



**LinkedIn Ireland Unlimited
Company**

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Company Number: 477441

**Application of the revised draft Online Safety Code
Response to invitation to consult under sections 139L(4) and (b) of the Broadcasting Act
2009**

LinkedIn Ireland Unlimited Company welcomes the opportunity to respond to Coimisiún na Meán's consultation regarding the draft Online Safety Code dated 27 May 2024 (the "Code"), under sections 139L(4) and (b) of the Broadcasting Act 2009. We also thank the Commission for the constructive meeting on 24 July 2024.

LinkedIn's Professional-Focused Platform Reduces Its Risk Profile

LinkedIn is a real-identity, specific-purpose platform, designed specifically for professionals. It is a networking tool that enables members to establish their professional identities online, connect with other professionals, and build meaningful relationships for the purpose of collaborating, learning, and staying informed about industry information and trends. The design and function of the platform are central to its overall risk profile and shape that risk profile in key ways, including the following:

- Because LinkedIn's terms require that members be real people and use their real or preferred professional names, the content they post is visible to their colleagues, employers, potential future employers, and business partners. Given this audience, members by and large tend to limit their activity to professional areas of interest and expect the content they see to be professional in nature.
- LinkedIn operates under standards of professionalism, which are reflected both in content policies and enforcement, as well as in content prioritization and amplification. LinkedIn's policies bolster a safe, trusted, and professional platform, and LinkedIn strictly enforces them. LinkedIn strives to broadly distribute high-quality content that advances professional conversations on the platform.
- LinkedIn services are tailored toward professionals and businesses. As such, most advertisements on the platform are business-to-business rather than business-to-consumer. Further, members must attest to being over the minimum age (16 years) to

open an account. If LinkedIn otherwise becomes aware that a member is under the age of 16, it will close the member's account.

One of LinkedIn's core values is "members first." This means that every day, when making decisions large and small, LinkedIn asks "Is this the right thing to do for our members?" This value drives LinkedIn, unites the company, and pushes it to remain worthy of the trust of LinkedIn members worldwide.

Child Safety Measures Implemented by LinkedIn

LinkedIn also refers the Commission to the information LinkedIn provided to the European Commission on child safety measures implemented by LinkedIn in June 2023.¹ Specifically, LinkedIn's robust safety program ensures that the risk of harm to the minors that are on the platform is low. First, LinkedIn has zero tolerance for anything but safe, trusted, and professional content. This commitment takes shape in LinkedIn's [Professional Community Policies](#), which explain in detail all of the categories of abusive content that are not allowed on LinkedIn. This includes hate speech, harassment, bullying, violent, explicit, graphic, sexual, and all other forms of content that have the potential to harm minors.

To protect minors from being exposed to policy-violating / harmful content, LinkedIn employs multiple layers of defense. The first layer of protection is automated and proactive prevention. As part of this process, artificial intelligence plays a key role in helping LinkedIn proactively filter out potentially harmful content. LinkedIn uses content (including, for example, key words or images) that has previously been identified as violating its Professional Community Policies to help inform AI models and better identify and restrict similar content from being posted in the future.

The second layer of protection is the combination of automated and human-led detection. This layer detects content that is likely to be violative but for which the algorithm is not sufficiently confident to warrant automatic removal. This content is flagged by our artificial intelligence systems for further human review. If the human review team determines that the content violates LinkedIn's policies, it is removed from the platform. LinkedIn's human review team is instrumental in this process and in helping train the platform's models.

The third layer of protection is fully human-led detection. If LinkedIn members locate content they believe violates the Professional Community Policies, we encourage them to report it using the in-product reporting mechanism (accessible via the three dots in the upper right-hand corner of the content) on LinkedIn. Reported content is then sent to LinkedIn's team of reviewers for further evaluation and is removed if found to be in violation of LinkedIn's policies.

¹ LinkedIn's confidential submission to the European Commission on the child safety practices and LinkedIn's compliance with Article 28 of Regulation (EU) 2022/2065, dated 26 May 2023, and shared with Coimisiún na Meán on 30 June 2023.

In addition to these measures, LinkedIn also works to protect minors by employing industry standard technology and processes to detect and report Child Sexual Abuse Material. All images that are uploaded to the platform via any entry point are assessed using automated and human means to determine whether they contain CSAM. In the rare instances that they do, those images and certain account identifying data are reported to authorities and preserved to enable law enforcement investigations. Although the numbers of confirmed CSAM cases on LinkedIn are quite small, as explained in the LinkedIn [DSA Transparency Disclosures](#), LinkedIn remains diligent and focused on this anti-abuse work.

Finally, repeated abusive behavior on LinkedIn results in account restrictions. Egregious violations, such as anything that would harm a child, will typically result in an immediate restriction. And any sort of criminal conduct towards children that takes place on LinkedIn, which is exceedingly rare, will lead to a law enforcement referral.

Comments on Part A of the Code

LinkedIn welcomes the confirmation from the Commission that the obligations in Section 10.6 of Part A of the Code are intended to be principle-based and apply to services “as appropriate.” We further appreciate that, in evaluating whether an obligation is appropriate for a particular service, the Commission will necessarily consider whether the obligation “would not be practicable or proportionate...taking into account the size of the video-sharing platform service and the nature of the service that is provided.”² LinkedIn understands that, in the first instance, it is a matter for each service to determine itself whether certain measures are appropriate for that service.

LinkedIn also welcomes the following recognition of LinkedIn’s uniquely professional platform in the Commission’s Statement of Reasons (Annex 1 to the Commission’s Letter of 2 July 2024):

“LinkedIn is functionally similar to these services but its overall user-experience is focused almost exclusively on professional interaction. By virtue of the current nature of the content on this service and its overall user-experience, it is not likely to be one that is attractive to children. Content relates almost exclusively to that of a professional nature and/or is shared in a professional context e.g. videos about management scenarios, job-hunting, online learning.”

This context is particularly important in considering the appropriateness of certain measures in Part A to LinkedIn, in particular those relating to age verification, content rating and parental controls in order to protect minors.

For example, as noted in our January 2024 response to the Commission’s consultation on Online Safety, age verification requirements are not appropriate for a platform like LinkedIn. LinkedIn’s [terms of service](#) specifically prohibit anyone under the age of 16 from having an account. Additionally, as its purpose is entirely professional (*i.e.*, providing members the ability to connect

² Section 9.2 of the Code.

and engage on topics relevant to the world of work), LinkedIn content is generally not interesting or appealing to minors. Unsurprisingly, therefore, LinkedIn does not direct or market any of its products or features toward minors – including the 16 and 17 year olds who are technically permitted on the platform – through content, design, marketing, advertising, or otherwise.

Furthermore, the implementation of age verification requirements would require LinkedIn to collect more personal data about users than is needed for the operation of the service. This would be the only way to verify age and would be disproportionately privacy invasive given LinkedIn's nature and its user base.

Similarly, given the nature of the content on LinkedIn, it would not be practicable or proportionate for LinkedIn to implement content rating or parental control obligations. As explained above, LinkedIn does not allow users under 16 to join the platform and, as its purpose is entirely professional, LinkedIn is not popular with minors. Further, LinkedIn's Professional Community Policies generally prohibit the types of adult and other mature content that would justify implementing such rating systems. Such content rating requirements are therefore not appropriate or proportionate for a VSPS such as LinkedIn.

Audiovisual Commercial Communications

While the LinkedIn service does include audiovisual commercial communications, LinkedIn is primarily a business-to-business (B2B) advertising platform, where professionals sell to other professionals and businesses and this focus differentiates us from other services. Examples include ads for cloud solutions for your business; cybersecurity solutions for your business; HR software for your business.

Given that business focus, LinkedIn's [ads policies](#) already prohibit the types of harmful ads the Code targets (e.g., harmful to children, harmful to the general public). For example, LinkedIn prohibits ads for illegal products, services, and activities; ads that are hateful, vulgar, sexually suggestive or violent; ads that are fraudulent or deceptive in any way; ads containing adult content, including ads for adult products and services; and ads promoting unhealthy or unsafe behaviors.

LinkedIn also does not serve targeted ads to members we know or think are under 18 years old in the EU. The age targeting options are 18-24, 25-34, 35-54, and 55+.

Detailed information on the ads running on LinkedIn is available in LinkedIn's publicly available [Ad Library](#).

Suspension of Accounts

LinkedIn is concerned that the obligations relating to suspension of accounts are potentially duplicative of those contained in the DSA, resulting in potentially conflicting obligations. LinkedIn notes that the Code includes provisions at Sections 12.10 and 13.10 which provide that the

provisions relating to suspension of accounts “*shall apply only insofar as the consequences for the user are not covered by measures adopted pursuant to Articles 23 and 35(1)(b) of Regulation (EU) 2022/2065 (Digital Services Act)*.” Although this provision may address the concerns, LinkedIn would welcome guidance on how the suspension of accounts provisions are intended to apply in practice, including the interplay with the DSA.

Complaints

On its face, Section 16 appears to require all VSPS to implement certain complaint-handling procedures relating to “age assurance, content rating, parental controls and reporting and flagging.” But this section does not clarify whether these requirements apply in situations where, pursuant to Section 10.6, a service has determined that it would be inappropriate to implement, for example, age assurance or content rating. In other words, if a VSPS like LinkedIn determined that, given the nature of its service, such measures were not appropriate, would LinkedIn nevertheless be required under Section 16 to implement complaint-handling procedures relating to those measures? Further guidance from the Commission on this issue is requested.

Reporting on Measures

LinkedIn remains concerned that the cadence of reporting required under Section 17.3 of the Code has the potential to become overly burdensome, particularly if that cadence is more frequent than annually. LinkedIn understands from the Commission’s [Response to Consultation: Online Safety](#) (page 51) that the Commission is further investigating the manner of reporting required and intends to engage further with the VSPS providers concerned. LinkedIn looks forward to such engagement.

12 August 2024



12 August 2024

FAO: Niamh Hodnett (By email: vspsregulation@cnam.ie)

Dear Niamh,

Meta Platforms Ireland Limited (**MPIL**) welcomes the opportunity to make submissions in response to Coimisiún na Meán's (the **Commission**) consultation on its proposed application of the draft Online Safety Code (the **Code**) to the video-sharing platform services (**VSPS**), as a category (the **VSPS Category**), and to each of Facebook and Instagram, as designated named services (the **Consultation**).

We have set out our views in the Annex below.

We thank the Commission for the opportunity to provide comments on the Consultation, and we hope that our comments will assist the Commission in carrying out its regulatory functions. We are available to discuss any aspect of the response below with the Commission at any stage.

Yours sincerely,

Meta Platforms Ireland Limited

Annex - MPIL submission to the Consultation

As acknowledged in our submission in January 2024 on the draft Code, MPIL does not, in principle, oppose the proposed application of the Code to the VSPS Category, nor to Facebook or Instagram, as designated named services. We also welcome the Commission's emphasis on proportionality of obligations throughout the Consultation document.

Determining appropriate measures

In order to ensure a proportionate and practicable application of the Code, it is imperative that there is flexibility for VSPSs when determining the appropriate measures to implement in compliance with Part A of the Code. In this regard, we note that section 10.6 of Part A requires VSPSs to, as appropriate, implement a number of measures to protect children and the general public. We welcome the flexibility in the wording of this section of the Code which acknowledges that VSPSs are only required to take measures as appropriate to their services and such an approach is in line with the wording of Article 28b(3) of the AVMS Directive (the **AVMSD**).

However, it is not clear from the Code how the "appropriateness" of a measure will be assessed. In this regard, we note that section 10.7 of the Code clarifies that, if any issue arises as to the appropriateness of the measures, it will be a matter for the Commission to determine. Notwithstanding this and while we appreciate that the present Consultation is not concerned with the substance of the Code, we would welcome clarification from the Commission regarding the factors it will take into consideration when assessing the appropriateness of a measure. We would also welcome confirmation from the Commission that, when determining the appropriateness of measures, it will do so "*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, including those of the video-sharing platform providers and the users having created or uploaded the content as well as the general public interest*", as per the first paragraph of Article 28b(3) AVMSD. This will ensure legal certainty and clarity for VSPSs when determining the measures they must take to comply with Part A of the Code.

Interaction between Part A and B of the Code

Furthermore, we note that the Code is structured in two parts - Part A and Part B. Part A of the Code provides for the general obligations applicable to VSPSs pursuant to Article 28b of the AVMSD, including the measures that VSPSs must take, as appropriate, to protect the general public and children. Part B of the Code makes provision for more specific obligations of VSPSs and sets out the appropriate measures that they must take to provide the protections for children and the general public required by Article 28b(1)(a), (b) and (c) of the AVMSD and to comply with the requirements of Article 9(1) of the AVMSD.

However, a significant number of the measures outlined in Part B of the Code relate to requirements that are also broadly set out in Part A of the Code, as appropriate measures that VSPSs may be required to take. Accordingly, in the interests of legal clarity and certainty, we urge the Commission to clarify the extent to which meeting a requirement under Part B of the Code (e.g. the requirement to put in place a reporting and flagging mechanism

under section 15 of Part B of the Code) will be sufficient to meet any corresponding requirements under Part A of the Code (e.g. the requirement under section 10.6(d) of Part A of the Code to (as appropriate) establish and operate mechanisms for users to report or flag content referred to in Article 28b(1)(a)-(c) of the AVMSD). Absent this clarity, it is not clear what the Commission's regulatory expectations will be with regard to the interaction between Part A and B of the Code.

Consultation on final version of the Code and Statutory Guidance

Additionally, we note that the Commission states in its correspondence that it "*considers it appropriate to engage in consultation at this juncture on the basis of the revised draft Code*" and that it is "*consulting on the basis of the revised draft Code as if it were the final Code*". In this regard, we wish to highlight that the Code is still not final and may be subject to amendments following the conclusion of the TRIS procedure.

The Commission acknowledges that "*if, following the conclusion of the TRIS procedure, the Commission proposes to make material changes to the revised draft Code before adoption and application, it will engage in further consultation.*" However, it is not clear what would constitute a "material" change such that the Commission would engage in further consultation on the Code. We respectfully submit that, for reasons of legal certainty and procedural fairness, the Commission should engage in further consultation in relation to the Code if any changes are made to it (other than mere grammatical or stylistic amendments), so as to provide VSPSs with an opportunity to submit their views on the application of the Code, in light of those changes.

Likewise, we submit that the Commission should also engage in further consultation in relation to the Statutory Guidance it has said it intends to publish in tandem with the final Code. As noted by the Commission in its original consultation on the Code, the Statutory Guidance is intended to set out its expectations as to how VSPSs can best implement the Code's requirements and that failure to follow it may be taken into account, to the extent it considers appropriate, when deciding whether to open an investigation or whether there has been an infringement. As such, for reasons of legal certainty and procedural fairness, VSPSs should be able to consult on such guidance before it comes into force.

Reporting obligations under the Code

The draft Code currently includes, at section 17.3 of Part B, an obligation on VSPSs to report to the Commission (every 3 months or at such other intervals as may be specified by it) on their handling of communications from users raising complaints or other matters. However, the Code does not specify the manner in which VSPSs must report to the Commission in this regard. Rather, it provides that they must report "*in the manner to be further specified by the Commission*". In light of this, we note that the Code lacks legal certainty and clarity in relation to the reporting requirements that VSPSs will be required to comply with and, therefore, this provision of the Code should not be made applicable to VSPSs until the Commission has further specified the manner in which VSPSs are required to report to it under this provision. This is necessary for reasons of legal clarity and certainty and so as to ensure that VSPSs are aware of the Commission's regulatory expectations when it comes to this provision of the Code.

Transition period

We note that, in its Response to Consultation on the draft Code, the Commission stated that it “*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*” (emphasis added). However, in the current Consultation, the Commission seems to be departing somewhat from this position, without any new evidence to back this up, when stating that it “*does not find the arguments made by VSPS providers [regarding transition periods] persuasive*”.

It does so on the basis that it considers that VSPS, “*even prior to designation, have been on notice of the forthcoming imposition of obligations since the adoption of the revised AVMS Directive in 2018 and the adoption of the Online Safety and Media Regulation Act 2022 (the OSMRA)*”. We respectfully disagree with this assertion and note that the OSMRA merely requires, under section 139K(3), that the Commission exercise its powers with a view to ensuring that VSPSs take appropriate measures to provide the protections set out in Article 28b(1)(a), (b) and (c) of the AVMSD and to comply with the requirements set out in Article 9(1) of the AVMSD. Therefore, the OSMRA does not provide sufficient detail on the nature and extent of obligations that would be imposed on VSPSs under the Code and, as such, the specific obligations under the Code could not have reasonably been anticipated by VSPSs.

Moreover, as the Commission recognizes, the second version of the Code has been significantly amended, with certain definitions changing substantively - notably, the definition of restricted content (previously, different types of regulated harmful content) which impacts the underlying requirements to which such definitions are applicable (e.g. terms and conditions and reporting and flagging) - and requirements becoming more prescriptive than those included in the original version of the Code (e.g. parental controls).

In addition, we note that, unlike the original consultation, the present Consultation on the Code does not include a draft of the Commission’s Statutory Guidance. In this regard, the Commission has stated that it is still considering its position on statutory guidance material to be issued and intends to finalise such material for publication in tandem with the final Code. As noted above, in its original consultation, the Commission stated that the Statutory Guidance is intended to set out the Commission’s expectations as to how VSPSs can best implement the Code’s requirements and that, failure to follow it may be taken into account, to the extent it considers appropriate, when deciding whether to open an investigation or whether there has been an infringement. Given the importance that the guidance will have in assessing compliance with the Code, VSPSs will need appropriate time, once it is published, to be able to take it into consideration in complying with the requirements of the Code.

In light of this and the nature of the measures included in the Code, and in particular the prescriptive and granular requirements contained in Part B of the Code - some of which differ materially from the previous version of the Code - MPIL believes that the Code should prescribe an overall minimum period of 12 months for implementation, before the Code begins to apply to VSPSs, and in particular to Facebook and Instagram.

Indeed, the Code sets out very prescriptive requirements with regard to, for example, the prohibition of certain types of specific content, implementing parental controls with specific functionalities, as well as implementing certain complaints mechanisms, all of which require

significant time and engineering work to implement. For instance, in order to comply with requirements to update terms and conditions, VSPs will need to conduct an extensive gap assessment of their terms and policies and newly updated definitions of certain types of restricted content. In the case that VSPs find they do need to make adjustments to their terms and conditions, they will need to conduct a substantial review and vetting, user research, as well as external engagement in order to assess the best way to provide effective and user friendly terms and conditions, which will have to take into consideration the various different languages in which VSPs provide their terms and services.

Likewise, the Code requires VSPs to implement certain measures which require substantial engineering work. For instance, in order to build requirements such as parental controls and complaints mechanisms required under the Code, VSPs may have to, not only build out the necessary prescriptive functionalities, but also test and train the relevant systems, all of which takes a significant amount of time and resources, which is incompatible with an immediate enforcement period.

Accordingly, and as noted in MPIL's prior submissions, the Code should set out implementations periods, bearing in mind the need for VSPs to build, test and train systems to make sure that the implemented measures are effective, practicable and scalable. As noted therein, the implementation period required varies depending on the nature of each specific measure, but should not, in any case, be inferior to 12 months.

12 August 2024

**Pinterest Response to Invitation to Consult:
Application of the revised draft Online Safety Code**

Introduction

The following is Pinterest’s response to the 2 July 2024 invitation by Coimisiún na Meán (the “Commission”) to consult under sections 139L(4)(a) and (b) of the Broadcasting Act 2009 (the “Act”) on the Commission’s proposed application of an Online Safety Code (the “Code”) to video-sharing platform services (“VSPS”).

Pinterest welcomes the opportunity to consult, as we share the Commission’s goal of fostering a safe and positive online environment. We take note of the Commission’s direction in the invitation to consult that “the consultation on the substance of the draft Code has closed and the Commission does not invite comments on the content or drafting of the revised draft Code or the final Code.”¹ Accordingly, this comment will be limited to the proposed application of the Code to the VSPS category, as well as statements made by the Commission in its Statement of Reasons supporting its preliminary determination to apply the Code.

Pinterest continues to study the revised draft Code and the measures that may be necessary for compliance, and we may have concerns regarding the proportionality and effectiveness of the Code’s requirements, as well as its timeline for implementation. While the scope of this particular consultation may be limited, to the extent it is necessary we look forward to engagement with the Commission on the interpretation and application of the Code to Pinterest’s service in a practical and proportional manner.

Pinterest is encouraged by the Commission’s statement that “the regulatory obligations imposed in the Code are proportionate and commensurate to the risk of harm. The Commission accepts that the different resources available to providers, will, to some extent, influence the form of measures they take.”² Indeed, in order to preserve competition in the digital sector and allow platforms to implement measures that are suitable and effective for their own platforms, we agree that it is crucial for the Code to be interpreted and applied in a manner that is tailored to its objectives and ensures compliance is practicable for the platforms in its scope.

¹ Letter from Commission dated 2 July 2024, pp. 2-3.

² Statement of Reasons, Part II(e).

The proportionality of the Code's measures may be assessed by taking account of a range of factors, including the size of a platform, its functionalities and use cases, the risk to users, existing mitigation measures, relevant industry standards, users' rights, and the platform's resources compared to the cost and effectiveness of the proposed measures. In view of these factors, it's clear that VSPS providers are diverse, and accordingly the Code should allow flexibility for platforms to implement safety measures that are practical and effective in light of their unique designs and risk profiles, and to do so in a manner that is suited to the features and functionality of their platforms. This approach would be in line with the wording of Article 28(b)(3) of the AVMS Directive.

In order for small- and medium-sized platforms to continue to innovate and grow, it is important that these platforms not be required to take steps that are unnecessary to improve their users' safety, considering the substantial aggregate costs of compliance with the Code's measures. Even platforms that may be considered "large" due to the size of their user base may have vastly different resources and capabilities than other "large" platforms due to differences in their business models or stages of development.

As such, we respectfully suggest a nuanced and proportionate approach that accounts for platforms' respective features, risk profiles, and resources, to ensure that the Commission's regulatory framework is tailored to the relevant circumstances and avoids undue burden on platforms wherever possible.

Comments on the Consultation

Applicability to services within the category

Pinterest does not dispute that it is appropriate for the Commission to apply the final code to platforms in the VSPS category, as this is consistent with the Commission's obligations under the Act. Pinterest further acknowledges that the Commission designated Pinterest as falling within the VSPS category on December 28, 2023, despite Pinterest's position that its service does not meet the requisite criteria.

As detailed herein, though, Pinterest disagrees with certain statements in the invitation to consult that are directed at VSPS providers collectively, but which do not accurately represent Pinterest's content safety policies and practices.

Availability of harmful content

In Part II(b) of its Statement of Reasons the Commission states that “from the available evidence, [the Commission] concludes that harmful online content is widely available on VSPS within the Category. That includes online content on bullying, eating/feeding disorders, self-harm or suicide, incitement to hatred or violence, terrorist content, child sexual abuse and other harmful online content which impairs the physical, mental, or moral development of minors.”

We disagree with the claim that such content is “widely available” on Pinterest. Pinterest’s Community Guidelines broadly prohibit various types of content that may be harmful to users of all ages, including, among others, content promoting suicide, self-injury, or eating disorders; hateful or violent content; content promoting extremists or terrorists organizations; and any content that contributes to sexualization or sexual exploitation of minors.³

Pinterest deploys robust content moderation systems to enforce our policies and help make Pinterest safe for everyone. These include automated tools, manual review, and hybrid approaches that combine elements of both, all of which combine to allow us to identify and action harmful content at scale.⁴ These efforts are highly effective in drastically limiting the availability of harmful content on Pinterest. In our global Transparency Report, we report data on the reach of Pins deactivated for violating each of our policy categories, calculated as the number of unique users that saw each deactivated Pin during the reporting period for at least 1 second before it was deactivated.⁵ Since the ultimate goal of content moderation is to prevent users’ exposure to harmful content, we think this is an important measure of the effectiveness of our content moderation measures, and in most cases, this data indicates that very few users view content before it is deactivated. For example, Pinterest’s most recent transparency report shows that in Q3 and Q4 of 2023, 98% and 95% of the Pins deactivated for violating our suicide and self-injury policy were seen by fewer than 10 users.

While we cannot speak to the effectiveness of their content moderation systems, we are generally aware that other designated VSPS also ban some or all of these categories of

³ Pinterest’s Community Guidelines can be accessed at:
<https://policy.pinterest.com/community-guidelines>

⁴ More information on Pinterest’s Community Guidelines enforcement is available at:
<https://policy.pinterest.com/enforcement>

⁵ Pinterest’s latest Transparency report, as well as an archive of past reports, is available at:
<https://policy.pinterest.com/transparency>

content, and carry out enforcement of these policies. We believe that in order to better account for platforms' existing policies and content moderation efforts, it would be appropriate for the Commission to revise this statement to read only that certain platforms may be at risk of these types of content.

Age minimum enforcement

In Part II(d) of its Statement of Reasons, the Commission states that “[n]one of the services in the Category have barriers that could meaningfully prohibit determined minors from accessing the freely available content within their core user-experience.”

First, we reiterate the point above that harmful content is not “widely available” on our platform, which should be taken into account when assessing the impact of minors “accessing the freely available content within their core user-experience.” As stated in Pinterest’s 31 January 2024 response to the Commission’s consultation on the draft Code, our Community Guidelines are developed with our youngest users in mind and are applied to all users and content on Pinterest, so that our platform can provide a safe experience for both teens and adults.

Second, we disagree that Pinterest does not impose any “barriers” to underage children accessing its service. Pinterest requires individual users to be at least 13 years old, or the minimum age of consent of the user’s country, in order to create an account, and explicitly prohibits children under the age of digital consent from using Pinterest. To enforce its minimum age requirements, Pinterest collects a user’s birthdate at sign up, which serves as a “neutral age gate” and does not indicate that the user needs to be above the age of digital consent to sign up, nor does it only permit users to enter the minimum age or older.

[Redacted: Confidential]

We also take steps to remove known children from the service. *[Redacted: Confidential]* In addition, our Help Center contains an article with various resources for parents and caregivers of teens on Pinterest, including regarding our age requirements, the privacy options available to Pinterest users, and the resources available to parents if they suspect their underage child is on the platform. When a parent notifies us that their underage child is on the platform, that child’s account will be deactivated.

These measures are commensurate to Pinterest’s risk profile and aligned

with industry standards, nonetheless Pinterest continues to monitor technological developments and forthcoming regulatory guidance on age-appropriate design measures. In particular, Pinterest notes that the future EU Code of conduct on age-appropriate design and the European Commission's recent call for evidence for guidelines on protection of minors online under the Digital Services Act may provide long awaited guidance for platforms.

Implementation period

In Part III of its Statement of Reasons, the Commission states that VSPS providers' comments in favour of an implementation period for the Code were not persuasive, on the grounds that platforms have been on notice of the AVMS Directive since 2018, of the Online Safety and Media Regulation Act since 2022, and of the draft Code since December 2023. This seems to be somewhat of a departure from the Commission's position in the Response to Consultation where it stated that it "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."

As noted in our 31 January 2024 comment to the draft Code, it takes a significant period of time to make changes to a platform's product, policies, content moderation systems, and transparency reporting practices, as multiple internal teams need to engage in planning, design, development, testing, and implementation of such changes. Accordingly, we suggested a transition period of 12-15 months, and understand that other VSPS providers suggested similar periods, if not longer. Considering the amount of time and cross-functional effort necessary to affect these changes, it is most efficient to undergo this process only after a new regulation's requirements are completely finalised, as any revisions may result in differences in a platform's user interface, disclosures, policies, or enforcement practices which need to go through the full implementation process in order to be executed properly and with minimal disruption to the user experience and the platform's business.

While platforms may have had some notice of the broader outlines of the requirements of the AVMS Directive, its specific implementation was always subject to the particulars of the Code, which was published in revised form in May 2024 and is still not finalised, pending the TRIS procedure and then codification into Irish law. The Commission itself notes that the May 2024 revised Code differs from the December 2023 draft Code, and

that further changes may still occur, acknowledging in the invitation to consult that the TRIS procedure could necessitate “material changes to the draft Code before adoption and application.”⁶

Even a slight change to the wording of the Code may significantly alter its meaning and impact, as well as implementation timelines. Even if those changes result in the Code being “narrowed or less prescriptive,” as the Commission suggests, those changes may alter product development timelines that require a substantial amount of time to be effectuated. Accordingly, releasing a revised draft Code in May of this year and making it enforceable in Autumn imposes an undue burden on VSPS providers, particularly where no statutory guidance for the revised Code has been made available.

Pinterest is working in good faith to implement the Code’s requirements in a timely manner. We strongly encourage the Commission to expressly provide for a reasonable implementation period. At least, we suggest that in the interests of effectuating principles of proportionality, as well as giving legal certainty to platform operators, that the Commission exercise discretion when it comes to enforcement of the Code. In its discretion, the Commission may give consideration to extending implementation timelines on an *ad hoc* basis in response to feedback from platforms, particularly considering the complexity of the requirements and the resources of the platform in question, or it may at least refrain from resorting directly to an enforcement posture should platforms demonstrate in good faith that additional time is needed to come into compliance with the Code.

Conclusion

Pinterest is grateful for the opportunity to consult with the Commission regarding the application of the Online Safety Code, and looks forward to further engagement with the Commission on this matter. If it would be of assistance, we would be happy to elaborate on or discuss any of the points raised in this response or any other matters of interest to the Commission.

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⁶ Letter from Commission dated 2 July 2024, p. 2.



Reddit Submission

Consultation on the Application of the Online Safety Code¹

Introduction

Reddit welcomes the opportunity to contribute to this consultation on the application of the revised Online Safety Code (the Code). In our response to the previous consultation on the substance of the Code, Reddit emphasised the critical importance of placing proportionality, flexibility, and fairness at the foundation of this regime. While it was positive to see that much industry feedback was reflected in the revised Code, proportionality measures are still lacking. Our comments are set in the context of the documentation associated with the consultation, where Coimisiún na Meán (the Commission) notes that it is obliged to consider the nature and scale of services within the category (the Category) of Video-Sharing Platform Services (VSPS). It is also required to ensure that its regulatory arrangements operate “proportionately, consistently, and fairly”, while taking account of “technological and societal change”. In this submission, therefore, we focus on the following points:

1. The Commission should take a holistic view of ‘nature’ and ‘scale’ in its analysis of designated services. It should then adopt a tiered approach to Code implementation that acknowledges significant differences amongst the designated platforms, particularly in 1) organisational scale and resourcing and 2) amount and prominence of video content.
2. Proportionate and flexible supervision will be necessary with respect to duties carrying technological requirements, recognising the early-stage development of privacy-protecting age assurance mechanisms.

Reddit’s participation in this consultation is informed by its position as a mid-sized platform on which text-based conversation remains the overwhelming mode of user engagement. In the context of the companies designated by Coimisiún na Meán as VSPS, Reddit’s emphasis on proportionate enforcement speaks to the particular concerns that companies at our level often express: that regulatory enforcement must be mindful of differences in size, resourcing, and approaches to content moderation, or risk harming mid-sized services in a manner that will undermine diversity and competition across the industry.

¹ **Legal Notice** – This submission is being made without prejudice to the issues outlined in *Reddit, Incorporated v Coimisiún na Meán* - High Court Record No. 2024/56 JR, which is currently under Appeal by Reddit (**Appeal**), and to matters generally, and is made on the basis that the Reddit service remains designated as a video sharing platform service, which is one of the points that is the subject of the Appeal. The issue of whether hyperlinks and/or embedded video links to audiovisual programmes and/or user-generated videos hosted on a third-party service constitute audiovisual programmes and/or user-generated videos within the meaning of s.2(1) of the Broadcasting Act 2009 is also the subject of the Appeal.



Holistic View of Nature & Scale – Adopting a Tiered Approach to Code Application

The Commission’s Statement of Reasons specifically notes that it must consider the ‘nature and scale’ of the platforms that have been designated in the Category. This is welcome. However, in order to arrive at an accurate impression of the designated services, the Commission must broaden its view of both ‘nature’ and ‘scale’. In doing so, the Commission should adopt a tiered approach to applying the Code.

Company Scale & Resourcing

The Commission has limited its assessment of scale to the reach of each service, thereby excluding other factors germane to a company’s capacity to comply with the Code, such as its corporate footprint and financial resourcing. The Commission makes a brief reference to how resource availability will, “to some extent”, influence the form of measures providers take, but this factor does not seem integral to its assessment framework.

There is a significant disparity in resourcing between the largest and smallest services in the Category – tens of thousands of employees and a two trillion dollar market capitalisation stand between the largest and smallest platforms designated as VSPS. For example, Reddit has 2,000 employees in total and generated revenue of \$281.2 million in Q2 this year, as compared to the largest VSPS that produce tens of billions in revenue each quarter.² These companies, therefore, have the means to invest significant resources into the development of proprietary technology which is deployed to meet compliance requirements. Smaller services do not have these resources, often cannot build such solutions in-house, and may then be required to establish relationships with third-party vendors that are costly and often technologically inflexible. Acknowledging this dynamic between the large and small services, any practical measurement of scale must account for its integral relationship with compliance capacity. The Commission should thus implement the Code’s provisions in a tiered manner that fairly reflects the vastly different means of the respective designated services.

Differences in Scale & Nature of Video Content Across VSPS

With regards to the Commission’s consideration of nature, it has designated ten services and acknowledges certain differences between those services. However, it does not give an indication that it will apply the Code in a manner that recognises that there is a broad spectrum between VSPS that are wholly premised on video consumption and, on the other end, services where video content is peripheral to the core user experience. Echoing the significant resourcing gap between the designated services, the difference in video content volume is equally stark. Users of the largest VSPS watch billions of hours of video every day, while consumption of video is comparatively trivial

² Reddit Second Quarter 2024 Results:

<https://investor.redditinc.com/news-events/news-releases/news-details/2024/Reddit-Announces-Second-Quarter-2024-Results/default.aspx>



on the smallest VSPS. It follows that the largest VSPS have constructed their entire service architecture to facilitate this mode of content delivery and associated moderation demands. A tiered approach to the Code's application would recognise this reality.

The Commission should also take a nuanced view of the varying content experiences across VSPS. For example, there is a clear distinction between natively uploaded video and video that's merely embedded through links and hosted elsewhere. In this case, the video is transmitted from a third-party site to the user's screen – it is not hosted by the pass-through platform. Indeed, it is often hosted and ultimately controlled by one of the larger designated services within the Category – a fact that will be clear to users who interact with the content and recognise the branding hallmarks of those services. The pass-through platform cannot, therefore, exercise the same control over this content, as it never hosts the file.

The Commission's obligation to operate proportionately, consistently, and fairly aligns with the adoption of a tiered approach to enforcement. It would ensure that the Code does not inadvertently favour the largest companies to the detriment of innovation, competition, and consumer choice. If the Code is applied without due regard to the factors discussed, it would disincentivize platforms from experimenting with video-related offerings in the EU, as doing so could subject services to a range of onerous obligations, thereby affecting options available to European consumers.

Proportional Approach to Enforcement of Technological Duties

The Commission should take a proportionate and flexible approach to its enforcement of the technological duties contained in the Code. Services need the flexibility and requisite time to arrive at technological measures that represent an appropriate fit for the unique characteristics of their platforms. What works for a service premised on a personalised videofeed does not work for a primarily text-based discussion forum, and vice versa.

The Commission's regulatory arrangements are required to take account of technological and societal change. We note that user privacy-protecting age assurance technologies are still at an early stage of development, with a small number of vendors in the market. Furthermore, a disturbing amount of these vendors have been subject to troubling data breaches, putting users' private information at risk. It is therefore important to consider the current state of this technology and provide grace periods, where necessary, to allow platforms to develop and implement technological measures that align with both their principles and user expectations of privacy.

Over the long term, the Commission may consider that implementing age assurance at the operating system-level (for example via Android or iOS settings), is a more effective, secure, and consistent solution. When age assurance is carried out at the point of entry into the ecosystem, the result can be communicated to all relevant services such that an underage user cannot circumvent safety measures. This would be a streamlined solution which has two further benefits. First, it is



privacy-preserving in that it avoids multiple and potentially risky disclosures of personal data, like name and birth date, across many services. Second, it acknowledges that the device manufacturers already have the relevant identifying data, as well as the technology and the resources to implement these solutions.

Conclusion

It is vital that the Commission should apply the Code proportionately, fairly, and with due regard for the holistic scale and nature of the designated services. The Category represents an enormously broad spectrum of services. These differences produce a sensible rationale for affording platforms due flexibility in meeting the Code's expectations. This would preserve their capacity to plan sustainably across jurisdictions, compete fairly, and provide a quality experience for their users.



TikTok Technology Limited

Response to the consultation on the application of the revised draft Online Safety Code

TikTok Technology Limited (**TikTok**) welcomes the Coimisiún na Meán's (the **Commission**) invitation dated 2 July 2024 to consult pursuant to sections 139L(4)(a) and (b) of the Broadcasting Act 2009 as amended (the **Act**) on the proposed application of an Online Safety Code (the **Code**) to video-sharing platform services (**VSPS**).

The purpose of this response is to outline the position of TikTok in respect of the applicability of the Code.

Applicability of the Code to TikTok

The draft Code is currently undergoing the TRIS process and is subject to change before it comes into force. While the Commission notes that it does not expect the final Code to depart in any material respect from the revised draft Code, it acknowledges the possibility that material changes could be required following the conclusion of the TRIS process such that a further consultation would be required.

While the Commission considers it appropriate to engage in the consultation process required under s.139L(4) of the Act on the basis of the revised draft Code, TikTok respectfully reserves its position as to the applicability of the Code to TikTok until the final version of the Code is published.

Timelines for Compliance with the Code

The Commission's *Response to Consultation* states that a transition period is not proportionate for Part A of the Code and that it may consider further the introduction of a transition period in respect of Part B. The Commission outlines that it did not find the arguments made by VSPS providers on introducing a transition period "*persuasive*".

The Commission's reasoning is that VSPS providers "*have been on notice of the forthcoming imposition of obligations*" because the revised AVMS Directive was adopted in 2018, the Online Safety and Media Regulation Act was adopted in 2022 and the draft Code was published in December 2023.

However, neither the AVMS Directive nor the Online Safety and Media Regulation Act contain the specific legal obligations required under the draft Code. In addition, the draft Code published in December 2023 was subject to change and indeed was materially revised on 27 May 2024. The Commission acknowledges that certain obligations in the revised draft Code have already been narrowed or made less prescriptive and that revised draft Code remains subject to change. Indeed, TikTok also understands that the Commission intends to publish a final version of its statutory guidance materials alongside the final Code. This final guidance will be essential in how VSPS providers assess and interpret what is required of them under the final Code.

Given that the detail of the obligations required under the revised draft Code remain subject to change, TikTok respectfully submits that expecting VSPS providers to implement measures to ensure compliance with these obligations (prior to them being finalised) is inappropriate.

The Commission acknowledges the impact that the Code may have on VSPS providers' service design and IT build, compliance reporting and number of content moderation, compliance and trust and safety staff, and related costs. However, the Commission fails to acknowledge that those changes will require time to establish, implement, test and resource. By way of example:

- **Complaints.** The revised draft Code requires the establishment and operation of complaint handling procedures for complaints related to age assurance, content rating, parental controls and reporting and flagging. While the DSA imposes an obligation on online platforms to establish an internal complaints-handling system, the nature of such complaints is different. Establishing a system that complies with the revised draft Code, and deals with categories of complaints that are distinct to what is currently required under the DSA, requires time for development, testing and training of relevant staff members.
- **Reporting.** The revised draft Code requires VSPS providers to report to the Commission on its handling of communications from users raising complaints or other matters every 3 months (unless otherwise



specified by the Commission). As submitted in TikTok's response to the consultation on draft Code, platforms require time, outside of the reporting period, to validate the metrics and ensure they are robust before disclosing. There also still remains uncertainty regarding the content of such reports. In the absence of specific guidance on the content of these reports, it is extremely challenging for VSPS providers to build the necessary technical and operational processes to comply with the reporting obligation.

TikTok's position is that VSPS providers should be provided with a transition period following publication of the final Code during which the necessary measures, systems and processes can be established and implemented with the assurance that those requirements are final.

TikTok thanks the Commission for the opportunity to provide comments on the application of the revised draft Code.

12 August 2024

Niamh Hodnett

Online Safety Commissioner

Coimisiún na Meán

**1 Áras Shíol Bhroinn, Bóthar Shíol Bhroinn,
Baile Átha Cliath 4, D04 NP20, Éire**

1 Shelbourne Buildings, Shelbourne Road,
Dublin 4, D04 NP20, Ireland

Dear Ms Hodnett,

On behalf of Tumblr, I write to submit comments on the proposed application of the revised draft Online Safety Code (the "Code") in accordance with the Revised Audiovisual Media Services Directive ("Revised AVMS Directive"). Thank you for the opportunity to engage with Coimisiún na Meán (the "Commission") on this matter.

First, we believe that the Commission's proposal to apply the entirety of the final Code to Tumblr as a VSPS does not fulfill the Commission's obligations to tailor the Code's requirements to be practicable and proportionate.

The Commission states that its reasons for applying the final Code to the entire VSPS category apply equally to Tumblr. However, the size and nature of the platforms within the VSPS category vary widely, and both the Revised AVMS Directive and the Code itself require the Commission to take this fact into account in determining the application of the Code to particular entities. It is plainly disproportionate to apply the final Code in the same manner to a platform with Tumblr's size, resources, and characteristics as to certain other platforms within the category (such as those qualified as Very Large Online Platforms under the Digital Services Act or those that consist almost entirely of videos).

Article 28b(3) of the Revised AVMS Directive mandates that Member States apply measures that are "practicable and proportionate, taking into account the size of the video-sharing platform service and the nature of the service that is provided." The Hon. Ms. Justice Siobhán Phelan in section 197 of her judgment dated 20 June 2024 underlined the importance of applying the Code proportionally in accordance with Article 28b(3) of the Revised AVMS Directive, writing that the size of the platform is "likely to be relevant to considerations of practicality and proportionality under the Revised AVMS Directive." When a smaller sized platform is subject to regulation as a VSPS because it is considered to meet essential functionality criteria, such as in Tumblr's case, Justice Phelan writes that "...measures required in such circumstances should be tailored to be practicable and proportionate." Justice Phelan further emphasizes this point in section 247, stating that An Coimisiún is "governed by a requirement to have regard to issues of practicality and proportionality" pursuant to the Revised AVMS Directive. The Commission's decision to not

tailor application of the final Code to be practicable and proportionate contravenes the requirements of the Revised AVMS Directive and the judgment of Justice Phelan.

The specific application of the Code to Tumblr must be realized in a practical and proportionate manner. For example, producing a report on user complaints every 3 months (section 17.3) would require an investment of time and resources disproportionate to Tumblr's resources, user numbers, and complaint volumes. However, we could share information about the reports we already regularly produce, both in compliance with the DSA and voluntarily, and discuss the types of information the Commission might require in addition to what we already report.

Consideration of proportionality is especially important for the application of Part A of the Code, which describes "Appropriate Measures." The Code explicitly states that its measures must be practicable and proportionate taking into account the size of the video-sharing platform service and the nature of the service, in accordance with Article 28b(3) of the Revised AVMS Directive. For instance, Sections 10.6(f-h) of Part A of the Code would each require building complex and costly age verification, content rating, and parental control systems if deemed appropriate for the platform.

Tumblr differs significantly from other platforms in the VSPS category in a number of salient ways. Tumblr is one of the smallest platforms within the category by an enormous margin; indeed, it is over 45 times smaller than the largest platform in the category. Correspondingly, it has significantly fewer resources than the larger platforms categorized as VSPSs. As mentioned in previous engagements with the Commission, the amount of video content available on Tumblr is extremely limited, representing less than 4% of all content posted on the platform. This is a stark difference to other platforms in the category which are very large and/or host almost exclusively video content.

Tumblr also poses a comparatively low risk due to the nature of its user and content policies. Users must be 16 years of age to sign up, and the limited video content that is posted on Tumblr does not target children. In contrast, some platforms within the category host channels of video content specifically designed to appeal to young children. Further, as described below, Tumblr enforces community standards which prohibit adult-only video content and requires content labeling for content which is permissible on the platform but more suited to an adult audience.

There are significant differences within the category of size, proportion of video content, and risks to minors attributable to video content. Taken holistically, Tumblr's profile represents a risk due to video content that is vanishingly small compared to others in the category. The Revised AVMS Directive requires that these distinctions be accounted for when applying the code. For a platform of Tumblr's size and characteristics, applying the requirements of Part A of the Code wholesale would be a disproportionate response to the level of risk; not practicable given Tumblr's resources; and contrary to the requirements of the Revised AVMS Directive, Justice Phelan's decision, and the Code itself.

Second, we would like to clarify an apparent misperception of Tumblr's User Guidelines. The Commission states that Tumblr currently permits users to post "types of sexually explicit and other adult material" that "may constitute pornography or gratuitous violence." This is not the case. Tumblr specifically prohibits sexually explicit material and violent content, gore, and mutilation in our user guidelines; we take action to remove such content and sanction accounts that post it. Further, for content that is allowed on Tumblr but suitable for adult audiences, such as non-pornographic artistic depictions of nudity, we require that users add a Content Label to ensure it can be appropriately filtered.

We believe that it's important to make this distinction clear because the draft Online Safety Code defines "adult-only video content" as "video content consisting of pornography" or "video content consisting of realistic representations of, or of the effects of, gross or gratuitous violence or acts of cruelty." Such adult-only video content, as defined in the draft Online Safety Code, is prohibited by Tumblr's terms of service.

While section 12.11 of the draft Online Safety Code would require that "A video-sharing platform service provider whose terms and conditions do not preclude the uploading or sharing of adult-only video content as defined in this Code shall implement effective age assurance measures," Tumblr does not meet this condition because it does prohibit the uploading or sharing of adult-only video content as defined in the draft Online Safety Code.

Finally, we would like to echo the concerns the Commission has noted regarding the lack of an implementation period. Because Tumblr is a small platform with proportionally limited resources, it would be unreasonably burdensome for it to make changes in anticipation of the requirements of the draft Online Safety Code only to have to rebuild systems, technologies, and processes due to changes to the Code that may arise during the TRIS procedure. This is of particular concern for complex and nascent systems and technologies such as age verification or parental controls, the requirements for which are not fully articulated in the Code. While perhaps significantly larger platforms could absorb such costs, Tumblr must plan carefully and be assured that expenditures will in fact be necessary. For this reason, we believe that it is disproportionate to require platforms to pre-emptively invest into compliance with an Online Safety Code that is still in a draft format, and ask the Commission to reconsider its stance against an implementation period.

We appreciate the opportunity to engage with you on this matter and can provide further clarification on any of the above as needed.

Best regards,

/s/ Jordan Hinkes

Associate General Counsel, Automattic Inc, on behalf of Tumblr



August 12th, 2024

COMISIÚN NA MEÁN

1 Shelbourne Buildings,
Shelbourne Road - Dublin 4
D04 NP20 - Ireland

By Email: vspsregulation@cnam.ie

Re: Consultation - Application of the revised draft Online Safety Code. Invitation to consult under sections 139L(4)(a) and (b) of the Broadcasting Act 2009 (the "Act")

Dear Commissioner Hodnett and team,

1. Twitter International Unlimited Company ("TIUC"), provider of the X VLOP service, hereby respectfully welcomes the opportunity to respond to Coimisiún na Meán's ("CnaM") consultation on the application of the revised draft Online Safety Code ("Code"), Section 139L(4)(b) of the Broadcasting Act 2009 (the "Act") ("Consultation"). TIUC also notes its support for Technology Ireland Online Safety Working Group ("Tech Ireland") submissions related to the substance of the Code, in alignment with its suggestions, concerns and comments.

2. We also strongly voice our support for the co-regulatory approach encouraged by the AVMSD, to achieve protection of all users, including children and young people, from harmful online content. However, we view that it is important that Ireland's transposition of the AVMSD does not impose obligations which go beyond what is required by the AVMSD and which potentially conflict with the Digital Services Act ("DSA"). We believe that there are opportunities to address these issues without undermining the policy intent and effectiveness of the Code, as expressed in detail in Tech Ireland submissions.

3. We take this opportunity to express our alignment with the application of the final Code to the VSPS Category (consultation under section 139L(4)(b) of the Act), but reiterate our concerns with its application to VSPS providers.

4. TIUC reserves its right to challenge the lawfulness of the Code. We reserve our position and all rights at this time, regarding CnaM's legislative and procedural approach, including in relation to further Guidance being issued. In that sense, we also reiterate our support to all Tech Ireland submissions and highlight the need for a transition period of 15 months - as granted in



relation to the DSA - or at least a minimum 12 months to be adopted to allow VSPS providers to adapt their systems, controls and processes to address the requirements of the Code.

Yours Sincerely,

Twitter International Unlimited Company

Google Ireland Limited Submission re: Code Application, Via Email August 23rd

Hi Patrick,

We are grateful for the opportunity to consult with Coimisiún na Meán (CnaM) on the applicability of the draft Online Safety Code (OSC) to YouTube as a Video Sharing Platform Services (VSPSs).

We are grateful to have had the opportunity to discuss our concerns and to hear CnaM's approach in relation to the areas of parental controls, prohibitions on defined categories of harmful content, reporting on complaints mechanisms, and transition periods.

In particular that:

- Transition periods should be considered for Part B of the Code;
- Proportionality and appropriateness should be an overriding consideration in relation to all of these measures;
- Prescriptive parental control measures should only apply as appropriate/proportionate and be directed to content considered to be harmful in respect of the physical, mental and moral development of children in line with the general framing of this section;
- Complaints reporting should be limited to purposes required for CnaM to assess compliance with the requirements of the Code (as per the underlying legislation) and should not extend to transparency reporting requirements.

We hope that the meeting was helpful from CnaM's perspective and gives an understanding of how YouTube is approaching these points, and we thank CnaM for taking the time to meet with us.

Kind regards,

Kennedy



Technology Ireland response to the consultation on the application of Coimisiún na Meán's revised draft Online Safety Code, section 139L(4)(b) of the Broadcasting Act 2009 (the "Act")

[A. Introduction](#)

[B. Key Issues](#)

A. Introduction

Technology Ireland, the Ibec group representing the technology industry, welcomes the opportunity to respond to Coimisiún na Meán's (**CnaM**) consultation on the application of the revised draft Online Safety Code, Section 139L(4)(b) of the Broadcasting Act 2009 (the "Act").

Technology Ireland is an association within Ibec, which represents the ICT, Digital and Software Technology Sector. Technology Ireland is committed to promoting trust in our industry, particularly as the online world has accelerated in its importance to our lives.

As a sector we strongly voice our support for the co-regulatory approach encouraged by the AVMSD, to achieve protection of all users, including children and young people, from harmful online content. Our members are committed to working closely with regulators and civil society to address evolving harms and to operating within a code that reflects the intentions of the AVMSD, which clearly defines the objectives which our sector must meet in order to achieve these goals.

As part of the TRIS process, Technology Ireland submitted comments to the European Commission with regard to the draft online safety "Code" and notes that it is important that Ireland's transposition of the AVMSD does not disturb that careful balance, nor distort the internal market, by imposing obligations which go beyond what is required by the AVMSD and which potentially conflict with the DSA. The implications for the application of the Code must be considered in this context and every effort must be made to consider areas where draft obligations fall short of this.

Our members are very concerned that many provisions of the Code cut across the Digital Services Act's (DSA) full harmonisation efforts and that they apply an overly prescriptive rather than outcome-based approach. These aspects of the Code fail to achieve, and/or are disproportionate to, the Code's objectives and, moreover, they fail to recognise evolving risks and solutions in this area. We believe that there are opportunities to address these issues without undermining the policy intent and effectiveness of the Code.

The substantive issues raised by Technology Ireland on the draft Online Safety Code were outlined in the comments we submitted to the European Commission on 12 July 2024 as part of the TRIS process. As the purpose of this consultation is to focus solely on the application of the Code, we would like to reiterate the need for any application of a Code to be compatible with EU law and to align with requirements already agreed at EU level.



Technology Ireland is grateful for the opportunity to respond to this consultation. We outline below some key overarching observations and issues arising from our review of the potential application of the draft Code.

B. Key Issues

1. Compatibility of the application of the Code with EU law

As noted throughout the consultation process, Technology Ireland supports the goals of the Draft Online Safety Code. However, it should be noted that the EU legislature has sought to strike a practicable and proportionate balance between protecting EU citizens online with the protection of EU citizens' fundamental rights in its adoption of the AVMSD and DSA. The application of the Code must not disturb that careful balance or conflict with requirements or terms set out in the DSA and AVMSD. The substantive issues raised by Technology Ireland on the matter were outlined in our comments submitted to the European Commission as part of the TRIS process. As the purpose of this consultation is to focus solely on the application of the Code, we would like to reiterate the need for any application of a Code to be compatible with EU law and to align with requirements already agreed at the EU level.

This alignment extends to terminology and definitions outlined in the Draft Code. One example of the impact of this on the application of the Code extends to Section 10's use of the terms "children" and "minors." "Children" is a defined term under the Code (albeit under Part B), meaning persons under the age of 18. However, the AVMSD applies in respect of "minors", which is not a defined term (under the Code or the AVMSD). Adoption of the term "minors" throughout the Code would grant providers more flexibility (and aligns with the actual AVMSD wording). Further, and as outlined in our previous submissions, applying Section 10 requirements to older children may be disproportionate and oversteps the requirements of the AVMSD. The Code should allow for differential treatment for age groups under 18 (for example, 0 - 12 yrs / 13 - 15 yrs / 16 - 18 yrs) ensuring its application aligns with existing EU provisions.

Additionally, in its original consultation on the Code, CnaM noted that the guidance accompanying the Code would be non-binding, setting out CnaM's expectations as to how VSPS can best implement the Code's requirements. However, failure to follow it may be taken into account, to the extent it considers appropriate, when deciding whether to open an investigation or whether there has been an infringement. This inevitably gives the guidance produced by CnaM a degree of weight. Due to the important role of this guidance in the application of the Code, oversight of its material is required by the European Commission to ensure alignment with EU law.

2. Parental control obligations in alignment with the AVMSD, DSA and GDPR

Technology Ireland presented its input on parental control obligations in our comments submitted to the European Commission on 12th July 2024 as part of the TRIS process. Any application of the Code should reflect and support the requirements on parental controls and obligation as outlined in the AVMSD, Article 8(1) GDPR and Articles 28, 34, 35 of the DSA.

3. Provisions on Terms and Conditions and Related Reporting and Flagging Obligations are in alignment with the AVMSD and DSA.

Technology Ireland's input to the consultation on the Draft Code and the comments provided to the European Commission in relation to the TRIS process outlines details of our position on the provisions for terms and conditions and related reporting and flagging obligations. When applying the Code, Technology Ireland would urge CnaM to consider the impact of prohibition in Section 15 of the Code requiring VSPS to establish and operate reporting and flagging mechanisms for all users in relation to content which may impair the physical, mental or moral development of minors. Members support appropriate measures as outlined under the AVMSD and the DSA which contains harmonised rules around notice and action mechanisms to be in place to notify illegal content (as opposed to the type of legal but harmful content prescribed by the Code). The Code's application should align with Article 14 of the DSA which exhaustively harmonises a platform's obligations with respect to their T&Cs.

4. Transparency Reporting obligations on VSPS and alignment with the DSA.

As it stands, the Code imposes transparency reporting obligations on VSPS (which appear to be subject to adoption of further specifications) with regard to handling communications from users on complaints or other matters (Section 17.3). The broad drafting of this obligation raises possible issues for the Code's application given the potential overlap with detailed and comprehensive transparency reporting requirements in Articles 15, 24 and 42 of the DSA. This should be carefully considered when considering its application.

Additionally, in the interests of legal clarity and certainty, section 17.3 of the Code should not become applicable to VSPS until CnaM has further specified the manner in which VSPSs should report to it. Absent such clarity, it is not clear on what basis and in what way VSPSs are required to report to CnaM and therefore they should not be required to comply with requirements which are not sufficiently clear, as this goes against good regulatory practice.

5. Transition Period Proportionality

The Code does not provide for a transition period to allow VSPS providers time for implementation. This is despite the fact that the majority of respondents to CnaM's 2023 Call for Inputs on the draft Code supported or at least acknowledged that there should be some form of transition period included within the Code.

CnaM has said that a transition period may be considered further in relation to Part B of the Code only. Technology Ireland members reiterated in previous written submissions that a proportionate minimum

transition period of at least 12 months should be adopted to allow VSPS providers to adapt their systems, controls and processes to address the requirements of the Code. Particularly given, on the one hand, that it is not clear when the Code will come into force and, on the other hand, the prescriptive nature of the measures set out under Part B of the Code (e.g. VSPS are required to prohibit certain types of specific content, build parental controls with specific functionalities, build prescriptive complaints mechanisms, etc). Such measures require VSPSs to engage in significant engineering work to build out necessary prescriptive functionalities on their services, and implementation of which may also require prior testing (to ensure effectiveness of the measures) before they can be rolled out to and availed of by users, all of which is incompatible with a complete lack of an implementation period and in any case is unlikely to be concluded within a timeframe inferior to 12 months.

Various measures require time for development, testing and implementation, including those relating to the establishment of a complaint handling mechanism, parental control systems and the suspension of accounts for violations as per the Code. Moreover, providers need time to build systems and processes for data collection as well as turnaround time to collect and validate it.

Additionally, even measures that, on their face, may not appear to require substantial engineering work (as they do not require VSPS to build out or adapt a particular functionality), still require significant time to implement. For example, there are requirements included within the Code which will oblige VSPS to adapt their terms and conditions to include certain restrictions. Updating terms and conditions can involve substantial review, vetting, research and external engagement and VSPS may also need to develop and train classifiers to detect and moderate such content.

Although the original consultation on the Code included a draft of CnaM's Statutory Guidance, the current consultation does not, and CnaM has stated that it is still considering its position on statutory guidance material to be issued and intends to finalise such material for publication in tandem with the final Online Safety Code. In the original consultation, CnaM noted that, whilst the guidance accompanying the Code would be non-binding, it is intended to set out CnaM's expectations as to how VSPS can best implement the Code's requirements and failure to follow it may be taken into account, to the extent it considers appropriate, when deciding whether to open an investigation or whether there has been an infringement. Given the degree of weight which the guidance will inevitably have, VSPS will need time to be able to take it into consideration in addressing the requirements of the Code.

Transition periods have been used in other instances with digital regulation including with the European Media Freedom Act, the UK Online Safety Act and the DSA, which allowed for a minimum transition period of 15 months for providers after the DSA text was finalised. This will ensure effective implementation of the Code and application to VSPS.

For the same reasons, Technology Ireland also wishes to seek confirmation from CnaM that there would be a reasonable transition period between designation of new VSPSs (once the Code is in force) and application of the Code to those services.

6. Appropriate Measures under the AVMSD

While it is not the purpose of this consultation to invite comments on the content or drafting of the revised Draft Code or the final Code, it is imperative to consider the impact of wording as outlined in Technology Ireland’s previous submissions on the application of the Code itself. Alignment with appropriate measures as outlined in Article 28b(3) will ensure the application of the Code remains compliant with the AVMSD and protects and promotes clarity and regulatory certainty. AVMSD protects and promotes clarity and regulatory certainty. Additionally, as regards the appropriateness of measures under Part A of the Code, there is a need for clarity regarding how “appropriateness” of a measure should be assessed, before the Code can begin to apply to VSPS. While section 10.7 of the Code clarifies that, if any issue arises as to the appropriateness of the measures, it will be a matter for CnaM to determine, it is not clear on what basis this determination will be made and what factors will be taken into account. Therefore, further clarity is needed so as to ensure VSPS are aware of CnaM’s regulatory expectations in this regard.

7. Coimisiún na Meán research

Technology Ireland notes that CnaM has referred throughout the Letter to evidence it has obtained through consultations and research, including the PA Harms Report (September 2023) and the Online Safety Research 2023 conducted by IPSOS B&A on behalf of the Commission (November 2023). In particular, when setting out its position on why it considers that harmful online content is widely available on VSPS within the Category, CnaM cites the IPSOS B&A research:

“For example, 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. 87% of respondents said that social media companies did not do enough to keep social media users safe.”

These research findings do not align directly with the categories of harmful content regulated under the draft Code (e.g. content that makes users feel uncomfortable, upset or negative in some way is not included in the Code as a type of harmful content). We urge the Commission to review any determinations which it has made in order to ensure that they relate directly to the types of content regulated by the Code.

8. Access of minors to content

Technology Ireland notes the Commission’s comment in the Letter that “None of the services in the Category have barriers that could meaningfully prohibit determined minors from accessing the freely available content within their core user-experience.” It is unclear on which basis the Commission made this conclusion. Technology Ireland would respectfully disagree with this statement to the extent it is applicable to it and would welcome further the opportunity to engage with the Commission on this concern.



9. Consultation on final version of the Code and Statutory Guidance.

Technology Ireland understands that CnaM is consulting on the basis of the revised draft Code as if it were the final Code and that CnaM does not expect the final Code to depart in any material respect from the revised draft Code.

While CnaM acknowledges that it will engage in further consultation on the Code if, following conclusion of the TRIS procedure, it proposes to make any “material changes” to the revised draft Code, it is not clear what would constitute a “material” change to the Code for these purposes. For this reason, and in the interests of procedural fairness, Technology Ireland and its members would welcome confirmation from CnaM that it will engage in further consultation in relation to the Code if any changes are made to it (other than mere grammatical or stylistic amendments) in order to provide VSPS with the opportunity to submit their views on the Code in light of any amendments that are made.

The above also applies to CnaM’s Statutory Guidance. As mentioned, and whilst in its original consultation on the Code, CnaM noted that the guidance accompanying the Code would be non-binding, it is intended to set out CnaM’s expectations as to how VSPS can best implement the Code’s requirements and failure to follow it may be taken into account, to the extent it considers appropriate, when deciding whether to open an investigation or whether there has been an infringement. CnaM has now stated that it is still considering its position on statutory guidance material to be issued and intends to finalise such material for publication in tandem with the final Online Safety Code. Given the degree of weight which the guidance will inevitably have, Technology Ireland and its members would welcome confirmation from CnaM that it will engage in further consultation on the statutory guidance once it is finalised.