

08 Márta 2021

MAIDIR LE: An Scéim Ghinearálta maidir leis an mBille um Sábháilteacht ar Líne agus Rialúchán Meán
RE: The Online Safety and Media Regulation Bill General Scheme

Aighneacht TG4

Glacann TG4 buíochas leis an gComhchoiste Oireachtais as an deis a thabhairt dúinn moltaí a chur ar aghaidh maidir leis an an Scéim Ghinearálta maidir leis an mBille um Sábháilteacht ar Líne agus Rialúchán Meán. Ar mhaithe le héascaíocht don Chomhchoiste, tá moltaí TG4 bunaithe ar an leagan Béarla den Bille. Tá TG4 ar fáil chun tuilleadh plé a dhéanamh de réir mar is gá. Tá na leasuithe a mholtar againn i **gcló trom**.

Thank you for the opportunity to engage on the Online Safety and Media Regulation General Scheme. TG4 has the following comments on the General Scheme. We are available to discuss further as required. Our suggested amendments are in **bold**.

1. Head 9 point 2 sets out the objectives of the Media Commission:

Ensure that the number and categories of public service media made available in the State serve the needs of the people of the island of Ireland, having regard to the following: (a) linguistic, religious, ethical and cultural diversity (b) accessibility of services to people with disabilities

TG4 welcomes the inclusion of this objective.

2. Head 10 (1) of the Bill provides:

- Ensure the provision of open and pluralistic broadcasting and audio-visual media services;*
- Promote and stimulate the development of Irish language content;*
- Stimulate provision of high quality, diverse and innovative content from commercial, community and public service media providers and independent producers;*
- Prepare and submit proposals to the Minister for a scheme or schemes for the granting of funds to support the production of audio-visual content and sound broadcasting content;*

TG4 welcomes these functions.

3. Head 10

The Bill does not include the BAI core function in s25(2)(b) of the Broadcasting Act 2009 which relates to its role in respect of public service broadcasters which provides that the BAI shall:

- (i) *facilitate public service broadcasters in the fulfilment of their public service objects set out in the Act.*

This language should be included in Head 10 of the Bill as a function/objective of the Media Commission.

4. Head 10

Parts of s25(3) of the Broadcasting Act 2009 are not included in the Media Commission functions in the Bill as follows:

25(3) The Authority and the statutory committees, in performing their functions, shall seek to ensure that measures taken—

(c) are mindful of the objects, functions and duties set for public service broadcasters in Parts 7 and 8,

(d) will produce regulatory arrangements that are stable and predictable, and

This language should be included in Head 10 of the Bill as a function/objective of the Media Commission.

5. Head 10

Article 30(2) of the revised AVMS Directive states:

Member States shall ensure that national regulatory authorities or bodies exercise their powers impartially and transparently and in accordance with the objectives of this Directive, in particularthe promotion of fair competition.

The “promotion of fair competition” language should be included in Head 10 as a function/objective of the Media Commission.

6. Head 18: Do these penalty provisions apply to designated online services or to all regulated entities?

7. Head 22 point 2 provides for exclusions for membership of the Media Commission and lists the following exclusion:

Any person who holds employment or an interest in a media undertaking (linear broadcasting and newspapers) shall be disqualified from becoming a member of the Commission.

The explanatory note in the Bill confirms that this will need to be extended to social media and tech companies.

TG4 contends that this exclusion must be extended to all regulated entities and Head 22 should be amended accordingly.

8. Head 40 provides for the Regulatory Levy. Head 40 (5) (k) provides that the Media Commission can specify thresholds in a regulation which would result in a nil/nominal regulatory levy for entities below those thresholds.

40 (5)(k) thresholds below which regulated entities will be obliged to pay a nil amount or a minimal contribution.

TG4 is a PSM receiving low funding and as such it is not a commercially driven entity. TG4 contends that the Media Commission should specify low thresholds in the regulations.

9. Head 40 Explanatory Note: This note refers to the regulatory levy currently payable by the public service broadcaster and the language is a bit unclear.

The bill should clarify that this regulatory levy is not in addition to the broadcasting levy currently paid.

10. Head 70 (explanatory note) refers to increased advertising minutage.

TG4 welcomes the opportunity to engage in the consultation process in respect of the code when it is drafted.

11. Head 71 provides for the inspection of draft codes and rules “on request” and further provides that the Media Commission will have regard to a submission made by the person who requests the draft.

- (1) The codes and rules have significant implications for entities governed by the codes and rules and therefore consultation is required.
- (2) Consultation on the drafts before the code is finalized would be consistent with the revised AVMS Directive objective in Article 4(a)(1) which provides that “Member States shall encourage the use of co-regulation and the fostering of self-regulation through codes of conduct... Those codes shall: (a) be such that they are broadly accepted by the main stakeholders in the Member States concerned... “

The “commentary” section in respect of Article 4(a)(1) in the “Correlation table between the General Scheme and the revised Audiovisual Media Services Directive” which is available on gov.ie supports consultation and states that “any consultations undertaken by the regulator in drafting these codes and rules are would be sufficient for them to be deemed coregulatory”

TG4 contends that Head 71 should be altered to provide for consultation in respect of drafts as opposed to making the drafts available on request.

- (3) The language in Head 71 should be amended to provide for consultation to apply to codes, rules and “guidance material” which the Media Commission can issue in respect of harmful online content and age-inappropriate online content referred to in Head 51

and any other guidance material which may be drafted by the Media Commission from time to time.

Head 71 should therefore be amended to refer to “guidance material”.

12. Head 76 provides for the Content Levy which applies to linear and on-demand services to be imposed on *audiovisual media service providers which are Established in other Member States and wholly or mainly targeting audiences in the State*

TG4 welcomes this language.

13. Head 77
This Head should clarify that current BAI S&V fund is not being replaced by the new content fund scheme referred to under Head 77.

14. Head 77 (3) states: A scheme may provide—
(a) for the making of applications by persons for funding under a scheme,
(b) general terms and conditions of funding, or
(c) that funding in a particular year will be directed at—
(i) particular classes of audiovisual programmes referred to in subsection (1) including but not limited to programmes of a specified nature or subject matter
(ii) particular classes of projects referred to in subsection (1) (e).

1. The language in Head 77(3)(c) has the effect that in a given year the content funding scheme might not be available for Irish language programming because Irish language programming is listed at Head 77 (1)(d). This would have the effect that TG4 could be prevented from accessing the content levy fund (via production companies producing for TG4) in any given year.
The language in Head 77 needs to change so that the introductory paragraph to Head 77 refers to programmes in English and Irish and this will have the effect that funding for Irish language programming cannot be excluded in a particular year.

TG4 therefore suggests the following two amendments to Head 77(1) to address this issue:

The addition of the language in red in Head 77(1):

- ***77 (1) The Commission shall prepare and submit to the Minister for his or her approval a scheme or a number of schemes for the granting of funds to support all or any of the following in the English and Irish language:***
- **The reference to Irish programmes in Head 77(1) (d) should be removed accordingly.**

2. Head 77 should specify as follows:

A minimum of 25% of the funding shall be allocated to programming in the Irish language.

25% of the S&V fund is currently allocated to Irish programming.

3. Head 77 should be amended to provide for consultation in respect of the draft scheme to be produced by the Media Commission under Head 77.

15. A new Head should be included to provide for prominence for PSM's across all platforms and content distribution mechanisms established in the State and outside of the State.

This statutory prominence would have the effect that PSM content is easy to find on the primary level on the first user interface where viewers choose what to watch and similarly when viewers use the search and recommendation functions. TG4 attaches a position paper entitled "Safeguarding Prominence for Irish Public Service Media in a Global Media Landscape ("Prominence Position Paper").

Prominence is crucial for PSM's for the reasons set out in the Prominence Position Paper and as set out below:

- The European Broadcasting Union (EBU) sets out clear reasons why European PSM needs prominence rules. These include: promoting freedom of expression, diversity of opinions and the right to information; promoting varied and quality content for all audiences; allowing citizens to discover content they fund (e.g. through license fee); preventing purely commercial considerations from determining access and visibility of general interest content on gatekept platforms.
- Article 12 of the revised AVMS Directive provides that member states may take measures to ensure the appropriate prominence of audiovisual media services of general interest. This aspect of the AVMS Directive should be implemented.
- In the UK, Ofcom have clear EPG codes that grant prominence to the UK's public service broadcasters. This has ensured that public service channels are able to benefit from a high profile on the broadcast-platform EPGs.
- PSM prominence sends a clear signal regarding the role and relevance of PSM and that Ireland believes in its value. When PSM content is difficult to find, or is several clicks away, it reduces the chances of being watched which runs contrary to the principle that PSM content should be universally available and accessible to all. Without prominence, the public value-for money of Irish PSM is at risk.
- The Broadcasting Act 2009 provides for PSM prominence on linear EPGs (and only on those limited platforms regulated in Ireland thereby excluding major platforms such as Sky and Virgin Media which are established outside of the State). For many years the EPG has been the primary user-interface and PSMs were granted prominence at the top of the EPG (101) to ensure they were easily discoverable. The prominence regulatory regime needs to be extended to all platforms to keep pace with changes in technology and must extend to platforms established outside the State.
- As a result of the gap in the current legislation, PSM's in Ireland seek to secure prominence on platforms through commercial negotiation. Irish language media has

very little market power and, unlike Ireland's English language media, exerts very little influence on commercial content platforms and as a result it does not manage to secure prominence on many platforms with the effect that the TG4 PSM content is not readily discoverable by viewers.

- TG4 has a certain level of prominence on SKY's EPG. However the EPG has shifted further back from first-screen or UI. Recently, Sky changed their primary user interface and removed the 'Live box' option for television channels, further focusing users on SKY's selection of recommended titles and 'top picks'. While the RTÉ Player is the first on-demand service on SKY's catch-up user interface, TG4 has not been able to negotiate prominence and as a result the TG4 player is not easily discoverable by viewers on this platform highlighting the necessity for statutory prominence requirements.
- PSM's have traditionally had prominence on the Virgin Media EPG, however Virgin Media have changed how the EPG operates with the effect that PSM's have lost this prominence. Historically the EPG started at 101 and moved upwards through the channel listings from there. Virgin Media has created a promotional own-brand channel at number 100. Similarly, if a Virgin Media viewer is watching Netflix, when they click back to linear television, it defaults back to the Virgin Media 1 channel, undermining the PSMs' EPG prominence. For their new set-top-box, Virgin Media has made prominence deals with global giants, meaning bargaining power is moving further away from PSM's again highlighting the necessity for statutory prominence provisions for PSM's.
- Unless Irish PSM's are supported and given due prominence, they will lose relevance, particularly for younger Irish audiences who are growing up in a global media environment. In particular the case for prominence for Irish language media is of crucial importance. Although a national language, Irish functions as a minority language. In the absence of statutory prominence its habitual speaking community continually face the danger of language shift and diminution.

16 A Head should be included to provide for the Media Commission to produce codes in respect of PSM prominence within a specified time frame after commencement of the Act, which would be subject to prior consultation.

17. A Head should be included to give powers to the Media Commission to enforce the PSM Prominence statutory provisions and Prominence codes.

CRÍOCH.