
Consultation Document

Consultation on the proposed Levy Order in respect of the levy period from 1 January 2024 to 31 December 2024, under the Broadcasting and other Media Regulation Acts 2009 and 2022.

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Contents

Introduction and Background	3
Purpose of Consultation	3
Issues for Consideration	4
Outline of Proposed Levy Models	5
Number of Levies	5
Proposed Levy Approach for TV Broadcasters	5
Section 71 contractors	6
Proposed Levy Approach for Radio/Sound Broadcasters	6
Proposed Levy Approach for Video-on-Demand Providers	7
Proposed Levy Approach for providers of designated online services	8
Other Considerations	9
Geographical scope of metrics	9
Time period of metrics	9
Providers of multiple services	9
De minimis exemption	9
Consultation	10
How to Respond	10
Next Steps	10
Timeframe for Responses	10
Use of Information	10
Personal data	10
Confidential information	11
Freedom of Information	11

Introduction and Background

Pursuant to section 21 of the Broadcasting and Other Media Regulation Acts 2009 and 2022 (the “Act”), that being the Broadcasting Act 2009, as amended by the Online Safety and Media Regulation Act 2022, Coimisiún na Meán has the power to impose a levy order on:

- Providers of audiovisual media services.
- Providers of sound broadcasting services.
- Providers of designated online services.

In 2024, Coimisiún na Meán expects to receive exchequer funding in the form of a grant from the Minister for Tourism, Culture, Arts, the Gaeltacht, Sports and Media (‘the Minister’). This grant will fund the discharge of the functions intended to be conferred on Coimisiún na Meán in respect of its role as Ireland’s Digital Services Coordinator (DSC) under the EU Digital Services Act (DSA) and as a competent authority under the Terrorism Content Online Regulation (TCOR) only. Coimisiún na Meán will also receive funding in relation to the Broadcasting Fund.

Levy income will therefore be required to fund the discharge of Coimisiún na Meán’s functions in relation to audiovisual media services, sound broadcasting services and designated online services. In accordance with section 21(4) of the Act, Coimisiún na Meán must seek to ensure that this levy income is sufficient to meet its expenses and working capital requirements in so far as they are not met through other means.

Coimisiún na Meán’s predecessor, the Broadcasting Authority of Ireland (BAI), had a similar power, pursuant to which a levy was imposed on broadcasters within its jurisdiction to fund the majority of the BAI’s administrative costs.

Purpose of Consultation

This document invites comments on Coimisiún na Meán’s proposals for a levy order in respect of the levy period from 1 January 2024 to 31 December 2024. Coimisiún na Meán will consult again during the course of 2024 before making a levy order for 2025 and subsequent periods.

There are various reasons for making a levy order that covers only one year including *inter alia* the possibility that there will be changes in legislation requiring amendments to the scope of the levies, such that Coimisiún na Meán will no longer require exchequer funding for some of its administrative costs. In addition, information gathered in the course of calculating the 2024 levy may be of use in determining the longer-term approach to the levy.

Following the 2024 consultation, Coimisiún na Meán will fully re-evaluate the bases for a future levy order. None of the views expressed in this consultation should be taken as a precedent for views that might be adopted in relation to the consideration of any subsequent levy order.

Issues for Consideration

Section 21(9) of the Act requires that, in making provision of a levy order the method of calculation of a levy and for any exemption or deferral must have regard to the following factors:

- The financing of a provider, including any public funding.
- The desirability of promoting new or innovative services.
- The nature and scale of services provided by a provider.
- Any other factor that may affect the exercise by Coimisiún na Meán of functions in relation to a provider, including, in the case of designated online services, matters referred to in section 139E(3) (d), (e) and (f) [which broadly concern matters relating to the risk of harm being caused by content on a service].

In addition, Coimisiún na Meán considers that the following factors are relevant when considering a levy order for 2024:

- Predictability.
- Simplicity and cost effectiveness in administration.
- Proportionality to the costs incurred by Coimisiún na Meán in performing its regulatory functions.
- Regulatory continuity.

As part of the process for deciding on the preferred options for the different levies for the different segments, a review was undertaken of levy schemes internationally and levy schemes in place in different regulators in Ireland. This review helped to inform the range of potential options for different levy approaches, including:

- Levies based on qualifying income, including:
 - Fixed percentage of income.
 - A banded approach such as that currently in place for broadcasters.
- A flat levy (fixed € amount).
- Different levy amounts depending on size of entity.
- Levies based on user numbers.

Flat rate-based levy approaches were ruled out of further consideration for reasons of proportionality, while levies based on profit were eliminated for reasons of regulatory continuity, simplicity, administrative cost, and predictability.

Outline of Proposed Levy Models

Number of Levies

Coimisiún na Meán's preliminary view is that there should be four separate levies, addressing the following specific segments:

1. TV broadcasters.
2. Radio/Sound broadcasters.
3. Video-On-Demand (VOD) providers.
4. Designated online services, including Video Sharing Platforms (VSPs).

Consideration was given to having a single levy for all audiovisual media service providers (i.e., both TV broadcasters and VOD providers). However, this was considered premature for 2024, largely for reasons of regulatory continuity and because there is some uncertainty about the potential impact on TV broadcasters if TV broadcasting and VOD are included in a single category.

However, there are potential advantages to a single levy, given that the major TV broadcasters also offer VOD services with much of the content being the same on both services. A single levy avoids the need to allocate Coimisiún na Meán costs between TV broadcasting and VOD regulation, and to allocate provider revenues between TV broadcasting and VOD services. The pros and cons of a single levy will be considered afresh in the consultation on the levy order for 2025 and beyond.

Proposed Levy Approach for TV Broadcasters

Coimisiún na Meán's preliminary view is that it should maintain the existing broadcasting levy for TV broadcasters in the 2024 levy order.

There are several reasons for this view, including regulatory continuity, predictability, simplicity, and recognition of differences in scale and financing of providers.

Coimisiún na Meán considers that there are finely balanced arguments for and against the proposition that a banded levy approach would better reflect proportionality to Coimisiún na Meán's costs than charging the same percentage of qualifying income to all broadcasters. For 2024, Coimisiún na Meán proposes to maintain a banded approach for reasons of regulatory continuity. However, as set out above, further consideration will be given to this issue when consulting on the model for 2025 and beyond.

The proposed levy model would be cost reflective and proportionate in nature, i.e., be designed to ensure full recovery of, and be proportionate to, the expenses properly incurred, and the working capital required in relation to TV broadcasters by Coimisiún na Meán to undertake its regulatory functions during the period for which the levy is raised.

The levy model has a regressive sliding scale element, whereby the levy amount paid (expressed as a percentage of the total qualifying income) falls as the value of qualifying income rises.

The levy percentage for each band of qualifying income is calculated via the following table, with B calculated to reach the estimated costs of regulation of that segment.

Levy Percentage by Qualifying Income (TV Broadcasters)	
Base Year Qualifying Income	Percentage Levy
€1 to €1,000,000	B %
€1,000,001 to €10,000,000	(B-0.25) %
€10,000,001 to €20,000,000	(B-0.50) %
€20,000,001 to €45,000,000	(B-0.75) %
€45,000,001 and above	(B-1.75) %

Section 71 contractors

As with the current BAI levy, qualifying income would exclude any income arising from Section 71 contracts. It is proposed that Coimisiún na Meán will waive the fees currently charged under these contracts and replace them with a fixed levy equivalent to the fee. This would result in no change in the amounts paid by Section 71 contractors in 2024 and would ensure that these amounts were used to reduce the amount to be levied on other TV and sound broadcasters, rather than benefiting levy payers in other categories. This approach reflects differences between Section 71 contractors and other TV and sound broadcasters from the perspective of regulatory continuity and in the way Coimisiún na Meán's functions are exercised. The proposed levy would be introduced in a manner consistent with the provisions of Section 71 of the Act.

Proposed Levy Approach for Radio/Sound Broadcasters

Coimisiún na Meán's preliminary view is that it should maintain the existing levy structure for sound broadcasters in the 2024 levy order.

As required by the Act, no levy would be charged to community broadcasters or in respect of income arising from community broadcasting services.

The reasons are the same as for TV broadcasters.

The proposed levy model would be cost reflective and proportionate in nature, i.e., be designed to ensure full recovery of, and be proportionate to, the expenses properly incurred, and the working capital required in relation to radio/sound broadcasters by Coimisiún na Meán to undertake its regulatory functions during the period for which the levy is raised.

The sound broadcaster levy model would also have a sliding scale element, whereby the levy amount paid (expressed as a percentage of the total qualifying income) falls as the value of qualifying income rises. These bands would be calculated based on the same approach as presented above in respect of TV broadcasters but would likely have different levy percentages due to the different costs of regulation and the different qualifying income in the segment as a whole.

Levy Percentage by Qualifying Income (Radio/Sound Broadcasters)	
Base Year Qualifying Income	Percentage Levy
€1 to €1,000,000	C %
€1,000,001 to €10,000,000	(C-0.25) %
€10,000,001 to €20,000,000	(C-0.50) %
€20,000,001 to €45,000,000	(C-0.75) %
€45,000,001 and above	(C-1.75) %

Proposed Levy Approach for Video-on-Demand Providers

Coimisiún na Meán’s preliminary view is that, for 2024, the VOD levy should be charged to providers of registered audiovisual on-demand media services, and that it should be a fixed percentage of qualifying income, i.e., without the sliding scale approach of the TV and radio/sound broadcasting levies.

There are several reasons for this view, including regulatory continuity, predictability, simplicity, and recognition of differences in scale and funding of providers.

Coimisiún na Meán considers that there are finely balanced arguments for and against the proposition that a banded approach would better reflect proportionality to Coimisiún na Meán’s costs than charging the same percentage of qualifying income to all VOD providers. Unlike for TV and sound broadcasters, there are no regulatory continuity reasons supporting the adoption of a banded approach, and Coimisiún na Meán’s preliminary view is that a banded approach would introduce complexity and unpredictability in a sector which has not previously been levied. Coimisiún na Meán will give further consideration to this issue when consulting on the model for 2025 and beyond.

As with the TV and radio/sound broadcasting segments, the proposed levy model would be cost reflective and proportionate in nature, i.e., be designed to ensure full recovery of, and be proportionate to, the expenses properly incurred, and the working capital required in relation to VOD providers by Coimisiún na Meán to undertake its regulatory functions during the period for which the levy is raised.

The computation of the proposed levy for VOD providers would also have full regard to the qualifying incomes of public service broadcasters and broadcasting contractors required to pay the levy as well to the operating costs of the Commission for the relevant period. The levy percentage (D) would be calculated based on the estimated costs of regulation of the segment and the qualifying income of the segment as a whole. This formula would be as follows:

$$D = \frac{\text{Estimated costs of regulation of segment}}{\text{Qualifying income of segment}}$$

Proposed Levy Approach for providers of designated online services

For 2024, Coimisiún na Meán’s preliminary view is that the levy for providers of designated online services, including VSPs, should be based on monthly active users.

Coimisiún na Meán’s preliminary view is that for 2024, the levy should be a fixed amount for each monthly active user rather than introducing any banding or coefficients.

The monthly average user metric is already required to be published every six months in accordance with Digital Services Act and is the basis on which the European Commission charges its supervisory fee for Very Large Online Platforms and Search Engines.

The reasons for Coimisiún na Meán’s preliminary view are simplicity, predictability, and recognition of differences in scale and funding of providers. As all designated online services for 2024 will be video-sharing platform services, and in the absence of any prior experience of regulating them, there is currently no objective basis for differentiating amongst designated online service providers on the basis of other factors affecting the exercise of Coimisiún na Meán’s functions.

As with other segments, the proposed levy model would be cost reflective and proportionate in nature, i.e., be designed to ensure full recovery of, and be proportionate to, the expenses properly incurred, and the working capital required in relation to designated online services by Coimisiún na Meán to undertake its regulatory functions during the period for which the levy is raised.

It is proposed that the levy would be based on a per user basis, with the charge per user for each service (E) calculated based on the estimated costs of regulation of the segment and the total number of service users across the segment as a whole. This formula would be:

$$E = \frac{\textit{Estimated costs of regulation of segment}}{\textit{Sum of service users across segment}}$$

Other Considerations

Geographical scope of metrics

Coimisiún na Meán's preliminary view is that qualifying income and monthly active user metrics should be EU-wide, on the basis that Coimisiún na Meán's functions derive from the Audiovisual Media Services Directive. Also, pursuant to the country-of-origin principle, Coimisiún na Meán regulates services received everywhere in the EU.

Time period of metrics

Coimisiún na Meán's preliminary view is that metrics should be based on actual amounts known at the beginning of the levy period, rather than on estimates that require a later reconciliation.

Thus, the preliminary view is that the levy for 2024 for TV broadcasters, sound broadcasters and VOD providers should be based on audited qualifying income for 2022, and that the levy for designated online services should be based on the monthly average customer numbers published on 17 August 2023.

The main reason for this is administrative simplicity. Coimisiún na Meán notes that this approach might encourage new and innovative services by reducing the levy payable during the growth phase.

In accordance with the Act, the costs to be recovered through levies will be based on forecasts for 2024. If the levy collected exceeds the actual costs, the Act provides for refunds or for the surplus to be offset against future levy obligations.

Providers of multiple services

Coimisiún na Meán's preliminary view is that the levy should be charged on a per-service basis so that each service within a segment attracts the same levy, irrespective of its ownership. This provides regulatory continuity for broadcast services (except that a provider of both radio and TV broadcast services would now be levied separately for TV and radio services as required by the Act).

For designated service providers, this mirrors the approach taken by the European Commission in calculating the supervisory fee for Very Large Online Platforms and Search Engines.

For VOD providers, the issue is not relevant, as the levy would be calculated as a fixed percentage of qualifying income, so it will make no difference to the total levy payable if qualifying income is assessed on a per-service or on an aggregate basis.

De minimis exemption

Coimisiún na Meán's preliminary view is that any designated services with a turnover of less than €500,000 should be exempt from paying a levy.

This is a change from the past arrangements under which providers with turnover of less than €500,000 had to pay a levy of €750.

This is for reasons of administrative simplicity and to promote new and innovative services.

Consultation

Coimisiún na Meán would welcome input on whether you agree with Coimisiún na Meán's preliminary views on the approach to be taken to the levy model for 2024.

If you disagree with any aspect of Coimisiún na Meán's preliminary views, please clearly outline the reasons for any such disagreement, having regard to the criteria set out in this consultation paper and any other considerations you consider relevant.

How to Respond

Written submission can be sent to LevyConsultation@cnam.ie or to Rong Jin, Levy Consultation, Coimisiún na Meán, 2-5 Warrington Place, Dublin D02 XP29.

Next Steps

Coimisiún na Meán will consider responses and will make a levy order before the end of 2023.

While all submissions will be considered in full, ultimately, it is a matter for Coimisiún na Meán to decide upon the appropriate levy model to be implemented.

Timeframe for Responses

All responses to this public consultation must be submitted to the Commission by 31 October 2023.

If you require any assistance with making the response, please contact the Commission by email LevyConsultation@cnam.ie or by phone on 01 644 1200.

Use of Information

Personal data

The Commission shall comply with its obligations under the General Data Protection Regulation ("GDPR"), Data Protection Act 2018 and any other applicable data privacy laws and regulations. The Commission is obligated and committed to protecting all personal data submitted. The Commission has an appointed Data Protection Officer who is registered with the Data Protection Commission. Respondents can find out more on how the Commission processes personal information in the Commission's published policy at: <https://www.bai.ie/en/about-us/data-protection-policy/>

For this process, the Commission will collect the name, email address and any other personal information that is included in your response. The name of the respondent to the consultation and the response provided will be made publicly available. However, the Commission will not make publicly available your contact details, such as your address, phone number or email.

The information collected will be used only for the purposes of this consultation and for no other purpose. Please clearly mark any information that you consider to be confidential in your response.

Confidential information

It is the Commission's intention to publish submissions received in response to this consultation. Please provide your response as a non-confidential document, with confidential information contained in a separate annex or submit a redacted non-confidential version together with your response.

The Commission will treat confidential information in line with its Consultation Guidelines published on 28 June 2023.

Freedom of Information

Information held by the Commission is subject to its obligations under law, including under the Freedom of Information Act 2014. The Commission will consult you about information you mark as confidential before making a decision on any Freedom of Information request received.