



Coimisiún  
na Meán

# Response to Consultation: Draft Audiovisual On-Demand Media Service Code & Rules

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# 1. Introduction

Coimisiún na Meán (“**the Commission**”) is Ireland’s public body responsible for developing and regulating a thriving, diverse, creative, safe and trusted media landscape. Its responsibilities include:

- Overseeing the funding of and supporting the development of the wider media sector in Ireland
- Overseeing the regulation of broadcasting and video-on-demand services
- Developing and enforcing the Irish regulatory regime for online safety

The Commission was established in March 2023 under the Online Safety and Media Regulation Act 2022, which amended the Broadcasting Act 2009 (“**the Act**”).

One of the Commission’s key duties under the Act is to make **media service codes**<sup>1</sup> and **media service rules**<sup>2</sup> to govern the standards and practices of radio and television broadcasters and providers of audiovisual on-demand media services.

## 1.1. Public Consultation

On 4 July 2024, the Commission [published](#) the Draft Audiovisual On-Demand Media Service Code & Rules (“**the Draft Code & Rules**”), together with a [Consultation Document](#), as part of its initiative to introduce media service codes and media service rules to apply to audiovisual on-demand media service providers based in the State.

The Commission commenced a consultation on the Draft Code & Rules, inviting the public and relevant stakeholders to provide submissions on the proposed regulations up until 6 August 2024 (subsequently extended to 20 August 2024).

In total, the Commission received 16 submissions in response to the consultation from the following person(s) / organisations:

- Advertising Standards Authority
- Alcohol Action Ireland
- Apple Distribution International Limited
- Children’s Rights Alliance
- Chime
- Conradh na Gaeilge
- Drinks Ireland
- National Disability Alliance

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<sup>1</sup> **Media service codes** are made by the Commission under Section 46N of the Act. Such codes generally are designed to address the content of programmes or commercial communications, ensuring that all content made available on the service adheres to established standards.

<sup>2</sup> **Media service rules** generally relate to the presentation and structural aspects of the service being provided, covering matters such as promoting the accessibility of the service to all members of the public. These are made by the Commission under Section 46O of the Act.

- NewsBrands Ireland
- On-Demand Audiovisual Media Services Group (“**ODAS Group**”)
- RTÉ
- Senator Rónán Mullen
- Technology Ireland
- TG4
- Virgin Media
- Warner Bros Discovery / Discovery Broadcasting Ireland Limited

Copies of the submissions received have been published separately and may be accessed on the [publications page](#) of the Commission’s website. A summary of the submissions received was prepared by Wagner-Hatfield for the Commission and may be accessed also on the publications page of the Commission’s website.

The public consultation was undertaken in accordance with the Commission’s statutory obligations to consult on any draft media services codes or media service rules it intends to introduce under Section 46Q of the Act.

## 1.2. Targeted Consultations

In furtherance of its statutory obligations, the Commission is committed to engaging with relevant service users as part of its process for developing its regulatory rules and standards that will directly impact those users and their enjoyment of television programming. The Commission is mindful of Ireland’s ratification of the United Nations Convention on the Rights of Persons with Disabilities (“**UNCRPD**”) and the prominence that it places on the involvement of Disabled Persons Representative Organisations (“**DPROs**”) in the development of policy. In this regard, as part of its regulatory process, the Commission engaged in targeted consultation meetings on the Draft Code & Rules.

### Engagement with Disabled Persons Representative Organisations

On the 11<sup>th</sup> and 12<sup>th</sup> September 2024, the Commission held individual meetings with the Irish Deaf Society and Voice of Vision Impairment, as the relevant DPROs in this area. The meetings were focused on the proposed changes to the Access Rules for Television Broadcasters, as well as the new rules relating to the accessibility of on-demand services, under Section 15 of the Draft Code & Rules.

### Engagement with User Consultative Panel

Two further meetings were organised with users of subtitling, Irish Sign Language and audio description services. These participants are part of the User Consultative Panels (“**UCP**”), which is an initiative to allow for direct engagement with users who are deaf, hard of hearing and/or vision impaired. On the 11<sup>th</sup> and 12<sup>th</sup> September 2024, the Commission held meetings with the UCP panel membership with particular interest in subtitling, Irish Sign Language, and audio description. These meetings were similarly focused on the proposed changes to the Access Rules for Television

Broadcasters, as well as the new rules relating to the accessibility of on-demand services, under Section 15 of the Draft Code & Rules.

A summary of the meetings and input received is published separately on the [publications page](#) of the Commission's website.

### 1.3. Purpose of the Response to Consultation

In accordance with the Commission's [Consultation Guidelines](#) published in June 2023, the Commission is publishing this Response to Consultation following its conclusion of the public consultation.

The purpose of the Response to Consultation is to set out the key issues emerging from the submissions received during the public consultation, and to explain how these issues have been considered by the Commission in the context of determining the final text of the Code & Rules to be adopted ("**the final version of the Code and Rules**").

The Commission has considered all of the submissions received. With due regard to the submissions as a whole, the Commission has exercised its judgement and formed its views on the final version of the Code and Rules.

This Response to Consultation provides an account of the issues raised in consultation that have resulted in amendments being made to the Draft Code & Rules, as well as the issues that could not be considered for practical, legal or policy reasons. In view of the range and volume of responses to consultation, it is not intended to be exhaustive. The failure to refer to any specific issue should not be taken as failure on the part of the Commission to have regard to any particular submissions or the submissions as a whole.

The Commission reserves the right, in the exercise of its discretion, to adopt measures on which it has consulted, with or without amendment.

## 2. Draft Audiovisual On-Demand Media Service Code & Rules

### 2.1 Relevant Background

#### Definition of Audiovisual On-demand Media Service

An “**audiovisual on-demand media service**” is one that allows for the viewing of programmes at the moment chosen by the viewer, and at the viewer’s request, on the basis of a catalogue of programmes made available by the service. The chosen programme is generally streamed with the capability of being viewed across different devices, such as a Smart TV, tablet, or mobile phone.

This type of media service is distinct from traditional television broadcasting, where programming content is broadcast under a fixed schedule. Examples of well-known audiovisual on-demand media service providers include platforms such as RTÉ Player, Apple TV+, and Virgin Media Player.

Audiovisual on-demand media services are also commonly referred to as “**video-on-demand**” services. For convenience, the Response to Consultation uses the term “on-demand service” or “on-demand provider” as shorthand when referring to “audiovisual on-demand media service providers” and their services.

#### The Audiovisual Media Services Directive

As explained in the Consultation Document, a key objective of the Commission in introducing regulatory rules for on-demand providers is to give effect to Ireland’s obligations as a member of the European Union.

The regulatory framework established by the EU to coordinate national legislation in this area is provided for by the Audiovisual Media Services Directive (“**AVMS Directive**”).

The AVMS Directive provides for minimum standards and obligations that on-demand providers must adhere to in a variety of areas, including the protection of children from content that will impair their mental, moral and physical development, the accessibility of the service, and the prohibition of content that incites hatred or violence.

## 2.2 Legal Framework for the Making of Codes and Rules

Rules applying to on-demand services are currently provided for under the ODAS Code of Conduct for Media Service Providers. This code of conduct was developed by the Broadcasting Authority of Ireland in conjunction with the On-Demand Audiovisual Media Services Group (“**ODAS Group**”), further to Section 13(1) of Statutory Instrument No 258 of 2010.<sup>3</sup> The ODAS Group was established as a regulatory body under SI 258/2010 and has overseen the regulation of the on-demand sector since 2010.

Once introduced, the final version of the Code and Rules will replace the ODAS Code of Conduct.

In terms of the preparation of the Draft Code & Rules, Section 46N(6) of the Act requires the Commission, in making or amending a media service code, to have regard to the following matters:-

- The degree of harm likely to be caused by the inclusion of a particular matter in programming material
- The likely size and composition of the potential audience for programming material
- The likely expectation of the audience as to the nature of programme material, and the extent to which the nature of the programme material can be brought to the attention of potential members of the audience
- The likelihood of persons who are unaware of the nature of programme material being unintentionally exposed to it by their own actions
- The desirability of securing that the provider of an audiovisual on-demand media service informs the Commission of any change affecting the nature of the service, and of any change relevant to the application of media service codes
- The desirability of maintaining the independence of editorial control over programmes

As per Section 46Q of the Act, before the finalisation of a media service code or media service rule, the Commission is required to:

- Make a draft of the code or rule available for inspection by any person
- Allow individuals to make submissions in relation to the draft within a specified period
- Publish a notice that a draft is available for inspection, details on how it can be inspected, and the period for making submissions

The drafting of the Draft Code & Rules and the public consultation have been undertaken in accordance with the statutory obligations of the Commission under the Act to have regard to the matters listed above.

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<sup>3</sup> [S.I. No. 258/2010 - European Communities \(Audiovisual Media Services\) Regulations 2010.](#)

## 3. Next Steps

### 3.1 Final version of the Code and Rules

The Commission has made a number of changes to the version of the Draft Code & Rules published in July 2024 on foot of the submissions received in response to this public consultation. These changes are reflected in **the final version of the Code and Rules** which has been published and which is accessible on the [publications page](#) of the Commission's website.

These regulations apply to all audiovisual on-demand media services that are based in or operate under the jurisdiction of the State from their effective date. The Commission has published and will maintain on its website its [Register of On-Demand Providers](#) to whom the relevant media service codes and media service rules will apply.

On-demand providers that are not based in Ireland are not regulated by the Commission, but rather are regulated by the Member State where they are based or operate from.

A summary of the key issues identified in the consultation submissions, together with a summary of the Commission's response to these issues, are detailed below under Section 4 of this Response to Consultation.

### 3.2 Technical Regulations Information System (TRIS) Process

As the Draft Code & Rules propose to regulate an information society service,<sup>4</sup> the Commission submitted the Draft Code & Rules to the EU Commission under the Single Market Transparency Directive (EU) 2015/1535 (the "**TRIS Directive**") to allow for the European Commission and other Member States to consider and submit comments or opinions on the Draft Code & Rules and their potential impact upon the single market. The 'standstill' period provided for the Draft Code & Rules ended on 11<sup>th</sup> October 2024. No comments or opinions were received at the conclusion of this process and the Commission's decision to finalise and publish the final version of the Code and Rules has been informed by this outcome.

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<sup>4</sup> "Information society service" is defined in EU legislation as "any service normally provided for remuneration, at a distance, by electronic means and at the individual request of a recipient of services".





## 4. Commission Response to Submissions

This section summarises in broad terms the key issues raised by the submissions received in response to each of the consultation questions listed in the Consultation Document.

Each subsection provides a brief summary of the relevant provision of the Draft Code & Rules, an overview of the submissions received relating to its respective consultation question, and the response of the Commission to these submissions in making its decision on the final version of the Code and Rules.

Please note that the overview of the submissions below are intended to provide a general sense of the responses received and highlight some of the more prominent issues raised. It is not a comprehensive account of every submission or concern expressed.

In general terms, a number of submissions received requested that the Draft Code & Rules be updated in a manner that would not meet the requirements of the AVMS Directive. Specifically, adopting some of the proposals would mean that the minimum levels of protection required and set out in the Directive for on-demand services would not be met. This would mean that the duty on the Irish State to transpose the Directive would not be achieved and separately that the protections offered to the public would be weakened. Such proposals have not been adopted. In addition, some issues were highlighted that will require further consideration and, if proposed for adoption, public consultation. The Commission will be undertaking a second stage review of the Code and Rules, and these matters will be given consideration at that time. Furthermore, a number of responses sought clarification about the implementation of the Code and Rules in practice. In this respect, the final version of the Code and Rules now includes a section setting out how and under what conditions the Commission will provide guidance on the regulations. Guidance may also be published by the Commission on specific aspects of the Code and Rules further to Section 7(3)(i) of the Act.

### 4.1 Introductory Sections (Sections 1 – 8 of the Draft Code and Rules)

#### Proposals for public consultation

The introductory sections to the Draft Code & Rules provided relevant context to the regulations in the following areas:

- Scope and Jurisdiction
- Purpose, Preparation and Application of the Code and Rules
- Regulatory Principles Relevant to the Code and Rules
- Severability
- Waiver
- Compliance and Enforcement
- Complaints

In addition to setting out the relevant legislative basis for the regulations and clarifying their scope, this section also detailed the compliance framework for on-demand and the potential consequences for contraventions of the Draft Code & Rules.



#### 4.1.1 Overview of submissions received in response

##### **Consultation question (Question 1): *Do you have any comments on Sections 1 – 8 of the Draft Code and Rules?***

While a number of respondents welcomed the principles and the processes outlined in Sections 1 - 8, some suggested reference be included to the ODAS Code of Conduct, as well as the Advertising Standards Authority's complaint procedures for commercial communications.

Other submissions requested that reference be included to the UN Convention on the Rights of Persons with Disabilities (“**UNCRPD**”) and the European Accessibility Act.

Respondents also made suggestions on complaints mechanisms, including with regard to the use of Irish Sign Language and the submission of complaints in both Irish and English.

#### 4.1.2 Commission response

The Commission has decided to maintain the current draft with the following changes.

- At Section 1, a footnote has been added to acknowledge the role of the ODAS group and the ODAS Code of Conduct as the mechanism that regulated the on-demand sector prior to the introduction of the Coimisiún na Meán Code and Rules. It also notes that the Commission will continue to engage with the ODAS Group as part of its regulatory relationship with the wider on-demand sector.
- Section 4 now states that, in its interpretation of the Code and Rules, the Commission will have due regard to the UNCRPD and the relevant provisions of the European Accessibility Act.
- Section 8 of the Code and Rules has been reworded to give further information about the complaints process and how to contact the Commission's Contact Centre. This update has had regard in particular to Article 7 of the AVMS Directive and the necessity to have a single point of contact for complaints relating to the accessibility of services. In addition, reference to the self-regulatory code and complaints handling mechanism of the Advertising Standards Authority is highlighting in the Code and Rules for information purposes.
- A new section titled “Guidance” has been added to the introductory section of the final version of the Code and Rules at Section 9. This states that the Commission may provide non-binding guidance regarding the provisions of the Code and Rules upon request or when it is deemed necessary.

## 4.2 Definitions (Section 9 of the Draft Code and Rules)

### Proposals for public consultation

This section outlined the definitions for the following important terms that are used in the Draft Code & Rules:

- Access Services
- Audio Description
- Audiovisual Commercial Communication
- Audiovisual Media Service
- Audiovisual On-Demand Media Service
- Captioning
- Child / Children
- Editorial Responsibility
- Media Service Provider
- Product Placement
- Programme
- Sign Language, including Irish Sign Language
- Sponsorship
- Surreptitious Audiovisual Commercial Communications
- Subliminal Techniques
- Subtitling

The definitions of each of the above terms were drafted to reflect their equivalent terms in the relevant legislation or as defined in prior regulatory contexts.

#### 4.2.1 Overview of submissions received in response

**Consultation question (Question 2): *Do you have any comments on the proposed definitions contained in the Draft Code and Rules?***

Respondents welcomed the alignment of the proposed definitions with the Act and provisions of the AVMS Directive. Some respondents made suggestions on the definition of access services, while others called for the use of gender-neutral language.

Some respondents called for greater clarity with regard to the obligations relevant for media service providers, in particular concerning the Irish Sign Language. Others made suggestions regarding the definitions for sponsorship and audiovisual commercial communications.

#### 4.2.2 Commission response

The Commission has decided to maintain the current draft with the following changes.

- The definitions for “audio description”, “Irish Sign Language” and “Sign Language” have been updated based on feedback to the consultation. They have also been updated to ensure alignment with the definitions that are used in the Access Rules for Television Broadcasters.
- One respondent sought clarification on the reference in the definition of “Access Services” to the use of Irish Sign Language in the case of services “targeting Irish audiences” and how this term should be interpreted. In this respect, the term is used to distinguish circumstances where, for some services, the relevant sign language for audiences might not be Irish Sign Language. For example, where a service might be targeting French audiences, the audience may consist of those who use, for instance, French Sign Language, which is not directly equivalent to Irish Sign Language. For the avoidance of doubt, a standalone definition for “sign language” is introduced into the Code as well as a stand-alone definition for Irish Sign Language. The use of the term “targeting Irish audiences” has been removed.

In making its decision, the Commission had regard to the importance that the definitions detailed in the rules are aligned with those of the AVMS Directive and the Act. Where appropriate, the Commission has transposed the definition set out in legislation verbatim.

### **4.3 Harmful Content (Section 10 of the Draft Code and Rules)**

#### **Proposals for public consultation**

This section outlined the responsibilities of on-demand providers to prevent the distribution of harmful content on the services that they provide to the public. It required that providers do not include in their catalogue certain content, including content which may provoke the commission of a terrorist offence or that is likely to incite violence or hatred against individuals or a group of individuals referenced in the Charter of Fundamental Rights of the European Union.

On-demand service providers are also required under this section of the Draft Code & Rules to protect children from content harmful to their development. Pornographic content or gratuitous violence is to be restricted to ensure that children cannot normally see it.

Such protective measures may involve safeguards such as the provision of parental controls, including restricted modes and PIN Access, or other technical measures that achieve an equivalent outcome of the foregoing. Any such measures should be proportionate to the potential harm the content could cause to children, with the most harmful content being subject to the strictest controls. The section further provided that children’s data gathered in the process of content management must not be used for commercial purposes.

#### 4.3.1 Overview of submissions received in response

##### **Consultation question (Question 3): *Do you have any comments on the requirements relating to harmful content provided for under Section 10 of the Draft Code and Rules?***

Respondents welcomed regulation that seeks to ensure that the risk that children are exposed to harmful content is minimised when viewing on-demand services, as well as the aspiration that protection measures are commensurate with the potential risk. Several respondents called for a clearer definition of harmful content, while some called for an extension of the types of harmful content listed.

Concerns were raised by some respondents about the exclusion of self-declaration as a measure that can be used under this section of the Code and commented that additional rules should not be imposed above the AVMS Directive. Others had concerns regarding compliance, data protection and age verification requirements, and there was a call for further clarity on prior content warnings. Regarding the applicability of provisions in this section to transactional video-on-demand services, respondents called for further clarity and made suggestions with regard to depictions or dialogue of fictional and creative content.

While the reference to the Charter of Fundamental Rights of the European Union was welcomed, it was suggested by some respondents that 'language' rights should be considered and that content warnings should be in both Irish and English.

#### 4.3.2 Commission response

The Commission has decided to maintain the current draft with the following changes.

- The proposal at Section 10.2 of the Draft Code & Rules has been updated and the requirement to provide information on programme content at the beginning of the programme has been removed. This was done to reflect the variety of on-demand services available to the public and the importance of taking an approach to how the required information is provided that reflects this variety. For example, in the case of transactional on-demand services, this information can be provided at the point of purchase, and it would not be proportionate or practical to require them to include this information at the beginning of content included in their catalogue.
- Section 10.4 of the Draft Code & Rules has been updated and it now states that content which may impair the physical, mental or moral development of children “includes, but is not limited to”, content consisting of pornography or content consisting of gratuitous violence. This update is intended to clarify that the obligation to take measures is not limited only to pornography or content consisting of gratuitous violence. In addition, another measure that might be taken to protect children has been added. Namely, the use of “account access systems”, for example, a requirement placed on users of an on-demand service to have an account or to have a credit card to access the content. This has been added having regard to the range of different types of on-demand services, including transactional on-demand services which rent or sell content, and which may choose to allow access to that content only after the creation of an account.

- Section 10.6 of the Draft Code & Rules has been updated by removing the reference to “parental controls, age assurance tools or other technical measures that achieve an equivalent outcome” as the type of “strictest measures” that may be taken to ensure that pornography and gratuitous violence is not normally seen by children. This is on account of the fact that “strictest” measures will be context-dependent, and it will be a matter for the provider to decide which measure or combination of measures is appropriate given the nature of the service offered e.g. transactional on-demand services, subscription on-demand services etc.
- The Commission has added a new provision to this section (Section 11.8 of the final version of the Code and Rules). Specifically, the Commission has added a new provision which introduces a deadline by which on-demand providers must have in place all measures necessary under this section. This recognises that organisational, administrative and technical changes may be necessary for some providers depending on the nature of the service provided. Such measures should be in place no later than 1st May 2025. On-demand providers are expected to continue to apply existing measures and augment, as required, existing measures necessary to protect children.

While respondents sought further clarification on certain terms, the Commission is of the view that the language of the Code and Rules is sufficiently clear to allow media service providers of on-demand services to fulfil their obligations. If any media service provider of on-demand services is unclear on their obligations under this section, they may contact the Commission for non-binding guidance.

In respect of the concerns expressed regarding appropriate measures to protect children, several respondents considered that the Draft Code & Rules was mandating the use of specific measures. This is not the case. Rather, the Draft Code & Rules required the on-demand provider to apply proportionate measures to ensure that children do not normally see content that would impair their development. Indicative measures were set out in the Draft Code & Rules and providers were required to have regard to the potential of material on their service to harm children. Several indicative factors were set out in this respect. However, the decision on the measures to be used would rest with the provider having regard to their service and potential harms to children from content on their service. The Commission is of the view that this approach allows media service providers to implement varied and proportionate safeguards as appropriate to satisfy their requirements under this section.

On the matter of age assurance, the Commission does not mandate any specific method or means. The Commission does not consider mandating age verification as a required type of age assurance, including measures requiring the use of identity documentation, to be proportionate, having regard to the need to balance different fundamental rights, including data protection, privacy and access to lawful content.

On the issue of “self-declaration” as a protection measure under this section of the Code and Rules, the Commission does not consider that self-declaration on its own could ensure that children do not normally see content that may impair their physical, mental, or moral development because of the ease of circumvention of self-declaration of age. The Draft Code & Rules stipulated that self-declaration would not be considered as a method for protecting children for the purpose of this section of the Code.

Having had regard to the submissions received, the Commission has updated the wording such that “self-declaration” is not described as a measure that may not be used but its use will not be considered, on its own, to be an adequate form of age assurance. The wording in the Code and Rules has been updated in this respect.

The Commission notes the submissions requesting that it include more specific categories of potentially harmful content. The Commission has decided that, at this stage, the language in the Code and Rules is clear and appropriately covers a wide range of types of harmful content. Consideration may be given to amending this section to include more specificity on the types of harmful content in the future.

On the matter of audience information being provided in both the Irish and English language, the Commission is of the view that this will require further consideration and investigation and will accordingly give it further consideration as part of the Stage 2 review of the Code.

## **4.4 Right to Cinematographic Works (Section 11 of the Draft Code and Rules)**

### **Proposals for public consultation**

This section provided that on-demand service providers shall not transmit cinematographic works outside periods agreed with the rights holders. It gives effect to Article 8 of the AVMS Directive.

#### **4.4.1 Overview of submissions received in response**

**Consultation question (Question 4): *Do you have any comments on the requirement not to transmit cinematographic works outside periods agreed with the rights holders?***

While respondents recognised the importance of copyright and other contractual restrictions in terms of the provision of cinematographic works, there was a call by a respondent to the consultation for a harmonised approach to specific national sub-quotas across different categories (e.g. cinematographic movies, local language and independent productions). Concerns were raised by some respondents regarding the putting in place of regulatory requirements as part of this section.

#### **4.4.2 Commission response**

The Commission has decided to maintain the current draft without any changes.

Matters relating to quotas for European and Independent works are outside the scope of this Code and Rules and will be addressed via separate engagement with the public and stakeholders, including on-demand providers.

## 4.5 Audiovisual Commercial Communications (Section 12 of the Draft Code and Rules)

### Proposals for public consultation

This section outlined the requirement that all audiovisual commercial communications presented on on-demand service providers are clearly recognisable as such to the audience.

It stated that the use of surreptitious or subliminal techniques is prohibited and that commercial communications must further not:

- Violate human dignity
- Discriminate based on sex, race, ethnicity, nationality, religion, disability, age, or sexual orientation
- Promote behaviour harmful to health, safety, or the environment
- Advertise tobacco products, electronic cigarettes and refill containers, or prescription-only medicines
- Encourage excessive consumption of alcohol

The section also provided that such commercial communications must not harm children, and prohibited certain types of advertising, including communications that encourage direct purchasing through exploitation or the targeting of children with alcohol advertisements.

Specific rules relating to the advertising of alcoholic beverages were listed, which included that advertisements for alcohol must not:

- Target or feature children
- Associate alcohol with improved physical performance or driving
- Imply alcohol contributes to social or sexual success
- Attribute alcohol with therapeutic benefits or as a means to overcome personal conflicts
- Encourage excessive drinking or negatively depict moderation
- Highlight high alcoholic content as positive

This section gives effect to Article 9 of the AVMSD and aims to ensure responsible advertising practices regarding content potentially harmful to children and public health.

#### 4.5.1 Overview of submissions received in response

**Consultation question (Question 5): *Do you have any comments on the requirements relating to commercial communications provided for under Section 12 of the Draft Code and Rules?***

A number of respondents welcomed the requirements outlined in this section, including with regard to restrictions on audiovisual commercial communication harmful to children. Some respondents called for consideration to be given to extending the list of restricted commercial communications harmful to children. Others raised concerns regarding the alignment of existing codes and stressed the importance of alignment with existing EU frameworks.



On alcohol advertising, respondents suggested that the Code should be clarified to note that the prohibition related to alcohol does not cover normal social activities. Some called for provisions related to alcohol to be reframed as an efforts obligation rather than an obligation of results, while others raised concerns with regard to the advertising of “alcohol-free” products.

Respondents called for greater clarity about the prohibition of the display of surreptitious audiovisual commercial communications, and made suggestions with regard to the use of pre-clearance systems to help ensure compliance.

#### **4.5.2 Commission response**

The Commission has decided to maintain the current draft without any changes.

In making its decision, the Commission had regard to the primary objective of the Code and Rules, which is to implement the AVMS Directive. As explained in the Consultation Document, this section gives effect to Articles 9 and 22 of the AVMS Directive and is necessary to ensure that the Directive is fully transposed. These are the minimum requirements contained in the Directive under these Articles and several of the proposals arising from the consultation would, if adopted, mean that the AVMS Directive would not, in the view of the Commission, be appropriately transposed.

While the submissions sought further clarity on certain matters including the prohibition of surreptitious audiovisual commercial communications and the advertising of alcohol, the Commission is of the view that the language of the Code and Rules is sufficiently clear to allow media service providers to fulfil their obligations. If any media service provider of on-demand services is unclear on their obligations under this section, they may consult the Commission for non-binding guidance.

In respect of the views expressed that the list of restricted commercial communications harmful to children should be extended, the Commission has decided that, at this stage, the language is sufficiently broad to cover a wide range of potentially harmful commercial communications. Consideration may be given to extending this section to include further types of audiovisual commercial communications in the future.

On the topic of alcohol, including non-alcohol product variants, such as 0.0% drinks, the Commission is of the view that the issues raised require further deliberation and engagement with stakeholders. This matter will be considered at a later date.

## **4.6 Sponsorship (Section 13 of the Draft Code and Rules)**

### **Proposals for public consultation**

This section detailed the regulations regarding sponsored content on on-demand service providers. It required that:

- Editorial independence is maintained and not influenced by sponsors
- Sponsorship does not directly encourage the purchase of the sponsor’s goods or services

- Viewers are clearly informed about sponsorship agreements
- Sponsored programmes are clearly marked with the sponsor's name, logo, or other symbols at appropriate times during the programmes

The section outlined that sponsorship from tobacco manufacturers or sellers is prohibited. It had also stated that sponsorship must not promote prescription-only medicines, and that the sponsorship of news and current affairs programmes is prohibited as is the showing of sponsorship logos in children's programmes, documentaries and religious programmes.

This section gives effect to Article 10 of the AVMS Directive and aims to ensure transparency in sponsorship relationships, as well as restricting the sponsorship of certain products for the public good.

#### **4.6.1 Overview of submission received in response**

**Consultation question (Question 6): *Do you have any comments on the requirements relating to sponsorship provided for under Section 13 of the Draft Code and Rules?***

Respondents underlined the need for consistency in the regulatory approach to the proposed codes and rules applicable in a linear and in an on-demand context, as well as the importance of protecting children's interests.

Some respondents raised concerns regarding the sponsorship requirements related to the purchase or rental of goods and services, and called for further clarification of this point, as well as the definitions included in the section. With regard to alcoholic beverages, it was suggested by respondents to include provisions on the protection of minors, as well as with regard to the sponsorship of programmes and sponsored content campaigns. They also raised concerns that the provisions went beyond the requirements of the AVMS Directive.

Others called for the inclusion of child-specific obligations to regulate sponsorship and product placement aimed at children and young people.

#### **4.6.2 Commission response**

The Commission has decided to maintain the Draft Code & Rules with minor changes:

- At Section 13.6, the Commission has decided, having regard to the submissions, to remove the proposed restriction on the use of sponsorship logos in children's programmes. The Commission is of the view that this proposal will require further consideration before any regulatory changes are introduced and that this should be done in the context of the overall review of children's commercial communications that the Commission will undertake at a future point.
- The prohibition of sponsorship logos for children's programmes has been removed, in order to align with the equivalent provisions for television broadcasters.

In maintaining the other provisions of the Draft Code & Rules its decision, the Commission had regard to the primary objective of the Code and Rules, which is to implement the AVMS Directive. This section gives effect



to Article 10 of the AVMS Directive and is necessary to ensure that the Directive is fully transposed. As with the provisions on audiovisual commercial communications, these are the minimum requirements contained in the Directive under these Articles. Several of the proposals arising from the consultation would, if adopted, result in provisions that would not, in the Commission's opinion, meet these minimum requirements. The Commission does not accept any submission that the section as drafted is outside the scope of the requirements of the AVMS Directive.

The Commission notes the concerns raised in the submissions relating to the obligations relating to the purchase or rental of good and services. This obligation is taken directly from the AVMS Directive. If any media service provider of on-demand services is unclear on their obligations under this section, they may consult the Commission for non-binding guidance as provided for by the Draft Code & Rules.

## **4.7 Product Placement (Section 14 of the Draft Code and Rules)**

### **Proposals for public consultation**

This section detailed the regulations for product placement for on-demand providers. Product placement is a type of commercial communication that, unlike advertising, is not separate from the programme content itself. The Draft Code & Rules provided that product placement is generally permissible, except in news, consumer affairs, religious and children's programmes. The section outlined that product placement must not affect the provider's editorial freedom, overtly push sales of goods or products, dominate the content, or be unannounced to viewers. The section further prohibited the product placement of tobacco products, e-Cigarettes and prescription-only medicines or medical treatments amongst other products.

This section gives effect to Article 11 of the AVMS Directive and aims to ensure the responsible use of product placement in audiovisual content.

### **4.7.2 Overview of submissions received in response**

#### **Consultation question (Question 7): *Do you have any comments on the requirements relating to product placement provided for under Section 14 of the Draft Code and Rules?***

A number of respondents highlighted the importance of defending and protecting children's interests, and some called for further child-specific obligations to be included. Other respondents raised concerns about the relationship between product placement and alcohol sales.

Regarding the restriction on product placement in children's programmes, it was suggested by respondents that these requirements should only apply to content produced or commissioned by the media service provider or a company affiliated to the media service provider.

Other respondents raised concerns in relation to the placement of products that offset production costs and called for the definition of 'prop placement' to be more clearly defined. Respondents also made comments on the language used in the Code with regard to the requirement to identify product placement to the audience.

Respondents also called for further clarity with regard to the forms of viewer confusion referenced in relation to product placement. Others called on the Commission to clarify the requirements related to the prohibition of product placement in children's programmes, and their applicability to transactional VOD services.

#### **4.7.2 Commission response**

The Commission has decided to maintain the current draft with one additional change.

In making this decision, the Commission had regard to the primary focus of the Code and Rules, which is to implement the AVMS Directive. As explained in the Consultation Document, this section gives effect to Article 11 of the AVMS Directive, and is necessary to ensure that the Directive is fully transposed.

As is the case with some of the responses provided under the other sections of the Code and Rules addressing commercial communications, these are the minimum requirements contained in the Directive under these Articles. Several of the proposals arising from the consultation would, if adopted, result in provisions that would not, in the Commission's opinion, meet these minimum requirements of the AVMS Directive.

The change to the Code and Rules that the Commission intends to make following its consideration of the submissions is:

- At Section 15.2 of the final version of the Code and Rules, it is now stated that Section 15.2 (iv) shall only apply to programmes that have been produced or commissioned by the media service provider of on-demand services or a company affiliated to them.

The Commission has decided to include it in the final version of the Code and Rules following its consideration of the submissions received, as well as to align as closely as practicable the requirements with respect to product placement to the equivalent rules for television broadcasters under the General Commercial Communications Code.

Regarding the prohibition on product placement in children's programming, the Commission notes that Recital 34 of the 2018 revision of the AVMS Directive details the basis for the restriction on the use of this type of commercial communications in children's programming. It states: "In particular, evidence has shown that product placement and embedded advertisements can affect children's behaviour as children are often not able to recognise the commercial content. There is thus a need to continue to prohibit product placement in children's programmes." In this context, the provision is retained.

### **4.8 Accessibility of audiovisual on-demand services (Section 15 of the Draft Code and Rules)**

#### **Proposals for public consultation**

The Media Service Rules section of the Draft Code & Rules set out requirements for supporting the accessibility of on-demand service providers. These included that on-demand service providers must take

proportionate measures to ensure that their programmes are made accessible to persons with disabilities, through measures such as subtitling, sign language, including Irish Sign Language, and audio description.

This section outlined that on-demand providers are required to draft and submit an accessibility action plan to the Commission within six months following the implementation of the media service rules, which must be updated on an annual basis. This action plan was set out to address matters including:

- The proportion of access services that the media service provider proposes to make available each year on the on-demand service(s) that it provides
- The measures to be taken to adhere to the quality standards developed by the Commission
- Proposals with respect to the provision of emergency information
- The manner in which the media service provider will promote access services made available on the on-demand service(s) that it provides
- Proposals to consult with users of access services on the provision by the media services provider of access services on the on-demand media service(s) that it provides
- Proposals with respect to ensuring that there is an accessible mechanism for dealing with complaints and queries from audiences with respect to the provision of access services

In deciding the measures, the provider is required to consider a range of influencing factors, namely:

- The nature of the audiovisual on-demand provider and the services provided
- The stage of development of the on-demand provider and its capacity to provide accessible programmes
- The level of current provision of access services made available by the provider
- The type of programmes provided in the catalogue of the on-demand service
- The technical and human resource cost for the on-demand provider of access services.
- The technical capacity of the on-demand provider

The draft stated that on-demand providers shall be required to adhere to quality standards for the provision of access services that are developed by the Commission, and that any emergency information transmitted by the provider must be done so in a manner which is accessible to persons with disabilities.

These media service rules give effect to Article 7 of the AVMS Directive and aims to ensure that on-demand service providers take action to improve the accessibility of their services.

#### **4.8.1 Overview of comments**

**Consultation question (Question 8): *Do you have any comments on the requirements relating to accessibility as set out in Section 15 of the Draft Codes and Rules?***

While a number of respondents welcomed the principles and standards proposed in this section, and the requirement for providers to develop accessibility plans, some called for clarification on what is meant by taking measures that are continuously and progressively more accessible to persons with disabilities.

Furthermore, respondents made comments related to the accessibility action plan, and the addition of further language with regard to content created by third parties, and the provision, reporting and monitoring of access services. While welcoming the approach taken by Commission to the accessibility action plan, it was proposed by some respondents that the requirements should only apply to content produced or commissioned by the media service provider or a company affiliated to the media service provider. Others submitted that the rules on accessibility should not apply retrospectively since much of the content will have been produced before the Code comes into force.

Respondents also recommended that the Commission should outline the steps it will take to monitor media service providers' compliance with accessibility action plans.

#### **4.8.2 Commission response**

The Commission has considered all the submissions received in response to Question 8, including the feedback of the relevant DPROs and UCP members expressed at the Commission's targeted consultation meetings. The Commission has decided to make the following changes.

- With respect to the subject matter of the accessibility action plan set now out at Section 16.5 of the final version of the Code and Rules, the Commission has amended this to require the provider of an on-demand service to include proposals to be included in the action plan to improve the quality of their access services (where required) and the steps that they propose to take to monitor their service to ensure quality standards are consistently met. These changes are considered necessary having had regard to the responses to the consultation and also having regard to the fact that the provision of access services only makes a meaningful impact for users of such services when the quality of the provision is sufficient to enhance the understanding and enjoyment of programming for the target audience.
- Section 16.5 of the final version of the Code and Rules has further been amended to include a requirement that the Commission is provided with a copy of the accessibility action plan in an accessible format and suitable for publication on the Commission's website.

The Commission has decided to make these changes in order to align, insofar as it is practicable, with the requirements of broadcasters regarding their respective accessibility action plan under the equivalent section of the Access Rules for Television Broadcasters.

While the Commission notes the calls for further clarification on the obligation to take measures that are continuously and progressively more accessible, it remains of the view that the section benefits from not being overly prescriptive, but rather allows media service providers to implement proportionate measures with regard to the nature of their service, in line with the influencing factors set out. It should be emphasised that the approach taken requires media providers to put in place a plan to make the services continuously and progressively more accessible, but the Commission is not determining what those commitments are to be. Rather, the media providers set out how they will meet this obligation having regard to the relevance of the influencing factors to their service and their capacity to meet the commitment over time. As such, the approach is different to that taken with television broadcasters. Consideration may be given in the future to include more specificity on the obligations of media service providers under this section in the future.