

19 May 2023

**Mr Maurice Quinlivan T.D.**  
**Cathaoirleach**  
**Joint Committee on Enterprise, Trade and Employment**  
**Leinster House**  
**Kildare Street**  
**Dublin**  
**D02 XR20.**

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Dear Cathaoirleach,

Thank you for the opportunity to give input to the pre-legislative scrutiny of the Digital Services Bill.

Coimisiún na Meán was established on 15 March this year, when we assumed the responsibilities and staff of the Broadcasting Authority of Ireland. We currently have around 40 staff and have approval to grow to just under 160, so that we can discharge new functions related to online content (including the supervision of service providers under the Digital Services Act), as well as additional media development functions.

We have four observations on the General Scheme of the Bill that we would like to draw to your attention to:

- Coimisiún na Meán strongly supports the decision to designate us as Ireland's Digital Services Co-ordinator (DSC)
- We would welcome the appointment of other competent authorities to enforce aspects of the Digital Services Act (DSA) as long as they were properly resourced and we had flexibility to define detailed working arrangements in a cooperation agreement
- We consider that the legislation should not contain additional provisions that specify how we discharge our functions – this is already governed by the DSA, by the legislation that established Coimisiún na Meán and by the common law
- Provision should be made in due course for a levy to fund all our functions relating to supervision of online services, including our DSC functions.

### **Coimisiún na Meán strongly supports the decision to designate us as Ireland's Digital Services Co-ordinator.**

When the Committee last discussed the Digital Services Bill, one of the Members asked whether Coimisiún na Meán welcomed being assigned the role of DSC. We very much welcome this.

The DSA is concerned with harmful and illegal content online. It is a key tool for enabling us to deliver our online safety mission and is a good fit with our other content-related functions.

Coimisiún na Meán has responsibility for a number of functions that relate to the regulation of content. We regulate broadcast content. We regulate video on-demand content. We regulate platforms where uploading videos is the principal purpose or is an essential functionality of the service. We are to be designated as the competent authority to regulate platforms in respect of terrorist content online. All these functions derive ultimately from EU law. Under national law, we may also regulate for online safety in other areas as long as they do not fall within the scope of the DSA.

There are many overlaps and similarities between the DSC role and our other functions. Indeed, there are many companies which we expect will fall to be regulated in respect of harmful or illegal content both under the DSA and under one or more of our other 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, we can make 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.

**We would welcome the appointment of other competent authorities to enforce aspects of the Digital Services Act.**

Some provisions of the DSA are closely related to the functions of other public bodies. For instance, the DSA obligations on operators of online marketplaces have a consumer protection objective that is closely associated with the CCPC's existing functions.

We would welcome the appointment of other public bodies to discharge DSA functions where there is synergy with their existing role. Such other authorities would need to have appropriate powers and resources.

We consider that Coimisiún na Meán and other competent authorities should be able to enter into cooperation agreements to establish detailed working arrangements. Cooperation agreements should enable Coimisiún na Meán and other competent authorities to share information, take coordinated action, and decide which of them should take action in cases that potentially involve several different provisions of the DSA and/or other laws.

**We consider that the legislation should not contain additional provisions that specify how we discharge our functions.**

In a number of places, the General Scheme proposes an obligation on Coimisiún na Meán to adopt procedures for discharging its functions. We already have a common law obligation to use fair procedures in every case. We consider that an additional statutory obligation related to procedures could unnecessarily restrict our flexibility to adapt to the needs of particular cases, especially when cases may involve cross-border collaboration with the European Commission or DSCs in other member states.

We note that the DSA itself does not require DSCs to adopt procedures in the circumstances proposed in the General Scheme.

Instead of additional obligations to adopt procedures, we consider that it would be useful to give Coimisiún na Meán discretion to issue guidelines and make rules in connection with our various functions. This would enable us, for example, to prescribe the form and content of notifications to be given to us and to set out how we would generally approach the discharge of our functions, but without restricting our flexibility to adapt our procedures if circumstances required it.

**Provision should be made in due course for a levy to fund our functions relating to supervision of online services, including our DSC functions.**

In order to discharge our DSC functions, we will incur expenditure, for instance on staff, IT, legal advice and other specialist advice.

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 we regulate. Given how intertwined all our platform supervision functions are, we consider that it would make sense for there to be a single levy covering all our platform supervision functions. This could be achieved by adding the term “intermediary service provider” to paragraph (c) of Section 21(1) of the Broadcasting Act 2009.

We would be very pleased to give evidence to the Committee if you would find it helpful, or to meet with any member of the Committee who has questions.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Jeremy Godfrey', written in a cursive style.

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**Jeremy Godfrey**  
**Executive Chairperson**