

Revised Online Safety Code Q&A – 27 May 2024

General

1. Why is an Online Safety Code needed?

Coimisiún na Meán is implementing an Online Safety Framework in Ireland, built on several pieces of legislation.

The Online Safety and Media Regulation Act requires Coimisiún na Meán to develop an Online Safety Code. This is because Ireland must implement Article 28b of the EU Audiovisual Media Services Directive 2018. The Online Safety Code will apply specific rules to Video Sharing Platform Services (VSPS), which are a sub-set of online platforms. The Digital Services Act has applied to a wider set of online services since February 17th 2024.

2. What will be the difference for users after this Code is introduced?

While many video sharing platforms already have some elements in place to protect their users, the final Code will set binding rules, and hold platforms accountable for how they keep their users safe, backed up by strong sanctioning powers and fines of up to €20 million or 10% of a platform's annual turnover, whichever is greater. The final Code will also provide clarity to users on how platforms are required to protect them, and what their rights are. The Code will be enforced alongside the Digital Services Act, to provide safeguards for users of online services against illegal content, and content which may be harmful to children.

3. What is the Online Safety Framework?

The Online Safety Framework is composed of the Digital Services Act, the Online Safety Code and the Terrorist Content Online Regulation (TCOR). When taken together, the Online Safety Framework will encompass all of the powers of Coimisiún na Meán to regulate online platforms at a systemic level, and to improve online safety for all users.

Contents of the revised draft Code

1. What is the difference between Part A and Part B of the Code?

Part A sets out the general obligations from the AVMS Directive, which apply where appropriate depending on the size and nature of the service. Coimisiún na Meán will determine when it is appropriate to apply these obligations to Video Sharing Platforms. Part B provides more prescriptive obligations that apply to all VSPS.

2. What content or behaviour is covered by the draft Code?

Part A of the Code covers content which:

1. *Impairs physical, mental, or moral development of minors*
2. *Incitement to hatred or violence on the grounds of sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other*

opinion, membership of a national minority, property, birth, disability, age, sexual orientation

3. *EU criminal content (Child Sexual Abuse Material, terrorism, racism and xenophobia)*
4. *Harmful and illegal audiovisual commercial communications*

Part B of the Code covers:

Restricted video content:

1. *Cyberbullying, self-harm and suicide (incl. dangerous challenges), eating and feeding disorders*
2. *Incitement to hatred or violence on the grounds of sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age, sexual orientation and membership of the Traveller community or Roma communities*
3. *EU criminal content (CSAM, terrorism, racism and xenophobia)*
4. *Audiovisual commercial communications (Harmful and illegal)*
5. *Restricted indissociable user-generated content (e.g. comments or captions)*
6. *Age-inappropriate content – pornography and extreme or gratuitous violence*

3. Why does the draft Code mention some harms and not others?

The draft Code is based on the harms outlined in the Online Safety and Media Regulation Act 2022 and the EU Audiovisual Media Services Directive 2018. The overall Online Safety Framework gives Coimisiún na Meán the tools to address the harmful content and behaviour people encounter online, including the exposure of children to harmful content, and the negative impact of recommender systems on mental health and wellbeing.

4. How were the included harms identified for inclusion in the Code?

The draft Code is based on the Online Safety and Media Regulation Act 2022 and the EU Audiovisual Media Services Directive 2018, which identify the scope of harms to be included in the Code.

Coimisiún na Meán also issued a public Call for Inputs on the Code and received 55 responses from the public and interested stakeholders in respect of the approach to the development of the Code and the harms that should be addressed in the Code. Coimisiún na Meán procured an expert report from PA Consulting on Online Harms which it published on its website. A public survey was also commissioned to further understand the public attitude to harmful content. Finally, a public consultation was conducted on the previous draft Code which attracted circa 1,400 responses.

Coimisiún na Meán also engaged with its Youth Advisory Committee (YAC) in consultation on the Online Safety Code. In line with the Online Safety and Media Regulation Act, at least half of the members of the Youth Advisory Committee are under the age of 25.

5. Can the list of harms be added to?

Yes. Coimisiún na Meán can make a proposal to the Minister that a particular type of content should be added to the categories of harmful content included in the Online Safety and Media Regulation Act 2022. There is a statutory procedure to follow set out in the Act and the Minister must ultimately approve any additions to the categories of harmful content.

6. How does the draft Code deal with Political advertising?

Advertising is dealt with under the commercial communications section of the draft Code. It needs to be clearly marked as advertising.

7. How does the draft Code deal with Disinformation?

Disinformation is not covered specifically by the draft Code. When disinformation crosses the threshold of being illegal content covered by the DSA, or regulated content under the draft Code, platforms must prevent it being uploaded or shared.

Under the draft Code, platforms also have to promote media literacy for their users, and publish reports on their efforts. Media literacy can help users to recognise disinformation, minimising its harmful effects.

The Digital Services Act has further obligations for the largest platforms to assess and mitigate the risks their services present in areas such as electoral integrity and public health, which will help to address the impacts of disinformation and misinformation.

Scope

1. What platforms does the code apply to?

The Code will apply to Video Sharing Platform Services, i.e. services which allow users to upload and view videos online where the provider of the service is under the jurisdiction of the Irish state. We have designated ten Video Sharing Platform Services:

1. Facebook
2. Instagram
3. YouTube
4. Udemy
5. TikTok
6. LinkedIn
7. X
8. Pinterest
9. Tumblr
10. Reddit

It should be noted that Tumblr and Reddit have judicially reviewed their designation and judgement is awaited.

2. What about other online services?

From February 17th 2024, Coimisiún na Meán has been responsible for enforcing the EU Digital Services Act in Ireland. The DSA covers all types of illegal content on a variety of online intermediary services.

3. What is the approach to age assurance and age verification?

Video Sharing Platforms which allow users to upload pornography or scenes of gratuitous violence will have to use age assurance so that children cannot normally encounter this content. The Code contains a general obligation for Video Sharing Platforms to use age verification to protect minors from content that could impair the mental, moral or physical development where it is appropriate. Coimisiún na Meán will determine when it is appropriate for a platform to use age verification, bearing in mind the proportionality considerations and the full range of protections for children under the Online Safety Code and the DSA. We are working with the European Commission to develop a pan-European approach to age assurance and age verification, so that there are similar protections for children on platforms across Europe.

4. What were the major themes of the responses to the public consultation?

The volume of responses to the public consultation underlined the importance of finalising a Code which provides for enhanced safety for children and the public at large online, which sets out proportionate and effective interventions, and which can work alongside our powers under the DSA. We recognise that we have been entrusted with a special responsibility to keep children and all of us safer online, and that was reflected in the views expressed in many of the responses to the public consultation.

5. Why has the recommender system safety plan been removed from the Code?

The proposal to have recommender system safety plans was consulted on as a supplementary measure in the draft Code and was not intended to be in the first Code. We recognise that recommender systems can have harmful impacts on users, especially children. Under our Online Safety Framework, Coimisiún na Meán will be best able to tackle the potential dangers of recommender systems through our implementation of the Digital Services Act. The European Commission recently opened investigations into TikTok and Meta which related in part to their recommender systems and their impact on children and young people under the Digital Services Act. Coimisiún na Meán is supporting the European Commission in its investigations as the Digital Services Coordinator in Ireland.

Users

1. What should someone do if they come across harmful content on a video sharing platform?

Users should first and foremost report the content to the platform in question. Under the DSA platforms must have systems for users to report content and make a decision in relation to content which is flagged or reported. Under the DSA the platforms also have to have a complaint handling process in place. In February 2024, Coimisiún na Meán established a Contact Centre which can receive complaints from members of the public. It can currently receive complaints related to the DSA and in time, related to our entire Online Safety Framework, once the Online Safety Code has been implemented. Coimisiún na Meán will supervise compliance with the final code by platforms, so information from users about their experiences is helpful for this supervision.

2. How will Coimisiún na Meán deal with complaints?

Coimisiún na Meán has established a Contact Centre which can receive complaints related to our powers under the Online Safety Framework. Where appropriate our complaints team will escalate issues to our platform supervision teams to resolve through supervisory dialogue or else to our investigation and enforcement team.

3. How will the Contact Centre contribute to the supervision of the Online Safety Code?
The Contact Centre has been operating since February 2024 and has received over 530 queries. 30% of these queries relate to the digital services which we regulate under our Online Safety Framework.

The Contact Centre provides us crucial information on the types of complaints being received, the nature of these complaints and allows us to identify trends in illegal and harmful online content. The Contact Centre also provides information to users of online services about their rights under the Online Safety Framework.

4. How do members of the public contact the contact centre?
The public can contact the Contact Centre by emailing usersupport@cnam.ie or calling 01 963 7755 from Monday-Friday, 8am-6pm.

Consultation Process

1. How does the code get finalised?
Coimisiún na Meán has notified the European Commission of the revised Code through their TRIS harmonisation procedure, which ensures that the Code aligns with EU law including the DSA. This process typically takes 3-4 months. Thereafter Coimisiún na Meán will adopt a final, binding Code and apply it to the various Video Sharing Platform Services. We expect to finalise the Code later this year.
2. Is there a time period after which the approved code must be reviewed?
Once adopted, Coimisiún na Meán will continue to assess the impact and effectiveness of the Code, and review it as and when required. The legislation does not specify any time period for a review. The Minister can also request that Coimisiún na Meán reviews the Code. Coimisiún na Meán intends for the Code to be a practical and useful document, and therefore it will likely require reviews and updates to take account of developments in video sharing platforms and consumer trends.
3. How will Coimisiún na Meán enforce the Code?
We will actively supervise designated services to ensure that they live up to their obligations under the Code. If systemic issues emerge, we will move to investigation and enforcement.
4. Can people make individual complaints to Coimisiún na Meán?
Coimisiún na Meán can already receive individual complaints relating to the infringements of the Digital Services Act via the Contact Centre. We will be setting up a super-complainants scheme or nominated bodies scheme under the Code, and once it has been in place for a year, we will be putting in place an

individual complaint handling scheme in line with the Expert Report from May 2022 in late 2025.

Legal Provisions

1. What legislation is the code based on?
The power for Coimisiún na Meán to make Online Safety Codes is contained in Section 139K of the Online Safety and Media Regulation Act 2022. In addition, the Code must address the harms set out in Article 28b of the EU Audiovisual Media Services Directive 2018.
2. What will be done with any fines collected? Where will that money go?
Any fines collected will go directly to the exchequer.

Candidate Information Packs

1. What is Coimisiún na Meán doing to protect election candidates from abuse online?
Coimisiún na Meán has published information packs for election candidates in the upcoming Local and European Elections. The pack provides information on the role of Coimisiún na Meán and offers guidance to candidates on what to do when they are faced with harmful and/or illegal content online.

Under the DSA, very large online platforms and search engines have a duty to assess risks that their services may pose. This includes a risk to civic discourse and the electoral process. The main message for Coimisiún na Meán to election candidates is to report content they think is illegal or a breach of a platform's own rules directly to the platform.