

**August 2024**

NDA Submission to Coimisiún na Meán concerning the Draft Audiovisual On-Demand Media Service Code & Rules

# Introduction

The National Disability Authority (NDA) is the independent statutory body with a duty to provide information and advice to the Government on policy and practice relevant to the lives of persons with disabilities, and to promote Universal Design. The NDA welcomes the opportunity to input into Coimisiún na Meán’s (‘the Commission’) consultation concerning the Draft Audiovisual On-Demand Media Service Code & Rules (‘Draft Code and Rules’).

The NDA’s contribution is limited to Questions 1 and 8 of the Consultation Questions, focusing primarily on the accessibility of audiovisual on-demand media services for persons with disabilities. We have also provided a detailed submission to Coimisiún na Meán concerning the Draft Access Rules for Television Broadcasting Services and some of the advice we have provided therein will have relevance for the development of this Draft Code and Rules.

In particular, and as outlined in our submission concerning the Draft Access Rules, the NDA underscores the importance of the monitoring of the quality of access services[[1]](#footnote-1) for all audiovisual media services, including audiovisual on-demand media services, through enhanced qualitative monitoring by Coimisiún na Meán, with the participation of access users.

# Responses to Consultation Questions

## Question 1: Do you have any comments on Sections 1–8 of the Draft Code and Rules?

### UN Convention on the Rights of Persons with Disabilities

The NDA notes the absence of a reference requiring the Commission to act in a manner consistent with the UN Convention on the Rights of Persons with Disabilities (UNCRPD) in Section 4.2 and advises that this be remedied. Ireland ratified the UNCRPD in 2018, and the NDA advises that the Commission should be guided by and adhere to the Convention in matters concerning the Draft Code and Rules.

Article 30 of the UNCRPD specifically obliges States Parties, including Ireland, to recognise the right of persons with disabilities to take part on an equal basis with others in cultural life, and to take all appropriate measures to ensure that persons with disabilities enjoy access to television programmes in accessible formats.[[2]](#footnote-2) In addition, Article 21 of the Convention enshrines the right to freedom of expression and opinion, including the freedom to seek, receive and impart information and ideas on an equal basis with others and through all forms of communication of their choice.

Furthermore, a key objective of the Commission in introducing regulatory rules for on-demand providers is to fully transpose the Audiovisual Media Services Directive into Irish law.[[3]](#footnote-3) The European Union has ratified the UNCRPD and accordingly all EU law, including the Audiovisual Media Services Directive, must be interpreted in a manner consistent with the Convention. Recital 22 of the Directive also explicitly states the following: ‘Ensuring the accessibility of audiovisual content is an essential requirement in the context of the commitments taken under the United Nations Convention on the Rights of Persons with Disabilities.’

### European Accessibility Act

The NDA also notes that there is no reference to the European Accessibility Act in Section 1.1 and advises that this be remedied. The European Accessibility Act (EAA) (Directive EU 2019/882) is a directive that aims to improve the functioning of the internal market for accessible products and services, by removing barriers created by divergent rules in Member States. These products include equipment related to digital television services and access to audio-visual media services such as on-demand audiovisual media services. The EAA was transposed into Irish law via Statutory Instrument (S.I.) 636/2023.

The NDA considers the EAA and the Audiovisual Media Services Directive to be complementary, a view echoed in the European Commission report examining the application of the Audiovisual Media Services Directive during the period between 2019 and 2022. The definition of ‘audiovisual services’ (which includes on-demand audiovisual media services) is the same in both Directives, further reinforcing this alignment.

As outlined in S.I. 636/2023, accessibility requirements for services providing access to an audiovisual media service, including on-demand audiovisual media services, must be achieved by ‘providing EPGs [Electronic Programming Guides] which are perceivable, operable, understandable and robust and provide information about the availability of accessibility’ (Schedule I, Section 4, (b)(i)); and ‘ensuring that the accessibility components (access services) of the audiovisual media services, such as subtitles for the deaf and hard of hearing, audio description, spoken subtitles and sign language interpretation, are fully transmitted with adequate quality for accurate display, and synchronised with sound and video, while allowing for user control of their display and use.’ (Schedule I, Section 4, (b)(ii)).

As the designated compliance authority for services providing access to audiovisual media services under S.I. 636/2023, the Commission must ensure that the services provided by on-demand audiovisual media services meet the accessibility requirements detailed in Schedule 1 of S.I. 636.

### Accessible Complaints Mechanism

The NDA notes that Section 8 deals with complaints, including complaints that an on-demand services failed to take proportionate measures to ensure that programmes available on their on-demand services are made continuously and progressively more accessible to persons with disabilities through the provision of access services.

Complaints processes are an essential part of service provision, business improvement and quality assurance. In 2021, the NDA undertook a statutory review of the Irish Sign Language Act 2017, which concluded that the absence of an accessible complaint mechanism for ISL users should be remedied promptly by providing a two-way mechanism where ISL users can make a complaint or submit feedback in ISL on any matter, and receive appropriate responses through ISL.

While the NDA notes that the Irish Sign Language Act 2017 (via the Access Rules) only applies to broadcast content and not to online on-demand players or other non-broadcast mediums, it is nonetheless important that the Commission considers ways of making their complaints and information services accessible to ISL users, particularly given the low literacy levels of some ISL users.

### Question 8: Do you have any comments on the requirements relating to accessibility as set out in Section 15 of the Draft Code and Rules?

The NDA has consistently advised that access requirements should be met through a progressive and continuous process, while considering the practical and unavoidable constraints that could prevent full accessibility, such as programmes or events broadcast in real time. Our approach is akin to that required by the Audiovisual Media Services Directive, which requires EU Member States, including Ireland, to ensure that services provided by media service providers under their jurisdiction are made continuously and progressively more accessible to persons with disabilities through proportionate measures.

### Accessibility Action Plans

The NDA welcomes the proposal to require media service providers of on-demand services to develop accessibility action plans detailing how they will continuously and progressively make their on-demand services more accessible to persons with disabilities through the provision of access services. We further welcome the need for such plans to be agreed with the Commission.

In addition, the NDA welcomes the list of six criteria which must be addressed in the accessibility action plans. We note that Section 15.5(v) states that the accessibility action plans must outline proposals to consult with users of access services on the provision by the media services provider of access services on the on-demand media services that it provides. While we agree that this is important, the NDA further recommends that media service providers of on-demand services also be required to detail the extent to which users of access services have been consulted in the development of the accessibility action plans.

We would further recommend that there is a specific reference to consultation with Disabled Persons’ Organisations (DPOs) in Section 15.5(v). The UNCRPD is clear that DPOs, as representative organisations of disabled people, must be closely consulted with and actively involved in decision making processes concerning issues related to people with disabilities. The NDA has developed guidance, entitled Participation Matters, for public officials on how to meaningfully consult with and actively involve disabled people and their representative organisations in policy development processes in line with the UNCRPD, which may be of assistance to the Commission in this regard.[[4]](#footnote-4)

Furthermore, the NDA advises that Section 15 be amended to expressly state that the annual accessibility action plans should be made publicly available in accessible formats. Likewise, reports on the implementation of accessibility action plans (as referenced in Section 15.9) should be made publicly available.

### Emergency Information

The NDA welcomes the provision in Section 15.8 which provides that where an on-demand service transmits emergency information, including public communications and announcements in natural disaster situations, the provider of that service shall ensure that this information is provided in a manner which is accessible to persons with disabilities. However, the NDA suggests that Section 15.8 should be more explicit and specify that such providers must provide subtitling and Irish Sign Language for emergency information transmissions, to mirror the approach proposed in the Draft Access Rules for Television Broadcasting Services.

### Monitoring

As outlined in Section 15, accessibility action plans must detail the measures to be taken to adhere to the quality standards developed by the Commission. In addition, media service providers of on-demand services must provide an annual report to the Commission on the implementation of these plans.

However, similar to the advice we provided in respect of the Draft Access Rules for Television Broadcasting Services, the NDA advises that the Commission outline the steps it will take itself to monitor compliance with the accessibility action plans, including monitoring adherence to the quality standards for ISL, Audio Description and subtitling.

# Conclusion

The NDA welcomes Coimisiún na Meán’s consultation on the Draft Audiovisual On-Demand Media Service Code and Rules. We would be happy to engage with the Commission on any of the points raised in this submission.

1. “Access services” means subtitling, captioning, Irish Sign Language and audio description as defined within the Draft Code and Rules. [↑](#footnote-ref-1)
2. The NDA’s 2024 annual conference, taking place on 24 October 2024, will consider Article 30 of the Convention. We are liaising with colleagues within the Commission regarding participation at the event to ensure a focus on accessible television and broadcasting services. [↑](#footnote-ref-2)
3. Ireland has failed to meet the deadline of 19 September 2020 for transposition of the Audiovisual Media Services Directive. While commencement of the Online Safety and Media Regulation Act 2022 in March 2023 marked partial transposition of the Audiovisual Media Services Directive, the Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media has noted that full transposition will only be achieved once Coimisiún na Meán adopts relevant online safety and media services codes (including the Audiovisual On-Demand Media Service Code and Rules). The right of persons with disabilities to participate and be integrated in the social and cultural life of the EU is linked to the provision of accessible audio-visual media services. The NDA therefore underscores the importance of full, effective and timely transposition of the Audiovisual Media Services Directive. [↑](#footnote-ref-3)
4. The guidelines are available at the following link: [Participation Matters: Guidelines on implementing the obligation to meaningfully engage with disabled people in public decision making - National Disability Authority (nda.ie)](https://nda.ie/publications/participation-matters-guidelines-on-implementing-the-obligation-to-meaningfully-engage-with-disabled-people-in-public-decision-making) [↑](#footnote-ref-4)