



Pre-legislative scrutiny of the Digital Services Bill 2023

Opening Statement

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Thank you Chair and members of the Committee for the opportunity to discuss the General Scheme of the Digital Services Bill 2023.

The Scheme of the Digital Services Bill will give effect to those elements of the EU Regulation known as “the Digital Services Act” that require national implementing measures. Those elements are mainly to fulfil obligations on Member States to designate and empower a competent authority.

The provisions of the EU Regulation that impose obligations on the providers of online intermediary services will have direct effect here, so do not require any further national measures. The Scheme does not adapt or add to these obligations.

More information on those obligations has been provided by the Department in a briefing note prepared for the Committee.

The General Scheme of the Digital Services Bill 2023 – Key features

Accordingly, the majority of the Scheme is concerned with the regulatory framework that will implement and enforce the Digital Services Act in Ireland and provides the following –

1. Designation of the main competent authority

The Digital Services Act obliges each Member State to designate one competent authority as the main authority for implementation and enforcement of the DSA in that State. The DSA refers to this main authority as the Digital Services Coordinator and requires that it must be designated and empowered by 17 February 2024 at the latest.

The Government has decided to designate Coimisiún na Meán, the Media Commission, as the Ireland’s Digital Services Coordinator.

The General Scheme gives effect to that decision and provides for the formal designation.

2. Assigning the necessary powers to the Digital Services Coordinator

The Digital Services Act provides that the Digital Services Coordinator 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. The Scheme gives effect to this.

Given the cross-border nature of online intermediary services, the Digital Services Act establishes a network of the 27 Digital Services Coordinators and the European Commission, who will also have a role in implementation of the new EU rules. To support the effectiveness of this network, the Digital Services Act provides for mutual assistance, joint investigation and other forms of cooperation.

The Scheme includes provisions that are intended to enable Coimisiun na Meán to participate in those arrangements.

3. The conduct of functions

As Digital Services Coordinator, Coimisiún na Meán will be responsible for some administrative tasks, such as awarding the status of trusted flagger, certifying out of court dispute settlement bodies and vetting researchers.

The Scheme provides that the conduct of those tasks should follow procedures and enables An Coimisiún to devise those procedures.

4. Powers for the Irish Digital Services Coordinator to cooperate with other regulators in Ireland

As things stand, there are a few regulators concerned with combatting illegal content online. For example, market surveillance bodies such as the Irish Health Products Regulatory Authority and the Competition and Consumer Protection Commission can require the removal of illegal goods from sale online.

As Digital Services Coordinator, An Coimisiún will have an active role in engaging with those other Irish regulators, coordinating activities and circulating information across the EU on cases taken here.

The General Scheme enables An Coimisiún in this regard, for example with provisions on exchange of information.

5. Provisions on take down and other orders.

The Digital Services Act introduces new requirements for the content of Orders to take illegal content down and of Orders for information. It also brings in obligations on providers to respond with certain information after they have received an Order.

The Scheme includes Heads to ensure that Orders, whether issued by the Courts or another authority, follow these requirements and that the follow up information from the providers is sent to Coimisiún na Meán so that it can meet its own obligations to inform other DSCs.

The General Scheme and the liability regime

As well as the supervisory and enforcement framework, the General Scheme revokes national laws that transposed the liability provisions that were introduced in 2000 by the e-Commerce Directive. This is because those provisions have been amended and replaced by the Digital Services Act and, therefore, are outdated.

The 2000 regime has been adapted so that providers may survey content on their services, to identify illegal content, without running the risk of losing their protections from liability.

This is intended to make it more likely that illegal content will be found and taken down.

Request for waiver

As you know, the Minister has asked the Committee to consider a waiver of pre-legislative scrutiny. This is mainly due to the urgency of the legislation, which must be enacted by early February 2024 at the latest, when Ireland is legally obliged to have designated a regulator to enforce the EU Regulation.

Many of the largest online providers in scope of the DSA have their EU Headquarters in Ireland. Although the European Commission will have a leading role in enforcement and implementation of the DSA vis-à-vis those large providers, it will be the Irish DSC that will be responsible for much of the day-to-day supervision of those providers and that will be called on to support the European Commission in its own work. Accordingly, Ireland's regulator will have a pre-eminent role in the network overseeing the delivery of these new landmark rules.

An Coimisiún needs time to prepare for that role. Recruitment is already underway so that new staff can start in An Coimisiún over this summer and into the autumn, well ahead of next February.

As well as people, An Coimisiún will need clarity about its legislative powers, functions and obligations to ensure staff are trained and ready. So, enactment of the Scheme at the earliest opportunity is important as it will allow An Coimisiún to fully prepare in advance of the February 2024 deadline.

Conclusion

Thank you Chair and Committee Members. My colleagues and I are available to provide any additional information either now or in the future.

Ends