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## **An Comhchoiste um Fhiontar, Trádáil agus Fostaíocht**

Tuarascáil maidir leis an nGrinnscrúdú Réamhrechtach ar Scéim Ghinearálta an Bhille um Sheirbhísí Digiteacha, 2023

Meitheamh 2023

## **Joint Committee on Enterprise, Trade and Employment**

Report on the Pre-Legislative Scrutiny of the General Scheme of the Digital Services Bill, 2023

June 2023





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Services Bill, 2023

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**[33/ETE/18]**

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## Chair's Foreword



In March 2023, The Minister for Enterprise, Trade and Employment Simon Coveney T.D., referred the Digital Services Bill, for pre-legislative scrutiny.

The Committee agreed to undertake pre-legislative scrutiny and has sought to scrutinise the proposed legislation, providing recommendations on areas where it believes changes or amendments are warranted. The Committee welcomes the introduction of the Digital Services Bill, and the time and consideration the Department has provided with this Bill.

The General Scheme implements those elements of the Digital Services Act (DSA) that require national implementing measures, which are to designate and empower the relevant competent authority within the regulatory framework. Coimisiún na Meán was established by the Online Safety and Media Regulation Act 2022 in March 2023.

The General Scheme gives effect to that decision and provides for some miscellaneous other matters, such as the liability regime for providers of online intermediary services and the harmonisation of Court Orders to take down illegal content from online services.

The Committee made a number of recommendations aimed at improving this important piece of legislation. When this legislation proceeds, the Joint Committee requests that the recommendations and key issues raised in this report and identified during the pre-legislative scrutiny process are taken on board by the Government and implemented.

Some Members of the Joint Committee suggested the Digital Services Bill would be better suited to the remit of the Joint Committee on Tourism, Arts, Gaeltacht, Sport and Media scrutinising this Bill as Coimisiún na Meán will be reporting to the Minister for Tourism, Culture, Arts, Gaeltacht, Sport and Media and not the Minister for Enterprise, Trade and Employment.

The Joint Committee look forward to further engagement on the Bill and I hope that when enacted it will be an important and significant reform of the co-operative sector. I wish to thank all stakeholders and the Department for their contributions and submissions to assist the Joint Committee in their analysis of the Bill. I must also thank Members of the Committee for their collaborative work in agreeing this report.



Deputy Maurice Quinlivan, T.D.,

Cathaoirleach to the Joint Committee on Enterprise, Trade and Employment

June 2023

## Recommendations

1. The Committee recommends that further clarity be provided for in the legislation as regards the functions, remit, and process for 'trusted flagger status'.
2. The Committee also recommends that further clarity be provided as to how takedown orders are to be actioned by Digital Platforms.
3. The Committee recommends that a review is conducted of the potential areas of overlap between the Online Safety and Media Regulation Act and the Digital Services Act.
4. The Committee recommends that provision be made in the legislation to enable public interest research based on data provided by regulated platforms to facilitate research access, conduct data analysis, and manage collaborations.
5. The Committee recommend the provision of a nationwide information campaign to inform the public of the protections contained within the Bill to provide awareness and information on how to access supports.
6. The Committee further recommends engagement and provisions for consultations with Social Partners and stakeholders for procedures being created under the Digital Services Act.
7. The Committee expressed concern at the varying responsibilities of different organisations such as the Competition and Consumer

Protection Commission and the potential for overlap of these responsibilities to hamper the effective carrying out of duties.

8. The Committee recommend further clarity be provided for in secondary legislation regarding take down orders and how they will be actioned upon and that regulations will assist in providing a fair balance between platforms and the rights of a person.
9. The Committee recommends further clarity with procedures and enhanced transparency in relation to Heads 5,7,8,10, 12, 14, 18 and 20 for the provisions and definitions provided for within the General Scheme.
10. The Committee recommends that Coimisiún na Meán is satisfactorily resourced, with the level of staffing and legal expertise required to adequately allow optimal operational capacity and enforcement and further recommends that highly precise detail is given as to the roles, individual functions and responsibilities of Coimisiún na Meán.
11. The Committee recommends Coimisiún na Meán and other competent authorities should have the ability to establish cooperation agreements, allowing them to share information, coordinate actions, and determine which authority should act in cases involving multiple provisions of the DSA and/or other laws.



<b>Glossary</b>	
AVMSD	Audio-Visual Media Services Directive
CCPC	Competition and Consumer Protection Commission
DMA	Digital Markets Act
DSA	Digital Services Act - Regulation (EU) 2022/2065 on a Single Market for Digital Services ('the Digital Services Act')
DSB	Digital Services Bill
DSC	Digital Services Co-Ordinator
FUJO	Institute of Future Media, Democracy and Society - DCU
OSMR	Online Safety Media Regulation Act 2022
Principal Act	the Broadcasting Act 2009, as amended by the Online Safety and Media Regulation Act 2022
VLOP	Very Large Online Platform
VLOSE	Very Large Online Search Engine

## Introduction

Minister for Enterprise, Trade and Employment, Mr Simon Coveney, TD, referred the General scheme of the Digital Services Bill to the Joint Committee on Enterprise, Trade and Employment on 23 March with a request to commence pre-legislative scrutiny at the Committee's earliest convenience.

### *Procedural basis for scrutiny*

Pre-legislative consideration was conducted in accordance with *Standing Order 173*<sup>1</sup>, which provides that the General Scheme of all Bills shall be given to the Committee empowered to consider Bills published by the member of Government.

The Committee commenced pre-legislative scrutiny on the Bill on 19 April. The Committee held one public hearing on the General Scheme with officials from the Department of Enterprise, Trade and Employment. The Committee received five written submissions on the Digital Services Bill from Children's Rights Alliance, Technology Ireland, The Law Society of Ireland, The Institute for Future Media in Dublin City University, and Coimisiún na Meán.

The primary focus of conducting pre-legislative scrutiny was to allow for an engagement between the Members and stakeholders to discuss areas of the General Scheme which may need to be amended. This report summarises the engagements and the key points considered by the Committee when drafting the recommendations set out in this report.

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<sup>1</sup> [https://data.oireachtas.ie/ie/oireachtas/parliamentaryBusiness/standingOrders/dail/2022/2022-05-26\\_consolidated-dail-eireann-standing-orders-may-2022\\_en.pdf](https://data.oireachtas.ie/ie/oireachtas/parliamentaryBusiness/standingOrders/dail/2022/2022-05-26_consolidated-dail-eireann-standing-orders-may-2022_en.pdf)

## Date      Witnesses

Meeting 1- 19 April 2023

*Officials from the Department of Enterprise, Trade and Employment*

*Digital Economy Regulation Unit*

- Sabha Greene, Principal Officer
- Elizabeth Harvey, Assistant Principal

[Transcript](#) - [Video](#)

## General Scheme

On 7 March 2023, the Government approved the drafting of the [Digital Services Bill 2023](#) on the basis of a General Scheme. The General Scheme implements those elements of the Digital Services Act (DSA) that require national implementing measures, which are to designate and empower the relevant competent authority within the regulatory framework.

The DSA Regulation provides that Member States must designate their Digital Services Coordinator (DSC) by 17 February 2024, the same date that the Regulation fully applies in the Member States. Accordingly, Ireland is legally obliged to have its DSC in place by that date. The EU Regulation known as the [Digital Services Act](#) (Regulation (EU) 2022/2065) came into force in EU law on 16 November 2022.

The [General Scheme](#) is intended to implement elements of Regulation (EU) 2022/2065 on a Single Market for Digital Services ('the [Digital Services Act](#)'). As the [Digital Services Act](#) is a Regulation, many of its provisions take direct effect in Ireland. For example, the obligations it places on providers of online intermediary services need no further national measures.

The Government decided that it will designate Coimisiún na Meán as the Digital Services Coordinator. Coimisiún na Meán was established by the Online Safety and Media Regulation Act 2022 on 15 March 2023.

The General Scheme gives effect to that decision and provides for some miscellaneous other matters, such as the liability regime for providers of online intermediary services and the harmonisation of Court Orders to take down illegal content from online services.

The General Scheme supports Coimisiún na Meán to be designated as the digital services co-ordinator. The General Scheme also supports matters relating to digital services, investigations, and sanctions under miscellaneous matters.

The Regulation will apply directly in all Member States at the same time, given the cross-border nature of the digital services in the scope of the Regulation, and in light of the design of the pan-EU oversight system in the DSA, all participants in the supervisory network must be designated and ready to play their part in implementation and enforcement on that date.

### *The General Scheme*

The General Scheme consists of 4 Parts and 24 Heads.

Part	Title	Heads	Summary of Provisions
1	Preliminary	1&2	Provisions covering commencement, citation, and construction.
2	Digital Services (insert new Part 8AA)	3-12	Provisions for amending the Principal Act by the insertion of new Part 8AA (Digital Services) after Part 8A (Online Safety)
3	Investigations and Sanctions	13-20	Provisions for contraventions, investigations, notifications, assistance, and cross-border

			cooperation, blocking orders, financial sanctions, and penalty payments.
4	Miscellaneous	21-24	Provisions for disclosure of information, co-operation, personal data, and an amendment to the Representative Actions for the Protection of the Collective Interests of Consumers Bill 2022.

### Background and purpose of the Bill

#### Remit

The Digital Services Act is an update of the E-Commerce Directive of 2000, which is under the remit of the Minister for Enterprise, Trade and Employment. The Act, when it was originally proposed by the European Commission in 2020 as part of a package, with the Digital Markets Act. The Digital Markets Act is very akin to competition law and the two Acts must be read together because they affect similar entities. The Digital Services Act also has some consumer protection elements, which align within the Department of Enterprise, Trade and Employment remit.

While many of the obligations imposed by the DSA apply directly, it is necessary to give effect to some of the DSA’s provisions with national legislative measures. In particular, Ireland is obliged to appoint and empower a competent authority, known as the Digital Services Coordinator, to supervise and implement the DSA.

The Digital Services Bill 2023 will provide for the appointment of the Digital Services Coordinator, as well as its supervisory and enforcement powers. In addition, the General Scheme provides for some other miscellaneous matters, including the liability regime for providers of online intermediary services, the harmonisation of court orders to take down illegal content from online services, along with the procedures for awarding "trusted flagger" status, certifying entities as out of court

dispute settlement bodies and procedures for dealing with complaints from users or bodies mandated to act on their behalf.

The General Scheme should be read in conjunction with the DSA and the Broadcasting Act 2009, as amended by the Online Safety and Media Regulation Act 2022 (2022 Act). On 15 March 2023, the 2022 Act established Coimisiún na Meán (the Media Commission) which the Irish Government has appointed as the Digital Services Coordinator.

The Scheme supports the following –

- Designation of Coimisiún na Meán as the Digital Services Coordinator in Ireland
- Functions and powers of the Digital Services Coordinator, such as the power to impose fines, the ability to cooperate across borders with other Digital Services Coordinators and the European Commission, issuing specific certifications.
- Updating the liability regime from the e-Commerce Directive of 2000
- The content and handling of take down and related Court Orders

The General Scheme only implements the regulatory framework. It does not deal with the substance of obligations on the technology companies, so it does not deal with the substance of online safety. The draft Bill assigns added functions to the Media Commission, which already has a role in online safety and ensures that the regulator can impose fines and will put in place procedures to implement the Digital Services Act.

The General Scheme supports what is referred to as a good Samaritan clause, which is intended to indicate to the platforms that if they voluntarily decide to do a trawl every so often and they find something, they still have protection from liability.

### *Reach*

The Department clarified that the legislation would apply regardless of where the platform provider is set up, inside or outside of the EU. The Department expect some providers will only have a legal representative in the EU. Once a company is supplying a service to people in the EU, it is bound by the regulation. In that regard, there is some extraterritorial effect.

### *Requirements*

The EU Regulation is intended to make the services used more transparent. People will have more information about the recommender systems and how ads are targeted at them. There are protections against profiling of minors, anybody under 18, to make sure content is not inappropriately targeted at them. There will be greater access to the data held by these companies, so there will be further knowledge about their algorithms and how they operate. This data will help design the future regulation and inform policy. An internal complaints mechanism will also be needed. Companies will have to respond faster and be transparent about who people are dealing with.

### *Public Consultation*

In January 2021, the Department of Enterprise, Trade and Employment held a public [consultation](#) and sought views from stakeholders on both the [Digital Services Act](#) and Digital Markets Act proposals and 10 submissions were received from a broad range of stakeholders.

## Coimisiún na Meán

Coimisiún na Meán has been set up since 15 March 2023, further to the provisions of the Online Safety and Media Regulation Act 2022. The provisions of the Digital Services Bill will provide for new functions related to online content. The work will build on the Broadcasting Authority of Ireland, whose staff and responsibilities have been transferred to Coimisiún na Meán.

Coimisiún na Meán's work will include:

- Setting up a new regulatory regime for online safety.
- Regulating broadcasting and on-demand services.
- Supporting the development of the wider media sector with funding schemes, together with initiatives to promote the Irish language, media literacy, as well as equality, diversity, and inclusion in the media sector.

The Commission will work closely with counterparts in other EU states and with the European Commission. Coimisiún na Meán's role and work will be particularly beneficial in Ireland, as this is the country where many large online businesses have their European headquarters.

Coimisiún na Meán has responsibility for several functions that relate to the regulation of content. Coimisiún na Meán regulates broadcast content, video on-demand content and platforms where uploading videos is the principal purpose or is an essential functionality of the service.

Coimisiún na Meán are to be appointed as the competent authority to regulate platforms in respect of terrorist content online. All these functions derive from EU law.

### Recommendation

The Committee recommends that Coimisiún na Meán is satisfactorily resourced, with the level of staffing and legal expertise required to adequately allow optimal operational capacity and enforcement and further recommends that highly precise



detail is given as to the roles, individual functions and responsibilities of Coimisiún na Meán.

#### Recommendation

The Committee recommends Coimisiún na Meán and other competent authorities should have the ability to establish cooperation agreements, allowing them to share information, coordinate actions, and determine which authority should act in cases involving multiple provisions of the DSA and/or other laws.

#### *Overlap of the DSA and Coimisiún na Meán functions*

There are many aspects of the DSA which overlap with other Coimisiún na Meán functions. These include:

- Orders to platforms to act against illegal or harmful content
- Requirements that platforms must have terms and conditions related to illegal or harmful content and must apply them diligently
- Requirements about how regulated entities act when given notice of illegal or harmful content
- Appointment of bodies whose reports and issues should be given priority
- Requirements about advertising and other commercial content
- Requirements to protect minors from harmful content
- Handling of complaints made to Coimisiún na Meán about regulated entities
- Monitoring compliance, conducting investigations, and taking enforcement decisions about how platforms have dealt with illegal or harmful content.

By appointing Coimisiún na Meán as the DSC, efforts can be made to be sure that the different legal instruments are used in a coherent and effective fashion to address issues such as content which is harmful to minors and vulnerable adults,

hate speech and misogyny, threats of violence, and non-consensual sharing of intimate images or videos.

There are also opportunities for enhanced organisational efficiency and effectiveness from assigning closely related functions to the same public body.

### **Key provisions of the Digital Services Act (Regulation (EU) 2022/2065)**

The EU Regulation known as “the Digital Services Act” (Regulation (EU) 2022/2065) imposes due diligence obligations on intermediary service providers that are designed to combat the proliferation of illegal content online and mitigate against harmful content.

The following providers are that come within its scope include –

- intermediary services,
- hosting services,
- online platforms, and
- “very large” online platforms (VLOPs) and search engines.

The type and number of obligations imposed by the DSA on any one provider depends on the nature of their service and their reach (i.e., number of users in the EU).

## Engagement with Stakeholders

### Survey

Following the first meeting with the Department of Enterprise, Trade and Employment, the Committee carried out a call for expressions of interest in relation to the General Scheme. Four replies were received in relation to the call for expressions of interest.

In welcoming this legislation, stakeholders highlighted the importance of ensuring that this legislation would supply an opportunity to be as detailed, prescriptive, and transparent as possible, in listing the rights and provisions it will include in relation to Digital Services.

Stakeholders recommended that as many provisions as possible should be included in this primary legislation rather than leaving them to be specified in secondary legislation.

### *Written Submissions*

The Committee received further detailed written submissions from the following Stakeholders.

- The Law Society of Ireland
- Technology Ireland
- The Institute for Future Media, Democracy and Society DCU and EDMO Ireland
- Coimisiún na Meán

Stakeholders welcomed the General Scheme, and their written submissions highlighted the following issues and observations.

## Issues and Observations

### Key Issue 1: Head 10 - Trusted flagger status

The General Scheme implements the provisions of Article 22 of the DSA, which requires online platform providers (a subset of intermediary service providers) to give priority attention to certain notices that have been submitted through the notice and action mechanism in Article 16. These are notices that have been submitted by a "trusted flagger" which is acting within their designated area of expertise. The status of "trusted flagger" is awarded by the Digital Services Coordinator in the Member State where it is seeking the status.

The General Scheme requires Coimisiún na Meán to institute procedures for: the application process for the status of "trusted flagger", meeting its own notification obligations (it must notify the European Commission and Board for Digital Services of those entities it has granted "trusted flagger" status to), and the format for the reports made by trusted flaggers.

In public session the Committee expressed concerns over the functions of a trusted flagger and how an organisation qualifies or can apply to gain trusted flagger status.

Department officials explained trusted flaggers will typically be non-governmental organisations. The aim of obtaining of organisations seeking trusted flagger status is that the organisation will then get priority treatment. When somebody with that status makes a complaint to any platform, they get priority treatment for their complaints. The Department explained the intention of the status is that the person knows what they are talking about, and they have valuable experience to make the complaint.

The General Scheme has details on the procedures the DSC will need to include. When Coimisiún na Meán puts these procedures in place, it will likely involve a variation of an application process where, if you meet the criteria, detailed under the DSA from the EU Regulation, then you get your certificate and trusted flagger status.

The Committee expressed concern that a court order would be required before a takedown order could be issued.

The Department noted that this would not be necessary in every instance and is entirely dependent on the content and what law is breached. The Department provided the example of mislabelled goods, the Competition and Consumer Protection Commission is the designated market-surveillance body.

The Department expect the trusted flaggers will be non-governmental organisations. The organisation will apply to Coimisiún na Meán for the status and it is maintained for the period of time required. For out-of-court dispute settlements, it is five years and for trusted flaggers, it is just kept until somebody complains that it no longer meets the criteria. It is not a job for these organisations, it is considered a facility that means as soon as they spot something in the course of their work and they make a complaint, that complaint must be given priority treatment by the platform.

The criteria for designating a trusted flagger are set out in the General Scheme. A person gets his or her certification and goes on a list, and that list is then available to the platforms, so the platforms know who has the status. A person applies to his or her local DSC. The organisation will, therefore, be a trusted flagger in all 27 Member States. The out-of-court dispute settlement bodies are similar to existing alternative dispute resolution bodies.

The Department confirmed that the EU regulation imposes obligations on the service providers, to have systems in place that make it easier to find who is posting and to have the content taken down. The General Scheme is giving the power to Coimisiún na Meán to make sure that the platforms have those systems in place. The Scheme enforces the obligations in the Digital Services Act. This General Scheme is not concerned with enforcing on any individual piece of content. It is about the systems that are put in place by the platforms.

#### Recommendation

The Committee recommends that further clarity be provided for in the legislation as regards the functions, remit, and process for 'trusted flagger status'.

## Recommendation

The Committee also recommends that further clarity be provided as to how takedown orders are to be actioned by Digital Platforms.

### **Key issue 2: Overlap with the OSMR Act**

In their written submission, the Law Society suggest that the DSA and the OSMR have significant overlap in terms of aims, procedures, and impact. This overlap may result in parallel processes for service providers and citizens, leading to increased regulatory burden. The parallel structure also risks confusing those whom the legislation aims to protect and regulate, as they would have to navigate multiple complaints schemes and reporting obligations.

The Law Society recommend ensuring regulatory clarity, to reduce complexity and avoid disputes, it is preferable to clearly define the independent operations of each regulator within the Coimisiún and eliminate duplication of regulatory efforts. Priority should be given to the DSA in case of conflicts while respecting government policy objectives. Similar attention should be given to addressing any potential issues between the OSMR and the transposition of the Audio-Visual Media Services Directive (AVMSD) into domestic law.

It is important to ensure that the Digital Services Coordinators act independently and remain free from external influences, as stated in the DSA. However, the proposed composition of the Coimisiún includes individuals with other responsibilities and functions under the OSMR and AVMSD.

Technology Ireland and Meta Ireland highlighted two key issues of a risk of overlap between the Online Safety and Media Regulation Act 2022 and the EU Digital Services Act, and a need for consultation in respect of the development of procedures created under the Digital Services Act.

Technology Ireland and Meta expressed industry concern for potential for the risk of overlap between the OSMR and the DSA. Any such overlap could lead to confusion and risks the harmonised approach intended by the DSA. As such, the Digital

Services Bill (DSB), is an amendment to the OSMR, provides an opportunity to mitigate that risk.

Technology Ireland and Meta advocate that further scrutiny should be given to provisions of the DSB that will extend beyond the scope of the DSA. Provisions relating to enforcement and liability for breaches of obligations of the DSA. It seeks to impose criminal liability on senior management for breaches of obligations of the DSA (where these obligations are subject to regulation by Coimisiún na Meán /DSCs).

This creates a situation where less significant obligations could result in more stringent penalties for Very Large Online Platforms (VLOPs) and Very Large Online Search Engines (VLOSEs) compared to smaller obligations enforced by a national regulator.

In public session the Committee expressed concern at the considerable overlap with the OSMR Bill arising from written submissions.

The Department explained that one of the main reasons the Government decided Coimisiún na Meán would be the regulator for the Digital Services Act is because it is the regulator for the online safety legislation. There are similarities between the two codes. There is an overlap of the platforms and the search engines that will be in the scope of both. Both take a similar approach in obliging companies to institute procedures that make them more transparent and faster in dealing with complaints. They have similar objectives. The way the online safety legislation is framed means Coimisiún na Meán has the flexibility to consider one code when implementing the other if there are similar obligations under both.

The Department in referencing the overlap explained that under the online safety legislation, Coimisiún na Meán also has an obligation to prepare codes of conduct. These codes will have to be notified under the transparency rules of the EU to the European Commission and will be looked at for consistency with the Digital Services Act.

As a result of the codes the Department maintain, they should not be at odds with each other. Where there is duplication, Coimisiún na Meán should be able to take it into account and say that if a company has done it once, that is enough, unless there are specific circumstances, in which case it has the right to ask it to do additional compliance.

#### Recommendation

The Committee recommends that a review is conducted of the potential areas of overlap between the Online Safety and Media Regulation Act and the Digital Services Act.

### Key issue 3: Researcher access to data

In their written submission to the Committee, FUJO consider that to effectively implement the DSA at a member state level, research and data play a vital role. DSCs are responsible for acquiring data from VLOPs and overseeing the vetting process for researchers to access that data.

These coordinators also provide national evidence and expertise to support the European Commission, monitor DSA violations, and verify trusted flaggers. Due to the complexity of these tasks, FUJO advocate strongly for the provision of specialised regulatory knowledge in platform risks and governance, as well as analytical skills to evaluate the data.

The obligations outlined in the DSA will generate a significant amount of data that will require expert analysis. To address this, FUJO recommend that the Committee consider incorporating a provision in the proposed legislation to establish a research unit. This research unit would be responsible for conducting research and data analysis, as well as managing collaborations for these tasks. By implementing such a unit, the necessary expertise would be available to support the effective implementation of the DSA at a national level.



In their written submission FUJO discusses the role of a specific organisation in researching and understanding online harms, such as hate speech and disinformation. It highlights their collaboration with regulators and policymakers in Ireland and Europe to provide an independent and research-informed understanding of complex issues. The focus of the submission is on the procedures to vet researchers and request data on behalf of vetted researchers, specifically related to the implementation of the Digital Services Act (DSA).

The DSA aims to increase regulation and supervision of large digital service providers, recognising the societal and individual risks associated with their operations. It shows areas of systemic risk and acknowledges the importance of third-party research to comprehend and address these risks. The DSA grants vetted researchers access to necessary data for in-depth examination of systemic risks.

FUJO emphasises the need for strong collaboration between DSCs, civil society, and academia to fulfil the research functions of DSCs. It suggests that Ireland, being the establishment country for numerous large intermediary service providers, should build a robust DSC ability.

Under the DSA, research requests can be submitted to the DSC of either the researcher's institution's country or the DSC of establishment. The DSC of establishment, likely to be Ireland in most cases, processes most research requests. The DSC must also request data from the service provider, and if exemptions like trade secrets are claimed, an amendment must be requested and approved.

The current access to platform data is limited, but the implementation of the DSA is expected to improve the scope and quality of research. Recommendations are provided to ensure transparency, expertise, and capacity within the Irish DSC for vetting research requests. They include managing applications transparently, possessing relevant expertise, and having substantial capacity to handle requests.

The written submission also suggests establishing a research unit within the DSC to facilitate research access, conduct data analysis, and manage collaborations. This

unit would ensure up-to-date expertise and knowledge, supporting the effective implementation of the DSA.

Alternatively, FUJO recommend that the DSB should specify that the DSC research process must be independent, guided by relevant experience, and adequately staffed.

#### Recommendation

The Committee recommends that provision be made in the legislation to enable public interest research based on data provided by regulated platforms to facilitate research access, conduct data analysis, and manage collaborations.

### **Key issue 4: Engagement in Respect of the Development of Procedures**

In their written submissions, Technology Ireland, and Meta both advocated for consideration to be given to introducing a consultation process for procedures being created under the DSA (e.g., similar to the consultation required in the creation of Online Safety Codes pursuant to OSMR).

Both stakeholders consider engagement important particularly relating to Heads 7, 8, 10 and 12 of the General Scheme, especially considering the potential impact to impacted providers. They further recommend clarification should also be built into the provisions of the DSB that these codes should go before the House of Oireachtas before adoption, like procedures set out in the OSMR.

The Committee also expressed the need for an information campaign to inform the public of the protections contained within the Bill and how to access support. The Department explained Coimisiún na Meán, will provide a strong communications role and a public campaign.

### Recommendation

The Committee recommend the provision of a nationwide information campaign to inform the public of the protections contained within the Bill to provide awareness and information on how to access supports.

### Recommendation

The Committee further recommends engagement and provisions for consultations with Social Partners and stakeholders for procedures being created under the Digital Services Act.

## Key issue 5: Appointment of a DSC

The DSC's focus is addressing harmful and illegal content online, aligning well with Coimisiún na Meán's existing responsibilities regarding content regulation.

During the Committee's discussion on the Digital Services Bill, Members inquired about Coimisiún na Meán's view on being assigned the role of Digital Services Coordinator (DSC). In their written submission Coimisiún na Meán expressed that they welcomed this assignment.

In public session Members expressed concern at the potential confusion of who acts first in a suspected breach. Department officials explained that the difficulty is that the circumstances of any allegation or suspected breach will determine who goes in first. The Committee expressed further concern with the lack of knowledge at the capacity, capabilities, and functions of the Coimisiún to act as a DSC.

The Department explained if it is a breach of the risk assessment obligations, the European Commission goes in first. If the platform does not have an internal complaints procedure, then the Irish regulator goes in first. If it finds there are systemic concerns, it will escalate it up to European Commission level. In the Digital Services Act, there is a clear and mandatory breakdown of competences and who

starts anything. It makes the point of how important it is that Ireland designate a DSC because until we have legally designated one, all that legal apparatus in the EU regulation does not come into play. If Ireland transposes the Directive in a less than timely fashion, the European Commission will want to start cases and Ireland may want to start cases, but Ireland will not be empowered to do so.

There are significant overlaps and similarities between the DSC role and Coimisiún na Meán's existing functions, as many companies are expected to fall under regulations for harmful or illegal content both through the DSA and other functions. Several aspects of the DSA align with Coimisiún na Meán's responsibilities, such as issuing orders to platforms to address illegal or harmful content, enforcing terms and conditions related to such content, handling notices, prioritising reports from specific bodies, regulating advertising and commercial content, protecting minors from harm, addressing complaints against regulated entities, monitoring compliance, conducting investigations, and making enforcement decisions related to illegal or harmful content on platforms.

In their written submission to the Committee, Coimisiún na Meán advocate that by appointing Coimisiún na Meán as the DSC, there is an opportunity to ensure a coherent and effective use of various legal instruments to tackle issues like harmful content affecting minors and vulnerable adults. Consolidating closely related functions within the same public body also offers potential enhancements in organisational efficiency and effectiveness.

The Committee expressed concern at the varying responsibilities of different organisations such as the Competition and Consumer Protection Commission and the potential overlap in these responsibilities to effectively carry out duties.

The Department explained that the obligation in the regulation and the purpose behind it is because if one thinks about the name of the role, which is co-ordinator, the EU recognised that illegal content is being dealt with by several different agencies and the position is the same in each Member State. The EU designed the role of a DSC to enable each Member State to have one co-ordinator in each

Member State to pull together all that information so that it could get a picture and improve the effectiveness and reach of the regulation.

The Department further explained that when any agency, for example, in the Health sector issues a take-down order for illegal medicines or medical devices, then that information will go, in our case to Coimisiún na Meán and it will be put into a central IT system for all the digital services co-ordinators around Europe.

The role of a DSC is important under the regulation because of the cross-border nature of the services and is designed so that everyone will know that a specific platform has been told to take down illegal products, or devices. This will ensure the message will be communicated cohesively by one body in a transparent manner for greater effect.

The Department assured the Committee that the role and responsibilities of another body such as the Gardaí or any other body remain the same. The appointment of the Coimisiún as a DSC provides for the communication of any breach to give effect to similar take down orders across other platforms and Member States.

The regulation provides for active co-operation between different bodies, not just waiting to be asked but that people would actively engage with each other. It would be a vital role for the Coimisiún na Meán that it will have to do outreach to all the other regulators to achieve the aims of the regulation under the DSA.

#### *Carte blanche removal*

The Committee expressed concern at the careful balance required under the regulation when it comes to take down orders.

The Department noted that under the DSA, the regulation, is trying to strike a balance between ensuring that illegal content comes down, but that people's freedom of expression is not unjustly trampled upon. The Department explained that there are procedures that when a platform is about to take material down, that if a particular person has posted it, the platform must contact the person who is the poster and let that person know that the platform is taking it down, as well as the

reasons this is happening. The poster will have a right to reply. The Department suggest that a two-way system is the correct approach here.

Transparency will be provided to users about who to go to and what the process is. It will also make clearer to the platforms what exact content is being sought in a takedown order and how to find it. If one has an order, therefore, the order has now to be more explicit about the content. The platforms have requested more specific detail on what content was requested to be removed and the regulation aims to provide clarity in a fair and transparent way for platforms and users.

The regulation aims to be more straightforward, to put an obligation on the platforms to find things, and to take them down when they have been contacted.

The applicable law and the EU regulation is based upon the country-of-origin principle. It is Irish law, therefore, that applies if one entity is established here, and it will therefore be going through Irish courts.

#### *Algorithms, legal capacity, and Risk assessment*

The Committee expressed concern at algorithms and the far-reaching effects they can have as they can change frequently and often.

The Department attested that there is obligation in the EU regulation requiring a very large platform to conduct a risk assessment. When the platform has identified risks, it must put in place mitigation measures and be audited. This process will be required on an annual basis. The European Commission will be the lead enforcement body regarding the obligations related to risk assessment, audit, and mitigation.

The Committee further expressed concern at the legal capacity of the Coimisiún under these new requirements of enforcement and how they can be effectively managed.

The Department noted they are working towards having in-house legal capacity as considerable as they identify is required based on working through this with Coimisiún na Meán and the advice of the European Commission. The legal element will be a vital role and requirement, and they further anticipate economists, IT

specialists, data analysis and communications experts will comprise additional staffing required.

#### *Appointment of other competent authorities to enforce the DSA*

In their written submission Coimisiún na Meán support and welcome the appointment of other competent authorities to enforce aspects of the DSA.

The DSA (Digital Services Act) includes provisions that overlap with the functions of other public bodies. For example, the obligations placed on operators of online marketplaces in the DSA align with the consumer protection objectives of the CCPC (Competition and Consumer Protection Commission).

It is suggested that additional public bodies with relevant roles can be appointed to fulfil DSA functions, provided they possess appropriate powers and resources. Coimisiún na Meán and other competent authorities should have the ability to establish cooperation agreements, allowing them to share information, coordinate actions, and determine which authority should act in cases involving multiple provisions of the DSA and/or other laws.

#### *Legislation should not contain additional provisions*

The General Scheme proposes an obligation for Coimisiún na Meán to adopt procedures, but there are concerns about the potential restriction on flexibility, particularly in cases involving collaboration with the European Commission or DSCs in other Member States. The DSA itself does not require DSCs to adopt such procedures.

In their submission it is suggested that Coimisiún na Meán should have the discretion to issue guidelines and make rules, allowing for the establishment of general approaches without limiting their ability to adapt procedures when necessary.

#### *Provision for a single levy*

Coimisiún na Meán advocate that provision should be made for a levy to fund their functions relating to supervision of online services, including their DSC functions. To

discharge DSC functions, Coimisiún na Meán will incur expenditure, for instance on staff, IT, legal advice, and other specialist advice. Coimisiún na Meán further explained it is usual for sector regulators to be funded by a levy on the entities they regulate. Provision has already been made for our existing online safety functions to be funded by a levy on the platforms they regulate.

Given how intertwined all platform supervision functions are, Coimisiún na Meán consider that it would make sense for there to be a single levy covering all their platform supervision functions. In their written submission Coimisiún na Meán suggest this can be achieved by adding the term “intermediary service provider” to paragraph (c) of Section 21(1) of the Broadcasting Act 2009.

### *Cost of a DSC*

The Department addressed the concerns of the Committee in relation to the cost provisions required for a DSC. The Department explained that under the Estimate provided from the budget, The Department have an allocation of €2.7 million just for the functions under the DSA and the creation of the DSC. This cost provision is for an additional commissioner and the recruitment of staff to support this new resource. The Department attest they are being a bit flexible with Coimisiún na Meán to say how many staff may be required this year. The cost provision is intended to help plan to prepare and put in place procedures, consultations and anything that may be required. The Department provided in evidence that the provision of a DSC and the required resources are €2.7million and further the budget provided for Coimisiún na Meán’s other functions is €10.5million for this year.

#### Recommendation

The Committee expressed concern at the varying responsibilities of different organisations such as the Competition and Consumer Protection Commission and the potential for overlap of these responsibilities to hamper the effective carrying out of duties.

#### Recommendation



The Committee recommend further clarity be provided for in secondary legislation regarding take down orders and how they will be actioned upon and that regulations will assist in providing a fair balance between platforms and the rights of a person.

## Key issue 6: Definitions and clarity

### *Head 2 and 4 - Definitions*

In their written submission the Law Society note that useful information has been provided in the explanatory notes of the General Scheme.

The Law Society expressed concern regarding Articles 49, 50, and 51 of the DSA. It is unclear (under the General Scheme) how the Coimisiún will organise itself to take decisions in relation to the DSA. The submission is concerned in relation to the manner of how decisions occur and how they may be recorded.

The submission is further concerned with how the Coimisiún may deal with topics of mixed relevance in a suitably independent and timely manner concerning complaints which involve a number of functions across a range of legislative instruments for which the Coimisiún has responsibilities and enforcement functions.

The Law Society advocate that definitions which are intended to have the same meaning as Regulation (EU) 2022/2065 should simply cross-refer to that regulation. In this regard, the Law Society support the drafting approach in Head 4 (2). This would improve clarity if the name given to Regulation (EU) 2022/2065 by the rest of the EU i.e., the Digital Services Act/DSA was retained, and the domestic legislation renamed accordingly to avoid unnecessary confusion nationally and within the EU.

### *Head 3 Digital Services (Insert new Part 8AA (Digital Services))*

The Law Society note that this Head intends to be specific to the implementation of the DSA into Irish law so that this part (Heads 2-12 inclusive) does not impact on existing powers under the Broadcasting Act 2009 (as amended), particularly in the context of investigations and sanctions.

The Law Society advocate, it may be appropriate to delineate explicitly which specific aspects of existing laws are not impacted by their provisions. Given the wording of Subhead (2), the Law Society support that it is better placed in the Section 2 (Definitions) of the Principal Act.

#### *Head 5 Liability of providers of intermediary services*

The DSA deletes and replaces Articles 12-15 of the eCommerce Directive (Directive 2000/31/EC), with Articles 4, 5, 6, and 8 of the DSA. The new provisions, like the existing provisions, provide an exemption from liability for intermediary online services in respect of mere conduit, caching, and hosting services.

Regarding sub-section (4), The Law Society support in the interests of transparency and clarity, to expand this sub-section to specify what would constitute “actively to seek facts or circumstances indicating illegal activity” in respect of Article 8 of the DSA.

#### *Heads 7, 8, 10 and 12 Notification of orders to take down content or provide information, trusted flaggers, and the right to lodge a complaint*

The General Scheme gives effect to Articles 9 and 10 of the DSA, concerning orders issued to online intermediary service providers to act against illegal content, and orders to provide information about specific recipients of their services. To ensure consistency in orders across the EU, it provides for the mandatory content (and limited territorial scope) of such orders, as listed in Articles 9 and 10 of the DSA and obliges the relevant market surveillance authority or the courts, as appropriate, to issue the order to the electronic contact point that the provider has designated in accordance with Article 11(11) of the DSA.

Similar to the approach taken to Online Safety Codes under the OSMR, The Law Society advocate consideration could be given to adopting a similar approach to the procedures to be introduced in Heads 7, 8, 10 and 12 of the General Scheme.

These measures will have a significant impact on providers in circumstances where failure to comply could attract considerable sanctions. The Law Society believe it would be sensible to consider requiring that these procedures be approved by the Houses of the Oireachtas, to avoid any issues arising if they were not.

In public session Members expressed concern at how timely the process will be for executing a notification order to take down content.

Department officials explained Heads 7 and 8 are slightly separate from the obligations on platforms and search engines. At the moment, it is already the case a take-down order can be issued. A person can go to court for defamation or, illegal goods or other similar matters. The process does not delay or change that process under this Head, it aims to harmonise the information across Europe. There are 27 different legal systems and court orders in each of the 27 Member States are slightly different. It is to harmonise the information so that, regardless of whether the order is issued in any different Member State, they get the same information and therefore can move a bit faster in finding the content and taking it down.

Officials further explained that the DSA is not actually concerned with individual pieces of content or practices online. The DSA aims to get the platforms to put in place systems such as an internal complaints system, create more transparency and provide more information on their recommender systems to provide the users, more control, for a start but also to make it more likely that people will flag up to them that there is illegal content they need to take down. It does not go into the substance of any particular illegal or harmful content.

#### *Head 14 Notifications of investigations and contraventions under the Digital Services Act*

This Head is concerned with the various obligations on Coimisiún na Meán to notify matters connected with suspected infringements of the DSA to the 26 other Digital Services Coordinators, the European Commission, the European Board for Digital Services, or all three.

These obligations are set out in Article 57 (mutual assistance) and Article 65 (enforcement of obligations of providers of very large online platforms and very large online search engines).

This is explained in the explanatory notes as a notification to the other 26 DSCs to meet the requirements of Article 57(1). However, Article 57(1) requires that such matters are to be addressed to "all Digital Services Coordinators of destination".

"Digital Services Coordinator of destination" is defined (in Article 3(o)) as the DSC of a Member State where the intermediary service is provided.

The Law Society believe if it is the case that not all DSCs must be notified, the addition of the words "of destination" (or equivalent) would, better reflect the intention and wording of Article 57(1).

#### *Head 17 Failure to comply with a notice to end a contravention*

The explanatory note for this Head specifies that section 139ZZB (2) of the Broadcasting Act 2009, provides a power for the Coimisiún to issue a notice to end a contravention.

For the purposes of a contravention of the DSA, the notice shall state "the steps that the Coimisiún requires the provider to take to put an end to the contravention". The explanatory note for this Head then further states that section 139ZZB(2) "appears to be sufficient to implement the requirements of Article 51(2)" of the DSA.

However, the Law Society note that Article 52(2) of the DSA provides for five specific powers of the DSC. While sections 139ZZB(2) and 139ZZB–A might be broad enough to give effect to Article 52(2), they do not specify the five specific powers, thereby leaving room for debate. The Law Society advocate the need to be prudent to specify here, the powers listed in Article 52(2) to clarify that they are, in fact, the Coimisiún's powers.

#### *Head 18 - Access Blocking Orders*

The Law Society advocate for clarity about procedures under this Head that the Coimisiún will adopt to identify those with a legitimate interest be made clear.

The Law Society suggest that in the absence of such clarity, it is likely that parties may challenge those procedures (based on whether the Coimisiún has such an interest) and so, a clear statutory authority is recommended in this regard.

### *Head 20 – Periodic Penalty Payments*

The General Scheme also provides Coimisiún na Meán with the power to impose periodic penalties where necessary to compel an intermediary service provider to end an infringement of the DSA, or to compel a provider or other specified person to comply with an investigative order.

The Law Society advocate for clarity in the wording of Subhead 8 under Head 20. Subhead (8) - defines any "relevant person" as any person reasonably likely to be in possession of information that is relevant to an investigation. However, The Law Society believe account should also be taken of the status of certain professional advisers, such as solicitors, and would therefore recommend the adoption of a similar approach to that implemented by the Data Protection Act 2018 in this regard.

The DSA provides that the DSC must be able to impose fines, either directly or through the courts, of up to 6% of annual worldwide turnover where there has been a breach of the EU regulation.

#### Recommendation

The Committee recommends further clarity with procedures and enhanced transparency in relation to Heads 5,7,8,10, 12, 14, 18 and 20 for the provisions and definitions provided for within the General Scheme.

## APPENDIX 1- Membership of the Joint Committee

### Deputies

Maurice Quinlivan (SF)	Cathaoirleach
Richard Bruton (FG)	
Francis Noel Duffy (GP)	
Joe Flaherty (FF)	
Mick Barry (S-PBP)	
James O'Connor (FF)	
Louise O'Reilly (SF)	
Matt Shanahan (Ind)	
David Stanton (FG)	

### Senators

Garret Ahearn (FG)
Ollie Crowe (FF)
Róisín Garvey (GP)
Paul Gavan (SF)
Marie Sherlock (Lab)

#### Notes:

1. Deputies appointed to the Committee by order of the Dáil on 8 September 2020.
2. Deputy Maurice Quinlivan was appointed as Chair on 8 September 2020.
3. Senators appointed to the Committee by order of the Seanad on 25 September 2020.
4. Deputy James O'Connor replaced Deputy Niamh Smyth on 26 November 2020.
5. Deputy Mick Barry replaced Deputy Paul Murphy on 28 March 2023.

## APPENDIX 2-Terms of Reference of The Joint Committee

### a) Scope and Context of Activities of Committees (*derived from Standing Orders – DSO 84, SSO 70*)

- 1) The Joint Committee may only consider such matters, engage in such activities, exercise such powers, and discharge such functions as are specifically authorised under its orders of reference and under Standing Orders;
- 2) Such matters, activities, powers, and functions shall be relevant to, and shall arise only in the context of, the preparation of a report to the Dáil/and or Seanad;
- 3) The Joint Committee shall not consider any matter which is being considered, or of which notice has been given of a proposal to consider, by the Committee of Public Accounts pursuant to Standing Order 186 and/or the Comptroller and Auditor General (Amendment) Act 1993;
- 4) The Joint Committee shall not consider any matter which is being considered, or of which notice has been given of a proposal to consider, by the Joint Committee on Public Petitions in the exercise of its functions under Standing Order 111A; and

The Joint Committee shall refrain from inquiring into in public session or publishing confidential information regarding any matter if so requested, for stated reasons given in writing, by—

- (i) a member of the Government or a Minister of State, or
- (ii) the principal officeholder of a body under the aegis of a Department or which is partly or wholly funded by the State or established or appointed by a member of the Government or by the Oireachtas:

Provided that the Chairman may appeal any such request made to the Ceann Comhairle, whose decision shall be final.

- 5) It shall be an instruction to all Select Committees to which Bills are referred that they shall ensure that not more than two Select Committees shall meet to consider a Bill on any given day, unless the Dáil, after due notice given by the Chairman of the Select Committee, waives this instruction on motion made by the Taoiseach pursuant to Standing Order 28. The Chairmen of Select Committees shall have responsibility for compliance with this instruction.

### b) Functions of Departmental Committees (*derived from Standing Orders – DSO 84A and SSO 70A*)

- (1) The Select Committee shall consider and report to the Dáil on-
  - (a) such aspects of the expenditure, administration and policy of a Government Department or Departments and associated public bodies as the Committee may select, and
  - (b) European Union matters within the remit of the relevant Department or Departments.
- (2) The Select Committee may be joined with a Select Committee appointed by Seanad Éireann for the purposes of the functions set out in this Standing Order, other than at paragraph (3), and to report thereon to both Houses of the Oireachtas.

(3) Without prejudice to the generality of paragraph (1), the Select Committee shall consider, in respect of the relevant Department or Departments, such—

- (a) Bills,
- (b) proposals contained in any motion, including any motion within the meaning of Standing Order 187
- (c) Estimates for Public Services, and
- (d) other matters as shall be referred to the Select Committee by the Dáil, and
- (e) Annual Output Statements including performance, efficiency, and effectiveness in the use of public moneys, and
- (f) such Value for Money and Policy Reviews as the Select Committee may select.

(4) Without prejudice to the generality of paragraph (1), the Joint Committee may consider the following matters in respect of the relevant Department or Departments and associated public bodies:

- (a) matters of policy and governance for which the Minister is officially responsible,
- (b) public affairs administered by The Department,
- (c) policy issues arising from Value for Money and Policy Reviews conducted or commissioned by the Department,
- (d) Government policy and governance in respect of bodies under the aegis of the Department,
- (e) policy and governance issues concerning bodies which are partly or wholly funded by the State or which are established or appointed by a member of the Government or the Oireachtas,
- (f) the general scheme or draft heads of any Bill
- (g) any post-enactment report laid before either House or both Houses by a member of the Government or Minister of State on any Bill enacted by the Houses of the Oireachtas,
- (h) statutory instruments, including those laid or laid in draft before either House or both Houses and those made under the European Communities Acts 1972 to 2009,
- (i) strategy statements laid before either or both Houses of the Oireachtas pursuant to the Public Service Management Act 1997,
- (j) annual reports or annual reports and accounts, required by law, and laid before either or both Houses of the Oireachtas, of the Department or bodies referred to in subparagraphs (d) and (e) and the overall performance and operational results, statements of strategy and corporate plans of such bodies, and
- (k) such other matters as may be referred to it by the Dáil from time to time.

(5) Without prejudice to the generality of paragraph (1), the Joint Committee shall consider, in respect of the relevant Department or Departments—

- (a) EU draft legislative acts standing referred to the Select Committee under Standing Order 114, including the compliance of such acts with the principle of subsidiarity,



- (b) other proposals for EU legislation and related policy issues, including programmes and guidelines prepared by the European Commission as a basis of possible legislative action,
  - (c) non-legislative documents published by any EU institution in relation to EU policy matters, and
  - (d) matters listed for consideration on the agenda for meetings of the relevant EU Council of Ministers and the outcome of such meetings.
- (6) Where the Select Committee has been joined with a Select Committee appointed by Seanad Éireann, the Chairman of the Dáil Select Committee shall also be the Chairman of the Joint Committee.
- (7) The following may attend meetings of the Select or Joint Committee, for the purposes of the functions set out in paragraph (5) and may take part in proceedings without having a right to vote or to move motions and amendments:
- (a) members of the European Parliament elected from constituencies in Ireland, including Northern Ireland,
  - (b) members of the Irish delegation to the Parliamentary Assembly of the Council of Europe, and
  - (c) at the invitation of the Committee, other members of the European Parliament.
- (8) The Joint Committee may, in respect of any Ombudsman charged with oversight of public services within the policy remit of the relevant Department or Departments, consider—
- (a) such motions relating to the appointment of an Ombudsman as may be referred to the Committee, and
  - (b) such Ombudsman reports laid before either or both Houses of the Oireachtas as the Committee may select: Provided that the provisions of Standing Order 111F apply where the Select Committee has not considered the Ombudsman report, or a portion or portions thereof, within two months (excluding Christmas, Easter or summer recess periods) of the report being laid before either or both Houses of the Oireachtas.

## Appendix 3- References

- The Draft General Scheme  
<https://enterprise.gov.ie/en/legislation/legislation-files/general-scheme-of-the-digital-services-bill-2023.pdf>
- Meeting in public session – Officials from the Department of Enterprise, Trade and Employment
  - [Video](#)
  - [Transcript](#)
  - [Opening Statement](#)



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