



**Coimisiún na Meán Call for Inputs
on an Online Safety Code for Video-Sharing Platform Services**

**Submission by the Ombudsman for Children's Office
4 September 2023**

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1. Introduction

Following its establishment in March 2023, Coimisiún na Meán (Commission) announced on 11 July that it is seeking views through a Call for Inputs on developing its first online safety code, which will apply to video-sharing platform services (VSPS).¹

The OCO welcomes the Commission's decision to gather views from the public on how the Commission should develop the code and the opportunity this consultation presents for us to provide an initial input at an early stage in the process. The OCO also welcomes the Commission's decision to undertake a phased process to gather input from children on the code.

The OCO is an independent statutory body, which was established in 2004 under the Ombudsman for Children Act 2002 (2002 Act). Under the 2002 Act, as amended, the Ombudsman for Children has two core statutory functions:

- to promote the rights and welfare of children up to the age of 18 years, and
- to examine and investigate complaints made by or on behalf of children about the administrative actions of public bodies, schools and voluntary hospitals that have or may have adversely affected a child.

The OCO has prepared this submission pursuant to section 7(4) of the 2002 Act, which provides that the Ombudsman for Children may advise on any matter relating to the rights and welfare of children.

In preparing this submission, the OCO is mindful that the submissions made in response to this Call for Inputs will assist the Commission in its task of information-gathering and reflection as it begins to draft the code. Accordingly, the overall aim of this submission is to set out the OCO's preliminary, high-level observations on several questions raised by the Commission in its Call for Inputs that we believe merit consideration by the Commission in completing this task. The OCO understands that the new code for VSPS will consider online safety in respect of adults and children. However, given the OCO's statutory remit under the 2002 Act, our submission focuses on children.

From the OCO's perspective, the Commission's work to develop Ireland's first online safety code presents a significant opportunity for the Commission, as a newly established independent statutory body, to situate the code within a human rights framework, to place service users, and particularly children, at the centre of the code, and, in doing so, to set an important precedent as regards adopting and promoting a human rights-based approach to the regulation of online safety.

2. Priorities and Objectives

Question 1 of the Call for Inputs asks about the main priorities and objectives of the first binding code for VSPS.² The Call for Inputs states that the Commission will take a child-centred approach to developing the code where it impacts children.³ In this regard, it refers to Article 24 of the EU Charter of Fundamental Rights (Charter) and Article 3 of the UN Convention on the Rights of the Child (CRC).

¹ Coimisiún na Meán, [Coimisiún na Meán seeks views for developing Ireland's First binding Online Safety code](#), 11 July 2023; Coimisiún na Meán (2023), [Call For Inputs: Online Safety](#).

² Coimisiún na Meán (2023), [Call For Inputs: Online Safety](#), p. 9.

³ *Ibid.*, p. 5.

The OCO welcomes that the Commission intends to take a child-centred approach to developing the code and that the Call for Inputs refers in particular to international and EU children's rights standards. In this regard, and as the Commission may be aware, following its most recent periodic review of Ireland's implementation of the CRC in January 2023, the UN Committee on the Rights of the Child (Committee) recommended that the State ensure that the Online Safety Commissioner pays particular attention to the protection of children who fall under its mandate, in line with children's rights standards.⁴

As the Commission knows, having ratified the CRC in 1992, Ireland has an obligation under international law to respect, protect and fulfil the rights set out in the CRC for all children in the State.

Among the CRC rights that are engaged in the online environment are:

- children's right to freedom of expression, which includes the right to seek, receive and impart information and ideas (Article 13)
- children's right to freedom of thought, conscience and religion (Article 14)
- children's right to freedom of association and peaceful assembly (Article 15)
- children's right to protection from arbitrary or unlawful interference with privacy, family, home or correspondence (Article 16)
- children's right to access information and materials from a variety of sources and to be protected from harmful information (Article 17)
- children's right to be protected from all forms of violence, abuse and exploitation (Articles 19, 34 and 36)
- children's right to the highest attainable standard of health (Article 24)
- children's right to education (Articles 28 and 29), and
- children's right to engage in play and recreational activities and to participate freely in cultural life and the arts (Article 31).

Four CRC rights are recognised as integral to the realisation of all children's rights set out in the CRC. These four general principles are:

- children's right to non-discrimination (Article 2)
- children's right to have their best interests treated as a primary consideration in all matters affecting them (Article 3)
- children's right to life, survival and development (Article 6), and
- children's right to express their views freely in all matters affecting them and to have due weight given to their views, in accordance with their age and maturity (Article 12).

The Committee states that in all decisions, measures or actions concerning children, the State should adopt a child rights-based approach, which entails respecting the child as a rights-bearing person and which is best achieved by furthering the realisation of all of the rights set out in the CRC.⁵

The CRC places an obligation on the State, as the primary duty bearer, to respect, protect and fulfil these rights. This obligation extends to the impact on the rights of children of the activities of business enterprises that are operating in the jurisdiction of the State. In 2013, the Committee

⁴ UN Committee on the Rights of the Child (2023), [Concluding observations on the combined fifth and sixth periodic reports of Ireland](#), CRC/C/IRL/CO/5-6, para. 22.

⁵ UN Committee on the Rights of the Child (2011), [General comment No. 13 \(2011\) The right of the child to freedom from all forms of violence](#), CRC/C/GC/13, para. 59.

published a general comment setting out guidance on the State's obligations in this regard. In this general comment, the Committee sets out three types of obligations placed on the State with respect to business enterprises:

- Respect: ensure that all private actors within the jurisdiction respect children's rights,
- Protect: prevent business enterprises from causing or contributing to abuses of children's rights, and
- Fulfil: create an environment in which children's rights can be fully realised.⁶

In setting out a framework for States' implementation of their obligations to children in this area, the Committee highlights the importance of legislative, regulatory and enforcement measures. In particular, the Committee advises that States must provide stable, clear and predictable legal and regulatory environments, which enable business enterprises to respect children's rights.⁷

In 2021, the Committee published a general comment on children's rights in the digital environment, which provides guidance to States on how they can respect, protect and fulfil children's rights online. The Committee reiterates that States should take measures, including through the development, monitoring, implementation and evaluation of legislation, regulatory frameworks and codes, to ensure compliance by businesses with their obligations to prevent their online services from being used in ways that cause or contribute to violations or abuses of children's rights and to provide children and their parents with prompt and effective remedies.⁸

The importance of taking a child rights-based approach to regulation is also highlighted at European level by the Council of Europe and the European Union. In 2018, the Committee of Ministers of the Council of Europe adopted a recommendation to Member States on Guidelines to respect, protect and fulfil the rights of the child in the digital environment. Having regard to the rights of the child set out under the CRC, the recommendation recommends that governments of Member States require business enterprises to meet their responsibility to respect the rights of the child in the digital environment. The recommendation includes guidance on the development of national legal frameworks that apply to businesses operating in the digital environment and recommends that States should create a clear and predictable legal and regulatory environment, which helps businesses and other stakeholders meet their responsibility to respect the rights of the child in the digital environment through their operations.⁹

EU law applicable to VSPS providers equally places emphasis on ensuring respect for children's rights. As the Commission is aware, the Charter applies to EU Member States when implementing EU law and Article 24 of the Charter reiterates key principles set out in the CRC, including that:

- the best interests of the child must be a primary consideration in all actions relating to children, whether taken by public authorities or private institutions
- children have a right to protection and care as is necessary for their wellbeing, and
- children may express their views freely and such views shall be taken into consideration on matters which concern them in accordance with their age and maturity.

⁶ UN Committee on the Rights of the Child (2013), [General comment No. 16 \(2013\) on State obligations regarding the impact of the business sector on children's rights](#), CRC/C/GC/16, paras. 26-29.

⁷ Ibid., para. 29 and para. 53.

⁸ UN Committee on the Rights of the Child (2021), [General comment No. 25 \(2021\) on children's rights in relation to the digital environment](#), CRC/C/GC/25, paras. 35-39.

⁹ Council of Europe (2018), [Guidelines to respect, protect and fulfil the rights of the child in the digital environment: Recommendation CM/Rec\(2018\)7 of the Committee of Ministers](#), para. 78.

The Audiovisual Media Services (AVMS) Directive states that the AVMS Directive respects fundamental rights and observes the principles recognised by the Charter and that it seeks to promote the application of the rights of the child enshrined in the Charter.¹⁰ It also states that EU Member States must carefully balance the rights set out in the Charter, including the rights of the child, when taking appropriate measures to protect children from harmful content.¹¹ Similar aims are set out in the Digital Services Act (DSA), which states that the DSA should be interpreted and applied in accordance with the fundamental rights set out in the Charter.¹²

Under the Online Safety and Media Regulation Act 2022, one of the functions of the Commission is to ensure that the interests of children are protected.¹³ When preparing an online safety code, the Commission is required to have regard in particular to levels of risk of harm, and particularly harm to children, from the availability of harmful online content or exposure to it, as well as the rights of users of online services, which may include children.¹⁴

Having regard to the Commission’s status and functions as an independent statutory body, together with the Commission’s obligations as a State actor under international and European law to uphold children’s rights and ensure that ICT service providers respect children’s rights, the OCO encourages the Commission to situate Ireland’s first online safety code within a human rights framework and to do so in a manner that has specific and explicit regard to children’s rights. In this way, and having regard to children, the Commission can both require and support VSPS providers to take a child-centred, rights-based approach to the design, development, delivery, monitoring and review of their services.

The Committee states that a child rights-based approach requires the adoption of an approach that is guided at all times by the four general principles of the CRC.¹⁵ In particular, the Committee states that the four general principles of the CRC should serve as a guide for determining the measures needed to guarantee the realisation of children’s rights in the digital environment.¹⁶

The OCO suggests that one way in which the Commission could mobilise the first online safety code to promote a rights-based approach by VSPS providers could be by specifying a set of cross-cutting, rights-based principles in the code. Allowing for the fact that the code will cover adults and children, such guiding principles could include, but not be limited to, the four general principles of the CRC. The inclusion of such guiding principles would serve to demonstrate an expectation on the part of the Commission that VSPS providers must respect human rights, including children’s rights. It could also facilitate the Commission to monitor VSPS providers’ compliance with the code from a rights perspective.

¹⁰ Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) in view of changing market realities, preambular paragraph 60.

¹¹ Ibid., preambular paragraph 51.

¹² Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act), preambular paragraphs 40 and 153 and Article 1(1).

¹³ Online Safety and Media Regulation Act 2022, s 7(2)(b).

¹⁴ Ibid., ss 139M(f)-(g).

¹⁵ UN Committee on the Rights of the Child (2011), [General comment No. 13 \(2011\) The right of the child to freedom from all forms of violence](#), CRC/C/GC/13, para. 59.

¹⁶ UN Committee on the Rights of the Child (2021), [General comment No. 25 \(2021\) on children’s rights in relation to the digital environment](#), CRC/C/GC/25, para. 8.

We note that such an approach would be consistent with the principles-led approach taken in codes previously adopted by the Broadcasting Authority of Ireland.¹⁷ It would also be consistent with codes relevant to online safety that have been adopted in some other countries, such as in the UK,¹⁸ which take approaches that include embedding children’s rights as one principle among a wider set of principles to guide implementation of the code or aligning a code’s guiding principles with the rights and principles set out in the CRC.

Given that the scope of the code will be broader than children, the Commission might give consideration to other relevant international human rights instruments in determining the other guiding principles to include in the code. Such standards include the UN Guiding Principles on Business and Human Rights adopted by the UN Human Rights Council in 2011.¹⁹ As with the guidance provided to States by the Committee, the UN Guiding Principles on Business and Human Rights include the principle that business enterprises should respect human rights as a global standard of expected conduct. In order to meet this responsibility, the UN Guiding Principles state that business enterprises should have in place a policy commitment to meet their responsibility to respect human rights, a human rights due diligence process to identify, prevent, mitigate and account for how they address impacts on human rights, and processes to enable remediation of any adverse human rights impacts.

In a report published in 2018, the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression (Special Rapporteur) refers to the UN Guiding Principles in stating that human rights standards provide a framework for holding both States and companies accountable to users.²⁰ The Special Rapporteur sets out the human rights principles that should guide online content regulation. These include: human rights by default; due diligence; transparency; accountability; remediation; legality; necessity and proportionality; and non-discrimination.²¹

The OCO encourages the Commission to seriously consider grounding Ireland’s first online safety code in cross-cutting, rights-based principles, which incorporate core child rights principles.

A further measure that the Commission could take to both oblige and support VSPP providers to adopt a child rights-based approach in respect of children is to require them to implement child rights due diligence. Like broader human rights due diligence obligations set out in frameworks such as the UN Guiding Principles on Business and Human Rights, the Committee states that businesses should be required to undertake child rights due diligence in order to meet their obligation to respect children’s rights.²² This requires a process of child rights impact assessment (CRIA) to be undertaken by business enterprises.²³

¹⁷ Broadcasting Authority of Ireland, [Codes & Standards](#).

¹⁸ Home Office (2020), [Interim Code of Practice on Online Child Sexual Exploitation and Abuse](#).

¹⁹ Office of the High Commissioner for Human Rights (2011), [Guiding Principles on Business and Human Rights](#).

²⁰ Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression (2018), [Report of the Special Rapporteur to the Human Rights Council on online content regulation](#), A/HRC/38/35, paras. 41-48.

²¹ Ibid.

²² UN Committee on the Rights of the Child (2013), [General comment No. 16 \(2013\) on State obligations regarding the impact of the business sector on children’s rights](#), CRC/C/GC/16, para. 62; UN Committee on the Rights of the Child (2021), [General comment No. 25 \(2021\) on children’s rights in relation to the digital environment](#), CRC/C/GC/25, para. 38. See also: Council of Europe (2018), [Guidelines to respect, protect and fulfil the rights of the child in the digital environment: Recommendation CM/Rec\(2018\)7 of the Committee of Ministers](#), paras. 94-95.

²³ UN Committee on the Rights of the Child (2021), [General comment No. 25 \(2021\) on children’s rights in relation to the digital environment](#), CRC/C/GC/25, para. 38; Council of Europe (2018), [Guidelines to respect, protect and fulfil the rights of the child in the digital environment: Recommendation CM/Rec\(2018\)7 of the Committee of Ministers](#), paras. 94-95.

CRIA is identified by the Committee as a key measure to implement children's rights and involves examination of the potential impacts of laws, policies, decisions or services on children and the enjoyment of their rights and identification of ways to prevent or mitigate any negative impacts.²⁴ At a minimum, the CRC, including its general principles, should be used as a framework for conducting CRIA and CRIA should have special regard for any differentiated impact of measures to be taken on children.²⁵ It is notable that, following its review of Ireland's combined fifth and sixth reports on the implementation of the CRC, the Committee recommended that the State introduce mandatory requirements for the business sector to undertake assessments of, consultations on and full public disclosure of the children's rights impacts of their business activities and their plans to address such impacts.²⁶

The OCO notes that the provisions of the 2022 Act concerning online safety codes place an emphasis on assessing, preventing and mitigating risk, with particular reference to risks of harm to children. Section 139K provides that an online safety code may make provision to ensure that service providers take appropriate measures to minimise the availability of harmful content online and risks arising from the availability of and exposure to such content.²⁷ It also states that an online safety code may provide for the assessment by service providers of the availability of harmful online content on services, of the risk of it being available, and of the risk posed to users by harmful online content.²⁸ When preparing an online safety code, the 2022 Act requires the Commission to have regard to particular matters, including the levels of risk of exposure to harmful online content when using designated online services and the levels of risk of harm, and in particular harm to children, from the availability of harmful online content or exposure to it.²⁹

The need to assess and mitigate risks to fundamental rights, including the rights of the child, is also reflected in the provisions of the DSA. As noted in the Commission's Call for Inputs, the DSA requires providers of very large online platforms and very large online search engines to assess the systemic risks of their services and take appropriate mitigating measures in observance of fundamental rights.³⁰ Included among the four categories of systemic risk that such providers are required to assess is the actual or foreseeable negative effect on the exercise of fundamental rights in the Charter, including the rights of the child.³¹ Measures that such providers must take to mitigate identified risks may include targeted measures to protect the rights of the child.³²

The OCO therefore welcomes that the Commission's Call for Inputs suggests that the code could require VSPS providers to carry out bespoke risk assessments of harmful content and that such

²⁴ UN Committee on the Rights of the Child (2013), [General comment No. 14 \(2013\) on the right of the child to have his or her best interests taken as a primary consideration \(art. 3, para. 1\)](#), CRC/C/GC/14, para. 99.

²⁵ See also: Council of Europe (2020), [Handbook for policy makers on the rights of the child in the digital environment to support the implementation of Recommendation CM/Rec\(2018\)7 of the Committee of Ministers of the Council of Europe on Guidelines to respect, protect and fulfil the rights of the child in the digital environment](#); Digital Futures Commission (2021), [Child Rights Impact Assessment: A tool to realise children's rights in the digital environment](#).

²⁶ UN Committee on the Rights of the Child (2023), [Concluding observations on the combined fifth and sixth periodic reports of Ireland](#), CRC/C/IRL/CO/5-6, para. 13(b).

²⁷ Online Safety and Media Regulation Act 2022, s 139K(2)(a).

²⁸ Ibid., s 139K(4)(c).

²⁹ Ibid., s 139M(e)-(f).

³⁰ Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act), preambular paragraphs 79 and Article 34(1)(b).

³¹ Ibid., preambular paragraph 80.

³² Ibid. Article 35(1)(j).

assessment could include a child rights impact assessment.³³ We also welcome the focus on assessing risks and identifying mitigation measures in the design and development of services.³⁴

The OCO encourages the Commission to consider specifying CRIA in the first online safety code as an approach to implementing requirements associated with identifying, preventing and mitigating risks of harm to children and their rights.

3. Online Harms

Question 1 of the Call for Inputs asks about the main online harms that the code should address and why.³⁵ The Commission states that reference to online harms in the Call for Inputs includes harm caused by harmful online content, illegal content, inappropriate content and commercial communications collectively.

The OCO notes that the Call for Inputs states that the Commission intends the code to complete the transposition of Article 28b of the AVMS Directive into Irish law, in line with the Commission's duty to develop a code in this regard under section 139K(3) of the 2022 Act. The Commission states that it also needs to consider how to use its code-making powers to address wider categories of online harm that are set out in the 2022 Act. Beyond the obligation to transpose Article 28b into Irish law, section 139K of the 2022 Act provides the Commission with the discretion to make codes that ensure protections are taken by online services against harmful online content set out in section 139A of the 2022 Act, which includes the offence-specific categories of online content and other categories of online content. In addition, the Commission envisages that the code will complement the DSA, when it comes into effect in February 2024,³⁶ and later asks stakeholders how the code can be designed to minimise conflict and maximise synergies in how platforms comply with the DSA.³⁷

Given that VSPS providers will have obligations under the AVMS Directive, the 2022 Act, and the DSA, and that there is some overlap between the categories of online harm covered in these three instruments, an optimal approach might be for the first online safety code to cover VSPS providers' obligations in respect of all types of harm. **Having regard to the international children's rights guidance that States should ensure a clear and predictable regulatory environment for service providers and that regulations for service providers should be comprehensive and effective in ensuring protection of children from harmful content and risks online, the OCO encourages the Commission to give consideration to covering all relevant harms applicable to VSPS providers in one code.**

In this regard, the OCO also notes that the Commission states in the Call for Inputs that it presumes it will adopt one code for VSPS providers, at least initially.³⁸ If it is not feasible for the Commission to prepare a code that addresses VSPS providers' obligations across domestic and EU law, **the OCO suggests that an alternative approach might be to focus the initial code on those areas where there is alignment between the 2022 Act, the AVMS Directive and the DSA. If such an approach was to provide regulatory clarity and coherence that can support compliance by VSPS providers, it could serve the interests of service users, including children.**

³³ Coimisiún na Meán (2023), [Call For Inputs: Online Safety](#), pp. 22-23.

³⁴ Ibid.

³⁵ Ibid., p. 9.

³⁶ Ibid., p. 5.

³⁷ Ibid., p. 11.

³⁸ Ibid., p. 9.

4. Measures to be taken by VSPS providers

- **Age verification**

Question 10 of the Commission's Call for Inputs asks stakeholders about the requirements that should be included in the code in respect of age verification.

Article 28(3)(f) of the AVMS Directive includes age verification among the measures that Member States should require VSPS providers to take, as appropriate, with respect to content that may impair children's physical, mental or moral development. The DSA also includes age verification among a list of risk mitigation measures that VLOPs or VLOSEs may take to protect the rights of the child.³⁹

The OCO welcomes that the Commission plans to include a requirement that VSPS providers introduce appropriate age-verification mechanisms to protect children from online harms in the code. The Committee states that robust age verification systems should be used to prevent children from access to illegal products or services and such systems should be consistent with data protection and safeguarding requirements.⁴⁰ The Council of Europe similarly recommends that effective systems of age verification are used to ensure protection against access to content or services that are legally restricted with reference to specific ages, using methods consistent with the principle of data minimisation.⁴¹

The OCO is aware that efforts to introduce standards for age assurance are underway at international and European levels. The International Organization for Standardization (ISO) has prepared a Working Draft Age Assurance Systems Standard to provide a common framework for age assurance.⁴² At EU level, the euCONSENT project aims to develop EU-wide infrastructure to enable online age verification and parental consent, in consultation with children, academic experts, NGOs and other stakeholders in child rights and online protection.⁴³

At a national level, the 5Rights Foundation in the UK has outlined a set of common child-centred standards that should apply to age assurance.⁴⁴ These include that age assurance:

- must be privacy preserving
- should be proportionate to risk and purpose
- should be easy for the child to use
- must enhance children's experiences, not merely restrict them
- must offer a high level of security
- must offer routes to challenge and redress
- must be accessible and inclusive
- must be transparent and accountable

³⁹ Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act), Article 35(1)(j).

⁴⁰ UN Committee on the Rights of the Child (2021), [General comment No. 25 \(2021\) on children's rights in relation to the digital environment](#), CRC/C/GC/25, para. 114.

⁴¹ Council of Europe (2018), [Guidelines to respect, protect and fulfil the rights of the child in the digital environment: Recommendation CM/Rec\(2018\)7 of the Committee of Ministers](#), para. 56.

⁴² ISO, [ISO/IEC WD 27566](#).

⁴³ <https://euconsent.eu/>.

⁴⁴ 5Rights Foundation (2021), [But how do they know it is a child? Age Assurance in the Digital World](#).

- should anticipate that children don't always tell the truth
- must be subject to agreed standards
- must be rights-respecting.

In Ireland, the Data Protection Commission's Fundamentals for a Child-Oriented Approach to Data Processing sets out a non-exhaustive list of criteria for a risk-based approach to age verification that should be considered by organisations who decide to implement age verification mechanisms.⁴⁵ These include:

- the type of data being processed
- the sensitivity of personal data being processed
- type of service offered to the child
- accessibility of personal data collected to other persons
- the further processing of personal data.

From the OCO's perspective, it is vital that online service providers enforce age restrictions appropriately and effectively and that the onus is on the service provider to ensure that no child below the minimum age to use their service or access content on their service can do so. **The OCO encourages the Commission to ensure that the requirements set out in the code in relation to age verification provide for VSPS providers to respect children's rights and to do so in a way that has regard to and balances different children's rights online appropriately.**

- **Parental controls**

Under Question 12, the Commission asks about the requirements that the code should contain in relation to parental control features.

Article 28(3)(h) of the AVMS Directive includes parental controls among the appropriate measures that Member States should require VSPS providers to take, as appropriate, to protect children from content that may impair their physical, mental or moral development. The preamble of the AVMS Directive suggests that effective parental controls are among the strictest measures, which should be applied to the most harmful content.⁴⁶ While not defined, parental controls may include placing restrictions on the time that children can spend online, placing restrictions on the content that a child can access or share, placing restrictions on the activities that a child can engage in, or monitoring of children's online activities.⁴⁷

Parents and caregivers play an important role in providing assistance to children in exercising their rights online. Under Article 5 of the CRC, parents are recognised as having the primary responsibility for the upbringing and development of the child and as having the best interests of the child as their basic concern. Under Article 18 of the CRC, States undertake to respect the responsibilities, rights and duties of parents to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance to children in the exercise of their rights, and to render appropriate assistance to parents in doing so. The Committee defines the evolving capacities of the

⁴⁵ Data Protection Commission (2021), [Children Front and Centre: Fundamentals for a Child-Oriented Approach to Data Processing](#), pp. 47-48.

⁴⁶ Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) in view of changing market realities, [20].

⁴⁷ B. Zaman and M. Nouwen (2016), [Parental controls: advice for parents, researchers and industry](#).

child as an enabling principle that addresses the process of maturation and learning through which children progressively acquire competencies, understanding and increasing levels of agency to take responsibility and exercise their rights.⁴⁸

In this regard, parental controls may offer one means by which parents can reduce the risk of a child's exposure to online harm. While acknowledging the role that parental controls may play as part of a range of measures to enable parents to engage with their children in preventing risk, research has highlighted however that the use of parental controls may also impede children's exercise of their other rights online.⁴⁹ Indeed, international children's rights standards and guidance emphasise the need to ensure that a balance of children's rights is achieved by ICT providers when developing parental control measures.

The Committee notes that monitoring or surveillance of children's online activities presents problems for respecting children's right to privacy.⁵⁰ In particular, parental controls, if not implemented carefully, may prevent a child from accessing a helpline or searching for sensitive information. It states that parents' monitoring of a child's digital activity should therefore be proportionate and in accordance with the child's evolving capacities. Similarly, the Council of Europe notes that such controls should be developed and deployed taking into account children's evolving capacities and their rights to non-discrimination, privacy and access to information, in accordance with their age and maturity.⁵¹ The Committee states that in seeking to provide an appropriate balance between respect for the evolving capacities of adolescents and appropriate levels of protection, consideration should be given to a range of factors affecting decision-making, including the level of risk involved, the potential for exploitation, understanding of adolescent development, recognition that competence and understanding do not necessarily develop equally across all fields at the same pace and recognition of individual experience and capacity.⁵²

The Committee also emphasises the important role of the State in providing assistance to parents to give appropriate direction and guidance to children when online. It states that States should raise awareness among parents of the need to respect children's evolving capacities and privacy and support parents in acquiring knowledge of the risks to children to help them assist children in the realisation of their rights. This guidance should support parents to achieve an appropriate balance between protecting the child and respecting their emerging autonomy.⁵³

The OCO encourages the Commission to include a requirement in the code that, where a VSPS provider intends to develop and deploy parental control measures on its service, such controls should be applied in such a way that respects children's evolving capacities, having regard to international children's rights standards and guidance. The OCO further suggests that the code could require VSPS providers to provide associated guidance for parents on the proportionate use of parental controls, taking into account children's rights and evolving capacities.

⁴⁸ UN Committee on the Rights of the Child (2016), [General comment No. 20 \(2016\) on the implementation of the rights of the child during adolescence](#), CRC/C/GC/20, para. 18.

⁴⁹ B. Zaman and M. Nouwen (2016), [Parental controls: advice for parents, researchers and industry](#).

⁵⁰ UN Committee on the Rights of the Child (2021), [General comment No. 25 \(2021\) on children's rights in relation to the digital environment](#), CRC/C/GC/25, para. 76.

⁵¹ Council of Europe (2018), [Guidelines to respect, protect and fulfil the rights of the child in the digital environment: Recommendation CM/Rec\(2018\)7 of the Committee of Ministers](#), para. 54.

⁵² UN Committee on the Rights of the Child (2016), [General comment No. 20 \(2016\) on the implementation of the rights of the child during adolescence](#), CRC/C/GC/20, para. 20.

⁵³ UN Committee on the Rights of the Child (2021), [General comment No. 25 \(2021\) on children's rights in relation to the digital environment](#), CRC/C/GC/25, para. 86.

- **Media literacy**

Under Question 13, the Commission asks about the requirements that the code should contain to ensure that VSPS providers provide for effective media literacy measures and tools.

Article 28b(3)(j) of the AVMS Directive includes effective media literacy measures and tools, and raising users' awareness of those measures and tools, among the list of appropriate measures that VSPS providers should be required to adopt, as appropriate. The Commission states that it intends for the code to implement this measure, including to ensure that users of VSPS understand the features, systems and procedures put in place by VSPS providers to protect citizens from online harms. In this regard, the Commission asks about the requirements that the Code should contain to ensure that VSPS providers provide for effective media literacy measures and tools.

Media literacy, including provision of child-friendly information to children and of information to parents on the measures available on online platforms to protect children on the services they use, can ensure that children are supported to exercise their rights online as well as deal with associated risks to their right to protection from harm. In line with children's right to seek and receive information under Article 13 of the CRC, the Committee and the Council of Europe state that States should encourage ICT providers to provide public, easily accessible, child-friendly and age-appropriate information and educational materials to children and parents in line with children's evolving capacities and in a language that they understand, in order to support children's safe and beneficial digital activities.⁵⁴ This includes information on matters such as a providers' terms of service, unacceptable behaviours and appropriate remedies (including on how and to whom to make a complaint), reporting mechanisms, and how to request help and counselling.

The OCO encourages the Commission to make it a requirement in the code that VSPS providers should ensure that child-friendly information on the measures put in place by VSPS providers to protect children from harmful content online and to respond to harmful content when using the service is made available, easily accessible and presented in multiple formats to children and their parents/guardians.

- **User complaints**

Question 16 of the Call for Inputs addresses the handling by VSPS providers of user complaints. The Commission states that it expects the code to require VSPS providers to establish and operate transparent, easy-to-use and effective procedures for handling users' complaints and to report to the Commission at regular intervals on the handling of communications from users.

The OCO welcomes the proposal to include requirements relating to complaints-handling in this code. The Commission provides examples of instances in which people using a VSPS may wish to make a complaint to a VSPS provider. This could include children who may wish to make a complaint about the actions taken by a VSPS provider, such as a complaint about a content moderation decision made about content that the child uploaded to a VSPS, or a complaint about the way in

⁵⁴ UN Committee on the Rights of the Child (2021), [General comment No. 25 \(2021\) on children's rights in relation to the digital environment](#), CRC/C/GC/25, para. 36, para. 39 and para. 55; Council of Europe (2018), [Guidelines to respect, protect and fulfil the rights of the child in the digital environment: Recommendation CM/Rec\(2018\)7 of the Committee of Ministers](#), para. 20, para. 59 and para. 68.

which a VSPS provider responded to a report that the child made about alleged harmful content available on the VSPS.

As the Commission knows, children can face particular challenges in accessing and participating in complaints processes that affect them. Complaints procedures and practices therefore need to be adapted to meet children's specific needs.⁵⁵ The Committee has stated that States should ensure that businesses provide effective complaint mechanisms for children when their rights have been abused in the digital environment.⁵⁶ Such complaint mechanisms should be free of charge, safe, confidential, responsible, child-friendly and available in accessible formats to all children, their parents and their representatives.⁵⁷ The Committee also states that remedial mechanisms should take into account the vulnerability of children and the need to be swift to halt ongoing and future damage.⁵⁸ The Council of Europe has similarly stated that States should ensure the provision of available, known, accessible, affordable, and child-friendly avenues through which children, as well as their parents or legal representatives, may submit complaints and seek remedies.⁵⁹ States should ensure children are provided with guidance on how and to whom to make a complaint and parents or carers should also be informed of such mechanisms and appropriate remedies. Mechanisms should ensure that access to remedies is speedy and child-friendly and provides appropriate redress to children.⁶⁰

Informed by our experience of dealing with complaints in the context of discharging our statutory complaints function, the OCO published a Guide to Child-Centred Complaints Handling in 2018.⁶¹ The purpose of the guide is to encourage and support organisations, which provide services to children and make decisions that impact on children, to deal with complaints in accordance with good practice and in a child-centred manner. The Guide sets out seven core principles of good practice for dealing with complaints by or on behalf of children, as well as measures that can be taken to translate these principles into practice:

- openness and accessibility,
- best interests of the child,
- participation of children,
- transparency and communications,
- timeliness,
- fairness, and
- monitoring and review.

In particular, the Guide encourages organisations to:

- provide any particular supports that children or their representatives may need during the complaints process,
- involve children in the development of information materials about the complaints process
- seek the views of the child affected by the complaint and address any barriers that may exist for children in expressing their views freely, and

⁵⁵ Ombudsman for Children's Office (2018), [A Guide to Child-Centred Complaints Handling](#).

⁵⁶ UN Committee on the Rights of the Child (2021), [General comment No. 25 \(2021\) on children's rights in relation to the digital environment](#), CRC/C/GC/25, para. 48.

⁵⁷ Ibid., para. 44.

⁵⁸ Ibid., para. 46.

⁵⁹ Council of Europe (2018), [Guidelines to respect, protect and fulfil the rights of the child in the digital environment: Recommendation CM/Rec\(2018\)7 of the Committee of Ministers](#), para. 67.

⁶⁰ Ibid., para. 68.

⁶¹ Ombudsman for Children's Office (2018), [A Guide to Child-Centred Complaints Handling](#).

- seek feedback from children as part of a regular review of the complaints policy and procedures in place.

Having regard to the above, **the OCO encourages the Commission to consider including a requirement in the code that VSPS providers must put in place a child-friendly complaints process, which facilitates complaints to be made by as well as on behalf of children using their service.**