



Coimisiún  
na Meán

# Final Decision: Online Safety Code

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# 1. Introduction

Coimisiún na Meán (the “Commission”) is Ireland’s regulator for broadcasting, video-on-demand, online safety, and media development. The Commission 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”). The Commission has a range of functions and powers, including setting standards, rules, and codes for the different types of media services and relevant online services under the jurisdiction of Ireland.

One of the Commission’s key duties under section 139K of the 2009 Act is to develop online safety codes for video-sharing platform services (“VSPS”) and providers of those services.

The Online Safety Code (the “Code”) has been developed to ensure that VSPS providers take measures that are appropriate to provide the protections set out in Article 28b(1)(a), (b), and (c), of the Revised Audiovisual Media Services Directive (the “AVMS Directive”).

It is also intended to ensure that VSPS providers take appropriate measures to provide the protections referred to in Article 28b(2) of the AVMS Directive, including measures referred to in Article 28b(3) of the AVMS Directive, and to comply with the requirements of Article 9(1) of the AVMS Directive.

The Code will operate in tandem with other measures to protect users from online harm, including Regulations EU (2022/2065) (the “Digital Services Act” or “DSA”) and EU (2021/784) (the “Terrorist Content Online Regulation” or “TCOR”). The Commission has responsibilities as the Digital Services Coordinator for Ireland, meaning it oversees the implementation of the DSA for online services established in Ireland; it is also a competent authority under TCOR.

This document provides the background and legislative context for the final decision taken with regard to the adoption of the Online Safety Code.

The documented decision is included at [Annex 1](#). The full text of the Online Safety Code (the “Code”) may be accessed [here](#).



## 2. Overview of development process

In the preparation of the Online Safety Code, the Commission engaged in specific evidence-gathering activities which have contributed to its decision-making:

### **The Call for Inputs on Developing Ireland’s First Binding Online Safety Code for Video-Sharing Platform Services (July 2023)**

The Commission’s Call for Inputs launched on 11 July 2023 and sought responses by 4 September 2023. The Commission received 55 written submissions from a range of respondents.

The Call for Inputs document set out a number of issues and asked 23 related questions, covering priorities and objectives for the first online safety code, the types of harms to be identified, the extent to which the code should be detailed, synergies with the Digital Services Act, the types of content to be addressed, the types of online safety features to be mandated as part of the code, the types of measures to be mandated in relation to service terms and conditions, content moderation, and complaints, as well as compliance, alongside other matters.

A summary of the responses to the Call for Inputs was independently prepared by CommSol and is available [here](#).

### **The Video-Sharing Platform Services Online Harms Evidence Review, undertaken by PA Consulting (the “PA Harms Report”) (September 2023)**

The Commission appointed PA Consulting to undertake a literature review of available evidence pertaining to online harms on VSPS. This was provided to the Commission as independent, expert advice so as to inform the Commission’s approach to VSPS regulation. The report is a meta-study that distils and analyses findings from multiple Irish, European, and international studies and publications, aiming to offer a balanced assessment while recognising the limitations of available data on some aspects of online harms.

The PA Harms report can be accessed [here](#).

### **Online Safety Research 2023 (November 2023)**

In order to gather further information about the views of the public on the regulation of video-sharing platform services, the Commission appointed IPSOS B&A to undertake two surveys on its behalf. The first survey focused on usage by the public of websites and apps that provide video. Questions addressed, amongst other matters, the frequency of use of websites and apps and frequency of watching, sharing or uploading videos.

The second survey was focused more on the potential harms caused by video content and regulatory responses to these potential harms. The impact of potential harms on certain groups in society was explored and respondents were also asked for their opinion on who should be responsible for protection. Copies of the survey responses may be found [here](#) (Part 1) and [here](#) (Part 2).

### **Commission’s public consultation on the draft Code (December 2023 - January 2024)**

On 8 December 2023, the Commission published a consultation document, inviting submissions until 19 January 2024 in relation to:

1. A draft Online Safety Code;
2. Draft online safety guidance materials;

3. The proposed application of the Online Safety Code to the category of VSPS; and
4. Supplementary measures for further consideration.

The deadline for submissions was subsequently extended to 31 January 2024.

The Commission received 1,398 submissions to its consultation from members of the public, Government Departments and agencies, non-governmental organisations, civil rights organisations, industry and industry associations, international regulators, and academia.

Copies of the submissions received have been published separately, and may be accessed [here](#). A summary of the submissions received has been prepared by Wagner-Hatfield for the Commission, and may be accessed [here](#).

### **Response to Consultation: Online Safety Code (27 May 2024)**

The Commission published a response to consultation on the draft Online Safety Code and a revised draft Online Safety Code on 27 May 2024 which is available [here](#).

### **The Commission's consultation with the Youth Advisory Committee on the draft Code and related matters**

Pursuant to section 19 of the Act, the Commission established a Youth Advisory Committee, which assists and advises the Commission in the exercise of its online safety functions relating to the interests of children and people 25 and under, and on such other matters as the Commission may determine. Pursuant to section 139N of the Act, the Commission is required to consult the Youth Advisory Committee prior to the making of an online safety code.

At the time of publication, the Youth Advisory Committee has met three times to consider the Online Safety Code and related matters: on 19<sup>th</sup> December 2023, 17<sup>th</sup> January 2024, and 28<sup>th</sup> May 2024.

At the meeting of 17<sup>th</sup> January 2024, the Commission consulted with the Youth Advisory Committee on the draft Online Safety Code, statutory guidance materials, application of the Code to the category of VSPS, and proposed supplementary measures. The consultation report can be accessed [here](#).

At the meeting of 28<sup>th</sup> May 2024, the Commission consulted with the Youth Advisory Committee on the application of the Code to VSPS. The consultation report can be accessed [here](#).

### **Other engagement**

The Commission has engaged significantly with the European Regulators Group for Audiovisual Media Services ("ERGA") on the Code, including through a workshop on 19 September 2023 and 13 December 2023.

The Commission has also engaged with the EU Commission in relation to the Code, including under Directive (EU) 2015/1535.

### **Directive (EU) 2015/1535 (the "TRIS Directive")**

The TRIS Directive is a European Union law which requires Member States to notify draft technical regulations that concern information society services to the EU Commission before these regulations can be adopted into national law. The EU Commission and other EU Member States may make comments or submit opinions on the same. Information on the TRIS Directive can be accessed [here](#).

The Commission notified the draft Online Safety Code to the EU Commission under the TRIS Directive on 27 May 2024. The Commission observes that four parties submitted comments for the attention of the European Commission and Member States during the TRIS procedure, namely: Computer & Communications Industry Association (CCIA Europe); Technology Ireland (IBEC); the Children's Rights Alliance; and Foróige. The foregoing comments did not prompt comments from the EU Commission or the Member States. The public record of notification can be accessed [here](#).

The standstill period for the notified draft ended on 28 August 2024.

Neither the EU Commission nor any of the Member States submitted a detailed opinion or made comments in relation to the notified text within the standstill period. Accordingly, the draft text may be adopted.

## 3. Finalisation and adoption of the Online Safety Code

### 3.1. Finalisation of the Code

The Commission has reviewed the draft Online Safety Code published in May 2024 and notified under the TRIS procedure and considers it appropriate to make a number of minor adjustments for clarity, as set out below:

- Insertion of standalone “without prejudice” language at the start of Part B and, accordingly, the removal of similar language from Sections 12 and 13.
- Amending cross-referencing in Section 15.1 of the Code.

These amendments are technical drafting corrections that do not change the scope of the Code overall. Accordingly, there is no requirement to re-notify the Code to the EU Commission under Article 5(1) of the TRIS Directive or to re-consult on the substance of the Code under section 139N of the Act.

### 3.2. Matters to be considered

When preparing an online safety code, the Commission must have regard to a number of matters listed in section 139M of the Act, namely:

- (a) the desirability of services having transparent decision-making processes in relation to content delivery and content moderation,
- (b) the impact of automated decision-making on those processes,
- (c) the need for any provision to be proportionate having regard to the nature and the scale of the services to which a code applies,
- (d) levels of availability of harmful online content on designated online services,
- (e) levels of risk of exposure to harmful online content when using designated online services
- (f) levels of risk of harm, and in particular harm to children, from the availability of harmful online content or exposure to it,
- (g) the rights of providers of designated online services and of users of those services, and
- (h) the e-Commerce Compliance strategy prepared by the Commission (accessible [here](#)).

The Commission confirms that it has had due regard to the matters listed in the preparation of the final Online Safety Code.

The Commission sets out the considerations to which it has had regard in relation to each matter in [Annex 2](#) of this document. The specific evidence-gathering activities which have contributed to the Commission's decision-making, and which are relevant to the analysis at Annex 2, are described at Section 2 above.

### 3.3. Adoption of the Code

On 10 October 2024, the Commission decided to adopt the final Online Safety Code in accordance with section 139K(1) of the Act. The documented decision is included at [Annex 1](#).

The full text of the Online Safety Code may be accessed [here](#).

### 3.4. Next steps

Pursuant to section 139N(2) of the Act, the Commission is required to give a copy of the Online Safety Code to the Minister for Tourism, Culture, Arts, Gaeltacht, Sport and Media as soon as practicable after

making the Code. The Minister shall lay it before both Houses of the Oireachtas pursuant to section 139N(3) as soon as practicable after receiving a copy of the Code.

The Commission will also communicate the final text of the Online Safety Code to the EU Commission in accordance with Article 5(3) of the TRIS Directive.

Pursuant to section 139N(4) of the Act, the Commission may at any time revoke or amend the Online Safety Code.

The Commission will take separate decisions in respect of the application of the Code to designated online services.





## Annex 1: Decision under section 139K

Coimisiún na Meán, in exercise of the powers and duties conferred on it by section 139K of the Broadcasting Act 2009 (the “Act”), after consultation with the persons specified in section 139N of the Act and having had regard to the matters set out in section 139M of the Act, has decided on 10 October 2024 to make an online safety code, known as the “Online Safety Code”.

**10 October 2024**

**Coimisiún na Meán**



## Annex 2: Matters to be considered: online safety codes

This annex summarises the Commission’s consideration of the matters to be considered in the preparation of Online Safety Codes, pursuant to section 139M of the Act.

### **The desirability of services having transparent decision-making processes in relation to content delivery and content moderation.**

Respondents to the Call for Inputs and the public consultation highlighted the importance of transparency and accountability across a range of measures to be introduced as part of any Online Safety Code. The PA Harms Report’s section 7.1 provides a summary of available evidence about the desirability of services having transparent decision-making processes in relation to content delivery and content moderation.

Part 2 of the Online Safety Research 2023 found that 85% of respondents said that “effective and timely content moderation” was essential to keep social media users safe, and 79% of respondents said that “effective and timely complaints-handling” was essential to keep social media users safe.

The Commission notes the Recitals and various provisions of the Digital Services Act to ensure transparency and accountability in the online environment. Article 28b(3)(d) of the AVMS Directive specifies that reporting and flagging mechanisms should be transparent, and Article 28b(3)(i) of the AVMS Directive specifies that procedures for the handling and resolution of complaints should be transparent.

Having taken this evidence into account, the Commission has imposed a series of obligations to introduce transparency in content delivery and content moderation, including those relating to services’ terms and conditions, content rating systems, complaints-handling systems, reporting and flagging systems, and obligations for providers to report on their handling of communications from users raising complaints.

### **The impact of automated decision-making on those processes.**

Respondents to the Call for Inputs and the public consultation highlighted the role of recommender systems and algorithmic decision-making in content delivery, particularly harmful content, and in content moderation.

The PA Harms Report’s section 7.2 provides a summary of available evidence of the impact of automated decision-making in relation to content delivery and content moderation processes used by online services. It further highlights that content moderation policies and processes are identified as a VSPS feature that can enable harm in six of the ten harms profiled in the report, and that recommender systems, a primary method of content delivery, can enable harm in seven of the ten harms profiled in the report.

Part 2 of the Online Safety Research 2023 found that 39% of respondents did not feel that they had enough control over what videos they saw on social media. 82% of respondents also said that the automatic detection of illegal or harmful content was essential to keep social media users safe.

The Code’s obligations are technology-neutral in nature. The Code does not seek to influence the use of automated processes to impact content moderation or content delivery.

The Commission confirms its view that recommender systems can play a significant role in creating harm, but is taking what it considers to be the most appropriate steps at this time, separately to the Code, to address such harms, including:

- Continuing to support European Commission investigations into whether recommender systems are operating in compliance with the Digital Services Act.

- Using its own supervisory powers, in cooperation with the European Commission as appropriate, to examine the compatibility of recommender systems with Article 28 of the Digital Services Act in relation to the protection of children.
- As a member of the European Board for Digital Services, participating in the development of guidelines to be issued under Articles 28 and 35 (the adoption of risk mitigation measures) of the Digital Services Act.

**The need for any provision to be proportionate having regard to the nature and the scale of the services to which a code applies.**

The Commission has taken into account the submissions to the Call for Inputs and public consultation relating to the proportionate application of the Code, both in general and in relation to specific provisions.

The general obligations in Part A of the Code are imposed “as appropriate”. The Code states that the “appropriate measures” taken by VSPS shall be those that the Commission is satisfied are practicable and proportionate, and that, if issues arise as to the appropriateness of the measures, it will be a matter for the Commission to ultimately determine.

The Commission has considered the proportionate application of obligations for VSPS providers, including with specific reference to the size and nature of the services to which the Code would apply.

Specific examples include:

- The Code confirms that the Commission, when determining non-compliance or enforcement action, shall have regard to whether it is satisfied that a specific obligation, or in the particular circumstances, compliance with a specific obligation, under the Code would not be practicable or proportionate in its application to the VSPS, taking into account the size of the VSPS and the nature of the service;
- The distinction in the Code between those VSPS providers who permit “adult-only video content” on their service, and those who do not, to avoid applying obligations concerning adult-only video content to the latter; and
- Revision of the provisions on parental control systems, such that only providers whose terms and conditions permit users under 16 are required to provide for those systems.

**Levels of availability of harmful online content on designated online services.**

Respondents to the Call for Inputs and the public consultation highlighted a range of harmful content that can be accessed on VSPS.

The PA Harms Report provides evidence in relation to the prevalence of online harms in Ireland, and explores ten harm profiles:

- online content by which a person bullies or humiliates another person;
- online content by which a person promotes or encourages behaviour that characterises a feeding or eating disorder;
- online content by which a person promotes or encourages self-harm or suicide, or makes available knowledge of relevant methods;
- other online content which impairs the physical, mental, or moral development of minors;
- online content by which a person incites hatred or violence;
- offences relating to the online identification of victims, suspects, or vulnerable people;
- online content associated with terrorism;
- online content associated with child sexual abuse;
- online content by which a person’s behaviour constitutes harassment or harmful communication;

- online content associated with audiovisual commercial communications.

Part 1 of the Online Safety Research 2023 found that 36% of respondents said they had experienced, in the last week, seeing a video on social media that made them feel uncomfortable, upset, or negative in some way; 49% said they experienced this in the last month; and 62% said they had experienced this in the last year. Part 2 of the Online Safety Research 2023 found that 87% of respondents said that social media companies did not do enough to keep social media users safe.

The Commission, from the available evidence, concludes that harmful content is widely available online, including on VSPS. The Code addresses many of the types of harmful content listed above.

#### **Levels of risk of exposure to harmful online content when using designated online services.**

Respondents to the Call for Inputs and the public consultation highlighted a range of ways in which users can be exposed to harmful online content while using VSPS.

The PA Harms Report's section 7.4 outlines a summary of evidence in relation to the availability, risk of exposure, and risk of harm from harmful online content. In relation to risk of exposure, the PA Harms Report states that risk of exposure can be created, reduced, or removed by VSPS features.

The Commission has obliged restrictions on harmful video content through the Code in order to limit the risk of exposure to such harmful content when using VSPS. The Code also imposes measures that qualify the access to content – for instance, through content rating, age assurance measures, or parental controls, to limit the risk of exposure of children to certain content when using VSPS.

#### **Levels of risk of harm, and in particular harm to children, from the availability of harmful online content or exposure to it.**

Respondents to the Call for Inputs and the public consultation highlighted a range of ways in which users risk encountering harm, including children, through online content or exposure thereto.

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

Part 2 of the Online Safety Research 2023 found that 78% of respondents said they were very concerned about potential harm to children caused by social media. It also found that 68% of respondents said that they were very concerned that videos on social media could impact negatively on the mental health of individuals, and 46% of respondents said they were very concerned that videos on social media could impact negatively on the physical health or safety of individuals.

The Commission has obliged restrictions on harmful video content through the Online Safety Code in order to minimise the risk of harm, and in particular harm to children, from the availability of harmful content and risk of exposure on VSPS. The Code provides protections for children, such as through content rating, age assurance, and parental controls.

### **The rights of providers of designated online services and of users of those services.**

The PA Harms Report's sections 7.5 and 7.6 outlines the applicable user rights and service provider rights.

The Commission also notes that the AVMS Directive specifies that the appropriate measures for the purposes of the application of Article 28b(1) and (2) shall be determined in light of, among other things, the rights and legitimate interests at stake, including those of VSPS providers, the users having created or uploaded the content, as well as the general public interest.

The Commission notes that the section within the Online Safety Code, "Regulatory principles relevant to the Code", highlights its considerations relating to the rights of providers of designated online services and of users of those services.

The Commission has taken into account the applicable rights when formulating the Online Safety Code and has taken a rights-balancing approach throughout, including the rights of users and service providers.

Specific examples include:

- The Commission has recognised the rights of children, parents, and guardians in the drafting of parental control obligations;
- The Commission has recognised user rights to privacy and information in the drafting of age assurance obligations; and
- The Commission has recognised the applicable rights of service providers in the drafting of the Code's compliance and enforcement provisions, with particular attention being given to the appropriateness and proportionality of measures included in the Online Safety Code.

### **The e-Commerce Compliance strategy prepared by the Commission.**

The Commission notes that the Online Safety Code contains a section, "E-Commerce Compliance Strategy", highlighting the Code's alignment with the Commission's published e-Commerce Compliance Strategy.