



Coimisiún
na Meán

Response to Consultation
and Final Decision:

Online Safety
Guidance Materials:
Online Safety Code

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1. Introduction and background

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.

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 statutory guidance materials;
3. The proposed application of the Online Safety Code to the category of video-sharing platform services (“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 (NGOs), civil rights organisations, industry and industry associations, international regulators, and academia.

The Commission also consulted with the Youth Advisory Committee on the Online Safety Code and related matters at its meeting of 17 January 2024, including the online safety guidance materials. A report of this consultation can be accessed [here](#). The Committee met again on 28 May 2024, and was briefed on the Code development process, including the revision of the online safety guidance materials.

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](#).

1.1. Online Safety Code

The Commission may make Online Safety Codes under section 139K of the Act. On 10 October 2024, the Commission decided to make its first Online Safety Code (the “Code”). The Code was published on 21 October 2024 and is accessible [here](#). It is intended to address harmful and illegal content on VSPS, and 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”).

1.2. Online safety guidance materials

Pursuant to section 139Z of the Act, the Commission may issue guidance materials for providers of online services.

In accordance with section 139Z(2)(b) of the Act, the Commission sought views on draft statutory guidance in its public consultation of December 2023. It noted that the draft guidance materials explained:

- how the Commission conceives certain obligations working in practice;

- features proposed for VSPS providers to take into account; and
- existing resources it wishes to draw to the attention of VSPS providers,

and asked for comments, including on the specific “matters to be considered” by the Commission under section 139ZA of the Act.

In addition, as noted above, the Commission engaged with the Youth Advisory Committee in accordance with section 139Z(2)(a) of the Act.

1.3. Issuing of online safety guidance materials

On 10 October 2024, the Commission decided to issue online safety guidance materials. The documented decision is included at [Annex 1](#).

The full text of the final guidance materials (the “Guidance”) was published on 21 October 2024 and may be accessed [here](#).

1.4. Next steps

Pursuant to section 139ZB(3) of the Act, the Commission is required to give a copy of the Guidance to the Minister for Tourism, Culture, Arts, Gaeltacht, Sport and Media as soon as practicable after issuing the Guidance.

Pursuant to section 139ZB(5) of the Act, the Commission may at any time withdraw guidance materials.

1.4. Purpose of the response to consultation

In accordance with the Consultation Guidelines published by the Commission in June 2023, which may be accessed [here](#), the Commission is publishing the response to consultation with regard to online safety guidance materials following its consultation process.

The Commission has considered the submissions made to its public consultation of December 2023. With due regard to the submissions as a whole, not limited to those exclusively responding to the draft online safety guidance materials, the Commission has exercised its judgement and formed its views on the online safety guidance materials.

The present response to consultation sets out the key issues emerging from the consultation and summarises how the Guidance takes account of issues raised in consultation on the Code and the guidance materials. It also explains changes made to the draft online safety guidance materials published on 8 December 2023 and which of those changes were necessary to reflect changes made to the Code. 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 and guidance on which it has consulted, with or without amendment.

1.5. Matters to be considered: online safety guidance materials

S139ZA of the Act provides that, in the preparation of guidance materials, the Commission shall have regard in particular to:

- a. Article 28b of the AVMS Directive,
- b. the desirability of services having transparent decision-making processes in relation to content delivery and content moderation,
- c. the impact of automated decision-making on those processes,
- d. the need for any provision to be proportionate having regard to the nature and the scale of the services concerned,
- e. levels of availability of any online content, and of age-inappropriate online content, on relevant online services,
- f. levels of risk of exposure to harmful online content, or of exposure of children to age-inappropriate online content, when using relevant online services,
- g. levels of risk of harm, and in particular harm to children, from the availability of such content or exposure to it,
- h. the rights of providers of relevant online services and of users of those services, and
- i. the e-Commerce compliance strategy prepared by the Commission (and accessible [here](#)).

The Commission confirms that it has had due regard to the matters listed above in the preparation of the Guidance.

The Commission sets out its considerations to which it has had regard in relation to each matter in [Annex 2](#) of this document.



2. Overview of consultation and Commission response

This section outlines the main changes in the final Guidance from the December 2023 consultation draft online safety guidance materials.

The Guidance is intended to assist VSPS to understand and comply with the Code, and to assist other interested parties in understanding the Commission's expectations for service providers. Accordingly, in preparing the final Guidance, the Commission has revised the draft guidance materials as necessary to reflect the structure and content of the final Code. These changes are in addition to the Commission's consideration of submissions received during consultation on the draft guidance materials.

The structural and substantive revisions to the Code since the December 2023 consultation have been explained elsewhere (including in the [Response to Consultation on the draft Online Safety Code](#) and in the [Commission's final decision on the Online Safety Code](#)); to the extent that changes to the guidance materials are merely a function of changes to the Code, these are noted, but not explained further in this document.

This section follows the structure of the final Guidance. A text box in each section explains the impact of any restructuring and the key changes from the draft guidance materials.

2.1. Introductory matters

Where did this section of the Guidance come from?

The draft guidance materials contained a section titled "Introduction", which set out the purpose of the guidance.

The Guidance restructures the introductory matters in line with the structure of the final Code, and clarifies the scope of the Guidance in response to submissions made in relation to the relationship between the Code and the guidance materials.

What does this section of the Guidance do?

This part of the Guidance provides an overview of the online safety guidance materials, sets out the scope and jurisdiction of the Guidance, and reflects the Commission's commitments made in its e-Commerce Compliance Strategy.

Which part of the Code does this section of the Guidance relate to?

This section of the Guidance is introductory in nature, and relates to the Guidance itself, rather than the Code.

Commission response to consultation

The Commission acknowledges submissions received in January 2024 in relation to adherence to the guidance as addressed by the draft guidance materials' introductory section, particularly those in relation to the statement that failure to follow the guidance may be taken into account when deciding whether to open an investigation or whether there has been a contravention of the Code.

In light of such concerns expressed by VSPS providers, the Commission considers it appropriate to revise the introductory section of the Guidance to clarify that the guidance materials are non-binding in nature. It

has thus removed reference to section 139Q of the Act and to taking account of a VSPS's failure to follow the guidance in deciding whether to open an investigation into a potential contravention.

The Commission also considers it appropriate to expand the wording of the introductory section:

- to clarify that the Code takes precedence over the Guidance in the event of discrepancies;
- to note that the Commission may withdraw, amend or supplement guidance materials;
- to note that the guidance materials are without prejudice to any online safety advisory notices issued by the Commission where it considers there is an urgent need to bring matters to the attention of a provider or providers; and
- to include a more complete description of its commitments through the e-Commerce Compliance Strategy.

These changes do not affect the substantive Guidance, but provide further structure and clarity in relation to the operation of the guidance materials, in line with the introductory matters contained in the final Code.

2.2. General guidance

Where did this section of the Guidance come from?

The draft guidance materials contained a section titled “General Guidance: Obligations of Video-Sharing Platform Services”, which:

- identified certain characteristics that the Commission considered indicative for an online safety mechanism to achieve its objective;
- noted that service providers are not prohibited from combining online safety measures with other kinds of features on services provided;
- noted that service providers could extend required protections to a wider range of content types or users.

The final Guidance expands this draft section in line with the contents of the Code, and in response to consultation submissions.

What does this section of the Guidance do?

This section provides general guidance on:

- Compliance with the Code, including taking “appropriate measures” under Part A of the Code, compliance with Part B of the Code, combining safety measures, and the extension of protections beyond the Code’s provisions;
- Qualities that service providers’ implementation of measures should demonstrate to provide the required protections for children and the general public; and
- The types of systems and controls that providers should be able to refer to when demonstrating compliance with the Code.

Which part of the Code does this section of the guidance relate to?

This section of the Guidance relates generally to the entire Code.

Commission response to consultation

The final Code has been restructured into Part A, which imposes general obligations on VSPS providers, and Part B, providing for more specific obligations.



In addition, the Code has been expanded from the consultation draft in order to clarify provisions around compliance, including in relation to assessments of the appropriateness of measures taken, and the requirement to have systems and controls in place to demonstrate compliance with the Code.

These revisions of the Code necessitate the provision of further information on compliance in the Guidance.

The Commission, furthermore, acknowledges submissions received in relation to the “fundamental rights” frameworks referenced, including calls for specific rights or rights frameworks to be referenced, alongside those submissions received in relation to the principles relevant to the Code and guidance materials, which included calls for particular user groups or users with particular characteristics to be specified or be given prominence in the guidance materials.

The Commission considers it appropriate to revise the guidance in the following ways:

- **Introduction** of a section on “Appropriate measures”.

The Commission considers it appropriate to provide guidance on its approach to determining compliance with the provisions under each of Part A and Part B of the Code, due to the restructuring of the Code and the differentiation between “appropriate measures” under Part A and the measures specified under Part B.

The Commission has introduced additional text to clarify the means by which the criminal offences under Union law, covered by the Code, have been transposed into Irish law. The criminal offences include public provocation to commit a terrorist offence, child sexual abuse material, and certain offences concerning racism and xenophobia.

This section incorporates content from the draft guidance materials related to the combination of safety measures and on the extension of protections to a wider range of content types or users.

- **Insertion** of a separate section on “Qualities of compliant measures”.

This section is based on the content of the draft guidance materials, which noted that online safety measures would achieve their objective if the mechanisms used to implement them had certain qualities (effective, easy to use, etc.).

The Commission has referenced the same qualities, but has redrafted them to simplify their expression, so as to ensure that they are more usable for the range of VSPS covered by the Code, with due regard for the differing sizes and natures of services provided.

Some substantive changes have been made to descriptions of the various qualities in simplifying their expression, which is intended to increase their usability for VSPS providers.

One element of the changes made is that, where relevant, the quality has been explored in the context of the implementation of specific measures, and therefore that dimension has been removed from the text of the overarching quality. For instance, “*Effective*” now does not refer to circumventions or abuses of measures; where relevant elsewhere in the guidance, reference to circumvention and abuse has been made in the context of the implementation of specific measures.

Another element of the change is to strengthen the meaning of certain qualities to reflect consultation feedback that users should be made aware of how implementation of measures concerns them, that safety is a priority for such implementation, and that technology and society should be reflected in how the Code is implemented. As such, “*Prominent*” now refers to drawing measures to the attention of service users; “*Transparent*” now refers to clarity on measures’ impact

on use of the service; “*Safe*” now refers to relevant protections “as a primary consideration” for service providers; and “*Up to date*” refers to reflecting technological and societal change.

The Commission has also **introduced** a new quality, “*Users’ rights and legitimate interests*”, to reflect consultation feedback received in relation to users’ rights, and to reflect the Commission’s view that service providers’ implementation of measures set out in the Code should have regard to the rights and legitimate interests of all users permitted to use a service. The Commission notes that a number of submissions called for references to particular rights or fundamental rights frameworks; however, it has not specified any in the Guidance so as to not privilege some rights, or user groups, over others.

Furthermore, the Commission notes that many submissions discussed the importance of meeting the specific needs of various user groups or users with particular characteristics, and has therefore placed more of a focus in the qualities on encouraging compliant measures’ implementation to correspond to “all users” of a service. This is in line with the Commission’s approach generally in the Guidance to ensuring that all users are accounted for in the implementation of the Code.

- **Introduction** of a section on “Systems and controls”.

The Code requires VSPS providers to ensure they have systems and controls in place to demonstrate compliance with the Code; this provision was a change from the draft consultation Code. In line with the Code’s revision in this respect, the Commission has included this new section in the Guidance to provide further clarity on the types of systems and controls that service providers should have reference to in demonstrating compliance with the Code.

2.3. Content

Where did this section of the Guidance come from?

This section of the final Guidance has been developed in response to consultation submissions calling for further clarity on certain terms used in the Code and the draft guidance materials.

It incorporates the draft guidance materials’ section on “Declaration of Audiovisual Commercial Communications”.

What does this section of the Guidance do?

This section provides guidance on:

- the concept of “content which may impair the physical, mental, or moral development of children”;
- the application of the “risk test”, where the Code requires the restriction of specified content if it gives rise to certain risks;
- how control over audiovisual commercial communications may be determined, and how the presence of audiovisual commercial communications should be made transparent.

Which part of the Code does this section of the Guidance relate to?

This section of the Guidance addresses the Code’s obligations on service providers:

- to take measures to protect children from content which may impair their physical, mental, or moral development;

- to restrict certain content where it gives rise to any risk to a person’s life, or a risk of significant harm to a person’s physical or mental health, where the harm is reasonably foreseeable;
- to provide certain protections relating to audiovisual commercial communications, with the level of obligation dependent on whether or not the service provider has control over such communications; and
- to ensure that audiovisual commercial communications on the platform are declared.

Commission response to consultation

The Commission received a number of submissions to the public consultation calling for further clarity on certain terms used in the draft online safety code and the draft guidance materials, including:

- “content which may impair the physical, mental, or moral development of children”,
- “gives rise to risk”, “reasonably foreseeable”, and “significant harm” in the context of the “risk test”, “audiovisual commercial communications that are marketed, sold, or arranged by video-sharing platform service providers”, including providing clarity on where such communications would be considered to be “marketed, sold, or arranged” by VSPS providers.

The Commission considers it appropriate to revise the guidance materials in the following ways:

- **Introduction** of a section on “content which may impair the physical, mental, or moral development of children”. This is in response to consultation feedback stating that such a category of content was vague in nature.

Reflecting the wording of the AVMS Directive, this section notes that the content most harmful to development should be subject to the strictest control measures. The Commission identifies provisions of the Code covering certain types of content that will help to protect children from impairment to their physical, mental or moral development, and encourages service providers to establish protections in respect of other types of content.

The Guidance clarifies that the terms child/children and minor/minors are used interchangeably in the Code and Guidance.

- **Introduction** of a section on the “risk test”.

In response to a request for clarity on the terms “gives rise to risk”, “reasonably foreseeable”, and “significant harm” in the context of the “risk test” (as now used in Part B of the Code), the Commission has included guidance which clarifies, for instance, the application of the risk test as it pertains to services’ terms and conditions and to content moderation.

This section of the Guidance identifies how service providers can comply with their obligations under the Code, how they should assess the risks posed by specified content, and how they should act in relation to content which meets the risk test.

- **Introduction** of a section on “protecting users from certain audiovisual commercial communications”. This is in response to consultation feedback stating that the Code does not define what is “marketed, sold, or arranged” versus “not marketed, sold, or arranged” by a VSPS provider.

This section covers requirements in the Code concerning (a) the control of audiovisual commercial communications and (b) the declaration of audiovisual commercial communications.

It clarifies the factors that may be taken into account by the Commission when determining that an audiovisual commercial communication has been marketed, sold, or arranged by a service provider – which will, in turn, dictate the scope of the provider’s obligations.

It also incorporates and expands on content in the draft guidance materials on declarations of audiovisual commercial communications. The consultation draft referred to a “consistent labelling system” across VSPS providers in respect of audiovisual commercial communications, including the possibility for the Commission to specify a labelling system to be used. Without prejudice to any further action the Commission may take in this regard, it has removed such references from the final Guidance to allow for due flexibility for service providers in the implementation of content rating systems, having regard to the size and nature of the service provided.

The Commission has removed previous references to the forms that commercial communications may take and a general statement of negative impacts caused by harmful commercial communications. The final Code highlights examples of commercial communications, and addresses harmful audiovisual commercial communications in terms of the harms they may cause.

The Commission has also removed previous references relating to high-fat, -salt, and -sugar foods and milk substitutes, and potential future activities of the Commission in relation to related commercial communications. The final Code does not explicitly address such products.

Furthermore, where the consultation draft guidance materials referenced guidance by bodies external to the Commission, the Commission has opted to remove these in order to avoid uncertainty as to where it is considered that VSPS would refer to the Commission’s guidance or to external guidance where these cover similar matters; consultation respondents highlighted the existence of several different external guidance documents, and called for the Commission to consider its guidance’s consistency with existing or future external guidance.

2.4. Specific obligations

Where did this part of the Guidance come from?

The draft guidance materials contained sections titled:

- “Guidance: Terms and Conditions – Content”, which
 - advised that users be directed through service terms and conditions to best practice guidelines on avoiding exposure to certain content, and
 - advised providers to reduce the risk in relation to content that could reasonably be expected to encourage a child to engage in behaviour dangerous to their physical safety.
- “Guidance: Content Rating”, which
 - advised that service providers facilitate users to rate content based on the national ratings system in effect in their location in the European Union.
- “Guidance: Age Verification”, which
 - advised on the use of age verification, age estimation, and other mechanisms for identifying the age of video-sharing platform service users.
- “Guidance: Parental Controls”, which
 - identified certain features that the Commission considers to be effective controls, and other considerations for service providers to have regard to.
- “Guidance: Reporting and Flagging”, which
 - indicated how reporting and flagging mechanisms may be made user-friendly, and considerations around content moderation mechanisms.
- “Guidance: Complaints”, which
 - identified certain types of information that the Commission considered should be made available to users.
- “Guidance: Media Literacy – Measures and Tools”, which
 - indicated qualities that the Commission considers characteristic of effective measures to promote media literacy, alongside underlying aims for such measures.

The final Guidance draws on each of these sections, with changes made to ensure coherence with the Code, and other changes made in response to submissions received.

What does this section of the Guidance do?

This section of the Guidance outlines recommended characteristics with regard to service providers’ implementation of measures obliged by the Code, to ensure the most effective provision of the required protections and the general public. Recommended characteristics are provided for:

- terms and conditions and related obligations,
- content rating,
- age assurance,
- parental controls,
- reporting, flagging, and complaints, and
- media literacy.



For some measures obliged by the Code, the Guidance provides further clarity on aspects of their implementation. For instance, guidance is provided on content moderation decision-making and capacity-building for service providers in relation to reporting, flagging, and complaints.

Which part of the Online Safety Code does this guidance relate to?

This section of the Guidance addresses the Code's obligations on service providers, as appropriate:

- to include and apply required protections in the service's terms and conditions;
- to allow users to rate content on the service;
- to implement age verification systems with respect to certain content;
- to implement parental control systems with respect to certain content;
- to allow users to report or flag certain content on the service;
- to allow users to complain about the implementation of content rating, age verification, parental control, or reporting and flagging measures; and
- to provide for media literacy measures and tools.

It also addresses the Code's obligations on service providers:

- to include and apply certain restrictions in the terms and conditions and related obligations of the service to provide protections for children and the general public from specified content;
- where they permit adult-only video content, to implement content rating and age assurance measures;
- where they permit users under the age of 16, to implement parental control measures with certain functionalities;
- to allow users to flag restricted video content, harmful audiovisual commercial communications, an adult-only video content uploaded contrary to the service's terms and conditions; and
- to publish and annually update media literacy action plans.

Commission response to consultation

Terms and conditions and related obligations

The Commission acknowledges comments received in relation to the formatting and communication of the terms and conditions of a service, including calls for the Commission to specify the means by which terms and conditions and related obligations of a service are written, formatted, and made available on the service.

The Commission considers it appropriate to introduce additional wording to reflect that the terms and conditions and related obligations of a service can be given fuller effect by taking efforts to ensure that all users understand them, and that they are made prominent and transparent on the service.

The Commission does not consider it appropriate to specify the ways in which terms and conditions are written or formatted, as it believes that such considerations are taken into account in encouraging service providers to take all reasonable efforts to ensure user understanding.

The Commission also notes that Article 14 of the Digital Services Act imposes obligations on service providers in relation to the provision of terms and conditions, including:

- the provision of information on any restrictions imposed on use of the service through terms and conditions;

- that the terms and conditions of a service shall be set out in clear, plain, intelligible, user-friendly, and unambiguous language, and shall be publicly available in an easily accessible and machine-readable format;
- the provision of child-friendly information on terms and conditions where services are primarily directed at children or predominantly used by them.

The draft guidance materials addressed dangerous challenges, which are now included in the Code under the definition of “restricted video content”. As such, the Commission has removed specific reference to behaviour dangerous to physical safety from the Guidance.

The Commission has removed previous references to referring users of a service to Irish and European best practice guidelines on the avoidance of harm, to allow flexibility for VSPS providers in relation to the types of information and guidance provided for their users, with due regard for the differing sizes and natures of services provided. The Commission’s final Guidance on terms and conditions and related obligations encourages service providers to direct users via terms and conditions to information and guidance on how to identify content that is incompatible with terms and conditions, and on how to avoid engaging in incompatible behaviours.

Content rating

In line with the provisions of the Code, the Commission has revised its guidance with regard to the effective implementation of content ratings for adult-only video content, including measures which help ensure that children do not see such content. While the Commission notes submissions received in relation to the use of various content rating systems internationally, previous references to age rating in European Union countries have been removed as the Code’s focus in relation to content rating is on adult-only video content.

The Commission has addressed comments received on the potential abuse of content ratings, on transparency of information related to content ratings, and integration of content rating systems with other online safety measures to ensure the provision of the required protections, through the identification in the Guidance of recommended characteristics for the implementation of effective content rating systems.

The Commission also considers it appropriate to include guidance on ensuring that all users understand the content rating systems in place, in order to ensure that the implementation of such measures is effective.

Age assurance

In line with the provisions of the Code, the Commission considers it appropriate to use updated terminology relating to age verification and age assurance in the Guidance; this section now refers to “age assurance”, but explains how the terms are used in the Code and Guidance.

It also contains a section on techniques, updating the consultation draft guidance’s section that described techniques to reflect the many submissions which discussed the various techniques and methodologies that can be used for age assurance purposes.

The Commission acknowledges submissions reflecting that there are many possible approaches available to providing age assurance. In response to consultation feedback, the Commission has included a section on recommended characteristics, which contains updated guidance on what age assurance measures should achieve in order to be considered most effective in providing the required protections. In this regard, the Guidance takes account of the various submissions made by respondents relating to age assurance, and particularly the concerns raised and points made around ease of use and circumvention, accuracy of verifications or estimations, fairness to users, protections for privacy and fundamental rights, proportionality of age assurance to the protections required, and accessibility to users.

The Commission considers it appropriate to remove references to error, reporting, and identification rates from the Guidance in line with the approach taken in the final Code. Furthermore, to ensure the Guidance reflects the provisions of the Code, the Commission has removed references to the effectiveness of age verification, as separate guidance has now been provided on the appropriateness of measures taken.

The consultation draft guidance materials referenced “out-linking” practices, whereby users may be directed to adult content via hyperlinks from content which may not itself be adult content. In line with respondents’ submissions to the consultation that the Commission should have regard to the particular sizes and natures of services provided that are covered by the Code, the Commission has removed previous references to out-linking practices for pornographic content from the Guidance as it is a particular technical occurrence that is not relevant to the full range of services provided. The Commission considers that the Code’s provisions in relation to the limitation of children’s exposure to adult-only video content, and the guidance on effective age assurance, address relevant issues.

Parental controls

In line with the provisions of the final Code and with submissions highlighting the need to reflect the various sizes and natures of the services provided to which the Code applies, the Commission considers it appropriate to remove from the Guidance references to particular technical implementations of parental controls or particular features they may have.

Instead, in response to consultation feedback, the Commission has included a section on recommended characteristics, which contains updated guidance on what parental control systems should achieve in order to be considered most effective. These relate to the rights of children, the privacy of users, children’s evolving capacities, and the integration of parental control measures with other safety measures on platforms.

The Commission has incorporated wording in this section from the draft guidance materials on establishing an appropriate relationship between user accounts, with some adjustments. In addition, in response to consultation feedback in relation to ensuring that users are aware of the parental control systems available on a service, as well as ensuring that children are protected regardless of parental control usage, new wording has been introduced on assisting user understanding of parental controls, and on protections that should be in place independently of the presence of parental controls, such as default settings for children’s accounts. The Commission has also included additional guidance on ensuring protections for children for whom parental control measures are not being used, or for whom they are being inappropriately used.

References to live-streaming have been removed from the Guidance to reflect the provisions of the final Code.

Reporting, flagging, and complaints

The Commission considers that many of the desirable characteristics of reporting, flagging, and complaints-handling mechanisms, and related decision-making, are broadly similar. As such, it has combined the guidance to assist service providers’ implementation of these measures.

The Guidance now includes a section on recommended characteristics, which contains updated guidance on what reporting, flagging and complaints mechanisms systems should achieve in order to be considered most effective. This draws on wording from the draft guidance materials with regard to the features of reporting and flagging systems. It also includes language on the making available of certain information on reports, flags and complaints, drawn from the complaints section of the draft guidance materials. In doing so, the Guidance also reflects consultation submissions that proposed that users be provided with certain information relating to their report, flag, or complaint.



While the Commission acknowledges submissions that requested the inclusion of detailed steps in the guidance as to how exactly service providers should act when presented with a report, flag, or complaint, the Commission does not consider it to be appropriate in light of the need for service providers' responses to such communications to be practicable and proportionate for the particular service in question, with due regard to the size and nature of the service provided.

Furthermore, the Commission notes submissions received in relation to thresholds for breaches of terms and conditions, which it has not addressed in the final Guidance as it is a matter for service providers to make such determinations and demonstrate that their application of their terms and conditions is effective in providing the required protections for children and the general public.

For ease of reference, the Commission has included a subsection on decision-making, which substantively reflects the text of the draft guidance materials on the qualities of content moderation decision-making.

The Commission acknowledges consultation feedback with regard to the capacity of service providers to respond to a report, flag, or complaint, the role of content moderators, and training for moderators. The Commission has therefore included guidance on capacity-building to assist service providers in upholding the rights and legitimate interests of their users where staff are dealing directly with decision-making that impacts content and users. The Commission has further noted that reporting, flagging, and complaints-handling mechanisms should be accessible to children.

The final Code specifies instances of interplay with the Digital Services Act in terms of complaints-handling and decision-making relating to the suspension of user accounts. As such, the Commission has removed previous references made to the Digital Services Act in the consultation draft guidance materials, in line with the changes to the final Code.

The Commission has also removed references to service providers' treatment of notifications from nominated bodies from the draft guidance, as the nominated bodies scheme is not in place at the time of adoption of the Code.

Furthermore, where the consultation draft guidance materials referenced guidance by bodies external to the Commission, the Commission has opted to remove these in order to avoid uncertainty as to where it is considered that VSPS would refer to the Commission's guidance or to external guidance where these cover similar matters; consultation respondents highlighted the existence of several different external guidance documents, and called for the Commission to consider its guidance's consistency with existing or future external guidance.

Media literacy

This section of the Guidance has been split into three sub-sections, setting out: (a), principles relevant to media literacy; (b), recommended objectives of media literacy measures; and, (c), media literacy action plans.

The Commission acknowledges submissions received to the consultation on the principles underlying media literacy measures and tools, and has reflected these submissions through additional wording relating to user empowerment, user perspectives, information and data on media literacy measures, and value and impact assessments. Otherwise, the four key principles and the substantive wording reflect the draft guidance materials.

The Commission acknowledges submissions received on media literacy and how the impact of the Code should be a feature of media literacy initiatives. The Commission considers it appropriate to include additional guidance on the raising awareness of users' rights and obligations on the service, promoting users' understanding of the service and its functions, and understanding of service provider responsibilities

under the Code. The remaining text relating to the recommended objectives reflects the substance of the draft guidance materials.

As the Code requires media literacy action plans to be developed, the Commission has included a new subsection noting that media literacy action plans should provide appropriate information, with appropriate prominence on the service, in an accessible manner; the Guidance advises service providers to notify service users of updates to media literacy action plans.

Annex 1: Decision under section 139Z

Coimisiún na Meán, in exercise of the powers conferred on it by section 139Z of the Broadcasting Act 2009 (the “Act”), after consultation with the persons specified in section 139Z(2) of the Act, and having had regard to the matters set out in section 139ZA of the Act, has decided on 10 October 2024 to issue guidance materials for providers of video-sharing platform services, known as the “Online Safety Guidance Materials: Online Safety Code”.

10 October 2024

Coimisiún na Meán

Annex 2: Matters to be considered

This section summarises the Commission’s consideration of the matters to be considered in the preparation of online safety guidance materials (the “Guidance”), pursuant to section 139ZA of the Act.

Evidence

In the preparation of the Guidance, the Commission has had regard to relevant evidence-gathering activities which have contributed to its decision-making, in particular:

- The Call for Inputs on Developing Ireland’s First Binding Online Safety Code for Video-Sharing Platform Services (July 2023). 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), available [here](#).
- Online Safety Research 2023 (November 2023), available [here](#) (Part 1) and [here](#) (Part 2).
- Responses to the Commission’s public consultation on the draft Code and related matters, including the draft Guidance (December 2023 - January 2024). See [Section 1](#) of this document.
- The Commission’s consultation with the Youth Advisory Committee on the draft Code and related matters, including the draft Guidance. See [Section 1](#) of this document.

The above evidence is relevant both to the Code and to the Guidance which accompanies the Code.

Specific matters to be considered under Section 139ZA

Article 28b of the AVMS Directive

The Guidance relates exclusively to the operation of the Code, of which the scope is to give effect to Article 28b of the AVMS Directive. Where the Guidance expands on the provisions of the Code in order to assist service providers in their understanding and implementation of the Code’s provisions, it draws upon the Code’s principles and the objectives set out in Article 28b of the AVMS Directive.

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 in respect of the Code and the Guidance 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 users' complaints should be transparent.

Having taken this evidence into account, the Commission has included obligations in the Code on transparency in content delivery and content moderation. These are reflected in the Guidance through specific guidelines on the principles applicable to reporting, flagging and complaints, and guidelines on related decision-making and capacity matters.

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 Commission notes the provisions of the Digital Services Act in relation to recommender systems, particularly risk assessments relating to algorithmic and recommender systems, and recommender system transparency requirements.

The Code's obligations, and the related Guidance, are technology-neutral in nature. The Code and Guidance do 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 and Guidance, 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 and the content of proposed guidance, both in general and in relation to specific provisions.

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. In general, the Commission's guidance sets out a series of characteristics that providers may use to inform their approach to implementing measures, but which service providers may interpret dependent on the service provided.

The Commission has also produced guidance on the concept of "appropriate measures", with due regard for the proportionality and practicability of measures dependent on the nature and size of a provided service, to assist providers in complying with the Code's provisions.

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

Respondents to the Call for Inputs and the public consultation on the Code 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 and its related Guidance address 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.

Having taken this evidence into account, the Commission has produced Guidance with regard to various types of video content, as well as concerning measures that qualify users' 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.

Having taken this evidence into account, the Commission has produced Guidance on harmful video content 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. Guidance is also provided on protections for children from content which may impair their physical, mental, or moral development, and on the implementation of measures to ensure children's safety on VSPS.

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 Guidance on "Users' rights and legitimate interests" (section 2.3) highlights its considerations relating to the rights of users of those services.

The Commission has taken into account the applicable rights when formulating the Guidance 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 its guidance relating to parental controls;
- The Commission has recognised user rights to privacy and information in the drafting of guidance relating to age assurance; and
- The Commission has recognised the applicable rights of service providers in the drafting of the guidance on appropriate measures and control over audiovisual commercial communications.

The e-Commerce Compliance strategy prepared by the Commission.

The Commission notes that the Guidance contains a section, “E-Commerce Compliance Strategy” (section 1.4), highlighting the Guidance’s alignment with the Commission’s published e-Commerce Compliance Strategy.