Technology Ireland Code of Conduct – short mission statement

Objective

Members of Technology Ireland's Online Safety Working Group, who provide online services to a broad user group that commonly includes children, wish to develop a Code of Conduct (a 'Code') that satisfies the requirements for codes of conduct under the General Data Protection Regulation (GDPR). The Code, and the process for creating, implementing and monitoring it, should therefore satisfy the Guidelines 1/2019 on Codes of Conduct and Monitoring Bodies under Regulation 2016/679 (v2.0).

Motivated by the publication of the Irish Data Protection Commission's Fundamentals for a Child-Oriented Approach to Data Processing, the Code will focus on certain topics of the GDPR that are deemed particularly important to drive higher standards of protection for children's personal data in online environments and create a level playing field within sectors by contributing to age-appropriate digital services at the European Union level. Not every aspect or principle of the GDPR will be addressed by the Code.
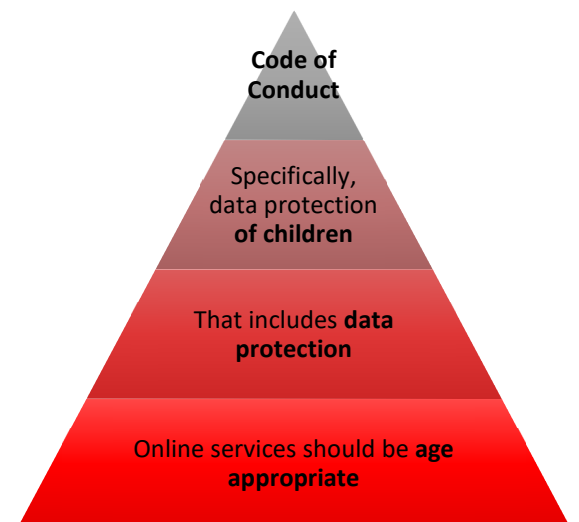
The desire is to obtain a positive Opinion on this Code from the European Data Protection Board ('EDPB'), i.e. at the EU level, with the Irish DPC acting as the lead authority, and ensuring that this Code is synchronised and complementary to other initiatives, such as the upcoming guidance from the EDPB on children's privacy and the European Commission Better Internet for Kids.

Scope of the Code

The central philosophy of the Code can be graphically illustrated via a pyramid of concerns and objectives. The pyramid builds on the overarching concern that **any online service likely to be accessed by children should be age appropriate**, meaning that the service's design considers the abilities and vulnerabilities of its user community, in all of its likely (age) diversity.

A subtopic of age appropriateness is **data protection**: personal data protection in particular must be ensured using means that can be tailored specifically to the age and maturity of the users. This is particularly important when the users are likely to include **children,** to be understood as any persons under the age of 18.

The **Code** is positioned as one of the means to support responsible data protection practices, to both facilitate and protect children's use of online services, and therefore contribute to an age appropriate experience. In doing so, the rights and freedoms of other affected stakeholders shall be considered and balanced. The Code is currently not intended to act as an instrument to support international data transfers.

Code of Conduct

Specifically, data protection **of children**

That includes **data protection**

Online services should be **age appropriate**

In addition to the service providers, there are a number of players who can also contribute to providing an age appropriate online experience (or duties to be complied with), including parents/guardians, educators, authorities and young people themselves. The Code will consider, where appropriate as a means to support age appropriate data protection of children that use online services, how industry can facilitate the necessary involvement of these other players. The Code recognizes that there are other (non-GDPR) issues that affect age appropriateness, such as the choice and protection of social values, media literacy, the digital divide, and protection against unlawful content. These are however not covered by the Code.

Central philosophy of the Code

The Code is being designed taking due account of the UN Convention on the Rights of the Child, existing codes/guidelines from data protection authorities, authoritative guidance from subject matter experts in the EU, consultation/research with young people and parents/guardians, and industry best practices. It aims to build on **proven, accepted, and practice oriented notions** of online data protection for children.

The goal is to focus on **impact, realism, and actual improvements** for data protection, rather than on formalism. Taking the best interest of the child as the primary consideration and in alignment with the European Commission's **Better Internet for Kids Strategy (BIK+)** pillars, the Code aims to be:

- **Digitally inclusive and empowering** for children, and for parents/guardians. Children should not be approached purely as the passive object of online experiences; data protection shall enable and encourage children to actively participate in digital experiences and encourage family conversations. Age bands play an important role: older children will look to be more autonomous and can be empowered to a greater extent, whereas younger children need greater default protections, and parental involvement.

Role of the parent/guardian and child - empowerment
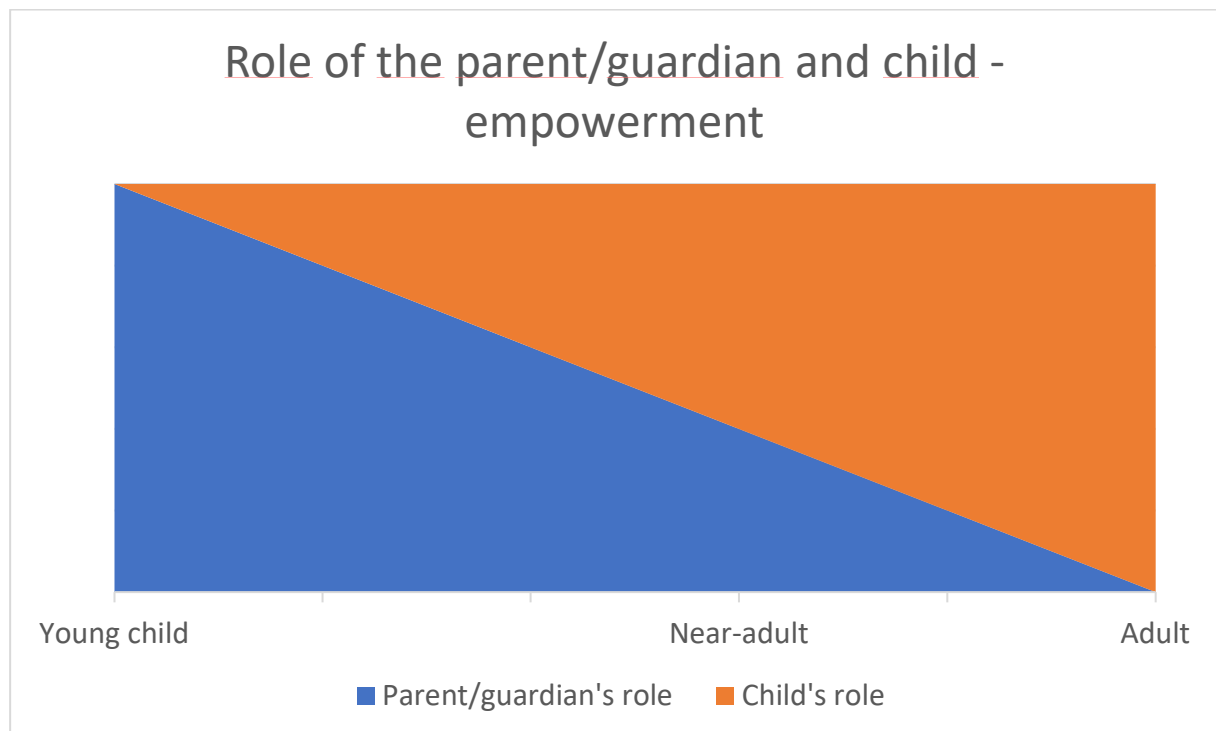
Thus, as in life in general, the child's autonomy and control should increase with age, taking into account the risks of the relevant features likely to be accessed.

- **Educational** for children and parents/guardians. The objective of the Code should not simply be to create a walled-off safe environment, but to actively involve children and parents/guardians. They should be given the information and tools to learn what happens to the children's personal data, and how they (children and/or parents/guardians, depending on the age and risk environment) can control it. In this way, the Code should support **children** to become responsible online adults, even after they leave their safe environment, and support **parents/guardians in their duties to empower and protect their children when engaging digitally**.

Underpinning each of these principles is the overarching objective of driving higher standards for children's personal data in online environments.

These principles should **build on the children's own experiences**. Online providers should **research** what works **for** the children (i.e. what tools and information they choose to use), and **towards** them (i.e. what tools and information are effective irrespective of the child's actions), aiming to make continuous data protection improvements.

Lastly, the Code **recognizes the role that service providers can play towards these objectives, among other stakeholders including** children and their parents/guardians.

Priorities for the Code

Taking into account this scope and the central philosophy, a few central priorities can be recognized. Structurally, the Code will focus on three pillars:
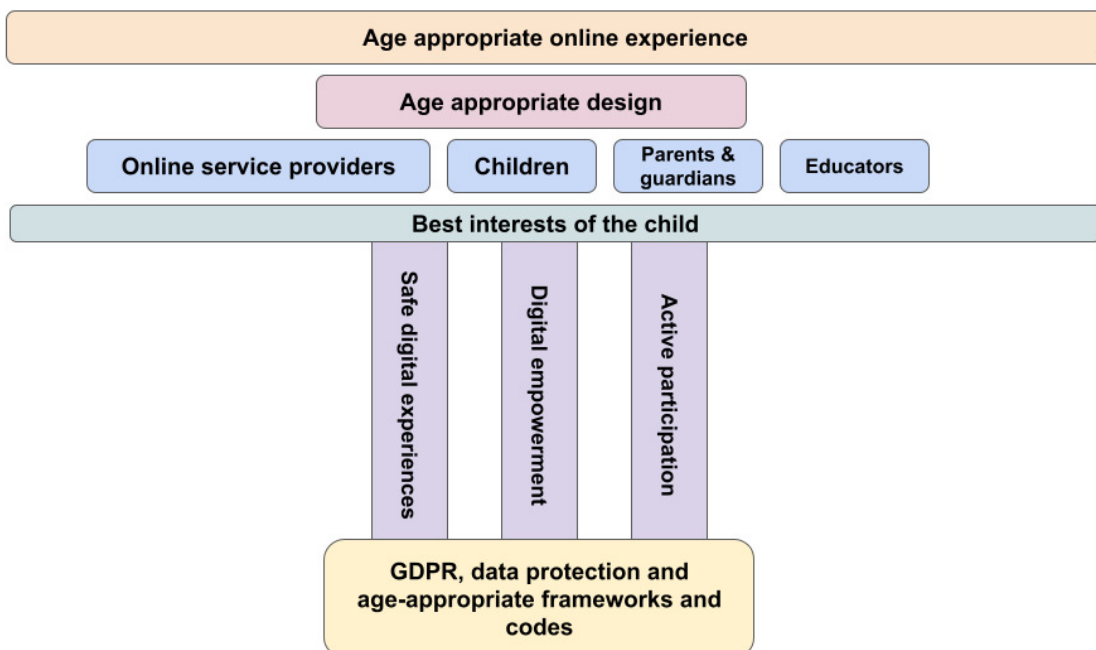
The Code should therefore, from a data protection angle:

- **Clarify the role of online service providers** in facilitating an age appropriate experience, where their service offering is likely to be accessed by children.
- **Clarify the rights and control mechanisms available to children**, particularly in relation to transparency and their data subject rights.
- **Clarify the rights and control mechanisms available to parents/guardians**, recognizing their dynamic role in relation to their children, and their central role in assessing the child's best interest.

To ensure that the Code can recognize how the child's best interest is served, the drafting team should consider and reference existing and/or ongoing research and consultation initiatives to inform the Code's objectives and compliance controls. This may involve participatory approaches such as co-design with parents/guardians and young people, privacy and youth experts, **academia, and other authoritative stakeholders** that can provide external insights and best practices in this field.

The Code should also take into account the breadth of service providers. It should be available both to SMEs and to large undertakings, and refrain from relying exclusively on measures that are out of reach of smaller companies.

The governance rules for the development of the Code (including rules for participation, contribution and development) will be openly available to interested stakeholders. The Code of Conduct development group has engaged in initial discussions with Brussels based Scope Europe[1], the first Monitoring Body to be formally accredited as satisfying the requirements under the GDPR. Scope Europe has affirmed its initial interest in assuming this role.

The Code should build on the notion of **age bands** of children as a simplified but useful model for assessing inclusiveness/empowerment, the balance of safety and privacy, and education. Code adherents should **assess likely and observed usage of their services by children**, and identify / justify relevant bands, including corresponding **measures** (objectives and compliance controls).

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[1] See https://scope-europe.eu/en/home/

References and consulted sources

- Guidelines 1/2019 of the EDPB on Codes of Conduct and Monitoring Bodies under Regulation 2016/679; see https://edpb.europa.eu/sites/default/files/files/file1/edpb_guidelines_201901_v2.0_codesofconduct_en.pdf
- The DPC Fundamentals for a Child-Oriented Approach to Data Processing; see https://www.dataprotection.ie/en/dpc-guidance/fundamentals-child-oriented-approach-data-processing
- DPC Public consultation on the processing of children's personal data and the rights of children as data subjects under the General Data Protection Regulation; see https://www.dataprotection.ie/en/news-media/consultations
- The European strategy for a better internet for kids (BIK+); see https://digital-strategy.ec.europa.eu/en/library/digital-decade-children-and-youth-new-european-strategy-better-internet-kids-bik
- The BIK+ Code of Conduct on Age-Appropriate Design; see https://digital-strategy.ec.europa.eu/en/policies/group-age-appropriate-design
- The European Declaration on Digital Rights and Principles; see https://digital-strategy.ec.europa.eu/en/library/european-declaration-digital-rights-and-principles
- ICO Age appropriate design: a code of practice; see https://ico.org.uk/for-organisations/guide-to-data-protection/ico-codes-of-practice/age-appropriate-design-a-code-of-practice-for-online-services/
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- ICO Designing data transparency for children - Insights from the Children's Code transparency champions open call; see https://ico.org.uk/media/2620177/designing-data-transparency-for-children.pdf
- CNIL Recommendations on Digital rights of children; see https://www.cnil.fr/en/digital-rights-children
- The Swedish Data Protection Authority, the Ombudsman for Children and the Swedish Media Council - The rights of children and young people on digital platforms - Stakeholder guide; see https://www.imy.se/globalassets/dokument/rapporter/the-rights-of-children-and-young-people-on-digital-platforms_accessible.pdf
- Garante Manifesto di Pietrarsa; see https://www.garanteprivacy.it/home/docweb/-/docweb-display/docweb/9807083 and https://stateofprivacy.it/
- NL University of Leiden / Waag Code for Children's Rights, commissioned by the Dutch Ministry of the Interior and Kingdom Relations; see www.codevoorkinderrechten.nl

- Family Online Safety Institute - Making Sense of Age Assurance: Enabling Safer Online Experiences; see https://www.fosi.org/policy-research/making-sense-of-age-assurance-enabling-safer-online-experiences
- 5Rights Foundation - But how do they know it is a child? Age Assurance in the Digital World; see https://5rightsfoundation.com/in-action/but-how-do-they-know-it-is-a-child-age-assurance-in-the-digital-world.html

- Centre for Information Policy Leadership - Protecting Children's Data Privacy, POLICY PAPER I - International Issues And Compliance Challenges; see https://www.informationpolicycentre.com/protecting-childrens-data-privacy.html