

Draft Online Safety Code - Public Consultation Q&A

General

1. Why is an Online Safety Code needed?

Coimisiún na Meán is implementing an online safety framework in Ireland, built on several pieces of legislation.

The Online Safety and Media Regulation Act requires Coimisiún na Meán to develop an Online Safety Code. This is because Ireland must implement Article 28b of the EU Audiovisual Media Services Directive 2018. The Online Safety Code will apply specific rules to Video Sharing Platform Services, which are a sub-set of online platforms. The Digital Services Act will apply to a wider set of online services from February 17th 2024.

2. What will be the difference in for users after this Code is introduced?

While many video sharing platforms already have some elements in place to protect their users, the final Code will set binding rules, and hold platforms accountable for how they keep their users safe, backed up by strong sanctioning powers and fines of up to €20 million. The final Code will also provide clarity to users on how platforms are required to protect them, and what their rights are.

3. What can this code do in relation to recent violence in Dublin?

Content which is intended to incite violence or hatred is covered by the draft Code (as it is illegal content which is harmful to the general public). Platforms will be obliged to prohibit the uploading or sharing of this content.

Platforms will also have to provide effective media literacy measures and tools for users. These tools can help users to recognise misinformation and disinformation.

4. What does the Code do in relation to the incitement of hatred and the organising of potentially illegal activities online?

Content which is intended to or likely to stir up hatred is covered by the draft Code (as it is illegal content which is harmful to the general public). Platforms will be obliged to prohibit users from uploading or sharing of this content. The full online safety regime, applicable from Q1 2024, will cover all types of illegal content and activity online, and force platforms to deal with it.

Contents of the draft Code

1. What content or behaviour is covered by the draft Code?

There are six categories of content defined in the draft Code:

1. *audiovisual commercial communications harmful to the general public*
2. *audiovisual commercial communications harmful to children (both these categories mirror the definitions used in broadcasting rules)*

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3. *illegal content harmful to children. Examples of this content include child trafficking and child sexual exploitation and abuse offences.*
4. *regulated content harmful to children. This consists of a list of content which may impair the physical, mental and moral development of children. This list includes pornography, representations of gross or gratuitous violence, dangerous challenges, bullying, promoting feeding or eating disorders, promoting or providing information on methods of self-harm or suicide,*
5. *illegal content harmful to the general public. This covers content the which is a criminal offence to disseminate consisting of terrorist content, child pornography offences and offences concerning racism and xenophobia*
6. *regulated content harmful to the general public. This covers 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, 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.*

2. Why does the draft Code mention some harms and not others?

The draft Code is based on the harms outlined in the Online Safety and Media Regulation Act 2022 and the EU Audiovisual Media Services Directive 2018. The finalised Code will form part of Ireland's overall safety regime, addressing illegal content online for adults and children and harmful content for children, taking effect from Q1 2024.

3. How were the included harms identified for inclusion in the Code?

The draft Code is based on the Online Safety and Media Regulation Act 2022 and the EU Audiovisual Media Services Directive 2018, which identify the scope of harms to be included in the Code.

Coimisiún na Meán also issued a public Call for Inputs on the Code and received 55 responses from the public and interested stakeholders in respect of the harms that should be addressed in the Code. A public survey was also commissioned to further understand the public attitude to harmful content.

4. Can the list of harms be added to?

Yes. Coimisiún na Meán can make a proposal to the Minister that a particular type of content should be added to the categories of harmful content included in the Online Safety and Media Regulation Act 2022. There is a statutory procedure to follow set out in the Act and the Minister must ultimately approve any additions to the categories of harmful content.

5. How does the draft Code deal with Political advertising?

Advertising is dealt with under the commercial communications section of the draft Code. It needs to be clearly marked as advertising.

6. How does the draft Code deal with Disinformation?

Disinformation is not covered specifically by the draft Code. When disinformation crosses the threshold of being illegal content or regulated content under the draft Code, platforms must prevent it being uploaded or shared.

Under the draft Code, platforms also have to promote media literacy for their users, and publish reports on their efforts. Media literacy can help users to recognise disinformation, minimising its harmful effects.

Scope

1. What platforms does the code apply to?

The Code will apply to Video Sharing Platform Services, i.e. services which allow users to upload and view videos online where the provider of the service is under the jurisdiction of the Irish state. We are planning to make an announcement on services which have been designated as Video Sharing Platform Services by the end of the year.

2. What about other online services?

From February 17th 2024, Coimisiún na Meán will be responsible for enforcing the EU Digital Services Act in Ireland. The DSA covers all types of illegal content on a variety of online intermediary services.

3. How is age verification going to work? Don't children just by-pass it?

The draft Code proposes the use of effective age verification to prevent underage users from accessing services not meant for them. In the case of pornographic services, robust age verification measures must be used. The form of robust age verification is left to the platform and it is for the platform to satisfy itself that it meets all GDPR and privacy obligations in this regard. The guidance notes robust age verification can involve using a photo ID and comparing it to the likeness of the user or age estimation. Platforms will also have to report on the effectiveness of their age verification measures and Coimisiún na Meán.

4. How do you make a decision on what could impair moral development of a minor?

The harms to be covered are set out in the Code and draws from the legislation including both the Act and the Directive. We considered the responses to the call for inputs. We also commissioned an expert report on harms. This report and the responses to the call for inputs are published with the draft code. We have also engaged with many civil society organisations representing ordinary people who have

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provided insight into the type of content and behaviour they experience online and on the responses to the call for inputs. The harmful content to be covered in the context of minors is cyber bullying, content which promotes eating or feeding disorder, content which promotes suicide or self harm. We are also proposing to include live streaming, dangerous challenges, and age inappropriate content such as pornography and extreme or gratuitous violence

5. What kind of response did you have to the call for inputs in the summer?

We received 55 responses to our Call for Inputs, which ran over the summer. This included responses from government departments, public bodies in Ireland and abroad, industry players and user groups. We have considered all the responses and they have informed our views of the draft Code that is now being consulted on.

Users

1. What should someone do if they come across harmful content on a video sharing platform?

Users should first and foremost report the content to the platform in question. Under the draft Code, platforms must have systems for users to report content and make a decision in relation to content which is flagged or reported. Under the draft Code the platforms also have to have a complaint handling process in place. At present, Coimisiún na Meán does not have the capacity to deal with individual complaints, work on this will start in 2024 when we are setting up a contact centre. Coimisiún na Meán will supervise compliance with the final code by platforms, so information from users about their experiences is helpful for this supervision.

2. How will Coimisiún na Meán deal with complaints?

We will use information we receive from users to aid our supervision of the Code. We will be setting up a consumer contact centre in Q1 2024 to deal with enquiries from the public. Work on a super complainants scheme – a nominated bodies scheme and an individual complaints scheme will begin in 2024.

Consultation Process

1. How does the code get finalised?

Coimisiún na Meán will assess the various replies to the Code consultation once that process concludes. There is also a process for engaging with the European Commission for approval to ensure alignment with the DSA. Thereafter Coimisiún na Meán will adopt a final, binding Code and apply it to the various Video Sharing Platform Services. We expect to finalise the Code in the first half of next year.

2. How can interested parties reply to the consultation?

Please refer to the consultation document and questions.

3. Is there a time period after which the approved code must be reviewed?

Once adopted, Coimisiún na Meán will continue to assess the impact and effectiveness of the Code, and review it as and when required. The legislation does not specify any time period for a review. The Minister can also request that Coimisiún na Meán reviews the Code. Coimisiún na Meán intends for the Code to be a practical and useful document, and therefore it will likely require reviews and updates to take account of developments in video sharing platforms and consumer trends.

4. How will Coimisiún na Meán enforce the Code?

We will actively supervise designated services to ensure that they live up to their obligations under the Code. If systemic issues emerge, we will move to investigation and enforcement.

5. Can people make individual complaints to Coimisiún na Meán?

Coimisiún na Meán will be working to develop an individual complaints scheme in 2024, so initially we will not be in a position to act on individual complaints, but they will form a useful part of our supervision approach. We will also be setting up a super complainants scheme or nominated bodies scheme in 2024 and our contact centre.

Legal Provisions

1. What legislation is the code based on?

The power for Coimisiún na Meán to make Online Safety Codes is contained in Section 139K of the Online Safety and Media Regulation Act 2022. In addition, the Code must address the harms set out in Article 28b of the EU Audiovisual Media Services Directive 2018.

2. What will be done with any fines collected? Where will that money go?

Any fines collected will go directly to the exchequer.