



Coimisiún
na Meán

Article 21 Out-of-Court Dispute Settlement

Guidance Document

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Table of Contents

Introduction	3
Guide	4
Application Instructions	5
Appendix 1 - Schedule of Documentary Evidence	6
Appendix 2 – List of Areas of Illegal Content	8



Introduction

Article 21 of the Digital Services Act (“**DSA**”) mandates the entitlement of recipients of a service (“**recipient**” or “**user**”) including individuals and entities to select any certified out-of-court dispute settlement (“**ODS**”) body to resolve disputes relating to content moderation decisions of online platforms and also complaints that have not been resolved by means of the internal complaint-handling system of an online platform.

Article 20(1) specifies the decisions of the online platform that can be referred to an ODS body.

- (a), decisions whether or not to remove or disable access to or restrict visibility of the information;
- (b), decisions whether or not to suspend or terminate the provision of the service, in whole or in part, to the recipients;
- (c), decisions whether or not to suspend or terminate the recipients’ account;
- (d), decisions whether or not to suspend, terminate or otherwise restrict the ability to monetise information provided by the recipients.

Recipients can avail of the ODS procedure at any stage in the process even where they did not initiate an internal appeal or did initiate it, but it is still pending (Article 21(1)).¹ Article 21 does not specify a time limit to initiate the ODS procedure.

ODS bodies must be certified by the Digital Services Coordinator (“**DSC**”) of the Member State where the bodies are established, and this certification should be valid in all Member States. In order to be certified, applicant bodies must demonstrate they satisfy the conditions in Article 21(3) of the DSA (hereinafter referred to as the “**Certification Conditions**”). The application process is subject to the relevant rules and procedures of the DSC which may be in place.

The Certification Conditions require the ODS body to demonstrate that:

- (a) *it is impartial and independent, including financially independent, of providers of online platforms and of recipients of the service provided by providers of online platforms, including of individuals or entities that have submitted notices;*²
- (b) *it has the necessary expertise in relation to the issues arising in one or more particular areas of illegal content, or in relation to the application and enforcement of terms and conditions of one or more types of online platform, allowing the body to contribute effectively to the settlement of a dispute;*
- (c) *its members are remunerated in a way that is not linked to the outcome of the procedure;*
- (d) *the ODS that it offers is easily accessible, through electronic communications technology and provides for the possibility to initiate the dispute settlement and to submit the requisite supporting documents online;*
- (e) *it is capable of settling disputes in a swift, efficient and cost-effective manner and in at least one of the official languages of the institutions of the Union;*
- (f) *the ODS that it offers takes place in accordance with clear and fair rules of procedure that are easily and publicly accessible, and that comply with applicable law, including this Article.*

¹ Per recital 59: “Recipients of the service should be able to choose between the internal complaint mechanism, an out-of-court dispute settlement and the possibility to initiate, at any stage, judicial proceedings.”

² Recital 59 of the DSA specifies that bodies seeking certification *and* the natural persons they use to make decisions (“decision-makers”) must be independent and impartial.



The right of access to the certified ODS body is without prejudice to the user's right to take legal action in the courts. Article 21 is also without prejudice to Directive 2013/11/EU³ and alternative dispute resolution procedures and bodies for consumers established under that Directive.

Guide

Coimisiún na Meán has developed this Guide, which includes an application form, to inform interested bodies of its assessment and decision-making process to determine whether a body meets the Certification Conditions set out in Article 21(3). The Guide supports evidence-based, transparent, consistent, and proportionate decision-making by Coimisiún na Meán in the exercise of its statutory functions.

The aim of the Guide is to help applicant ODS bodies (hereinafter referred to as “**you**”) to understand what is required of your ODS body for both the certification process and your ongoing obligations with which you must continue to comply as a certified ODS body under Article 21.

The Guide is informed by Irish and European legislation, consultation, data-gathering, and independent research. The Guide is not a substitute for any statutory provision(s) and does not constitute legal advice. You are advised to obtain your own independent legal advice on the relevant statutory provisions. This guide will be reviewed periodically, and any changes will be published on the Coimisiún na Meán website.

The Guide divides the Certification Conditions into five sections as follows: (1) General Information; (2) Impartiality and Independence; (3) Expertise; (4) Efficiency, Access & Transparency; and (5) Fairness (Decision-Making and Rules of Procedure).

Section (1) identifies the **information** we need from you to process and consider your application, such as the ODS body's name, official address and, the areas of expertise and the period for which you are applying to be certified.

Section (2) requests information in relation to your ODS body, its organisational structure, its **impartiality and independence** and its **financial independence**. These matters are relevant to Coimisiún na Meán's assessment of the certification conditions set out in Article 21(3)(a) and (c).

Section (3) focuses on the **expertise** of your ODS body and the persons who will be charged with resolving disputes and how you will ensure that this expertise is maintained and enhanced over the period of certification. These matters are relevant to Coimisiún na Meán's assessment of the certification conditions set out in Article 21(3)(b) and (e).

Section (4) focuses on your proposed **dispute settlement procedure** and **fee model** as well as the **technologies** you will employ to settle disputes for example case management systems. This section also seeks confirmations in relation to your reporting obligations. These matters are relevant to Coimisiún na Meán's assessment of the certification conditions set out in Article 21(3)(d), (e) and Article 21(5).

Section (5) focuses on your **decision-making framework** and your **Rules of Procedure** and how you will ensure the framework, rules and procedures are clear, fair, easily and publicly accessible and comply with applicable law in accordance with the certification conditions set out in Article 21(3)(f).

³ Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32013L0011>

The **Appendix** provides a **Schedule of Documentary Evidence** that must (where applicable) be submitted with the completed application form.

The application form at page 7 contains a list of **questions** under each section that you must respond to. For each section, we also provide **guidance** to help you understand why we are asking these questions. In the *Appendix* to this Guide, we provide a **Schedule of Documentary Evidence** that identifies records and documents that you are requested to submit to meet the conditions and/or to verify the information and representations you have provided in your application.

You are responsible for demonstrating that your ODS body satisfies the Certification Conditions and you must submit all of the information and the documentary evidence specified in this Guide and/or as may be requested at a later stage by Coimisiún na Meán. It is important that you ensure full and accurate information is provided to all of the questions to avoid any delays to the application process.

Coimisiún na Meán will have regard to the information submitted and also information available to it from its own independent information-gathering and research that may be relevant to its verification of the information submitted by you at this application stage and to its **continuous assessment** of the Certification Conditions. It should be noted that, in circumstances where it is established following an investigation that a body no longer meets the Certification Conditions, Coimisiún na Meán is required to revoke the certification.

Completed applications or any queries or requests for clarification in relation to the contents of this Guide should be directed to outofcourtapplications@cnam.ie.

Please note that this mailbox supports a maximum file size of **50MB**. If your file exceeds this limit or if you are having difficulties sending a file, please contact the Regulatory Operations team at the email address specified above.

Application Instructions

- **Completed application:** Please ensure you provide **full and accurate** information to all of the questions asked and include any **documentary evidence** referenced in the appended Schedule.
- **Additional Information:** Coimisiún na Meán may also require additional information and/or other documentary evidence following its review of your application in order to assess whether you meet the requirements to be certified. In addition to the documentary evidence specified you can submit any other information that provides context to the information being supplied or supports the answers provided.
- **Declaration:** Your application should include a Declaration signed by Chief Executive Officer or equivalent, certifying that the information contained in the application form and documentary evidence is true and correct to the best of that person's knowledge and belief.
- **Changes:** You must notify in writing, without undue delay, any events or changes to your circumstances which in any way relate to, or are connected with, the information and/or confirmations you have provided in your initial application and relied upon by Coimisiún na Meán in assessing your compliance with the Certification Conditions. **Note:** this is an ongoing obligation throughout the period of certification.
- **Decision:** Coimisiún na Meán shall endeavour, within three months of receipt of all information that enables Coimisiún na Meán to process the application, to communicate in writing its approval of, or its refusal to approve, certification. The timeframe indicated is based on Coimisiún na Meán receiving a complete application with all of the requisite information and supporting evidence to make its



determination on certification. Coimisiún na Meán will provide you with a statement of reasons as to why your application for certification was approved or refused.

- **Publication:** The decision to certify a body and the certificate issued by Coimisiún na Meán will be published on its website. Coimisiún na Meán is required to notify to the European Commission of the ODS bodies it has certified in accordance with Article 21(3). The European Commission will also publish a list of certified bodies on its website.
- **Confidential and Commercially Sensitive Information:** Any information you consider to be confidential and/or commercially sensitive must be included in a Confidential Appendix and clearly cross-referenced to the relevant sections of this Guide. The reasons why you consider the information to be confidential should be clearly set out.
- **Freedom of Information:** Records held by Coimisiún na Meán may be requested by persons under the Freedom of Information Act 2014 (“FOI Act”). The provisions of the FOI Act exempt certain records containing commercially sensitive and other confidential information from publication. Coimisiún na Meán will consult with you in respect of any request received prior to making a decision under the FOI Act.
- **Personal Data:** Coimisiún na Meán is obligated and committed to protecting all personal data submitted in accordance with its obligations under the General Data Protection Regulation, the Data Protection Act 2018 and any other applicable data and privacy laws and regulations. Coimisiún na Meán’s published policy is at: [Coimisiún na Meán | Data Protection \(cnam.ie\)](https://www.cnam.ie) In this notice, Coimisiún na Meán has requested the name and contact details including email addresses of specified persons. The information collected will be used only for the purposes stated herein.

Appendix 1 - Schedule of Documentary Evidence

Section (1): GENERAL INFORMATION

Provide the ODS body’s **founding legal documents** or, if you are a public body, a link to and an outline of the relevant provisions of law that establish the ODS body and determine its objectives.

Provide the following documentation and information:

- *The ODS body’s certificate of incorporation.*
- *The ODS body’s Constitution.*
- *Company registration office details.*

Section (2): IMPARTIALITY AND INDEPENDENCE

2.1 Impartiality and Independence and of Case Decision-Makers

- *Copies of policies or other documents to ensure case decision-makers you appoint are independent from online platforms and their recipients and will make decisions impartially.*
- *Copies of rules or procedures on the terms of office of case decision-makers, their appointment and termination of their appointment that ensure they can function independently and approach decision-making in an impartial and objective manner for the duration of their appointment.*
- *Template contract of employment or service agreement for case decision-makers.*



2.2 Organisational Independence

Provide the following documentation and information:

- *A copy of the Share Register / Commercial Register.*
- *Shareholders' Agreements.*
- *Partnership Agreements.*
- *Illustration, in diagrammatic form, of the corporate group structure, in the case of a group of companies.*
- *A list of the directors of the Board and whether any directors sit in a representative capacity for a shareholder in the body.*
- *Rules on conflicts of interest for directors, employees and case decision-makers.*

2.3 Financial Independence

Provide the following documentation and information:

- *Affidavit⁴ of a director or equivalent position verifying the sources of funding and that no conditions are attached to funding arrangements that would impact on the independence of the bodies or the impartiality of its decision making.*
- *Letters of financial commitment from third parties (where applicable).*
- *Audited financial statements for the preceding financial year.*
- *Annual budgets and profit and loss statements with notes on anticipated sources of income (including the identity of the funders) for the first 2 years of operation.*
- *Copies of agreements between the body and external funders.*
- *Copies of the body's policies, procedure or other controls in relation to external funding.*

Section (3): EXPERTISE

3.1 Expertise of Body and Case Decision-Makers

Provide the following documentation and information:

- *Biographies or curricula vitae of identified panel members/case decision makers.*
- *Details of training courses provided or required of case decision-makers.*

Section (4): EFFICIENCY, ACCESSIBILITY & TRANSPARENCY

4.1 Dispute Settlement Procedure:

Provide the following documentation and information:

- *A list of costs that will be covered by the fees charged.*
- *A list of qualifying and non-qualifying expenses that online platforms will be required to reimburse where a decision is made in favour of the recipient of the service.*

Section (5): FAIRNESS (Rules of Procedure)

⁴ Sworn statement



Provide the following documentation:

- *A copy of the body's Rules of Procedure.*

Appendix 2 – List of Areas of Illegal Content

This list of areas of illegal content has been developed by a subgroup of Digital Services Coordinators in contact with the European Commission to assist in the development of harmonised approaches to the implementation of the DSA.

The list is not exhaustive and is indicative only. The list reflects potential areas of illegal content across the Member States which may constitute areas of expertise for applicant bodies.

- **Animal offenses**
 - Animal harm
 - Unlawful sale of animals and/or wildlife smuggling
 - Other
- **Data protection and privacy violations**
 - Biometric data breach
 - Missing processing ground for data
 - Infringements to the right to be forgotten
 - Data falsification
 - Other GDPR data breaches
 - Other
- **Illegal speech⁵**
 - Defamation
 - Discrimination
 - Hate speech
 - Threats of violence (such as death threats)
 - Holocaust Denial
 - Other
- **Intellectual property and other commercial rights infringements**
 - Copyright infringement
 - Design infringement
 - Sports events rights infringements
 - Geographical indications infringements
 - Patent infringement
 - Trade secret infringement
 - Trademark infringement
 - Counterfeit products
 - Other
- **Negative effects on civic discourse or elections**
 - Foreign information manipulation and interference
 - Information manipulation aimed at affecting sincerity/outcome of elections
 - Other

⁵ Including all types of public hate speech, regardless of both medium and content (i.e images, videos, texts, public addresses, etc.).



- **Non-consensual behaviour**
 - Non-consensual image sharing
 - Non-consensual items containing deepfake or similar technology using a third party's features
 - Doxing (publicly providing personally identifiable information about an individual)
 - Other
- **Online bullying/intimidation**
 - Stalking
 - Sexual harassment
 - Other
- **Pornography or sexualized content**
 - Image-based sexual abuse (excluding content depicting minors)
 - Rape and other sexual-based violence (depiction of rape and incitement to rape)
 - Other
- **Offense to minors**
 - Failure to implement age-specific restrictions concerning minors
 - Child pornography/Child sexual abuse material
 - Grooming/sexual enticement of minors
 - Unsafe challenges
 - Other
- **Risk for public security**
 - Provocation or incitement to commit an offense dangerous to public safety.
 - Illegal organizations
 - Risk for environmental damage
 - Risk for public health
 - Terrorist content
 - Other
- **Scams and/or fraud**
 - Inauthentic accounts
 - Inauthentic listings
 - Inauthentic user reviews
 - Impersonation or account hijacking
 - Phishing
 - Pyramid schemes
 - Other
- **Incitement to self-harm**
 - Content promoting eating disorders
 - Incitement to self-mutilation
 - Incitement to suicide
 - Other
- **Illegal scope of access to the platform/content**
 - Failure to implement age-specific restrictions other than those concerning minors
 - Illegal geographical requirements
 - Failure to comply with language requirements
 - Other discriminatory access restrictions
 - Other
- **Unsafe and/or illegal products**
 - Insufficient information on traders
 - Illegal offer of regulated goods and services (eg. health)
 - Sale of non-compliant products (eg. dangerous toys)
 - Illegal drugs and weapons trafficking
 - Illegal practices under consumer protection law
 - Malware and ransomware

- Other
- **Violence**
 - Coordinated harm
 - Gender-based violence
 - Human exploitation
 - Human trafficking
 - Other

