

Digital Rights Ireland

Opening Statement to Joint Committee on Media, Tourism, Arts, Culture, Sport and the Gaeltacht

General Scheme of the Online Safety and Media Regulation Bill

26 May 2021

Cathaoirleach and members of the Committee

I am very grateful to the Committee for the opportunity to discuss the General Scheme of the Bill with you.

In the written submission I have set out some issues regarding the constitutionality and compatibility with European law of the General Scheme of the Bill. It is DRI's position that there are fundamental problems with the aspects which introduce a domestic online safety scheme, which we believe are so far-reaching, vague in their definition of "harmful" speech, and lacking in procedural protections for individuals that they would be precluded by the Constitution, the European Convention on Human Rights (ECHR) and the European Union Charter of Fundamental Rights (CFR).

I am of course happy to expand on these if you wish. At this stage, however, it may be helpful to make some additional comments regarding the wider regulatory context.

As you are well aware, Irish legislation is necessary to implement the revised Audiovisual Media Services Directive (AVMSD) and this is now time sensitive as the AVMSD should have been transposed by September 2020.

However, the General Scheme goes far beyond what is required by the AVMSD. Instead of applying to a relatively small subset of online businesses (media service providers and video sharing platforms), it would introduce a much more expansive scheme which would cover essentially all internet users. This would be an unprecedented development in Irish law which would permit the Media Commission to police the speech of individuals on all social media and even on private communication services.

Unfortunately, the Heads of Bill are somewhat misleading on this point. Instead of making it clear which aspects are domestic and which are required by EU law, in Part 4 of the Heads of Bill all the provisions are described as "related to the transposition of the AVMSD". In effect, the provisions regarding the AVMSD and regarding domestic law have been folded together in a way which is difficult to untangle.

It is our position that – quite apart from the particular fundamental rights concerns outlined in our written submissions – such a significant change in domestic law should not be

considered as part of an entirely different piece of legislation, particularly because that legislation must be passed with some urgency. To provide the time necessary for proper consideration of the domestic proposals will further delay transposition of the AVMSD.

Also, as a practical matter, it makes little sense to rush through the domestic provisions at this time. Other submissions to the Committee have already pointed out that there will be significant overlap and conflicts between the proposed domestic scheme and the requirements of the Digital Services Act – it seems likely that if the domestic scheme takes effect at all then it will be for only a short period before it has to be significantly recast. This would be both confusing for individuals and an additional unnecessary cost for the state and businesses in this area.

In light of both these fundamental rights concerns and practical difficulties, I recommend that the General Scheme of the Bill should be revised to limit it to transposition of the AVMSD, so that further legislation takes place when the final shape of the Digital Services Act is clear.

Dr. TJ McIntyre