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Oireachtais**  
Houses of the  
Oireachtas

**An Comhchoiste um Fhiontair,  
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**Joint Committee on Enterprise,  
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Date: 20/04/2023

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## Preliminary call for expressions of interest relating to the General Scheme of the Digital Services Bill 2023

1. Would your organisation be interested in preparing a written submission to the Joint Committee on Enterprise, Trade and Employment in relation to pre-legislative scrutiny on the General Scheme of the Digital Services Bill 2023?

Yes:

No:

2. Would your organisation be interested in attending an oral hearing and presenting to the Joint Committee on Enterprise, Trade and Employment with other relevant stakeholders in relation to pre-legislative scrutiny on the General Scheme of the Digital Services Bill 2023?

Yes:

No:

3. Can you briefly set out whether you feel there are any specific key issues that arise in relation to the General Scheme of the Digital Services Bill which you feel merit particular consideration by the Committee.

#### 1. Risk of overlap between OSMR and DSA and TRIS notification

The Committee will be aware of the industry concern for potential for the risk of overlap between the Online Safety and Media Regulation Act 2022 (the “OSMR”) and the EU Digital Services Act (“DSA”). Any such overlap will cause confusion and risks the harmonised approach expressly sought to be achieved by the DSA. As such, the Digital Services Bill (“DSB”), particularly as it takes effect by way of an amendment to the OSMR, provides an appropriate opportunity to address or mitigate that risk. This could be achieved via a reasonably straightforward amendment.

Further scrutiny should be given to provisions of the DSB that will extend beyond the scope of the DSA. In particular, 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 the CNM/DSCs). If implemented, this would have the effect of meaning that DSA contraventions resulting in a ‘notice to end contravention’, where not complied with, could result in criminal liability for one or more senior managers of in-scope DSA providers (with the potential for category 1 offences under the OSMR - i.e. maximum penalties of prison sentences of up to 10 years and/or a €500,000 fine). Therefore, the potential imposition of individual criminal liability by a DSC creates the peculiar position whereby VLOPs / VLOSEs will be subject to more stringent penalties for less significant obligations, where these are enforced by a national regulator.

In light of the fact that parts of the DSB go beyond what is required under the provisions of DSA, and affect information society services, confirmation should also be sought that the DSB should be subject to TRIS notification to the EU Commission.

#### 2. Need for Consultation/Engagement in Respect of the Development of Procedures

Consideration should 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). Such consultations could apply to Heads 7, 8, 10 and 12 of the General Scheme particularly in light of the potential impact to impacted providers. Clarification should also be built into the provisions of the DSB that these procedures should go before the House of Oireachtas before adoption, similar to procedures set out in the OSMR.