



8 March 2021

Ms. Laura Pathe
Clerk
Joint Committee on Media, Tourism, Arts, Culture, Sport and the Gaeltacht
Leinster House
Dublin 2

General Scheme of the Online Safety and Media Regulation Bill

Dear Laura

Three Ireland thanks the Joint Committee on Media, Tourism, Arts, Culture, Sports and the Gaeltacht for the opportunity to comment on the General Scheme of the Online Safety and Media Regulation Bill. We would make the following observations in relation to the Heads of Bill.

Head 56

The language in Head 56.2.(d) of the General Scheme of the Bill acknowledges the role of ISPs in the value chain of information society services and provides an explicit example that where they are already regulated that those regulated services are not doubly impacted by this piece of proposed law.

We would propose that Head 56 be extended to exclude Electronic Communications Services and Electronic Communications Networks, already falling to be regulated under the European Electronic Communications Code (“EECC”), which might otherwise be covered by the scope of the Bill.

This would help prevent a scenario where ISPs are regulated by both ComReg and the Media Commission. We do not believe this is the intention of the General Scheme and think that the drafting should clarify this position or specifically state that ISPs that are regulated by ComReg are excluded.

Other observations on the Scheme

The Bill should also clearly define ISPs as “intermediary service provider” rather than “internet Service provider” as meaning any person or entity that provides an electronic communications network or electronic communications service.

Where an ISP service is identified as potentially coming within the definition of a relevant online service, and not already falling to be regulated under 2000/31/EC or the EECC, the obligations that come under Part 4 of the Bill ought to be applied to ISPs – such as codes, compliance statements, sanctions etc. – but only in so far as that application extends to those specific service aspects of the ISPs business.

Given the rapid pace of the progression of the draft Digital Services Act which will become a directly applicable Regulation as part of the EU legislative process and which



will address many of the issues within the contemplated scope of the General Scheme, it may be premature to expand upon the scope of the Audiovisual Media Services Directive and the draft Digital Services Act, to introduce Irish specific legislation in the manner that is being contemplated under the Online Safety and Media Regulation Bill. The draft Digital Services Act at a European level recognises that intermediary services such as electronic communications service providers and networks are mere conduits and accordingly there is a liability safe harbour for them in relation to illegal content.

There are potential dangers of this Bill leading to unharmonised regulation, out of step with Europe. It may be preferable to continue with the transposition of the updated AVMS Directive and the updating of the Broadcasting Act, but for the moment to await the Digital Services Act which should provide for a more effective pan-European approach that could better address these important issues.

Yours Sincerely,

Niamh Hodnett

Head of Regulatory Affairs