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Coimisiún na Meán

Call For Inputs: Online Safety Code

Introduction

The FSM is a German state-approved self-regulatory body for digital services and online media. Amongst our members are many of the Very Large Online Platforms as well as a range of video on demand services providers from across Europe.

Since 1997, the FSM has been working to ensure that children and young people can grow up with a safer and better Internet - in particular by combating illegal and harmful content online. To this end, the FSM operates an Internet Hotline that anyone can contact to report online content. In addition, the FSM does extensive educational work and promotes media literacy skills among children, young people and adults.

Having been selected as an observer to the Global Online Safety Regulators Network, we are dedicated to working together with regulators from around the world to help young people stay safe online while allowing for innovation and recognising the rapid development of our digital world.

We are thankful for the opportunity to give input for the development of Ireland's first binding Online Safety Code for video sharing platforms by Coimisiún na Meán.

We are aware that, while online harms are global by nature, the perspectives of young people and their parents might differ from country to country and that the results of research will not always be internationally consistent. Regulating providers whose services are available in different jurisdictions is therefore challenging. With this input, we draw from our experience as a Germany based organisation working together with global companies on a daily basis.

There are significant differences between the various video-sharing platform services (VSPS) available already today and probably even more so when looking at

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services which will be developed in the future, regarding the number of users, their age, the size and focus of the platforms and the content that is being shared. Any regulation should therefore carefully balance mandatory requirements and optional measures. The Code should reflect this by taking a risk- and principle-based approach which is flexible enough so that different VSPS can employ the most appropriate instruments to protect and empower their users.

Question 1: Which harms to address

What do you think our main priorities and objectives should be in the first binding Online Safety Code for VSPS? What are the main online harms you would like to see it address and why? (Please remember that when we refer to 'online harms' and 'online harm' in this document this includes harm that can be caused by harmful online content, illegal content, inappropriate content and commercial communications collectively.)

We welcome that Coimisiún na Meán distinguishes between different qualities of online harms: Some content or behaviour will clearly be illegal while others might (only) be inappropriate for young people under a certain age. The obligations imposed by any regulatory measure should always reflect this in order to balance the fundamental rights of all citizens and the rights of children.

Recent studies such as our own Youth Media Protection Index 2022 ("Jugendmedienschutzindex") have shown the main online harms young people are worried about in general as well as individually confronted with when they use online services and platforms, including VSPS and social media platforms. Among the age group between 13 and 16 **the following online harms can be identified as most relevant**, especially because the number of young people being confronted with them has significantly increased compared to 2017 (first edition of FSM's "Youth Media Protection Index" study).

- Being confronted with disturbing or scary content (48% of 13/14-year-olds and 63% of 15/16-year-olds have experienced this)
- Being the victim of cost traps, rip-offs or scams (27% of 13/14-year-olds and 42% of 15/16-year-olds have experienced this)
- Being incited to engage in risky behaviour (dangerous challenges, drug/alcohol use or self-harm (35% of 13/14-year-olds and 45% of 15/16-year-olds have experienced this)
- Being exposed to political or religious extremism (35% of 13/14-year-olds and 49% of 15/16-year-olds have experienced this)
- Meeting people online who cannot be trusted (46% of 13/14-year-olds and 60% of 15/16-year-olds have experienced this)

- Being bullied by others (51% of 13/14-year-olds and 53% of 15/16-year-olds have experienced this)
- Being harassed online (51% of 13/14-year-olds and 56% of 15/16-year-olds have experienced this)

This might be an indication of what issues young people would most likely want to see being addressed. This being said, some of these online harms will be more difficult to tackle from a regulatory perspective than others. For the purposes of the envisaged Code, a clear focus might best be put on risks which are mentioned in Article 28b of the AVMSD, thus avoiding conflicts with the scope of the DSA.

When considering whether to address CSAM (child sexual abuse material), regulators should take into account that from our practical experience there are hardly any reports about such content on VSPS. In most cases, CSAM will be automatically filtered out after being uploaded there, and other channels for spreading such content are much more relevant. However, the FSM Hotline does receive reports about content that is classified as CSEM (Child Sexual Exploitation Material). This includes children behaving in a sexually suggestive way in front of the camera, obviously under instructions they receive through chat or messenger services.

Although there is limited content on VSPs that can be classified as CSAM/CSEM and regulation is already strong, this topic should still be included in the code because of the severity of the offences.

Question 2: Classification of harmful content

What types of online harms do you think should attract the most stringent risk mitigation measures by VSPS? How could we evaluate the impact of different types of harms e.g. severity, speed at which harm may be caused? Is there a way of classifying harmful content that you consider it would be useful for us to use?

Most stringent risk mitigation should be applied in the following order:

- when there is actual ongoing harm, especially when content goes viral: abuse, life-threatening challenges, live-streaming of illegal acts
- criminal offences
- content not suitable for minors

Question 3: Studies and resources

Do you have reports, academic studies or other relevant independent research that would support your views? If you do, please share them with us with links to relevant reports, studies or research.

The Youth Media Protection Index ("Jugendmedienschutzindex") examines how the protection of children and young people from negative online experiences is reflected in the concerns, attitudes, skills and actions of parents as well as adolescents themselves.

As a result, strengths and weaknesses of the current media policy regulations for the protection of young people from harmful online media as well as the available media education support services become apparent. This empiric evidence offers a basis for further developments and optimisations. The study was initiated and published by the FSM and conducted by the Leibniz Institute for Media Research | Hans Bredow Institute (HBI) and the JFF – Institute for Media Research and Media Education in 2022.

The empirical basis of the Youth Media Protection Index is a representative survey of 805 children and young people in Germany aged 9 to 16 who use the internet. In each case, the parent who feels responsible for the children's online use or online education was also interviewed. This study is a repeat survey. Empirical results were available for the first time in the form of the Youth Media Protection Index 2017. By using the same questionnaire for the most part, the data from both studies – from 2017 and 2022 – can be compared and constants as well as changes can be identified.

See presentation of study results:
https://www.fsm.de/files/2023/03/fsm_jmsindex_presentation_english-1.pdf

See complete study (German):
https://www.fsm.de/files/2023/01/fsm_jmsindex_2022_barrierefrei.pdf

Question 4: Prescriptiveness of the Code

What approach do you think we should take to the level of detail in the Code? What role could non-binding guidance play in supplementing the Code?

While the Code needs to be prescriptive as such in order to be executable, it should also be flexible in order to accommodate a variety of different services and to encourage the best possible reaction by service providers. We have recently seen various research efforts by the platforms that led to different approaches to current challenges, and we appreciate that there are no one size fits

all solutions. Therefore, a mixed approach should be preferred. In addition, co- and self-regulatory measures should be encouraged, as foreseen in the AVMSD.

Question 5: Structure
What do you think would be the most effective structure for the Code? What are the most important factors we should consider when we decide how to structure the Code?

The Code could be structured along the Article 28b.3 measures of the AVMSD.

Question 6: Synergies with DSA requirements
How should we design the Code to minimise the potential for conflict and maximise the potential for synergies in how platforms comply with it and the DSA?

While focussing on the AVMSD, the Code would ideally be consistent and coherent with the requirements of the DSA.

The AVMSD includes provisions for content which is harmful or inappropriate for younger users but is not strictly illegal in a way that it would constitute a violation of criminal law, whereas the DSA, in its English language version, focusses on *illegal* content. It is left for the national regulators to determine what content they consider illegal in this regard. Other language versions, specifically the German, are less strict. Even though there is no precedent today, we expect the German understanding of "illegal content" under the DSA to extent to any types of content forbidden by law, even if only under certain conditions (e.g. content inappropriate for younger users which is not restricted by age assurance measures). From a user perspective, it will be difficult (yet not important) to determine on which legal grounds certain content is inadmissible. That is why when drafting this Online Safety Code, Coimisiún na Meán should have the upcoming execution of the DSA in mind.

Question 7: Comments and other content connected to videos
To what extent, if at all, should the Code require VSPS providers to take measures to address content connected to video content?

Many of the outlined online harms minors are confronted with occur in additional content or in the comment sections (see question 1). Especially comment sections tend to develop a momentum of their own. Even if a video itself is harmless, there is a possibility that the comments are not.

However, since the purpose of the Code will be the transposition of the AVMSD, mandatory measures should only be set for video content.

VSPS could be encouraged to apply optional safety measures for content which is connected to videos uploaded by users, though.

This is reflected already today in the way platforms allow their users to report illegal content or behaviour in videos or in the comments section alike.

Question 8: Declaration of advertisements

How should we ask VSPS providers to introduce a feature that allows users to declare when videos contain advertising or other type of commercial communications? Should the Code include specific requirements about the form in which the declaration should take? What current examples are there that you regard as best practice?

left unanswered.

Question 9: Flagging mechanisms

How should we ask VSPS providers to introduce and design a flagging mechanism in the Code? How can we ensure that VSPS providers introduce the mechanism in a user-friendly and transparent way? How should we ask VSP Providers to report the decisions they've made on content after it has been flagged? To what extent should we align the Code with similar provisions on flagging in the DSA?

There should be no difference between flagging mechanisms for AVMSD or DSA purposes. Again, users should not be required to choose from different methods based on different legal grounds.

It is important to inform users that they can report content or conduct they think is illegal. However, there will be more than one option for doing this in a user-friendly way, depending on the nature of the VSPS, the users' age and the way platforms are used. It therefore seems indeed advisable to demand user-friendly and transparent information but refrain from too strict provisions in the Code.

Users will want to know if their report was taken care of so the provider should always send an appropriate response, preferrable not hidden in a support dashboard. Some services might want to send an email, others might find a different path. User feedback as well as VSPS's own research might be considered in order to find an appropriate balance between the expectations of the reporting persons and the feasibility of such solutions.

Since users tend to be disappointed if their report has not led to the removal of content flagged by them, platforms should always inform users of the reasons for their decision in a transparent and easily understandable way.

Question 10: Age verification and age assurance

What requirements should the Code include about age verification and age assurance? What sort of content should be shown by default to users who are logged out or in private browsing mode and whose age cannot be verified or assured? What evidence is there about the effectiveness of age estimation techniques? What current practices do you regard as best practice? Where accounts are not age verified should default privacy settings be used, should content default to universal content and should contact by others be more limited?

Recently we have seen an enormous development in the effectiveness of age estimation techniques. FSM member YOTI continue to be very vocal on their numbers (cf. https://www.yoti.com/blog/yoti-age-estimation-white-paper/). In December 2021, the FSM's independent expert commission thoroughly examined the age estimation system "Yoti Age Scan" and concluded that it meets the German legal requirements. This has been the first time the FSM saw fit to accept a tool for preventing the access to adult pornography by minors which did not require a personal identification and use of official documents, but merely relies on automatic age estimation. This might underscore the quality and feasibility of this fairly new approach.

Question 11: Content rating

What requirements should the Code have in relation to content rating? What do you consider to be current best practice? What experiences have you had using content rating systems on platforms and do you think they have been effective? What steps could we ask VSPS to take to ensure content is rated accurately by users?

Content rating systems can be an effective way to prevent minors from encountering inappropriate material online and, at the same time, enable all users to view content they would like to see.

It should be noted that often users themselves will not be able to provide precise age ratings like we know them from cinema, TV or VoD services. Asking users for a too granular rating is likely to lead to many wrong ratings. There might be services which target a diverse audience from all age groups. These services could encourage their users to label content which they think is not appropriate for all ages or a specific age group.

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If VSPS providers are required to establish and operate easy-to-use systems that allow users to age-rate the videos they upload, it is important to ensure that VSPS providers take steps to help users understand content rating schemes.

It is also important to understand that the availability of age ratings might lead users (especially parents) to a sense of safety which is not necessarily consistent with the actual situation.

VSPS might want to offer their users options to flag ratings they think are incorrect, and a certain number of such flags might lead to a review by the service provider. Again, this will be different for each VSPS, so the Code should encourage such features yet not prescribe them in detail.

Question 12: Parental controls

What requirements should the Code have in relation to parental control features? How can we ensure that VSPS providers introduce the mechanism in a user-friendly and transparent way? Can you point to any existing example of best practice in this area? Should parental controls be 'turned-on' by default for accounts of minors or where age is not verified?

What kind of parental control feature is appropriate and meets the needs of the users may vary greatly from platform to platform. Some might focus on screen-time whereas others may be used to restrict interaction with other users or limit the availability of certain content. It is therefore important to provide users with clear and transparent information on what tools are available and how they can be used.

A default-on setting is challenging: Such a setting will practically always require age assurance so that the service can be used in full. It seems favourable to encourage parents to make an informed decision and set up the parental controls the way they deem appropriate for their children. Age verification as a standard would most likely not be accepted by users.

Most of the VSPS available today do not specifically target adults and many explicitly exclude content which is inappropriate for minors. A default-on setting for these platforms would be overprotective.

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Question 13: Media literacy

What requirements should the Code contain to ensure that VSPS provide for effective media literacy measures and tools?

The Code should include a general requirement that there must be media literacy measures for minors in place. These should include available comprehensible and transparent platform rules. Furthermore, VSPS should be asked to anticipate online harms and educate minors in a way that is appropriate for the target group (regarding content reception and production). VSPS should also explain available measures to strengthen media literacy (prevention and intervention) and their use. Available measures should be (easily) accessible. To increase visibility and actual use by minors, measures targeted at parents and educators should also be encouraged. The Code can provide concrete examples of implementation which are not binding.

Question 14: Terms and conditions

How should we ask VSPS providers to address online harms in their terms and conditions in the Code, including the harms addressed under Article 28b? How should key aspects of terms and conditions be brought to users' attention? What examples are there of best practice in relation to terms and conditions including content moderation policies and guidelines?

Terms and conditions should be phrased in a way that minors can easily understand them. If VSPS consider this challenging for legal reasons, they could provide minor-friendly versions of their terms and conditions labelled as supportive documents.

Question 15: Content moderation

How should we ask VSPS providers to address content moderation in the Code? Are there any current practices which you consider to be best practice? How should we address automated content detection and moderation in the Code?

The Code should clearly outline the expectations for content moderation, including the removal of illegal and harmful content. Given the purpose of the Code being the transposition of the AVMSD, measures should not interfere with requirements of the DSA.

VSPS providers should be encouraged to be transparent about their content moderation practices, including the use of automated systems, and provide regular reports on their efforts to combat harmful content. While automated content detection systems can be useful, they are not foolproof. VSPS providers should be

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urged to have a robust human review process in place to ensure accurate and fair content moderation decisions.

It is important to note that best practices in content moderation are constantly evolving. Therefore, the Code should provide a framework that allows for flexibility and adaptation to new technologies and emerging challenges.

Question 16: Complaint handling mechanism

What requirements should the Code include about procedures for complaint-handling and resolution, including out-of-court redress or alternative-dispute resolution processes? To what extent should these requirements align with similar requirements in the DSA? What current practices could be regarded as best practice? How frequently should VSPS providers be obliged to report to the Commission on their complaint handling systems and what should those reports contain? Should there be a maximum time-period for VSPS providers to handle user complaints and if so, what should that period be?

Complaint handling and resolution requirements should be consistent with those in the DSA to ensure consistency and harmonization across regulatory frameworks.

From our work as a self-regulatory body under the German NetzDG we know that setting stringent timelines for complaint handling is challenging. While it is desirable from a user's perspective that platforms review complains quickly, it is even more important that they make correct decisions in order not to limit the users' freedom of expression. If maximum time-periods are to be set, they should reflect that some infringements are easier to determine than others and, likewise, some infractions are more severe than others and therefore demand quicker reactions.

Question 17: Accessibility

What approach do you think the Code should take to ensuring that the safety measures we ask VSPS providers to take are accessible to people with disabilities?

People with disabilities should equally be considered when it comes to safety measures. Similar to how VSPS already provide some features to allow more accessible content, the provision of accessible and inclusive safety features for prevention and intervention as well as efforts to make them well-known amongst users should be encouraged.

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Since Article 47 of the DSA encourages codes of conduct for accessibility at Union level, the Code should avoid any possible interference or discrepancies with these.

Question 18: Safety by design

What approach do you think the Code should take to risk assessments and safety by design? Are there any examples you can point us towards which you consider to be best practice?

A holistic safety by design concept is desirable. Incentives for this should be created. However, it seems difficult to make individual functions mandatory. Here, too, the Code must be able to adapt to the constantly changing technology and be flexible.

Providers should carry out a renewed risk assessment when the introduce new features on their platforms.

Question 19: (International) Cooperation

How do you think that cooperation with other regulators and bodies can help us to implement the Code for VSPS?

We are aware that, while online harms are global by nature, the perspectives of young people and their parents might differ from country to country and that the results of research will not always be internationally consistent. Regulating service providers that are available in different jurisdictions is therefore challenging.

We also know that VSPS struggle with making adjustments for only one market or country. Ideally, a constant and trustful dialogue between regulators leads to feasible solutions that work across Europe and even beyond. The Global Online Safety Regulators Network might be a good forum for such a dialogue.

Question 20: Feeds and recommender systems

What approach do you think we should take in the Code to address feeds which cause harm because of the aggregate impact of the content they provide access to? Are there current practices which you consider to be best practice in this regard?

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Question 21: Commercial content, advertisement (e.g. pre-roll)

Do you have any views on how requirements for commercial content arranged by a VSPS provider itself should be reflected in the Code?

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Question 22: Compliance

What compliance monitoring and reporting arrangements should we include in the Code?

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Question 23: Transitional arrangements

Should the Code have a transition period or transition periods for specific issues? Which areas touched on in this Call for Inputs may VSPS providers require time to transition the most? What time frame would be reasonable for a transition period?

left unanswered.

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