

THE DIGITAL SERVICES (LEVY) BILL 2024

General Scheme of Bill

April 2024

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PART 1 – PRELIMINARY AND GENERAL

HEAD 1 – Short title and commencement

To provide that –

“(1) This act may be cited as the Digital Services (Levy) Act 2024.

(2) This Act shall come into operation on such day or days as the Minister, following consultation with the Minister for Tourism, Culture, Arts, Gaeltacht, Sport and Media, may appoint by order or orders either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions.”.

Explanatory Note

This Head provides for the short title and commencement arrangements.

Subhead (1) provides for the name of this Act to be the “Digital Services (Levy) Act”. The levy being introduced will be to fund the supervisory functions (including enforcement) that Coimisiún na Meán and the Competition and Consumer Protection Commission will have as the designated competent authorities for EU Regulation 2022/2065 (hereafter referred to as the “Digital Services Regulation”). Those designations are made in the Digital Services Act 2024 (Act No. 2 of 2024). So, the title chosen here makes a clear link to that legislation.

Subhead (2) provides for the commencement arrangements. The Minister for Enterprise, Trade and Employment has policy responsibility for implementation of the Digital Services Regulation. However, some of these Heads propose to insert new provisions into the Broadcasting Act 2009, as amended by the Online Safety and Media Regulation Act 2022, to empower An Coimisiún na Meán (the Media Commission) to raise a levy for its digital services functions. The Broadcasting Act 2009, as amended, is the establishing and governing legislation for Coimisiún na Meán. Both it and Coimisiún na Meán are within the policy remit of the Minister for Tourism, Culture, Arts, Gaeltacht, Sport and Media. Accordingly, subhead (2) provides that the Minister will set the commencement date or dates in consultation with the Minister for Tourism, Culture, Arts, Gaeltacht, Sport and Media. This follows the procedure in section 1 of the Digital Services Act 2024.

HEAD 2 – Definitions

To provide that

In this Act –

‘CCPC’ means the Competition and Consumer Protection Commission.

‘Digital Services Regulation’ means Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services and amending Directive 2000/31/EC.

‘Terrorist Content Online Regulation’ means Regulation (EU) 2021/784 of the European Parliament and of the Council of 29 April 2021 on addressing the dissemination of terrorist content online.

‘2009 Act’ means the Broadcasting Act 2009 and Other Media Regulation Acts 2009 and 2022.

‘Principal Act’ means the Digital Services Act 2024 (Act No. 2 of 2024).

‘hosting service provider’ has the meaning given to it in Article 2(1) of the Terrorist Content Online Regulation.

‘Intermediary service provider’ has the meaning given to it in Section 2 of the 2009 Act.

‘Category 2 Offence’ has the meaning given to it in section 2 of the 2009 Act.

Explanatory Note

The ‘CCPC’ – Competition and Consumer Protection Commission. Section 44 of the Principal Act designates the Competition and Consumer Protection Commission as the competent authority for Articles 30, 31 and 32 of the Digital Services Regulation. Heads 4 – 6 of this General Scheme provide a power to the CCPC to raise a levy to fund those new functions.

“Digital Services Regulation” is used throughout this General Scheme. The definition of the EU Regulation, known as the Digital Services Act. The term “Digital Services Regulation” is proposed for clarity, to distinguish from other regulations. Regulation (EU) 2022/2065 was published in the Official Journal on 27 October 2022.

“Terrorist Content Online Regulation” means Regulation (EU) 2021/784 of the European Parliament and of the Council of 29 April 2021 on addressing the dissemination of terrorist content online is used in Head Coimisiún na Meán has been designated by the Minister for Justice for the purposes of Article 12(1)(c) of the Terrorist Content Online Regulation as the competent authority that is competent to oversee the implementation of specific measures pursuant to Article 5 of the Terrorist Content Online Regulation.

“Intermediary service provider” is also used throughout this General Scheme and it is defined in the Digital Services Regulation and in the Digital Services Act 2024.

The Principal Act is defined as the Digital Services Act 2024 (Act 02/2024).

“2009 Act” is the Broadcasting Act 2009 and Other Media Regulation Acts 2009 and 2022. the Head 3 amends section 21(1) in order to allow Coimisiún na Meán to also levy (d) providers of intermediary services and (e) hosting service providers in addition to the services it already levies.

“Category 2 offence” is defined in the Broadcast Act 2009, and means an offence the penalties for which are specified in section 139ZZH(2) of the 2009 Act.

PART 2 – LEVY FOR DIGITAL SERVICES

HEAD 3 – Amendment to section 21 of the 2009 Act

To provide that –

(1) To amend section 21(1) of the 2009 Act, to add a new category of providers on whom Coimisiún na Meán may impose a levy by order, so that section 21(1) reads (new text in italics) –

“21(1) The Commission may make an order (a ‘levy order’) imposing a levy on any of the following:

- a) Providers of audiovisual media services;
- b) Providers of sound broadcasting services;
- c) Providers of designated online services;
- d) *Providers of intermediary services;*
- e) *Hosting service providers.*

(2) To amend section 21(9)(d) of the 2009 Act, by adding a new factor for consideration so section 21(9)(d) reads (new text in italics) –

“(21)(9)(d) any other factor that may affect the exercise by the Commission of functions in relation to a provider, including, in the case of designated online services, matters referred to in section 139 E (3) (d), (e) and (f), *and in the case of intermediary services, any functions exercised by the European Commission that are within the scope of the supervisory fee payable pursuant to Article 43 of the Digital Services Regulation in respect of a particular provider.*

Explanatory Note

Subhead 1

The purpose of subhead 1 of this Head is to provide Coimisiún na Meán with the power to raise a levy on those providers of online intermediary services that are in scope of both –

1. The Digital Services Regulation
2. The Terrorist Content Online Regulation.

Section 21 of the 2009 Act, as inserted by section 8 of the Online Safety and Media Regulation Act 2022 gives Coimisiún na Meán the power to make a levy order on 3 categories of providers, namely

1. Providers of audiovisual media services;
2. Providers of sound broadcasting services; and

3. Providers of designated online services.

The first two categories are defined in section 2 of the Broadcasting Act 2009, as amended by sections 3(2) (a) and 3(2) (u) respectively of the Online Safety and Media Regulation Act 2022. The third comprises providers that have been designated by Coimisiún na Meán to comply with online safety codes. This designation is provided for in Chapter 2 (sections 139E- 139J inclusive) of Part 8A of the Broadcasting Act 2009, as inserted by section 45 of the Online Safety and Media Regulation Act 2022.

We are amending section 21(1) in order to allow Coimisiún na Meán to also levy (d) providers of intermediary services and (e) hosting service providers.

Although some of the providers of intermediary services in scope of the Digital Services Regulation and some of the hosting services in scope of the Terrorist Content Online Regulation will also be providers of designated online services, not all will. Therefore, the Department considers it prudent to expressly provide for both separately here. The potential for overlap between the categories, where a particular provider falls within more than one category, is not a difficulty as already there is potential for overlap between the existing 3 categories in section 21, as amended. Moreover, there is potential for one provider to provide several online intermediary services, each with different compliance requirements under the Digital Services Regulation. So, Coimisiún na Meán will need to take that into account even if the levy was confined to just one legal code. Section 21(10) specifically addresses this possibility, so Coimisiún na Meán may take that potential into account when setting the levy amounts.

New functions being assigned to Coimisiún na Meán to be funded by the extended levy

Coimisiún na Meán is designated as the main competent authority for the Digital Services Regulation by the Principal Act. This main competent authority is referred to as the “Digital Services Coordinator” as per Article 49(2) of the Digital Services Regulation.

Coimisiún na Meán has been designated by the Minister for Justice for the purposes of Article 12(1)(c) of the Terrorist Content Online Regulation as the competent authority that is competent to oversee the implementation of specific measures pursuant to Article 5 of the Terrorist Content Online Regulation. This was done in the European Union (Online Dissemination of Terrorist Content) (Designation of Coimisiún na Meán as a competent authority) Regulations 2023 (S.I. No. 545 of 2023). That designation came into effect on 30 November 2023.

Section 21 of the Broadcasting Act 2009, as inserted by section 8 of the Online Safety and Media Regulation Act 2022, establishes that the levy covers the performance of Coimisiún na Meán’s functions in relation to the specific services listed in section 21(1). The new functions under the Digital Services Regulation and the Terrorist Content Online Regulation have been assigned to An Coimisiún under the Digital Services Act 2024, and S.I. 545 of 2023 (European Union (Online Dissemination of Terrorist Content) (Designation of Coimisiún na Meán as a competent authority) Regulations 2023) respectively. Therefore, the Department considers that it is sufficient to just add the services in scope of both the Digital Services Regulation and the Terrorist Content Online Regulation to enable Coimisiún na Meán to include charges for its role as competent authority for both.

What falls within the scope of the Digital Services Regulation?

The obligations (set out in Articles 9 et seq) in the Digital Services Regulation apply to “providers of intermediary services”. Within that category there are sub-categories, namely –

- Mere conduit
- Caching
- Hosting

The Regulation also makes distinctions between platforms and other types of hosting services. The Regulation is structured in a tiered way, starting with obligations that fall on all intermediary service providers and including obligations that only fall on those services that have the greatest impact.

Some of these obligations only apply to “very large online platforms” (VLOPs) and “very large online search engines” (VLOSEs) and are enforceable by the European Commission. The European Commission will charge a supervisory fee to those VLOPs and VLOSEs. Nevertheless, the 27 national Digital Services Coordinators (one in each Member State) retain a role in these cases, if only, in some cases, as “on the ground support” for the European Commission, for example arranging warrants and attending searches.

Note also there are exemptions from some obligations for providers that qualify as micro or small enterprises as defined in Recommendation 2003/361/EC of 6 May 2003, concerning the definition of micro, small and medium-sized enterprises.

Accordingly, the amount of supervision and enforcement that Coimisiún na Meán will have responsibility for with respect to any particular provider will depend on a number of factors. The Department considers that the provisions of section 21 as it stands, particularly section 21(9)(d), are sufficient to allow Coimisiún na Meán take all this into account when setting the amount of levy that refers to its work as the Digital Services Coordinator.

What falls within the scope of Articles 5 and 18 of the Terrorist Content Online Regulation?

The provisions set out in Article 5 of the Terrorist Content Online Regulation apply to hosting service providers exposed to terrorist content. A hosting service provider is ‘exposed to terrorist content’ where the competent authority of the Member State of its main establishment or where its legal representative resides or is established has taken a decision, on the basis of objective factors, finding that the hosting service provider is exposed to terrorist content and notified this decision to the hosting service provider concerned.

Article 18 of the Terrorist Content Online Regulation sets out provisions relating to infringements of the Regulation by hosting service providers under Article 3(3) and (6), Article 4(2) and (7), Article 5(1), (2), (3), (5) and (6), Articles 6, 7, 10 and 11, Article 14(5), Article 15(1) and Article 17 of the Regulation.

Hosting service providers are in scope of Article 5 of the Terrorist Content Online Regulation. They are defined in Article 2(1) of that Regulation as a *provider of services as defined in point (b) of Article 1 of Directive (EU) 2015/1535 of the European Parliament and of the Council consisting of the storage of information provided by and at the request of a content provider.*

“Hosting services” are also defined in the Digital Services Regulation. Article 3(g)(iii) of the Digital Services Regulation provides that ‘intermediary service’ means one of the following information society services: (iii) a ‘hosting’ service, consisting of the storage of information provided by, and at the request of, a recipient of the service. Article 3(a) of that Regulation provides that “information society service’ means a ‘service’ as defined in Article 1(1), point (b), of Directive (EU) 2015/1535.

There are therefore clear similarities between the definition of hosting services as defined in Article 2(1) of the Terrorist Content Online Regulation and the definition of hosting services in Article 3(g)(iii) of the Digital Services Regulation, for example both cross-refer to definitions in Article 1 of Directive 2015/1535.

Nevertheless, both the Department and the Department of Justice consider it prudent to provide for them separately here. It also supports clarity, showing that hosting services may be levied for supervision and enforcement of both the Digital Services Regulation and the Terrorist Content Online Regulation where they fall within the scope of both. It supports a link being made to the various functions that Coimisiún na Meán will have.

Subhead 2: Need to take account of supervisory fee paid to European Commission

Subhead (2) above is intended to ensure that the levy rate set by Coimisiún na Meán in respect of its competence under the Digital Services Regulation takes account of the fact that some supervisory and enforcement functions in respect of a Very Large Online Platform (VLOP) or Very Large Online Search Engine (VLOSE) are either within the sole competence of the European Commission or are shared between it and the national Digital Services Coordinator where that VLOP or VLOSE is established. So, Coimisiún na Meán will not be responsible for the supervision and enforcement of all the obligations that fall on a VLOP or VLOSE.

Moreover, Article 43 of the Digital Services Regulation provides that the European Commission shall charge VLOPs and VLOSEs an annual supervisory fee. So, it is important that national authorities do not “double charge” any particular provider.

Recital 101, which is associated with Article 43, recognises that Member State authorities may also charge for their functions. It states that Member States should be entitled to charge providers established in their territory a supervisory fee in respect of the supervisory and enforcement tasks exercised by their authorities.

Article 50 (Requirements for Digital Services Coordinators) obliges Member States to ensure that their Digital Services Coordinators and any other competent authority designated under the Digital Services Regulation, shall have all the necessary resources to carry out their tasks, including sufficient technical, financial and human resources to adequately supervise all providers of intermediary services falling within their competence. The Digital Services Coordinator, and any other designated competent authority, must also have sufficient autonomy in managing its budget in order not to adversely affect its independence.

The allocation of responsibilities between the European Commission, on the one hand, and the national Digital Services Coordinators and any other designated national competent authority, on the other, will not always be clearcut. For example, there may be cases where a VLOP or VLOSE has apparently infringed but, because the alleged infringement does not present any systemic risk, the national authority will lead the investigation and make any conclusions. It is also open to the European Commission to investigate jointly or with the support of a national authority.

For these reasons, it is important to ensure that Coimisiún na Meán takes account of the role of, and supervisory fee payable to, the European Commission while also allowing it flexibility in how it calculates the impact of that on its own levy rate.

HEAD 4 – Power for Competition and Consumer Protection Commission to impose a levy on providers of online platforms that allow consumers to conclude distance contracts with traders

To provide that –

After section 45 of the Principal Act, insert new section 45A (Power to impose a levy) as follows –

“45A (Power to impose a levy)

- (1)** The CCPC may make an order (‘a levy order’) imposing a levy on providers of online platforms that allow consumers to conclude distant contracts with traders.
- (2)** A levy order shall specify the period in respect of which a levy is imposed (‘a levy period’).
- (3)** Levy periods shall run successively and shall be the same for all levies imposed.
- (4)** The CCPC shall seek to ensure that the amount of all levies imposed under subsection (1) in respect of a levy period is sufficient to meet its expenses properly incurred in that period and its working capital requirements in that period, in respect of its functions pursuant to section 44 of the Principal Act, in so far as these expenses and requirements are not met in any other way.
- (5)** In calculating the amount of a levy under subsection (1) in respect of a levy period, the CCPC shall seek to ensure that the total amount imposed by way of levy under that paragraph in respect of that period, represents a corresponding proportion of the total amount imposed by way of levy under this section in respect of that period.
- (6)** A levy order shall provide for the collection, payment, and administration of a levy including –
 - a. The method of calculation of the levy,
 - b. The times at which payment is to be made and the form of payment,
 - c. Requirements for providers subject to the levy to keep relevant records and to make them available to the CCPC,
 - d. Any provision for exemptions, deferrals or refunds, and
 - e. The consideration of applications by providers for the review of decisions under the order.
- (7)** In making provision by levy order for the method of calculation of a levy and for any exemption or deferral, the CCPC shall consider the relevance of the following factors:
 - a. the nature and scale of services provided by a provider;
 - b. any other factor that may affect the exercise by the CCPC of functions in relation to a provider, including, any functions exercised by the European Commission that are within the scope of the supervisory fee payable pursuant to Article 43 of the Digital Services Regulation in respect of a particular provider.

- (8) Levy orders may (subject to subsection (3)) make different provision for different providers of online platforms allowing consumers to conclude distance contracts with traders.
- (9) Any surplus of income, from levies imposed in respect of a levy period, over the expenses properly incurred by the CCPC in that period and its working capital requirements in that period shall either –
- a. Be retained by the CCPC to be offset proportionately against subsequent levy obligations of the providers on whom the levy was imposed, or
 - b. Be refunded proportionately to those providers.
- (10) In this section and section 45B –
- ‘levy order’ has the meaning given in subsection (1),
- ‘levy period’ has the meaning given in subsection (2).

Explanatory Note

Section 44 of the Principal Act designates the Competition and Consumer Protection Commission as the competent authority for Articles 30, 31 and 32 of the Digital Services Regulation. This Head provides a power to the CCPC to raise a levy to fund those new functions.

Articles 30, 31 and 32 of the Digital Services Regulation apply only to those platforms that allow consumers to conclude distance contracts with traders (i.e. online marketplaces). The obligations in those Articles are similar to Articles in the General Product Safety Regulation, for which the CCPC is also the competent authority.

As both the CCPC and Coimisiún na Meán will be charging for their functions under the Digital Services Regulation, and in some cases charging the same providers, the Department considers it appropriate and highly desirable that the two levies are set and enforced according to the same statutory rules.

The text of this Head is modelled on section 21 of the Broadcasting Act 2009, as inserted by section 8 of the Online Safety and Media Regulation Act 2022. Subsections (7) and (8) of that section have not been replicated here as they are not relevant to online marketplaces. Additionally, subsection (9) has not been replicated in its entirety, having been modified for relevance to online marketplaces.

Subhead (7) obliges the CCPC to take into account the extent to which the European Commission supervises and enforces against any particular provider. This is to avoid the risk of “double charging” given that the European Commission will perform certain functions if a provider is a Very Large Platform or Search Engine and charge a fee for that role under Article 43 of the Digital Services Regulation. See note on Head 3 above, proposal for addition to section 21(9)(d) of the 2009 Act..

The allocation of responsibilities between the European Commission and a national competent authority will not always be clearcut. For example, there may be cases where a VLOP or VLOSE has apparently infringed but, because the alleged infringement does not present any systemic risk, the national authority will lead the investigation and make any conclusions.

HEAD 5 – Levies under section 41A: enforcement and procedure

To provide that –

In the Principal Act insert new section 45B as follows –

“45B (Levies under section 45A: enforcement and procedure)

- (1) A levy payable under a levy order by any person may be recovered by the CCPC from that person as a simple contract debt in any court of competent jurisdiction.
- (2) A person shall be guilty of a category 2 offence if in purported compliance with a requirement imposed by or under a levy order, he or she provides information to the CCPC which is to his or her knowledge false or misleading.
- (3) A levy order shall be laid by the CCPC before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the order is passed by either such House within the next 21 days on which the House sits after the order is laid before it, the order shall be annulled accordingly, but without prejudice to the validity of anything previously done under it.

Explanatory Note

This Head replicates section 22 of the Broadcasting Act 2009, as inserted by section 8 of the Online Safety and Media Regulation Act 2022.

As both the CCPC and Coimisiún na Meán will be charging for their functions under the Digital Services Regulation, the Department considers it appropriate and highly desirable that the two levies are set and enforced according to the same statutory rules.

‘category 2 offence’ is defined in section 2 of the Broadcast Act 2009. This is defined in Head 1 above.

HEAD 6 – Cooperation between CCPC and Coimisiún na Meán (Collection of levies)

To provide –

In Principal Act, insert new section 45C as follows –

“45C Cooperation between CCPC and Coimisiún na Meán (Collection of levies)

- (1) The CCPC may enter into an agreement (in this section referred to as a “collection agreement”) with Coimisiún na Meán for the purpose of enabling Coimisiún na Meán to collect the levy due under a levy order made by the CCPC from providers subject to that order on behalf of the CCPC.
- (2) A collection agreement shall include provisions –
 - a. enabling each party to furnish to the other party information in its possession if the information is required by that other party for the purpose of subsection (1).
 - b. ensuring that where a particular provider is subject to a levy from both parties, the combined levy is equitable and proportionate, having regard to the functions exercised by each party relating to the Digital Services Regulation.
- (3) A collection agreement may be varied by the CCPC and Coimisiún na Meán.
- (4) The CCPC shall, within one month after the agreement (or the variation of it) has been made, furnish the Minister with a copy of a collection agreement (or the variation) that has been made.
- (5) A collection agreement, or any variation made to it, shall be in writing and, as soon as is practicable after the agreement or variation has been made and furnished to the Minister, the CCPC may publish the agreement on a website maintained by it.
- (6) Without prejudice to subsection (7), nothing in any enactment shall be read as preventing the provisions of a collection agreement from having effect in accordance with their terms.
- (7) If information is furnished by one party to the other party pursuant to a provision of a collection agreement of the kind referred to in subsection (2), the provisions of any enactment concerning the disclosure of that information by the first-mentioned party shall apply to the second-mentioned party with respect to that information.
- (8) A failure by the CCPC or Coimisiún na Meán to comply with a provision of the collection agreement shall not invalidate the exercise by the CCPC or Coimisiún na Meán of any power, including the power of the CCPC to make and execute a levy order under this Act and the power of Coimisiún na Meán to make and execute a levy order under this Act and under the 2009 Act.

Explanatory Note

This Head is modelled on section 45 of the Principal Act.

This General Scheme provides that Coimisiún na Meán and the CCPC will each set a levy to fund their respective functions under the Digital Services Regulation. The Principal Act assigns competence for those obligations in Articles 30, 31 and 32 of the Digital Services Regulation to the CCPC. However, providers who are subject to these obligations, the online marketplaces, will also be subject to other obligations in the Digital Services Regulation that are within the competence of Coimisiún na Meán.

Moreover, there will be providers that offer more than one type of intermediary service, not just online marketplaces.

Therefore, all providers that are subject to the supervision of the CCPC will also be subject to supervision of Coimisiún na Meán, albeit for different provisions of the Digital Services Regulation. Conversely, not all providers subject to the supervision of Coimisiún na Meán will be subject to the supervision of the CCPC.

To minimise the administration requirements for providers, the Department supports the CCPC and Coimisiún na Meán working together for a single invoicing system, with one acting as collection agent for the other.

A precedent for this is An Post collecting the TV Licence fee on behalf of RTÉ. Section 145 (1) of the Broadcasting Act (as amended) names An Post as an 'Issuing Agent' for TV licence. Another model is the ability of Screen Ireland to disburse funds collected by Coimisiún na Meán.

As Coimisiún na Meán will be invoicing all Irish providers in scope of the Digital Services Regulation, while CCPC will only invoice a subset, it is appropriate and desirable that Coimisiún na Meán be empowered to collect for both authorities.

Coimisiún na Meán and the CCPC are engaged in discussions on the operational aspects of this proposal. That engagement may lead to changes to this Head.