation to the digital environment, CRC/C/GC/25, para 68

⁴⁶ <https://ico.org.uk/about-the-ico/what-we-do/information-commissioners-opinions/age-assurance-for-the-children-s-code/>

⁴⁷ <https://www.dataprotection.ie/en/dpc-guidance/fundamentals-child-oriented-approach-data-processing>

- The upcoming EU Code of conduct on age-appropriate design.⁴⁸ (MPIL)
- The proposal for a European Digital Identity framework (eID)⁴⁹. (MPIL)
- The European Commission's proposal to issue a standardisation request for a European standard on online age assurance / age verification in the context of the eID proposal. (MPIL)

It was also noted that the DSA is a harmonised framework for assessing and responding (i.e. mitigating measures) to risks, age assurance being one potential measure in that response.

The DSA already sets out related risk management requirements and mitigating measures (TikTok). The Commission was urged to concentrate its efforts on harmonising its approaches with all these regulations and initiatives, assessing it premature for the Commission to seek to regulate age verification measures in any prescriptive way. (MPIL)

Specific recommendations on age verification measures

It was recommended that binding safeguards were incorporated into the Code, and in the event that current technologies do not meet these conditions, VSPS providers should not be obliged to implement age verification or estimation measures (EDRI). Examples of safeguard measures include:

- Permanently preventing any linking of the internet activity or history of a person to their identity, ensuring that a person cannot be traced by their use of the system.
- Not providing any information to the provider other than a yes/no about their age threshold.
- Consider using tokens instead of storing personal data, and delete personal data processed for the purpose of generating the token immediately afterwards.
- Not allowing any data collected or processed to be used for any other purpose, commercial or otherwise.
- Not allowing the processing of biometric data.
- Being robust and secure from a cyber-security perspective.
- Being consent-based, and not overly burdensome for those who do not want or do not have the means to verify their identity in an overly prescriptive way.
- Ensuring genuine alternatives for those that do not have formal identity documents.
- Being mindful of a potential chilling effect, in particular ensuring that access to educational and health (including reproductive health) material is not subject to age verification, which could have a chilling effect on whether or not children feel comfortable accessing this information.
- The CEN-CENELEC Workshop Agreement 18016 on 'Age-appropriate digital services framework'⁵⁰ sets out minimum standards that any age assurance system should meet when the appropriate tools/approach to establish the age/capacity of users, based on the nature of the service is determined, such as:
 - Protect the privacy of users in accordance with applicable laws, including data protection laws and obligations and human rights laws, in particular only process the data strictly necessary for the given purpose of age assurance.
 - Be proportionate to the risks arising from the product or service and to the purpose of the age assurance system.
 - Offer functionality appropriate to the capacity and age of a child who might use the service.

⁴⁸ <https://digital-strategy.ec.europa.eu/en/policies/group-age-appropriate-design>

⁴⁹ https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/europe-fit-digital-age/european-digital-identity_en

⁵⁰ CEN-CENELEC CWA 18016 'Age appropriate digital services framework': https://www.cencenelec.eu/media/CENCENELEC/CWAs/ICT/cwa18016_2023.pdf

- Be secure and prevent unauthorised disclosure or security breaches, and not use data processed for the purposes of the age assurance system for any other purpose.
- Provide appropriate mechanisms and remedies for users to challenge or change decisions if their age is wrongly identified.
- Be accessible and inclusive to users, particularly to users with protected characteristics.
- Not unduly restrict access of children to services to which they should reasonably have access, e.g. news, health and education services.
- Provide sufficient and meaningful information for a user to understand its operation, in a format and language that they can be reasonably expected to understand, including if they are a child.
- Be effective in assuring the minimum age or age range of a user as legally required.
- Not rely solely on information provided by the user when age verification is legally required or the context raises risks for children. ([5Rights Foundation](#))

It was also recommended that the Commission considers 11 common standards developed by the 5Rights Foundation which sets out standards that should inform the development of any age assurance mechanism⁵¹, including:

- Age assurance must be privacy preserving
- Age assurance should be proportionate to risk and purpose
- Age assurance should be easy for children to use
- Age assurance must enhance children’s experiences, not merely restrict them
- Age assurance providers must offer a high level of security
- Age assurance providers must offer routes to challenge and redress
- Age assurance must be accessible and inclusive
- Age assurance must be transparent and accountable
- Age assurance should anticipate that children don’t always tell the truth
- Age assurance must adhere to agreed standards

In addition, the standards express the recognition that there are substantial technological solutions to identifying and verifying age which can be explored. ([Children Rights Alliance](#))

4D.4 General concerns on age verification measures

Issues with age verification technology

It was stressed that, according to several reports from different sources such as Australia’s eSafety regulator⁵², France’s data protection authority⁵³, OFCOM⁵⁴ and the United States’ Congressional Research Service,⁵⁵ age verification technologies are considered as unreliable, circumventable, and legally fraught because of their disproportionate effects and present real risks to privacy and security. ([Tumblr](#), [Civil Society Groups](#))

Related research was cited which showed that all the current methods of age verification and age estimation that the researchers were able to find did not comply with the strict standards of protection of personal data and privacy rights. In addition, it was found that these systems can also pose

⁵¹ https://5rightsfoundation.com/uploads/But_How_Do_They_Know_It_is_a_Child.pdf

⁵² <https://www.esafety.gov.au/about-us/consultation-cooperation/age-verification>

⁵³ <https://www.cnil.fr/en/online-age-verification-balancing-privacy-and-protection-minors>

⁵⁴ Ofcom’s 2022 study of online user ages demonstrates the difficulty of achieving certainty of a person’s age online.

https://www.ofcom.org.uk/data/assets/pdf_file/0015/245004/children-user-ages-chart-pack.pdf

⁵⁵ <https://crsreports.congress.gov/product/pdf/IN/IN12055>

potentially serious limitations on the rights to freedom of expression, freedom of association, access to information, non-discrimination and dignity, as well as the rights of the child.⁵⁶ (EDRI) Mandatory, generalised age verification or estimation was not recommended, and instead a case-by-case assessment to determine whether age verification/estimation tools are really necessary and proportionate for a given platform or service should be employed. (EDRI)

However, utmost caution was urged in accepting age verification measures proposed by providers. (Civil Society Groups)

Concerns around data protection and privacy

Concerns were expressed that the Commission has not taken account of the potential data protection issues which specifically arise in the context of age verification. (TikTok, EDRI, Mastodaoine CLG, Tumblr, FuJo) Examples were provided of data breaches which exposed drivers' licences and other sensitive information in Ireland⁵⁷ and Louisiana⁵⁸ were mentioned. (Tumblr) Concerns were also raised about the provision that providers could use age estimation or age verification by other measures, suggesting that age could be verified through examination of the way an account makes use of the service or biometric analytics. As a result, platforms are likely to collect a large amount of data from minors, whereas minors may not always be aware of the risks of sharing their data with commercial parties. (CvdM)

The necessity and proportionality of these measures were questioned. It was noted that the Data Protection Commission ("DPC") in a recent decision⁵⁹ clarified that the narrow pursuit of a single public interest basis by a public body when determining the necessity and proportionality of processing personal data is not compatible with the Data Protection Law, and public bodies should consider the broader scope of rights and interests that may be affected and other public interests that might be affected by the proposed processing. (Mastodaoine CLG)

Further concerns were raised in relation to the compatibility of these measures with compliances certain principles and articles of the GDPR, (Mastodaoine CLG) in particular:

- Data Minimisation principle (Article 5), as it requires the processing of personal data only to the extent that it is strictly necessary for the purposes for which the data has been obtained, which may have implications for the mode of any age verification that might be applied by a Fediverse platform provider.
- Obligations on Data Controllers (Article 32), as it requires providers to ensure that they have appropriate organisational and technical measures in place to ensure that personal data processed by them is protected from unauthorised or accidental disclosure, loss, or destruction. Smaller platforms may not have the adequate financial resources for such measures, or even to entrust this task to third party identity verification provider.
- Obligations on Data Controllers with respect to Data Processors (Article 28), as engaging with a third party to provide age verification services would introduce cost and overhead of managing the obligations of the supplier under this Article. This would include the need to carry out appropriate audits of the processing of personal data to verify the operation of technical and organisational controls on the part of the Data Processor. However, in the event

⁵⁶ <https://edri.org/our-work/policy-paper-age-verification-cant-childproof-the-internet/>

⁵⁷ <https://www.independent.ie/irish-news/thousands-of-drivers-have-sensitive-data-exposed-to-hackers-in-major-it-breach/a1379036136.html>

⁵⁸ <https://www.theguardian.com/us-news/2023/jun/16/louisiana-drivers-license-hack-cyber-attack>

⁵⁹ See https://www.dataprotection.ie/sites/default/files/uploads/2023-07/20230710_Full%20decision%20IN-21-3-2%20Dept%20of%20Health.pdf

of a data security breach affecting a data processor, it would not absolve the operator of a Fediverse platform instance of their responsibilities under GDPR.

- Processing of biometric data for the purposes of identifying an individual (Article 9), as it allows such processing for the purposes of a “substantial public interest”, while the recent DPC’s decision requires a clear balancing of competing public interests.

Issues of inconsistency or redundancy were also highlighted between the proposed measures and Article 30 of the Data Protection Act 2018, as some platforms may operate as not-for-profit organisations and would therefore not process children’s personal data for “commercial” purposes. It was also noted that the term “commercial purposes” is not defined in the AVMS Directive or in the draft Code and the need for its clear definition of “commercial purposes” stressed, harmonised and consistent with the purposes of the Data Protection Act 2018. ([Mastodaoine CLG](#))

Concerns were also expressed about whether robust age verification follows the principal of data minimisation when they are used in situation where the content provided is recognised as intrinsically harmful to children. ([Children’s Rights Alliance](#))

It was argued that the draft Code does not prescribe adequate measures to protect children’s privacy nor place sufficient emphasis on the responsibility of platforms to use their technological skills and knowledge to devise suitable methods to protect children from harm or to ensure that some existing features which create risk of harm are disabled. ([Children’s Rights Alliance](#)) It was suggested that the Code stipulates that any personal data generated by age verification should be used for no other purpose than that of age verification and kept for the minimum period necessary to verify age. ([Safe Ireland](#)) In addition, effective and robust age verification should be conducted in line with data protection requirements, in particular, where it relates to Article 8 of the GPDR with regards to parental consent. ([Trust Alliance Group](#))

Concerns related to document-based and biometric age verification

Particular concern was expressed about the potential use of document-based age verification at sign up, or selfie or live likeness-based age verification on a per video or per session viewing basis, as part of robust age verification measures. ([FuJo](#), [ISPCC / Webwise](#), [TikTok](#), [Belong To](#), [UCD Centre for Digital Policy](#), [Trust Alliance Group](#), [EDRI](#), [Tumblr](#))

Caution was urged against encouraging such verifications techniques, as it is feared these measures may prove inherently limited and therefore not a proportionate response when contrasted with the ability to access unrestricted services devoid of identification requirements. It was noted that alterations to social media policies or standards can trigger a cascade effect, prompting user backlash and subsequent migration to less regulated platforms. ([FuJo](#))

Using document-based age verification or selfies also raised certain online privacy and safety concerns because user IDs may be linked to the type of content they choose to see. ([FuJo](#)) In addition, concern was noted about where such documents would be stored, accessed, and the possibility of data leaks. ([ISPCC / Webwise](#)) Verification on hard identifiers could also exclude people who lack the necessary documents or information ([TikTok](#)), as well as trans, non-binary and gender non-conforming young people, whose usernames and gender may not reflect that which is stated on government-issued documents such as a passport or driver’s licence. ([Belong To](#))

It was acknowledged that certain age verification and assurance techniques can have serious consequences for privacy and freedom of expression of both children and adults⁶⁰. Therefore, while the Commission's decision not to prescribe or mandate specific age-verification measures was supported, as concerns were also raised about possible implications of setting a precedent in terms of having a regulatory body that recommends measures such as document-based age-verification⁶¹. The question was raised of whether a more robust public debate was necessary to determine how these measures should be implemented, looking at whether specific technologies should be considered to be an industry standard in terms of age assurance and whether document-based verification needs to be re-visited as a possible or recommended approach. ([UCD Centre for Digital Policy](#))

With regards to age estimation techniques through behavioural or biometric analysis, it was mentioned that age estimation can take a broad-brush approach where precision is needed, especially where companies are setting targets for the proportion of children of different ages who are incorrectly assessed to be adults. If these measures were to be implemented in line with the Age-Appropriate Design Code, and its age banding of children, then the age estimation techniques are inadequate to accurately place children within such brackets and enable age-appropriate service delivery. The broadness of this approach is also inadequate in accounting for the variations in children's rates of development, which can be significant and can arise for any number of reasons. Thirdly, targeting children with the aim of conducting age estimation based on service usage patterns and the nature of content created by the user (and/or biometric information) stands out as a particularly invasive proposition and gives rise to several questions around its alignment with GDPR. ([Trust Alliance Group](#))

It was also believed that estimation on the basis of biometric data has been plagued with bias and discrimination, and despite industry commitments to counter this, it remains that certain people are still discriminated against ([EDRI](#)), with studies which show e.g., issues when identifying people of colour with facial recognition technology⁶². ([Tumblr](#))

Other concerns related to age verification

There were concerns that the genuine challenge of children's safety online being dealt with surveillance measures would encourage a slippery slope towards broader surveillance of people's internet activity, censorship, and a push to eradicate online anonymity. ([EDRI](#))

It was also emphasised that children can be very inventive when it comes to circumventing technical protection measures ([NICAM](#)). In addition, VPN technologies could be used to circumvent the restrictions, allowing an underage user to access the non-European version of a website which likely would not incorporate the same standards for age verification. ([FuJo](#))

It was argued that while effective age verification and protection of children is vitally important, so too is ensuring a safer, less harmful online environment for all. The importance of avoiding a cliff edge situation was stressed, where young people who become legal adults, and therefore not subject to protections arising from age verification, are no longer focused on and covered by the Code's focus once they turn 18. Being able to confidently access online services without a high risk of encountering harm must be an achievable goal for all people, especially young adults who are moving out of the protections offered by age verification or other measures targeted exclusively or especially at those under 18. ([SpunOut](#))

⁶⁰ EDRI. (2023, October 4). Online Age Verification and Children's Rights: Position Paper. Retrieved from: <https://edri.org/wp-content/uploads/2023/10/Online-age-verification-and-childrens-rights-EDRI-position-paper.pdf>; see also with respect to setting a precedent for authoritarian regimes which could abuse such measures: DeNardis, L. (2014). The global war for internet governance. Yale University Press.

⁶¹ [https://www.europarl.europa.eu/RegData/etudes/ATAG/2023/739350/EPRS_ATA\(2023\)739350_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/ATAG/2023/739350/EPRS_ATA(2023)739350_EN.pdf)

⁶² <https://www.nytimes.com/2020/12/29/technology/facial-recognition-misidentify-jail.html>

It was believed that there are other concepts present in safeguarding systems in Ireland that could be useful such as protection for vulnerable adults, particularly in relation to young adults. ([Youth Work Ireland](#)) In particular, some stakeholders advocated that VSPS providers should have a duty of care to all internet users, regardless of their age and believe all VSPS providers, regardless of reach and functionality, should be required to remove suicide and self-harm. The results of a UK study were mentioned, which looked at deaths by suicide between 2011-2015, and found 151 patients who died by suicide were known to have visited websites that encouraged suicide or shared information about methods of harm. 124 were aged over 25.⁶³ ([Samaritans Ireland](#))

4D.5 Section specific comments

This section brings together the views and recommendations that have been made specifically in reference to the provisions of the draft Code.

Self-declaration (Section 11.16 and 11.17)

There was agreement with the statement that self-declaration of age is not an effective age verification technique ([DCEYI](#), [Age Verification Providers Association](#), [Alders Unit Children's Health Ireland](#), [Specialist Child Sexual Abuse Services](#), [ISPC / Webwise](#)) as it can be easily circumvented ([CvdM](#)). The importance of making abundantly clear that self-declaration of age by users is not sufficient for the purposes of age verification was pointed out. ([UEA Centre for Competition Policy](#)) It was added that self-declaration of age requirements can encourage minors to lie about their age, and that it is therefore essential to prioritise effective methods of age verification, other than self-declaration. ([SpunOut](#))

On the other hand, it was argued that the use of self-declaration alone can be an effective and proportionate age verification measure in certain circumstances where platforms take an approach that balances the protection of minors with the principle of data minimisation as well as the relative risk of harm to the minor on the platform. It was further argued that this approach is consistent with the DPC Fundamentals⁶⁴, favouring a risk-based approach which require balancing the type of service being offered, the risk of harm to minors, and data minimisation obligations. Consequently, it was recommended that the Code should allow for this possibility for platforms which do not host pornographic or violent content. ([Pinterest](#)) Results of internal research were shared which showed that, supplemented with other measures, self-declaration currently offers the most appropriate balance of minimising intrusiveness and data collection, whilst ensuring some form of age gating. It was suggested that by preventing providers from being able to rely on such methods in order to meet their obligations under the Code, providers will be forced to implement age verification tools which are known to be harmful. Hence, it was recommended that the Code allow providers to rely on age self-declaration, so long as they ensure privacy and security by default. ([EDRI](#))

It was also pointed out that corroboration of self-declaration can be provided by age estimation to achieve verification, meaning it would be appropriate where a very low level of assurance is required of a user's age, such as where the risks to children are distinctly low. ([Trust Alliance Group](#))

It was pointed out that neither the IDPC or the ICO went so far as to rule out self-declaration or any other measure for being ineffective and that the ICO observed that self-declaration can be a less intrusive from a data protection as it does not require a service to collect and store large amounts of personal data. ([TikTok](#))

⁶³ The National Confidential Inquiry into Suicide and Homicide by People with Mental Illness (NCISH) (2017)

⁶⁴ Data Protection Commission's Fundamentals for a Child Oriented Approach to Data Processing, <https://www.dataprotection.ie/en/dpc-guidance/fundamentals-child-oriented-approach-data-processing>

Detecting under-age users (Section 11.16)

Given that the draft Code require VSPS providers a function of a minimum age for opening an account and measures to detect underage users (which should apply to all services according to the rules established in Article 8 of GDPR), it was noted that the Code amounts to an obligation to use age verification measures for practically all VSPS providers based in Ireland, which, considering the tech giants registered in Ireland, will have a wide impact across the European Union. (EDRI)

It was reiterated that if platforms deny presence of underage users on their platforms, underage users are rendered invisible for policy and innovation purposes. (UCD Centre for Digital Policy) Underage usage of VSPS providers was also underlined as a well-known reality, with some research showing that 84% of children aged 8-12 have at least one social media and/or instant messaging account in their name.⁶⁵ (CybersafeKids)

There was disagreement with the use of “may” in relation to the application of such measures at account opening or subsequently and it was recommended these measures must be applied at both situations. In addition, it was argued that what constitutes effective measures needed to be more clearly defined and it was suggested that a mandatory training module should be applied to all users at the opening of an account. (RCNI RCNI)

It was noted that the Code separates adults from children at the age of 18. However, Ireland has established in law a digital age of consent at 16 and that a variety of platforms have established their own age of access at 13. It was recommended that the Code and related material needs to be clear what age is being referred to. It was proposed that this should be based on the contents of Irish law rather than the self-regulatory systems of the platforms which are clearly ineffective. (Youth Work Ireland) It was recommended that setting a minimum age for account opening should be a mandatory requirement, and to ensure that any users are at least that age. Given that there is a large developmental difference between an 8-year-old child and a 16-year-old child, it was recommended that the Code should prescribe age thresholds rather than leave definitions open to self-regulation in terms of determining age thresholds. (CybersafeKids)

Concerns were expressed by Industry representatives that the requirement for VSPS providers to detect underage users and close their accounts exceeds requirements of AVMS Directive (Technology Ireland). It was argued that the AVMS Directive is aimed at protecting minors from accessing unsuitable content, not preventing minors from accessing services. (Google, Technology Ireland). It should be open to VSPS providers to engage their own technical and proportionate measures to ensure minors are accessing age-appropriate content (Technology Ireland). Concerned was also noted that these measures would be contrary to Article 28 of the DSA in how it would require them to process a minor’s personal data. Further, this obligation seemed to interfere with the rights given to VSPS providers under Article 14 of the DSA to determine their own terms and conditions. (Google)

Content rating (Section 11.17)

It was recommended that content rated higher than all ages, or not rated at all, should not be accessible without an account, parental controls and potentially age verification. For this to work, all content would have to be rated and parental controls and age verification measures would need to be in place. (NICAM) It was also proposed that a content warning on its own is not sufficient and a further age verification process should be required to access such data. (RCNI)

Obligation to create a content rating for postings is welcomed and this obligation should be clearly heightened in relation to child centered content, or content easily accessible by children. (Tusla)

⁶⁵ <https://www.cybersafekids.ie/children-are-experiencing-real-harm-online-wheres-the-urgency-to-address-this/>

A potentially significant weakness in the proposed draft Code was related to whether the regime was to rely on age assurance measures implemented at the point that designated content is accessed, and if the draft Code's content rating systems regime would rely on users of VSPS providers to rate the content themselves. This could potentially mean that underage users could be able to rate content, potentially unlocking content for themselves and their peers that they should not be able to access. In addition, content rating can be very highly subjective, as perceptions about what is age-appropriate can be very different from one adult to another and can therefore lead to very arbitrary decisions. It was recommended that the Code either evolve to remove the ability to implement age assurance techniques at the point of accessing individual pieces of content or insist that content rating not be left to users. (Yoti)

Description and efficiency of effective age verification measures (Section 11.18 and 11.20)

The transparency requirements were welcomed (Alders Unit Children's Health Ireland, Specialist Child Sexual Abuse Services), as it was believed that in light of widespread underage use, greater clarity is needed in terms of effectiveness of companies' age assurance procedures; and also in terms of compliance with Article 8 of the GDPR. (UCD Centre for Digital Policy) In addition, it was noted that users must also be able to know the kind of mechanism that is used by VSPS providers and their rationale, and that such mechanisms should be user-friendly, age appropriate and easy to access. (5Rights Foundation)

The Commission was reminded that while the protection children's interests is a legitimate and important goal, it was important to remember that it did not take priority over all other interests, such as risks to the rights of adults, and to a free and democratic society, if adults are prevented from being anonymous online. It was argued that when it comes to the setting of targets, the Code does not seem to foresee a corollary for adults who have been misidentified as children. In addition, such framing of setting targets seemed to suggest acceptance of inaccuracy and accepting wrong identification as a feature. (EDRI)

Concerns were expressed about VSPS providers being required to evaluate themselves. It was recommended that there should also be external and independent evaluation (Yoti) and that the Code should include a requirement on VSPS providers to provide to the Commission all necessary data to evaluate their age verification systems. (Women's Aid) In addition, defining in more detail the effectiveness expected of the measures to be taken by VSPS providers was recommended. (CybersafeKids)

Further, such requirements were seen as insufficient in the absence of robust indicators of what is acceptable in terms of standards and baselines. It was argued that such standards should be set by the Commission. (Children's Rights Alliance) Feedback from Trust Alliance Group to the Call for Inputs was recalled which highlighted "For many platforms, especially those where engagement drives profits through advertising, there has been very little commercial incentive to block users' access to the service based on age or to punish users if they evade what little blocks are in place"⁶⁶. (Yoti)

It was pointed out that VSPS providers can target advertising to under 12s and a study was cited which showed that this market representing USD \$2 billion in revenue in 2022 in the US alone⁶⁷. Therefore,

⁶⁶ Summary of submissions to call for inputs - "Developing Ireland's first binding online safety code for video-sharing platform services", CommSol, October 2023, p.65, https://www.cnam.ie/wp-content/uploads/2023/12/CommSol_CallForInputs_Summary_vFinal.pdf

⁶⁷ Austin, Bryn et al, Social media platforms generate billions of dollars in revenue from U.S. youth: Findings from a simulated revenue model' (2023), Source: <https://www.hsph.harvard.edu/news/press-releases/social-media-platforms-generate-billions-in-annual-ad-revenue-from-u-s-youth/>

it was recommended that the Code should require VSPS providers to prevent underage users from accessing the VSPS and suggested a transparency reporting requirement linking under-age users and revenue generated from under-age users. Further, user complaints highlighting a child's exposure to age-inappropriate content should be included in these reportable figures. (CyberSafeKids)

The setting of targets was recommended with reference to industry standards as a minimum threshold to ensure there is a minimum but feasible level set. (Bratislava CMS) It was also suggested that while setting such targets was an important first step, the Commission should go further and define the minimum rate of false positives. It was argued that without this, there was a risk of a race to the bottom. (Age Verification Providers Association) It was also suggested that the target should always be that no children should be accessing the service pretending to be adults and that specific reporting should be required on how many children are identified and what measures are being taken to ensure the methods they have used are addressed. (RCNI) In addition to this requirement, it was also suggested that VSPS providers should also provide an estimate of the total number of underage accounts identified on their service, so that the number of accounts closed in a given period is shown as a ratio to the total estimated figure. (CybersafeKids)

While Industry representatives welcomed the overall goal of ensuring transparency and accountability, several concerns were also expressed regarding the transparency requirements (MPIL). It was noted that they already make a lot of this type of information available to their users.⁶⁸ The importance was noted of VSPS providers having a certain degree of flexibility in implementing these measures to ensure transparency while not giving too many details, so that the protection measures remain effective and prevent users from developing circumvention measures. (MPIL, TikTok)

Further clarity was requested on the meaning and rationale behind this requirement (MPIL, TikTok, RCNI). Why these targets should be published was also questioned, as none of the objectives and goals of the AVMSD or the draft Code require such a measure (MPIL) There was a call for clarification on what must be public, and a request for flexibility be given to VSPS providers in this area. (TikTok) Further clarity was requested on how these targets could be set in practice to satisfy this requirement. It was argued that such requirements risk the creation of unintended incentives, where these targets could be used to set a maximum threshold for misidentified minor user accounts which could discourage VSPS providers to utilise measures to uncover such accounts. (TikTok)

Deep concerns were expressed by Industry about the processing of personal data that would be required for the assessment of the effectiveness of the age verification measures with any reasonable accuracy. It was noted that this measure was not required by the AVMSD and compliance of this requirement with the GDPR was questioned (MPIL). The alignment and the consistency of these measures with the general approach taken by the DSA⁶⁹ was also raised, given that the DSA has introduced an important accountability framework for intermediary services. In particular VLOPs are required to conduct annual systemic risk assessments and to adopt appropriate and effective mitigation measures in light of the findings of the risk assessment. This includes the following risks: any actual or foreseeable negative effect in relation to minors and serious negative consequences to the person's physical and mental well-being (Article 34 and 35 of the DSA)). (MPIL) In addition, it was argued that the level of detail and actions envisaged, in particular, for the evaluation requirements, was disproportionate to achieving the goal of transparency on the effectiveness of age verification techniques and potentially inappropriate for user transparency. (TikTok)

⁶⁸ See, for instance, <https://about.fb.com/news/2022/06/new-ways-to-verify-age-on-instagram/> and <https://about.fb.com/news/2021/07/age-verification/>

⁶⁹ In particular recital 71 and 77 and Article 28(3) of the DSA.

With regard to the estimation of the number of users who are children, the Commission was urged to reconsider this measure or at least explicitly acknowledge in the Code that accurately estimating the number of minors on a platform is inherently uncertain, especially as surveys are very unreliable and other means of estimation might involve excessive processing of the personal data of minors. The measure was perceived as unclear, and further guidance was sought. (MPIL) It was also argued that these measures pose inaccuracy risks and were onerous and likely to raise data protection issues. (TikTok) However, there was also a suggestion that surveys might be the best tool to assess the levels of circumvention of age assurance techniques and it was believed this measure should also be required under Section 11.20. (Yoti)

It was noted that “age estimation” was omitted in Section 11.20 compared to Section 11.18. This was perceived as implying that age estimation is not sufficient to provide robust age verification for pornographic sites. It was argued that while it may not be sufficient for adults just over the age of 18, for those above a “buffer age” such as 25, facial age estimation can deliver >99.5% certainty that users are at least 18. It was noted that such a method is often preferred by users as they do not have to disclose other personal data. Therefore, it was suggested the Commission considers allowing such method for platforms whose nature require robust age verification measures. (Age Verification Providers Association)

Robust age verification measures (Section 11.19)

The idea of a robust age verification system was welcomed (CvdM), and it was believed that platforms may themselves have methods and processes which can help strengthen this beyond the current unsatisfactory arrangements. (Youth Work Ireland)

It was believed that a clear definition of what constitutes acceptable “robust age verification” must be established by, and contained in, the Code - not in the Guidance materials (RCNI). Further, it was recommended that Section 11.19 be much more specific in its wording since children are accessing pornography from sites that do not have a principal purpose of providing adult-content but also do allow sexual content. (CybersafeKids)

For the purposes of age verification, it was suggested that the Code should only state option ‘(ii) on each occasion such content is accessed’ as this would be a far more effective way than option (i) of ensuring children do not access the content. It was argued that if a user only has to verify their age at sign up, there is a significant risk that children could access that adult’s device without their knowledge. (Well-Aware Campaign) It was also argued that leaving the option between using such measures either for account sign-up or for each occasion the content is accessed, leaves a gap, especially if signing-up allows users to create or upload content as it could allow minors to upload content. It was noted that self-created child sexual abuse material (“CSAM”) is an increasingly significant problem, therefore the option of having anything less than robustness at the point of initial access should not be an option in the final Code. Additionally, it was recommended that, at a minimum, effective age verification measures should be required every time the service is accessed to prevent sharing of login details among individuals. (UEA Centre for Competition Policy) It was also argued that such measures should be required at both sign up and on each occasion that content is accessed. (RCNI)

It was also pointed out that neither age estimation nor content warnings are adequate protections for children exposed to the risk of encountering either pornography or content depicting gross and gratuitous violence, hence these measures should be replaced by the most stringent robust age verification measures possible. (Safe Ireland) It was recommended that access to platforms regulated under this section should require the viewer to provide document-based identification with a photograph, to the VSPS providers. It was suggested that this verification process should be a two-

stage process that takes place in real time – firstly would be the provision of the identification document and then secondly, a photograph to be matched against the identification document. It was argued that such an approach would be very difficult to circumvent by simply borrowing an identity document. The process should be undertaken by an independent state-run or private agency, which will process and retain the personal data generated by this process in an ultra-secure virtual vault for as long as needed and the user obtains a sort of unique identification code or password, so the process does not have to be repeated. ([Safe Ireland](#))

However, concern was expressed that the use of such perpetual or recurring age verification measures can incentivise not just excessive collection, but also storage, of sensitive personal data, the risk of which is not mentioned at all in the Code. ([EDRI](#))

Reporting obligation on effective and robust age verification measures (Section 11.21)

Concerns were raised by Industry in relation to the reporting obligation under Section 11.21 of the Code. It was believed that such obligations go beyond the requirements of the AVMSD ([MPIL](#)), which will not be borne by VSPS providers under the jurisdiction of other Member States whose services can lawfully be available in Ireland, and consequently will impact the internal market. ([Google](#)) Further, it was also noted that aspects of such requirements were related to harmonised DSA requirements and the reporting requirements of this Code must acknowledge the need for flexibility by allowing services to report in a manner that aligns with DSA. ([Google](#), [MPIL](#)) Fulfilment of these targets should be reported to the Commission at the individual national level to avoid inconsistency of performance by the platforms in smaller countries. ([Bratislava CMS Contribution](#))

Alternatively, it was also suggested that such reporting should be either produced by trusted independent third parties, or the Commission itself. ([Yoti](#))

With regard to frequency, Industry expressed concerns about the necessity and proportionality of quarterly reporting ([Technology Ireland](#)) and argued that this level of frequency will be extremely burdensome for platforms. ([Google](#), [MPIL](#), [Pinterest](#)). Preference was expressed to either annual or semi-annual frequency ([Pinterest](#)), or that it should be an annual reporting obligation in line with DSA reporting requirements ([Technology Ireland](#)), or that the frequency of report should be set at 6 months particularly if independent third-party auditing is to be employed. ([Yoti](#))

With regard to the content of the report, Industry sought clarification on what the required content of these reports would be, ([Technology Ireland](#)) and concerns were expressed that such work requires extensive manual labelling and there are currently no aligned set of metrics at member state or industry level which would demonstrate this, hence comparison would not be possible. ([MPIL](#))

4E Content rating (Q. 10)

The following responses refer to Section 11.22 and 11.23 of the draft Code which deals with the establishment and operation of easy-to-use Content Rating systems. These responses were mainly gathered from Question 10 of the consultation.

Consultation Question 10: What is your view on the requirements in the draft Code in relation to content rating?

Under Section 11.22 and 11.23, VSPS providers are required to establish and operate easy-to-use rating systems allowing users of video-sharing platforms to rate content on their services. The content rating system shall enable users to rate whether the content is appropriate for children and

shall enable users to suggest the age(s) of children for whom the content is appropriate, or inappropriate, as the case may be.

Video-sharing platform service providers, when adopting content rating systems shall ensure that the system adopted is objective and shall promote users' compliance with that system by appropriate means.

4E.1 General feedback and recommendations

The introduction of this content rating system was welcomed (DCEDIY, CvdM, NICAM) as it gives users another option to flag age-inappropriate content. (CybersafeKids, AgriKids) It was noted that user-run content rating systems in general can enable online communities to keep themselves and others safe (Tumblr) and content labelling can be a useful tool, which focuses on empowering users (or in the case of younger children, their parents) to make decisions for themselves. (EDRI) It was also suggested that age ratings combined with content advice formed the basis of almost all safeguards, as they provide children and parents with additional information on which to base their viewing decisions. (NICAM)

It was recommended that age estimation or verification measures should not be linked to age classification, as the advantage of the latter lies in the fact that it guides and empowers users, rather than restricting them. (EDRI)

It was pointed out that children have the right to get information from the Internet, radio, television, newspapers, books and other sources and adults should make sure the information they are getting is not harmful. To this end, governments should encourage the media to share information from many different sources, in languages that all children can understand.⁷⁰ (NICAM)

It was suggested that the requirement should not be limited to 18+ content, as there is a great variety of harmfulness depending on the age of the child. (CvdM) Caution was expressed in relation to the definition of the term "children" as it may prove problematic in the case of content labelling, particularly as there are differences between States as regards the right to vote, so it may be considered legitimate to allow citizens aged 16 or 17 to view violent or distressing but not illegal content in order to ensure that they are able to participate fully in these democratic process. As a general point, it was noted that it is often not appropriate to restrict older teenagers' access to content compared to younger children, and the Code should make a distinction of this kind. It was noted that there may be times where access to content is not just not harmful, but actually beneficial, for children. For example, this could include exposure to risk (within reason) in order to build resilience, or access to LGBTQI+ content for older adolescents exploring their sexuality or gender identity. It was noted that this is particularly important given that the Code will have ramifications for users across the Union, including in countries where LGBTQI+ people face persecution. (European Digital Rights Group)

Additional measures were suggested such as the establishment of a mechanism that activates triggers for potentially harmful content and a focus on safe browsing by utilising tools that limit time and diversify content also warrant consideration.⁷¹ (NSRF) It was also recommended that content ratings should be sampled by the VSPS frequently and compared to those which would be given to the same content by professionals with specialist skills in this area. In this regard, the Code should be more prescriptive in this area, for example by suggesting that any evaluation measures should be carried out at set intervals over a minimum range of users because of the risks of harm to vulnerable users, especially children, carried by poor ratings which are not overseen effectively. (Safe Ireland)

⁷⁰ <https://www.unicef.org/child-rights-convention/convention-text-childrens-version>

⁷¹ Brennan et al. 2022

It was pointed out that it would be inappropriate for VSPS to collect or process, for commercial purposes, the data outside of what is necessary for purposes of age verification and parental controls. (E. Kilgallon, K. Ryan, O. Delaney)

It was argued that content rated higher than 'All Ages' should not be accessible without an account, parental controls and potentially age verification and when certain content has not been rated, it should not be accessible by children. When profiles are not logged in, only content suitable for all ages should be accessible. For this approach, it is necessary that all content gets rated and parental controls and age verification are in place. (NICAM) VSPS providers should be obliged to provide simple, clear and comprehensive video instruction tutorials, aimed at parents, to help them understand how parental controls work. (Tusla)

Accessibility of such measures should also be considered and within the Code or in the Guidance, particularly because regulated audiovisual media services such as Vloggers will need to adhere to local accessibility provisions. (Bratislava CMS)

Concern was expressed that the draft Code does not contain provisions for the visibility of a rating to a user or for the possibility for all users to filter content with certain ratings. (CvdM)

It was also requested that the Code specify that content ratings should be "child friendly" for children and young people themselves to make informed decisions about what they can access. (DCEDIY)

Results of a parents' survey showed that 55% of parents stated that they were somewhat familiar with different systems used to rate video content. When asked about the type of system they felt was the most useful, 54% favoured a system of age rating similar to that used for cinema content as a way of ascertaining whether content was suitable for their child or not. In addition, 67% of parents felt that video sharing platforms did not provide enough information about their content to allow users to make informed decisions before watching them. (National Parents Council)

Concerns were expressed that the content rating system does not provide an adequate safeguard to uphold complaints, where unintended harm is facilitated by aggregated content that is viewed but does not qualify as 'harmful' as conceived in the draft Code. It was believed that this would have a dilutive impact for Traveller and other children in other parts of the Code causing a range of harm and offence, as the content is often designed to be derisive, stereotypical and prejudicial. (Irish Travellers Movement)

It was suggested by Industry that VSPS should only be required to age-restrict content at 18+, as offering age ratings with greater levels of granularity was not considered feasible at the scale required for user-generated content uploaded to VSPS. It was also not considered to be necessarily helpful to users watching content originating from multiple territories, especially considering the varying ages of digital consent adopted in different Member States. Hence, it was believed that any content rating system should not rely on a local content rating system and instead the Commission should consider using agreed upon industry-wide standards which would be strictly limited to user-generated video content. (MPIL)

It was argued that allowing all users to rate content would fundamentally misunderstand the way that social media reporting systems are used and misused. Allowing users to rate and re-rate other users' content would become a proxy battle for diverging opinions and subject to abuse, (MPIL) it would therefore be more appropriate, proportionate and effective to only allow those users who are the uploaders of content to rate that content. (Technology Ireland)

Additionally, some argued that establishing a content rating system that would apply to “indissociable content” is not feasible as user-generated videos may have hundreds or even thousands of comments and it simply would not be practicable for each comment to have a different rating and for VSPS providers to make or not make such comments visible to minors depending on their different ratings. It was suggested that the Code could instead require VSPS providers to have systems in place to remove comments that violate their terms or policies. Further, as the introduction of the proposed measure will require VSPS providers to build, test and train systems to make sure that the implemented measure is effective, practicable and scalable, it was recommended that the Code should provide VSPS providers with a minimum of 24 months to implement such a measure. (MPIL)

4E.2 Responsibility for content rating

Concerns were raised that this content rating system appeared to be shifting the responsibility of content moderation onto users whilst this responsibility should lay with the VSPs, as they should have responsibility for ensuring the content rating is accurate to prevent any harm to children before they view such content. Questions of practicality based on the requirement for speed and volume of content should not outweigh the need for protections from harmful material reaching children. (5Rights Foundation, RCNI)

Similarly, failure to establish a standard system for all platforms was perceived as very disappointing as there was a view that the Commission should define thresholds that are clear, easily understandable and uniform across the digital and media landscape. (Yoti) It was argued that without such standards, the current proposal means that users will have to try to understand a plethora of different content rating systems devised – even objectively – by each of the VSPS providers. It was pointed out that even in the broadcast world, the rating system does not depend on which supplier is providing the material. (Children's Rights Alliance)

The Council of Europe guidelines⁷² were mentioned and how they recommended that “states should co-operate with a view to promoting standardisation of content classification and advisory labels among countries and across stakeholder groups to define what is appropriate and what is inappropriate for children”. (Children's Rights Alliance)

The Commission was urged to bring the Industry representatives together to define and build an agreed age-appropriate industry standard. This would give the relevant stakeholders, i.e. parents, users and VSPS providers, a clear and consistent set of age-appropriate content guidance from which to develop more consistent age-appropriate experiences. (MPIL)

4E.3 Third party rating system and existing national age rating systems

It was recommended that the Code should direct the VSPS to use a European wide rating system developed by a third party. They believed this approach would ensure independent monitoring of the system, consistently prioritising the interests of minors. (CvdM) Some went further and strongly encouraged the Code to include an obligatory cooperation of the VSPS with national regulators and rating bodies on age rating requirements and to facilitate these national systems on their platforms. The task of creating a (preferably universal) rating system for VSPS can then be taken up by independent regulators/ bodies like NICAM with the sole aim of the protection of minors. (NICAM)

It was suggested that the Code should consider the regulation of Vloggers under the individual national legal frameworks where they have a duty to rate and declare the content ratings for content uploaded (Bratislava CMS). Further recommendations were made to facilitate (national) rating systems on

⁷² Council of Europe, Guidelines to respect, protect and fulfil the rights of the child in the digital environment (2018) Recommendation CM/Rec(2018)7 of the Committee of Ministers, 29, para 121.

platforms by providing uploaders with options to embed and show ratings in their videos. (CvdM) In particular, representatives of Dutch content creators requested that the Code includes an obligation for platforms to facilitate the Kijkwijzer rating system across the EU and across all platforms in the Code. Dutch content creators are currently required to comply with the Dutch Media Act and must therefore integrate icons in their videos to warn children against harmful content. They believed this would help creating a level playing field for all content creators in the EU and a safe place for children on these platforms (DDMA, Minidisco B.V., J. Bouhof, J. Lieuwma, NICAM)

In terms of existing national age rating systems, PEGI (Pan European Game Information) was referred as being a current best practice in this area. The PEGI age categories and content descriptions are specifically designed for non-linear media and have been updated following technological, academic, and societal developments. Some games covered by PEGI include console games, VR games, mobile and tablet games, and PC and cloud gaming. However, Apple and Steam do not apply the PEGI system to their platforms and products. (ISPCC / Webwise)

The table 4CS Classification - Australian Classification Scheme⁷³ was also mentioned as an example of a framework that could be considered, as it provides tools for identify risk and classification of harm. (Children's Rights Alliance) In particular, it recognises that online risks arise when a child:

- engages with and/or is exposed to potentially harmful content;
- experiences and/or is targeted by potentially harmful contact;
- witnesses, participates in and/or is a victim of potentially harmful conduct;
- is party to and/or exploited by a potentially harmful contract.

The classification scheme under the Australian Online Safety Act (2021)⁷⁴ was also cited, as it referred to content as either “class 1 material” or “class 2 material”, which are defined by reference to Australia’s National Classification Scheme that is also used for classification of films, computer games, and other publications. (Children's Rights Alliance)

4E.4 Inefficiency

Concerns were expressed by Industry representatives that the content rating requirements would not be reliable, effective or proportionate for their intended goal. (Google, Pinterest, MPIL, Technology Ireland, Tumblr) Such requirements were perceived as unreliable, disproportionate, ineffective, and would risk abuse from bad actors, diverting resources away from the key task of identifying and deactivating potentially violative content. (Google, Pinterest)

They believed such requirements will invariably result in inconsistent, abusive and potentially misleading ratings with varying outcomes for users. (MPIL, Technology Ireland) It was also outlined that the development and monitoring of a granular age rating system would also require significant amounts of human resources to review such ratings, as crowd-sourced signals are unreliable. (Technology Ireland)

Examples of previous experiences of content rating solutions were mentioned, including those designed by NICAM and the BBFC (British Board of Film Classification) during the development phase of You Rate It⁷⁵. This is a simple rating tool developed to inform parents and children on the content of user-generated videos, through six questions about the content of the video on: drugs, horror/fear, language, sex and violence, which it is argued demonstrates the lack of efficacy of such measures.

⁷³ CORE, ‘4 Cs of online risk: Short report & blog on updating the typology of online risks to include content, contact, conduct, contract risk’ <<https://core-evidence.eu/posts/4-cs-of-online-risk>> accessed 28 August 2023.

⁷⁴ Online Safety Act 2021 s106 and s107.

⁷⁵ <https://www.yourateit.eu/>

Even though it was created in 2014, its adoption has been limited and there have been significant concerns about its scalability. (MPIL)

It was put forward that users of VSPS are unlikely to have the kind of knowledge to understand and take into account different cognitive abilities of children of different age groups, and be able to assess the risks of the content to each age group and make comparisons across content. (TikTok, NICAM) It was further suggested that the same reasoning could apply to VSPs as well, who on top of this may also have commercial interests. (NICAM)

There was concern across different sectors in relation to the potential of these ratings being open to abuse (IAB Ireland) by bad actors and therefore entirely pointless as they would have to be viewed by other users (potentially children) before anyone would establish that they may not be suitable. (RCNI) The opportunity for potential miscalculations of age, either innocently or intentionally was underlined (ISPPC / Webwise) and while the content may incorrectly receive a safe rating, it only takes one valid report to lead to content being actioned. (Pinterest)

It was further argued that under-age users could be able to rate content, potentially unlocking content for themselves and their peers that they should not be able to access. (Yoti) In addition, users who want their content to reach the largest number of users possible are unlikely to rate it as inappropriate for minors, which could potentially expose VSPS providers to legal and compliance risks where such ratings are false or misleading. (MPIL)

4E.5 Subjectivity

It was pointed out by Industry that Section 11.23 requires content rating systems to be objective but specifies that the rating system needs to be user-led, without accounting for the element of subjectivity that necessary lies in the nature of user-led rating of content. (TikTok) Furthermore, it was argued that content rating is highly subjective in nature given the significant different views users might have about what is and is not appropriate for children and can make potentially very arbitrary decisions about how old a person should be in order to have access to content (Google, MPIL, Technology Ireland, Yoti). Such systems, because of the subjectivity involved, could disproportionately impact users' rights to information/of expression. (Google, Technology Ireland) As an example, it was noted that there may be sections of society that would rate any LGBT+ content as being inappropriate for minors, regardless of the substance of the content. (Google)

Significant concerns about the subjectivity of such measures were also raised by a range of respondents. (IAB Ireland) Content may be interpreted differently by different communities or cultures, leading to varying perceptions of what is deemed appropriate or inappropriate for certain age groups and such mechanisms in the hands of bad actors carry safety risks. (SpunOut, Safe Ireland, Belong To) Some have stressed that it is therefore essential for VSPS to incorporate cultural sensitivity into their content rating systems, for example by using algorithms that take into account diverse cultural perspectives and clearly communicating to users the criteria used to classify content, offering personalisation options and implementing a feedback mechanism. (SpunOut)

It was argued that content rating by users is not an effective means to ensure the safety of users, in particular children on VSPS. It should rather be considered as a complementary measure to other safety design measures. In relation to flagging and reporting harmful content, children have already stated that they felt that this was not their responsibility.⁷⁶ Although the fact of providing means to identify harmful content to user was welcomed, they suggested this should only be complementary to providers taking appropriate measures to ensure safety on their service. (5Rights Foundation) Similarly,

⁷⁶ OFCOM (2022) Children and Parents: media use and attitudes report 2022, https://www.ofcom.org.uk/data/assets/pdf_file/0024/234609/childrens-media-use-and-attitudes-report-2022.pdf

it was also suggested that it should not be a mandatory requirement but optional for those who have alternative, effective solutions available to restrict age-inappropriate content. (MPIL)

Concerns were also expressed by Industry in relation to the requirement to offer flagging mechanisms in respect of appropriate age-rating of any content due to the subjective nature of age rating. It was noted that from their experience, user flagging of content could also be very subjective as users often report content simply because they do not like a video rather than because it violates a policy. For instance, on YouTube between July and September 2023, there were 22,956,787 user flags. Upon review, this resulted in 363,005 videos being removed on the basis that they breached YouTube's Community Guidelines, i.e. a 1.6% accuracy rate (or a 98.4% error rate).⁷⁷ It was suggested that the inaccuracy and subjectivity associated with user flagging is very likely to apply equally, if not more so, to content ratings. It was argued that flagging/reporting mechanisms combined with the possibility for the content creator to rate their own content should be sufficient, but requiring increased granularity in this respect would be disproportionate. (Google)

Concern was also expressed that when encountering harmful content some users may apply a content classification instead of reporting the content. It was argued by Industry that even if the content purely and simply violates their terms and conditions, it should be reported as quickly as possible and they would prefer to encourage users to report content so that it can be investigated and acted upon quickly in the event of an infringement. (Pinterest)

It was recommended that the requirement of a content rating system should either be left out of the final Code or deemed not practicable or proportionate for platforms that do not host adult content. (Pinterest)

4E.6 Scope, proportionality and appropriateness

It was argued that content classification is a highly complex area that requires the adoption of a principles-based approach. This is particularly the case since whether a particular approach is effective depends on the context of the relevant VSPS, given the differences between the providers who are in scope of the draft Code. (TikTok) Hence, the requirements set out in the draft Code were perceived as not proportionate or appropriate for all in-scope services. It depends on the nature of the content on the service they host and their assessed risks (Technology Ireland) as well as the most effective ways to categorise content on each platform. (Tumblr)

It was argued that such requirements would not be practicable or proportionate for certain type of platforms, such as LinkedIn which is a purpose-specific, professional platform which does not allow users under 16 to join the platform. (LinkedIn) Similarly, it was argued that the requirement to build a feature to allow users to suggest an appropriate age for a given video would not make sense on a platform like Tumblr that is 16+, because there is not a discernible difference in the content appropriate for a 16 versus a 17-year-old individual. It was suggested that it would be unnecessary and disproportionate to require a platform which is 16+ to rate content as suitable for users under 16 years of age, e.g. 13+. (Tumblr).

It was noted that for a professional skills platform primarily focused on hosting curated video content designed for enterprise-level professional education, where account creation is restricted to those 18 and older (and where all content undergoes review, moderation, and categorisation before being published on the platform), content rating requirements would be excessive, disproportionate, and inappropriate. It would therefore disproportionately affect its business, requiring it to make large-

⁷⁷ YouTube Community Guidelines enforcement – Google Transparency Report, available at <https://transparencyreport.google.com/youtube-policy/removals>

scale and cumbersome technical changes to its worldwide platform. It was recommended the Code should specify that the requirements from Section 11.15 to 11.31 are not imposed to this kind of enterprise. (UDEMY)

It was stressed by Industry that under the AVMSD and the draft Code, content which may impair children’s physical, mental or moral development should be either prohibited under the VSPS’s terms and conditions or not be visible to children. Therefore, it was believed that requiring a content rating system should be unnecessary, as terms and conditions and reporting and flagging tools should, in any case, sufficiently guard minors against such content. (MPIL) Therefore, the benefit of granular age rating was questioned. (Technology Ireland)

It was also argued that Section 11.22 appears to go beyond the AVMSD (Technology Ireland) as while Article 28(b)(3)(g) requires VSPS providers to implement a system that allows users to rate content which may impair children’s physical, mental or moral development, the draft Code extends this scope further by using the undefined term “content appropriate for children”. (MPIL)

4E.7 Measures already implemented

Industry argued that, in practice, VSPS are better placed to determine what type of content is and is not appropriate for children in line with their policies, than users. It was pointed out by Industry that they were already employing a range of more practicable and effective measures such as removing content that violates their terms and conditions, or age-gating measures which ensure that age-inappropriate content is not recommended to children not visible through accounts they are following, and not available through the platform’ search or explore surfaces. (MPIL)

Examples of measures already being implemented by Industry includes:

- An extensive process of regular consultation with experts, not only to design and review its Community Standards, but also, in the case of age-appropriate content, to consult with experts, parents, and teens to develop features that let young people control their experiences on MPIL’s apps, help them be more mindful of how they are using social media in the moment, and build healthy habits. (MPIL)
- The operation of “Content Levels” which are used to organise content on TikTok based on thematic maturity. Content is assigned a “maturity score” by TikTok, and that which is detected to contain overtly mature themes will be prevented from reaching users under the age of 18. While all content, whether tagged as audience controlled or not, must adhere to their Community Guidelines and go through their content moderation process, “Audience Controls” feature on TikTok allows uploading users to tag their videos containing themes that they would prefer are not recommended to those under the age of 18. (TikTok)
- A content rating system⁷⁸ has been built by Tumblr that specifically suits the platform. It automatically blocks content labelled as mature for 16-17 year olds and allows adult users to tailor their experience by hiding mature content. (Tumblr) Its Content Classification Label was mentioned as an example by other stakeholders, especially on how Twitch currently requires explicit consent of the user before watching each video that contains a Content Classification Label. (CvdM)

4E.8 Clarity required

Clarity was requested about whether this rating system will also be available to video uploaders, as is the case with the advertising declaration in Section 12.10, or how VSPS will display content ratings provided by users and potentially uploaders in the platform user interface, given that there is no

⁷⁸ <https://help.tumblr.com/hc/en-us/articles/5436241401239-Community-Labels>

obligation to display this information, as is the case with Section 12.11 in the case of advertising. These two clarifications must be taken into account in the case of uploaders, who will in any case have an obligation to evaluate and declare the ratings and descriptors of uploaded content as this could clarify the chain of responsibility between a VSP and uploaders. (Bratislava CMS)

It was also pointed out that some platforms already use warnings such as “contains sensitive content” which can be too vague, especially for minors, as it is unclear from whom the warning originates. Therefore, it was suggested that the scope of the content rating should be expanded and set clear and binding expectations in the Code and include some context as to why content ratings are important. (CvdM)

Clarify was also requested on:

- Whether this rating system will be also available to the uploaders of the video since they have the best overview of the uploaded content and could provide a good starting point for a content rating. The findings of the ERGA reports on Vloggers⁷⁹ were noted. This showed that Vloggers are usually responsible and willing to make changes if it leads to the protection of the public and it is done in a user-friendly way. (Bratislava CMS)
- Whether there will be, in addition, an obligation on the uploader of content to flag the appropriate age when uploading content (i.e. over-18, 13-18, under-13). (CybersafeKids)
- How, and if, the VSPS will be displaying the content ratings provided by the users and potentially by the uploaders in the user interface. There was a suggestion that the platform should have a duty to display this information, after the review by the platform. (Bratislava CMS)
- Whether the “content rating” includes content descriptors or other “system describing the potentially harmful nature of the content” that are mandatory in many of the EU jurisdictions. (Bratislava CMS)
- Whether the content rating include thematic ratings, or is it solely focused on age ratings. (CvdM)
- Whether this feature should be available for all pieces of content or only for content that is preliminary marked as content for children. (I. Goldberger)
- What the requirement under Section 11.23 of “ensuring that the system adopted is objective” should entail, as this could mean that each platform could come up with their own content rating systems, based on their own (potentially commercially driven) preferences which could essentially become a black box. (NICAM)
- How besides “promoting user compliance” the VSPS will be checking accuracy of the ratings given by the uploaders or the declaration of the ads. This is a prerequisite for effective implementation of the content ratings systems, therefore they suggested including in the Code the reference to the duty of the VSP to ensure “that the system adopted is objective”. (Bratislava CMS)

4F. Parental Controls (Q. 11)

The following responses refer to Sections 11.24 to Section 11.28 of the draft Code which deals with the establishment and operation of easy-to-use Content Rating systems. These responses were mainly gathered from Question 11 of the consultation.

Consultation Question 11: What is your view on the requirements in the draft Code in relation to parental controls?

Section 11.24 require VSPS to provide for parental control systems which must be under the control of the end-user. Sections 11.25 and 11.26 require certain options available for parents or guardians

⁷⁹ <https://erga-online.eu/wp-content/uploads/2021/12/ERGA-SG1-2021-Report-Vloggers.pdf>

to prevent a child from providing or viewing live-streaming content. In addition, parental controls must be explained and prominent as per Section 11.27 and be offered as an option when a new account is created as per Section 11.28.

4F.1 General feedback and recommendations

These requirements were welcomed (NSRF, DCEDIY) as they were believed to be the correct way to police internet use by children. (S. Hynes) The flexibility proposed by these measures was welcomed (MPIL) and maintaining a high-level approach was highly encouraged. (MPIL)

It was noted that any parental control must: respect, protect, and fulfil children's rights; be accessible; be turned on by default; be easily navigable; be able to recognise and to accommodate to a child's age and stage of development. (ISPCC / Webwise)

It was also noted that while parental controls are a positive and important measure, they should not replace the obligation on the VSPS to ensure that their service is safe for children. (CybersafeKids)

It was agreed that effective controls are necessary to allow parents or guardians to protect children (National Parents Council) by regulating the content that could harm their child. (CvdM) It was underlined that it was an important empowering feature for parents to be able to adjust the online experience for their children based on their individuality and parenting methods. Further, being aware of the important nudging effects of some of the pre-set settings, the balance found between the mandatory and guidance parts of the Code and Guidance was welcomed. (Bratislava CMS)

Research was referred to that had shown that parental controls were only used for the youngest children, up to the age of 9. Therefore, for these measures to be effective, there is a need for age ratings and guidance for all content, particularly for content that may be lighter but is still dangerous for this younger group of children. (NICAM)

It was recommended that the Code should also recognise that parents/guardians may not always act as a protective factor, as harmful content can be livestreamed by a parent/guardian. In these instances, it the ultimate responsibility lies with the VSPS provider. (Alders Unit Children's Health Ireland, Specialist Child Sexual Abuse Services)

Similarly, it was pointed out that some children may not have parents/guardians in a position to exercise such control and protection, due to lack of digital skills or issues around respecting children's privacy. (5Rights Foundation)

It was pointed out that the draft Code does not refer to the reality that many children are out of home, are unaccompanied minors seeking asylum, are in complex or state supervised situations with parents/guardians or have other vulnerabilities. It was therefore argued that the Code needs to make provisions for their safety that takes account of this reality. (Children's Rights Alliance).

It was also underlined that while parental controls can be used to complement a safety and privacy by design approach, they are only a component for the protection of children's rights online⁸⁰ (5Rights Foundation) and they are not a substitute for good design that prioritises user safety and can result in

⁸⁰ On their effectiveness see University of Central Florida (2018) Apps to Keep Children Safe Online may be Counterproductive; <https://www.ucf.edu/news/apps-keep-children-safe-online-may-counterproductive/>, Alexis Hiniker et al. (2018) Coco's Videos: an Empirical Investigation of Video-Player Design Features and Children's Media Use. <http://faculty.washington.edu/alexisr/CocosVideos.pdf>

parents having a false sense of security while children continue to be exposed to risks due to poor service design.⁸¹ ([Children's Rights Alliance, ISPCC / Webwise](#))

It was suggested that some of these requirements would not function properly unless Section 11.28 was reworded to make the provision of parental controls mandatory, and providers were required to implement age assurance techniques at the point of signup in order to determine which users should be subject to parental controls. ([Yoti](#))

Specific recommendations for tools, modifications and functionalities of parental controls include:

- The use of facial recognition, passcodes which must be entered prior to upload. ([AgriKids](#))
- Personal filtering vs un-publishing at source, robust filtering and parental controls at the device/operating system/app/browser level, regulation of device manufacturers to create effective parental controls that are actually effective and well-tested. ([J. O'Connor](#))
- A requirement for all new accounts opened by children to have the strictest possible safety and privacy settings by default which can then be adjusted using parental controls. ([RCNI, Women's Aid](#))
- Additional details on how the Commission proposes to establish and verify the link between the minor user and the parent or guardian. ([Yoti](#))
- Linking parental controls to content ratings in order to allow parents to effectively and systematically prevent minors from accessing content that they feel would be inappropriate for their age. ([CvdM](#))
- Parental controls being turned on by default. It was noted that parental controls that are not easy to setup or are based on unclear or untrusted ratings will most likely not be understood nor trusted by parents and therefore not used. ([NICAM](#))

4F.2 Measures already implemented

Examples of measures already being implemented by Industry include:

- YouTube sets strong default settings and provide tools that give families flexibility to manage their relationships with technology. Such protections include turning on “take a break” and bedtime reminders by default, turning off autoplay by default, making the default upload setting on the most private setting available, blocking access to mature content, and prohibiting personalised advertising based on the age, gender, or interests of people under 18. They also offer robust parental controls for YouTube Kids and supervised experiences on YouTube, for children up to the digital age of consent, and on the YouTube Kids app, parents can choose a preferred content setting for ages four and under, 5-8, or 9-12; limit videos to parent approved content only disallow searching; pause watch or search history; and control autoplay. ([Google](#))
- With regard to live streaming, YouTube does not allow minors under the age of 13 to be on a live stream, unless they are visibly accompanied by an adult. Channels not in compliance with this policy may temporarily or permanently lose their ability to live stream. In addition, they have taken steps to allow minors to make informed decisions about their online footprint and digital privacy, which includes additional safeguards and live streaming requirements for recipients between 13 and 17.⁸² Users under the age of consent cannot currently upload any content to the platform - this includes livestreaming or commenting on videos. This also applies to YouTube Kids, and in YouTube’s Supervised Experience. ([Google](#))
- Meta has involved young people, parents and experts in its product design process, including for its parental supervision tools. They incorporate their feedback through the Trust, Transparency and Control (TTC) Labs and the global co-design program and used insights from this program to

⁸¹ https://www.ofcom.org.uk/data/assets/pdf_file/0027/226269/5rights-foundation.pdf.

⁸² <https://support.google.com/youtube/answer/9228390>.

inform how supervision tools were built. By reason of the core commitment of Meta’s Best Interest of the Child Framework,⁸³ they chose not to follow a mandatory “parental control” approach but to promote youth autonomy while considering the rights, roles and responsibilities of parents/guardians. (MPIL)

- With regards to live-streaming content, Meta has a team of human reviewers who review live streamed content in real-time and are able to take action if they identify any violations of its community standards and guidelines. This can include removing the video or stream, suspending or banning the account, or reporting the content to law enforcement. In addition to human reviewers, they also uses AI to help identify and flag potential violations in real-time. This can include using machine learning algorithms to detect and flag specific keywords or phrases that may indicate a violation, as well as using computer vision technology to analyse the content of the video or stream. (MPIL)
- TikTok has already implemented effective and robust parental tools called “Family Pairing” where tools they developed⁸⁴ which allow: safety settings to be customised based on individual needs, including setting daily screen time limits; muting push notifications; limiting videos that may be inappropriate for teens by turning on "Restricted Mode"; selecting keywords or hashtags to exclude content from the For You or Following feeds; turning off the search functionality; direct messages, and comments. In particular the features let caregivers link their TikTok account to their teen’s to manage a variety of content, privacy, and well-being settings. (TikTok)
- Yoti and its partner SuperAwesome have, in June 2023, made an application to the US’ Federal Trade Commission for the approval of a verifiable parental consent (‘VPC’) method pursuant to the Children’s Online Privacy Protection Rule (COPPA)^{85 86}. In it, Yoti & SuperAwesome have requested that the Federal Trade Commission approve a new VPC mechanism known as “Privacy-Protective Facial Age Estimation”. (Yoti)

4F.3 Factors for consideration: Other regulatory and guidance text

It was suggested the Commission should consider the regulatory development and guidance in the area of parental controls such as the UK Age-Appropriate Design Code, the Irish Data Protection Authority’s Children’s Fundamentals and the French CNIL Recommendations that are underpinned by the United Nations Convention on the Rights of Child. It was noted that the latter recognised that children have participation rights, including a right to have a say in matters affecting their own lives. It was suggested that there is a need to balance such participation rights with the challenges presented by introducing parental controls. (MPIL)

It was also recommended that the intermediary liability regime of the eCommerce Directive, the DSA and the Commission’s eCommerce Strategy needs to be carefully considered in light of a proposal to allow users to have such controls over newly labelled types of “illegal content” and the potential liability concerns that this could raise for providers. (MPIL) It was also mentioned that the DSA has already harmonised the regime for online platforms to respond to the risk of content by requiring risks to be formally assessed and risk mitigation measures be put in place (Article 35 of the DSA), parental controls being one such potential risk mitigation measure. (TikTok)

⁸³ <https://www.ttclabs.net/news/metas-best-interests-of-the-child-framework>

⁸⁴ <https://www.tiktok.com/safety/en-us/safety-privacy-controls/>

⁸⁵ Application for Approval of a Verifiable Parental Consent Method Pursuant to the Children’s Online Privacy Protection Rule 16 C.F.R. §312.12(a), Federal Trade Commission, 2 June 2023, available at https://www.ftc.gov/system/files/ftc_gov/pdf/Application-for-a-new-VPC-method-ESRB-SuperAwesome-Yoti-06-02-2023.pdf

⁸⁶ Asking the FTC to approve facial age estimation for verifiable parental consent, Yoti, July 2023, available at <https://www.yoti.com/blog/asking-ftc-approve-facial-age-estimation-verifiable-parental-consent/>

4F.4 Factors for consideration: Timing

As this particular measure will require VSPs to build, test and train systems to make sure that the implemented measure is effective, practicable and scalable, it was suggested that the Code should provide VSPs with a minimum of 18 months to implement such measure. (MPIL)

4F.5 Scope, proportionality and appropriateness

It was added that these obligations around live-streaming were not required by the AVMSD (Google, MPIL) and seem to be disproportionate to achieve the underlying aims of AVMSD, as the provisions of Article 28b apply to content which may impair the physical, mental or moral development of minors, and not to any live stream whether or not it is potentially harmful. (Technology Ireland).

It was believed that such an approach would fragment the internal market and leave parents/guardians in a confusing position - for example, some may assume that their child will not be able to live-stream on a particular VSPs, whereas such restrictions may not apply due to the VSPs not being under Irish jurisdiction. (Google)

It was also pointed out that there are multiple live-streaming services that are not within the scope of the draft Code (e.g. Skype, Zoom, Apple Facetime, etc.) and, thus, will not have to comply with such a requirement, which will create an inconsistent experience across apps and incentives to create a market elsewhere that is unregulated. (MPIL)

Some also noted the need to expressly safeguard against live-streaming videos was not mentioned in the Call for Inputs and there were no requests for this functionality in the responses to the Call for Inputs, hence they would welcome clarity around the origin of this initiative. (MPIL)

It was also argued that this one-size-fits-all approach of such requirement does not take into account the varied sizes, risk levels, user demographics, or prevalence of video on different platforms. It was suggested that developing appropriate parental controls would be a challenging and burdensome process for smaller platforms who would have to devise and implement systems to identify the parent or guardian who should have account controls and develop processes to manage disputes in cases where two parents disagree on account access and controls. (Tumblr)

It was believed that introducing such requirements would be highly burdensome and intrusive requirement that would apply to only a small percentage of users due to a small percentage of content they may potentially see. In addition, a parental control obligation would be inappropriate and disproportionate for a small platform like Tumblr which only permits 16+ users. (Tumblr)

It was noted that for a professional skills platform, parental controls requirements would be excessive and inappropriate and would disproportionately affect their business. It was recommended that the Code should specify that the requirements from Section 11.15 to 11.31 are not imposed to this kind of enterprise. (UDEMY)

4F.6 Age thresholds, adolescents and fundamental rights

It was believed that the draft Code fails to distinguish between children of various ages or to take into account their evolving capacities. It was suggested that consideration be given to the Council of Europe Guidelines⁸⁷ which recommend that children's evolving capacities should be taken into account when businesses establish or update their parental controls and that States should ensure that such controls

⁸⁷ Council of Europe, Guidelines to respect, protect and fulfil the rights of the child in the digital environment (2018) Recommendation CM/Rec(2018)7 of the Committee of Ministers, 54.

do not reinforce discriminatory attitudes or infringe on children’s privacy and information rights. ([Children's Rights Alliance](#))

It was also noted that while parental support tools can be useful, it is not appropriate for parents to ‘control’ the internet use of their children, especially adolescents. Therefore, the use of such tools should always be used with the full knowledge of the child and must never allow access to the content of communications. ([EDRI](#))

It was pointed out that parental control should be respectful of the privacy of children and should be clearly mentioned in the Code, as persistent parental monitoring will severely impact a child’s private sphere which in turn may affect their sense of identity. ([5Rights Foundation](#))

Concerns were expressed from Industry about the application of parental controls without exception until the age of 18, as it has been established under GDPR that the age of digital consent ranges from 13 to 16 across Member States, ([Tumblr](#)) therefore, such measures could be a disproportionate interference with a 16- or 17-year old’s rights to privacy and to freedom of expression and information. ([Google, Technology Ireland](#))

In this regard, the Irish DPC’s guidance note on “Fundamentals for a Child Orientated Approach to Data Processing” was referenced, as it specifically highlights that child protection measures should not downgrade a child user’s experience. ([Google, Technology Ireland](#))

It was argued that a two-tiered approach for the provision of an online service risks depriving children of their full rights under the UN Convention on the Rights of the Child, as the child’s right to express their views fully, their right to freedom of expression and to seek, review and impart information and ideas of all kinds, amongst others. ([Google, Technology Ireland](#))

Concern was also expressed about implementing an overly restrictive two-tier system, whereby the service and features provided to under-18s is very different to over-18s, and may actually create greater risk, by driving minors ‘underground’ and encouraging greater efforts to circumvent age verification processes, ([TikTok](#)) such as lying about their age in order to attempt to access - what they perceive to be - a more fulsome ‘adult’ service. This risk is particularly acute in respect of older minors (16 and 17 years olds), who may consider it problematic that their parent can effectively control their use of YouTube. ([Google, Technology Ireland](#))

In order to ensure that the rights of users are balanced against the risk of exposing older teenagers to content, which is still unsuitable for them to view, content which is unsuitable for children should continue to be age-gated until the user turns 18. ([Google, Technology Ireland](#))

4F.7 Negative impact of Parental Controls on vulnerable minors

It was suggested that the approach taken by the Code does not take into consideration the potential harms that parental controls may have on vulnerable teenagers ([Tumblr](#)) and that parental controls can even hinder child empowerment and the privacy of the child. ([Children's Rights Alliance](#))

It was noted that parental controls may actually undermine the rights of some children who may not have sufficient parental or caregiver support and who might therefore use social media to find emotional and social support that they are not able to find at home.⁸⁸ It was suggested that this issue should be considered when companies undertake Child Rights Impact Assessments when developing parental controls technologies for their products. ([UCD Centre for Digital Policy](#))

⁸⁸ Livingstone, S., & Third, A. (2017). Children and young people’s rights in the digital age: An emerging agenda. *New media & society*, 19(5), 657-670.

Research was cited where it was found that increased parental oversight might lead to a loss of independence, ownership, and feelings of responsibility for teens, leaving them unprepared for adulthood⁸⁹ and that teens who were under parental surveillance were more secretive and less likely to ask for help. It was further noted that LGBTQ+ advocates have long stressed⁹⁰ that increased parental surveillance can do more harm than good for vulnerable teens' mental health and safety. (Google)

It was underlined that the right to privacy is an important concern for all children but is particularly important for LGBTQ+ young people, as they may be particularly vulnerable to such monitoring tools.⁹¹ (5Rights Foundation) It was recommended taking into account a child's right to privacy in line with Article 16 of the United Nations Convention on the Rights of the Child and the digital age of consent being 16 years old, to explore whether children aged 16 and 17 should have the right to opt-out of certain parental control features detailed in the Guidance and how this could be represented in the Code. It was also recommended that children should be informed as to the operation of parental controls on their user account, the nature of these controls, and what information a parent can be alerted to relating to their activity on the VSPS. (Belong To)

Further, it was argued that providing parental controls must be balanced with the potential impact to older teenagers who belong to marginalised communities and are seeking vital community and support online that they may not be able to access in-person. The example of Tumblr was mentioned as it provided older teenagers a space to explore their identities and learn from others before they are ready or in a safe place to share their identity in the real world.⁹² Parental controls may, for example, 'out' a teenager who identifies as part of the LGBTQIA+ community, and therefore make it impossible for that teenager to seek important resources and community online out of fear of being ostracised at home.⁹³ It explained its platform was having a role of safe haven for LGBTQIA+ individuals.⁹⁴ (Tumblr)

4F.8 Section Specific comments

Measures under the control of the end-user (Section 11.24)

It was pointed out that it was unclear how any of the parental controls proposed in Section 11.24 could be designed to protect children from seeing illegal content, which is in any event is prohibited from the platform, or regulated harmful content which is not supposed to be visible to children. (Google, Pinterest, MPIL, Technology Ireland) It was noted that applying parental controls to illegal content would be inappropriate and ineffective, and it was recommended such tools be applied to regulated content harmful to minors only. (TikTok)

It was suggested that the Code should simply require measures be put in place to provide for regulated content harmful to children to be age-gated. (Google, Technology Ireland) It was proposed that Section 11.24 of the draft Code, as currently drafted, conflicts with Sections 11.1 and 11.2 of the draft Code. This difficulty would not arise if the Code simply required appropriate measures for age gating of

⁸⁹ <https://nautil.us/parents-shouldnt-spy-on-their-kids-235888/>

⁹⁰ <https://www.lgbttech.org/post/legislative-parental-consent-requirement>

⁹¹ Kristina Bravo (2022) Parents want to keep their kids safe online. But are parental controls the answer?

<https://blog.mozilla.org/en/internet-culture/deep-dives/parental-controls-internet-safety-for-kids/>

⁹² For example, documented in the 2022 research article "How Tumblr Acts as a Crucial Resource for Online Queer Communities", <https://networkconference.netstudies.org/2022/csm/1191/how-tumblr-acts-as-a-crucial-resource-for-online-queer-communities/>

⁹³ Or kicked out of their home – a critical risk for LGBTQIA+ young adults, https://www.focusireland.ie/wp-content/uploads/2021/09/LGBTQI-Youth-Homelessness-Report_FINAL-VERSION.pdf

⁹⁴ "On Tumblr, where users are twice as likely to be lesbian, gay or another sexuality, these connections proved vital to navigating and surviving the mental health struggles that nearly three-fourths of LGBTQ Generation Z users reported in a recent survey." <https://thehill.com/changing-america/well-being/mental-health/555547-facing-stigma-in-their-own-homes-lgbtq-gen-zers/>

regulated content harmful to children in Section 11.2 of the Code (as opposed to being prohibited). Such an approach was what is likely to have been envisaged by the AVMSD. ([Technology Ireland](#))

It was requested that the Commission clarify whether Section 11.24's parental controls requirement is obviated if a platform's guidelines prohibit, for all users, the content types defined as illegal and regulated content harmful to children. ([Pinterest](#))

Guidance was also requested on who is considered to be the "end-user" in the meaning of this section, whether it is the minor or the parents/guardians. ([MPIL](#))

It was argued that there is still not sufficient take-up of these measures by the parents,⁹⁵ and it was suggested stipulating that parental controls should "...be easy to find and use" within Section 11.24. ([Bratislava CMS](#))

Live-streaming restrictions (Sections 11.25 and 11.26)

The industry argued that VSPS should be required to put in place appropriate measures to effectively protect minors from content which is unsuitable for children during live-streams (as is YouTube's current practice), rather than being required to impose a blanket ban on children viewing live-streams without parental consent, regardless of its content. ([Google](#))

It was suggested that this 'blanket' approach may not be appropriate on the basis that it is disproportionate to the risk arising, in particular from a privacy perspective as it implies that the caregiver should have access to and control over content that the minor uploads. ([TikTok](#)) It was further argued that such a measure should only be required if VSPS do not already have other effective measures to ensure that minors do not see violating content. ([MPIL](#))

However, others commended the Commission for ensuring that live-streaming services fall under the parental control systems and allow parents to prevent a child from live-streaming. ([ISPPC / Webwise](#)) Concerns were expressed over the same prohibition being applied to viewing such content, as it was feared if parents/guardians were to block children under their care from consuming videos, it may violate their rights to explore topics that may not align with their parents/guardians beliefs, even if they are legitimate for the kids emotional and intellectual development, such as LGBTQ content or religious topics. ([I. Goldberger](#))

In addition, it was believed that as live-streaming is a functionality rather than an individual piece of content. Therefore, if a provider chose to implement age assurance at the point of accessing content rather than signup, an underage individual could access a live-streaming function without the provider knowing that they should in fact be subject to the Code's parental controls dispositions. ([Yoti](#))

Explanation and prominence of parent controls (Section 11.27)

This requirement was welcomed, and the Commission was encouraged to include within it a requirement that VSPS providers should provide age-appropriate and transparent information to children who are users of the service on how parental controls operate; and information for parents/guardians of such children on how parental controls work and their appropriate use, having

⁹⁵ For example, according to this Ofcom research "There remains a lack of parental awareness of online safety tools: Currently, parents' knowledge of online safety tools varies, with broadband parental controls being the most well-known. However, for other tools, awareness levels are only about half or less among parents. This points to the need for a more concerted effort to raise awareness of online safety tools. This points to the need for a more concerted effort to raise awareness of online safety tools." <https://www.internetmatters.org/hub/research/research-tracker-awareness-usage-parental-controls/>

regard to the children’s rights considerations involved in applying parental controls. ([Ombudsman for Children's Office](#))

It was suggested that parents must be educated on how these controls work and also be encouraged to use them ([AgriKids](#)) and that VSPS must draw users’ attention to them by appropriate means.⁹⁶ The importance of ensuring that explanations of parental control systems are really easy to understand for the least technologically competent parents was emphasised. ([Safe Ireland](#))

Clarification was sought on the phrase “appropriate means” used to describe instructions to parents in Section 11.27 and it was suggested amending it to “user-friendly and easy to understand for all adults”. ([Safe Ireland](#))

It was recommended that parents should be provided with information about the child’s right to privacy under the United Nations Convention on the Rights of the Child and information about resources to support age-appropriate discussion with children. ([5Rights Foundation](#)) In addition, it was suggested that VSPS providers should offer parental controls to parents/guardians with the recommendation to involve their child and young person in any conversations on the use of parental controls. It was further suggested that Industry should also be asked to consult with children and young people on what parental control features they feel work well. Ultimately, it was argued, that the safety of a product or service should be down to the provider and not parents/ guardians. ([ISPC / Webwise](#))

To manage the risk that parental controls may create a sense of distrust between a parent and the child,⁹⁷ ([5Rights Foundation, Children's Rights Alliance](#)) it was suggested that there should be specific mention in this section that if parental controls are provided, children must be given age-appropriate information about this so that it is clear to the children that they are being monitored, and to enable children to fully understand how such systems operate. ([5Rights Foundation, Children's Rights Alliance](#))

Parental controls option offered at sign-up (Section 11.28)

It was proposed by Industry that it would be more appropriate to include these aspects of the draft Code in the non-binding guidance accompanying the Code, rather than in the Code’s legally binding obligations. It was noted that this approach has been adopted by other Member States and takes account of the inherent technical challenge in legally identifying a parent/guardian on registration and also that caregivers may not be on the app and raising awareness in off-app campaigns may be more effective. ([TikTok](#))

4G. Complaints (Q. 12)

The following responses refer to Sections 11.29 to Section 11.31 of the draft Code which deals with the establishment and operation of easy-to-use Content Rating systems transparent, easy-to-use and effective procedures for the handling and resolution of complaints in relation to reporting and flagging, age verification, content rating and parental controls. These responses were mainly gathered from Question 12 of the consultation.

Consultation Question 12: What is your view on the requirements in the draft Code in relation to complaints?

⁹⁶ <https://euconsent.eu/download/understanding-of-user-needs-and-problems-a-rapid-evidence-review-of-age-assurance-and-parental-controls/>

⁹⁷ University of Central Florida (2018) Apps to Keep Children Safe Online may be Counterproductive. <https://www.ucf.edu/news/apps-keep-children-safe-online-may-counterproductive/>

Under Section 11.29, VSPS providers are required to establish and operate transparent, easy-to-use and effective procedures for the handling and resolution of complaints in relation to reporting and flagging, age verification, content rating and parental controls. Complaints should be handled in a diligent, timely, non-discriminatory, and effective manner as per Section 11.30. Under section 11.31 and pursuant to 139ZD of the Act, VSP and their users are encouraged to use mediation by an independent mediator.

4G.1 General feedback and recommendations

The approach to complaints taken by the draft Code was supported by several stakeholders. ([ISPPC / Webwise](#), [DCEDIY](#), [Department of Health](#), [Simon Communities of Ireland](#), [Bodywhys](#))

It was recommended that a robust monitoring system is put in place, as it was suggested that current complaint practices around monitoring the International Code are reactive and require citizens to be constantly vigilant in many areas. ([CUIDIÚ](#))

Although complaint mechanisms are acknowledged to be important measures, they do not replace ex ante and even substantive safeguards. ([EDRI](#)) It was proposed that the text on complaints is too general to be useful either to complainants or VSPS. ([Safe Ireland](#))

There was a further suggestion that VSPS should be required to report on their complaint handling systems annually at a minimum. ([Children's Rights Alliance](#))

Concerns about the absence of common standards, baselines, timelines or even processes for all the platforms. It was proposed that this could hamper the provision of an effective remedy for users, as engaging with different systems can be particularly difficult at a time where a complainant who has suffered harm or abuse may be particularly vulnerable and traumatised and in need of structures and support. ([Children's Rights Alliance](#))

It was argued by Industry that because VSPS providers already have effective complaints flows in place in respect of relevant aspects of their service (i.e. reporting and flagging, age verification, content rating and parental controls), it was disproportionate to require them to establish new parallel complaints handling processes, in particular in relation to complaints to non-video content such as comments, as extending these requirements to ancillary features would place unnecessary burdens on providers and goes beyond what is required by the AVMSD. ([Google](#))

It was recommended that users should be enabled to make a complaint in an uncomplicated manner and that the Code should mandate a prompt acknowledgment from the VSPS, informing the users about what would happen next. ([Women's Aid](#), [Dublin Rape Crisis Centre](#))

It was suggested that specific safeguarding training was provided to ensure that service moderators were able to recognise when particular groups (such as Travellers) were being subjected to “harm” or “hatred” ([Irish Traveller's Movement](#))

Regret was expressed that the draft Code did not address specific procedures for complaints in relation to Intimate Image Abuse content, in particular the need to protect the victim from the perpetrator and assist them in finding supports and the need to block/take down material during the complaint process to prevent it spreading. ([Women's Aid](#))

It was suggested that while regulation, guidance and oversight can set the standards by which the market should operate, first-hand evidence of actual user experience will not be captured and consumers will remain unable to challenge final decisions made by providers, even if they are incorrect. An example was cited from the Energy Ombudsman who upholds consumer complaints

approximately 70% of the time – showing that, even in a highly regulated market, erroneous decisions are made. (Trust Alliance Group)

4G.2 Factors for consideration: Other regulatory and guidance text

It was pointed out by Industry that there was an overlap between these requirements and out-of-court dispute resolution under the DSA. It was suggested that an alignment with the latter in order to minimise friction and avoid unnecessary duplication (Google, TikTok, MPIL, UDEMY, Technology Ireland). It was believed any out-of-court redress for complaints about individual content moderation decisions should fall within the remit of the DSA. (Google, TikTok)

It was strongly advised that a system was created where the requirements, timelines and potential sanctions are clear and transparent combined with a means of escalation in the form of independent complaints board followed by an appeals board and publication of decisions. (NICAM)

It was considered that this requirement should be limited to complaints from service users within the EU only so as not to create a disproportionate burden on platforms with users across multiple jurisdictions outside the EU. (UDEMY)

Based on the nature of the service provided, it was recommended that platforms where account creation is restricted to those over 18, should be exempt from Sections 11.15 to 11.31 of the Code. (UDEMY)

4G.3 Factors for consideration: Complaint handling and independence

It was recommended to include an appeal process where the appeal would be examined by a trusted independent service in the trusted flaggers scheme (when operational) or the Online Safety Commissioner. (Women's Aid) Similarly, it was suggested that if national age rating systems are recommended in the Code, it was believed that the process for handling complaints should also be routed through the organisations responsible for these age rating systems, such as NICAM or IFCO. (CvdM)

It was suggested that users must be able to make complaints directly to the Commission about the VSPS implementation or complaints procedure or appeal decisions made by the VSPS on any dispute, and such procedures should be transparent, accessible and have specific time limits for responses by the VSPS and the Commission. Specifically, when dealing with the urgency required in matters involving child abuse material, intimate image abuse and the non-consensual sharing of images or information, the processes need to have strict timelines and clear protections and supports for victims. (RCNI)

The Commission was advised against appointing industry bodies as the associated bodies or flaggers with regards to complaints processes and mechanisms. (Dr L. O'Sullivan). A study⁹⁸ was cited which showed significant divergence between the reported impact of marketing regulation (including self-regulation by industry) provided in peer-reviewed journals, or industry-sponsored reports, showing the need for external monitoring. More specifically, the problems with self-regulatory complaints mechanisms were outlined including complaint procedures which do not provide a level playing field between citizens and industry, lack of effective enforcement mechanisms such as fines to serve as a deterrent, and compliance and informal resolution processes are not open to public scrutiny. (HSE, Irish Heart Foundation, Safefood, BFLGI, HSE Health & Wellbeing, Dr. O. Bartlett, Dr. N. Campbell, Dr. A. Garde, Dr. C. Patton, K. Reilly, Dr. M. Tatlow-Golden)

⁹⁸ Galbraith-Emami, S. and Lobstein, T. (2013) 'The impact of initiatives to limit the advertising of food and beverage products to children: a systematic review'. Obesity Reviews.

Measures already implemented

The Industry indicated that they supported providing users with mechanisms to submit complaints, for instance Meta already allows users to contact Facebook and Instagram at any time using in-app reporting functionalities as well as through the respective Help Centers and contact forms. (MPIL) TikTok operates easy-to-use functionalities and procedures to raise, address and resolve complaints and related issues from users, such as TikTok's help centre articles. (TikTok)

The importance of appeals and complaints was acknowledged as an indispensable facet of online safety. It was noted that the way organisations communicate moderation decisions, apologising for incorrect decisions and build transparent appeals processes, illustrates the extent to which ethical considerations are embedded into their operations – demonstrating the importance of an accessible, easy-to-use system which does not deter users from challenging a platform's decision simply because to do so is an onerous task. (Trust Alliance Group)

It was emphasised that user access to impartial Digital Dispute Resolution⁹⁹ was the missing piece of the puzzle, (Trust Alliance Group) with regards to making online experiences safer, in particular in how it could offer:

- independent redress for users to challenge disputes;
- a complete overview of issues emerging in digital markets;
- the opportunity to spot issues of concern with individual platforms;
- clear and transparent categorisation of complaint types;
- the capture of consumer experiences and detriment;
- the ability to share information with platforms and regulators to drive improvements.

Scope of the complaint mechanism (Section 11.29)

Further guidance on the scope of this obligation was requested, specifically on whether the requirement pertains to decisions taken by VSPS providers under the obligations relating to reporting and flagging, age verification, content rating and parental controls. They explained it was difficult to envision how VSPs can implement effective and scalable complaints mechanisms covering such a broad scope. If a particular user has concerns with the compatibility of a VSPs' implemented solutions to the Code, they believed the best placed recipient for such a complaint would be the Commission. (MPIL)

It was also stressed that the AVMSD does not envisage the handling of complaints related to the reporting and removal of specific content (Technology Ireland) but rather complaints with respect to the AVMSD measures themselves. In this line, clarity was requested on whether it is intended that the requirements set out in the Code would be limited in this way. (Google)

Additional guidance should also be provided regarding the expected purpose and operation of platforms' complaints systems, specifically with regards to complaints system in relation to the Code's content rating and parental controls requirements. Content rating and parental controls involve actions by the users themselves hence it is unclear on what grounds a user could complain to the platform, and what actions the platform would be expected to take in response. For example, if a user disagreed with a content rating applied to content they have saved, a platform would not be able to override that rating without contravening the Code's requirement to enable users to rate content. (Pinterest)

It was also suggested that complaints and redress should address suspension and termination of accounts as well as data concerns and reflect children's data rights. Such mechanisms should provide

⁹⁹ https://commission.europa.eu/live-work-travel-eu/consumer-rights-and-complaints/resolve-your-consumer-complaint/alternative-dispute-resolution-consumers_en

children and parents with opportunities to correct a child’s digital profile/footprint. (5Rights Foundation) Some also believed that the users should also be able to make a complaint in relation to VSPS implementation or lack thereof of their obligations relating to illegal and regulated content upload, where such uploading is being allowed by the VSPS contrary to the Code or indeed legislation, hence Section 11.29 should include “content upload” in the last line. (Women’s Aid)

4G.4 Section Specific comments

Transparent, easy-to-use and effective procedures (Section 11.29)

There should be clear information and guidance available to the public indicating how they can make complaints (Dr L. O’Sullivan) and the Code should recommend the importance of educating people (especially minors and in a child-friendly manner) about the availability of such mechanisms. (ISPC / Webwise) It was believed that informing users about how decisions are made, and which policies are applied is essential. (Bodywhys)

The 2021 General Comment on children’s rights in relation to the digital environment was mentioned, where the UN Committee on the Rights of the Child set out a number of recommendations relating to complaint handling and resolution.¹⁰⁰ It recommended that judicial and non-judicial remedial mechanisms be made available for children in relation to digital rights violations, and that these mechanisms be “widely known and readily available to all children”. Additionally, the Committee recommended that complaint handling be “swift”, and that these mechanisms be “free of charge, safe, confidential, responsive, child-friendly and available in accessible formats. (Belong To)

It was suggested to specify explicitly that such procedures should be age-appropriate, as an ‘easy-to-use’ procedure may look different to a child than an adult. (5Rights Foundation) Further, it was also recommended that complaints mechanisms ought to have offline options where possible, such as phone lines or physical addresses, as a recognition of the fact that digital skills are varied and possessing skills in one area does not guarantee possessing them in another. People who encounter problems with online services and platforms may not have the skillset to navigate online complaints procedures and this needs to be accounted for. (Age Action Ireland)

In line with children’s rights standards, it was recommended that the Code should include a requirement that VSPS providers must put in place child-friendly complaints procedures. (Ombudsman for Children’s Office, DCEDIY)

The Ombudsman for Children’s Office presented “A Guide to Child-Centred Complaints Handling”¹⁰¹ which set out seven core principles of good practice for dealing with complaints made by, and on behalf of, children in a child-centred manner. It also provides concrete actions that organisations can take to implement the core principles, thereby ensuring that their complaints processes are child-centred. They noted that other organisations similarly recommended the inclusion of a requirement that VSPS providers put in place child-friendly complaints processes.¹⁰²

Manner in which complaints are handled (Section 11.30)

While the requirement to handle complaints in a diligent, timely, non-discriminatory, and effective manner was welcomed, it was recommended to define clearly the term “timely” (Dublin Rape Crisis Centre) and “effective” (RCNI, I. Goldberger) and to define specific and appropriate response times

¹⁰⁰ UN Committee on the Rights of the Child, General Comment no 25 (2021) on children’s rights in relation to the digital environment, CRC/C/GC/25, para 44-46. Available here: <https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no-25-2021-childrens-rights-relation>

¹⁰¹ https://www.oco.ie/app/uploads/2018/02/14433_OCO_child-centred-complaints_covers_WEB-1.pdf

¹⁰² CommSol (2023), Summary of Submissions to Call for Inputs - “Developing Ireland’s First Binding Online Safety Code for Video-Sharing Platform Services”, pp. 102-104.

(Women's Aid, A. Steen) which should be appropriate and proportionate to the seriousness of the report. (5Rights Foundation)

It was suggested that VSPS should also provide users with information on the timeframe to expect, as well as how VSPAs will prioritise complaints, and how the appeals process would work. (ISPC / Webwise)

It was argued that complaints need to be followed up in timely and effective manner to instil confidence in the procedural system. (AgriKids) It was recommended that the response required for image intimate abuse complaints must be immediate, in order to protect the victim/survivor from the risk of repeat victimisation. (Dublin Rape Crisis Centre)

It was noted again that for those affected by online abuse, time is of the essence, hence the Code should more prescriptive. Additionally, it was argued that the Code should stipulate that every VSPS should ensure that complaint handling services are resourced well enough to ensure that any target processing time is met in all but the most exceptional cases. (Safe Ireland)

It was remarked that it was essential that the Code provides for a maximum time-period for VSPS providers to handle user complaints so to offer quick and effective resolutions for children and young people. (Children's Rights Alliance, CybersafeKids) The Online Safety Code developed by the Australian eSafety Commissioner was mentioned in this regard as it states that Tier 1 social media services must resolve complaints within 'a reasonable time' and that what constitutes a reasonable time 'should be based on the scope and urgency of potential harm that is related to a complaint and the source of the complaint.'¹⁰³ (Children's Rights Alliance)

It was recommended that throughout the process, information should be provided on the status of the handling of the complaint and the actions taken by the provider. This information should be provided in a clear and age-appropriate manner. (5Rights Foundation)

It was suggested that there was an ambiguity among complaints' handlers understanding of racism experienced by specific ethnic groups, including Travellers. They suggested the wording of Section 11.28 should be amended to insert requirement: "to establish and operate procedures within a culturally competent understanding." (Irish Travellers Movement)

Use of mediation (Section 11.31)

Although this requirement was appreciated, it was suggested that independent mediation was not practical, given that it will likely involve lengthy timeframes, costs and the content remaining live on a platform whilst the mediation is ongoing. It was suggested that independent mediation should be recommended only in specific and exceptional circumstances. And if a user complaint is not addressed within the given timeframe, it should be possible to take it to the Individual Complaints Mechanism provided for within the legislation. (CybersafeKids)

The Commission was encouraged to provide a list of mediators for the purpose of these requirements. (Udemy)

It was noted by Industry that this section does not prescribe but rather encourages VSPS and users. It was suggested that such encouragement does not fall within the scope of the provisions which may be included in online safety codes pursuant to Section 139K of the Act. Accordingly, the inclusion of

¹⁰³ eSafety Commissioner for Australia, Schedule 1 – Social Media Services Online Safety Code (Class 1A and Class 1B Material), 15.

such “encouragement” in the draft Code seems inappropriate and it was suggested that it should only be included in the Statutory Guidance.

It was also noted that the scope of such “encouragement” appears to be overly broad and vague. Clarity was sought on what should be interpreted as a dispute arising from user complaints about a VSPS provider taking or not taking any action.

Additionally, it was recommended that the Commission should encourage users to refer to the DSA out-of-court dispute settlement process under Article 21 of the DSA. Such a process is far-reaching and the Commission was cautioned against seeking to set up parallel and competing processes for users to challenge the decisions of VSPS providers, pursuant to the AVMSD, in matters regulated by the DSA, which would lead to legal uncertainty. (MPIL)

With respect to the references to the rights of users, it was noted that the right to assert their rights before the Independent Complaints Mechanism was not similarly highlighted. (CybersafeKids)

4H. Other matters (Q. 13)

The following responses are a summary of other comments related to Section 11 of the draft Code. These responses were mainly gathered from Question 13 of the consultation.

Consultation Question 13: Do you have any other comments on the requirements in section 11 of the draft Code

It was suggested that the approach to online children safety was coming from the wrong side, as the goal should have children’s safety boxed into services and not boxed out. (S. Hynes)

It was recommended that the Code could be strengthened by placing clear obligations on providers to meet common standards and adopt common methodologies to establish baselines to ensure regulation that is measured, understandable, enforceable, and effective. (Children's Rights Alliance)

It was also suggested that the Code should take into account the changing balance of rights as a child grows and develops and that there should be an explicit recognition that the best interests of a child should be the primary consideration and, in that context, ensure balance between the various rights of a child to safety, to privacy, freedom of information, freedom of association, and freedom of identity. (Children's Rights Alliance)

4H.1 Specific recommendations

A number of specific recommendations were made in relation to Section 11 of the Code:

- Include mechanisms to facilitate early detection of online ‘suicide games’ related to suicide and mental health to identify emerging harms in real time and encourage VSPS to monitor and remove content related to such phenomena. (NSRF)
- Increase collaboration across jurisdictions in relation to the harmful effects of pro-suicide and self-harm content, to achieve consistency and reduce access to these sites. (NSRF)
- Consider additional VSPS containing very graphic and detailed descriptions of highly lethal methods of suicide, including those that are not established in Ireland but are accessible to Irish users. Removal of specific websites is warranted in line with regulations in other countries and WHO guidelines for preventing suicide.¹⁰⁴ (NSRF)

¹⁰⁴ <https://www.hse.ie/eng/services/list/4/mental-health-services/connecting-for-life/publications/9789240076846-eng.pdf>

- Consider including in the Code a requirement for VSPS to take measures to address content connected to video content, such as captions and comments. It was suggested it was essential that community guidelines are considered as part of this potential requirement, to ensure that, for example, harmful content posted as a comment in response to content that does not breach the Code is treated as seriously as harmful video content. (NXF)
- Provide for immediate take down of materials or accounts in circumstances where there is a risk of harm to a user pending full investigation. (Children's Rights Alliance)

4H.2 Safety by design

It was acknowledged that Section 11 outlines many useful measures to ensure the minimisation of availability and risks of exposure to harmful content, and support was expressed for the inclusion of an obligation around safety by design within Section 11. (5Rights Foundation)

4H.3 Transparency

It was suggested that the importance of transparency on the part of the VSPS, and of the regulatory rules that are imposed on them, should be paramount. It was noted that information in the public domain about platforms' approaches to dealing with harmful content is limited, with inconsistencies in the information that is available across platforms and no way of assessing the impact and effectiveness of these approaches. It was pointed out that evaluations are generally conducted by intermediaries and platforms themselves, who have discretion on what to measure and disclose, with the transparency reports provided by many platforms noted not to "represent a comprehensive assessment of the impact of their content governance activities".¹⁰⁵ (HSE, Irish Heart Foundation, Safefood, HSE Health & Wellbeing, Dr. O. Bartlett, Dr. N. Campbell, Dr. A. Garde, Dr. C. Patton, K. Reilly, Dr. M. Tatlow-Golden)

It was also pointed out that outside of proprietary research from Industry, there is no independent public data to reliably monitor the extent to which children are exposed to commercial advertising and marketing online, and the impact these powerful and opaque digital marketing strategies have on children's identities, behaviour and development.¹⁰⁶ In this regards, it was recommended that a publicly available database was created where VSPS recommender safety plan, targets and tri-monthly performance is lodged, for transparency, comparability, EU bench-marking, and for research by universities and civil society. (HSE, Irish Heart Foundation, Safefood, HSE Health & Wellbeing, Dr. O. Bartlett, Dr. N. Campbell, Dr. A. Garde, Dr. C. Patton, K. Reilly, Dr. M. Tatlow-Golden)

¹⁰⁵ Mark Bunting. (2018). Keeping Consumers Safe Online Legislating for platform accountability for online content. [Online]. Available from:

<http://static1.1.sqspcdn.com/static/f/1321365/27941308/1530714958163/Sky+Platform+Accountability+FINAL+020718+200.pdf?token=llv5b6G14vicGq8x%2BWRfKHhNTN4%3D> p13

¹⁰⁶ Garde, A et al. (2020). General Comment submission Children's rights in relation to the digital environment. [Online]. Available from: <https://www.ohchr.org/EN/HRBodies/CRC/Pages/GCChildrensRightsRelationDigitalEnvironment.aspx>

Chapter 5: Obligations of VSPs – Audiovisual Commercial Communications (Qs.14 – 17)

The responses in this chapter refer to Section 12 of the draft Code and gathers views on the obligations placed on Video-Sharing Platform Service Providers in relation to Audiovisual Commercial Communications. The responses are mostly gathered from consultation questions 14 – 17.

5A General comments on Sections 12 of the draft Code

It was suggested that the Code should require VSPS to introduce a watershed (as for television) ([Well-Aware Campaign](#))

It was suggested that the Commission should consider requiring a waiver that indicates that the VSPS provider does not endorse or share the opinions of the commercial item. ([AgriKids](#))

It was recommended that any audiovisual commercial communications should have a consistent feature that places a stringent requirement on users to declare when videos contain advertising and/or commercial communications and that there should also be a specific form the declaration should take. It is vital that the form is clear, concise, and easy for young people to understand. ([ISPCC/Webwise](#), [Children’s Rights Alliance](#)) It was further argued that it is frequently unclear to children and young people that content is advertising and research was cited showing that children under the age of 8 have limited ability to understand persuasive intent; children aged between 7 and 11 can start to recognise television advertising and persuasive intent with parents’ assistance; children over 12 were able to identify television advertising. ([Children’s Rights Alliance](#))

It was noted that the UN has recom”ende’ that the profiling or targeting of children for commercial purposes is prohibited including practices that ‘rely on neuromarketing, emotional analytics, immersive advertising and advertising in virtual and augmented reality environments to promote products, applications and services’. ([Children’s Rights Alliance](#))

It was suggested that the Commission should prioritise the protection of the public over any commercial interests of the content creators or VSPS and that strong protection against harmful content should be put in place by the Commission and it should conduct strict monitoring. ([RCNI](#))

5B. Audiovisual commercial communications that are not marketed, sold, or arranged by the VSPS provider (Q. 14)

The following responses refer to comments and feedback relating to the requirement in the draft Code in relation to audiovisual commercial communications which are not marketed, sold, or arranged by the VSPS provider which is dealt with in Sections 12.1 to 12.5 of the draft Code (captured from Question 14).

Consultation Question 14: What is your view on the requirement in the draft Code in relation to audiovisual commercial communications which are not marketed, sold, or arranged by the VSPS provider?

The view of the Commission is that it is important that users know when they are viewing an audiovisual commercial communication, particularly in relation to paid influencers who do not always disclose that they have been paid, or do not disclose this in a consistent fashion.

Where the VSPS provider does not market, sell or arrange the audiovisual commercial communication, VSPS providers are obliged to include and apply in the terms and conditions of the service, a requirement to ensure that audiovisual commercial communications are readily recognisable. These

terms must prohibit audiovisual commercial communications that are surreptitious or use subliminal techniques, or are harmful to the general public or to children. Users must be required by the VSPS terms to declare any user-generated content that contains audiovisual commercial communications, and VSPS providers must suspend or terminate accounts in certain circumstances.

In addition, VSPS providers are required to put in place a functionality for users who upload user-generated video to declare whether it contains audiovisual commercial communications. Where a user makes such a declaration, the VSPS provider must inform users of this in a transparent manner.

5B.1 General responses

Respondents, in general, supported the proposal to ensure that all audiovisual commercial communications which are not marketed, sold or arranged by the VSPS provider be identified to users. ([AgriKids](#), [Children’s Rights Alliance](#), [DCEDIY](#), [Google](#), [ISPC / Webwise](#), [MPIL](#), [National Parents Council](#), [Technology Ireland](#)) It was suggested that applying a two-tiered approach to regulation of audiovisual commercial communications depending on whether or not they are “marketed, sold or arranged” by the VSPs makes sense in the context of paid promotions within organic videos. ([Technology Ireland](#))

It was noted that 85% of parents in the National Parents Council survey said that such sponsored content should be completely separate from video aimed at young children. It would also help parents and children understand the difference between regular content and advertisements. ([National Parents Council](#))

It was suggested that any labelling system used consistently across platforms to indicate the presence of commercial communications, as mentioned in the draft guidance, should be prioritised for inclusion in the Code. It was further argued that for this labelling system to be effective for all forms of commercial communications, including both those involving direct payment and those which provide goods and services free of charge with the exception of promotion by the user, the definition of “commercial communications” under the draft Code should be reviewed. ([Belong To](#))

It was stated that these provisions are of limited applicability to some VSPS and it was requested that the Commission ensures that the provisions in question are only implemented on a non-mandatory basis. ([Udemy](#))

5B.2 Terms and conditions

It was recommended that the guidance document should contain a benchmark as to what is deemed ‘repeated’ breaches of the terms and conditions by users who engage in commercial communications, as distinct from users who do not. Similarly, it was suggested that the guidance document should consider whether the threshold for suspension of users engaged in commercial communications, in terms of the number of breaches of terms and conditions required, should be lower than for other users. This is to reflect the fact that users who produce commercial communications will, on average, have a larger audience than the average user. As a result, the capacity for harm done by breaches of terms of conditions by these users may be higher. ([Belong To](#))

It was recommended that within the terms and conditions, under point 12.1, the Commission should add “including to child users”. ([DCEDIY](#))

Concerns were expressed by Industry about suspending or terminating a user’s account for repeated breaches as this has no basis in the AVMSD and pre-empted Article 14 and 23 of the DSA – the latter confines suspension to offenders who repeatedly post manifestly illegal content. ([Technology Ireland](#))

5B.3 Definition

It was noted that the draft Code does not define what the AVMSD also does not define as “an audiovisual commercial communications which are not marketed, sold, or arranged by the VSPS provider”. It was recommended that, to avoid uncertainty, the final Code defines this term as well as “an audiovisual commercial communications which are marketed, sold, or arranged by the VSPS provider”. (MPIL, Technology Ireland, IAB Ireland) Similarly, guidance tailored to VSPS (similar to that provided to broadcasters) was requested. (MPIL)

It was also suggested that the definition of commercial communication should be reviewed as it may involve products and services supplied free of charge. (Belong To)

Further clarification was sought on what “readily recognisable” means. (CvdM)

5C. Audiovisual commercial communications which are marketed, sold, or arranged by the VSPS provider (Q. 15)

The following responses refer to comments and feedback relating to the requirement in the draft Code in relation to audiovisual commercial communications which are not marketed, sold, or arranged by the VSPS provider which is dealt with in Sections 12.6 to 12.9 of the draft Code (captured from Question 15).

Consultation Question 15: What is your view on the requirement in the draft Code in relation to audiovisual commercial communications which are marketed, sold, or arranged by the VSPS provider?

Where VSPS do market, sell or arrange audiovisual commercial communications, VSPS are obliged to ensure that audiovisual commercial communications are readily recognisable as such and shall not market, sell or arrange audiovisual commercial communications that are surreptitious or that use subliminal techniques, or are harmful to the general public or audiovisual commercial communications harmful to children.

VSPS providers 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 prohibit, audiovisual commercial communications for alcohol provided that the service provider shall implement effective measures to ensure that such content is not normally viewed by children.

The measures must include a requirement in the service’s terms and conditions that users who upload such content to: rate it as adult content not suitable for viewing by children; use transparent and user-friendly mechanisms for users of the service to flag to the video-sharing platform service provider content that has been incorrectly rated or has not been rated as adult content; and use effective age verification measures in accordance with sections 11.16 and 11.17 in the draft Code.

5C.1 General views

It was recommended that under terms and conditions, under point 12.6, the Commission should add “including to child users” and under 12.9.2 “including child-friendly mechanism for child users” after “users”. (DCEDIY)

It was proposed that any labelling system to indicate commercial communications should be used consistently across platforms and should be prioritised for inclusion in the Code. Specific penalties should be considered for VSPS who fail to make these commercial communications readily recognisable. (Belong To)

It was welcomed that content relating to alcohol will not be advertised to children and that it will be rated adult content. (ISPPC/Webwise)

5C.2 Industry views

Support was expressed for Sections 12.6 to 12.8, assuming they were read in conjunction with section 5.3 of the Code¹⁰⁷. (Google, Technology Ireland) It was noted that “commercial communications marketed, sold, or arranged by a VSPS” was understood to be those in which the VSPS provider is involved in making the advertising available on the platform, e.g. sold advertising. (MPIL) However, concerns were also expressed at the workability of the Commission’s measures and how material could be rated. (Google, MPIL, Technology Ireland)

It was argued that in the case of audiovisual commercial communications which are marketed, sold or arranged by the VSPS, the VSPS generally play no active role in either marketing, selling or arranging a paid promotion between a brand advertiser and a creator. Where the VSPS do play some intermediary role, then the VSPS have the ability to ensure such paid promotion complies with the rules set out in Article 9(1) of AVMSD. However, it was suggested that the draft Code fails to clarify that the VSPS cannot be expected to ensure that paid advertisements appearing on the platform comply with such rules, even where they play some intermediary role in ‘arranging’ such adverts, through automated means or otherwise. (Technology Ireland)

Alternatively, it was suggested by Industry that VSPS should not be in breach of Sections 12.6 to 12.8 of the draft Code unless it has actual knowledge of specific advertisements which contravene those sections and fails to remove those advertisements from the service. (Technology Ireland)

To the extent that ads which appear on YouTube through the Google Ads platform could be considered to be ads “marketed, sold or arranged” by Google Ireland Limited, it was argued that such ads are user-generated content hosted on the Google Ads platform and Google is therefore not obligated to conduct general monitoring of every advertisement uploaded to the platform. It was pointed out that both machine learning, and human reviewers, are used to enforce advertising policies, which results in the vast majority of paid ads which are found to be violative being removed before ever appearing on YouTube. Therefore, it was recommended that Sections 12.6 to 12.8 of the draft Code should be amended to make it clear that VSPS can only be held in breach of these provisions in circumstances where their notice and action mechanisms for illegal advertisements hosted by them are demonstrated to be insufficient for the purpose of addressing specific notified advertisements that are illegal and prohibited by the Code. (Google)

It was suggested that the Commission should be mindful not to construe the requirements in such a way that, in practice, it imposes ex ante control measures or upload-filtering of content which does not comply with the provisions of Article 15 of the eCommerce Directive and Article 8 of the DSA. The Commission was also reminded that, even when such audiovisual commercial communications are not marketed, sold, or arranged by a VSPS provider, there’s “limited control exercised by those video-sharing platforms over those audiovisual commercial communications” (see Article 28b(2) of the AVMSD). (MPIL)

It was recommended that the draft Code should be amended to ensure that VSPS prohibit such types of advertising on its service and that it takes proportionate steps to enforce those standards. As an example, it was noted that Meta has strict advertising policies for advertising to all users, which impose

¹⁰⁷ Section 5.3 states, “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 15 of the eCommerce Directive or Article 8 of the Digital Services Act.”

high standards on paid advertising and, among other things, strictly prohibit ads promoting the sale or use of certain types of products for all users, such as tobacco and related products, drugs and drug-related products, and adult content. (MPIL)

To enforce these policies, Meta's ad review process starts automatically before ads begin running, and is typically completed within 24 hours, although it may take longer in some cases. If a violation is found at any point in the review process, the ad will be rejected. Meta uses automated and, in some instances, manual review to enforce its policies and, beyond reviewing individual ads, also reviews and investigates advertiser behaviour, and may restrict advertiser accounts that do not follow its advertising policies, Community Standards or other Meta policies and terms. (MPIL)

It was suggested that Section 12.9 (implementing effective measures to ensure alcohol commercial communications are not normally viewed by children) was overly prescriptive and not aligned with the AVMSD or industry practice. (Google, Technology Ireland)

It was suggested that the draft Code should be amended to reflect the AVMSD and industry practice of permitting users to use parameters to target their advertising campaigns (as opposed to age-rating advertising). For example, for paid advertisements which appear on YouTube through Google Ads, advertisers have a number of targeting controls including: Demographic controls; Interest controls; Content controls (websites, apps, YouTube channels, YouTube videos and app categories can be avoided); Keywords and topics (e.g. lists of keywords and topics advertisers want to avoid); Ineligible to show alongside (e.g. 'Made for Kids' material). It was also noted that it was in breach of advertising policies to target children in certain circumstances, including in respect of alcohol advertising. Therefore, it was suggested that Section 12.9.1 should be amended so that VSPS be required to include a prohibition in their terms and conditions to target children with alcohol advertisements. (Google)

Section 12.9.2 of the draft Code requires that users have the ability to flag content as having been incorrectly "rated". It was pointed out that as advertisements are not "rated", the prescriptive nature of these requirements does not align with the industry's practices. As an example, it was noted that YouTube has a functionality by which users can report advertisements for various reasons, including that the advertisement "promotes a restricted product or service (Alcohol, tobacco, gambling, addiction services, healthcare, political, financial)". It was suggested that such a mechanism, in addition to machine learning and human review content moderation, is an effective way of helping to ensure that children are not targeted with alcohol advertising. (Google)

Consideration should be given, by the Commission, to how these requirements are reflected in a VSPS's terms and conditions. The draft Code should be amended to ensure that VSPS prohibit such types of advertising on its service and that it takes proportionate steps to enforce those standards. (MPIL)

There was concern about suspending or terminating a user's account for repeated breaches as this has no basis in the AVMSD and pre-empts Article 14 of the DSA which harmonises rules around intermediary service's terms and conditions. In addition, Article 23 of the DSA harmonises the rules around repeat offenders and it confines an online platform's obligation to suspending the repeat offenders who repeatedly post manifestly illegal content. (Technology Ireland)

5D. Declaration of audiovisual commercial communications for user-generated content (Q. 16)

The following responses refer to comments and feedback relating to the requirement in the draft Code in relation to audiovisual commercial communications (in user-generated video uploaded by users) which are not marketed, sold, or arranged by the VSPS provider which is dealt with in Sections 12.10 and 1.11 of the draft Code (captured from Question 16).

Consultation Question 16: What is your view on the requirement in the draft Code in relation to user declarations that user-generated content contains audiovisual commercial communications?

The Code proposed that VSPS put in place a functionality for users who upload user-generated video or an audiovisual programme to declare whether such material contains commercial communications as far as they know or they can be reasonably be expected to know. VSPS are required to ensure users are informed of the declaration in a transparent manner.

5D.1 General Views

There was, in general, support for the proposal. ([Well-Aware Campaign](#), [AgriKids](#), [Bratislava CMS](#), [Children’s Rights Alliance](#), [CvdM](#), [DCEDIY](#), [Google](#), [ISPC / Webwise](#), [MPIL](#)).

It was noted that that it is important that the declarations are easily visible. For instance, uploaders using multiple hashtags leave the commercial declaration at the very end. It was suggested that VSPS should make sure that there are many options in terms of colours and backgrounds and it was proposed that the term “readily recognisable” (as set out in Section 12.1 and 12.6 of the draft Code) could also be used here. ([CvdM](#)) The declaration should be clear, transparent and easy for children and young people to understand. ([ISPC/Webwise](#))

Reviewers who offer (unbiased) reviews and product feedback based on their opinion should be categorised differently. ([AgriKids](#))

In the interests of transparency and user-friendliness, the process for identifying user-generated content that contains commercial communication should be consistent with the labelling system for marketed, sold and arranged commercial communications. The definition of “commercial communication” should also include those goods and services provided for free (with the expectation of promotion). ([Belong To](#))

It was pointed out that Article 26(2) of the DSA already requires online platforms to provide users with the ability to declare whether the content they provide is or contains commercial communications. For clarity, it is therefore suggested that the accompanying Statutory Guidance makes this clear. ([MPIL](#))

The need for consistency, internally and across platforms, in declarations was welcomed. It was suggested that the Code should make clear that the content rating system is available to uploaders, how VSPS will display content ratings and that content rating includes content descriptors or other systems describing the potentially harmful nature of content. Regulation of vloggers was highlighted, particularly from the perspective of related country-of-origin principles, accessibility quotas, political and other advertisements, application of relevant national content rating systems in the targeted countries, etc. ([Bratislava CMS](#))

It was recommended that under terms and conditions, under point 12.11, the Commission should insert “including where relevant, child users”. ([DCEDIY](#))

5E. Other comments about Section 12 of the draft Code in relation to audiovisual commercial communications (Q. 17)

Consultation Question 17: Do you have any other comments on the requirements in section 12 of the draft Code in relation to audiovisual commercial communications?

In addition to the request for views on audiovisual commercial communications specifically highlighted in questions 14-16 above, the Commission asked respondents for any other comments on Section 12 of the draft Code.

5E.1 CCPC / ASAI Joint Guidance

The draft Code's requirement that all commercial communications are readily recognisable as such is welcomed. Research was cited that found that consumers may be over-confident in their ability to recognise influencer posts which are marketing material but not identified as such and that posts with commercial content were either not sufficiently labelled or not labelled at all. It was noted that consistent labelling is important and the Commission's acknowledgement of this in its statutory guidance was appreciated and, in particular, references to the guidance issued by the CCPS and the ASAI. It was recommended that any labelling system provided by platforms to influencers is complementary to the CCPC and the ASAI joint guidance. ([Competition and Consumer Protection Commission](#))

Clarity was requested on whether the Commission is encouraging the VSPS providers themselves to follow this joint guidance or if the VSPS providers are also to encourage content creators on their platforms. It was argued that its uptake by influencers will be more widespread if the Code is clear that VSPS providers should encourage the joint guidance's use. Therefore, it was suggested that the obligations set out in Section 12 are explicitly stated among the aims included in the guidance for Section 13 of the final Code (media literacy – measures and tools). ([Competition and Consumer Protection Commission](#))

5E.2 Recognition of vulnerability of children

It was requested that there was further recognition contained in Section 12 that children were particularly vulnerable to surreptitious and subliminal advertising. It was also suggested that an assessment of such techniques as well as criteria/standards to evaluate what commercial communications are "readily recognisable as such" should consider the specific vulnerabilities and needs of children, as well as their evolving capacities. ([5Rights Foundation](#))

It was proposed that advertising farming products should contain visuals and content that promote safe farm practices and behaviours. ([AgriKids](#))

5E.3 Marketing strategies

Criticism was expressed of the marketing strategies used by formula milk companies which aim to create brand loyalty in women from early pregnancy onwards. It was pointed out that these strategies while not aimed at children can still undermine their health and development. It was therefore recommended that the Code should protect all children and not just those old enough to have digital access, since they are the most vulnerable in society. Protection should be given to the caregiver from CMF marketing messages. It was also noted that the UN Convention on Children's Rights recommends implementing the International Code of Marketing of Breast-milk Substitutes. ([Baby Feeding Law Group](#), [HSE](#), [Irish Heart Foundation](#), [SafeFood](#), [HSE Health & Wellbeing](#))

5E.4 Self-regulation

It was argued that voluntary (self-regulatory) actions have not been demonstrated to work effectively to protect children from the impact of harmful commercial communications (such as HFSS food and drink and CMF). The current approach of industry-led self-regulation for online advertising needs to fundamentally change towards stronger independent statutory regulation and enforcement. Key research findings in this area are:

- Food advertising targeting children is pervasive and its influence on children's behaviour contributes to the childhood obesity epidemic.
- Online food marketing is exploitative, surveillant and violates multiple rights, including children's rights to health, privacy and freedom from exploitation.
- Advertising standards authorities/associations are industry bodies and have little or no formal accountability to government or the public. They are established and financed by the advertising industry. They exist to protect advertising industry interests.
- The extent of lobbying of governments by unhealthy food corporations – identified as the greatest lobbying spenders of lobbyists for unhealthy commodities and practices in the US is such that it makes a mockery of regulatory processes to charge their representatives with safeguarding children and their health.
- The public health objective is to protect children from the harmful effects of food advertising. The advertiser's overriding commercial interest means using advertisements that effectively encourage children to consume unhealthy food. A clear conflict of interest exists.
- To devolve responsibility for and monitoring of advertising practice and standards to the advertising industry is a failure of a government's duty of care to its people.
- Government regulation of food advertising to children must be implemented globally.

(Baby Feeding Law Group, HSE, Irish Heart Foundation, Safefood, HSE Health & Wellbeing, Dr. O. Bartlett, Dr. N. Campbell, Dr. A. Garde, Dr. C. Patton, K. Reilly, Dr. M. Tatlow-Golden)

It was suggested that the definition of harmful audiovisual commercial communications was vague and ambiguous and therefore challenging to implement effectively. Further clarification on what is meant by "surreptitious" and "subliminal techniques" was also requested as the terms are highly subjective. ([Pinterest](#))

Chapter 6: Other Obligations for VSP (Qs.18- 21)

The consultation responses in this chapter refer to comments and feedback on Section 13 of the draft Code which deals with the General Obligations of Video-sharing Platform Service Providers. Responses are mostly captured from consultation questions 18-21.

6A Media Literacy – Measures and Tools

Consultation Question 18: What is your view on the requirements in the draft Code in relation to media literacy measures?

Section 13.1. and 13.2. deals with Media Literacy – Measures and Tools and focusses on the VSPS providers’ obligations to provide effective media literacy measures and tools in order to raise users’ awareness of those measures and tools, in addition to obliging VSPS providers to publish annual action plans specifying the measures they will take to promote media literacy, while having to report to the Commission on the impact of measures taken in a manner specified by the Commission.

6A.1 General Views

The requirement for VSPS to include media literacy measures, tools, and reporting to the Commission was welcomed, as was proposal that each VSPS provider must publish an action plan specifying measures it will take to promote media literacy and for ensuring that any measures to promote media literacy are relevant, transparent, collaborative, and objective ([ISPC/ Webwise](#)), [CyberSafeKids](#), [National Parents Council](#), [Ombudsman for Children's Office](#), [Samaritans Ireland](#), [Youth Work Ireland](#)) as well as the measures focussing on addressing harmful content. ([CPPLU](#)).

Media Literacy skills are regarded as crucial in the digital age especially as online sources and social media are being used more frequently as the main source of news in Ireland, particularly among younger people. ([CyberSafeKids](#), [ISPC/ Webwise](#)) and the draft Code’s identification of media literacy measures as a priority was welcomed. ([SpunOut](#))

It was acknowledged that at both European and Irish-level, media literacy is seen as a key tool in the overall objective of enhancing the safety of the digital space, particularly regarding online harms on digital platforms. In particular the themes of user empowerment and enhancing media literacy were noted as a means of empowering users. ([Trust Alliance Group](#))

It was suggested that extensive engagement with other relevant stakeholders like Media Literacy Ireland and National Adult Literacy Agency will be important to determine specific requirements for VSPS providers. ([Samaritans Ireland](#))

There was agreement that was appropriate to “provide high-level obligations, elaborated by statutory guidance materials, and there should be a requirement to be transparent about the actions taken and their impact”. ([Trust Alliance Group](#)) It was suggested that the Commission could further elaborate on related obligations, perhaps in a separate document. ([Youth Work Ireland](#))

Concern was expressed by the absence of a specific requirement to provide media literacy measures that are child-friendly and that address the needs of children who are users of VSPS. The Commission was encouraged to include an explicit requirement in Section 13 of the draft Code that VSPS providers should provide media literacy tools that are child-friendly for children and their parents, and

corresponding information in the draft Guidance on how VSPS providers should do so. ([Ombudsman for Children's Office](#))

The Commission's important role in relation to media literacy and education and awareness raising in relation to online harms is recognised, while expressing hope to engage with it and other key stakeholders with regard to potential collaboration in the areas of media literacy with regard to electoral process information and voter engagement during election campaign periods. ([An Coimisiún Toghcháin Electoral Commission](#))

It was noted that it was not entirely clear from the wording of Section 13 whether the media literacy provisions refer to companies providing educational materials that explain how users can protect themselves on their platforms (such as Safety/Help/Wellbeing Centres that some companies already have) – although clarity was provided in the Supplementary Statutory Guidance material. ([UCD Centre for Digital Policy](#))

In relation to the definition of media literacy meaning public understanding of material published in print, broadcast, online or other media, it was suggested that the Commission should explicitly require VSPS themselves to be equipped to understand when content is racist or discriminatory towards specific groups. An example was provided of how a platform did not recognise apply the same protections to Irish Travellers as they did to Roma as a 'protected' group. ([Irish Traveller Movement](#))

To ensure that any media literacy measures would include information and guidelines as to identifying harmful content and the impact such content can have on users (especially content containing or promoting domestic, sexual and gender-based violence, misogyny, exploitation, intimate image abuse and the sharing of images and information and exploitation), it was suggested that the Guidance on Media Literacy provided should be prescriptive rather than suggestive. VSPS should be required to promote the qualities suggested and required to consider the measures contained. Any media literacy standards should be set by the Code and uniformly applied to all VSPS. These standards should include not only provisions relating to the approach by VSPS to informing and educating content creators but also users so that they are not making uninformed choices about the content they are accessing and the information they may be sharing. ([RCNI](#))

It was emphasised that although media literacy is often presented as the solution to intrusive advertising and marketing practices, it is no substitute for a robust regulatory framework to reduce children's exposure to all forms of harmful marketing. It was recommended that the effectiveness of such measures should be defined by evidence of impact on behavioural responses to food marketing, rather than simply understanding and recognising marketing and marketing strategies. ([Dr. O. Bartlett, Dr. N. Campbell, Dr. A. Garde, Dr. C. Patton, K. Reilly, Dr. M. Tatlow-Golden](#))

6A.2 Comments on Section 13.1 of the Code

It was suggested that Section 13.1 was reworded to include reference to plain English, accessibility and the provision of materials and resources in a range of languages: "Video-sharing platform service providers shall provide effective media literacy measures and tools and shall take steps to raise users' awareness of those measures and tools, ensuring associated resources and materials use plain English and are provided in a range of languages." ([Belong To](#))

It was recommended that it was clearly flagged to users when the viewed content is generated by or appears likely to have been created by the use of Artificial intelligence or Computer-generated imagery

and that VSPS users should have to declare when they are uploading content created using AI or realistic CGI. ([Well-Aware Campaign](#))

It was proposed to insert the text “including child users” in Section 13.1. ([DCEDIY](#))

6A.3 Comments on Section 13.2 of the Code

It was recommended that an obligation be included for VSPS to fund, in part, research into media literacy and participation into forums and campaigns to promote media literacy. ([Belong To](#))

An example was noted whereby VSPS had declared that they had promoted media literacy in the run-up to the early parliamentary elections in Slovakia. However monitoring of the VSPS showed that there was no analysis of actual impact of these campaigns and that not all the campaigns were country-specific. Therefore, it was recommended that media literacy activities should be implemented and reported per country not just on a pan-EU level and that measuring the impact of these activities was equally important. Therefore, it was suggested amending the draft Code in 13.2 to specify that the action plans should also cover individual countries as well and “...shall publish an action plan specifying the measures it will take to promote media literacy including at the level of all individual countries”. ([Bratislava CMS](#))

It was argued that it would be important to ensure that the media literacy provisions provided for in the draft Code are implemented in a meaningful manner by companies, ensuring that the process does not become a box-ticking exercise. ([UCD Centre for Digital Policy](#))

To avoid largely superficial measures, it was also recommended that VSPS providers adopt proven measures or demonstrate the effectiveness of their measures. ([FuJo](#)) In relation to the use of external stakeholders providing evaluation for the media literacy activities of VSPS, it was noted that it would be important that the relationship between the advisory body and the industry partner is transparent, in order to assess the advisory body's independence from the industry partner and their ability to provide objective assessment and to voice critical feedback. ([UCD Centre for Digital Policy](#))

Given the prevalence and severe impact of online Gender-based Violence, it was recommended that the media literacy action plans provided by VSPS should include awareness raising on the harms of online Technology Facilitated Gender-Based Violence and Intimate Image Abuse, how to oppose it and supports available, in line with the Group of Experts on Action against Violence against Women and Domestic Violence GREVIO (Recommendation 51(i) and 16. ([Women's Aid, Dublin Rape Crisis Centre](#))

It was suggested that people living with the trauma of domestic violence have very specific media literacy needs relating to their safety and that of their children, and an approach was called for which draws on specialist knowledge about domestic violence issues which is written from a domestic violence trauma- informed perspective and is very simple and easy to use. ([Safe Ireland](#))

It was noted that media literacy should only be seen as a complementary measure and should not be used as an excuse or a means of limited responsibility of VSPs with regards the safety of their services and particularly the safety of children online. ([5Rights Foundation](#))

It was suggested that promotional campaigns that seek to educate the public on how to use media and create better understanding could be developed, including the explanatory notes on what are the consequences of posting content that is illegal or promotes unsafe behaviour, etc. ([AgriKids](#))

6A.4 Media Literacy Principles

It was noted that the draft Code did not stipulate any standards or principles for the obligations placed on VSPS to provide “effective media literacy measures and tools” and to “raise users’ awareness of those measures and tools”. Similarly, there was no guidance in the draft Code as to what should be contained in the action plans the VSPS are obliged to publish specifying the measures they will take to promote media literacy. It was recommended that key principles were included in the draft Code and attention was drawn to the European Regulators Group for Audio Visual Media Services (ERGA) six principles to underpin media literacy: transparency; multi-stakeholder collaboration; focus on the user/citizen; reach; localisation and evaluation.

While it was noted that the statutory guidance did reflect some of these principles, it was argued that breach of statutory guidance is not necessarily going to result in a breach of the Code and that including principles in the Code itself would permit standards and baselines to be adopted which are common to all providers and which would have to be followed. ([Children's Rights Alliance](#))

Attention was also drawn to the Online Safety Bill currently in Westminster whereby media literacy is underpinned by “an awareness of the impact material may have”. It was argued that this is a key principle of speaking safely about suicide and self-harm online. ([Samaritans Ireland](#))

6A.5 Development of media literacy measures

It was noted that evidence¹⁰⁸ suggests that children may have gaps in their media literacy skills, which if filled, could protect against disinformation. Social media literacy can protect against the impact of consuming idealised body-related content. It was also noted that the European strategy for a better internet for kids (BIK+)¹⁰⁹ highlights how media literacy and critical thinking can help children and young people to safely navigate the digital environment and to make informed choices. It was argued that it is essential that media literacy strategies are further developed without delay. ([Bodywhys](#))

It was noted that media literacy measures and tools need to be accessible, and users made aware of the availability of the tools for example using prompts/nudges. ([ISPCC/ Webwise](#)) It was suggested that ‘easy read’ versions of the Code should be developed, as well as requiring the platforms to publish their own guidance in this format and that public consultations should be made available in ‘easy read’ format so everyone concerned is able to fully participate. ([Samaritans Ireland](#))

It was recommended that children and those who support children, particularly vulnerable children, should have the opportunity to input into the development of media literacy programmes. Adopting the above or similar principles into the Code itself would ensure that their voices are heard as stakeholders. Platforms could also be required to report against regulatory principles, including evaluation of impact. ([Children's Rights Alliance](#)) In particular, it was requested that there should be specific reference to child friendly media literacy measures and tools being developed with the key concerns of children and young people in mind, from evidence available on issues such as body image, and in consultation with children and young people. ([DCEDIY](#))

It was recommended that media literacy measures should be adapted to children, but inclusive of measures targeting parents, guardians and/or educators. ([5Rights Foundation](#))

¹⁰⁸ Paxton, S.J., McLean, S.A., Rodgers, R.F. (2022) "My critical filter buffers your app filter": Social media literacy as a protective factor for body image. *Body Image*, 40,158-164.

¹⁰⁹ Better Internet for Kids (2022) A Digital Decade for children and youth: the new European strategy for a better internet for kids (BIK+) <https://digitalstrategy.ec.europa.eu/en/library/digital-decade-children-and-youth-new-european-strategybetter-internet-kids-bik>

It was recommended that platforms should be required to integrate user-friendly and interactive digital tours as a standard practice for introducing updates. It was argued that this approach would proactively meet the challenges of service users struggling with walls of text and inaccessible explanations when faced with service changes or new features which may increase possible exposure to online harms, if not properly understood. ([SpunOut](#))

A survey of parents was cited which asked parents if their child is able to understand how a certain platform works, the functions and features of the platform, its content moderation guidelines, online safety features, and its content rating feature. Out of 312 parents, 174 of them believed that their child is able to understand how a certain platform works and 131 parents thought that their child can understand the functions and features of the platform. In addition, 126 parents considered their child could understand content rate features and 104 parents believed their child could understand online safety rules. As for content moderation guidelines, only 73 parents think their child was able to understand what those entailed. ([National Parents Council](#))

It was suggested including media literacy topics such as media ownership, funding, advertisers and power structures ([S. Hynes](#)), support was expressed for the Commission using external media literacy resources as well as developing their own. ([I. Goldberger](#))

It was recommended that the Code should explicitly reference the need for an intersectional approach to media literacy, and name older persons as a cohort that ought to be prioritized. Improved access to training for digital skills was seen as critical, and building on models like Age Action's Getting Started programme should be considered. It was acknowledged that the tools and methods appropriate for media literacy training will change depending on the cohort receiving it and those providing the training ought to be cognisant of that. In recognition of the fact that digital skills are varied and possessing skills in one area does not guarantee possessing them in another, it was suggested that complaints mechanisms should have offline options where possible, such as phone lines or physical addresses. ([Age Action Ireland](#))

6A.6 Industry Perspective

Some Industry representative were very supportive of the approach that has been adopted in the draft Code which sets out the objectives to be achieved, but leaves it to the VSPS to devise their own means for achieving those objectives ([Google](#), [MPIL](#)) and that the draft Statutory Guidance includes commentary on what VSPS could consider when implementing requirements relating to media literacy and tools ([TikTok](#)).

It was described how Industry uses measures and tools both on-platform ([MPIL](#), [Google](#)) and off-platform in order to increase media literacy including collaboration with academics, policymakers, publishers, and civil society in order to increase media literacy. The example was provided of a €25 million contribution by Google to help launch the 'European Media and Information Fund' to strengthen media literacy skills, fight misinformation and support fact checking. ([Google](#))

It was also noted that VSPS are part of a broader ecosystem of stakeholders responsible for promoting the development of media literacy in all sections of society and that any action plan would need to factor in existing and long-standing EU-wide digital literacy and safety initiatives already in place, as well as any new plan as proposed with the EU Age Appropriate Design Code. ([MPIL](#))

It was highlighted that some VSPS already report extensively under the Code of Practice on Disinformation ("COPD") on efforts to raise user awareness around disinformation and that it would be difficult and impractical to provide a detailed "advanced" statement about the initiatives for the upcoming year given the number of dependencies involved including the availability of external

partners to collaborate with on the initiatives and the likelihood that a crisis or event may arise that needs to be prioritised for user awareness e.g. an international conflict. It was proposed that it may be more effective and appropriate for VSPS to be required to concretely report on what they have actually undertaken (as opposed to actions VSPS intend to take). ([TikTok](#))

While acknowledging that the promotion of media literacy was a worthy goal, it was suggested that it was not particular to video content harms and argued that the measure proposed in the draft Code is not appropriately specific to the scope of the Code. The prescribed measures, with publishing and implementing action plans, were deemed disproportional for smaller platforms, forcing them to make trade-offs between content moderation and media literacy efforts that would not appropriately address the harms on their platforms. ([Tumblr](#))

There was a request for the Commission not to adopt any mandatory requirements in relation to media literacy, and instead ensure that requirements introduced by the draft Code are flexible depending on the nature of the platform and the level of risk. It was argued that media literacy requirements will vary based on the type of platform and particular circumstances, and should be on a voluntary basis only. ([Udemy](#))

6B. Personal Data – Children (Q. 19)

The comments that follow refer to Section 13.3 of the draft Code dealing with Children’s Personal Data (captured from consultation question 19).

Consultation Question 19: What is your view on the requirements in the draft Code in relation to ensuring the personal data of children is not processed for commercial purposes?

This section prohibits the processing of children’s personal data for commercial purposes, in line with the provisions of the AVMS Directive and mindful of the provisions of the General Data Protection Regulation (GDPR) and the Data Protection Act 2018 (DPA), which will also apply to such personal data.

6B.1 General Views

There was agreement with the proposals in this section of the draft Code, ([Women’s Aid](#), [RCNI](#), [Pinterest](#), [National Parents Council](#), [NICAM](#), [Belong To](#), [DCEDIY](#), [Alcohol Action Ireland](#), [National Parents Council](#), [I. Goldberger](#), [Google](#), [FMA](#), [E.Kilgallon / K.Ryan / O.Delaney](#), [A. Fitzpatrick](#), [AgriKids](#), [Well-Aware Campaign](#), [European Digital Rights Group](#), [Bodywhys](#)) with additional suggestions for strengthening it to ensure that the personal information is not processed for any purpose other than the age verification and parental controls which would be consistent with the purpose limitation requirement of the GDPR. ([EDRI](#), [RCNI](#))

It was noted that apart from ethical principles, this is critical given the social, intellectual, and cognitive differences between children and adults. ([Bodywhys](#))

A survey of parents was cited which showed that 97% of respondents felt it was important not to allow the processing of personal data of children for commercial purposes, while only 3% find it somewhat important ([National Parents Council](#)).

Clarity was sought on when and why children’s personal data might be needed. ([AgriKids](#)) It was suggested that naming only commercial purposes leaves the interpretation open to abuse and the information contained in the Guidance should be placed in the Code itself. ([RCNI](#))

It was proposed that the only way to guarantee that the personal data of children would not be processed for commercial purposes was to not to collect personal data from children at all, especially biometric data. ([FMA](#))

Noting that data protection and related breaches come under the Data Protection Commissioner (“DPC”), ([CybersafeKids](#), [Children’s Rights Alliance](#)) the direction to the DPC in the accompanying draft Guidance was also supported, ([ISPCC/Webwise](#) [CybersafeKids](#)) However, it was also noted that the draft Code does not require compliance with it. The draft Code could include a requirement that VSPS providers certify that they are acting in accordance with the fundamentals and to provide evidence to this effect. ([Children’s Rights Alliance](#))

It was suggested that it is not necessary to store any personal data to prove age. It was noted that it is possible to have a privacy enhanced age verification service that would store only an identification code that is bound to a unique identifier that could be used to verify that a returning user is the same person who initially registered and proved their age. ([Sedicii](#))

Specific concerns were raised about the mining and collecting of children’s personal data via their parents’ data, which can then be used for commercial purposes such as the marketing of Infant

Formula and Breast Milk Substitute products. The Commission was urged to strengthen the prohibition on the processing of children’s personal data by including within that prohibition the collecting of parental data which may identify a child and its potential siblings. Examples given included fertility, pregnancy and parenting apps, as well as baby clubs that collect data about infants’ due dates and birth date. It was argued that children have developed a digital footprint linked to marketing databases before they are even born. ([Senator M Sherlock](#), [Friends of Breastfeeding](#), [CUIDIÚ](#), [BFLGI](#), [ACLI](#))

To ensure personal data was not being used for commercial purposes, it was argued that VSPS should be compelled to provide relevant marketing data, including marketing spending, media used and data on the demographics of audiences reached. It was argued that full disclosure should enable individuals to see if a piece of content is being paid for, if so, by whom and what data have been used for targeting them. It was further suggested that health bodies should also be able to have access to data sources indicating at scale what kinds of content are being circulated and how targeting of populations and individuals happens. ([Alcohol Action Ireland](#))

There was one suggestion that VSPSs should be required to collect the names and contact details of any person who posts on their platform, so that this information can be made available to the DSC if requested, to deal with valid complaints or to apply penalties both to platforms and the offender. ([Alex Pigot](#))

A clarification was sought on whether Section 13.3’s prohibition on the use of such data for “profiling” prevents the use of age information to direct minors into an age-appropriate experience (such as a private profile) or implementation of other protection measures. ([Pinterest](#))

It was suggested that on platforms where children may only access content with the direct involvement of a supervising adult, that these requirements are unnecessary and that this provision of the draft Code should not apply to them. ([Udemy](#))

6B.2 Existing regulatory texts and guidance

It was noted that all online platforms are already required, under Article 28(2) of the DSA, to not present advertisements based on profiling using personal data of the user when they are aware with reasonable certainty that the recipient of the service is a minor. Industry were keen that the scope of this provision is aligned with other existing regulatory requirements. ([MPIL](#))

There was a request that the Code should clearly define what is meant by “commercial purposes” in relation to the use of personal data as the term is not defined in either the AVMSD or in the draft Code. It was noted that Data Protection law prescribes legislative measures be clear, precise, and foreseeable, confirmed by e.g., Schrems litigation at the European Court of Justice. ([Mastodaoine CLG](#))

There were also calls to clarify whether the scope of “commercial purposes” for the purposes of the draft Code is not different to the description of purposes set out in Section 30 of the DPA. It was argued that if the scope is the same as DFA, then the inclusion of a provision such as this in a Code is unnecessary as it is effectively duplicating a prohibition that is already legislated for. ([Mastodaoine CLG](#))

However, if the scope of “commercial purposes” for the purposes of the draft Code is wider than that set out in Section 30 of the DPA, it was suggested that it would be better from a governance and regulatory certainty perspective for this to be addressed through an amendment to Section 30 of the DPA by the Oireachtas. ([Mastodaoine CLG](#))

The reasoning for the suggested considerations relates to a detailed explanation of considerations of Articles 5, 28 and 32 of the GDPR. The introduction of an algorithmic processing of personal data for the purposes of age verification would have the effect of introducing an algorithmic processing of personal data into platforms where there is no algorithmic filtering or presentation of content. ([Mastodaoine CLG](#))

It was also noted that there was an uncertainty in relation to the legal basis for biometric processing (and a need for balancing privacy with competing public interests) when it comes to permitting people to partake in social interactions in forums that are not subject to algorithmic profiling or targeted advertising. ([Mastodaoine CLG](#))

6B.3 Specific Recommendations

Suggested additions/amendments to Section 13.3. include:

- Extending the provision to require that personal data processed for any purpose under this Code cannot be processed for another purpose. In addition, only the minimum amount of personal data needed for the functioning of the service should be collected and retained to be consistent with the purpose limitation requirement of the GDPR and the DSA. ([5Rights Foundation](#), [RCNI](#), [EDRI](#))
- What happens to the personal data of the children once they turn 18. ([NICAM](#))
- Adding the related text from draft Statutory Guidance ([RCNI](#))
- Specifying that personal data collected by other apps and services should not be used by a VSPS in marketing, profiling or targeting of children. ([Belong To](#))
- Specifying in the Code itself that child data is not to be shared with third parties and adopt the approach of Data Protection Commission's Fundamentals for a Child Oriented approach to Data Processing and to provide evidence to this effect. The Information Commissioner's Office (ICO)'s guidance is a tool providing numerous mechanisms for consideration, including, e.g. creating a 'download all my data' tool, a 'delete all my data tool', etc. For the avoidance of doubt, the Code could specify that any processing whatsoever, apart from recording and strictly using the data for the specific purpose that it was supplied and consent was given, shall be deemed to be a breach of the Code until the contrary is proven. ([Children's Rights Alliance](#), [University College Dublin UCD Centre for Digital Policy](#))
- Ensuring that all relevant data is stored in Ireland or the EU particularly when it comes to audits. ([Youth Work Ireland](#))
- Clarifying whether algorithmic operations are covered in Section 13.3 or as part of "recommender systems". ([Youth Work Ireland](#))
- Clarifying which age the draft Code refers to (13, 16 or 18) in respect of the GDPR rights of children. ([Youth Work Ireland](#))
- Prohibition of the collection of the data from online 'due date' calculators for commercial use, or being used for the purposes of advertising, in particular by producers of commercial milk formula and follow-on milk. ([Senator Marie Sherlock](#), [Friends of Breastfeeding](#), [CUIDIÚ](#), [BFLGI](#), [ACLI](#))

6C. Reporting on complaints (Q.20)

The comments that follow refer to Section 13.4 of the draft Code dealing with reporting in relation to complaints (captured from consultation question 20).

Consultation Question 20: What is your view on the requirements in the draft Code in relation to reporting in relation to complaints?

Pursuant to section 139K(6) of the Act, each video-sharing platform service provider shall provide a report to the Commission, in the manner specified by the Commission from time to time, on the provider's handling of communications from users raising complaints or other matters every three months from 1 January each year.

6C.1 General Views

Support for the reporting obligation was expressed. (DCEDIY, Department of Health) and it was noted that the language used to describe the handling of complaints in the Consultation document is clear. (Bodywhys)

6C.2 Frequency of Reporting

It was noted that it would be imperative that this requirement is followed up with VSPS every three months as suggested. (AgriKids) It was also suggested that the Commission should also be free to specify a more frequent reporting interval in the case of an individual VSPS, if there is good reason to do so. (Safe Ireland)

However, Industry argued that a requirement to report metrics every three months is excessive for VSPS providers and does not seem necessary or proportionate, especially considering that the DSA limits such reporting obligations to a six-month cadence for VLOPs and yearly for other intermediary services. It was suggested that that this requirement follows the DSA approach. (MPIL, Google, Pinterest, Technology Ireland)

It was recommended that the Commission limits quarterly reporting to more high-risk platforms and those which reach certain usage thresholds, e.g., quantity of complaints or subject matter of complaints within a specific timeframe, after which the platform should be required to meet enhanced reporting standards. (Udemy)

6C.3 Concerns

Industry raised several concerns about the reporting obligation in relation to complaints set out in Section 13.4 of the draft Code. It was suggested that the Code introduces disproportionately onerous reporting requirements, which are not explicitly provided for in the AVMSD and overlap with existing transparency reporting requirements in the DSA. (Google, Technology Ireland)

The scope of the reporting obligation in relation to complaints was felt to be overly broad - covering the provider's handling of communications from users "raising complaints" or "other matters" (MPIL) so that the extent of the obligation (e.g. in terms of the contents of such reports) is unclear. (Google)

Clarity was sought about whether under "communications from users raising complaints", the scope of the reporting obligation is limited to complaints raised under the complaints mechanism set out under Section 11.29 (i.e. in relation to the implementation of obligations relating to reporting and flagging, age verification, content rating and parental controls), or if it encompasses any complaint made by any user. (MPIL)

Clarity was also sought about what should fall under the scope of "other matters". (MPIL)

Clearer guidance was sought on what is envisaged by "the manner specified by the Commission from time to time". (Google)

It was pointed out that reporting on internal complaints handling systems is already required under the DSA, and the Commission should avoid setting out competing duplicate requirements (see Article 15(1)(c) of the DSA). (MPIL)

It was noted that the Commission has discretion around the granularity required for reporting and that a one-size-fits-all requirement would undoubtedly be a disproportionate burden for smaller platforms. It was proposed that the Commission should first assess what, if any, gaps exist with regards to the information provided in the DSA reports, and then apply this reporting requirement in a proportionate manner such that smaller platforms are only required to provide information which the Commission deems absolutely necessary to carry out its functions. (Tumblr)

It was noted that the rationale for having a report every 3 months, rather than every year as provided by the DSA, is not explicit. From the current text, the scope of the report remains unclear. Under the DSA, transparency reports include measures taken in regard to content moderation, use of automate means, orders regarding illegal content and complaints. (5Rights Foundation, Technology Ireland)

6C.4 Content of the reports

It was pointed out that it will be important that such reports give sufficient detail to enable the Commission to understand the effectiveness of the VSPS providers' complaints system, and to obtain supporting evidence and audit information as necessary. (Children's Rights Alliance) It was also important to list the parameters of reporting, such as number of complaints handled in a cadence, what was the percentage of complaints being enforced, what was the average time from reporting to closing the issue etc. (I. Goldberger) It was also suggested that data on service users' satisfaction ratings for the complaints procedure they have just used is reported. (Safe Ireland)

It was also recommended that the detail contained in the VSPS provider reports should include detail on Technology Facilitated Gender-Based Violence, Intimate Image Abuse and Image-Based Sexual Abuse complaints to ensure data capture and understand the effectiveness of the complaints handling system. (Dublin Rape Crisis Centre, Women's Aid)

It was suggested that in addition to monitoring and reporting the speed, accuracy, and human level of involvement in removing and reducing self-harm and suicide content online, it was important that VPSPs are held accountable for the mental wellbeing of their staff – and that this should be reported on. (Samaritans Ireland)

6C.5 Specific recommendations on reporting in relation to complaints

- Make the reports publicly available (5Rights Foundation) and in plain English to ensure the transparency of the reporting process and to facilitate research and the identification of recurring trends by civil society organisations, policymakers and other stakeholders. (Belong To)
- Specify that these reports should include details as to the number and outcome of complaints and other matters where the content at the subject of the complaint relates to one of the protected characteristics named in the Code. (Belong To)
- Include a provision that a VSPS which fails to comply with this requirement, does not fulfil the requirement in full, or is suspected of misrepresenting information in relation to complaints will be subject to external auditing as per section 139P of the Act. (Belong To)

- Specify a more frequent reporting interval for individual VSPS providers, if there is good reason to do so. ([Safe Ireland](#))
- Ensure reporting on proposed obligatory measures related to monitoring and reporting the speed, accuracy, and human level of involvement in removing and reducing self-harm and suicide content online, including mental wellbeing of their staff. ([Samaritans Ireland](#))
- Request VSPS providers to appear before the Online Safety Commissioner and/or relevant committees to report on their compliance on an annual basis. ([Samaritans Ireland](#))
- Amend the provision to add minimum specifications for complaint handling reports including separate reporting of TFGBV, IIA and IBSA with the information on the number and type of complaints, action taken and timeframes. ([Women's Aid, Dublin Rape Crisis Centre](#))
- In order to ease compliance for providers and to avoid duplication, reporting frequency and requirements should be aligned, or at least avoid major inconsistencies, with the procedures established under the DSA. ([5Rights Foundation](#))

6D. Other considerations for VSPS (Q. 21)

The consultation responses in this chapter refer to any other comments on the requirements of Section 13 of the draft Code (captured from consultation question 21).

Consultation Question 21: Do you have any other comments on the requirements in Section 13 of the draft Code?

6D.1 Safety by design approach

Support was expressed for a ‘safety by design’ approach to regulating these matters and there were calls for the VSPS providers to adopt such an approach. The inclusion of a general obligation on VSPS relating to safety by design as detailed in the draft Statutory Guidance and Supplementary measures was recommended. ([5Rights Foundation](#))

6D.2 Strengthening of Section 13

As currently drafted, the draft Code gives too much discretion to the how VSPS advance media literacy. Instead, the Commission should ensure: that it incorporates the underlying principles such as those suggested by EGRA; children and those who support children, particularly vulnerable children, are regarded as stakeholders and consulted; the Code itself (rather than the Statutory Guidance) specifies that providers follow the guidance provided by the Data Protection Commissioner in their Guide to the Fundamentals for a Child-Oriented approach to Data Processing; the Code specifies that any processing whatsoever, apart from recording and strictly using the data for the specific purpose that it was supplied, and consent given, shall be deemed to be a breach of the Code until the contrary is proven. ([Children's Rights Alliance](#))

6D.3 Timely manner of reporting

It was noted in the supplementary guidance that complaints should be handled in ‘timely’ manner. It was recommended that an obligation, defined by a set of priorities, should be established by the Code to determine a universal and agreed approach to be adopted by VSPS. ([Irish Traveller Movement](#))

6D.4 Scope of obligations and reduction of reporting requirements

It was suggested by Industry that all reporting requirements be included in one single provision and that all be satisfied by one single report and an opportunity was sought to engage constructively in the establishment and clarification of clear reporting standards that meet the goals of the Commission while also being feasible to address (in light of all of the other relevant reporting requirements of the in-scope services). (MPIL)

There was a view that some platforms do not consider that measures in relation to media literacy and the processing of children's personal data apply to their business, owing to the nature of its content provision. (Udemy)

Chapter 7: Supervision and Enforcement (Q.22)

The consultation responses in this chapter refer to comments on Section 14 of the draft Code dealing with Supervision and Enforcement of the Code (captured from consultation question 22).

Consultation Question 22: Do you have any comments on this section of the draft Code?

Section 14 of the draft Code deals with Supervision and Enforcement and contains a summary of the enforcement procedures in respect of the draft Code.

7A. General Views

Support was expressed for the approach outlined in Section 14 of the draft Code which sets out the provisions for the Supervision and Enforcement of the Code. ([Department of Health](#))

The proposed provisions were supported, with a suggestion to consider the timing of some of the requirements in order to ensure that there are fair but firm deadlines for complying with obligations, helping to elevate the public trust. ([Yoti](#))

A constructive approach to supervision and enforcement of internet regulation, scoped and appropriate to the systems in place at each VSPS, was welcomed. ([Udemy](#))

Concern was expressed that the potential consequences of the regulations proposed in the draft Code extend far beyond safeguarding. It was suggested that the powers granted to the Commission represent a severe threat to the principles of freedom and open discourse and further suggested that it was echoing authoritarian regimes that seek to control and manipulate information to their advantage and that there was a risk of dissenting voices being silenced, critical opinions stifled, and the vibrant tapestry of diverse perspectives on social media being replaced. ([L. McMonagle](#))

7B. Submissions

It was noted that currently only the concerned providers may make submissions to the Commission. To ensure the effective supervision and enforcement of this Code, it was argued that all relevant parties should be involved and heard by the Commission, with special attention paid to the limited legal capacity of children with appropriate measures taken to respect their right to be heard, while taking into due consideration the limited personal and legal autonomy and capacity of children. ([5Rights Foundation](#))

7C. Transparency

A question was raised about the extent of publication by the Commission of complaint reports, supervision and enforcement action. ([A. Steen](#))

It was recommended that more robust and transparent control measures to regulate the Code are adopted and that VSPS should be required to monitor, report and publish the actions taken to ensure compliance with the Code. ([HSE NCHP](#))

It was suggested that it would be helpful if the Code specifies what follow-up action the Commission might take if a content-limitation notice to a VSPS provider is not obeyed, or if there is delay in implementation. ([Children's Rights Alliance](#))

7D. Nominated bodies

It was noted that Section 139O(7) of the Act provides that a nominated body may notify the Commission of a matter which may trigger a request for information. It was requested to include information on the power of a nominated body to provide information, and to identify how the nominated body interacts with the Commission on so doing. In line with general fair procedure principles, the Code should specify how the right of any complainant to participate in any investigation would be vindicated, and how such a complainant would be supported. ([Children's Rights Alliance](#))

7E. Sanctioning

Concerns were expressed that the wording remains very unclear as to how, and as to when, sanctions will be applied to VSPS for being in breach of the legislation and/or the Code. It was pointed out that the Code provides the opportunity to explicitly outline at what point a breach has occurred and a sanction will apply. ([CybersafeKids](#))

It was suggested that it would be helpful if the Code would specify what follow-up action the Commission might take if a content-limitation notice to a VSPS provider is not obeyed, or if there is delay in implementation. ([Children's Rights Alliance](#))

It was suggested that sanctions to be imposed for inappropriate activities need to be strong, with robust enforcement. These should be funded by levies on advertisers. ([Alcohol Action Ireland](#))

The development of effective, dissuasive sanctions for non-compliance was recommended. ([HSE NCHP](#))

7F. Use of fines

It was suggested that the Code explicitly outline a mechanism whereby any fines resulting from non-compliance with the Code are directed towards services that offer support to those who have been negatively impacted by breaches of online safety. ([The Alders Unit](#), [Children's Health Ireland](#), [Specialist Child Sexual Abuse Services](#))

7G. Audits and compatibility with the DSA

Concerns were expressed from Industry about the proposed audits and it was recommended that an audit should only be required in specific circumstances, such as where there has been a finding of non-compliance. It was argued that they are an expensive and time-consuming process that redirect resources from implementing safety measures to responding to the audit. It was suggested that the audits proposed would not have any meaningful benefit in the space. ([Technology Ireland](#))

It was also pointed out that VLOPs have separate annual audit requirements pursuant to Article 37 of the DSA. The audit report resulting from those audits must be shared with the Commission, once it is appointed as Ireland's Digital Services Coordinator. Therefore, the imposition of this requirement is disproportionate to aims to be achieved. These requirements are outside the scope of AVMSD and overlap with requirements set out in DSA and pre-empted by the DSA. ([Google](#), [Technology Ireland](#))

Industry indicated that it is looking forward to receiving guidance on the audit procedure set out in section 139P of the Act and referred to in section 14.4 of the draft Code. ([MPIL](#))

It was noted that the draft Code contained a significant number of new requirements, many of which will need to be interpreted by companies in the context of their own unique platforms. As such, there may be good faith differences of opinion between platforms and the Commission on the necessary measures for compliance with the Code. Concern was expressed that there was no explicit process for

platforms to cure violations and a more consultative approach to potential violations would serve the principles of fairness and transparency. ([Pinterest](#))

It was argued that there was precedent for this in the DSA, under which platforms being investigated can offer commitments specifying how they intend to comply, which, if accepted by the European Commission, would be deemed binding and terminate the investigation. Also, at the conclusion of an investigation under the DSA where there is a finding of non-compliance, the European Commission must communicate preliminary findings that state the measures needed to come into compliance and provide a reasonable cure period before a fine is issued. Questions were also raised as to whether the draft Code, in Section 14, refers to Articles 71 and 73 of the DSA. ([Pinterest](#))

7H. Monitoring of marketing

It was argued that self-regulation and individual complaints processes are not sufficient, and it was recommended that the onus of responsibility relating to monitoring of marketing should be with the VSPS and producers of the advertisements and not with the end user to submit complaints. ([HSE NCHP](#))

7I. Compliance notifications

It was noted that the enforcement procedure and accompanying sanctions are clearly laid out and it was suggested that it may be beneficial to expand on what “periodically” could mean in 14.2, if practicable. ([ISPCC /Webwise](#))

7J. Alternative dispute resolution (ADR)

It was recommended that any mediation requirements under the Code should align with requirements in the DSA to minimise friction and avoid duplication. In particular, any ADR options for complaints about individual content moderation decisions should fall within the remit of the DSA. The proposed obligations were deemed overly burdensome and disproportionate, and beyond what is required by the AVMSD that requirements in relation to complaints would extend to ancillary content (i.e. comments). ([Technology Ireland](#))

7K. Complaints handling processes

It was argued that it is overly burdensome to oblige VSPS to set up new complaints handling processes in circumstances where they already have in place effective processes for handling complaints in respect of relevant aspects of their service (i.e. reporting and flagging, age assurance, content rating and parental controls). It was also considered disproportionate, and beyond what is required by the AVMSD that requirements in relation to complaints would extend to ancillary content (i.e. comments). ([Technology Ireland](#))

Chapter 8: Annex to the draft Code (Qs.23-24)

The consultation responses in this chapter refer to the Annex to the draft Code (captured from consultation question 23), or any other aspect of the draft Code that the Commission is required to consider in developing an online safety code (captured from consultation question 24).

Consultation Question 23: Do you have any comments on the Annex?

8.A Illegal content harmful to children

Table A explains the offence-specific categories referred to in the definition of “illegal content harmful to children”.

8A.1 Limitations of applicable definitions

Concerns were expressed about the limited definitions of illegal content harmful to both children and the general public. It was argued that there should be no limitations set as all illegal content is harmful. ([RCNI](#), [Safe Ireland](#))

8A.2 Affirmation of draft provisions

The specifications of the types of harmful content noted in Table A were welcomed, and deemed to present valuable additions to the more vague categories of “services that may impair the physical, mental or moral development of minor” and “most harmful content” in the AVMSD. It was deemed necessary to specify these types of harm in a diligent, evidence based way in order to be able to tackle the current challenges via adequate and targeted measures by the platforms. It was felt that these categories target, in a proportionate way, the most important categories of possible harm. ([Bratislava CMS](#))

It was considered that the Annex is clear and lays out well the statutory frameworks for the various types of harm covered by the draft Code. ([ISPC /Webwise](#))

8A.3 Intimate Images

It was suggested that points 38 and 39 of the Annex, relating to “an intimate image” could also include CGI or AI-generated “deep-fake pornographic images, audio or video” or any realistic likeness of a person without their consent. ([Well-Aware Campaign](#))

8A.4 Safety by design

It was reiterated that the adoption of the Code was an opportunity to set out parameters, even generally, around recommender systems and safety by design. ([CybersafeKids](#))

It was suggested that it would be helpful to refer to the UN Convention on the Rights of a Child in order to bolster efforts to ensure that VSPS providers integrate safety by design as part of their operational models. ([Alders Unit Children’s Health Ireland](#), [Specialist Child Sexual Abuse Services](#))

8A.5 Jurisdictional scope and definitions of illegal content harmful to children

Concerns that were expressed previously about the jurisdictional scope of the Code and whether certain provisions of the draft Code are intended to apply only in Ireland, and other provisions to apply throughout the EEA, were reiterated, as the Annex informs the definition of illegal content which will be regulated across the EEA. ([Google](#))

As noted in the comments by Industry representatives previously relating to Question 3, there are concerns that the definition of illegal content harmful to children was confusing and went further than the AVMSD (Articles 28(b)(1)(a) and (c)) as it lists those activities that are criminal offences in Ireland. (MPIL)

It was noted that across the EU, it is envisaged that VSPS would be regulated by one Member State and therefore it is confusing and problematic to include Irish-specific offences in the Code. Obligations in respect of national illegal content in the draft Code that go beyond the AVMSD were felt to be unnecessary and that the issue would be addressed, harmonised and regulated under the DSA. (Google, MPIL, Udemey). It was recommended that references to specific Irish criminal legislation should be removed from the definitions of “illegal content harmful to children”. (Google)

The term “illegal content harmful to children” was understood to mean content that is not, in and of itself, illegal but is considered to be seriously harmful. But the definition also includes content representing illegal activities or behaviours which are harmful to children by virtue of the fact that the victim is a child or the content is viewed by a child. As such, it appears that underlying content itself is not illegal and therefore the labelling of such material as “illegal content” is misleading and confusing. (MPIL)

It was argued that there is also a difference between an illegal act and illegal content and uploading a video of an illegal act does not necessarily make such content illegal. Labelling such material as illegal is misleading and inaccurate and gives rise to uncertainty to VSPS providers when implementing the relevant requirements, as well as to users when posting or reporting content. (MPIL)

Greater clarity was called for the offence-specific categories of harmful on-line content (as listed in A-2 of the Annex) in order for the relevant requirements in the Code to be practicable. Specifically, it is unclear when offence-specific categories of harmful online content would be considered to be “likely to be viewed by a child”, which qualifies the harmfulness of the content. In addition, it was argued that it will be very challenging for both human and automated content moderators to make accurate decisions on whether content is harmful, and therefore violating, by virtue of whether it has been seen or is likely to be seen by a child. It was unclear how VSPS could enforce some of the draft Code requirements which apply to that content without unduly interfering with adult users' rights with respect to such content (MPIL, Technology Ireland)

It was recommended that the Commission renamed the term “illegal content harmful to children” to something more appropriate (since it is not in itself “illegal”); to review its definition to include categories of types of content rather than reference offence-specific categories under Irish law or behaviours or who is likely to view content; and to provide workable definitions of the undefined terms included in the definitions of “illegal content harmful to children”. (MPIL)

Also, the use of undefined terms such as “gives rise to risk”, “significant harm”, “reasonably foreseeable”, which were described as broad and ambiguous, were deemed difficult to understand, implement and enforce. It was recommended that the Commission should provide workable definitions of these undefined terms that are focused on the type and nature of the underlying content rather than the potential impact that a given piece of content could have on a particular user. (Technology Ireland)

8B. Illegal content harmful to the general public

Table B explains the offence-specific categories referred to in the definition of “illegal content harmful to the general public”.

8B.1 Limitations of applicable definitions

Concerns were expressed over the limited definitions of illegal content harmful to both children and the general public, and the elimination of any limitations was recommended, as it was deemed that all illegal content is harmful. (RCNI)

It was argued that the definition of “illegal content harmful to the general public” was too narrow to be effective in the context of online domestic violence and abuse, confined as it is to terrorist offences, offences concerning child pornography and racist and xenophobic offences. (Safe Ireland, Dublin Rape Crisis Centre)

It was noted with disappointment that there was an absence in this definition of illegal content of a number of other offences, which were specified in Schedule 3 of the Act, and which should also be included under illegal content harmful to the general public, including but not limited to offences under the Domestic Violence Act 2018 and the Harassment, Harmful Communications and Related Offences Act 2020. It was observed that relevant offences under the Harassment, Harmful Communications and Related Offences Act 2020 are included in Table A, but not included in Table B although these behaviours are also criminal offences when committed against adults. (Women's Aid)

It was argued that there was no legal impediment to the inclusion of these offences in the definition of illegal content harmful to the general public at the level of either national or European law and it was requested that the Commission should advocate for the inclusion of these offences within the ambit of the law so that this Code could become a much more effective tool to identify and frustrate the proliferation of many forms of online abuse in the context of domestic violence (and others). (Safe Ireland)

Other relevant offences identified in Schedule 3 the Act include inter alia offences prohibiting the identifications of victims of rape, female genital mutilation and trafficking, online threats to kill, harassment and stalking, none of which are in the code as far as the general public is concerned. The absence of these offences in this definition was noted as being of particular relevance to the work of non-governmental organisations specialising in support to women and victims of violence. (Women's Aid)

It was suggested expanding the definition of “illegal content harmful to the general public” to include paragraphs 1, 2, 3, 6, 9, 10, 16, 17, 19, 23, 24, 25, 26, 27, 28, 29, 31, 34, 37, 41 and 42 of Schedule 3 of the Act. (Dublin Rape Crisis Centre, Women's Aid, Safe Ireland)

It was also argued that the definition of “regulated content harmful to the general public” is too restrictive to be effective as a tool to prevent or sanction forms of online abuse which constitute cyber-bullying, being confined to content inciting to violence or hatred against a group of persons or one of their members on a number of grounds (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). It was noted also that most online abuse in the context of a pattern of domestic violence easily passes the risk test under Section 139A (4) the Act, in that it gives rise to a risk of significant harm to a person's physical or mental health, where the harm is reasonably foreseeable. Accordingly, it was recommended that the definition also includes content by which a person bullies or humiliates another person. (Safe Ireland)

8C. Matters the Commission is required to consider in developing an Online Safety Code

Consultation Question 24: Do you have any other comments on any section or aspect of the draft Code, including with reference to section 139M of the Act in relation to the matters the Commission is required to consider in developing an online safety code?

8C.1 Proportionality of measures

While commending the Commission on having generally taken a high-level approach to setting out the draft Code's requirements and abstaining from being overly prescriptive, there were concerns from Industry that the draft Code appeared to take a one-size-fits-all approach and fails to provide VSPS providers with flexibility with regard to the specific measures that should, in practice, be implemented, in light of their proportionality and appropriateness to their services. (MPIL, Udemey)

It was argued that the draft Code does not take into account the different nature of the services, types of harms, the criteria upon which a service has been designated, etc., all of which raises issues of substantive fairness and proportionality. It was further argued that the AVMSD's and the Act's goal would be better achieved by requiring all VSPS providers to have effective systems in place with the view of ensuring the Code's goals are met, with baseline measures, such as those set out with regard to terms and conditions and related obligations, ensuring that content not suitable for children cannot be generally seen by them and reporting and flagging.

The Commission was urged to amend the draft Code to include a provision acknowledging that not all measures under the Code may be proportionate or appropriate for all VSPS providers, allowing providers to engage with the regulator to demonstrate they are achieving the required safety outcomes and mitigating identified risks without necessarily needing to implement inappropriate prescriptive measures, and particularly acknowledging that many of the existing measures required to be taken by VSPS who are also regulated under the DSA. (MPIL)

8C.2 Self-regulatory mechanisms and complaints

The collaboration between ASAI and the Commission was supported by some, as would be the adoption of the co-regulation mechanisms proposed in the draft Code. It was pointed out that co-regulation allows for the harnessing of knowledge from industry and the expertise in dealing with harmful content and that most member states appear to have adopted co/self-regulation mechanisms in AVMSD and references to the existing advertising self-regulatory system and to the relevant references to the ASAI code was welcomed. (IAB Ireland)

However, strong objections were also made of the co-regulation mechanisms proposed in the draft Code.

Echoing comments captured in other chapters (e.g. Chapter 25) (BFLGI, Irish Heart Foundation, SafeFood, HSE, HSE Health & Wellbeing, Dr. O. Bartlett, Dr. N. Campbell, Dr. A. Garde, Dr. C. Patton, K. Reilly, Dr. M. Tatlow-Golden), concern was expressed that the draft Code refers VSPS to self-regulatory bodies (ASAI) on certain commercial communications. It was argued that as an industry funded organisation the ASAI has no statutory authority with no sanctions beyond a "name and shame" approach and that self-regulation is not appropriate, proportionate or effective. It was recommended that there should be no self-regulatory measures or bodies with respect to regulating the Code particularly at the expense of statutory measures, in the Code, including in respect of complaints and content flagging to the Commission. (Friends of Breastfeeding, ACLI, HSE NCHP,

Alcohol Action Ireland, Dr. O. Bartlett, Dr. N. Campbell, Dr. A. Garde, Dr. C. Patton, K. Reilly, Dr. M. Tatlow-Golden)

It was argued statutory mechanisms should be the sole structures by Codes are designed, implemented and enforced, citing previous alcohol commercial related adjudications under the ASAI self-regulatory mechanism, recommending. (HSE, Alcohol Action Ireland)

It was pointed out that the current self-regulatory system relies on goodwill and knowledge of legislation by concerned and motivated citizens to report violations and it was argued that this was an unsustainable model. (ACLI, CUIDIÚ) Calls were made for a much more robust and responsive complaints system that includes a monitoring and enforcement approach with appropriate sanctions, perhaps exploring existing AI tools, such as the Vivid Code Catcher⁵ which may assist in the monitoring of violations. (ACLI)

8C.3 Definitions

It was suggested to define “child pornography” and “deep fake” or realistic CG or AI-generated content. (Well-Aware Campaign)

8C.4 Gender-based and related violences

The Commission was urged to include a section dedicated to TFGBV and/or, at the very minimum, to IIA in the Code. It was argued that there should be clear obligations imposed on VSPS providers in respect of rapid removal and take down procedures. Given the exponential harm that victim/survivors suffer from the non-consensual sharing of their intimate images which can be replicated and shared at speed, very specific minimum outcomes must be required of VSPS providers including the adoption of a precautionary approach in favour of immediate removal. (Dublin Rape Crisis Centre)

Further, it was assessed that the draft Code lacks the commitment to tackle the high levels of risk and harm perpetuated by content which contains domestic, sexual and gender-based violence, misogyny, exploitation, intimate image abuse and non-consensual sharing of images or information. Great concern was expressed about there being no mention of these harms in the Code, despite their devastating impact on victims and society generally. (RCNI, Women’s Aid)

It was suggested that the draft Code includes obligatory cooperation between VSPS themselves, and with the Commission, the police and specialist NGOs and public sector bodies in combatting the sharing of illegal and harmful content, training and development of prevention measures and support services for victims, with the obligation on the part of VSPS providers to fund these external expertise, overseen by the Commission, to ensure transparency in the distribution of the levy not interfering with the independence of the external experts. (RCNI, Women’s Aid).

It was noted that the Code does not address the need for VSPS to collaborate with each other both with technology and coordinated responses to create a seamless response that will minimise any need for an individual to have to engage multi-laterally with different platforms in respect of the same complaint. It was also recommended that the Code should also include a commitment to work with hotline.ie and equivalent services in other jurisdictions in relation to removal of CSA and IIA content. (Women’s Aid)

8C.5 Safety by design and Recommender Systems

Having regard to the references to safety by design in the draft Guidance, it was suggested that the Code should stipulate that in the design of safety mechanisms in new applications, programs and systems, the principle of safety by design should always be followed and also, existing applications,

programs, etc. should be examined in timely fashion and adjusted if necessary so that their safety mechanisms conform to safety by design principles. It was also recommended that the meaning of Safety in this context must include the maximum level of safety from online abuse in the context of a personal relationship (as well as other forms of harm). The proposal to include a section on safety by design in the next iteration of this Code was welcomed. ([Safe Ireland](#))

While acknowledging that Recommender Systems and safety by design will not be addressed within the first Code, it was stated that there was an urgent need for measures to tackle recommender systems as a means of addressing how harmful content is being served to children as well as the urgent need to ensure safety by design is central design consideration for any new or emerging technology. ([CybersafeKids](#))

It was noted that the Code does not seem to address how some algorithms used by VSPS may exacerbate the impact of harmful content by recommending further harmful content to users or by making harmful content go viral. For example, algorithms may recommend repeated viewing of misogynistic and gender-based violence promoting content or may recommend Intimate Image Abuse (IIA) content and contribute to its rapid spread. It was acknowledged that measures on recommender algorithms are being considered in the Draft Supplementary Measures and the speedy introduction of such measures was recommended. ([Women's Aid](#))

8C.6 Accessibility by design

It was argued that accessibility should be a 'must-have,' on a par with privacy, security, and safety-by-design and that safety measures, settings, terms and conditions, complaints mechanisms and solutions should be appropriately tailored, clear and accessible to all users regardless of age, ability, or disability. It was suggested that there should be a clear requirement for accessibility to be built by design and co-created in consultation with expert bodies such as the National Disability Authority (NDA) whose work is guided by the United Nations Convention on the Rights of Persons with Disabilities (UNCPRD), which incorporates the Centre for Excellence in Universal Design (CEUD), the only statutory Centre of its kind in the world. ([ISPC/Websites](#))

8C.7 Rights of a child

In line with the UN Convention on the Rights of a Child (Article 12), as well as the Young Ireland: National Policy Framework for Children and Young People 2023-2028, all legislation, policy, programmes and services that have an impact on the lives of children and young people must embed the voice of children and young people. Additionally, due regard to the full rights of children in digital spaces should be considered in the drafting of the Code through a Child Rights Impact Assessment Process. ([DCEDIY_CRPU](#))

8C.8 Processing of Children's Data

It was suggested that the Commission strengthens the prohibition on the processing of children's personal data by considering within that prohibition the collecting of parental data which may identify a child and its potential siblings. In the context of infant and follow-on formulas, examples include baby clubs that collect data about infants' due dates and birth dates. Fertility, pregnancy and parenting apps also collect this type of data. As a result, children have developed a digital footprint linked to marketing databases before they are even born. It was recommended that the Commission takes proactive measures to regulate and monitor digital marketing practices related to infant formula and follow-on milk with stricter guidelines, increased transparency, and penalties for misleading advertising. ([Friends of Breastfeeding](#))

Chapter 9: Draft Statutory Guidance (Q.25)

The consultation responses in this chapter refer to comments to the Draft Statutory Guidance Materials (Guidance) in Appendix 2 to the draft Code. The responses contained in this section are mostly drawn from consultation question 25.

Consultation Question 25: Do you have any comments on this draft Guidance, including in relation to the matters required to be considered by the Commission at section 139ZA of the Act?

9A. Introduction (Section 1 of Draft Statutory Guidance)

This section explains that the Commission has prepared these Guidance in relation to the application of the measures detailed in Sections 11 - 13 of the draft Code.

It was suggested that the Guidance remains at a very high level and lacks specificity. There were concerns that if the draft remains as currently proposed it will be a failed opportunity to strengthen and clarify VSPS commitment to oppose online Gender Based Violence and reduce harm to victims/survivors of online abuse who are aged 18 and above. ([Women's Aid](#))

It was recommended that the text of the Guidance should be incorporated into the draft Code, enabling for the preparation of a more comprehensive Code, which would, in turn, provide more protection for users from the outset. ([RCNI](#))

It was noted that non-adherence to the guidance is not a “contravention” to the guidance but that “failure to follow the guidance” would be looked on less favourably by the Commission. This approach was welcomed, and it was felt that it ought to support regulated entities to employ best efforts when adhering to the Code. ([ISPCC/Webwise](#))

It was noted that the words “effective” and “robust” were used interchangeably throughout the document, particularly in the context of age assurance, content ratings and parental controls. With no definition provided for the word “robust” it was suggested that the word “effective” be used throughout in the interest of legibility. ([Yoti](#))

It was suggested that Statutory Guidance includes several undefined and vague terms such as “may be exposed to videos” that may “may impair their physical, mental or moral development”. It was argued that this was vague and classifying features in this way creates further regulatory confusion for VSPS. ([MPIL](#))

Industry representatives cautioned the Commission against including guidance and suggestions that go beyond the requirements of Article 28b of the AVMSD and recommended that the Guidance should be entirely voluntary and should not be taken into account, to the extent the Commission considers it appropriate, when deciding whether to open an investigation and/or whether or not there has been a contravention. ([MPIL](#))

Similarly, concerns were expressed that some aspects of the Guidance (Age Verification, Content Rating, and Parental Controls) are excessive for certain VSPS. It was suggested, when preparing the Guidance, the proportionality of provisions, levels of availability of online content and levels of risks be considered. ([Udemy](#))

9B. General Guidance: Obligations of Video-Sharing Platform Services (Section 2 Draft Statutory Guidance)

This section contains certain characteristics and examples considered indicative of an online safety mechanism achieving its objective.

9B.1 Easy-to-Use

It was suggested that under “easy-to-use” that children’s needs should be considered and that online safety mechanisms should be age appropriate and accessible for children. ([5Rights Foundation](#))

The consistent means of content rating noted in the Guidance was welcomed and it was suggested that it should be prioritised in the interest of user-friendliness and accessibility of these mechanisms. ([Belong To](#))

9B.2 Prominent

Specifying “users, including children” was suggested to ensure that children’s specific needs are not forgotten but duly taken into account. ([5Rights Foundation](#))

9B.3 Transparent

Specifying “users, including children” was suggested to ensure that children’s specific needs are not forgotten but duly taken into account. ([5Rights Foundation](#))

9B.4 Safe

It was suggested that within the explanation of “safe”, there should be explicit reference to ensuring the protection of users with protected characteristics. ([Belong To](#))

The characteristics laid out for online safety measures to achieve their objective was welcomed, as was the inclusion of “safe” and the recognition of the importance of ensuring the safety of users by encouraging the use of safety impact assessments. ([ISPCC/Webwise](#))

The mention of safety by design principles in the Guidance was noted with approval and it was suggested that an obligation to monitor existing applications, programs etc and to design new ones in accordance with safety by design principles, should be incorporated into the Code itself. ([Safe Ireland](#))

9B.5 Rights and principles related to children

It was suggested that explicit reference should be made to the rights and principles contained in the UN Convention on the Rights of Child in the General Guidance section of the draft Guidance; and/or by incorporating reference to children’s rights consistently throughout the draft Code and Guidance in respect of each obligation placed on VSPS providers, similar to the approach taken to the section in the draft Guidance on parental controls. ([Ombudsman for Children's Office](#))

9B.6 Protection of users

The Guidance as drafted was welcomed and the ‘later expansion’ requirement without onerous obligations was noted as fair. However, it was suggested that the Guidance would best serve all people from racism and discrimination, by requiring groups protected in Ireland under Article 21, including Travellers to be named and defined in the Guidance as a standard baseline. ([Irish Traveller Movement](#))

While protection from sexual abuse is referenced in relation to minors, it was noted that domestic, sexual and gender-based violence, misogyny, intimate image abuse, non-consensual sharing of images

and information and exploitation are not mentioned as grounds for protection. It was recommended that Code must provide specific details on what the requirements of the 'online safety impact assessment' should be. [\(RCNI\)](#)

9C. Guidance: Terms and Conditions – Content (Sections 11.1-11.9 of the Code)

This section explains that users be directed to best practice guidelines on avoiding exposure to certain content and on reduction of risks.

9C.1 General

It was argued that the Guidance provided regarding terms and conditions went beyond the legal remit of Article 28b(a) of the AVMSD, under which VSPS providers are required to include and apply in their terms and conditions certain requirements, notably, prohibition of certain types of content. However, the Guidance appears to go beyond and impose on VSPS providers to direct users to Irish and European best practice, assist them users to identify content that falls within the scope of the draft Code and take measures to reduce the risks. [\(MPIL\)](#)

It was recommended that the Guidance requiring VSPS providers to prohibit certain matters in their terms and conditions, should include groups/ grounds protected in Ireland under Article 21, including Travellers, are described to users as a group protected by a discourse standard setting guide established by the Service. [\(Irish Traveller Movement\)](#)

It was also recommended that the terms and conditions should also address the way multiple forms of discrimination intersect and intensify the negative impact of abuse in the experiences of marginalized individuals and groups. [\(Women's Aid\)](#)

9C.2 Content Detrimental to the Safety of Children

There was a call for content that promotes dangerous or reckless behaviour which can pose a risk to life or health to be subject to stringent measures to protect children and should include 'warnings' to create better awareness to the dangers being depicted and to dissuade the public from uploading and viewing such content. [\(AgriKids\)](#)

It was also noted that in relation to access to adult content the Guidance does not clearly state that children under 18 shall not be permitted access to this content. [\(CyberSafeKids\)](#)

9C.3 Gender Based Violence and related offences

It was proposed that the Guidance should specify that platforms should state in their terms and conditions that content promoting misogyny and Gender Based Violence will not be tolerated and that there will be consequences for users doing so. In addition, it was suggested that the Guidance should specify that platforms Terms and Conditions should warn users that Intimate Image Abuse (IIA) is a criminal offence in some jurisdictions - such as Ireland.

9C.4 Best practices

With respect to best practice, it was argued that it may not be sufficient to allow providers to decide what this constitutes and it was suggested including minimum requirements for best practice within the Guidance. [\(Belong To\)](#)

The proposal to publish sample best practice guidelines on the Commissions website were supported. [\(DCEDIY_CRPU, Department of Health\)](#)

9C.5 Harmful content and Breaches of Terms and Conditions

It was suggested that the guidance should contain a benchmark as to what is deemed “repeated” breaches of terms and conditions and should detail specific benchmarks for the number of breaches of terms and conditions which will lead to suspension for each of the following categories “illegal content harmful to the general public”; “illegal content harmful to children”; “regulated content harmful to the general public” and “regulated content harmful to children”. ([Belong To](#))

It was also proposed that breaches of terms and conditions on the basis of “illegal content harmful to the general public” and “illegal content harmful to children” should lead to the immediate suspension of a user’s account. Finally, guidance should set out parameters for time limits on responding to reported content, handling a user’s report, and suspending or removing an account. ([Belong To](#))

It was welcomed that the Commission advises platforms to assist users to identify content that falls within the scope of the Code, including content that promotes eating or feeding disorders, content that promotes or makes available knowledge or methods of self-harm or suicide. It was suggested that to be most useful, guidelines should specify what harmful content can look like – for example, with regard to suicide and self-harm, this can include information on different methods and rationales for suicide, any type of forum that encourages suicide, ‘pact’ websites, content (videos, images, descriptions) that depict suicide or self-harm acts. ([Department of Health](#))

9D. Guidance: Reporting and Flagging (Sections 11.11-11.15 of the Code)

This section explains how the “user-friendly” requirement of a reporting and flagging mechanism might be achieved in practice, with indication on how VSPS providers might design moderation mechanisms so that they comply with relevant provisions of the Code as well as the Digital Services Act (DSA).

9D.1 Training of moderation staff

The need for objectivity, accuracy and fairness when making content moderation decisions was welcomed and it was further suggested that additional training would be helpful to assist moderators to identify patterns of online abuse in a personal relationship, particularly in scenarios where there is no evidence that a crime is being committed (i.e. it appears to be regulated content harmful to the public rather than illegal content harmful to the public). It was suggested that this training was a necessity. ([Safe Ireland](#))

It was also suggested that staff involved in content moderation decisions undergo cultural awareness and sensitivity training, to ensure that there is a clear understanding of the context within which content can be considered harmful, in particular with regard to LGBTQ+ topics, race, ethnicity and membership of the Traveller community. ([Belong To](#))

To ensure that reporting and flagging is accessible to all users, considering language barriers, disabilities etc., it was suggested that the Guidance should also suggest different reporting mechanisms for VSPS to make available to users, including offline options. ([Women’s Aid](#))

It was proposed that the Guidance should also include steps to report content to the Police where appropriate and outline any steps required for the retention of evidence for investigations of IIA and CSAM. ([Women’s Aid](#))

9D.2 Content take-downs

It was recommended that the Guidance should include detailed steps on how to act when IIA or Child Sexual Abuse content has been reported or flagged, including immediate taking down or blocking of such material, as the first action, pending a review and final decision which might take more time. It was argued that in the case of IIA, given the harm caused by viral circulation, a precautionary approach should be followed by which content is blocked or taken down immediately, when a person depicted in the video image state, they do not consent to it being available. (Women's Aid)

It was also proposed that the Guidance should acknowledge that consent can be coerced and can also be revoked or coerced, so it is immaterial whether consent was given or not in the past. It was therefore argued that it was vital that platforms recognise this and respond swiftly, and without question, to any subsequent complaint regardless of whether there was any initial indication of 'consent'. (Women's Aid)

It was also suggested that the Guidance should cover how to prioritise reports for action. Examples of reports that should be prioritised included where personal information is shared with an IIA image/video or where the person is easily identifiable. It was stressed that where the content shared was a recording of rape/sexual abuse and/or involves children, it should be an absolute priority. (Women's Aid)

9D.3 Interplay with the DSA

It was stated that once the relevant powers are commenced, further engagement will be undertaken by An Coimisiún Toghcháin with key stakeholders including the Commission in relation to content moderation mechanisms and any potential overlap with regard to content posing a risk to democratic processes, civic discourse and electoral processes. (An Coimisiún Toghcháin Electoral Commission)

9E. Guidance: Age Verification (Sections 11.16-11.21 of the Code)

This section explains guidance on the use of age verification, age estimation and other mechanisms for identifying the age of users of a VSPS provider.

It was found problematic from a legal perspective that terms referred to in the binding Code, such as "effective age verification" and "robust age verification" are used in the binding Code, but defined only in the non-binding Guidance. (EDRI)

9E.1 Age estimation

It was argued that age estimation, whether via the processing of biometric data or by other forms of profiling, to be mutually incompatible with privacy and data protection and that biometric data are a special category of protected data under the GDPR. The necessity and proportionality of the use of these sensitive data was questioned from a data protection perspective. (EDRI)

Concern was expressed at how such measures could normalise the sharing of sensitive biometric data in order to participate in daily activities and that an exceptionally high threshold for the use of children's biometric data would need to set. It was felt that this was not established by the draft Code. (EDRI)

It was highlighted that not all age estimation technologies, of which facial age estimation is a subset, require users to either possess an account or make a self-declaration in order to accurately establish whether a person is below or above an age threshold. (Yoti)

In relation to the guidance requiring that effective age estimation should meet any industry standards, clarity was sought on what industry standards and quality parameters the Commission would like to refer providers to. Codes such as California's Age Appropriate Design Code, the upcoming European Union Code of conduct on age-appropriate design, the UK Children's Code, and 'Privacy by Design' principles were noted. (Yoti)

It was also pointed out that age verification of young people based on their usage or behaviours may violate rules laid down in the EU's Digital Services Act. (EDRI)

It was noted that guidance materials state that age estimation must "comply ... with data protection and privacy requirements" but that no description or explanation of what this means is given. This was described as a missed opportunity to demand prescriptive safeguards which could do more harm than good, and may violate the requirement under the EU Charter of Fundamental Rights that when fundamental human rights are limited by law, appropriate safeguards must also be laid down in that law - especially the case when it comes to the processing of biometric data. (EDRI)

It was suggested that self-declaration should not be included in the opening list of "techniques for estimating or verifying the ages of children and users" because it is noted later in this section that "Self-declaration is not considered by the Commission to be an effective form of age verification". (Yoti)

9E.2 Age verification

It was stated by Industry representatives that text in the Guidance relating to age verification contains impractical requirements and places a disproportionate burden on VSPS providers, particularly in connection to liability for content hosted on third party sites, whenever a user clicks on a third-party link, effectively obliging VSPs to monitor third party sites. (Technology Ireland)

It was suggested that the expression "age verification" should be reworded to "age assurance", as not all of the techniques included in the verification list mean that the age of a user is "verified". (Yoti)

It was noted that the draft Code contains no requirement to comply with international standards. This will mean that the method used is entirely up to the provider and this will lead to inconsistent outcomes with potentially disastrous results (Sedicii).

Including references to the international standards such as BSI PAS 1296:2018 or new standards which are almost complete IEEE 2089.1 and ISO 27566 was suggested as a way to assess whether a method of age assurance is sufficiently robust or effective. It was noted that robust age verification may equate to the "Enhanced" level; effective age verification may equate to the "Standard" level as defined in Part 2 of the ISO 27566 and Appendix A of IEEE P2089.1. It was also noted that the Guidance provided no insight into what would constitute "sufficiently high" in relation to the "Targets for effectiveness would have to be sufficiently high and effectiveness would need to be demonstrated to have been achieved." (Age Verification Providers Association)

The use of "live likeness-based" methods was not found to be necessary or proportionate. It was argued that children should be conditioned into thinking that it is a 'normal' process for accessing information and services. It was pointed out that it was not clear what was meant by "live selfie plus biometrics", as the live selfie would already process biometric data, and it was not clear where the comparison "biometrics" would come from. (EDRI)

Clarity was sought on what the Commission would deem an acceptable error rate in relation to children being misidentified as adults and a question was raised around why a precise date of birth needed to be 'verified', as opposed to just requiring providers to assess if a user is, for instance, a minor. (Yoti)

It was also noted that document-based verification might pose potential issues in relation to accessibility to identity documents, their affordability as well as the ease with which fake documents can be procured, and the amount of personal information that is disclosed and potentially stored in the process. (Yoti, Sedicii)

9E.3 Effectiveness

Concern was expressed that age estimation systems could be easily circumvented by any reasonably tech-savvy young person under-18 and the most stringent possible age verification procedures would be the most appropriate ones, having regard to the serious harm which can be done (and is being done) by the exposure of children to pornography and content depicting gross and gratuitous violence. (Safe Ireland)

It was noted that the Guidance mentions the need to “minimise the error rate when children are misidentified as adult” and it was argued that the same principle should apply to adults being misidentified as children, which could see them locked out of services. (EDRI)

It was suggested that it would be important for the Commission to audit or mandate independent third-party auditing of age verification methods, and in particular to understand the volumes of circumvention of each technique, which is a key indicator of effectiveness. (Yoti)

9E.4 Storing and processing of data

In relation to the recommendation of the use of “document-based age verification at sign up and selfie or live likeness-based age verification” in the guidance, concern was expressed about the significant risk of misuse of personal data when users are required to submit identity documents to a provider. It was also suggested that this may violate the principle of data minimisation under the GDPR, as the user will be revealing not just whether they are above the age of 18, but sensitive information such as legal name, address, date of birth, nationality etc. This would not meet the requirement of proportionality under the Charter of Fundamental Rights of the EU, and also puts these data at risk of hacks. Given that the Code will also cover porn platforms, sensitive information about people’s sexual orientation and preferences could also be at stake here. (EDRI)

It was argued that technical measures should not be directed at children, and the potential privacy risks of storing any of their data which declares their age outweighs the advantages these measures will have. It was suggested instead to direct these measures towards adults, by means of payment methods/ id/ tokenised age checking. (NICAM)

Concerns were expressed about the Commission’s note in the Guidance concerning the uploading document-based age verification of children to verify age in relation to where such documents would be stored, accessed, and the possibility of data leaks. Support was expressed for the Guidance on the use of technical design measures and tokenised age checking using third parties. (ISPPCC/Webwise)

9E.5 Tokenised age services

The reference to tokenised age services was welcome but it was suggested that many people may not understand the terms and it was proposed that it might be better phrased as “Mechanisms such as tokenisation that facilitate the re-use and interoperation of existing age checks may be considered.” (Age Verification Providers Association)

It was noted that reusable age tokens had the potential to seamlessly access websites and authenticate new browsers and devices and that criteria for what type of age tokens are accepted can be defined by providers, or could be set by the Commission. (Yoti)

A note of caution was expressed about tokenised age services as it was suggested that these services are frequently part of a lucrative ‘age assurance’ industry, and rely on users trusting a private, commercial entity. It was argued that there was a risk that the dominance of these commercial entities in policy debates about age verification may have skewed perspectives, and obfuscated much-needed debates on the impacts on rights and freedoms. It was urged that if the Commission does mandate any sort of age verification or estimation measures, it should be ensured that private entities do not profit from this. (EDRI)

9F. Guidance: Content Rating (Sections 11.22-11.23 of the Code)

This section explains that VSPS providers facilitate users to rate content based on the national ratings system in effect in their location in the European Union.

9F.1 General

The importance of the advice for VSPS providers around content rating contained in the draft Statutory Guidance and developing skills for their users in this regard was noted. It was hoped that this approach will make sure that the providers will facilitate users to rate content based on the national ratings system in effect in their country, e.g. IFCO for Ireland. (Department of Children, Equality, Disability, Integration and Youth)

It was strongly recommended that the Commission should create a consistent and universal system for age rating content and include it with this version of the Code, rather than try to deal with the issue at a future date whether. It was noted that the draft Code suggested that content rating could distinguish between material posted as a contribution to civic discourse or for educational purposes as opposed to material that is intended to entertain, disgust or shock. The question was posed how anyone could determine the intention of a certain production as there could be mitigating factors. (NICAM, CvdM)

This point was echoed when it was pointed out that for children, the same intensity of emotional response and internal distress may be caused regardless of the purpose of why they were exposed to the content (e.g. whether as a contribution to civic discourse or for educational purposes or material that is intended to entertain, disgust or shock). (Well-Aware Campaign)

It was recommended that it would be beneficial for the Guidance to include a requirement for content rating to be sensitive to LGBTQ+ topics, to ensure that age-appropriate content that covers LGBTQ+ topics is not incorrectly rated as suitable for an adult audience only. (Belong To)

The non-mandatory Guidance to the VSPS to introduce possibility for local ratings in the targeted country was welcomed as it was thought it could allow the use of the age ratings/content descriptors recognised already by the users in their countries. (Bratislava CMS)

Industry pointed out that the Guidance advises that VSPS facilitate users rating content based on the national ratings system in effect locally such as IFCO in Ireland and NICAM in the Netherlands. It was pointed out that IFCO and NICAM are specialised rating bodies that classify films, television programmes and video games rather than user-generated videos. This distinction is important for rating as what is acceptable e.g. in a fictional context may not always be acceptable in content created by users. It was argued that while the content levels approach adopted by some platforms draws closely on the kinds of standards already in use around the world, including IFCO and NICAM, further content levels policies have been developed to take into account content bespoke to platforms. (TikTok)

It was noted that the “user-led” approach favoured in the draft Code inherently lacks the key focus of the guidelines which is consistency. Concern was expressed that the Guidance risks a shift from the Commission’s principles-based approach on this topic, replacing it with not just a prescriptive approach but seemingly a prescriptive system, which would go against the principle of “practicability” given the complexity of content rating and the uniqueness of each VSPS, and “proportionality” if a VSPS is required to overhaul a system that is already in place. It was suggested that consistency can be ensured through the use of principles. (TikTok)

9G. Guidance: Parental Controls (Sections 11.24-11.28 of the Code)

This section explains certain features that the Commission considers to be effective controls, and other considerations suggested for VSPS providers have regard to.

9G.1 Scope of Guidance

It was argued that requiring VSPS providers to take measures to reduce the risk of the dissemination by users of harmful or illegal content and/or harmful audiovisual commercial communications through live-streaming functionalities on their service was problematic as it is no longer a parental control point and, as such, does not constitute actual guidance on a Code provision and actually imposes an additional obligation on VSPS providers. (MPIL)

It was noted that the draft Code itself states only that platforms shall provide for parental controls “with respect to illegal content harmful to children and regulated content harmful to children”, however, the Guidance Materials, advise platforms to consider a broad range of parental controls that do not necessarily appear to be related to harmful content, such as privacy settings and screen time restrictions. Clarification was sought on whether some of the parental controls named in the Guidance Materials are considered essential for protecting children from harmful content, while others are complementary best practices for children’s internet use based on risks posed by their use of the platform. (Pinterest, MPIL)

It was also argued by Industry that the reference to using parental controls in relation to illegal content appears particularly inappropriate when viewed in light of the following suggested feature in the guidance: “allowing for the blocking or re-enabling of access to categories of content in accordance with the service’s content rating scheme”. It was recommended that parental controls are an appropriate tool regarding regulated content harmful to minors only. (TikTok)

9G.2 Role of parents/guardians and their visibility

It was suggested to consider adding the parent/guardian as a recipient of notifications in the following text: “Raise notifications to the provider and parent/guardian about prohibited user behaviour on the child’s behalf”. (Well-Aware Campaign)

It was stated that it was not clear from the draft Code and Guidance whether the Commission intended for parents/guardians to have the sole responsibility for deciding whether or not to apply default safety and privacy settings to children’s accounts, or whether such parental controls are intended to operate in parallel to VSPS providers’ obligations to apply such settings by default. Concern was expressed at the inclusion of these measures in such a way as to suggest that it will be up to parents/guardians to decide whether or not default privacy and safety settings should be applied in their children’s account, and the inclusion of default safety and privacy settings as discretionary measures. It was also suggested that it was inconsistent with VSPS providers’ data protection obligations and with the high standard set by the Data Protection Commission (DPC) in its Fundamentals for a Child-Oriented Approach to

Data Processing, both of which are referenced in the draft Guidance. ([Ombudsman for Children's Office](#))

The Commission was encouraged to clarify in and through the draft Code and Guidance that including default settings among the list of parental controls that VSPS providers may adopt on their service does not obviate the need for providers to adopt a high level of safety by design and privacy by design in the development and modification of features on their service. ([Ombudsman for Children's Office](#))

Similarly, it was suggested that many of the features advised by the Commission should not fall under parental controls but rather should be provided to every child as a possible safety by design and/or mitigation measure, i.e. requiring VSPS to set them as default settings for children and/or providing the children with the ability to decide about and use such measures where appropriate. If parental controls are provided, children must be given age-appropriate information about this so that it is clear to the children that they are being monitored and to enable children to fully understand how such systems operate. ([5Rights Foundation](#))

It was suggested that need for parental controls to be easy to find and use should be made more prominent in the Guidance. It was noted that to be truly effective, any instructions on Parental Controls must be capable of being understood by the least technologically confident parents and also by parents who may find it difficult to absorb written instructions for whatever reason. ([Safe Ireland](#))

It was proposed that the provisions relating to parental controls were reviewed with regard to the digital age of consent (age 16), in line with the UN Convention on the Rights of the Child. ([Belong To](#))

A clear disconnect was noted between providing screen time controls and trying to effectively manage screen time on what are essentially very addictive services. It was argued that these additive services are designed to hold attention for as long as possible and persuading children to switch-off and to disconnect from such services can be extremely challenging. In relation to the wording of “The Commission advises that parental control may include the following features...”. It was suggested that the use of the word “may” suggests optionality and that these should be the minimum standards that need to be met. ([CybersafeKids](#))

9H. Guidance: Complaints (Sections 11.29-11.31 of the Code)

This section explains guidance on certain types of information the Commission na Meán considers should be made available to users and refers providers to best practice and child-centric guidance.

It was suggested that details regarding submission of complaints should be provided in plain English and in a range of languages. ([Belong To](#))

It was suggested that Complaints Services should be required to facilitate an ethnic identifier in reporting tools, and monitoring reports should be disaggregated for publication based on the Article 21 grounds, to examine impact for those groups, and to allow adaptability of the Code and standards going forward. ([Irish Traveller Movement](#))

9H.1 Scope of Guidance

In terms of the requirements regarding complaints, and specifically the requirement to prioritise notifications from nominated bodies and trusted flaggers, it was argued that the Act only provides for such notification to the Commission and not to VSPS providers. Clarification was sought on what is intended with such guidance, given that it refers to nominated bodies, seeming to equate them to

trusted flaggers under the DSA, which is not provided for under the Act or, indeed, the draft Code. It was also argued that such guidance cannot be taken into account, to the extent the Commission considers it appropriate, when deciding whether to open an investigation and/or whether or not there has been a contravention. (MPIL)

It was noted that the guidance which refers to mechanisms established for reporting/flagging content and advises VSPS providers to integrate them with mechanisms provided for notifying content that is otherwise in breach of the terms and conditions of the service, and the mechanism for notifying content which is illegal under the DSA, may be the wrong section of the Draft Guidance and that it should instead be included under the reporting and flagging section. (MPIL)

9H.2 Nominated Bodies and Trusted Flaggers

The provision for VSPS to reasonably prioritise notifications they receive about harmful content addressed by the Code from nominated bodies and trusted flaggers and was strongly supported. (Belong To)

In relation to the prioritisation of the notifications from nominated bodies and trusted flaggers, it was recommended that advertising self-regulatory bodies established in the EU should not be actively encouraged, nor be permitted, to seek to be a trusted flagger or nominated body as part of the super complaints scheme under the Code. Concern was expressed that bodies funded by industry will be well equipped to propose themselves as a nominated body or trusted flagger as they have capacity to do this. However, the industry cannot be its own watchdog. (HSE, Irish Heart Foundation, HSE Health & Wellbeing, Dr. O. Bartlett, Dr. N. Campbell, Dr. A. Garde, Dr. C. Patton, K. Reilly, Dr. M. Tatlow-Golden) It was also noted that the current self-regulatory system relies on goodwill and knowledge of legislation by concerned and motivated citizens to report violations which is an unsustainable model. (ACLI, Alcohol Action Ireland)

H.2 Gender-based and related violence

The Commission is urged to clearly indicate that it will comprehensively deal with any aspects of technology-facilitated gender-based violence (“GBV”) and Integrated Impact Assessment IIA not covered by the Code. Also, complaints processes should include a separate provision related to IIA cases, be easy for users, be inclusive of a prompt acknowledgment, outlining the actions to be taken by VSPS providers, as the time is of the essence with complaints of this nature, with removals as an immediate default function, pending more detailed factual investigations thereafter. Finally, it should be borne in mind that harmful online activities not currently within the scope of the draft Code, warrant thoughtful consideration for future inclusion. (Dublin Rape Crisis Centre)

9i. Guidance: Commercial Communications (Sections 12.1-12.11 of the Code)

This section explains the Commission’s plans in relation to developing additional requirements and advises VSPS providers to have regard to certain of its Commercial Codes, while the providers are strongly encouraged to engage with existing non-statutory regulatory measures in respect of certain commercial communications.

There was a recommendation that the definition and explanatory note for commercial communications include the provision of goods and services free of charge, where the individual uploads user-generated content about the good or service but was not explicitly/contractually obliged to do so. (Belong To)

The ability of advertisers using platforms to exclude specific videos or categories was welcomed and it was noted that working with digital technology and data partners can create possibilities to produce

pre-qualified lists of video channels on which advertising communications will only appear (i.e. ‘inclusion lists’.) ([Food Drink Ireland](#))

Noting the Reformulation Roadmap as a core element of Ireland’s Obesity Policy and Action Plan, as well as the ability for companies to market their reformulated products, it was emphasised that any restriction on this ability will limit the companies’ ability to positively influence consumer behaviour by encouraging the purchase of healthier substitutes through informed choice. ([Food Drink Ireland](#))

9i.1 Additional requirements, HFSS foods and self-regulatory mechanisms

The Commission’s intention to further consult on “additional requirements” as they relate to commercial communications including those relating to the promotion of infant and follow-on formula or HFSS foods was welcomed and cooperation on these matters was offered. ([Dairy Industry Ireland](#), [Food Drink Ireland](#))

It was requested that any reference to foods or beverages containing high levels of fat, salt and/or sugar is informed by evidence, research and that it is proportionate. The Commission’s encouragement to providers to engage with existing non-statutory regulatory measures in place for the promotion of HFSS foods was noted and welcomed. ([Food Drink Ireland](#))

Noting the related provisions of the AVMSD (Article 4a), the various references contained in the draft Code to the existing advertising self-regulatory system were welcomed, in addition to signposting to the ASAI Code. ([ASAI](#))

It was also proposed that further additional requirements (as they relate to commercial communications, including those relating to the HFSS foods) may not be necessary nor proportionate and a suggestion was made to consider amend the wording from “will develop” to “will consider, over time, whether specific additional rules are required”. ([ASAI](#))

This approach was strongly objected to and it was recommended that there should be no reference to, encouragement of, or cooperation with self-regulatory measures regarding commercial communications, particularly at the expense of statutory measures. The absence of, or gaps in, requirements for HFSS food and drink commercial communications should not equate with reference to non-statutory codes being directed to. It was argued that the marketing of breastmilk substitutes and unhealthy food and beverage products to children are clear examples of weak standards, poor industry adherence to voluntary codes, and the need for stronger regulatory, and monitoring systems, echoing the calls from the WHO and UNICEF to adopt a mandatory, comprehensive regulatory approach, as the best way to respect, protect and fulfil children’s rights. ([BFLGI](#), [Irish Heart Foundation](#), [SafeFood](#), [HSE](#), [HSE Health & Wellbeing](#), [Dr. O. Bartlett](#), [Dr. N. Campbell](#), [Dr. A. Garde](#), [Dr. C. Patton](#), [K. Reilly](#), [Dr. M. Tatlow-Golden](#))

It was argued that self-regulatory mechanisms appeared to be given credibility and support, with the statutory guidance explicitly telling VSPS to use and refer to self-regulatory bodies on certain commercial communications. This was felt to be extremely problematic as it gave self-regulatory bodies moral authority and weight and that their complaint and enforcement systems would be used. It was argued that “self-regulation is no regulation” and that providers should have statutory regulatory measures to draw upon. Moreover, even if enforced rigorously, these self-regulatory mechanisms do not cover a great deal of harmful advertising techniques. ([Irish Heart Foundation](#), [SafeFood](#), [HSE](#), [HSE Health & Wellbeing](#), [Dr. O. Bartlett](#), [Dr. N. Campbell](#), [Dr. A. Garde](#), [Dr. C. Patton](#), [K. Reilly](#), [Dr. M. Tatlow-Golden](#))

Reiterating these points, it was recommended that the following text was removed from the guidance:

“The Commission also directs providers to the Code of Standards for Advertising and Marketing Communications in Ireland” and “On the matter of commercial communications relating to foods high in fat, salt and sugar, the Commission strongly encourages providers to engage with existing non-statutory regulatory measures in place for the promotion of foods high in fat, salt and sugar”. (SafeFood, HSE, Irish Heart Foundation, NHCP, HSE Health & Wellbeing, Dr. O. Bartlett, Dr. N. Campbell, Dr. A. Garde, Dr. C. Patton, K. Reilly, Dr. M. Tatlow-Golden)

Questions were also raised over why requirements related to commercial communications on HFSS food and drinks and breast milk substitute were not included in this draft Code, or at least referenced and it was argued that there was no reason for them to be omitted. If they were being omitted at this stage, clarity was sought about what mechanism the Commission envisages to tie this Code to future codes on these commercial communications and it was argued that it would be better to include these requirements now, and include them as supplementary material. Clarity on these issues were requested in the final Code. (BFLGI, Irish Heart Foundation, SafeFood, HSE, NHCP, HSE Health & Wellbeing, Dr. O. Bartlett, Dr. N. Campbell, Dr. A. Garde, Dr. C. Patton, K. Reilly, Dr. M. Tatlow-Golden)

Clarity was sought about who the responsible authority for these commercial communications was now and into the future and whether HFSS food and drink advertising regulation for VSPS was being left to ASAI. If so, was this an interim measure or permanent? If interim, it was queried whether the references to existing non-statutory regulatory measures and ASAI be removed. (HSE, Irish Heart Foundation, SafeFood, HSE Health & Wellbeing, Dr. O. Bartlett, Dr. N. Campbell, Dr. A. Garde, Dr. C. Patton, K. Reilly, Dr. M. Tatlow-Golden)

It was suggested that all online advertising should be subject to the same level of statutory regulatory control and a straightforward system where all actors are held accountable was preferred and would help to ensure certain actors are unable to shirk their responsibilities. (HSE, SafeFood)

9i.2 Adults’ rights and freedoms

It was argued that the text of the Guidance which refers to commercial communications which are only suitable for adults being displayed only to logged-in accounts whose holders have been identified as adults, could threaten adults’ right to access the internet anonymously, jeopardising their online privacy on a massive scale. Disappointment was expressed over a perceived lack of attention to the many serious risks entailed by age verification and estimation, and an improvement to the Code in this area was sought. (EDRI)

9j. Declaration of Audiovisual Commercial Communications (Sections 12.10-12.11 of the Code)

This section explains the Commission’s preference for a consistent labelling system for these communications to support transparency and directs providers to existing guidance.

It was noted that in the text under the Declaration of Audiovisual Commercial Communications, the ASAI name should read “Advertising Standards Authority for Ireland” (ASAI)

The Declaration of Audiovisual Commercial Communications was deemed beneficial and helpful to users. (Well-Aware Campaign)

9K. Guidance: Media literacy – Measures and Tools (Sections 13.1-13.2 of the Code)

This section explains qualities that the Commission considers characteristic of effective measures to promote media literacy, along with some suggested underlying aims for these measures.

9K.1 Nature of Guidance

It was suggested that the Guidance on Media Literacy should be prescriptive rather than suggestive, requiring VSPS's to promote the qualities suggested and to consider the measures contained. (RCNI) It was also suggested that there was a need for a glossary of definitions for groups identified within protected characteristics in Ireland, covered by Article 21. (Irish Traveller Movement)

9K.2 Online harms

The vitality of promoting awareness on the harms of online technology-facilitated gender-based violence GBV and Integrated Impact Assessment IIA was emphasised. (Dublin Rape Crisis Centre)

It was proposed that media literacy should include awareness raising about the harms of online gender-based violence, how to oppose it and signpost supports available. If this requirement cannot be included in the Code, it should be at least included in the Guidance. It was also suggested that the Guidance should suggest that VSPS collaborate with relevant NGOs to find ways to prevent and address online GBV. (Women's Aid)

It was suggested periodic training is provided to domestic violence support services and survivor-led support groups on how to establish and maintain online safety (as far as possible) in the context of abuse in a personal relationship. (Safe Ireland)

The broad range of media literacy measures suggested, particularly those measures focussed on addressing harmful content were welcomed. Including a reference to promoting users' awareness of their own responsibilities under the terms and conditions of the service was also suggested. (DCEDIY_CRPU)

9K.3 Media literacy related to privacy and reporting

It was argued that media literacy measures should consider children and be age appropriate. Measures should also be directly aimed at parents and give explanations as to the right of the child to privacy and ensure the rightful use of parental control mechanisms. In addition, users, including children, should be made aware of, and know how to use, reporting and flagging mechanisms. Furthermore, media literacy measures should raise awareness of users rights, in particular their data protection rights. (5RightsAlliance)

9L. Guidance: Personal Data – Children (Section 13.3 of the Code)

This section explains obligations under data protection and related legislation.

9L.1 Importance of privacy protection

While it was welcomed that the Guidance signposts the Data Protection Commission's Guide to the Fundamentals for a Child-Oriented approach to Data Processing, it was noted that compliance with it was not required. (Children's Rights Alliance)

While the importance of children’s data protection rights was acknowledged, it was noted that the data protection rights of adults are also important and that care should be taken to treat personal data processed as part of age verification with the utmost care and to avoid retaining any personal data for longer than strictly necessary. ([Safe Ireland](#))

The Commission was reminded that data protection obligations require organisations that process personal data to adopt measures that respect the principles of data protection by design and by default and although the DPC acknowledges that there is no one-size-fits-all solution to data protection by design and default, the measures recommended by the DPC include;

- applying the strictest privacy settings to services directed at/intended for, or likely to be accessed by, children;
- turning off geolocation by default for child users; and
- defaulting to lower-risk settings when controls are delegated to parents.

([Ombudsman for Children's Office](#))

Chapter 10: Application of the draft Code (Qs.26-27)

The consultation responses in this chapter refer to comments and feedback about the Commission's proposal to apply the draft Code to the category of video-sharing platform services. (captured from consultation question 26 and 27).

10A. Responses to Consultation Question 26

Consultation Question 26: Do you have any comments on the proposed application of this draft Code to the category of video-sharing platform services?

10A.1 Application of categories

It was suggested that image-sharing, audio-sharing platforms should also be included in the category of video-sharing platform services ([AgriKids](#)), as well as applications such as WhatsApp, which can facilitate large groups (over 1000 people) sharing video content within that application ([A. Fitzpatrick, E.Kilgallon/K.Ryan/O.Delaney](#)). It was also noted that a substantial percentage of 8–12-year-olds, despite the minimum age of service being 16. ([CybersafeKids](#))

It was suggested that the Commission should apply the Code to named services individually, rather than applying it to the category overall as this would enable the Commission to apply a more risk-based approach, taking into account the unique risk profiles of the individual services in deciding the specific obligations that are appropriate to each individual VSPS.s. ([LinkedIn](#))

It was proposed that many of the harms that the Code seeks to mitigate against are not relevant to how some providers operate. It was suggested that the Commission must only apply those sections of the Code that are relevant to a designated VSPS providers. ([Udemy](#))

10A.2 Other regulatory texts and guidance

It was suggested that the draft Code as written fails to acknowledge many of the existing measures required to be taken by VSPS who are also regulated under the DSA and it was recommended that if certain VSPS already have a similar or related obligation under the DSA then that obligation should be a supplementary measure in the Code and should not also apply (unless it is clearly serving a distinct purpose in light of the goals and objectives of Art 28(b) AVMSD and is not otherwise addressed under the DSA). ([MPIL](#))

10A.3 Proportionality

In principle, the proposed application of the draft Code to the category of VSPS was not objected to. ([MPIL](#), [Reddit](#)) However, there were concerns that the Commission appears to have taken a one-size-fits-all approach which would be incompatible with the AVMSD and the Act ([Reddit](#)) and fails to provide VSPS providers with flexibility with regard to the specific measures that should, in practice, be implemented, in light of their proportionality and appropriateness to their services. ([MPIL](#), [Reddit](#))

It was noted that, to date, the Commission has designated ten different services as VSPS, some of which on the basis of principal purpose criterion and others on the basis of the essential functionality criterion. However, the draft Code and the measures prescribed therein do not take into account the diversity of platform structures and models as it did not consider the amount, context, and function of video on a site, the different types of harms that there may be available on the services, the

different criteria upon which a service has been designated, etc., all of which raises issues of substantive fairness and proportionality. (MPIL)

It was argued that while the draft Code may be flexible enough to apply to certain services with similar features to VSPs, it would be unsuitable or unworkable for services with different features. It was suggested that the Commission should not assume that the Code is broadly applicable to the full range of designated online services and could consult on this during the designation process for each service or group of services, having previously identified the online safety concerns underpinning the proposed designation. (Technology Ireland)

At a high level, given the extremely broad range of platforms that the draft Code aims to regulate, it is crucial that it be both flexible and proportionate, taking into account a range of relevant platform factors and characteristics to ensure that the result is not to unintentionally disadvantage smaller companies as compared to larger ones, or models that serve as alternatives to those which are market dominant. (Reddit)

The principle of proportionality encoded in Article 28b of the AVMS Directive was noted in this respect and attention was drawn to the necessity of proportionality with regard to platform size and resources; with regard to the amount and relative significance of video on a platform and concern was also noted about the 'overbroad' definition of "Content" proposed in the Draft. It was pointed out that the text of the AVMS Directive itself via Article 28b, recognises that it is unreasonable to expect companies that have vastly differing amounts of human, financial, and infrastructure resources to comply in the same way. (Reddit)

It was argued that the goal of protecting children online would be better achieved by requiring all VSPS providers to have effective systems in place with the view of ensuring the Code's goals are met, with baseline measures, such as those set out with regard to terms and conditions and related obligations, ensuring that content not suitable for children cannot be generally seen by them as well as reporting and flagging. The remaining measures included in the draft Code would then be supplemental measures that VSPS could implement but would not be obligated to do so in every case. This would enable each VSPS to mitigate harms more effectively, as they would be able to adopt different mitigation measures in accordance with those factors mentioned above. This would also be consistent with the risk-based approach to regulation adopted under the DSA and set out in Article 28b(3) of the AVMSD and section 139M of the Act. (MPIL)

It was recommended that the Commission amends the Code to include a provision acknowledging that not all measures under the Code may be proportionate or appropriate for all VSPS providers, and allow providers to engage with the regulator to demonstrate they are achieving the required safety outcomes and mitigating identified risks without necessarily needing to implement inappropriate prescriptive measures. (MPIL)

Mandating platforms to report to the Commission every 3 months was not deemed proportionate for smaller companies and it was recommended that these requirements should be limited to an annual cadence at most, and limited in scope, simply be available upon the request of the Commission for specific investigative purposes, with appropriate notice. (Reddit)

10A.4 Transition period

It was suggested that, as with any legislation but in particular one that requires VSPS providers to implement a variety of complex technical solutions, the final Code should have a sensible and proportionate implementation period which will allow providers to effectively implement the relevant measures in a timely manner. (MPIL, IAB Ireland)

It was pointed out that in an earlier stage of the Commission's consultation process, it was indicated that there should be a transition period for implementation of the Code (MPIL, Pinterest) and it was noted that compliance with the Code's requirements may entail substantial changes to VSPS's product, policies, content moderation systems, and transparency reporting practices. (Pinterest).

The Commission was urged to consider an overall minimum implementation period of 12-15 months recommended (Pinterest), or minimum of 15 months as noted in the Digital Services Act (Technology Ireland, TikTok) or 18 months. Consideration on a staggered approach was also proposed. (MPIL)

10A.5 Tiers of enforcement

It was pointed out that tiers of enforcement have become standard in global online safety regulation, citing both the EU Digital Services Act and the UK Online Safety Act as examples, however, as currently proposed, there is no tiering provision in the draft Code. This was deemed troubling as it was believed that a number of the requirements proposed in the Code would be particularly burdensome for providers who were VLOPs. Some of the most burdensome noted were:

- Requiring platforms to publish an action plan specifying the measures they will take to promote media literacy, to be updated annually and reported to the Commission.
- Mandating platforms to report to the Commission every 3 months on the effectiveness and accuracy of multiple and varied processes, including user complaint responses, reporting and flagging systems, and age verification methods.
- The Commission may appoint a person to carry out an audit of the platform to assess handling of user complaints and trends in user complaints.

10B. Responses to Consultation Question 27

Consultation Question 27: Do you have any comments on the proposed application of this draft Code to named individual video-sharing platform services?

This section explains the manner to designate as a named service any relevant online service that appears to the Commission to be a VSPS provider.

10B.1 Application of categories

It was argued that it was vital that WhatsApp would be considered a VSPS as it was noted that it can facilitate large groups (over 1000 people) sharing video content within the application. It was also noted that a substantial percentage of 8–12-year-olds use the service, despite the minimum age of service being 16. (A Fitzpatrick).

10B.2 Other regulatory texts and guidance

It was suggested that the draft Code as written fails to acknowledge many of the existing measures required to be taken by VSPS who are also regulated under the DSA and it was recommended that if certain VSPS already have a similar or related obligation under the DSA then that obligation should be a supplementary measure in the Code and should not also apply (unless it is clearly serving a distinct purpose in light of the goals and objectives of Art 28(b) AVMSD and is not otherwise addressed under the DSA). (MPIL)

10B.3 Proportionality

As noted in the responses to consultation question 26 above, there were concerns that the draft Code fails to provide VSPS providers with flexibility with regard to the specific measures that should, in practice, be implemented, in light of their proportionality and appropriateness to their services. (MPIL)

It was noted that, to date, the Commission has designated ten different services as VSPS, some of which on the basis of principal purpose criterion and others on the basis of the essential functionality criterion. However, the draft Code and the measures prescribed therein do not take into account of the diversity of platform structures and models by not considering the amount, context, and function of video on a site, the different types of harms that there may be available on the services, the different criteria upon which a service has been designated, etc., all of which raises issues of substantive fairness and proportionality. (MPIL)

It was argued that the goal of protecting children online would be better achieved by requiring all VSPS providers to have effective systems in place with the view of ensuring the Code's goals are met, with baseline measures, such as those set out with regard to Terms and Conditions and related obligations, ensuring that content not suitable for children cannot be generally seen by them as well as reporting and flagging. The remaining measures included in the draft Code would then be supplemental measures that VSPS could implement but would not be obligated to do so in every case. This would enable each VSPS to mitigate harms more effectively, as they would be able to adopt different mitigation measures in accordance with those factors mentioned above. This would also be consistent with the risk-based approach to regulation adopted under the DSA and set out in Article 28b(3) of the AVMSD and section 139M of the Act. (MPIL)

It was recommended that the Commission amends the Code to include a provision acknowledging that not all measures under the Code may be proportionate or appropriate for all VSPS providers, and allow providers to engage with the regulator to demonstrate they are achieving the required safety outcomes and mitigating identified risks without necessarily needing to implement inappropriate prescriptive measures. (MPIL)

It was argued that the Commission will be able to pursue its aims under the Act and the objectives of the Code itself more efficiently and meaningfully by focusing on those providers which pose true risks to online safety, and that it will also mitigate the risks of undermining the Commission's purpose through the creation of unnecessary or inappropriate administrative burdens which in themselves do not further online safety goals. As such the Commission was urged to disapply the categories of: Content rating; Parental controls; Complaints; Media literacy; Reporting in relation to complaints and Recommender system (listed as a future supplementary measure) to Udemy. (Udemy)

10B.4 Transition period

It was suggested that, as with any legislation but in particular one that requires VSPS providers to implement a variety of complex technical solutions, the final Online Safety Code should have a sensible and proportionate implementation period which will allow providers to effectively implement the relevant measures in a timely manner. The Commission was urged to consider an overall implementation period of up to 18 months or a staggered approach was also proposed. (MPIL)

Chapter 11: Proposed Supplementary Measures and Related Guidance (Q. 28)

The consultation responses in this chapter refer to Appendix 3 to the draft Code (captured from consultation question 28) and deal with matters of safety by design, Online Safety supports and Recommender System Safety, considered for possible future inclusion in the Code, pending consultation and adherence with any appropriate Irish and EU approval procedures.

Consultation Question 28: Is there anything you consider the Commission needs to be aware of in relation to the draft supplementary measures and draft supplementary guidance as it further develops its thinking in these areas and seeks to effectively fulfil its mandate in relation to online safety?

11A. General Views on Appendix 3

Support was expressed in general for measures included in the draft supplementary measures and the draft supplementary guidance. ([ISPCC / Webwise, Tusla](#))

It was suggested that it was important that these changes are accompanied by clear and accessible public awareness campaigns led by the OSC. Guidance should highlight in plain English for both young people and adults their new and improved rights in relation to online safety, along with the steps they must/can take in order to access and apply the Online Safety Codes to their specific situation/s. ([CybersakeKids](#))

It was suggested that the Commission keeps in mind the issue of images and videos that are posted that contravene farm safety and not only serve to encourage repetition of the actions, or undermine the work of farm safety advocates but also serve to trigger and cause further upset to those impacted by a farming related injury or death. ([AgriKids](#))

It was recommended that the list of protected characteristics include those detailed in both the EU Charter and Equal Status Acts 2000-2018, namely gender, 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, family status, marital status, and membership of the Traveller community. ([Belong To](#))

The Commission was urged to indicate clearly in the supplementary measures for further consideration that it will squarely and comprehensively deal with any aspects of TFGBV and IIA not covered in the finalised Code. ([Dublin Rape Crisis Centre](#))

Concerns were expressed by Industry that the measures proposed in Appendix 3 exceed the requirements of AVMSD cutting across areas that are exhaustively regulated by DSA. It was argued that proposed supplementary measures were not consistent with the DSA's clear purpose of harmonising and streamlining regulation. There was concern that given the DSA already includes obligations on safety by design and recommender systems, the imposition of duplicate and overlapping requirements covering these matters would lead to inefficiencies, duplication, and possibly inconsistent results – as well as potentially leading to diverging outcomes between obligations imposed under the DSA and at national level in Ireland. ([LinkedIn](#), [Google](#), [MPIL](#))

It was suggested that if these provisions are included in a future code, they should clarify which types of platform changes would necessitate a safety impact assessment, for example only those with a reasonably foreseeable impact on user safety. ([Pinterest](#))

Concern was expressed about what are described in the consultation document as toxic misogyny feeds. It was suggested that both the new Code and any associated Guidance are informed on this topic by input from specialist domestic violence support services, survivor-led groups, or other experts in this area. ([Safe Ireland](#))

Any regulations need to also ensure that platforms can't be too overzealous in removing content without verification, and that they must ensure that the restrictions are not abused to censor content. ([G. Grings](#))

11B Safety by Design

Section 1 of Appendix 3 requires providers of video-sharing platform services to prepare and publish their methodology for conducting safety impact assessments that are effective in identifying and mitigating safety issues relating to the physical, mental and moral development of minors, the protection of minors from sexual abuse, and the protection of the general public from racism, xenophobia and incitement to hatred or violence on any of the grounds referred to in Article 21 of the Charter of Fundamental Rights of the European Union, 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.

11B.1 General Views

Support was expressed for the Commission's proposals in this area, however it was also recommended that safety by design become the part of the Code and with a Child Rights Impact Assessment process incorporated into the Safety by design process ([Irish Traveller Movement](#), [Children's Rights Alliance](#), [DCEDIY](#))

11B.2 Safety by Design as a key measure

It was recommended that the requirement of safety by design should be one of the key measures included in the Code to avoid missing an excellent opportunity to include the principle of safety by design in the Irish regulatory framework, while adhering to and emphasising the issues highlighted by the relevant Council of Europe recommendations and guidelines. ([Children's Rights Alliance](#)).

It was also suggested that safety by design should be required as standard into all products and services of VSPS and that child rights risk assessments should be conducted by VSPS before their digital products or services could reach or affect children. In addition, it was recommended that VSPS should regularly undertake children's rights impact assessments in relation to digital technologies and demonstrate that they are taking reasonable steps to mitigate risks. ([Children's Rights Alliance](#))

It was suggested that safety by design is a central pillar to ensure safety for children online, while other measures currently prescribe by the Commission appear to be rather complementarity such as content rating and media literacy measures. ([5Rights Foundation](#))

It was requested that any safety by design measures take due consideration of safety by design in the specific context of avatars. (DCEDIY)

Reference was made to the 2018 Council of Europe Recommendation¹¹⁰, 'Guidelines to Respect, Protect and Fulfil the Rights of the Child in the Digital Environment' where a key proposal was that States should require relevant stakeholders to implement safety by design, privacy by design, and privacy by default measures, taking into account the best interests of the child. Similarly, reference was made to the UN Committee on the Rights of the Child¹¹¹ in 2021 which recommended that that States should incorporate 'the integration of privacy-by-design into digital products and services that affect children.' (Children's Rights Alliance, DCEDIY)

There was a suggestion to ensure that safety by design encompass a human rights-based approach which protects against TFGBV, whereas it should be clear that the Commission will squarely and comprehensively deal with any aspects of TFGBV and IIA not covered in the draft Code. (Dublin Rape Crisis Centre)

11B.3 Scope

It was suggested that the scope of these measures should be extended beyond the protection of children from sexual abuse and the protection of the general public from racism, xenophobia and incitement to hatred or violence on the basis of membership of a specified group. It was noted that safety by design is needed very much also by victims of online abuse in the context of an intimate or other personal relationship and by those at risk of such abuse. It was further recommended that specialist Domestic Violence support services and other experts in this area are consulted before this part of the Supplemental Measures is incorporated into a new version of the Code. (Safe Ireland)

Further, while protection from sexual abuse is referenced in relation to minors, it was noted that domestic, sexual and gender-based violence, misogyny, intimate image abuse, non-consensual sharing of images and information and exploitation are not mentioned as grounds for protection and it was stated that the draft Code must provide specific details on what the requirements of the impact assessment should be. (RCNI)

11B.4 Safety Impact Assessment

Support was also expressed for the proposed requirement to prepare a "Safety Impact Assessment" whenever services are being developed or enhanced, with sign-off of the risk assessment and proposed mitigation measures by an executive staff member of the VSPS provider with appropriate experience and responsibilities. (DCEDIY, Women's Aid) There was also support for the proposal to require providers to submit a copy of their online safety impact assessment, on request, to the Commission. (DCEDIY – (CPPLU), Women's Aid)

It was noted that the Children First Act 2015 requires organisations providing 'relevant services' to children to keep children safe from harm while they are using the service, to undertake a risk

¹¹⁰ Council of Europe, 'Recommendation CM/Rec(2018)7 of the Committee of Ministers to Member States on Guidelines to respect, protect and fulfil the rights of the child in the digital environment' (COE 2018) 10.

¹¹¹ UN Committee on the Rights of the Child, General Comment no 25 (2021) on children's rights in relation to the digital environment, CRC/C/GC/25, para 70.

assessment and to develop a Child Safeguarding Statement (CSS) setting out the procedures in place to manage any risk identified. It was pointed out that onus was on VSPS providers to examine the legislation to determine whether any aspect of their work brings them within the definition of 'relevant services'. [\(CPPLU\)](#)

It was recommended that impact assessment and impact statements, as a requirement of safety by design, should include that appropriate measures are taken to address the risks and harms related to spreading and amplifying of harmful content and the malicious use of new tools to particularly abuse women and girls, but also to protecting the general public from the impact of technology facilitated gender-based abuse as well and should cover existing and new functions as they are developed. These assessments should be provided to the Commission automatically and be made available to the general public. [\(Women's Aid\)](#)

It was suggested that the 4Cs framework should be used as a starting point when considering the risks that children face online and could be explicitly mentioned. In terms of safety assessment, the Commission's attention was drawn to the Child Rights Impact Assessment (CRIA) which appears to be a broader tool compared to safety impact assessments as they are based on children's rights as enshrined in the The United Nations Convention on the Rights of the Child. Also, examples of measures under Recommender System safety could be added for safety by design, inclusive of, e.g., geolocation, nudge techniques, dark patterns and persuasive design techniques. [\(5Rights Foundation\)](#)

It was noted that an examination of the implementation of Child Rights Impact Assessments on all policy making, legislation and programme design that will have an impact on children's lives is currently being undertaken which will inform how Child Rights Impact Assessments (CRIAs) can embed a children's rights approach, and the development of a prototype CRIA and training supports aimed at embedding children's rights. [\(DCEDIY\)](#)

The Commission was encouraged to further develop the proposed supplementary measures, to consider incorporating Child Rights Impact Assessment CRIA within the requirement in the draft Code and include guidance in the associated sections of the draft supplementary guidance on how providers can implement CRIA when undertaking online safety risk assessments. It was recommended that such guidance should, among other things, set out:

- the children's rights that VSPS providers must take into account, both under the Charter and the UNCRC, when assessing new or existing functions;
- how providers can appropriately take such rights into account; and
- the steps that providers should take to ensure that the process of undertaking assessments is itself child-centred and rights-based.

[\(Ombudsman for Children's Office\)](#)

11B.5 Evaluation

It was suggested that the Commission should provide guidance on how it will evaluate companies' safety impact assessments; if public discussions of safety impact assessments could be facilitated and companies encouraged to provide more information and clarifications, if this should be deemed

necessary. It was also noted that it would be particularly important to ensure periodic independent evaluation of popular platforms' recommender systems and effectiveness of reporting/flagging tools and complaints handling schemes from the perspective of end-users, and children in particular. It was suggested that such evaluation could take the form of independent research convened by the Commission, rather than by companies themselves, in order to ensure that companies' impact assessments and transparency reporting are accurate and reflective of their safety measures. ([UCD Centre for Digital Policy](#))

More clarity was requested on the extent of details in the VSPS reports and the introduction of mechanisms through which members of the public or designated specialist non-governmental organisations could access the reports. To facilitate easy access by the general public, it was suggested that the documents provided by VSPS providers as per the duties included in this section could be hosted on the Commission's website. ([Yoti](#))

11B.6 Data protection

The Commission should indicate how it envisages the progress of the supplementary measures, having in mind the importance of data protection, in order to ensure that all relevant data is stored in Ireland or the EU particularly when it comes to audits. ([Youth Work Ireland](#))

11B.7 Overlap with the DSA

Concerns were expressed by Industry in relation to the safety by design measures as they conflict with the obligations under the DSA. ([Technology Ireland](#), [Google](#), [TikTok](#), [Pinterest](#), [Tumblr](#), [LinkedIn](#)) It was suggested that the online safety support proposed in the consultation paper would be more appropriately addressed in non-binding guidance. ([Google](#))

It was further deemed unnecessary and disproportionate to require VLOPs to repurpose obligations under the DSA, including contacting local authorities in circumstances where the provider considers there may be an imminent and serious risk to the life or health of a user, as such an obligation is pre-empted by the DSA. It was also added that these requirements have no basis in the AVMSD, as it was argued these measures do not relate to regulating content on VSPS and therefore cannot be considered additional measures within the meaning of Article 28b(6) of the AVMSD. ([Google](#))

For similar reasons, the safety by design measures were viewed as highly premature and manifestly unnecessary, as well as extremely broad and burdensome. The Code should be framed in a wholly consistent way with the DSA and, to the extent necessary, the Code should mirror the DSA provisions. ([MPIL](#))

Additionally, industry representatives not considered to be VLOP's under the DSA, believed it excessive to impose this analogous obligation on them. ([Udemy](#))

11B.8 Specific Recommendations for Safety impact statements

The following recommendations were made in relation to the Safety by Design proposals:

- Extend safety impact statements to protect women and girls from technology facilitated gender-based abuse. ([Women's Aid](#))
- Safety impact statements should be provided to the Commission and made available to the general public. ([Women's Aid](#))
- The requirement of safety by design should include that appropriate measures are taken to address the risks and harms identified in impact statements, in particular in relation to opposing the spreading and amplifying of harmful content and the malicious use of new tools to particularly abuse women and girls. ([Women's Aid](#))

11.C Online Safety supports

Section 2 of Appendix 3 explains that the protection of users from harm should include the support for users who are affected by illegal or harmful content.

11C.1 General Views on Online Safety Supports

Online safety supports being incorporated into the Code was strongly recommended in order to mitigate any potential harm experienced by children and young people online. ([DCEDIY](#))

It was also suggested that consideration should be given to exemption for parental consent in the case of online safety supports, in line with the United Nations Convention on the Rights of the Child Comment 25 which stated that providers of preventive or counselling services to children in the digital environment should be exempt from any requirement for a child user to obtain parental consent in order to access such services. Such services should be held to high standards of privacy and child protection. ([DCEDIY](#))

It was suggested that online safety support plans should also cover harmful content at the moment not covered by the draft Code (which is quite limited), such as online gender-based violence and particularly Intimate Image Abuse/Image Based Sexual Abuse. Concern was expressed that the proposed wording of this measure will not cover many forms of online gender-based violence and specifically IIA, which is an offence in Ireland. The importance was noted of individuals of any age who are subjected to IIA, cyber-harassment, cyber-stalking, or other forms of online gender-based violence being provided with supports, including referring to specialist organisations, providing support material and information, funding initiatives to support users and contacting authorities where there is an imminent and serious risk to life. ([Women's Aid](#))

It was noted in some detail how Industry already makes available several tools and resources to support the welfare of its users and welcomes such measure. However, the Commission was cautioned against imposing prescriptive obligations in this regard, as it is unclear how the Commission would even supervise and enforce such an obligation. As such, it was suggested that the Commission solely include a high-level requirement for VSPS providers to have online safety supports in place. ([MPIL](#))

It was also suggested that there should be explicit mention of online abuse both in the new Code and in any associated Guidance, in the context of a personal relationship and also, of the specialist support services which can help anyone who finds themselves the victim of this form of abuse. ([Safe Ireland](#))

11C.2 Specialised sources of support

There was strong support for online safety supports designed for children, particularly schools, charities and NGOs, funding initiatives, engagement with local authorities. (DCEDIY)

A number of responses suggested that VSPS should engage with expert support services when preparing online support safety plans.

It was recommended that in preparing their plans, VSPS should provide users with support materials and contact information about organisations who can support their welfare; and consider developing arrangements with organisations that can offer direct support, such as NGOs and relevant health services and supports. (Department of Health)

With regard to suicide and self-harm specifically, it was requested that providers developing such plans should engage with the HSE National Office for Suicide Prevention to access the most relevant and up to date information on services and supports. On the issue of eating/feeding disorders, the HSE and relevant organisations should be engaged. (Department of Health)

It was suggested that provider online support safety plans should be aligned to co-ordinated communication campaigns for the promotion of mental health and wellbeing under the Connecting for Life programme. (Department of Health)

It was also noted that the section on online support safety plans references “contacting local authorities in circumstances where the provider considers there may be an imminent and serious risk to the life or health of a user”. It was requested that clarification was required over what was meant by local authorities and it was recommended that if a provider considered an imminent and serious risk to the life of a user, emergency services would be the most appropriate contact. (Department of Health)

The Commission’s attention was drawn to the Children First National Guidance (2017) which includes definitions of child abuse and signs for its recognition. It also explained how reports about reasonable concerns of child abuse or neglect should be made by the general public and professionals to Tusla (the Child and Family Agency). In cases of emergency, where a child or young person appears to be at immediate and serious risk, An Garda Síochána (AGS) should be contacted. It was suggested that this information should be included in the guidance material for VSPS providers supporting users affected by illegal or harmful content. (CPPLU)

It was noted that the suggestion that VSPS should contact local authorities - where it considers there may be an imminent and serious risk to the life or health of a user - is a requirement which is already harmonised by the DSA under Article 18 and would therefore be pre-empted from applying under the Code. (Technology Ireland)

11C.3 Overlap with the DSA

The industry viewed the online safety supports provisions conflicting with the obligations under the DSA and has no basis in the AVMSD. (Technology Ireland, Google, TikTok, Pinterest, Tumblr)

Industry representatives listed a number of initiatives they take in relation to safety of their services and caution the Commission against imposing prescriptive obligations in this regard, as it is unclear how the Commission would even supervise and enforce such an obligation. It was instead suggested that the Commission solely include a high-level requirement for VSPS providers to have online safety supports in place. (MPIL)

11C.4 Specific Recommendations on Online Safety Supports

It was suggested that the requirement on VSPS to publish an online safety support plan should cover all users impacted by harmful content, especially women and girls impacted by online GBV and IIA, and not be limited by the proposed wording and the limitations of this Code. (Women's Aid)

11.D Recommender System Safety

Section 3 of the Appendix explains the nature of the supplementary measures to the draft Code in terms of a recommender system safety plan that includes effective measures to mitigate the harm risks.

11D.1 General Views on Recommender System Safety

It was welcomed that the Commission recognised that recommender systems may also amplify harmful content across platforms and has set out measures that the VSPS should take to reduce the risk of harm to children. (Children's Rights Alliance, Belong To, Safe Ireland, Civil Society Groups, Irish Traveller Movement, SpunOut, Women's Aid)

It was recommended that the recommender system Safety should be incorporated into the Code. It was argued that it is vital that aggregate content which could cause harm to a child or young person is interrupted/mitigated. (DCEDIY, Civil Society Groups, Samaritans Ireland, RCNI, Safe Ireland, Civil Society Groups, Irish Traveller Movement, SpunOut, Children's Rights Alliance) However, use of the term "in aggregate" was noted, and it was suggested that content can be harmful after only one viewing and there is no mass point after which the content becomes harmful. (RCNI, Irish Traveller Movement)

The Commission was congratulated for recognising that algorithmic amplification is a robust and legitimate way to address platform impact as it was noted that recommender algorithms are most often driven by what users watch the longest or comment on most. As such, these algorithms shape the user experience, and often drive users towards divisive and harmful content. It was suggested that rather than removing algorithms altogether, it would be more beneficial to regulate them to be built in ways that empower users and ultimately improve their impact on society. (Council on Technology and Social Cohesion)

It was also welcomed that the Commission recommends that a safety impact assessment be conducted in relation to recommender algorithms and that safety should be prioritised before optimising user engagement. The consultation documents also set out a requirement for VSPS to report to the Commission on measures that are being taken to address 'toxic' feeds and measures to address the amplification of harmful content online. It was recommended that the provision in the

supplementary measures concerning recommender feeds should be incorporated into the Online Safety Code and that consideration should be given to implementing the provisions in relation to the recommender feeds into the Code. ([Children's Rights Alliance](#))

It was further suggested that there should be an obligation on all platforms to provide transparency about how recommender systems operate and to make it easy for users to modify their choices when they have more than one option. It was also argued that this is child friendly when the user is a child and that users should be provided with at least one option that is not based on profiling. ([DCEDIY](#))

It was argued that one of the best ways to mitigate “the risk that may arise from recommender feeds which contain harmful content, on their own or in aggregate” is for VSPS to ensure that users can enjoy age appropriate experiences on their platforms. This can easily be achieved through the use of age assurance techniques. ([Yoti](#))

Pornography and violence, it was suggested, should be prohibited (as well as not promoted by recommender systems) for uploading or sharing, in addition to the pornographic or violent content which contains or appears likely to contain ‘deep-fake’ likenesses of real people generated by AI or CGI. Also, it was suggested that violent/distressing content should only be permitted in recommender systems, promoted advertising or national broadcasting during post-watershed hours (9pm – 5.30am, including promotion of adverts and news broadcasting, etc. ([Well-Aware Campaign](#))

11D.2 Petition/Joint Submission from Civil Society Groups

Responses to question 28 included a petition and also a joint submission on behalf of a range of civil society groups. The petition consisted of a near identical email from over 1,000 individuals urging the Commission to make the requirements in Section 1.3 of the draft supplementary measures as robust as possible.

These responses requested that the Commission remove any loopholes or ambiguity from this section which could be seized upon by VSPS. Changes to wording were proposed and it was suggested that without such edits the VSPS could carry on business-as-usual. ([Petition](#))

The joint submission was a collective response from a group of just over 60 civil rights organisations representing the view of a substantial number of national and EU-based organisations, comprising of a diverse cross-section of Irish society, (see Annex 1 for a full list). It was argued that content recommender systems used by VSPS are a source of harm for children and that the measures outlined in the draft Code are necessary and proportionate to the objective set by the Act to protect children against harmful content. ([Civil Society Groups](#))

It was noted that the Act requires that measures in the draft Code must be proportionate to the level of risk of exposure to the content and harms and it was argued that the harms from recommender systems are “acute”. ([Civil Society Groups](#))

It was suggested that because Article 38 of the DSA provides that recommender systems based on a profile must be optional, VSPS have a separate and pre-existing requirement to be able to implement the measures and the only difference would be that the new measures envisaged by the Commission

would operate as the default. It was noted that this makes no practical difference to the technical burden on providers. (Civil Society Groups)

It was noted that the draft Code does not explicitly refer to digital addiction and it was suggested that at a minimum, measures be added to the Code obliging notifications to be off by default, no infinite scroll, and no autoplay. It was also suggested that the Code should oblige providers to change the signals that their recommender systems use to rank content and measure performance and instead of prioritising signals that place an overriding emphasis on engagement, other signals should be employed that show the quality of content, such as providence and authorship, and whether the creator is well-regarded by other well-regarded creators. (Civil Society Groups)

11D.3 Scope

It was reiterated that the new Code and guidance should make sure the proposed measure regarding recommender system safety applies both to children and the general public. (Women's Aid) Also, it was suggested that both the Code on this topic and any associated Guidance are informed by input from specialist domestic violence support services, survivor-led groups, or other experts in this area. (Safe Ireland)

11D.4 Mandatory off by default

There was support for a mandatory “off by default” obligation on VSPS in relation to recommender system’s algorithms. (SpunOut, RCNI, FuJo, Civil Society Groups, Civil Society Groups, 5Rights Foundation)

The draft Code’s intentions regarding recommender systems, and the intention that these algorithms would be turned off by default where they involve in profiling or the processing of special category data was welcomed. (SpunOut)

It was argued that these measures must be mandatory, as it was expressed that the only effective way to protect users from recommender algorithms/systems is for them to be optional for users on all platforms, while the use of these algorithms/systems should, by default, be switched off. (RCNI)

Default deactivation of recommenders’ system’s algorithms was deemed compatible with a safety by design approach and, what is more, it does not prohibit their use, but simply requires a conscious effort on the part of users to select recommendations. (FuJo)

It was noted that the Commission is not mandating VSPS to implement protections within the Recommender Feeds function. It was strongly recommended that implementation of the Recommender Feeds should be a binding principle because users must be allowed to limit and permanently block content which they have identified as being harmful to their mental health. VSPS who fail to implement this protective function should be penalised. (Civil Society Groups)

A submission supported the requirement for a default recommender system turn off on social media video platforms and that algorithms that engage explicitly or implicitly with special category data such as political views, sexuality, religion, ethnicity or health should have these aspects turned off by default. (Civil Society Groups, 5Rights Foundation)

It was counter-argued by Industry that recommender systems play an important role in ensuring a safe, predictable and trusted online environment by ensuring that users are connected to relevant and high quality information. ([Technology Ireland](#))

It was further noted that there is no legal requirement for providers to provide a non-profiling option by default. This was expressly addressed by Article 38 of the DSA, which does not require VLOPs to offer a non-profiling option by default but rather is a choice the user can make. ([MPIL](#))

11D.5 Evaluation

It was noted that this is a highly important area, and the effectiveness and implementation of this guidance should be reviewed regularly in close collaboration with stakeholders and service providers. It was suggested that VSPS should engage with the National Counter Disinformation Strategy Working Group to develop a recommender system safety plan. ([Belong To](#))

11D.6 Transparency

It was suggested establishing a publicly available database registering VSPS platforms' recommender safety plan, targets and tri-monthly performance. ([NHCP](#), [Irish Heart Foundation](#), [SafeFood](#), [HSE Health & Wellbeing](#), [Dr. O. Bartlett](#), [Dr. N. Campbell](#), [Dr. A. Garde](#), [Dr. C. Patton](#), [K. Reilly](#), [Dr. M. Tatlow-Golden](#)) Transparency of design and operation of recommender system was assessed as key to addressing the risks. ([5Rights Foundation](#))

The Commission needs to ensure that platforms are fully transparent in how algorithmic technologies are being utilised particularly regarding children and young people as these appear to go to the heart of the business model and indeed profitability of platforms. ([Youth Work Ireland](#))

11D.7 Overlap with the DSA and AVMS Directive

Industry pointed out that recommender systems standards are already harmonised by the DSA. As such, it was suggested that this supplementary measure was not necessary and it was unclear what this additional proposal sought to achieve. Furthermore, it was stated that the introduction of these measures would undermine the legislative intent of DSA and ultimately lead to a fragmented approach that would fail to effectively protect users, noting in addition the view that the AVMSD provides no basis to introduce such requirements, nor was it intended by the Article 28b(6) of the AVMSD to permit Member States to render large portions of the DSA's harmonisation efforts redundant. It was proposed that the Commission should consider the measures undertaken under the DSA to be sufficient compliance measures. Any enhancement to such measures should be done exclusively through the lens of the DSA rather than through Supplementary Measures in the Code.

([Technology Ireland](#), [Google](#), [TikTok](#), [LinkedIn](#), [Pinterest](#), [Tumblr](#), [MPIL](#))

Additionally, Industry representatives not considered to be VLOPs under the DSA, believed it excessive to impose this analogous obligation on them. Supplementary argumentation against inclusion of these obligations were provided in terms of the specific nature of the platform and business model, which is designed for enterprise-level, professional skills education and lack of direct availability of video content. ([Udemy](#))

11D.8 Specific Recommendations

The following recommendations were made in respect of recommender system safety:

- Relocating the measures on recommender systems from Section 1.3 of Appendix 3 to Section 12 of the Code, where obligations upon providers are specified. (Civil Society Groups, SpunOut)
- Amending the language to clarify that the measures are strict requirements, for example by removing the words “the choices that have been made about whether and” from the relevant paragraph at Section 6.4 of the Code. (Civil Society Groups, Block Submission, SpunOut)
- Removing the words “consider the following measures and” and “whether and” from Section 1.3 of Appendix 3 so that it reads “In preparing a recommender system safety plan, a video-sharing platform service provider must at a minimum consider the following measures and explain whether and how it has given effect to them: [...]” (Civil Society Groups, SpunOut)
- Removing the words “should have these aspects” and replacing them with “must be” at Section 1.3 of Appendix 3, in order to remove ambiguity and allow for efficiency of monitoring and enforcement so that it reads “measures to ensure that algorithms that engage explicitly or implicitly with special category data such as political views, sexuality, religion, ethnicity or health should have these aspects must be turned off by default; and”. (Civil Society Groups, SpunOut)
- Specifying that providers must introduce lawful consent requests and confirmation requests, as per the EU law to request and confirm two-step “explicit consent” before commencing any processing of special category data. (Civil Society Groups)
- Obliging all platforms to provide transparency about how recommender systems operate and to make it easy for users to modify their choices when they have more than one option; and ensure that this is child friendly when the user is a child. (DCEDIY)
- Providing users with at least one option that is not based on profiling. (DCEDIY)
- Ensuring that lawful consent is sought and recorded for all recommender systems - a requirement under EU and national law which must be complied with in full. (SpunOut)
- Ensure the proposed measure regarding recommender system safety applies both to children and the general public. (Women’s Aid)

11.E Draft Guidance Materials to support the proposed Supplementary Measures

Section 4 of Appendix 3 explains the proposed guidance to the aforementioned supplementary measures, with proposed steps and further information to consider when implementing them.

11E.1 Safety by Design

It was recommended that a Child Rights Impact Assessment Process be incorporated into the safety by design process. (DCEDIY)

It was suggested that the Code should expand on guidelines for how VSPS providers should perform their safety impact assessments, and how to ensure these are as robust as possible. It was suggested that a pilot period working with a sample group of children, and conducting research alongside the

pilot, should potentially be considered as a mandatory requirement for any new function, device or programme aimed specifically at children or which children may have direct access to. The research should then be presented to the Commission for approval, and in order to be approved for general rollout, the new function/device/programme should be found definitively to not have an adverse effect on child development or wellbeing. ([Well-Aware Campaign](#))

11E.2 Online Safety Supports

It was requested that specific reference to child friendly and available to children be referenced in the Draft Guidance Materials. ([DCEDIY](#))

11E.3 Recommender Feeds

It was noted that toxic feeds of mainstream news broadcasting and current affairs journalism can be common and may be leading to a rise in anxiety levels across people of all ages accessing VSPS services. This category should also be considered as an area that is potentially harmful in aggregate, and addressed accordingly in system safety measures. ([Well-Aware Campaign](#))

It was suggested that VSPS providers should be required to “prohibit the uploading or sharing” of pornographic or violent content which contains or appears likely to contain (until proven otherwise) ‘deep-fake’ likenesses of real people generated by artificial intelligence or CGI, and that this type of content should not be promoted via recommender systems (or otherwise) until post-watershed hours (i.e. only permitted in those feeds between 9pm and 5.30am). ([Well-Aware Campaign](#))

It was suggested that violent/distressing content (whether as a contribution to civil discourse / public interest or not) should only be permitted in recommender systems, promoted advertising or national broadcasting during post-watershed hours (9pm – 5.30am). This includes the promotion of adverts (e.g. featuring famine / abuse / war imagery) and news broadcasting etc." ([Well-Aware Campaign](#))

Chapter 12: Supplementary contributions

This chapter is a collection of comments to the consultation which were not provided in direct response to any specific question but submitted by respondents in their introduction or other parts of their response. Where the responses duplicate what has already been submitted to specific questions, every effort has been made not to include the duplicating comments in this Chapter.

12A. General

There was some disagreement with the adoption of the draft Code as it would have negative consequences on the free speech. (Brid, C. O'Brien, C. O'Regan, D. Ward, I. Tobin, L. Dunne, V. Brooks)

The draft Code, as expressed, carries inequalities, where “elite are trusted and given free passes” while the actual hard affect is expected for the ordinary public. (FMA)

Provided in personal capacity, it is the view of technology professionals that the technological developments were possible due to the concept of “permissionless innovation”. While it would be naïve to suggest that there should be no rules, it was asserted that any regulation needs to be as light touch as possible. (M Neylon)

As this Code will apply to all EU citizens, it was suggested that it is made available in other EU languages. (CvdM, The Netherlands) It was also stated that it would be extremely useful for the Code to include flowcharts and infographics to explain the various sections and the overall Code itself. (A. Steen) Similarly, the Commission’s predecessor, the Broadcasting Authority of Ireland, issued a very accessible Code of Programme Standards. The Commission should adopt a similar approach. (Civil Society Groups)

Online safety is a key strategic priority for civil society organisations, inclusive of digital media campaigns combatting online hate speech experienced by LGBTQ+ youth, while empowering young people to take back social media, protect themselves online, and to hold social media companies accountable as the work is done to make spaces safe for users. (Belong To)

The questions were raised as to what measures that help after reporting mechanisms are initiated on the part of the VSPS providers (such as available therapist to assist the user including content the affected person can watch to help them overcome the trauma). (S. O’Cathain)

There does not seem to be any obligations to act in regard to the protection of those who may be depicted in harmful images online as against the users (e.g. a baby smoking), and it was therefore recommended for VSPS providers to establish where it was hosted and report it to local police. (N Cahill)

Ireland should bring in legislation (similar to Australia) which would restrict influencers from promoting health and beauty products unless they had medical qualifications. (F O’Malley)

Concerns were expressed that the Draft Code does not go far enough to effectively address some of the most prevalent harms to women and girls that occur online and undoubtedly constitute forms of gender-based violence. A closer alignment between the operation of the Code and the realisation of the objectives set out in Ireland’s Third National Strategy on Domestic, Sexual and Gender-Based Violence would be welcomed. (SERP)

12B. Protection of minors

The Code together with the UN Convention on the Rights of the Child, the rights of children outlined in the DSA and the AVMSD, as well as the Irish Data Protection Commission's Fundamentals for a Child-Oriented Approach to Data Processing, provides an opportunity to foster the synergies between the foregoing legislative and voluntary measures, thus improving their effectiveness and ultimately advancing the protection of children's rights online. ([5RightsAlliance](#))

Child-protection considerations were proposed, including that relevant legislation should require the development of new age-appropriate devices to replace mobile phones for children under 16, and prototyping and piloting the device; VSPS should only be accessible on either fixed location or larger devices for children under 16. Reference to the AI and gaming was also made, suggesting their inclusion in the Code, where it was recommended to require licence and possibly specialised training for AI generated content, while researching all areas in more detail, having in mind that the way content is delivered on VSPS might be dangerous and harmful, not only the content itself. ([Well-Aware Campaign](#))

It was stated that the work done by the Commission was impressive and praiseworthy. Since VSPS providers operate as commercial entities, establishing a transactional relationship with their users, the safeguarding of minors and their privacy was imperative and should be included in a robust Code that consistently upholds the principles of privacy by default and by design, and not as an optional consideration. ([CvdM](#))

12C. Self and co-regulation

While welcoming the draft Code, members of the World Federation of Advertisers referred to their responsibility, in so far as it relates to how they select their purpose, their influencer partners or the media platforms they use as they seek to protect brand value. In that sense, it was stated that advertising self-regulation has numerous advantages for both consumers and businesses, and a very strong tradition in Europe. ([AAI](#))

12D. Cross-border cooperation

Due to the global nature of VSPS, the importance of cross-border cooperation was highlighted. Bratislava CMS was willing to play an active and supporting role in the Commission's enforcement of the draft Code. Possible ways of such cooperation were outlined, with individual regulatory authorities or collectively on the ERGA level. ([Bratislava CMS](#))

Annex 1 – Full List of Respondents

Table 1 - Full List of Respondents by Category

Category	Respondent name	Category	Respondent name
Advertising self-regulatory organisation	<ul style="list-style-type: none"> Advertising Standards Authority for Ireland (ASAI) 	Industry organisations providing submissions on advertising	<ul style="list-style-type: none"> Association of Advertisers in Ireland (AAI) Danone Ireland Data-Driven Marketing Association (DDMA) Food Drink Ireland (FDI) IAB Ireland
Child protection organisations, NGOs, Government agencies and health centres (national and international)	<ul style="list-style-type: none"> 5Rights Foundation AgriKids Children's Rights Alliance Caring Support for Parenthood - (CUIDIÚ) CybersafeKids Family and Media Association (FMA) HSE Healthy Weight for Children Group (HSE)* HSE National Healthy Childhood Programme (NHCP) ISPCC (Irish Society for the Prevention of Cruelty to Children) / Webwise National Parents Council Ombudsman for Children's Office TUSLA Youth Work Ireland 	Irish national agencies, regulators and government departments	<ul style="list-style-type: none"> Competition and Consumer Protection Commission (CCPC) DCEDIY – Child Protection Policy and Legislation Unit (CPPLU) DCEDIY Department of Health An Coimisiún Toghcháin Irish Human Rights and Equality Commission (IHREC)
Civil rights organisations	<ul style="list-style-type: none"> Civil Society Groups** European Digital Rights Groups (EDRI) Civil organisations' Letter on Codes for over 18s*** 	Minority / underrepresented groups and language groups	<ul style="list-style-type: none"> Belong To Irish Traveller Movement (ITM) National LGBT Federation (NXF) Simon Communities of Ireland Well-Aware Campaign (Aida Whooley)
European and international regulatory bodies and government ministries	<ul style="list-style-type: none"> Dutch Media Authority (CvdM) UNICEF 	Organisations and Government agencies, and research centres dealing with mental health and self-harm issues (suicide, anorexia)	<ul style="list-style-type: none"> Headline HSE National Office for Suicide Prevention (NOSP) National Suicide Research Foundation (NSRF) Samaritans Ireland Bodywhys Council on Technology and Social Cohesion
European co- and self-regulatory bodies	<ul style="list-style-type: none"> Bratislava CMS Contribution Netherlands Institute for the Classification of Audiovisual Media (NICAM) 	Organisations and NGOs dealing with online harm	<ul style="list-style-type: none"> FuJo Trust Alliance Group
Girls and Women's - rights and protection Including also Organisations dealing with	<ul style="list-style-type: none"> Rape Crisis Network Ireland (RCNI) Safe Ireland Alders Unit Children's Health Ireland, Specialist Child Sexual Abuse Services Women's Aid 	Organisations and research centres addressing other harms: bullying, harassment,	<ul style="list-style-type: none"> SpunOut

violence against women and children	<ul style="list-style-type: none"> • Dublin Rape Crisis Centre 	sharing of intimate images.	
Health promotion organisations providing submissions on advertising	<ul style="list-style-type: none"> • Alcohol Action Ireland • ACLI (Association of Lactation Consultants in Ireland) • Dairy Industry Ireland • Friends of Breastfeeding • HSE Health & Wellbeing • Irish Heart Foundation • La Leche League of Ireland • Safefood • Baby Feeding Law Group Ireland (BFLGI) 	Organisations offering technical solutions	<ul style="list-style-type: none"> • Age Verification Providers Association • Sedicii • VerifyMy • Yoti
Industry and industry associations	<ul style="list-style-type: none"> • Google • LinkedIn • Mastodaoine CLG • MPIL • Pinterest • Reddit • Technology Ireland • TikTok • Tumblr • Udemy 	University departments/ experts/ academics	<ul style="list-style-type: none"> • Dr Liz O’Sullivan • UCD Centre for Digital Policy • SERP – the Sexual Exploitation Research Programme in University College Dublin • Centre for Competition Policy / University of East Anglia (UEA Centre for Competition Policy) • Dr. O. Bartlett, Dr. N. Campbell, Dr A. Garde, Dr. C. Patton, K. Reilly, Dr. M. Tatlow-Golden
Civil Society Group****	<ul style="list-style-type: none"> • Action for Choice • Afri • Age Action • Belong To LGBTQ+ Youth Ireland • Black and Irish • Bray for Love • Bridging The Gap Ireland • Circle VHA • Clare Immigrant Support Centre • Climate Action Wexford • Community Work Ireland • Cork Rebels for Peace • Donegal Intercultural Platform • Doras • Droichead FRC • Dublin Bay South Branch Social Democrats • Dublin City Community Cooperative • Dublin LGBTQ+ Pride • Empower • European Anti-Poverty Network Ireland • Fermoy and Mallow Against Division • Friends of the Earth Ireland • Galway City Community Network 	<ul style="list-style-type: none"> • Good Day Cork • Helping Irish Hosts • Hope & Courage Collective • Human Rights Sentinel • IDEN • Independent Living Movement Ireland (ILMI) • International Community Dynamics CLG • Irish Council for Civil Liberties • Irish Council for International Students • Irish Doughnut Economics Network • Irish Network Against Racism • Irish Traveller Movement • Irishwomen Together • Leitrim Volunteer Centre • LGBT Ireland • Light Advisory • Mammies for Trans Rights • Migrant Rights Centre Ireland • Nasc, the migrant and refugee rights centre • National Traveller Women’s Forum 	<ul style="list-style-type: none"> • National Women’s Council • NeuroPride Ireland • New Horizon Refugee Support • Outhouse LGBTQ+ Centre • Parable Communications • Pavee Point Traveller and Roma Centre • People vs Big Tech • Rialto Youth Project • ShoutOut • Social Rights Ireland • Solas Project • Suas/STAND • The Exchange Irishwomen • Together for Safety • Uplift • Waterford Integration Services • Wicklow Volunteer Centre • Women for Election • Women’s Collective Ireland (WCI)
Other individuals	<ul style="list-style-type: none"> • A.G. Smith • A.Steen • A Conway • A Smith • A Pigot • A Fitzpatrick • A Burns 	<ul style="list-style-type: none"> • D Dowling • D O’Boyle • D Connolly • E Kilgallon • F O’Malley • F Kelleher • G O’Brien 	<ul style="list-style-type: none"> • M O’Brien • M Neylon • M B.V. • M Corcoran • N Cahill • NCJ • O. Delaney

<ul style="list-style-type: none"> • A Madirazza • Barry • Block Submissions***** • B Chamberlain • B Daly • B Nisbet • C Connolly • Bríd • C Clarke • C Ryan • C Mac Mahon • C O'Sullivan • C O'Brien • C O'Regan • C Sheehan • C Bradley • C Dillon • C Power • C Egan • C Malone • D Cussen • D Litvak • D Earley • D O'Neill • D Ward 	<ul style="list-style-type: none"> • G Grings • H Tuohy • I Goldberger • I Hunter • I Mc Nally • I Sowunmi • I O'Connell • I Tobin • J Behan • J Buckley • J O'Connor • J Ryan • J Edwards • J Kavanagh • J Steinmann • J Bouhof • J Lieuwma • K Ryan • L Dunne • L Laughey • L Matthews • L McMonagle • L Bayes • M Dennehy • M Lordan • M Mac Carthy 	<ul style="list-style-type: none"> • Kyne • P • P Fahy • P Cunningham • P O Leary • R Jensen • R Griffiths • Rory • R D Maher • S Fagan • S Hynes • S MacDiarmada • Senator M Sherlock • S O' Cathain • S O'Toole • S Laide • S Spillane • T Toth • T Malone • T Hamilton • V Brooks • V Milas • V Snt • W Harold • An Fear Saor
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* HSE Healthy Weight for Children Group is a collaboration of health sector and public health partners who have an interest child health and obesity prevention including HSE Healthy Eating Active Living Programme, HSE Healthy Childhood Programme, Safefood, Irish Heart Foundation and Institute of Public Health.

** Civil organisations' Letter on Codes for over 18s was signed by the following organisations: AAI, Headline , Irish Association of Social Workers, Jigsaw, LGBT Ireland, Mental Health Reform, National Suicide Research Foundation, National Women's Council, Samaritans Ireland, Shine, spunout.

**** Civil Society Group represents a joint response from a group of large number of civil rights organisations representing the view of a substantial number of national and EU-based organisations:

***** Petition, representing a block of identical emails sent by over 1,000 individuals to the Commission in reaction to question 28.

Annex 2 – List of Consultation Questions

Consultation on Online Safety Code

1. Do you have any comments on sections 1 - 9 of the draft Code?
2. What is your view on the proposal to include user-generated content that is indissociable from user-generated videos in the definition of content to be covered by the Code?
3. What is your view on the definitions of “illegal content harmful to children” and “regulated content harmful to children”?
4. What is your view on the other definitions of illegal content and regulated content?
5. Do you have any comments on any other definitions provided in the draft Code?
6. What is your view on the obligations in the draft Code that relate to what a VSPS provider must include in its terms and conditions?
7. What is your view on the requirement in the draft Code for a VSPS provider to suspend or terminate an account in certain circumstances?
8. What is your view on the requirements in the draft Code in relation to reporting and flagging of content?
9. What is your view on the requirements in the draft Code in relation to age verification?
10. What is your view on the requirements in the draft Code in relation to content rating?
11. What is your view on the requirements in the draft Code in relation to parental controls?
12. What is your view on the requirements in the draft Code in relation to complaints?

13. Do you have any other comments on the requirements in section 11 of the draft Code?

14. What is your view on the requirements in the draft Code in relation to audiovisual commercial communications which are not marketed, sold or arranged by the VSPS provider?

15. What is your view on the requirements in the draft Code in relation to audiovisual commercial communications which are marketed, sold or arranged by the VSPS provider?

16. What is your view on the requirements in the draft Code in relation to user declarations that user-generated content contains an audiovisual commercial communication?

17. Do you have any other comments on the requirements in section 12 of the draft Code in relation to audiovisual commercial communications?

18. What is your view on the requirements in the draft Code in relation to media literacy measures?

19. What is your view on the requirements in the draft Code in relation to ensuring the personal data of children is not processed for commercial purposes?

20. What is your view on the requirements in the draft Code in relation to reporting in relation to complaints?

21. Do you have any other comments on the requirements in section 13 of the draft Code?

22. Do you have any comments on this section of the Draft Code?

23. Do you have any comments on the Annex?

24. Do you have any other comments on any section or aspect of the draft Code, including with reference to section 139M of the Act in relation to the matters the Commission is required to consider in developing an online safety code?

Consultation on Statutory Guidance

25. Do you have any comments on this draft Guidance, including in relation to the matters required to be considered by the Commission at section 139ZA of the Act?

Consultation on the application of the Code to the category of video-sharing platform services

26. Do you have any comments on the proposed application of this draft Code to the category of video-sharing platform services?

27. Do you have any comments on the proposed application of this draft Code to named individual video-sharing platform services?

Proposed Supplementary Measures and Related Guidance

28. Is there anything you consider the Commission needs to be aware of in relation to the draft supplementary measures and draft supplementary guidance as it further develops its thinking in these areas and seeks to effectively fulfil its mandate in relation to online safety?