

Joint Oireachtas Committee on Tourism, Culture, Arts, Sport and Media

Opening remarks from officials in the Department of Enterprise, Trade and Employment on Digital Services Package

Wednesday 19 January 2022

Thank you to the Chair and Committee Members for this opportunity to update you on the EU Digital Services Package.

As that Package comprises 2 proposals for new Regulations, the Digital Markets Act (DMA) and the Digital Services Act (DSA), I am accompanied today by my colleagues who have led the Irish position in those 2 negotiations. Mr Eoin Cuddihy, who is on the DMA, and Mr Mark Dugdale, who is on the DSA.

The negotiations on the 2 proposals are advancing in Brussels. The Competitiveness Council adopted its general approach on each of the proposals at its meeting on 25 November last. Meanwhile the Parliament adopted its amendments on the DMA last month and is scheduled to vote on its DSA amendments tomorrow [20 January 2022]. Trilogue negotiations on the DMA started last week, while those on the DSA are expected to begin next month. So, while the EU legislative process is moving fairly fast, it should be borne in mind that the text is still evolving.

Adoption of both proposals is a priority for the French Presidency. We expect to have final instruments this year.

The Committee today has asked us to provide information on the potential interplay between the Digital Services Package and Online Safety and Media Regulation Bill. As the Committee's report on that Bill points out, the DSA is the most relevant of the 2 proposals in the EU package when it comes to scope and provisions.

Therefore, I'll focus what follows on that proposal.

The Council's general approach maintains many key features of the original Commission proposal, notably, the horizontal approach, whereby the DSA must be read in tandem with sectoral legislation, such as the Audio-visual Directive. Clearly, therefore, where there are provisions in sectoral EU legislation that are specific to that sector, they are unaffected by the DSA. The text names many of those sectoral laws, but it is not an exhaustive list, and allows for additional sectoral rules in future.

The text is still a general framework with a systemic approach – requiring providers to have certain systems in place with respect to content.

The general approach also keeps to the country-of-origin principle, where the applicable law and regulators are those of the country in which a platform or service provider is established. This supports the smooth functioning of the Single Market.

It also retains the focus on combatting illegal content, on the principle that what is illegal offline should be illegal online. When it comes to moderation of harmful content, this continues to be the

responsibility of intermediary services providers, but subject to risk assessments for the very large online platforms.

One of the main changes introduced in the Council's general approach is to the enforcement model. The text now extends the powers of the Commission for the supervision and enforcement of the Regulation with respect to the very large online platforms and very large online service providers. National Digital Services Coordinators retain their enforcement roles with respect to the smaller sized platforms and providers and will still have a role in working with the Commission in respect of the very large operators. The DSC will also work closely with sectoral regulators in Ireland and with its counterparts across the EU. As a result, there are new elements to reinforce the cooperation between national Digital Services Coordinators and the Commission, to ensure a robust and coordinated approach to enforcement.

This significant amendment was agreed just last November, so the full practical implications are still being assessed by the Commission and the Member States. In Ireland's case, this Department is preparing a Regulatory Impact Analysis to assess the best way to meet the obligation to designate and equip a Digital Services Coordinator here. Given the number of operators established here, this will be a significant role.

As I mentioned, the Parliament is adopting its own amendments this week, and we are still examining those.

In conclusion, while many features of both the DMA and the DSA are clear now, they are still subject to the trilogue negotiations and some change is likely.

Since the publication of the original proposals in late 2019, our Department has engaged with colleagues in the Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media and that will continue as we each progress the EU Regulations and the Online Safety Bill.

Thank you.

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