



Coimisiún
na Meán

Response to Consultation: Online Safety Code

Publication date: 27 May 2024

Explainer

This document is a response to consultation, following the public consultation by Coimisiún na Meán on a draft Online Safety Code.

Coimisiún na Meán received 1,398 submissions to its public consultation between 8th December 2023 and 31st January 2024. Coimisiún na Meán has also consulted with its Youth Advisory Committee. The public consultation document can be accessed [here](#).

This document responds to the main issues raised.

This document explains the restructuring of the revised draft Online Safety Code into a “**Part A**” and a “**Part B**”. The content of the Code is accessible [here](#).

Part A comprises legislative and regulatory context for the Code, as well as general obligations to be imposed on VSPS providers.

A number of changes have been made to the more specific obligations on which Coimisiún na Meán previously consulted. Coimisiún na Meán now proposes to adopt these revised specific obligations in **Part B**. This document outlines the changes that have been made to those obligations and provides reasons for the changes.

The Online Safety Code is not yet final. Coimisiún na Meán is now submitting the entire revised draft Online Safety Code to the EU Commission under Directive (EU) 2015/1535 (the “**TRIS Directive**”). This involves a process that is likely to take three (3) to four (4) months. The EU Commission and other EU countries may make comments or submit opinions on the Code during this process.

Following the process under the TRIS Directive, Coimisiún na Meán will finalise the Code and publish a final decision. The Code will be binding on services to which it applies.



The Online Safety Code is not yet final. Coimisiún na Meán reserves its position to adopt measures on which it has consulted, with or without amendment.

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Foreword

Coimisiún na Meán is grateful for the significant engagement received during the public consultation on the draft Online Safety Code. Circa 1,400 responses were submitted, reflecting a wide range of perspectives from individuals, civil society organisations, academia, industry, and government departments and agencies. We also consulted with our Youth Advisory Committee, to ensure that the provisions of our Code reflect the real-world experiences of young people online.

We also benefitted from valuable engagement with the European Commission and the European Regulators Group for Audiovisual Services (ERGA). Online safety is a shared, cross-border challenge, so the perspectives of our European counterparts, and our international partners in the Global Online Safety Regulators Network are important to us. Ireland is the European headquarters of several large video-sharing platforms, so we have a responsibility to set robust and effective rules that benefit adults and children in Ireland and across the European Union.

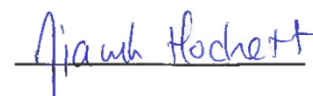
We have listened carefully to the feedback received in the public consultation and have made thoughtful amendments to our Code, which we are now notifying to the European Commission through the Technical Regulations Information System (TRIS) Directive process. Once this process is complete, Coimisiún na Meán will apply the Code to video-sharing platform services established in Ireland.

The consultation process clearly highlighted the ongoing challenge of dealing with the harms people encounter online. These online harms have real-world impacts, with chilling impacts on democracy and society. Certain groups, including women, LGBTQIA+ communities, and ethnic minorities, are othered and subjected to increased online abuse and views have become increasingly polarised – even since we consulted on our draft online safety code. The Code addresses incitement to hatred and violence.

Terrorist content and child sexual abuse material are the most serious types of content addressed by the Code. The Code also addresses several categories of content which are having a negative impact on the physical and mental health and wellbeing of children, including cyberbullying, content that promotes eating/feeding disorders or self-harm and suicide, as well as dangerous challenges.

We recognise that tackling these issues requires a concerted effort from all of us. This is a whole of society issue, where legislation, academic research, education initiatives, parental guidance, empowered children, platform accountability, and regulation all play crucial roles. Our responsibility as regulator is to set out the rules and hold platforms to account for keeping all of us and our children safe online.

This document summarises the key themes and concerns raised during the consultation and sets out how they are reflected in the updated Code. Our Online Safety Framework also comprises the Digital Services Act where we work closely with the European Commission and the Terrorist Content Online Regulation where we work closely with An Garda Síochána. The application of the Code, as part of Coimisiún na Meán's overall Online Safety Framework, will be a step change for improving online experiences. We remain committed to fostering a safer and more inclusive online environment for all.



Niamh Hodnett
Online Safety Commissioner
May 2024

1. Introduction

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

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.

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](#).

The development and revision of the Code was informed by several sources of evidence, including:

- Responses to the Call for Inputs on Developing Ireland’s First Binding Online Safety Code for Video-Sharing Platform Services (July 2023);
- The Video-Sharing Platform Services Online Harms Evidence Review, undertaken by PA Consulting (the “PA Harms Report”) (September 2023);
- Online Safety Research 2023 (November 2023);
- Responses to the public consultation; and
- Consultation with the Commission’s Youth Advisory Committee.

Further information on the Commission’s evidence base is provided in [Annex 1](#) of this document.

1.1. 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 following its consultation process.

The Commission has considered the submissions made. With due regard to the submissions as a whole, the Commission has exercised its judgement and formed its views on the draft Online Safety Code.

The present response to consultation sets out the key issues emerging from the consultation and summarises how the revised Code takes account of certain issues raised in consultation. 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.

This document outlines changes made in respect of the draft Online Safety Code which was published on 8 December 2023. The draft statutory guidance will be published with the final Online Safety Code following the TRIS process. The draft supplementary measures that accompanied the consultation draft Code are still under consideration by the Commission.

1.2. Youth Advisory Committee

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

Pursuant to section 139N of the Act, the Commission is required to consult the Youth Advisory Committee prior to the making of an online safety code.

At the time of publication, the Youth Advisory Committee has met twice: on 19th December 2023 and 17th January 2024.

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

The Youth Advisory Committee will continue to assist and advise the Commission with respect to the Online Safety Code and related matters.

1.3. Other engagement

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

The Commission has also engaged, and will continue to engage, with the EU Commission in relation to the consultation draft Code and revised draft Code.

2. Online Safety Code

2.1. Background

The Commission may make Online Safety Codes under section 139K of the Act.

The first Code to be published by the Commission is intended to address harmful and illegal content on VSPS.

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

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

The entirety of the Code, once adopted, will be binding in its entirety on the VSPS regulated by the Code. The provisions of the Code will apply to all such services.

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

Further to the consultation process, the Commission has restructured its draft Online Safety Code into a **Part A** and a **Part B**. The revised draft Code is accessible [here](#).

Part A

Part A contains introductory provisions and general obligations to apply to VSPS providers. The provisions of Part A are intended to reflect the requirements of the AVMS Directive and section 139K(3) of the 2009 Act as amended.

Part A makes provision for the measures contained in Article 28b of the AVMS Directive. It applies to content which may impair the physical, mental, or moral development of children, content inciting hatred or violence on the grounds of protected characteristics, and content the dissemination of which is a criminal offence under EU law – child sex abuse material, terrorism, racism, and xenophobia.

Part A requires VSPS to take measures as appropriate to protect the general public and children.

Part B

Part B provides for further mandatory specific obligations to be applied to VSPS providers, and is intended to apply alongside Part A, with respect to Article 28b of the AVMS Directive and section 139K(3) of the 2009 Act as amended.

The revisions that have been made to the measures on which the Commission publicly consulted are primarily reflected in Part B.

2.2. Next steps

The TRIS Process and Code Adoption

The revised Code is still in draft form. Before the Code can be finalised and applied to VSPS, the Commission is engaging in a formal process under the TRIS Directive. Information on the TRIS Directive can be accessed [here](#).

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

The Commission now intends to notify the Code, comprising Parts A and B, under the TRIS Directive. The procedure described is likely to take three (3) to four (4) months.

The Commission will then finalise the Code. It will publish a final decision on the adoption of the Code and its application to VSPS.

Application of the Code to VSPS

On 14 August 2023, the Commission designated, as a category of services to which Online Safety Codes may be applied, those VSPS the providers of which are under the jurisdiction of the State. This designation was made under section 139G(1) of the Act and became effective on 11 September 2023.

In December 2023, the Commission designated, under section 139G(2), a number of individual named services as VSPS the providers of which are under the jurisdiction of the State.

The Commission has published and maintains a register of designated named online services, and categories of online services, to which Online Safety Codes may be applied. The register may be accessed [here](#). It is current as of 27 May 2024. This is in line with section 139J of the Act.

Prior to determining that an Online Safety Code applies to a designated service and/or category of services, under section 139L of the Act, the Commission is required to consult with designated online service providers, and organisation(s) representative of services falling within a designated category of online services.

The Commission will engage in a further consultation process with designated online service providers and organisation(s) representative of services falling within a designated category of online services on the application of Parts A and B of the Code to VSPS. There is no further consultation in relation to the content of the Code.

2.3. Matters to be considered

When preparing an Online Safety Code, the Commission must have regard to:

- (a) the desirability of services having transparent decision-making processes in relation to content delivery and content moderation,
- (b) the impact of automated decision-making on those processes,
- (c) the need for any provision to be proportionate having regard to the nature and the scale of the services to which a code applies,
- (d) levels of availability of harmful online content on designated online services,
- (e) levels of risk of exposure to harmful online content when using designated online services,

- (f) levels of risk of harm, and in particular harm to children, from the availability of harmful online content or exposure to it,
- (g) the rights of providers of designated online services and of users of those services, and
- (h) the e-Commerce Compliance strategy prepared by the Commission (accessible [here](#)).

This is in line with section 139M of the Act.

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

The Commission sets out its considerations to which it has had regard in relation to each matter in [Annex 1](#) of this document.

3. Statutory guidance material

3.1. Background

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

The Commission sought views on draft statutory guidance in its public consultation of December 2023, including on:

- 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.

3.2. Next steps

The Wagner-Hatfield report, accessible [here](#), contains a summary of the submissions raised in relation to the draft statutory guidance.

Further to the consultation process, the Commission is still considering its position on statutory guidance material to be issued. This document does not contain revised statutory guidance or a response to the submissions raised.

It is intended that the statutory guidance material will be finalised for publication in tandem with the final Online Safety Code.

4. Supplementary measures and related guidance

4.1. Background

The Commission consulted on draft measures that it was considering for inclusion in a future Online Safety Code, and associated guidance material. While these were not proposed to be included in the first Online Safety Code, the Commission saw benefit in seeking stakeholder views on these potential measures, which included:

- Safety by design;
- Online safety supports; and
- Recommender system safety.

4.2. Next steps

This document does not address these draft supplementary measures or contain a response to submissions made. The Wagner-Hatfield report, accessible [here](#), contains a summary of those submissions.

The Commission acknowledges the volume of responses received in relation to the proposed supplementary measures. In light of this, the Commission is continuing to reflect on stakeholder responses and believes that the making of rules in this regard merits further deliberation. The Commission may address issues relating to safety by design and online safety supports through statutory guidance.

A significant number of responses received related to recommender systems. Although the Commission's consultation paper did not propose to include measures relating to recommender systems in the first Online Safety Code, the Commission notes that another aspect of the online safety framework, the Digital Services Act, applies to all online platforms and sets out a range of relevant protective measures in relation to recommender systems.

That Act obliges service providers which use recommender systems to explain, in the service's terms and conditions, the main parameters of the recommender systems used, as well as any options to modify or influence those parameters.

It also obliges Very Large Online Platforms ("VLOPs") to conduct risk assessments and take appropriate mitigation measures. Those risk assessments must take into account the design of any recommender and algorithmic systems. VLOPs must also provide options for users to opt out of recommender systems that are based on profiling.

After reviewing the responses on recommender systems, the Commission confirms its view that recommender systems can play a significant role in creating harm to minors.

The Commission considers that to reduce this harm, recommender systems that create feeds of content for minors should be designed to avoid risks such as:

- creating feeds of content that are harmful in aggregate (including by creating a "rabbit-hole" effect)
- encouraging minors to spend a harmful amount of time using the service
- amplifying harmful or age-inappropriate content
- recommending content based on profiling of minors, unless there are child-centred ways for users to configure their profiling options

The Commission considers that recommender systems that are not so designed are likely to be unsafe for minors.

The Commission notes that all VSPS providers are bound by Article 28 of the Digital Services Act, which requires them to take measures to ensure a high level of privacy, safety, and security of minors. The Commission also notes that video-sharing platforms that have been designated as VLOPs by the European Commission are obliged under Articles 34 and 35 of that Act to identify and mitigate negative effects on minors.

The Commission is concerned about video-sharing platforms exposing minors to content recommended by a recommender system that is unsafe for minors.

The Commission notes that the European Commission has initiated investigations under the Digital Services Act which include an examination of whether recommender systems are in compliance with that Act.

The Commission proposes to:

- Continue to support European Commission investigations into whether recommender systems are operating in compliance with the Digital Services Act.
- Use 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.
- As a member of the European Board for Digital Services, participate in the development of guidelines to be issued under Articles 28 and 35 of the Digital Services Act.

The Commission considers that these steps are the most appropriate to address the harms caused by unsafe recommender systems, and does not propose to take further the possibility of a supplementary Online Safety Code at this time.

5. Overview of consultation and Commission response

This section outlines the main changes made in the revised draft Online Safety Code.

More detailed subsections follow, which address the main issues raised in relation to each section of the consultation draft Code and set out the Commission's rationale for the position it now plans to adopt. These subsections are presented in the order addressed in the consultation paper. A summary is presented at the start of each subsection.

Part A and Part B

Further to the consultation process, the Commission has restructured its draft Code into a **Part A** and a **Part B**. Both Parts of the final Code will be binding.

Interplay with online safety framework

For the avoidance of doubt, the Commission observes that the absence of particular measures or types of content from its revised draft Online Safety Code does not mean that there is no regulation or self-regulation only in respect of such matters. The Code is intended to form one part of Coimisiún na Meán's overall online safety framework. The Code will operate alongside other online safety measures to protect users from online harm, including the Digital Services Act and the Terrorist Content Online Regulation.

In particular, the Digital Services Act has broad application; it applies to all online platforms as of 17 February 2024. The Commission is the Digital Services Coordinator for Ireland, which means it oversees the implementation of the Digital Services Act for online services established in Ireland.

As such, the Commission has developed the revised draft Code with due regard for the relevant provisions of the Digital Services Act. The Commission notes that the Digital Services Act is without prejudice to the AVMS Directive and the Terrorist Content Online Regulation.

The illegal content covered by the revised draft Code has been narrowed from that consulted on. The Commission considers the Digital Services Act offers an appropriate avenue to address content that is illegal under the various specific Irish criminal offences that were referenced in the consultation draft Code. As Digital Services Coordinator, the Commission can address this content through its relevant powers under the Digital Services Act. The rules concerning illegal content online under the Digital Services Act broadly reflect the existing rules in the offline environment.

However, in line with Article 28b(1)(b) and (c), the revised draft Code addresses content which incites hatred or violence on the grounds of protected characteristics under Article 21 of the EU Charter of Fundamental Rights; further, it addresses content which is prohibited by European law, such as that relating to child sex abuse material, terrorism, racism, and xenophobia.

The Commission notes that the Digital Services Act contains various additional protections in respect of illegal content, including that online platforms must provide internal complaint-handling mechanisms for users to notify illegal content, be transparent, and act expeditiously in their treatment of illegal content when they become aware of it, and suspend users' accounts when they frequently provide manifestly illegal content. As Digital Services Coordinator, the Commission can certify "trusted flaggers" to report illegal content directly to platforms. Platforms are required to establish appropriate and proportionate measures to protect children on their services, and VLOPs have additional risk assessment obligations.

Definitions of content

The Commission has included a new definition for "restricted video content", which means:

- video content by which a person bullies or humiliates another person,
- video content by which a person promotes or encourages behaviour that characterises an eating or feeding disorder,
- video content by which a person promotes or encourages self-harm or suicide, including video content which encourages behaviour prejudicial to the health or safety of children, including dangerous challenges.
- video content by which a person makes available knowledge of self-harm or suicide, to include video content which encourages behaviour prejudicial to the health or safety of children, including dangerous challenges.

Such content must meet the risk test defined in Part B.

The definition of “restricted video content” also includes video content containing incitement to violence or hatred based on the grounds referred to in Article 21 of the EU Charter of Fundamental Rights, including sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age, sexual orientation. The Commission considers that membership of the Traveller community or Roma communities falls within the protections of Article 21 of the Charter. It also includes video content which is referenced as a criminal offence under EU law under Article 28b(1)(c) of the AVMS Directive.

This new definition of “restricted video content” is included instead of the previous definitions of “illegal content harmful to children”, “illegal content harmful to the general public”, “regulated content harmful to children”, and “regulated content harmful to the general public”.

The newly introduced definition of “restricted video content” does not refer to specific Irish criminal offences. The definition of “restricted video content”, and therefore the Code, addresses only that illegal content that is referenced as a criminal offence under EU law in Article 28b(1)(c) of the AVMS Directive: public provocation to commit a terrorist offence, offences concerning child pornography, and offences concerning racism and xenophobia.

Age verification / age assurance

The Commission has included a binding general obligation in Part A of the revised draft Code for VSPS providers to, as appropriate, establish and operate age verification systems with respect to content that may impair the physical, mental, or moral development of minors. The term “age verification” is used to reflect the language of the AVMS Directive.

The more specific measures in Part B require that VSPS providers that permit adult-only video content must ensure, through age assurance, that children cannot normally see such content. The term “age assurance” has replaced “age verification” for these more specific measures, which the Commission considers appropriate to capture a range of techniques.

The Commission has also introduced a definition of “adult-only video content” in respect of the more specific Part B measures, which includes pornography and gross or gratuitous violence.

The Commission retains its view in the revised draft Code that self-declaration of age is not effective to accurately assess the age of users. The Commission does not consider that self-declaration alone could sufficiently limit children’s exposure, or risk of exposure, to content that may impair their physical, mental, or moral development – due to the ease of circumvention of self-declaration.

The Commission has removed the obligation in the Code to restrict the access of children to services through age verification. The Commission agrees that there is potential for harm when underage users are able to open accounts on video-sharing platforms.

The revised draft Code contains a number of measures that reduce the potential harm:

- It requires VSPS providers to implement restrictions that preclude the uploading and sharing of several categories of harmful video content, and to remove such content once it is flagged to them.
- It requires VSPS providers that permit pornography or depictions of gross or gratuitous violence to use age assurance so that minors cannot normally see such content.
- It requires VSPS providers that permit users aged 15 and under to make a range of parental controls available.
- It requires platforms to use age verification, where appropriate, depending on the size and nature of the service, to protect minors from video content which may impair their physical, mental and moral development.

The Commission also notes that there are provisions in the Digital Services Act that require platforms to ensure the safety, security and privacy of minors and – in the case of platforms designated as Very Large Online Platforms by the European Commission – to identify and mitigate negative effects on minors.

The effect of all of these provisions is that platforms must take suitable measures to ensure that the way they operate does not cause harm as a result of underage users being able to open accounts.

The Commission notes that requiring platforms to implement age verification measures at the point of account creation may impinge on the privacy and freedom of expression of adults and older children, and on their right to access lawful content. Depending on the nature of a platform, there may be other ways to address the risk of harm as a result of underage account opening.

The Commission therefore does not consider it appropriate at this time to impose a specific obligation mandating all platforms to use age verification at the point of account creation. The Commission will use its supervisory and enforcement powers to ensure that service providers meet their obligation to ensure that they operate in a way that does not cause harm to minors.

Complaints-handling

With regard to its obligations under the AVMS Directive, the Commission considers it appropriate to retain requirements in the revised draft Code for VSPS in relation to complaints-handling, concerning age assurance, content rating, parental controls, and reporting and flagging.

The revised draft Code retains the obligation under section 139K(6) of the Act to require service providers to report to the Commission at intervals of not more than three (3) months on the provider's handling of communications raising complaints or other matters. The Commission has also revised the Code to allow for the flexibility to specify other intervals for such reporting.

The Commission does not prescribe the particular timelines or processes that constitute complaints-handling systems, so as to allow VSPS providers the flexibility to structure such systems, taking into account the size and nature of the service provided.

Audiovisual commercial communications for specific products

The Commission notes the responses relating to the following products in relation to the definitions of harmful "audiovisual commercial communications":

- High-fat, -salt and -sugar foods: The Commission considers that the making of rules in this regard may require further deliberation and engagement with public health authorities. As such, the Commission does not propose, at this point, to include in the revised draft Code measures relating to high-fat, -salt, and -sugar foods.
- Milk substitutes: The consultation draft Code provided that audiovisual commercial communications contravening existing EU rules were within "audiovisual commercial communications harmful to the general public". The Commission considers that the Digital Services Act mechanism is more appropriate to address contraventions of those existing EU rules. The inclusion of any further measures in this regard may also require further deliberation and/or engagement with public health authorities.

Recommender systems

The Commission invited views on whether it should consider developing a supplementary online safety code that included provisions related to recommender systems.

The Commission recognises that a significant number of comments were received in respect of recommender systems. While the Commission continues to reflect on these submissions, further information on the existing obligations on online platforms that use recommender systems under the Digital Services Act is provided in [section 4.2](#) of this document.

After reviewing the responses on recommender systems, the Commission confirms its view that recommender systems can play a significant role in creating harm to minors.

The Commission considers that to reduce this harm, recommender systems that create feeds of content for minors should be designed to avoid risks such as:

- creating feeds of content that are harmful in aggregate (including by creating a "rabbit-hole" effect)
- encouraging minors to spend a harmful amount of time using the service
- amplifying harmful or age-inappropriate content
- recommending content based on profiling of minors, unless there are child-centred ways for users to configure their profiling options.

The Commission considers that recommender systems that are not so designed are likely to be unsafe for minors.

The Commission notes that all VSPS providers are bound by Article 28 of the Digital Services Act, which requires them to take measures to ensure a high level of privacy, safety, and security of minors. The Commission also notes that video-sharing platforms that have been designated as VLOPs by the European Commission are obliged under Articles 34 and 35 of that Act to identify and mitigate negative effects on minors.

The Commission is concerned about video-sharing platforms exposing minors to content recommended by a recommender system that is unsafe for minors.

The Commission notes that the European Commission has initiated investigations under the Digital Services Act which include an examination of whether recommender systems are in compliance with that Act.

The Commission proposes to:

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

- Use 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.
- As a member of the European Board for Digital Services, participate in the development of guidelines to be issued under Articles 28 and 35 of the Digital Services Act.

The Commission considers that these steps are the most appropriate to address the harms caused by unsafe recommender systems, and does not propose to take further the possibility of a supplementary Online Safety Code at this time.



5.1. Introductory provisions

Included in Part A?

Yes: Part A includes provisions on:

- Introduction,
- Scope and jurisdiction,
- Purpose, preparation, and application of the Code,
- Regulatory principles relevant to the Code,
- e-Commerce Compliance Strategy,
- Statutory Guidance,
- Severability,
- Waiver, and
- Compliance and Enforcement.

Included in Part B?

The introductory provisions apply for the purposes of Parts A and B.

Overview of changes

- The introduction reflects the Part A and Part B structure.
- The introductory sections have been streamlined.
- The section on “Compliance” is now “Compliance and Enforcement”. Provisions around compliance have been clarified in the Code, as well as points in relation to the assessment of the appropriateness of the measures taken.

Proposals for public consultation

Sections 1 through 9 of the consultation draft Code (the “introductory provisions”) stated that the Code’s purpose, preparation, and application are in line with statutory obligations, and that the Commission will be informed by various rights, objectives, statutory functions, and principles in its interpretation, application, and enforcement thereof.

The consultation draft Code referred to giving effect to Article 28b of the AVMS Directive, and stated that it does not impose any obligation contrary to Article 15 of the e-Commerce Directive or Article 8 of the DSA, in line with the Commission’s e-Commerce Compliance Strategy.

The introductory provisions also set out that:

- the Code is accompanied by statutory guidance;
- the lawfulness or enforceability of any Code provision will be unaffected if any other provision is found to be unlawful or unenforceable; and
- the Commission does not waive any rights or powers under the Code by not responding to or commenting on any material received from a VSPS provider. a provision’s lawfulness, validity, or enforceability will not be affected if any other provision of the Code is found to be unlawful, invalid, or unenforceable.

Finally, a “Compliance” provision set out that, when the Commission is making assessments as to a VSPS’s compliance with the Code, it would have regard to whether it is satisfied that a specific obligation would not be practicable or proportionate in its application to the VSPS.

Overview of comments

On the scope of the Code, certain respondents to the public consultation stated a view that the consultation draft Code extends beyond the requirements of Article 28b of the AVMS Directive, and risked significant overlap with the DSA.

Respondents made a number of comments relating to the regulatory principles underpinning the consultation draft Code, referencing various human rights frameworks and querying the wording of certain provisions.

In relation to compliance, respondents expressed a number of concerns – either that the provisions of the consultation draft Code would not ensure compliance to a satisfactory degree, or that compliance with the Code would mean the adoption of disproportionate, unfeasible, and/or impracticable measures. Some respondents also expressed concern that the capacity to prove compliance with the Code is hampered by ambiguous or overlapping provisions.

Certain respondents stated that, in order to comply with the Code by implementing technical measures, VSPS providers would require a proportionate transition period to allow for the construction of measures and solutions. Respondents suggested a range of timeframes in this regard.

Commission response

The introductory provisions of the revised draft Code reflect the fact that it now comprises Parts A and B. They have also been streamlined, with a view to ensuring the Code is accessible; the Code no longer sets out detailed descriptions of the regulatory principles by which the Commission is guided.

The Commission notes the submissions in relation to the Digital Services Act, and recognises the Digital Services Act as a maximum harmonisation measure that applies without prejudice to the AVMS Directive. This response to consultation document highlights aspects of the Digital Services Act that have influenced the revision of the Code.

The Commission has streamlined the wording of the relevant regulatory principles underpinning the Code with reference to the Act, the AVMS Directive, and other relevant frameworks.

In relation to compliance with the Code, the Commission acknowledges submissions on the practicalities of demonstrating compliance. The section on “Compliance” has now been renamed “Compliance and Enforcement”.

The Commission has clarified in the revised draft Code that, when it is considering a VSPS's possible failure to comply with the Code and/or any enforcement steps, it shall have regard to whether it is satisfied that an obligation, or in the circumstances, compliance with an obligation, would not be practical or proportionate in the case of the VSPS, taking into account its size or the nature of the service. The revised draft Code also states that the Commission shall not be precluded from taking into account the size and nature of the VSPS provided in considering compliance with the Code. The Commission considers this to be a proportionate and appropriate approach.

The Commission has also clarified in the revised draft Code that a failure to comply with the Code shall be a contravention for the purposes of Part 8B of the Act. Furthermore, the revised draft Code confirms that, if any issue arises as to the appropriateness of any measures taken by a VSPS provider, it will be a matter for the Commission to determine the appropriateness of the same. The Code states that the appropriate measures shall be practicable and proportionate, taking into account the size of the VSPS and the nature of the service that is provided.

The Commission acknowledges that certain respondents expressed a need for a transition period to implement the Code. The Commission intends to monitor VSPS providers' implementation of the Code over time and will engage with those providers as necessary through its supervision and enforcement structures. The Commission does not accept that a transition period is proportionate for Part A in view of the revised AVMS Directive's date of 2018. In relation to Part B, a transition period may be considered further.



5.2. Definitions

Included in Part A?

No.

Included in Part B?

Yes: definitions are provided in Part B.

Overview of changes

- New definition introduced: “restricted video content”. This is included instead of previous definitions of “regulated content harmful to the general public”, “regulated content harmful to children”, “illegal content harmful to the general public”, and “illegal content harmful to children”.
- “Restricted video content” covers a range of harmful content, as well as content that is referenced as a criminal offence under EU law in Article 28b(1)(c) of the AVMS Directive.
- New definition introduced: “restricted indissociable user-generated content”. This replaces the previous definition of “indissociable user-generated content”. User-generated content that is indissociable from videos, like captions or comments, are addressed by the Code in terms of the harms they can cause.
- The illegal content as referenced under Schedule 3 of the 2009 Act is no longer covered by the Code.
- New definition introduced: “adult-only video content”. This addresses video content that consists of pornography and video content that consists of gross or gratuitous violence.

Proposals for public consultation

Section 10 of the consultation draft Code defined various terms, including:

- Content;
- Audiovisual commercial communications;
- Illegal content; and
- Regulated content.

These definitions specified illegal and regulated content, and audiovisual commercial communications, that are harmful to children, as well as to the general public.

The proposed definition of “content” included user-generated videos and other user-generated content that is indissociable from user-generated videos, such as descriptions of a video or comments on a video.

“Illegal content harmful to children” included certain offence-specific categories of content as set out in the Act, and “regulated content harmful to children” included pornography, gross or gratuitous violence, dangerous challenges, bullying or humiliation, promotion of feeding or eating disorders, encouragement of self-harm or suicide, and making available knowledge of methods of self-harm or suicide.

“Illegal content harmful to the general public” included certain offence-specific categories of content as set out in Schedule 3 of the Act, in addition to content of which the dissemination is illegal under European Union law as transposed into Irish law – including public provocation to commit a terrorist offence, child pornography, and racism and xenophobia.



“Regulated content harmful to the general public” included content containing incitement to violence or hatred against a group of persons or a member of a group based on any of the grounds referred to in Article 21 of the Charter of Fundamental Rights of the European Union.

Definitions of harmful audiovisual commercial communications included promotion of tobacco products, electronic cigarettes, and prescription-only medicines and medicinal products.

With specific reference to children, definitions of harmful audiovisual commercial communications included communications for alcohol aimed at children, or communications which exploit the special trust children place in parents, teachers, or other persons.

Overview of comments

Illegal content

Some respondents stated that the definitions of “illegal content”, as set out in the consultation draft Code, are too limited. It was requested that such definitions of illegal content should include all criminal offences, in Irish, European, or international law, without restriction.

However, there was particular concern about the jurisdictional scope of the consultation draft Code in addressing illegal content. Respondents considered that the Code attempts to apply Irish criminal law across the European Union in its definition of illegal content. Respondents stated that Article 28b(1)(c) of the AVMS Directive sets out the only categories of illegal content that the Code is required to address in order to give effect to the AVMS Directive.

It was submitted that other illegal content should be addressed, harmonised, and regulated under the Digital Services Act. Respondents considered that references to Irish criminal law in the Code’s content-related definitions should be removed.

Furthermore, it was highlighted that it might not be useful or practical to distinguish between children and the general public in terms of defining “illegal content”; respondents were of the view that illegal content is illegal regardless of whether it causes harm to children or adults.

Where illegal content relates to incitement to violence or hatred based on the grounds stated in Article 21 of the EU Charter of Fundamental Rights, respondents requested that specific mention would be made of members of Traveller and Roma communities in order to provide adequate protections.

Regulated content

Many respondents proposed that the consultation draft Code’s definition of “regulated content harmful to children”, insofar as this referenced cyberbullying, eating and feeding disorders, self-harm, and suicide, should be extended to the general public. Respondents noted that the harms caused by these types of content impact both children and adults.

Concerns were raised that the attempt to include lawful content in definitions of “regulated content” could have implications for the right to freedom of expression. Equally, respondents proposed a range of content types and harms that they considered should come under scope for regulation. Respondents suggested that the Commission further define a number of specific terms outlined in the consultation draft Code’s definitions of regulated content.

Audiovisual commercial communications

Respondents stated that the proposed definitions of “audiovisual commercial communications” are narrow and limited in terms of the harms covered. Some respondents made proposals as to the addition of categories of harmful audiovisual commercial communications.

Particular concerns were raised in relation to the absence of high-fat, -salt, and -sugar foods, as well as of various milk substitutes, from definitions of harmful “audiovisual commercial communications”.

Indissociable user-generated content

Many respondents were supportive of the proposal to include user-generated content that is indissociable from user-generated video in the Code’s definition of “content”. It was noted that the interactions of text, image, and video all have different capabilities of harm, dependent on context.

However, it was also submitted by certain respondents that the inclusion of non-video content in the Code’s definition of “content” could be beyond the scope of the AVMS Directive. Respondents stated that comments and posts associated with user-generated video would always be addressed through a VSPS’s terms and conditions, or, if such content was illegal, through the Digital Services Act.

In addition, the inclusion of indissociable user-generated content in the Code’s definition of “content” was stated to create significant practical issues in respect of applying the Code’s proposed measures beyond programmes or user-generated content. For instance, it was proposed that the application of content rating provisions to video comments would be unworkable and disproportionate. Respondents highlighted that indissociable content should not be treated the same as the user-generated video to which it is ancillary.

Commission response

The Commission is required by Articles 28b(1) and 28b(3) of the AVMS Directive to address:

- user-generated videos, programmes, and audiovisual commercial communications which may impair the physical, mental, and moral development of minors;
- user-generated videos, programmes, and audiovisual commercial communications containing incitement to violence or hatred on the grounds referred to in Article 21 of the EU Charter of Fundamental Rights – sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation; and
- user-generated videos, programmes, and audiovisual commercial communications of which the dissemination constitutes a criminal offence under European Union law, including public provocation to commit a terrorist offence, offences concerning child pornography, and offences concerning racism and xenophobia.

This content is addressed in Part A of the Code.

Definitions are now contained in Part B of the revised draft Code.

As the AVMS Directive is specific in naming user-generated videos and programmes, the Commission considers it appropriate to revise its definition of “content” to “video content” for greater clarity.

The Commission has inserted new definitions for “restricted video content” and “restricted audiovisual commercial communications”, while retaining previous definitions relating to harmful audiovisual commercial communications.

This new definition of “restricted video content” is included instead of the definitions of “illegal content harmful to children”, “illegal content harmful to the general public”, “regulated content harmful to children”, and “regulated content harmful to the general public”.

The Commission has clarified in the Code's definition of "restricted video content", in respect of incitement to violence or hatred on the grounds referred to in Article 21 of the European Charter of Fundamental Human Rights, that it considers that membership of the Traveller community or Roma communities falls within the protections of Article 21 of the Charter.

The Commission has inserted a new definition of “restricted audiovisual commercial communications” captures those audiovisual commercial communications which are harmful or illegal under Article 28b(1) of the AVMS Directive.

With reference to the use of the term “child pornography” in the Code, the Commission recognises that the term “child sex abuse material” is the more appropriate description of the relevant content. Nevertheless, the Commission uses the term “child pornography” in the Code to reflect the legal definitions of the AVMS Directive.

Illegal content

The Commission notes that the newly introduced definition of “restricted video content” does not include any reference to Irish criminal law. The definition of “restricted video content”, and therefore the revised draft Code, addresses EU criminal content only as set out under Article 28b(1)(c) of the AVMS Directive: public provocation to commit a terrorist offence, offences concerning child pornography, and offences concerning racism and xenophobia.

The Commission notes that other content that is illegal under Irish law can be addressed through mechanisms included in the Digital Services Act. As such, it considers that a suitable approach to address such content is through that Act, rather than through the Code at this time.

Restricted content

The Commission considers that the newly introduced definition of “restricted video content” provides protections for VSPS users from a range of harmful video content, such as:

- cyberbullying,
- promotion or encouragement of eating or feeding disorders,
- promotion, encouragement, or making available knowledge of methods concerning self-harm and suicide, including encouragement of behaviours prejudicial to the health or safety of children such as dangerous challenges.

Such content is restricted subject to a risk test. The Commission considers these restrictions to be necessary in order to ensure that such content is not normally seen by children.

The Commission notes the concerns of some respondents regarding limitations on freedom of expression when restricting certain types of content. The Commission does not accept that restricting the types of video content addressed in the definition of “restricted video content” constitutes a disproportionate limitation on VSPS users, in view of the protections from harm that it offers to children. The Commission recognises that adults can also be impacted by online harms covered by the proposals in the consultation draft Code.

The definition of “restricted video content” also includes video content that is referred to under Article 28b(1)(b) and (c) of the AVMS Directive.

Adult-only video content

The consultation draft Code's definition of "regulated content harmful to children" included content consisting of pornography and content consisting of gross or gratuitous violence.

To provide clarity concerning the Part B obligations of VSPS providers, the Commission considers it appropriate to introduce a definition of "adult-only video content", which addresses video content consisting of pornography and video content consisting of gross or gratuitous violence.

This allows Part B's provisions to distinguish between those VSPS providers who permit such video content on their service, and those who do not – and avoids applying obligations concerning adult-only video content to the latter.

Audiovisual commercial communications

The revised draft Code retains the definitions relating to audiovisual commercial communications, but has removed references to communications for infant formula which contravene existing EU rules. This is because the Digital Services Act provides an appropriate mechanism for that content to be addressed.

The Commission notes the concerns of respondents relating to the absence of high-fat, -salt, and -sugar foods, from definitions of "audiovisual commercial communications". The Commission considers that the making of rules in this regard will require further deliberation and consultation with public health authorities.

Indissociable user-generated content

The Commission considers that there is a need to retain a definition of user-generated content that is indissociable from user-generated video, in recognition of the harms that can be caused by such content. However, the Commission recognises that it would likely be disproportionate to apply all of the same measures to both indissociable content and the video content that it accompanies.

The Commission has clarified the application of Part B to indissociable content. It is not intended to generally apply all measures proposed by the Code to indissociable content.

As such, the Commission has introduced a definition of "restricted indissociable user-generated content". Such content is restricted on the same basis as "restricted video content", where the content:

- constitutes cyberbullying,
- constitutes promotion or encouragement of eating or feeding disorders,
- constitutes promotion, encouragement, or making available knowledge of methods concerning self-harm or suicide, including encouragement of behaviour prejudicial to the health or safety of children, such as dangerous challenges,
- constitutes incitement to hatred or violence, or
- is illegal under Article 28b(1)(c) of the AVMS Directive.

Provision has been made in Part B that VSPS providers must allow users to report and flag restricted indissociable user-generated content. Further information on the Commission's proposals in relation to reporting and flagging is provided in [section 5.5](#) of this document.

5.3. Terms and Conditions: Content

Included in Part A?

Yes: Part A imposes a general obligation on VSPS providers to, as appropriate, include and apply in the service's terms and conditions requirements to provide certain protections to the general public and children.

Included in Part B?

Yes: Part B contains requirements in relation to terms and conditions to address the uploading or sharing of restricted video content, restricted indissociable user-generated content, and adult-only video content. Part B also contains requirements relating to how terms and conditions to address the access of children to certain services and how users comply with age assurance measures. Part B provides that these prohibitions shall not preclude the uploading or sharing of content as a contribution to civic discourse, provided certain protections are in place.

Overview of changes

- There is now a general obligation in Part A for VSPS providers to, as appropriate, include and apply requirements in their terms and conditions to provide protections set out in the AVMS Directive.
- Where the principal purpose of a VSPS or of a dissociable section of a VSPS is the provision of adult-only video content (pornography and gratuitous violence), there is now an obligation for the VSPS provider to preclude, in its terms and conditions, the use of the VSPS or dissociable section by children.

Proposals for public consultation

Sections 11.1 through 11.9 of the consultation draft Code set out a number of obligations relating to the terms and conditions of video-sharing platform services, including a prohibition on the uploading or sharing of illegal content harmful to the general public and to children, as well as regulated content harmful to the general public.

With regard to regulated content harmful to children, the consultation draft Code proposed to prohibit the uploading or sharing of such content, with the exception that, where content consisting of pornography or gross or gratuitous violence is provided, it was proposed that service providers shall implement effective measures to ensure that such content would not be accessed or normally viewed by children.

Overview of comments

Some respondents welcomed the consultation draft Code's provision that uploading or sharing of illegal and regulated content should be prohibited. A number of respondents shared a view that the Commission should go further in prescribing a VSPS's terms and conditions, including in relation to how those terms and conditions are formatted and written. Respondents highlighted the need for meaningfulness for all users in respect of platforms' terms and conditions. In this regard, respondents proposed numerous additional obligations to apply to a VSPS's terms and conditions.

Other submitters raised concerns in relation to the prohibition of the uploading or sharing of regulated content; some respondents stated that the provider is only required to take "appropriate measures" in its terms and conditions as are practical and proportionate. In particular, the prohibition of uploading or sharing regulated content, as defined in the Code, was believed by some respondents to be disproportionate to the Code's objective of applying the AVMS Directive.

Commission response

The Commission is required under Article 28b(3)(a) of the AVMS Directive to ensure that VSPS providers, as appropriate, include and apply in their terms and conditions the requirements referred to in Article 28b(1) of the AVMS Directive.

Article 28b(3) further stipulates that the appropriate measures shall be determined in light of the nature of the content in question, the harm it may cause, the characteristics of the category of persons to be protected, as well as the rights and legitimate interests at stake.

The Commission considers that, in order to ensure that VSPS providers take appropriate measures in light of Article 28b(3)(a) of the AVMS Directive, it is appropriate to oblige, through Part A, that VSPS providers, as appropriate, include and apply in the service's terms and conditions the requirements to provide certain protections to the general public and children. Part A also imposes a general obligation on VSPS providers to take appropriate measures to protect children and the general public from harmful content.

The Commission also considers it appropriate to retain provisions in Part B that VSPS providers shall require, through their terms and conditions, the prevention of uploading or sharing restricted video content. The Code retains the provision that this shall not preclude the uploading or sharing of content as a contribution to civic discourse, provided certain protections are in place.

The Commission does not consider such restrictions to be an ex-ante control measure or upload-filtering of content beyond what is practicable or proportionate, nor does the Commission consider such restrictions to be outside of its e-Commerce Compliance Strategy. Terms and conditions constitute an agreement between the user and the service provider, and the inclusion and application of a requirement that users must agree that they will not engage in the uploading or sharing of restricted content does not constitute a general monitoring obligation on the part of the service provider.

5.4. Suspension and termination of accounts

Included in Part A?

No.

Included in Part B?

Yes: Part B requires VSPS providers to apply their terms and conditions, and to suspend, after prior warning and for a reasonable period of time, the provision of services to users that frequently infringe the terms and conditions and related obligations of the service.

Overview of changes

- The obligation to terminate user accounts for infringements of terms and conditions has been removed.

Proposals for public consultation

Sections 11.9 and 11.10 of the consultation draft Code provided that service providers shall suspend or terminate accounts that they deem to have repeatedly infringed the terms and conditions of the service, which service providers were obliged to apply and implement under the Code, relating to illegal and regulated content.

Overview of comments

A number of respondents considered that suspending or terminating accounts can be a protective approach to minimising the impact and sharing of harmful content. There was support for escalation of sanctions for infringements of terms and conditions, whereby a system of strikes or warnings could be implemented, prior to culminating in suspensions or bans. Respondents also called for clarity on the nature of infringements that would lead to either a suspension or termination of accounts, including specific benchmarks, conditions, or thresholds relating to the infringements and subsequent procedures.

Other respondents raised concerns with this obligation, submitting that the requirement is not provided for within the AVMS Directive, and that the requirement would interfere disproportionately with users' freedom of expression and freedom of access to information.

Respondents noted that not all categories of harmful content should be treated equally, and, rather, that suspensions and terminations should be applied in a graduated way, in line with the harm or illegality of the infringing content or behaviour.

In addition, it was highlighted that the Digital Services Act only provides for suspension, and not termination, of services to users, and provides only for the suspension of those service recipients who frequently provide manifestly illegal content.

Commission response

The Commission is required by Article 28b(3)(a) of the AVMS Directive to ensure that VSPS providers, as appropriate, include and apply in their terms and conditions the requirements referred to in Article 28b(1) of the AVMS Directive, which includes the protection of minors and the general public from certain harms.

The Commission acknowledges concerns in respect of the potentially disproportionate nature of obliging VSPS providers to suspend or terminate accounts for repeated infringements of terms and conditions. The Commission also recognises the provisions of the Digital Services Act in relation to measures and protections against service misuse.

The revised draft Code has removed the requirement for VSPS providers to terminate accounts for infringements of terms and conditions. The Commission believes this is proportionate in that it allows users to come into compliance with terms and conditions without a VSPS having to terminate an account automatically.

The Commission considers that, in order to give full effect to the provisions of Article 28b(3) in relation to terms and conditions, it is appropriate to require VSPS providers, under Part B, to ensure that there are consequences for users who frequently upload or share content that infringes a service's terms and conditions. As such, the Commission has revised the draft Code to ensure that VSPS providers suspend their services for a reasonable period of time, and after prior warning, to users who are determined to have frequently infringed terms and conditions.

The Commission does not propose to suggest benchmarks, conditions, or thresholds for infringements or for the processes by which user accounts are suspended. The Commission intends to provide flexibility to VSPS providers, with due regard to the size and the nature of the services provided, in the implementation of the Code's requirements to suspend users who frequently upload or share infringing content, and in the application of services' terms and conditions by VSPS providers.

Furthermore, the Commission considers that there is a need for VSPS providers, in deciding upon suspensions of user accounts, to have due regard to the rights and legitimate interests of all parties involved. The Commission has also specified that such measures should only be in place where they are not covered by measures adopted pursuant to Articles 23 and 35(1)(b) of the Digital Services Act.



5.5. Reporting and Flagging

Included in Part A?

Yes: Part A contains a general obligation for VSPS providers to, as appropriate, establish and operate transparent and user-friendly mechanisms for users to report or flag content referred to in Article 28b(1)(a)-(c) of the AVMS Directive. Part A also contains a general obligation for VSPS providers to, as appropriate, explain to users the effect that has been given to a report or flag.

Included in Part B?

Yes: Part B contains requirements for VSPS providers to allow users to report or flag:

- Restricted video content;
- Restricted indissociable user-generated content;
- Adult-only video content if it is not permitted by the service's terms and conditions; and
- Harmful and restricted audiovisual commercial communications.

Part B also specifies further measures around explaining the effect given to reporting or flagging, and the provision of information on complaints-handling.

Overview of changes

- There is now a general obligation for VSPS providers to, as appropriate, provide mechanisms for users to report or flag content outlined in the AVMS Directive, for the purposes of Part A.
- The revised draft Code does not require VSPS to provide for reporting and flagging of content that is illegal, other than that illegal content which falls within the definition of restricted video content.
- Reporting and flagging mechanisms required under Part B shall allow users to report or flag harmful audiovisual commercial communications.
- The requirement for VSPS providers to set targets for timeliness and accuracy in respect of reporting and flagging mechanisms has been removed.

Proposals for public consultation

Sections 11.11 through 11.15 of the consultation draft Code set out a number of obligations relating to reporting and flagging mechanisms. This included the proposal that service providers must provide transparent and user-friendly mechanisms for VSPS users to report or flag illegal or regulated content to the service provider.

It was proposed that service providers shall be required to explain to VSPS users what effect has been given to their reporting and flagging, as well as to inform the user of certain complaint-handling procedures. Further information on those complaint-handling procedures is provided in [section 5.9](#) of this document.

The consultation draft Code further proposed that VSPS providers shall set targets for timeliness and accuracy in respect of reporting and flagging mechanisms, and report to the Commission on those targets.

Overview of comments

Respondents generally welcomed the proposed measures, though some shared a view that there was too much flexibility left by the consultation draft Code to VSPS providers for implementation, as a result of a lack of common standards and criteria. Respondents suggested that the Commission prescribe timelines in respect of the reporting and flagging of content. Respondents made a number of specific recommendations



as to the types of reporting and flagging mechanisms to be implemented, and to the matters that users should be able to report and flag.

Other respondents considered that the proposed measures were disproportionate, exceeding the requirements of the AVMS Directive, and overlapping with the requirements of the Digital Services Act, particularly as the consultation draft Code required platforms to allow reporting and flagging of illegal content. As such, concerns were expressed that the consultation draft Code's requirements in relation to reporting and flagging may be repetitive and give rise to legal uncertainty.

Respondents also highlighted concerns that the consultation draft Code's requirements on VSPS providers to report on targets for timeliness and accuracy are disproportionate if such reporting is required to make reference to categories of infringing content.

The Youth Advisory Committee discussed the need for timeliness in the resolution of users' reports or flags, and raised the role of mediation in the resolution of such issues. The Committee also raised the issue of accurately reflecting different types of harms in reporting or flagging mechanisms, such that particular users or groups of users are not prevented from flagging content that harms them.

Commission response

The Commission is required by Article 28b(3)(d) to ensure that VSPS providers, as appropriate, establish and operate transparent and user-friendly mechanisms for VSPS users to report or flag infringing content to the VSPS provider.

The Commission is also required by Article 28b(3)(e) to ensure that VSPS providers, as appropriate, establish and operate systems through which VSPS providers explain to VSPS users the effect that has been given to this reporting and flagging.

As such, the Commission considers it appropriate to retain the requirements in the Code for VSPS providers to ensure that users can report and flag restricted video content, and to explain the effect that has been given to such reporting and flagging.

The Commission considers that it is necessary to provide users with relevant information in the event that they are dissatisfied with the outcome of a report or flag, in the interests of upholding users' rights to an effective remedy. As such, the Commission considers it appropriate to retain provision in Part B that, when users are informed of the effect that has been given to their report or flag, VSPS providers shall inform the user of relevant complaints-handling procedures.

Further information on the Commission's proposals in relation to complaints-handling is provided in [section 5.9](#) of this document.

The Commission has removed the requirement for VSPS providers to set targets for timeliness and accuracy in respect of reporting and flagging mechanisms, as it considers that related content moderation decision-making requires further deliberation. The Commission can use its information-gathering powers under the 2009 Act to retrieve relevant data from VSPS providers, without imposing an obligation in the Code at this time.

The Commission also does not consider it appropriate to prescribe targets for timeliness and accuracy in respect of reporting and flagging mechanisms. The Commission considers that the making of such rules would require further deliberation, and that a universal target for timeliness and accuracy would be unlikely to meet the requirement to have due regard to the size and nature of various VSPS to which the Code would apply, as well as the nature of the harm.

The Commission has introduced a definition of “restricted video content” that addresses cyberbullying, promotion of eating and feeding disorders, promotion of self-harm and suicide, and incitement to hatred and violence, and EU criminal content under Article 28b(1)(c) of the AVMS Directive (terrorism, racism, xenophobia, child sex abuse material). As such, the revised draft Code does not require VSPS to provide for reporting and flagging of content that is illegal other than that which falls within the definition of restricted video content; however, the Commission notes the provisions of the Digital Services Act in relation to complaints concerning illegal content, with which online platforms must comply.

The Commission has revised the Code to ensure that users can report and flag harmful or illegal audiovisual commercial communications, more closely reflecting Article 28b(3)(d) of the AVMS Directive.

In relation to requirements to set targets and report on those targets, further information on reporting requirements is provided in [section 5.5](#) of this document.

5.6. Age Verification

Included in Part A?

Yes: Part A contains a general obligation for VSPS providers to, as appropriate, establish and operate age verification systems for VSPS users with respect to content which may impair the physical, mental or moral development of minors. Self-declaration of age is not sufficient to meet this obligation.

Included in Part B?

Yes: Part B requires VSPS providers whose terms and conditions do not preclude the uploading or sharing of adult-only video content to implement effective age assurance measures to ensure that adult-only video content cannot ordinarily be seen by children. Self-declaration of age is not sufficient to meet this obligation.

Overview of changes

- There is now a general obligation in Part A to, as appropriate, implement age verification for content which may impair the physical, mental, or moral development of minors.
- The term “age assurance” is used for the purposes of Part B.
- Age assurance is now required, through Part B, for VSPS whose terms and conditions do not preclude the uploading or sharing of adult-only video content.
- The obligation to restrict the access of children to VSPS through age verification has been removed.

Proposals for public consultation

Sections 11.16 through 11.21 of the consultation draft Code set out a number of obligations relating to age verification; self-declaration of age by VSPS users is not, on its own, an effective measure for the purpose of implementing age verification obligations.

The proposed obligations included:

- Implementing effective measures to detect underage users and close their accounts, where a service provider has a minimum age for account opening;
- Implementing effective measures to ensure that content rated as unsuitable for children cannot normally be seen by them; and
- Establishing a mechanism to describe the measures used and how they are used, evaluate the accuracy and effectiveness of systems implemented, set targets for correct identifications, and estimate the number of service users who are children.

The consultation draft Code also proposed that service providers be required to report to the Commission every three months on the accuracy and effectiveness of the implemented measures relating to age verification.

Overview of comments

The issue of age verification led to a number of diverse responses. Many respondents acknowledged the importance of age verification measures, and rejected the use of self-declaration for age verification purposes. Respondents also noted that age verification is not sufficient by itself to ensure that a service is age appropriate.

Some respondents showed a general preference for the term “age assurance” to be used, stating it to be an umbrella term that includes age verification and age estimation techniques. Respondents demonstrated a belief that the age of a user does not need to be verified in every instance, depending on the nature of the content and service provided.

Respondents expressed general concerns with age assurance, primarily relating to the handling and privacy of data, the balancing of rights, the proportionality of the measures proposed in respect of the Code’s objectives, and the definitions of terms used to describe age verification measures.

Respondents pointed to existing standards and practices in respect of age assurance, though submissions differed on the most effective measures that could be implemented in respect of age assurance.

Respondents also highlighted the provisions of the Digital Services Act in relation to the protection of minors, the assessment of risks on platforms, and risk mitigation measures which apply to VLOPs. Respondents suggested that the Code should align closely with the Digital Services Act in this regard.

Concerns were raised in relation to the transparency and reporting requirements for age assurance measures taken by VSPS providers. Respondents generally supported the objectives in relation to transparency. Some respondents requested more detailed reporting on age assurance, while others stated that much of the detail requested was disproportionate and unfeasible to gather.

The Youth Advisory Committee raised issues relating to the handling and privacy of data, the balancing of children’s rights with the objective of protection from harm, the distinction between children of varying ages, and the need for age verification systems and approaches to be simple to use.

Commission response

Article 28b(3)(f) of the AVMS Directive requires the Commission to ensure that VSPS providers, as appropriate, establish and operate age verification systems for VSPS users with respect to content which may impair the physical, mental or moral development of minors. Furthermore, the AVMS Directive states that content which may impair the physical, mental, or moral development of children should only be made available in such a way as to ensure that children will not normally see it.

As such, the Commission considers it appropriate to retain a general obligation for VSPS providers to establish and operate age verification systems with respect to such content.

The Commission has revised the more specific obligations in Part B to refer to “age assurance”, rather than “age verification”, in recognition of the appropriateness of the term to capture a range of techniques. It should be noted that the term “age verification” is used in Part A to reflect the language of the AVMS Directive.

Part B’s provisions relate to age assurance in respect of adult-only video content. Further information on the Commission’s proposals in relation to definitions is provided in [section 5.2](#) of this document.

The Commission recognises that providers of online platforms, in complying with obligations to provide a high level of privacy, safety, and security of children on their service, shall not be obliged to process additional personal data in order to assess whether the recipient of the service is a child. The Commission acknowledges the provisions of Article 28 of the Digital Services Act in this regard, as well as the provisions of the General Data Protection Regulation.

The Commission recognises the provisions of Article 28b(3) of the AVMS Directive, that the personal data of minors collected or otherwise generated by VSPS providers to meet obligations relating to age assurance or parental controls shall not be processed for commercial purposes. The Commission reflects these provisions within the Code.



Further information on the Commission’s proposals relating to parental controls is provided in [section 5.8](#) of this document.

The Commission maintains its position that self-declaration of age is not effective to accurately assess the age of users. The Commission does not consider that self-declaration alone could sufficiently limit children’s exposure, or risk of exposure, to content that may impair their physical, mental, or moral development – due to the ease of circumvention of self-declaration.

For these reasons, the Commission considers it appropriate to require that VSPS providers that permit adult-only video content must ensure, through age assurance, that children cannot normally see such content.

In relation to the setting of targets for the accuracy and effectiveness of age assurance measures implemented, the Commission considers that the setting of such targets and the making of such reports requires further deliberation. The Commission reserves the right to use its information-gathering powers under the 2009 Act as amended to retrieve relevant data from VSPS providers, without imposing an obligation in the Code at this time.

The Commission has removed the obligation in the Code to restrict the access of children to services. The Commission agrees that there is potential for harm when underage users are able to open accounts on video-sharing platforms.

The revised draft Code contains a number of measures that reduce the potential harm:

- It requires VSPS providers to implement restrictions that preclude the uploading and sharing of several categories of harmful video content, and to remove such content once it is flagged to them.
- It requires VSPS providers that permit pornography or depictions of gross or gratuitous violence to use age assurance so that minors cannot normally see such content.
- It requires VSPS providers that permit users aged 15 and under to make a range of parental controls available.
- It requires platforms to use age verification, where appropriate, depending on the size and nature of the service, to protect minors from video content which may impair their physical, mental and moral development.

The Commission also notes that there are provisions in the Digital Services Act that require platforms to ensure the safety, security and privacy of minors and – in the case of platforms designated as Very Large Online Platforms by the European Commission – to identify and mitigate negative effects on minors.

The effect of these provisions is that platforms must take suitable measures to ensure that the way they operate does not cause harm as a result of underage users being able to open accounts.

The Commission notes that requiring platforms to implement age verification measures at the point of account creation may impinge on the privacy and freedom of expression of adults and older children, and on their right to access lawful content. Depending on the nature of a platform, there may be other ways to address the risk of harm as a result of underage account opening.

The Commission therefore does not consider it appropriate at this time to impose a specific obligation mandating all platforms to use age verification at the point of account creation. The Commission will use its supervisory and enforcement powers to ensure that service providers meet their obligation to ensure that they operate in a way that does not cause harm to minors.

5.7. Content Rating

Included in Part A?

Yes: Part A contains a general obligation for VSPS providers to, as appropriate, establish and operate an easy-to-use content rating system, allowing VSPS users to rate content referred to in Article 28b(1)(a)-(c) of the AVMS Directive.

Included in Part B?

Yes: Part B contains a requirement that, where VSPS providers do not have terms and conditions that preclude the uploading or sharing of adult-only video content, they must establish an easy-to-use content rating system to allow users who upload videos to rate such content.

Overview of changes

- Clarification provided: content rating systems are to allow uploaders of user-generated video content to rate their content as adult-only.
- Introduction of a provision to ensure that uploaders can be transparent in their content ratings for the benefit of other users.

Proposals for public consultation

Sections 11.22 and 11.23 of the consultation draft Code proposed that service providers establish and operate easy-to-use content rating systems, enabling users to rate content in terms of age-appropriateness, and to indicate the age for which an uploader believes their content is suitable.

It was also proposed that those content rating systems be objective, and that users' compliance with that system be promoted by service providers.

Overview of comments

Respondents generally welcomed the consultation draft Code's proposal to introduce content rating systems, while raising issues in relation to the evolving capacities of the child, the subjectivity of content ratings, responsibility for content rating, and alignment with age classification systems that exist across countries. Respondents recommended specific characteristics that they believed should be prescribed by the Code for content rating systems, with some reference to existing content rating and age classification systems.

Respondents differed in views over whether content ratings should be limited to adult content (i.e. content for users over the age of 18). Some respondents suggested that offering granular age ratings may not be feasible at the scale required for user-generated content uploaded to VSPS, and would require significant human resourcing to moderate.

In addition, respondents submitted that allowing all users to rate content, including user-generated content that is indissociable from video content, would be subject to abuse, particularly as a result of the subjectivity involved. Respondents requested that only the uploaders of content would be able to rate that content. Respondents queried how content ratings would be displayed on services.

Respondents raised issues relating to the proportionality of requiring the implementation of content rating systems for content that the consultation draft Code would either prohibit or make inaccessible for children.

The Youth Advisory Committee raised the issue of the volume and speed at which content is produced on VSPS, and the difficulties this causes in assessing content. The Committee also discussed the ability of content rating systems to account for graphic content provided in historical or public interest.

Commission response

The Commission is required by Article 28b(3)(g) of the AVMS Directive to ensure that VSPS providers shall, as appropriate, establish and operate easy-to-use systems allowing users of video-sharing platforms to rate the content referred to in Article 28b(1) of the AVMS Directive.

As such, the Commission considers it appropriate to retain requirements in Part A and Part B for VSPS providers to enable users to rate content on their services.

The Commission also considers it necessary, to this end, to ensure through Part B that users who upload video content can rate it as adult-only and be transparent in such content ratings for the benefit of other users.

In light of the need to have due regard to the nature of the service provided, Part B provides that content rating requirements shall only apply to those services that permit adult-only video content, as defined in the Code.

The Commission also acknowledges the risks of allowing all users to rate all content, including user-generated content that is indissociable from video content. Part A does not extend to user-generated content that is indissociable from video content, and does not specify which users should be allowed to rate the content concerned. Part B provides that content rating systems would allow only the uploader of content to rate that content, and would allow only for the rating of user-generated videos.

5.8. Parental Controls

Included in Part A?

Yes: Part A contains a general obligation for VSPP providers to, as appropriate, provide for parental control systems that are under the control of the end user, with respect to content which may impair the physical, mental, or moral development of minors.

Included in Part B?

Yes: Part B contains requirements that VSPP providers whose terms and conditions permit users under the age of 16 shall provide for parental control systems with respect to video content and audiovisual commercial communications which may impair the physical, mental, or moral development of children. Part B also sets out further requirements on the purpose, function, and provision of parental control systems.

Overview of changes

- Part B specifies that parental control systems must be provided where VSPP providers' terms and conditions permit users under the age of 16.
- Part B sets out the minimum functions mandated for parental control systems.
- Removal of obligations in relation to parental control systems for live-streaming functionality or content.

Proposals for public consultation

Sections 11.24 through 11.28 of the consultation draft Code set out a number of obligations relating to parental controls. This included an obligation on service providers to supply parental control systems with respect to illegal and regulated content, to explain to and draw the attention of users to those systems, and to ensure that those systems are offered as an option to new users on account sign-up.

It was also proposed that service providers ensure that parental control systems allow for the option of preventing a child from live-streaming content to other users or viewing live-streaming by other users.

Overview of comments

Respondents generally welcomed the consultation draft Code's proposals in relation to parental controls; the flexibility and high-level approach proposed were encouraged. Respondents highlighted that, while parental controls are a positive and important measure, VSPP should still be obliged to ensure that their service is safe for children. Respondents emphasised that this obligation should be upheld by VSPP in light of the realities of children for whom parents or guardians may generate harmful content, may not act in the best interests of the child, or may not be present in children's lives to use such parental controls.

Respondents made a number of specific recommendations for tools and functionalities that they believed the consultation draft Code should impose in respect of parental controls. Other respondents gave examples of parental control measures that are already implemented by VSPP.

Some respondents welcomed the consultation draft Code's obligations relating to live-streaming. However, others raised concerns that these obligations appeared to extend beyond the requirements of the AVMS Directive. Certain respondents shared a view that the AVMS Directive does not apply to any live-streamed content regardless of its potential harm. Concerns were also expressed that such a requirement would create confusion among parents, and lead to differing approaches across jurisdictions, as VSPP which are not based in Ireland would potentially not restrict live-streaming in such a way.

Respondents highlighted a need to distinguish between children of various ages and to take into account the evolving capacities of children. Respondents stated that, for older children, parental controls may interfere disproportionately with rights to privacy, freedom of expression, and information. Respondents noted the differing ages of digital consent across Member States.

Respondents also remarked that the consultation draft Code stated that parental controls would apply in respect of illegal content, which is, in any event, prohibited.

Commission response

The Commission is required by Article 28b(3)(h) of the AVMS Directive to ensure that VSPS providers, as appropriate, provide for parental control systems that are under the control of the end-user with respect to content which may impair the physical, mental or moral development of minors.

As such, the Commission considers it appropriate to retain requirements in the Code that VSPS providers shall provide for parental control systems that are under the control of the end-user with respect to such content.

The Commission notes responses submitting that parental controls do not, on their own, make a service safe for children. Equally, the Commission notes that the implementation of the other measures within the Code does not mean that the protections otherwise offered by parental controls are in place.

The Commission recognises that parents and legal guardians have the primary responsibility for the upbringing and development of their children. The Commission therefore considers it appropriate that parental control systems must be offered so that parents and legal guardians can exercise their judgement with respect to content and audiovisual commercial communications impacting the development of their children.

As such, the Commission has inserted a number of provisions in Part B that require parental control systems to have particular functions, which allow the end-user to place certain restrictions on children's viewing, including time limits, or to prevent a child's uploaded content from being viewed by users unknown to the child.

In recognition of the differences between children of varying ages, and in recognition of the evolving capacities of children, Part B specifies that parental control systems should only be implemented in respect of users under the age of 16. This is intended to apply Part B's requirements in a more proportionate way only to those VSPS providers who permit users under 16.

The reference to illegal content has been removed from the requirements relating to parental controls has been removed from the revised draft Code. The reference in the previous version of the Code was a drafting error.

In relation to live-streaming, the Commission is of the view that access to such content, and the functionalities permitting the creation and viewing of such content, can create particular risks concerning the dissemination of restricted video content or harmful audiovisual commercial communications, owing to the difficulties in addressing such content in real time. The Commission acknowledges the consultation responses in relation to live-streaming.

The Commission considers that live-streamed content is addressed by the Code's focus on video content, regardless of whether such content is live. As such, the Commission does not propose to address live-streaming separately at this time.

5.9. Complaints

Included in Part A?

Yes: Part A contains a general obligation for VSPS providers to, as appropriate, establish and operate transparent, easy-to-use, and effective procedures for the handling and resolution of users' complaints to the VSPS provider in relation to the implementation of measures relating to reporting or flagging, age verification, content rating, and parental controls.

Included in Part B?

Yes: Part B contains requirements for VSPS providers to establish and operate complaints procedures relating to the implementation of certain measures, and specifies the nature in which information on complaints-handling is provided, and the nature of how complaints should be handled.

Overview of changes

- There is now a general obligation in Part A for complaints-handling as appropriate.

Proposals for public consultation

Sections 11.29 through 11.31 of the consultation draft Code proposed a number of obligations relating to complaints handling. This included an obligation on service providers to establish and operate procedures for the handling and resolution of certain complaints made by users.

Under the consultation draft Code, users must be able to complain about how service providers have implemented their obligations relating to:

- Reporting and flagging;
- Age verification;
- Content rating; and
- Parental controls.

The consultation draft Code stipulated that service providers shall handle complaints in a diligent, timely, non-discriminatory, and effective manner.

Overview of comments

Respondents generally welcomed the consultation draft Code's proposals in relation to complaints-handling. Respondents expressed concerns relating to the absence of common standards, baselines, timelines, or processes for VSPS, which they noted may prevent users from receiving effective remedies. Some respondents raised concerns that the requirement was not to establish procedures to handle complaints relating to content.

Some respondents highlighted that the requirements overlapped with out-of-court dispute resolution processes provided for by the Digital Services Act. Respondents recommended specific features of complaint-handling systems that the Commission should prescribe, or examples of measures that are currently implemented by VSPS.

Respondents also queried the scope of complaints covered by the consultation draft Code's proposals, including the grounds on which users can make complaints in relation to the implementation of named measures. Respondents noted potential difficulties in relation to implementing effective and scalable complaints mechanisms for the relevant measures.

Commission response



Article 28b(3)(i) of the AVMS Directive requires the Commission to ensure that VSPS providers, as appropriate, establish and operate transparent, easy-to-use, and effective procedures for the handling and resolution of users' complaints to the VSPS provider in relation to the implementation of age verification, parental control, content rating, and reporting and flagging measures.

As such, the Commission considers it appropriate to retain requirements in the Code for VSPS in relation to complaints handling concerning age assurance, content rating, parental controls, and reporting and flagging, and also in relation to the nature of how complaints should be handled – that is, in a diligent, timely, non-discriminatory, and effective manner.

The Commission notes that the provisions of Article 20(1) of the Digital Services Act apply to certain complaints, and the revised draft Code's provisions exclude such complaints from the application of the Code as they are covered by the Digital Services Act.

The Commission does not consider it appropriate to prescribe the particular timelines or processes that constitute complaints-handling systems at this time, so as to allow VSPS providers the flexibility to structure such systems, taking into account the size and nature of the service provided.

The Commission has revised the draft Code to reflect that VSPS providers may optionally provide for out-of-court redress mechanisms, including mediation, to be available for dispute settlement between VSPS users and VSPS providers relating to certain applications of the AVMS Directive. Such mechanisms may enable disputes to be settled impartially and shall not deprive the user of the legal protection afforded by national law. The Commission considers that the new provision better reflects the duty to encourage alternative dispute resolution processes, including the use of mediation. The Commission also notes the provisions of Article 21 of the Digital Services Act regarding the entitlement of service recipients to select certified out-of-court dispute settlement bodies to resolve relevant complaints.

5.10. Terms and Conditions: Audiovisual Commercial Communications

Included in Part A?

Yes: Part A imposes general obligations on VSPS providers to comply or take appropriate measures to comply with Article 9(1) of the AVMS Directive with respect to audiovisual commercial communications. It contains a general obligation for VSPS providers to have a functionality for users who upload user-generated videos to declare whether such videos contain audiovisual commercial communications.

Part A also requires a VSPS provider to clearly inform users of the presence of audiovisual commercial communications where such communications are declared or the provider has knowledge of them.

Included in Part B?

Yes: Part B imposes obligations on VSPS providers to ensure that audiovisual commercial communications are easily recognisable as such, that users are required to declare them under the terms and conditions, and that users who upload these can declare these as such, that the VSPS clearly informs users of such a declaration, that subliminal techniques and surreptitious commercial communications are prohibited, and that the uploading and sharing of certain kinds of harmful or restricted audiovisual commercial communications are prohibited.

Overview of changes

- The obligation to terminate user accounts for infringements of terms and conditions relating to audiovisual commercial communications has been removed.
- The text of the Code relating to suspension(s) of user accounts has been aligned with the wording provided in Article 23 of the Digital Services Act.

Proposals for public consultation

Sections 12.1 through 12.5 of the consultation draft Code set out a number of obligations relating to the terms and conditions of video-sharing platform services, with particular reference to audiovisual commercial communications not marketed, sold or arranged by the VSPS, including:

- Ensuring that audiovisual commercial communications are readily recognisable as such;
- Prohibiting audiovisual commercial communications that are surreptitious or that use subliminal techniques; and
- Prohibiting audiovisual commercial communications that are harmful to the general public and to children, as defined elsewhere in the Code.

It was also proposed through sections 12.10 and 12.11 that service providers shall oblige users to declare when they are uploading user-generated video that contains audiovisual commercial communications, and where such declarations are made the service provider shall ensure that users are clearly informed of the declaration.

The consultation draft Code stated that service providers shall not be restricted from, or required to prohibit, audiovisual commercial communications for alcohol, if the service provider implements effective measures to ensure that these are not normally viewed by children.

Sections 12.6 to 12.9 contained similar provisions in respect of audiovisual commercial communications that are not marketed, sold or arranged by the VSPS.

The consultation draft Code contained an obligation on VSPS to suspend or terminate accounts which they determined to have repeatedly infringed terms and conditions.

Overview of comments

Respondents generally welcomed the consultation draft Code's proposal to ensure that audiovisual commercial communications be identified to users, and supported the two-tiered approach to the regulation of audiovisual commercial communications based on whether they are "marketed, sold, or arranged" by VSPS providers.

In respect of the declaration of audiovisual commercial communications, some respondents called for the Code to prescribe a labelling system to be used consistently across services.

Respondents requested further refinement of the definitions of audiovisual commercial communications, including defining the term "commercial communication", and defining those audiovisual commercial communications which are or are not "marketed, sold, or arranged" by the VSPS provider.

Some respondents shared a view that it was disproportionate to require VSPS providers to implement effective measures to ensure audiovisual commercial communications for alcohol are not normally viewed by children. Respondents stated that such measures are not provided for in the AVMS Directive, and that they are not in line with existing industry practice in relation to advertisement targeting controls.

Concerns were raised in relation to the consultation draft Code's requirement to suspend or terminate accounts for infringement of terms and conditions; some respondents stated that the requirement is not provided for within the AVMS Directive.

In addition, it was highlighted that the Digital Services Act only provides for suspension, and not termination, of services to users, and only where a user frequently provides manifestly illegal content.

Respondents were not generally favourable to self-regulation in terms of audiovisual commercial communications.

The Youth Advisory Committee raised the issue of indirect marketing to young people, including of alcohol products. The Committee stressed the importance of defining commercial communications as opposed to non-commercial communications. The Committee also expressed concern in relation to the potential for political advertising to be directed at young people.

Commission response

The Commission is required by Article 28b(2) of the AVMS Directive to ensure that VSPS providers:

- comply with the requirements of Article 9(1) of the AVMS Directive with respect to audiovisual commercial communications that are marketed, sold or arranged by those VSPS providers; and
- take appropriate measures to comply with the requirements of Article 9(1) of the AVMS Directive with respect to audiovisual commercial communications that are not marketed, sold or arranged by those VSPS providers.

The requirements in respect of audiovisual commercial communications that are marketed, sold or arranged by the VSPS provider have been retained.

Article 28b(3)(b) of the AVMS Directive requires the Commission to ensure that VSPS providers, as appropriate, include and apply in their terms and conditions the requirements set out in Article 9(1) of the AVMS Directive for audiovisual commercial communications that are not marketed, sold or arranged by the VSPS provider.

These requirements include that audiovisual commercial communications are readily recognisable as such, that subliminal techniques and surreptitious commercial communications are prohibited, and that harmful audiovisual commercial communications are prohibited, have been retained in the Code. The requirement that users be required to declare audiovisual commercial communications under the terms and conditions has also been retained.

The Commission is required by Article 28b(3)(c) of the AVMS Directive to ensure that VSPS providers, as appropriate, have a functionality for users who upload user-generated videos to declare whether such videos contain audiovisual commercial communications as far as they know or can be reasonably expected to know. This provision has been retained in the Code. The Code also requires a VSPS provider to clearly inform users of the presence of audiovisual commercial communications where such communications are declared or the provider has knowledge of them.

The Commission notes that Article 9(1) of the AVMS Directive provides that audiovisual commercial communications shall not be aimed specifically at minors. The Commission does not believe that such a restriction means that VSPS providers should be prohibited from permitting advertisements for alcohol. However, the Commission is of the view that it is necessary to ensure that children do not normally see such advertising. The Commission, through Part B, considers it appropriate to require VSPS providers to prevent children from seeing such advertising by implementing appropriate measures.

The obligation to terminate accounts has been removed from the relevant section of Part B. Instead, the Commission has revised the Code to oblige VSPS providers suspend users for a reasonable period of time, following a prior warning, for infringing terms and conditions and related obligations of the service. Further information on the Commission's proposals in relation to suspension and termination can be accessed in [section 5.4](#) of this document.



5.11. Media literacy

Included in Part A?

Yes: Part A contains a general obligation for VSPS providers to, as appropriate, provide for effective media literacy measures and tools and raise users' awareness of those measures and tools.

Included in Part B?

Yes: Part B requires each VSPS provider to publish an annual action plan specifying the measures it will take to promote media literacy.

Overview of changes

- The requirement to report on the impact of media literacy measures has been removed from the Code.

Proposals for public consultation

Sections 13.1 through 13.2 of the consultation draft Code set out that service providers shall provide effective media literacy measures and tools, take steps to raise users' awareness of these, and publish an action plan to be updated annually that specifies the measures the service provider will take to promote media literacy.

The consultation draft Code also proposed an obligation on service providers to report to the Commission on the impact of measures taken.

Overview of comments

Respondents generally welcomed the consultation draft Code's proposals in relation to media literacy. Many respondents highlighted the value of media literacy and associated skills for the overall aim of enhancing safety in digital spaces. Respondents did, however, indicate that they would like the Commission to further expand on obligations related to media literacy; some respondents suggested specific wording or obligations to be imposed. Respondents also shared views as to the practices to be adopted in VSPS' media literacy action plans, as set out in the consultation draft Code.

Some respondents highlighted that the requirements to report on the impact of measures taken and to set out annual action plans were disproportionate to achieving the aims of the Code. Respondents stated that there are external dependencies to carrying out media literacy initiatives, and that any such requirements should consider the size and nature of the service provided.

The Youth Advisory Committee highlighted the importance of media literacy and user empowerment, and was in favour of placing an obligation on VSPS providers to support media literacy.

Commission response

Article 28b(3)(j) of the AVMS Directive requires the Commission to ensure that VSPS providers, as appropriate, provide effective media literacy measures and tools, and raise users' awareness of those measures and tools.

As such, the Commission considers it appropriate to retain requirements in the Code that VSPS providers provide effective media literacy measures and tools, and take steps to raise users' awareness of those measures and tools.

The Commission believes that transparency is required in order to raise users' awareness of media literacy measures and tools.

As such, the Commission considers it appropriate to retain a specific requirement in Part B to publish an annual action plan which specifies the measures a VSPS provider will take to promote media literacy.

The obligation to report on the impact of media literacy measures taken has been removed, as the Commission considers that the making of such reports requires further deliberation. The Commission can use its information-gathering powers under the 2009 Act as amended to retrieve relevant data from VSPS providers, without imposing an obligation in the Code at this time.

5.12. Personal data of children

Included in Part A?

Yes: Part A obliges VSPS providers not to process, for commercial purposes, the personal data of minors collected or otherwise generated by providers pursuant to age verification or parental control measures.

Included in Part B?

Yes: Part B requires VSPS providers to ensure that they do not process, for commercial purposes, the personal data of children collected or otherwise generated by providers when implementing obligations relating to age assurance or parental controls.

Overview of changes

- No significant changes made.

Proposals for public consultation

Section 13.3 of the consultation draft Code required service providers to ensure that the personal data of children, collected or generated when implementing the Code's obligations relating to age verification and parental controls, is not processed for commercial purposes.

Overview of comments

Respondents generally welcomed the consultation draft Code's proposals in relation to the personal data of children. However, some respondents suggested that the proposals be changed to ensure that such personal data is not processed for any purpose other than age verification or parental controls. Respondents made suggestions in relation to how such data protection would work in practice, as well as specific recommendations to extend the consultation draft Code's proposals to include how such data is handled.

Commission response

Article 28b(3) of the AVMS Directive requires that the personal data of minors, collected or otherwise generated by VSPS providers following obligations in relation to age verification and parental controls, shall not be processed for commercial purposes, such as direct marketing, profiling, or behaviourally targeted advertising.

As such, the Commission considers it appropriate to retain requirements in the Code for VSPS providers that concern the personal data of children that is collected or otherwise generated when implementing obligations relating to age verification, age assurance, or parental controls.

The Commission notes consultation responses relating to the processing of children's data. The Commission does not propose to expand the relevant provisions in the Code at this time, noting that the scope of the Code is to apply the requirements of the AVMS Directive.

The Commission notes the existing legal and regulatory frameworks in relation to privacy to which VSPS providers are already subject – including, but not limited to, the General Data Protection Regulation, and the provisions of the Digital Services Act in relation to the privacy of minors.

5.13. Reporting

Included in Part A?

No.

Included in Part B?

Yes: Part B contains a requirement that each VSPS provider shall report to the Commission on the provider's handling of communications from users raising complaints or other matters.

Overview of changes

- Introduction of wording to allow the Commission to specify other intervals for reporting on complaints-handling.

Proposals for public consultation

Section 13.4 of the consultation draft Code contained a requirement for service providers to report to the Commission on the provider's handling of communications from users raising complaints or other matters every three months.

Overview of comments

Respondents generally welcomed an obligation to report on complaints handling.

Respondents' views differed concerning the required frequency of reporting, with some welcoming the requirement to report every three months, and others highlighting that the consultation draft Code's proposals did not align with provisions of the Digital Services Act.

Respondents also sought clarity on the nature of matters that could come under scope for reporting, including the nature of complaints that could be considered, the nature of other matters that could be considered, and the manner of reporting to be specified by the Commission.

Many respondents made suggestions as to the contents, format, and publication of such reporting.

Commission response

The Commission is required by Article 28b(5) of the AVMS Directive to establish the necessary mechanisms to assess the appropriateness of measures taken by VSPS providers. It is the Commission's view that the assessment of appropriateness of measures requires that VSPS providers report on various aspects of their activities.

Section 139K(6) of the Act also requires that service providers be required under a Code to report to the Commission at intervals of no longer than three (3) months in relation to complaints-handling or other matters.

As such, the Commission considers it appropriate to retain the requirement in Part B for VSPS providers to report on their handling of communications from users raising complaints or other matters. However, in order to introduce a degree of flexibility, the Commission has introduced wording that allows for the specification of reporting intervals other than every three (3) months, either generally or with regard to a particular VSPS provider.

The Commission wishes to further investigate the manner of reporting required, and intends to engage with the VSPS providers concerned, with due consideration for the size and nature of the service provided in each case.

Further information on the Commission's proposals in relation to complaints can be accessed in [section 5.9](#) of this document.



5.14. Supervision and enforcement of the Code

Included in Part A?

Yes: Part A contains a section on “Compliance and Enforcement”.

Included in Part B?

No.

Overview of changes

- Clarification has been provided in Part A to state that a failure by a VSPS provider to comply with the Code shall be a contravention for the purposes of Part 8B of the 2009 Act.
- The previous summary of supervision and enforcement procedures has been removed from the text of the Code. The statutory procedures described still apply.

Proposals for public consultation

Section 14 of the consultation draft Code summarised the legal provisions underpinning the Commission’s ability to supervise and enforce the implementation of the Code.

Overview of comments

Respondents generally expressed support for the supervision and enforcement provisions set out in the consultation draft Code.

Respondents sought further clarity as to how the provisions would work in practice, with a particular focus on the transparency arising from these provisions, as well as on sanctioning and the use of financial administrative sanctions. Some respondents proposed ways of aligning these provisions with other existing legal frameworks.

Commission response

The supervision and enforcement provisions of the consultation draft Code were a summary of the legislation that allows for the Commission’s powers and activities in this regard. The Commission is not empowered to amend the legislation summarised in the consultation draft Code.

As the section of the consultation draft Code constituted a summary of procedures, and not any standalone obligation to be imposed on VSPS providers under the draft Code, the Commission considers it appropriate to remove this section from the revised draft Code. The summary is provided for reference in [Annex 2](#) of this document.

This is in the interests of streamlining the revised draft Code document, and reflects the fact that VSPS providers should in all cases refer to, and obtain advice on, the specific legislative provisions rather than referring to a summary prepared for information only.

For the avoidance of doubt, the Commission confirms that the relevant provisions – Part 8B of the 2009 Act – continue to apply. The Commission has also clarified in Part A of the revised draft Code that a failure to comply with the Code shall be a contravention for the purposes of Part 8B of the Act.

Annex 1: Matters to be considered

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

Evidence

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

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

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

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

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

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

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

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

Online Safety Research 2023 (November 2023)

In order to gather further information about the views of the public on the regulation of video-sharing platform services, the Commission appointed IPSOS B&A to undertake two surveys on its behalf.

The first survey focused on usage by the public of websites and apps that provide video. Questions addressed, amongst other matters, the frequency of use of websites and apps and frequency of watching, sharing or uploading videos.

The second survey was focused more on the potential harms caused by video content and regulatory responses to these potential harms. The impact of potential harms on certain groups in society was explored and respondents were also asked for their opinion on who should be responsible for protection.

Copies of the survey responses may be found [here](#) (Part 1) and [here](#) (Part 2).

Responses to the Commission's public consultation on the draft Code (December 2023 - January 2024)

The public consultation is the subject of this document.

The Commission's consultation with the Youth Advisory Committee on the draft Code

Please see [section 1.2.](#) of this document.

Specific matters to be considered under 139M

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

Respondents to the Call for Inputs and the public consultation highlighted the importance of transparency and accountability across a range of measures to be introduced as part of any Online Safety Code.

The PA Harms Report's section 7.1 provides a summary of available evidence about the desirability of services having transparent decision-making processes in relation to content delivery and content moderation.

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

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

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

The impact of automated decision-making on those processes.

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

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

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

The 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 Commission was not intending to introduce obligations relating to "supplementary measures" included in its December consultation paper, and these are not included in the revised draft Code. The Commission acknowledges the volume of responses received in relation to recommender systems in particular, and believes that the making of rules in this regard merits further deliberation.

The revised draft Code's obligations are technology-neutral in nature. The Code does not seek to influence the use of automated processes to impact content moderation or content delivery. For instance, the Code permits VSPS providers to adopt effective age assurance measures that may include age estimation via automated means.

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

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

With the restructuring of the Code into a Part A and a Part B, the general obligations in Part A are imposed "as appropriate". Clarification has been provided in the revised draft Code that the "appropriate measures" taken by VSPS shall be those that the Commission is satisfied are practicable and proportionate, and that if issues arise as to the appropriateness of the measures, it will be a matter for the Commission to ultimately determine.

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

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

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

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

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

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

- online content associated with terrorism;
- online content associated with child sexual abuse;
- online content by which a person's behaviour constitutes harassment or harmful communication;
- online content associated with audiovisual commercial communications.

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

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

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

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

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

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

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

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

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

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

The Commission has obliged restrictions on harmful video content through the revised draft Code in order to minimise the risk of harm, and in particular harm to children, from the availability of harmful content and risk of exposure on VSPS. The revised draft Code provides protections for children from adult-only video content, such as through content rating, age assurance, and parental controls. The revised draft Code also provides protections for children from harmful audiovisual commercial communications.

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 revised draft Code "Regulatory Principles Relevant to the Code" highlights its considerations relating to the rights of providers of designated online services and of users of those services.

The Commission has taken into account the applicable rights when formulating the revised draft Code and has taken a rights-balancing approach throughout, including the rights of users and service providers. Specific examples include:

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

The e-Commerce Compliance strategy prepared by the Commission.

The Commission notes that the section "e-Commerce Compliance Strategy" within the revised draft Code highlights the Code's alignment with the Commission's published e-Commerce Compliance Strategy.

Annex 2: Supervision and Enforcement

For convenience, this section provides a summary of the enforcement procedure in respect of the Code. This summary is not intended to replace, limit or vary any provision of the Act nor is this summary intended to act as guidance or rules with respect to the operation of any investigation.

Under section 139O of the Act, the Commission may by notice in writing require the provider of a designated online service to provide the Commission with information relating to the provider's compliance with an online safety code over any period, and may require such information to be provided periodically for a succession of periods.

It is an offence for a provider to fail without reasonable excuse to comply with such an information notice or, in purported compliance with such an information notice, to provide false information, knowing that it is false or being reckless as to whether it is false.

Under section 139P of the Act, the Commission may appoint a person to carry out an audit:

- to enable the Commission to assess compliance by the provider with provisions of the Code that relate to the handling of communications by which users raise complaints or other matters relating to designated online services with the providers of those services; and
- to provide the Commission with information to identify any trends in complaints or other matters raised by such communications that may be relevant to the Commission's functions.

The Commission may by notice in writing require the provider of a designated online service to co-operate with any person appointed to carry out such an audit. It is an offence for a provider to fail without reasonable excuse to comply with such a notice.

Under section 139Q of the Act, a failure by a video-sharing platform service provider to comply with the provision of this Code shall be a contravention for the purposes of Part 8B of the Act.

Where there is reason to suspect a contravention of this Code, an investigation will be carried out on notice to the video-sharing platform service provider and a report will be produced by an authorised officer which is provided to the Commission.

The video-sharing platform service provider will be afforded an opportunity to make submissions on the draft report prior to its finalisation and submission to the Commission.

After receiving the report, the Commission will give the provider an opportunity to make submissions in such manner as it considers appropriate.

The Commission will thereafter make a decision whether, on the balance of probabilities, the video-sharing platform service provider has committed a contravention of this Code and, if so, whether or not to impose an administrative financial sanction.

A written notice of the decision and the reasons for it will be given to the video-sharing platform service provider. If the Commission has decided that an administrative financial sanction should apply, the notice shall *inter alia* invite submissions in relation to the amount of the sanction.

The amount of an administrative financial sanction shall not exceed:

- in the case of an individual, €20,000,000, or

- in the case of a video-sharing platform service provider that is not an individual, €20,000,000 or, if greater, 10 per cent of its relevant turnover in the financial year preceding the date of the decision.

In determining the amount of administrative financial sanction to be applied, the Commission shall have regard to the factors as set out in the Act.

A video-sharing platform service provider may appeal the decision to a court on the grounds set out in the Act and the Commission's decision shall not take effect unless it is confirmed on appeal or on summary application to the Circuit Court.

If the Commission is of the view that the contravention is continuing, the Commission may issue a notice to end contravention. A video-sharing platform service provider who without reasonable excuse fails to comply with a notice shall be guilty of an offence under the Act.

If, during the course of an investigation or otherwise, it appears to the Commission that content available on a designated online service is harmful online content, the Commission may issue a content limitation notice to a video-sharing platform service provider.

