



**Roinn Cumarsáide, Gníomhaithe
ar son na hAeráide & Comhshaoil**
Department of Communications,
Climate Action & Environment

Public Consultation on the Regulation of Harmful Content on Online Platforms and the Implementation of the Revised Audiovisual Media Services Directive

NOTE: The questions contained in this online form/consultation should be read in conjunction with the accompanying explanatory note

Strand 1 – National Legislative Proposal

Q. 1. – What system should be put in place to require the removal of harmful content from online platforms? For example, the direct involvement of the regulator in a notice and take down system where it would have a role in deciding whether individual pieces of content should or should not be removed on receipt of an appeal from a user who is dissatisfied with the response they have received to a complaint submitted to the service provider. **[Sections 2, 4, & 8 of the explanatory note]**

Q.2 – If the regulator is to be involved in deciding whether individual pieces of content should or should not be removed, should a statutory test be put in place before an appeal can be escalated to the regulator? Please describe any statutory test which you consider would be appropriate. **[Sections 2, 4 & 8 of the explanatory note]**

Q.3 – Which online platforms, either individual services or categories of services should be included within the scope of a regulatory or legislative scheme? **[Sections 2, 5 & 6 of the explanatory note]**

Q. 4 – How should harmful online content be defined in national legislation? Should the following categories be considered as harmful content? Online platforms are already required to remove content which it is a criminal offence under Irish and EU law to disseminate, such as material containing incitement to violence or hatred, content containing public provocation to commit a terrorist offence, offences concerning child sexual abuse material or concerning racism and xenophobia. Are there other clearly defined categories which should be considered? For example,

- Serious Cyber bullying of a child (i.e. content which is seriously threatening, seriously intimidating, seriously harassing or seriously humiliating)
- Material which promotes self-harm or suicide
- Material designed to encourage prolonged nutritional deprivation that would have the effect of exposing a person to risk of death or endangering health

[Sections 2, 4 & 6 of the explanatory note]

Strand 2 – Video Sharing Platform Services

Q. 5 – The revised Directive introduces a definition of Video Sharing Platform Services. Where should the limits of this definition be, i.e. what services should and shouldn't be considered Video Sharing Platform Services? Please include your rationale and give examples. **[Section 3 of the explanatory note]**

Q. 6 – The revised Directive takes a principles based approach to harmful online content and requires Video Sharing Platform Services to take appropriate measures to protect minors from potentially harmful video content, the general public from video containing incitement to violence or hatred and certain criminal video content. It also requires that Ireland designate a regulator to oversee the ongoing implementation of these measures.

Given this, what kind of regulatory relationship should there be between a Video Sharing Platform Service established in Ireland and the Regulator? **[Section 3, 4, 5, 6 & 8 of the explanatory note]**

Q. 7 – On what basis should the Irish regulator monitor and review the measures that a Video Sharing Platform Service has in place, and on what basis should the regulator seek improvements or an increase in the measures the services have in place? **[Section 3, 4, 5, 6 & 8 of the explanatory note]**

Strands 3 & 4 – Audiovisual Media Services

Q. 8 – The revised Directive closely aligns the rules and requirements for television broadcasting services and on-demand audiovisual media services. Given this, what kind of regulatory relationship should there be between an on-demand audiovisual media service established in Ireland and the relevant Irish regulator? In addition, should the same content rules apply to both television broadcasting services and on-demand audiovisual media services? **[Section 4 of the explanatory note]**

Q. 9 – Should Ireland update its current content production fund (Sound & Vision fund currently administered by the BAI from licence fee receipts) to allow non-linear services to access this fund? Should Ireland seek to apply levies to services which are regulated in another EU Member State but target Ireland in order to fund or part-fund an updated content production fund? **[Section 4 of the explanatory note]**

Strands 1 & 2 – European & International Context

Q. 10 – The United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression has previously raised concerns regarding the National Legislative Proposals under Strand 1. How can Ireland balance the fundamental rights of all users, e.g. the right to freedom of expression, including those affected by potentially harmful

online content and those creating said content, in pursuing the further regulation of harmful online content? **[Section 2, 4, 5, 7, & 8 of the explanatory note]**

Q. 11 – How can Ireland ensure that its implementation of the revised Directive under Strand 2 and any further regulation of harmful online content under Strand 1 fits into the relevant EU framework for the regulation of online services, including the limited liability regime for online services under the eCommerce Directive? **[Section 2, 4, 5, 6, 7, & 8 of the explanatory note]**

Strands 1-4 – Regulatory Structures

Q. 12 – Potential options for regulatory structures to progress the regulation of the four strands are identified in the explanatory note accompanying these questions. These options include:

- Restructuring the Broadcasting Authority of Ireland as a Media Commission responsible for the four strands,.
- Two regulatory bodies. Assigning the responsibility for editorial services, e.g. on-demand audiovisual media services, to a restructured BAI and creating another regulatory body with responsibility for non-editorial online services, e.g. Video Sharing Platform Services.

Is one of these options most appropriate, or is there another option which should be considered? **[Section 5 of the explanatory note]**

Q. 13 – How should the chosen regulatory structure or structures be funded given the various categories of services which are to be regulated? **[Section 5 of the explanatory note]**

Strands 1 & 2 –Sanctions/Powers

Q. 14 – What functions and powers should be assigned to the relevant regulator to allow them to carry out their monitoring and enforcement role (some examples have been provided in Section 8 of the explanatory note)? In addition, should these functions and powers differ between regulation for Video Sharing Platform Services under the revised Directive under Strand 2 and regulation adopted at a national level under Strand 1? Please include your rationale and give examples. **[Section 2, 4, 5, 7, & 8 of the explanatory note]**

Q. 15 - What sanctions should be available to the relevant regulator to apply to a service that does not comply with its obligations? Such sanctions may include

- The power to publish the fact that a service is not in compliance,

The power to issue administrative fines,

- To issue interim and final notices to services in relation to failures of compliance and the power to seek Court injunctions to enforce the notices of the regulator, and,
- The power to apply criminal sanctions in the most serious cases.

Are there any other sanctions which should be considered, please provide your reasoning as to why the regulator should have recourse to a particular sanction. **[Sections 2, 4, 6, 7 & 8 of the explanatory note]**

Q. 16 - Given that the revised Directive envisages that a Video Sharing Platform Service will be regulated in the country where it is established for the entirety of the EU it does not envisage that the relevant regulator would assess individual complaints. However, the revised Directive requires Ireland to put in place a system of mediation between users and Video Sharing Platform Services. Given that such a system would be in place on an EU-wide basis should thresholds apply before an issue could be brought before this system? If so, then what thresholds would be most appropriate? **[Sections 2, 4, 6, 7 & 8 of the explanatory note]**