

Consultation Responses to:

The Draft Audiovisual On-Demand Media Service Code & Rules

Report by



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Chapter 1: Introduction

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

This document provides a summary of the responses to the public consultation on the Draft Audiovisual on-Demand Media Service Code and Rules¹ (“the Draft Code”) launched by the Coimisiún na Meán on the 4 July 2024.

The Act gives effect to the Audiovisual Media Services Directive (“AVMSD”) in national law by requiring the Commission to make media service codes and media service rules to regulate on-demand providers that are established in or operate primarily from Ireland. The Commission may also make codes and rules that regulate matters in addition to the minimum standards required by the AVMSD, in diverse areas such as rules relating to privacy and fairness, objectivity and impartiality in news and current affairs.

Media service codes are made by the Commission under Section 46N of the Act. Such codes are generally designed to address the content of programmes, ensuring that all content made available on the service adheres to established standards. This includes, but is not limited to, regulations that relate to content that may be harmful to children, content that incites hatred against groups, and the use of commercial communications including advertising, sponsorship and product placement.

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

The purpose of this document is to provide an accessible overview of the responses to the consultation on the Draft Code. It is not to evaluate responses, nor provide any conclusions or recommendations (legal or regulatory). It provides a summary of the representations made but it should be noted that the Commission has read and evaluated all responses and taken them into account in reaching any decisions.

A total of 17 responses to the consultation were received and Figure 2 below categorises responses according to the types of organisations that provided submissions. The full list of respondents and organisational type are listed in alphabetical order in Annex 1. Many of the representations were long and detailed indicating a high level of interest, dedication, and a significant amount of work on the part of respondents to the consultation. The total volume of responses amounted to 81 pages and given the volume and depth of the responses, it was not possible to comprehensively cover all argumentation and evidence provided in every submission.

The authors of this report have made all efforts to faithfully and fairly present the main findings and opinions expressed by all respondents in their submissions. In most cases, responses are attributed by including the name of the respondent in brackets immediately after the relevant point is made. In some cases, references to the response of an organisation will be identified using the broad categories in the table below.

¹ On 4 July 2024, the Coimisiún na Meán opened a public consultation on the first draft of the Audiovisual on-Demand Media Service Code and Rules, see <https://www.cnam.ie/vod-code-consultation/>

Sometimes multiple respondents have made the same or similar points. In those instances, the point is attributed to multiple respondents by the inclusion of multiple names in brackets following the relevant point.

The document is structured around the 8 questions posed in the consultation document (see Annex 2). Within each chapter of this report, questions dealing with related aspects of the Draft Code are addressed, with clear reference to the question number of the consultation. Some responses did not follow the structure of the questions in the consultation, and in those instances the very best effort has been made to ensure that all opinions, principles, priorities, and approaches are reflected in this document, in the most appropriate chapter.

It is anticipated that these responses (dependent upon the wishes of the relevant organisations and individuals) will be published online. These detailed responses will be further examined by the Commission in the process of developing the Audiovisual On-Demand Media Service Code and Media Service Rules (or “the Code”). The availability of the full responses online also allows for the general public and any other interested parties to delve deeper into the argumentation and evidence provided by respondents.

In addition, some organisations summarised, referenced and provided links to research and reports relevant to the issues discussed here. It was beyond the scope of this document to summarise or provide any comprehensive overview of research and evidence provided. Therefore, it is recommended to refer to the individual responses for the detail on research, and to access the reports and links that can be found in the individual submissions of the various organisations.

Chapter 2: Tabled presentation of categories of respondents and respondents

Figure 1: Breakdown of responses from respondent generated by chapter of this report

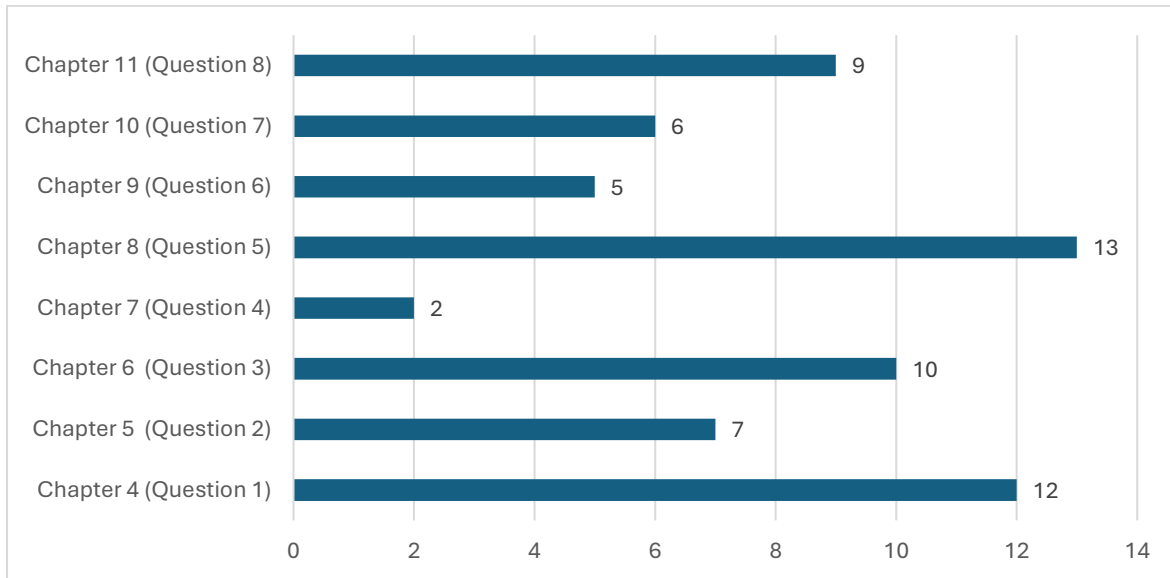


Figure 2: Breakdown by type of respondents



Chapter 3: General Comments on the Draft Code

The following is a summary of comments made by respondents to the consultation that were general in nature and were not directed at any specific question asked in the consultation.

It was considered, in line with Article 4a of the AVMSD, that the Commission should encourage media service providers to engage with the Advertising Standards Authority as a complementary measure to the requirements of the Draft Code, so that there is an enhanced system of audience protection. ([Advertising Standards Authority for Ireland, IAB Ireland](#))

It was believed that additional issues requiring clarification may arise in the future with the application of this Draft Code, demonstrating the need for a forum that could be used by stakeholders in the industry to appraise the Commission on the application of the Code and conformity in its application by service providers. ([On-Demand Audiovisual Media Services Group, hereinafter the “ODAS Group”](#))

The general risks associated with on-demand services for children and young people was considered to be multifaceted, involving exposure to harmful content, privacy issues, and negative behavioural impacts. To address these risks efficiently, it was recommended that the Code fully reflects the obligations and principles contained in the UN Convention on the Rights of the Child (“UNCRC”) and, in particular, Article 17, which emphasises the child’s right to access information from diverse sources, while also safeguarding them from harmful materials. Additionally, Articles 16, 13, 3, 19 and 34 of the UNCRC² should also be considered. ([Children’s Rights Alliance](#))

Concerns were raised that the Draft Code did not regulate certain aspects of functionality of on-demand media service providers, notably that such services can contribute to excessive screen time and addiction, which can impact physical health, sleep patterns, and academic performance. Hence, it was argued that the Code should set out clear obligations requiring on-demand media services to put in place measure that prohibit or limit features that may negatively impact the health or wellbeing of children and young people. ([Children’s Rights Alliance](#))

More generally, it was believed that a combination of regulatory measures and industry accountability is required to ensure a safer digital environment that respects children’s rights, and that on-demand service providers must fulfil their obligations under the UNCRC to ensure that children, young people, and their parents or caregivers are provided with the necessary information and resources to develop and enhance digital literacies, in line with their right to education and protection. ([Children’s Rights Alliance](#))

As with other consultations applicable to services in scope of the AVMSD, it was seen as important that the Commission reflect the need for codes that fit the parameters and risk profiles of specific services and it should be recognised that there are differences in the offerings of Video Sharing Platform Services (“VSPS”) and video-on-demand (“VOD”). ([Technology Ireland](#))

² Article 16 protects children’s right to privacy, highlighting the need for safeguards against unlawful interference in their personal data. Article 13 supports children’s right to seek and receive information through any media, though this must be balanced with protection from harmful content. Article 3 underscores that the best interests of the child must be a primary consideration in all actions, including those by private companies such as media providers. Article 19 requires that children be protected from all forms of physical or mental violence and abuse, necessitating safeguards against harmful content. Article 34 mandates protection from sexual exploitation and abuse.

Chapter 4: Sections 1-8 of the Draft Code (Consultation Q.1)

This question asked whether respondents had any comments on Sections 1-8 of the Draft Code and Rules. Section 1-8 of the Draft Code covered the following areas:

1. Introduction
2. Scope and Jurisdiction
3. Purpose, Preparation, and Application of the Code and Rules
4. Regulatory Principles Relevant to the Code and Rules
5. Severability
6. Waiver
7. Compliance and Enforcement
8. Complaints

General Comments on Sections 1-8

Surprise and disappointment was expressed that the Draft Code is largely based on the code developed by the ODAS Group of which the Commission remains an active member, but the introduction, scope or preparation sections of the Draft Code make no reference to this. It was requested that a mechanism is put in place to ensure active engagement and regular consultation between ODAS members and the Commission in light of the role it has played. This would provide a forum for stakeholders to raise issues of concern and provide clarity on aspects of the final Code and feedback on its practical application. (ODAS Group)

There was agreement with the principles and the suggested processes outlined in the Sections 1-8. (RTÉ) however, caution was urged against disturbing the careful balance struck by the AVMSD which ensures harmonisation across EU member states. (Technology Ireland)

Section 1 (Introduction)

It was noted that there was no reference to the European Accessibility Act (“EAA”) (Directive EU 2019/882) in Section 1.1 of the Draft Code and it was recommended that this should be remedied. The EAA is a directive that aims to improve the functioning of the internal market for accessible products and services, by removing barriers created by divergent rules in Member States. These products include equipment related to digital television services and access to audiovisual media services such as on-demand audiovisual media services. This requires audio media services to provide Electronic Programme Guides ‘which are perceivable, operable, understandable and robust and provide information about the availability of accessibility’; and ‘ensuring that the accessibility components (access services) of the audiovisual media services, such as subtitles for the deaf and hard of hearing, audio description, spoken subtitles and sign language interpretation, are fully transmitted with adequate quality for accurate display, and synchronised with sound and video, while allowing for user control of their display and use.’ (National Disabilities Authority)

Section 2 (Scope and Jurisdiction)

The view was firmly expressed that independent news publishers do not come under the definition of a relevant media service provider and therefore the Draft Code is not applicable to independent news publishers. (NewsBrands Ireland)

Section 4 (Regulatory Principles Relevant to the Code and Rules)

The principles outlined in this section were welcomed and, in particular, those relating to child protection and safety. However, to support further this approach it was suggested that Section 4 should also include explicit reference to other human rights treaties and obligations such as the European Convention on Human Rights; the UN Convention on the Right of the Child; and the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, commonly called the Istanbul Convention. In line with the views of the UN Committee on the Rights of the Child, the Code would strengthen the commitment to the rights of children and young people if it explicitly acknowledged that the digital environment ‘affords new opportunities for the realization of children’s rights, but also poses the risks of their violation or abuse’. ([Children’s Rights Alliance](#))

In addition, it was argued that the Commission as a public body has a duty to eliminate discrimination, promote equality of opportunity, and protect the human rights of public sector staff and users and consideration should be given to including these in the Code. ([Children’s Rights Alliance](#))

It was noted that Section 4.2 makes no reference to the requirement that the Commission should act in a manner consistent with the UN Convention on the Rights of Persons with Disabilities (“UNCRPD”). It was suggested that this should be remedied by recognising the right of persons with disabilities to take part on an equal basis with others in cultural life, and to take all appropriate measures to ensure that persons with disabilities enjoy access to television programmes in accessible formats. The UNCRPD also requires the freedom to seek, receive and impart information and ideas on an equal basis with others and through all forms of communication of their choice. ([National Disabilities Authority](#))

Section 6 (Waiver)

It was suggested that it was inappropriate to have the waiver (as set out in Sections 6.1 and 6.2) in a regulatory code issued by a regulator who can impose severe penalties in the event of a breach. Waiver language is appropriate for contracts between two parties. If such language is to be retained then, at a minimum, it should exclude the Accessibility Action Plan which is agreed by the Commission under Section 15.2. ([TG4](#))

Section 7 (Compliance and Enforcement)

It was argued that while the Draft Code advises complainants to get in touch with service providers in the first instance, the Commission should be proactive and conduct periodic research of the advertising (as well as product placement and sponsorship) landscape. For example, alcohol brands are increasingly using zero alcohol products to advertise to children. It is arguable that such advertising would be classed as using ‘subliminal techniques’ under the Draft Code. ([Alcohol Action Ireland](#))

Section 8 (Complaints)

It was argued that the Advertising Standards Authority has ‘well developed, robust and free complaints service’ accepted by the advertising community. As a cross-media industry regulator, the Advertising Standards Authority ensures a level of consistency across the media. It was therefore suggested that the Code should refer to alternative complaints handling processes such as those offered by the Advertising Standards Authority (additionally or alternatively the Commission’s website). ([The Advertising Standards Authority for Ireland and IAB Ireland](#))

It was suggested that the complaints mechanism appears overly vague. While it was acknowledged that a complaint should, in the first place, be made to the service provider, there appears to be very little information on the Commission's processes. It is essential that children and young people whose rights have not been respected by on-demand service providers have access to an effective remedy (with clear, prominent, and age-appropriate complaints procedures) if all other channels have been exhausted. ([Children's Rights Alliance](#))

It was noted that the EU Directive (2018/1808) states that 'each Member State shall designate a single, easily accessible, including by people with disabilities, and publicly available online point of contact for providing information and receiving complaints...' It was argued that making a complaint to a service provider, in the first instance, was not the quickest way to resolve an issue as stated by the Commission. It was further noted that the complexity of complaint systems and the lack of responses from service providers can lead to frustration and there should be one state-led complaints process in order to track complaints, identify patterns and trends and ensure that service providers respond to complaints in a timely and appropriate manner. ([Chime](#))

It was stated that complaints processes are an essential part of service provision, business improvement and quality assurance. The results of a statutory review of the Irish Sign Language Act 2017 were noted which concluded that the absence of an accessible complaint mechanism for Irish Sign Language users should be remedied promptly by providing a two-way mechanism where its users can make a complaint or submit feedback in Irish Sign Language on any matter, and receive appropriate responses through Irish Sign Language. ([National Disability Authority](#))

It was argued that while the Irish Sign Language Act 2017 (via the Access Rules) only applies to broadcast content and not to on-demand players or other non-broadcast mediums, it is nonetheless important that the Commission considers ways of making their complaints and information services accessible to Irish Sign Language users, particularly given the low literacy levels of some users. ([National Disability Authority](#))

It was recommended that users should be able to make complaints in both Irish and English. ([Conradh na Gaeilge](#))

Chapter 5: Section 9 of the Draft Code (Consultation Q.2)

This question asked whether respondents had any comments on Section 9 of the Draft Code and Rules concerning definitions of:

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

It was stated that the proposed definitions appeared to align with the Broadcasting Act 2009 (as amended) and the provisions of the AVMSD. (RTÉ)

While the objective of increased accessibility was recognised, it was suggested that the Draft Code was not clear what obligations, in general, media service providers would be under. In particular, with regard to Irish Sign Language, Section 9 of the Draft Code, ‘access services’ are defined as including the provision of Irish Sign Language if the service is ‘targeting Irish audiences’. It was argued that the phrase ‘targeting Irish audiences’ is not clear and, consequently, the scope of any responsibilities, in particular regarding Irish Sign Language requires clarification. This is especially in the circumstances where the content may be available to Irish audiences (who are a tiny proportion of overall viewers) and the technical and practical costs associated with the provision of Irish Sign Language services may be significant. It was also suggested that the Commission should investigate how Artificial Intelligence (“AI”) could be a partial solution to providing Irish Sign Language. (Warner Bros. Discovery)

The definition of audiovisual on-demand media service refers to ‘at his individual request’ (emphasis added). While it is noted that this accurately reflects the AVMSD, it was suggested that either ‘his/her’ or ‘their’ is used to be more inclusive. (Advertising Standards Authority for Ireland and IAB Ireland)

It was suggested that the definition of sponsorship should clarify that a corporation’s parents, subsidiaries and related entities within a media service provider’s group structure are not considered sponsors per se. (Apple and Technology Ireland)

It was considered that the definition of ‘surreptitious audiovisual commercial communications’ should explicitly exclude product placement. It was argued that Section 12.2 prohibits the display of any surreptitious ACCs, which are defined as representations of goods / services ‘intended by media service providers to serve as advertisements and might mislead the public as to its nature’ and that the phrasing of this definition may also encompass inadequately identified product placements

(prohibited under section 13.4). This could potentially result in media service providers receiving censure from the Commission under two different sections of the Code, for only one infringing act. (Warner Bros. Discovery)

Chapter 6: Section 10 of the Draft Code (Consultation Q.3)

This question asked whether respondents had any comments on Section 10 of the Draft Code and Rules. Section 10 relates to harmful content.

General Comments on Section 10

Regulation that seeks to ensure that children are not exposed to harmful content in an on-demand (or on-line) context was welcomed. The aspiration that protection measures are commensurate with the potential risk was applauded. (RTÉ)

A service provider stated that it already protects minors and implements banner/age verification for content with mature themes. (Virgin Media Television)

However, concerns were expressed that the Draft Code went beyond the terms of the AVMSD and the Online Safety and Media Regulations Act 2022. (Warner Bros. Discovery)

Concerns were also expressed the Draft Code was limited and vague in terms of only describing two types of material that ‘may impair the physical, mental or moral development of children’ – pornography and gratuitous violence, especially since pornography is undefined. It was further noted that other content that may be harmful to children and young children is absent from the Draft Code. Section 139a of the Broadcasting Act 2009 includes other harms which are equally relevant to audiovisual on-demand media services, such as content promoting or encouraging behaviour that characterises or glamorises a feeding or eating disorders, self-harm or suicide, and content that makes available knowledge of methods of self-harm or suicide. It was argued that these should be included, at a minimum, in the Code. Evidence of the high rate of suicide, self-harm and eating disorder amongst the young was provided and it was argued that exposure to media representations of harms and age-inappropriate content may negatively impact the mental and moral development of children; this is especially true for children and young people who have other psychological or social risk factors. (Children’s Rights Alliance)

Section 10.1

It was recommended that the Commission clarify Sections 10.1(a) and (b) so that certain depictions and dialogue (i.e. terrorism or use of discriminatory dialogue) within fictional and non-fictional content are not subject to blanket restrictions. This should also apply to such depictions and dialogue within non-fictional content where it is fundamental to the narrative or purely informative and it is not intended to offend or cause harm. The following language was recommended as an addition, ‘The provisions of Section 10.1 will not apply to depictions or dialogue in fictional content or which is essential to the creative context of the content made available by the media service provider’. (Apple)

While reference to the European Union Charter of Fundamental Rights was welcomed, it was suggested that this Section should take into account that ‘language’ rights are also included in this Charter. (Conradh na Gaeilge)

Section 10.2

The requirement for media service providers to provide sufficient information to audiences about potentially harmful content should be in both Irish and English. (Conradh na Gaeilge)

There was a query about what, in practical terms, was meant by ‘sufficient information to audience about content...’. (ODAS Group)

Section 10.3

The terms ‘gratuitous violence’ and ‘pornography’ should be clearly defined by the Commission, since they require surgical precision.

Clarification was sought that the requirement for information about harmful content being present at the beginning of a programme is not applicable to transactional video-on-demand services (given that such information would be provided prior to the transaction). (Apple)

It was suggested that that what constitutes material which ‘may impair the physical, mental or moral development of children’ is wholly undefined in the Draft Code and that the phrase may be excessively broad and impose disproportionate costs on media service providers. As such, a clear definition is required. It was suggested that the Commission needs to be more prescriptive on certain terms mean e.g. ‘pornography’, ‘gratuitous violence’, ‘prior content warnings’. In addition, other than ‘gratuitous violence’ and ‘pornography’. (Apple, Warner Bros. Discovery)

It was suggested that Section 10.3 should be expanded to include content promoting or encouraging behaviour that characterises or glamourises feeding or eating disorders, self-harm or suicide, and content that makes available knowledge of methods of self-harm or suicide. (Children’s Rights Alliance)

Section 10.4

It was recommended that the Commission provide clarification on whether displaying local and appropriate age ratings/descriptors and effective parental controls qualify as ‘prior content warnings’. In addition, confirmation was requested that that methods that partially rely on self-declaration for age assurance may suffice since methods such as e-certificates are overly burdensome and should not be required. It was argued that overall, the age assurance tools should be appropriate to the potential risk and nature of content available on VOD services and caution was urged against a general prohibition of a self-declaratory age assurance system. It was argued that age assurance tools can have a severe impact on data protection rights and such use should take into account the requirement for proportionality under the GDPR. It was suggested that, like the UK regulator (Ofcom) with the UK’s Information Commissioner’s Office, the Commission should work with the Data Protection Commission on these matters. (Apple)

It was recommended that the Commission should tease out what is meant by ‘age verification’. (ODAS Group)

It was noted that Irish and EU legislation does not explicitly ban the use of self-declaration and given general market practices, internationally and in Europe, it would not be feasible to prohibit self-declaration and other mechanisms (e.g. carefully designed parental control should be deemed sufficient). There was a request for the Commission to reconsider the general prohibition in the Draft Code on media service providers using self-declaration tools for age-verification. (Apple, Technology Ireland)

It was noted that the Draft Code does not provide any information on alternative age-assurance methods which could be used. Under Section 10.4, clarification should be provided on the intent for requirements to be general or targeted and if the listed options are alternative or cumulative. In general, it was recommended that the Commission should ensure that the AVMSD is imposed with rules that align to its scope and purpose. It was argued that a level playing field for audiovisual on-demand media service providers across the EU means that regulators should refrain from applying obligations beyond the AVMSD. Failure to do so will lead to significant differences with how the AVMSD is implemented in other Member States which is contrary to the EU directive framework. These principles are enshrined in EU and Irish law and there have been several cases in which Member States (and regulators) have been brought before the European Courts for non-compliance with EU directives. Examples of such cases were provided. ([Technology Ireland](#))

Clarification was sought on the meaning of the term 'sufficient' (as in '...media service providers of on-demand services shall provide sufficient information to audiences about content which may impair the physical, mental or moral development of children'.) A list of suggestions or further guidance on what will be determined to be effective age verification was also requested. ([TG4](#))

The requirements under this section were considered to be too onerous and costly (IT development work, resourcing, consumer communications) for a Public Service Broadcaster in receipt of no direct public funding. It was argued that the current proposals would require implementing a registration/sign in procedure to include control mechanisms/functionality for the facility to choose bespoke/personalise control options. These measures are not currently commonly adopted e.g. mature themed television programming requires confirmation/verification of age. Implementing such a process would be very challenging and diminish the direct level of access to television programming currently enjoyed. It was recommended that the Commission should undertake consultation with the Data Protection Commission before finalising the Guidelines, particularly in relation to the use of 'age assurance tools'. ([Virgin Media Television](#))

It was noted that the Draft Code does not specify what types of age assurance tools would constitute an effective measure and what 'technical measures' would meet this requirement such as requiring credit/debit cards or another system. Age verification tools that do not rely on self-declaration are complex and burdensome and may have serious implication for data protection and privacy rights. Therefore, it was recommended that the Code provide further clarity on what constitutes effective measures. It is not clear whether the Draft Code requires all content which may impair children's physical, mental or moral development to be subject to the full extent of protection mechanisms referenced in Section 10, or whether the provision of one (or some) of these protection mechanisms is sufficient, depending on the relevant context. ([Warner Bros. Discovery](#))

It was argued that the Code should extend the appropriate protection measure outlined in Section 10.4 to areas such as content promoting or encouraging behaviour that characterises or glamourises feeding or eating disorders, self-harm or suicide, and content that makes available knowledge of methods of self-harm or suicide. Such measures would also be subject to the proportionality test set out in Section 10.5 which would not mean that such content cannot be accessed by children and young people, but that the service provider would be required to take measures to protect children and young people. ([Children's Rights Alliance](#))

It was argued that the Draft Code did not provide sufficient specificity in relation to harmful content. It was noted that, other than the setting down of a minimum standard providing that mere self-declaration of age shall not be an effective measure for age assurance, 'age assurance tools' are not defined and there is no mention of the stronger phrase, 'age verification'.

It was also noted that the use of 'age assurance tools' are not obligatory. Section 10.4 provides that 'appropriate measures...may entail' their use. Further, at Section 10.6, 'age assurance tools' are listed within an apparent list of options for media service providers including 'parental controls' and 'other effective measures'. ([Senator Rónán Mullen](#))

It was argued that this section will not be effective because it gives unnecessary and undeserved choice to media service providers. There needs to be a clear obligation in all circumstances on media service providers to ensure strict age verification so that persons under the age of majority are not normally exposed to adult content. Age verification should be defined so as to require the provision of documentation and relevant photographs in line with standards that apply in relation to accessing other services online (specifically financial services) or audio-visual. ([Senator Rónán Mullen](#))

Content warnings should be in both Irish and English to ensure that the Gaeltacht and Irish-speaking community will not be affected. ([Conradh na Gaeilge](#))

Chapter 7: Section 11 of the Draft Code (Consultation Q.4)

This question asked whether respondents had any comments on Section 11 of the Draft Code and Rules. Section 11 relates to the rights to cinematographic works.

The importance of copyright and other contractual restrictions in terms of the provision of cinematographic works was recognised. (RTÉ)

A harmonised approach on specific national sub-quotas (e.g. in cinematographic movies, local language and independent productions) was advocated for. It was argued that providers require sufficient guarantees of regulatory stability, predictable business environments and legal certainty provided by the provisions set out in the AVMSD. The requirement being a regulatory condition was not supported and was deemed unnecessary and an interference with the commercial arrangements between platforms and licence-holders. It was argued that if a platform or service provider transmits a work outside the period of the licence terms, this should be a contractual matter for the parties to deal with. (Technology Ireland)

Chapter 8: Section 12 of the Draft Code (Consultation Q.5)

This question asked whether respondents had any comments on Section 12 of the Draft Code and Rules. Section 12 relates to audiovisual commercial communications.

Support was expressed for the requirements of this Section, in particular Sections 12.1 to 12.4. (Technology Ireland)

Complementary and consistent with the legal framework and other codes of practice

It was highlighted as crucial that any new regulation in this area complements existing EU frameworks rather than creating potentially conflicting requirements, to ensure a streamlined and practical approach for businesses across the EU. (Drinks Ireland) Alignment of requirements of Section 12 with the AVMSD and the Digital Services Act was also called for, as these harmonise rules on the terms and conditions of intermediary services. (Technology Ireland)

There was a call for alignment and consistency of approach between the requirements of this Section and the provisions of other existing legislation and codes of practice. (Drinks Ireland and ODAS Group)

Clarification was sought on how similar codes for the broadcasting sector could be applied to the on-demand audiovisual sector (RTÉ), and the importance of the requirements of Section 12 reflecting the requirements of the other codes in order to ensure that the requirements/standards are consistent and not contradictory, was stressed. (Virgin Media Television)

There was criticism that the Draft Code does not reflect the codes developed for the advertising of alcoholic products in audiovisual media and it was recommended that a consistent approach should be adopted regardless of the media platform (ODAS Group), as consistency of approach between linear and on-demand services is crucial to ensure that similar standards apply to content, whether accessed by linear transmission or in an on-demand context. (RTÉ) In this respect, it was pointed out that the provisions of the Advertising Standards Authority Code reflect those in the Section 12, and even go further in some areas.³ In the interests of the public and consumers, it was recommended that media service providers take account of these provisions of the Advertising Standards Authority Code. (Advertising Standards Authority for Ireland and IAB Ireland)

The different nature of the service offered by VOD and VSP services was highlighted and it was recommended that this difference should be reflected by different approaches in the codes that regulate them. (Technology Ireland)

Section 12.3

It was suggested that 'language' was included as a prohibited ground for discrimination under the provisions of Section 12.3(ii). (Conradh na Gaeilge)

Clarity was requested on the meaning of 'encouraging behaviour grossly prejudicial to the protection of the environment' in Section 12.3(iv). (ODAS Group)

³ This includes the following areas: Misleading (Truthfulness, Honesty and Substantiation), Slimming, Promotional Marketing Practices, Financial Services and Products, Distance Selling, Employment and Business Opportunities, Children, Environmental Claims, Food and Non-Alcoholic Beverages, including HFSS and infant formula, Occasional Trading, Alcoholic Drinks, E-Cigarettes, Gambling, Online Behavioural Advertising, Health and Beauty (includes medicines and medical treatments).

Section 12.4(i)-(iv)

The specific prohibition on audio commercial communication harmful to children under the provisions of Section 12.4 was welcomed (Alcohol Action Ireland and Children's Rights Alliance), but regret was expressed that it was limited to this one section (Children's Rights Alliance). The importance of considering the defence and protection of children's interests against commercial exploitation in the digital environment was noted by referring to recommendations made on this matter from the 2020 WHO UNICEF-Lancet Commission on the future for the world's children, the Council of Europe and the UN Committee on the Rights of the Child⁴. (Children's Rights Alliance)

There was criticism of the Draft Code not containing provisions prohibiting or restricting commercial communications likely to harm the health or physical well-being of children and young people was also criticised. It was recommended that considerations should be given to prohibiting or restricting the commercial communications for infant formula, follow-on formula, and foods or beverages which contain fat, trans-fatty acids, salts or sugars. (Children's Rights Alliance)

Section 12.4(v) (Alcohol advertising targeted at children)

The restrictions relating to commercial communications for alcohol products targeted directly at children set out in this section were welcomed. (Alcohol Action Ireland and Children's Rights Alliance) However, concern was also expressed about the limited scope of this provision compared to the prohibitions set out in the Public Health (Alcohol) Act 2018 which prohibits alcohol advertising in locations where children are likely to be present. (Children's Rights Alliance) The example was cited of leading alcohol producers remaining major advertisers for children in traditional media. (Alcohol Action Ireland) It was recommended that the Code should go further by requiring that audiovisual commercial communications for alcoholic beverages 'shall not be seen by minors'. (Alcohol Action Ireland, Children's Rights Alliance)

It was pointed out that there are also restrictions arising from the Advertising Standards Authority Code, including the alcohol-specific rules in Section 9, as well as other codes of practice. These reduce the exposure of young people to alcohol advertising and marketing and are based on the principle of audience profiling in all media and sponsorship, whereby alcohol advertising/marketing is not permitted unless the media concerned has an adult audience profile of 75% or more. It was emphasised that the industry has demonstrated a very high level of compliance with the detailed requirements of these various rules and codes, as evidenced in particular by successive annual reports from the Alcohol Marketing Communications Monitoring Board (AMCMB). (Drinks Ireland)

Section 12.5

While accepting the requirements of this section, industry representatives also emphasised that the drinks industry in Ireland is already subject to strict advertising and marketing regulations, including the restrictions and prohibitions of the Public Health (Alcohol) Act 2018. (Drinks Ireland)

⁴ This recommended that "States parties should make the best interests of the child a primary consideration when regulating advertising and marketing addressed to and accessible to children. Sponsorship, product placement and all other forms of commercially driven content should be clearly distinguished from all other content and should not perpetuate gender or racial stereotypes" and to ensure that the profiling or targeting of children for commercial purposes is prohibited, including practices that "rely on neuromarketing, emotional analytics, immersive advertising and advertising in virtual and augmented reality environments to promote products, applications and services".

It was suggested that the drafting of these requirements was excessively broad and should allow for more flexibility in terms of content. In particular, clarification on Section 12.5(iii) of the Draft Code was sought in relation to the prohibition and not inadvertently cover normal social activities in which alcohol may be consumed. (Warner Bros. Discovery)

Caution was advised about the dangers of AI being used as a marketing tool for alcohol and it was recommended that regulators monitor what is happening in this area. (Alcohol Action Ireland)

The industry recommended that Sections 12.5 (i)-(vi) be reworded as an obligation of effort rather than an obligation of result, in order to include reasonable parameters on commercial communication requirements. (Apple and Technology Ireland) The following wording was recommended: *'Media service providers of on-demand services shall strive to ensure that audiovisual commercial communications for alcoholic beverages they provide, with the exception of sponsorship and product placement, comply with the following requirements:...'* (Technology Ireland)

'Alcohol-free' products

There was criticism of the proliferation of advertising for 'alcohol-free' products, which use a brand identical to the main alcoholic brand and reach large numbers of children. This is seen as posing a real danger to children who are growing up without fully understanding the difference between the types of activities appropriate to alcohol consumption, because of the way in which the main brand advertises its 'alcohol-free' products. (Alcohol Action Ireland)

Industry representatives pointed out that the advertising of alcohol-free products is currently covered by an Advertising Standards Authority guidance note which states that alcohol-free products must be clearly aimed at people over the age of 18 and that anyone involved in the marketing of alcohol-free products must be over the age of 25 and give the impression of being over 25. It was also stressed that the market for this type of product is set to grow significantly if supported by business and government, and that it offers consumers a choice that promotes moderation and more responsible drinking. (Drinks Ireland)

Pre-clearance system

Clarification was sought on how the Commission could practically support the development of a central trade clearance body (ODAS Group), and it was pointed out that a central clearing house for all commercial communications would be beneficial to avoid duplication of compliance on the same advertisements across channels. (TG4) The positive effect was highlighted of the pre-clearance system 'CopyClear' (an independent service responsible for checking alcohol advertising and promotion in Ireland), in ensuring compliance with the relevant content codes. (Drinks Ireland)

Chapter 9: Section 13 of the Draft Code (Consultation Q.6)

This question asked whether respondents had any comments on Section 13 of the Draft Code and Rules. Section 13 relates to sponsorship.

General comments

It was suggested that product placement and sponsorship of popular programmes are strategies used by the alcohol industry to normalise alcohol use in society and to drive sales. Concerns were raised about how RTÉ allows alcohol brands to sponsor programmes and create marketing campaigns that sees alcohol brands expand their sponsorship reach across other RTÉ platforms. It was recommended that alcohol brands should not be allowed to use sponsored content campaigns to advertise across platforms, to reduce the risk of normalising the visibility of a harmful product and driving consumption of alcohol. (Alcohol Action Ireland)

Alignment with other legislative frameworks and Codes

The need for consistency in the regulatory approach to the proposed codes and rules applicable in a linear and in an on-demand context was reiterated. (RTÉ)

Section 13.1

The requirement in Section 13.1(ii) was considered to be very ambitious. It was felt that this requirement should be qualified to apply only to undisclosed sponsorship or, alternatively, it should be clarified that such a requirement does not preclude the inclusion of product placement, so long as the rules on product placement are complied with. (Apple and Technology Ireland) The addition of the following wording was recommended: *'...the on-demand services or programmes they provide shall not directly encourage the purchase or rental of goods or services, in particular by making special promotional reference to those goods or services, without disclosing the existence of a sponsorship agreement/relationship beforehand.'* (Technology Ireland)

More detailed clarification was sought on the term 'special promotional references' in Section 13.1(ii) (and repeated in Section 14.2). (Technology Ireland)

Section 13.6

Clarity was sought on the decision to automatically prohibit the showing of sponsorship logo during children's programmes, documentaries or religious programmes, given that the AVMSD leaves this option open and does not make it obligatory. (Warner Bros. Discovery)

Children's specific requirements and sponsorship

The importance of defending and protecting children's interests against commercial exploitation in the digital environment was reiterated.⁵ In order to ensure a consistent approach and recognition of children's specific requirements, it was recommended that Sections 13 and 14 be strengthened to include child-specific obligations to regulate sponsorship and product placement aimed at children and young people. (Children's Rights Alliance)

⁵ See response under Chapter 8, Section 12.4(i)-(iv).

Chapter 10: Section 14 of the Draft Code (Consultation Q.7)

This question asked whether respondents had any comments on Section 14 of the Draft Code and Rules. Section 14 relates to product placement.

General comments

It was proposed that product placement and sponsorship of popular programmes are strategies being used by the alcohol industry to normalise alcohol use in society and to drive sales. An example of a study analysing the United Kingdom's TV shows in 2015 was cited, which found very high levels of prevalence of alcohol product placement on the popular shows, where an analysis of almost 3,000 minutes of national TV revealed that more than a third of characters' drinks were alcoholic beverages. ([Alcohol Action Ireland](#))

Difference between 'product placement' and 'prop placement'

It was noted that there may be reasons to consider the form that product placement may take and the differences between prop and product placement, as these involve different cost and benefit considerations in the industry. ([Warner Bros. Discovery](#))

It was recommended that the requirements of Section 14 should only apply to 'product placement' for which significant monetary value is exchanged, and not to placement of products that merely offset production costs. ([Apple](#))

A clear distinction between 'product placement' and 'prop placement' was requested, by defining 'prop placement' and specifying in the Code whether or not the requirements of Section 14 would also be applied to the latter. It was suggested that the disclosure requirement under Section 14.2(iv) should not be applied to 'prop placement' given that it is provided for free or at a discount to programme production. ([Technology Ireland](#))

Alignment with other legislative framework and Code

The need of consistency in regulatory approach in relation to proposed codes and rules applicable in a linear and in an on-demand context was reiterated. ([RTÉ](#))

Children's specific requirements and product placement

The importance of defending and protecting children's interests against commercial exploitation in the digital environment⁶ was highlighted. In order to ensure a consistent approach and recognition of children's specific requirements, it was recommended that Sections 13 and 14 be strengthened to include child-specific obligations to regulate sponsorship and product placement aimed at children and young people. ([Children's Rights Alliance](#))

Clarification was sought as to whether the requirement of no product placement in 'children's programmes' applies to transactional video-on-demand services. ([Apple](#))

It was suggested that the Commission clarify that the restriction on product placement in children's programmes should only apply to content produced or commissioned by the media service provider or a company affiliated to the media service provider. ([Technology Ireland](#))

⁶ See response under Chapter 8, Section 12.4(i)-(iv).

Section 14.2(iv)

It was underlined that the inclusion of the requirements of this Section appear more suited to a linear broadcasting model than on-demand services, which involves a direct and continuous requirement from the viewer to watch the broadcast. It was argued that in the on-demand context there are less advertising breaks and viewers can continuously choose what content they wish to view, therefore a repeated warning would not appear necessary. (Warner Bros. Discovery)

It was argued that this requirement should be simplified, and that a single, clear indication at the start of the programme or in the programme description would achieve the same goal. (Apple and Technology Ireland)

It was recommended that the requirement to identify product placement to the audience should also only be applied to programmes that are produced or commissioned by the media service provider, not for programmes simply licensed by the media service provider. (Apple and Technology Ireland) It was suggested, that as currently drafted, the Code would create an undue burden on media service providers (Apple) and does not reflect the practicalities of on-demand media distribution. (Technology Ireland) It was recalled that this derogation was allowed by Article 11(3)(d) second paragraph of the AVMSD Directive which states: “Member States may waive the requirements set out in point (d) except for programmes produced or commissioned by a media service provider or by a company affiliated with that media service provider.” An explanation of why the Commission did not include this derogation was requested, (Warner Bros. Discovery) and it was noted that this exemption was also included in the ODAS Code. (Technology Ireland)

The following alternative wording was therefore recommended: “audiences shall be clearly informed of the existence of product placement by an appropriate identification at the start and at the end of the programme, and when a programme resumes after an advertising break, in order to avoid any confusion on the part of the viewer; provided that media service providers shall not be required to include such identification if the programme in question has neither been produced nor commissioned by the media service provider itself or a company affiliated to the media service provider.” (Technology Ireland)

Clarity was also sought on the wording ‘avoid any confusion on the part of viewer’ and it was requested that this section should include indicative examples of the forms of viewer confusion which product placement identifiers are required to prevent. (Warner Bros. Discovery)

Chapter 11: Section 15 of the Draft Code (Consultation Q.8)

This question asked whether respondents had any comments on Section 15 of the Draft Code and Rules. Section 15 relates to accessibility.

The principles and standards proposed in this section were considered to be comprehensive and correct and a provider outlined its intention to develop an accessibility action plan to be agreed with the Commission. (RTÉ) The proposals and Commission's intention to consult separately on accessibility for audiovisual on-demand service providers were welcomed. (Virgin Media Television)

Clarification was sought on what the Commission meant by media service providers taking measures to ensure that programmes made available are 'continuously and progressively more accessible to persons with disabilities...'. (Apple, ODAS Group and Technology Ireland) and how is it to be measured. (ODAS Group and Technology Ireland) A preference was expressed for a broad and flexible approach which factored in all efforts taken by the provider throughout its services, products and ecosystem, rather than a less effective content-based approach. (Apple) It was proposed that a more precise definition would avoid ambiguity and ensure that media service providers understood the scope, obligations and expectations of their accessibility obligations. (Technology Ireland) Concern was expressed that even where a provider already provides a very substantial amount of access, the terms 'continuously and progressively' will mean that it could still breach the Code notwithstanding its current high level of access. This would be unreasonable and not in line with the Commission's duty to 'operate proportionally, consistently and fairly' (Section 4.4. of the Draft Code). (TG4)

While welcoming the approach taken by Commission to the accessibility action plan, it was proposed that the requirements should only apply to content produced or commissioned by the media service provider or a company affiliated to the media service provider. (Technology Ireland)

It was argued that the rules on accessibility should not apply retrospectively since much of the content will have been produced before the Code comes into force. Therefore, it was recommended that the following sentence should be added to Section 15.1 (as with Section 14.4 of the Draft Code), 'Section 15.1 shall apply only to programmes produced after 19 December 2009'. (TG4)

It was argued that it is not practical to provide all forms of access in respect of each programme in an on-demand service as required by Section 15.1. It was therefore suggested that the following sentence is added to Section 15.1, 'Failure by a media service provider of on-demand services to provide each element of the access services as described in the definition of Access Services will not constitute a breach of Section 15.1.' (TG4)

It was recommended that to provide certainty, the accessibility action plan agreed by the Commission should constitute compliance with the Code. Therefore, the following should be added to Section 15.4. '*Compliance with the Accessibility Action Plan constitutes compliance by the media service provider of on-demand services with section 15.1 of the Code*'. Under Guidance (iv) which states that the 'type of programme' is an influencing factor in determining a proportionate approach to access requirements, the following should be added, '*It is acknowledged that access services may not be possible for certain acquired programming and certain co-produced programming*'. (TG4)

It was argued that while the concept of proportionality is typically helpful, in the context of accessibility services it is unclear and not adaptable. This is because service providers cannot easily or precisely pre-estimate the audience level or gain audience feedback about the impact of such access services.

It would therefore be preferable if Section 15.1 referred to the concept of 'suitable measures' (with suitable examples) rather than 'proportionate measures'. (Warner Bros. Discovery)

In dealing with complaints about access issues, it was argued that the complexity of complaint systems and the lack of responses from service providers can lead to frustration and it was argued that there should be one state-led complaints process in order to track complaints, identify patterns and trends and ensure that service providers respond to complaints in a timely and appropriate manner. (Chime)

There was agreement that access requirements should be met through a progressive and continuous process and the requirement for providers to develop accessibility plans and for those to be agreed with the Commission was welcomed. (National Disability Authority) The six criteria which must be addressed through these plans (as set out in Section 15.5 of the Draft Code) were also welcomed. (National Disability Authority) Section 15.5(v) states that media service providers should put forward proposals to consult users of access services, and it was suggested that the Code should also require the provider to detail the extent to which it consults such users in developing its accessibility action plan. In addition, it was recommended that there is a specific requirement to consult with Disabled Persons' Organisations in Section 15.5(v). The UN Convention on the Rights of Persons with Disabilities is clear that Disabled Person's Organisations should be closely consulted and actively involved in the decision process relating to issues related to people with disabilities. The National Disability Authority has developed guidance on how to meaningfully consult with and actively involve disabled people and their representative organisations. (National Disability Authority)

It was suggested that Section 15 should be amended to ensure that the annual accessibility plans are publicly available in accessible formats. Similarly, reports on the implementation of accessibility action plans (as referenced in Section 15.9) should be made publicly available. (National Disability Authority)

While welcoming Section 15.8 which requires providers to transmit emergency information in a manner that is accessible to people with disabilities, it was suggested that this is made more explicit and specify that providers must provide subtitling and Irish Sign Language (mirroring the approach proposed in the Commission's Draft Access Rules for Television Broadcasting Services). It was recommended that the Commission should outline the steps it will take to monitor media service providers' compliance with accessibility action plans (including quality standards in Irish Sign Language, audio description and subtitling). (National Disability Authority)

Annex 1 – Full List of Respondents

Table 1 - Full List of Respondents by Category

Category	Respondent name	Category	Respondent name
Advertising self-regulatory organisation	1. Advertising Standards Authority for Ireland (ASAI)	Industry organisations providing submissions on advertising	13. IAB Ireland
Child protection organisations, NGOs, Government agencies and health centres (national and international)	2. Children's Rights Alliance	Other individuals	14. Senator Rónán Mullen
Health promotion organisations providing submissions on advertising	3 Alcohol Action Ireland	Disability Rights groups	15. Chime 16. National Disability Authority (NDA)
Industry and industry associations	4. Apple 5. Drinks Ireland 6. NewsBrands Ireland 7. ODAS Group 8. RTÉ 9. Technology Ireland 10. TG4 11. Virgin Media Television 12. Warner Bros. Discovery	Civil rights organisations	17. Conradh na Gaeilge

Annex 2 – List of Consultation Questions

Consultation on Draft Audiovisual On-Demand Media Service Code & Rules

Question 1: Do you have any comments on Sections 1 – 8 of the Draft Code and Rules?

Question 2: Do you have any comments on the proposed definitions contained under Section 9 of the Draft Code and Rules?

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

Question 4: Do you have any comments on the requirement under Section 11 of the Draft Code and Rules not to transmit cinematographic works outside periods agreed with the rights holders?

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

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

Question 7: Do you have any comments on the product placement requirements under Section 14 of the Draft Code and Rules?

Question 8: Do you have any comments on the requirements relating to accessibility as set out in Section 15 of the Draft Code and Rules?