



Submission to Draft Online Safety Code Consultation

Coimisiún na Meán

31 January 2024



Coimisiún um
Iomaíocht agus
Cosaint Tomhaltóirí

Competition and
Consumer Protection
Commission



Introduction

The Competition and Consumer Protection Commission ('the CCPC') welcomes the opportunity to respond to the Coimisiún na Meán ('CnaM') consultation on a draft Online Safety Code ('the draft code').

The CCPC has a statutory function under Section 10(3)(a) of the Competition and Consumer Protection Act 2014 to provide advice to policymakers on matters likely to impact on consumer protection and welfare, or competition, and the CCPC's submission reflects this mandate.

As we set out in our response to the CnaM call for inputs during the development of the draft code, we are supportive of the decision by CnaM to focus the first online safety code on video-sharing platform services and providers (VSPS providers) and to make sure VSPS providers take measures to address online harms more effectively.

Our response to this consultation focusses on Section 12 of the draft code (audiovisual commercial communications).

Section 12 - Audiovisual Commercial Communications

It is important that those who view content on VSPS providers' platforms are made aware when they are being presented with commercial communication in order to protect them against misleading advertising or marketing. Both VSPS providers and those who upload content to their platforms should comply with all existing consumer protection law in this area. In order to help establish the extent to which they are complying with existing consumer laws, in October 2023, the CCPC took part in an EU wide 'sweep' of online posts by influencers to identify testimonials and endorsements that could mislead consumers. The results will be available at a later date. The 'sweep' was carried out by the European Commission and national authorities of the Consumer Protection Cooperation

Network (CPC). It began on the same day that the Commission launched an online influencers legal hub, which brings together EU legislation in this area¹.

We welcome the draft code obligations for VSPS providers to ensure that audiovisual commercial communications are readily recognisable as such. We further welcome the proposal for this to apply to both audiovisual commercial communications that are marketed, sold, or arranged by the VSPS providers themselves as well as by those who upload content to their platforms.

In December 2022 the CCPC published the results of research we conducted on online consumer behaviour and influencer marketing². The research found that consumers may be over-confident in their ability to recognise when posts by influencers are in fact marketing, and not identified as such. A key finding from the research was that a significant portion of the posts with commercial content that we analysed were either not labelled at all, or not sufficiently labelled.

When we engaged directly with consumers and influencers we found that there was widespread agreement amongst both groups that clear guidance would be beneficial for everyone. In the report we set out an approach to regulating influencer marketing, and we note that the obligations placed on VSPS providers platforms in Section 12 of the draft code are in line with the recommendations in our report³.

Labelling System

It will be important that there is a consistent labelling system adopted by those who upload commercial communications and we note that this is acknowledged by CnaM in the statutory guidance material that accompanies the draft code.

¹ More information on the 'sweep' and the legal hub can be accessed at: [Influencer Legal Hub - European Commission \(europa.eu\)](https://influencer-legal-hub.ec.europa.eu/)

² The full report can be accessed at: [CCPC influencer marketing research - CCPC Business](#)

³ The report recommended that the most appropriate approach to regulating influencer marketing is hybrid in nature encompassing: strengthened guidance; education of influencers; and increased responsibility for platforms.

In the absence of CnaM's own specifications for a labelling system, it is welcome that the draft code statutory guidance material references the guidance issued by the CCPC and the Advertising Standards Authority for Ireland ('ASAI') in October 2023 on influencer advertising and marketing⁴. However, it is unclear whether the former is encouraging VSPS providers themselves to follow the CCPC and the ASAI guidance in designing a labelling system, or if the VSPS providers are also to encourage content creators on their platforms to follow the guidance. This would benefit from clarification in the final draft code.

It is important to note that the CCPC and the ASAI guidance was intended for influencers who promote or recommend products or services on social media for a benefit (monetary or non-monetary). The term 'influencer' was used to cover a range of content creators, that includes, but is not limited to, online personalities, online streamers, bloggers/vloggers, celebrities, or media personalities. The CCPC research on consumer behaviour and influencer marketing found that the approach taken to guidance by social media platforms to their content creators on commercial communications was not universal. While some VSPS providers did provide a degree of guidance, the terminology used and format that it took varied⁵. This was one of the reasons why the CCPC and the ASAI took the decision to develop the influencer marketing and advertising guidance. We would strongly recommend that any labelling system provided by platforms to influencers is complementary to the CCPC and the ASAI joint guidance.

We expect that the CCPC and the ASAI guidance will be widely adopted by influencers and that in future commercial content will be displayed in a clearer and more transparent manner than in the past. Its uptake by influencers will be even more widespread if the draft code is clear that VSPS providers should encourage its use.

However, the effectiveness of new guidance and obligations will be dependent on content creators on VSPS platforms fully understanding the reasons why these types of

⁴ The full guidance can be accessed at: [CCPC-ASAI-Guidance-on-Influencer-Advertising.pdf](#). This guidance was developed after a period of extensive research that involved a qualitative eye tracking experiment, a quantitative eye tracking experiment and a series of interviews with influencers. This research was independently conducted by Ipsos MRBI.

⁵ See page 29 of the CCPC influencer market research for more information on the type of guidance issued by different social media platforms. It can be accessed at: [CCPC influencer marketing research - CCPC Business](#)

communications need to be labelled. In addition, consumers of this content should be able to identify the labels that are used and understand when a content creator is in breach of the guidance. Since we published the guidance with the ASAI, early indications show that raising awareness among the general public can be effective in ensuring compliance⁶. Therefore, it would be welcome if the obligations set out in Section 12 are explicitly stated among the aims included in the guidance for Section 13 of the draft code (media literacy – measures and tools).

ENDS

⁶ ASAI introduced an informal reporting tool in November 2023 and they have seen a significant interest from consumers in bringing content to their attention regarding potential failures to disclose brand deals, sponsorships or other partnership by influencers. See: 'New online form allows users to flag suspected breach of ASAI guidelines in promoting brands', Irish Independent, 05 Jan 2024. Accessed at: [More than 800 complaints made in five weeks about influencers' potential failing to declare ads on social media | Independent.ie](https://www.independent.ie/irish-news/asiai-complaints-2024-01-05)