

---

## **Response to Consultation**

Response to 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.

---

**Publication date: 21 December 2023**

# Contents

<b>Introduction and Background</b> .....	1
<b>Purpose and Summary of Consultation</b> .....	1
<b>Overview of Main Issues Raised in Response to Consultation</b> .....	2
<b>Next Steps</b> .....	5

## Introduction and Background

Pursuant to Section 21 of the Broadcasting and Other Media Regulation Acts 2009 and 2022 ('the Act'), Coimisiún na Meán has the power to impose a levy order on:

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

In 2024, Coimisiún na Meán will receive exchequer funding in the form of a grant from the Department of Enterprise, Trade and Employment and the Department of Justice. These grants 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 Media 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 insofar 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 and Summary of Consultation

Coimisiún na Meán's consultation on the proposed Levy Order in respect of the levy period from 1 January to 31 December 2024 was published on 2 October 2023, with responses requested by 31 October 2023. The deadline was subsequently extended to 1 November 2023. The consultation invited comments on Coimisiún na Meán's proposals for a levy order in respect of the levy period from 1 January to 31 December 2024.

The consultation document noted that 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 while calculating the 2024 levy may be of use in determining the longer-term approach to the levy. Coimisiún na Meán also indicated that it would consult again during 2024 before making a levy order for 2025 and subsequent periods.

A total of ten responses were submitted, by the following entities:

- Apple
- Clare FM / Tipp FM
- Independent Broadcasters of Ireland
- Meta
- RTÉ
- Technology Ireland
- TG4
- TikTok
- Tumblr
- Virgin Media

A copy of each submission is appended to the end of this document.

## **Overview of Main Issues Raised in Response to Consultation**

This Response to Consultation document provides a summary of the main issues raised in these submissions. The main issues identified by respondents can be summarised under the following headings:

- Metrics used for the TV broadcasting levy.
- Metrics used for the designated online services levy.
- Providers being subject to multiple levies.
- The appropriate level for the turnover exemption.
- A possible cap on levies payable by a single service provider.
- The information provided by Coimisiún na Meán.

### **Metrics Used for TV Broadcasting Levy**

#### *Comments from respondents*

TG4 proposed that the levy for TV broadcasters should be based on user numbers rather than revenues or qualifying income. TG4's rationale for this proposal is that a TV broadcaster with a small audience relative to its qualifying income is likely to be less costly to regulate. TG4 also drew attention to the difference in proposed approach between the proposed broadcasting and Video on Demand (VOD) levies (which are based on qualifying income), and the proposed designated online services levy (which is based on user numbers).

#### *Coimisiún na Meán consideration and final position*

Coimisiún na Meán considers that while the benefits of regulation primarily accrue to users, every regulated entity in a sector derives benefit from a level regulatory playing field, hence it is equitable to base apportionment on a metric that reflects ability to pay, without attempting to adjust this for differences in the cost of regulatory activities that relate to specific entities.

In addition, audience numbers are not a particularly good proxy for the cost of regulation of entities – for instance there are different activities that relate to public service broadcasters as compared to licensed broadcasters that are not affected by audience numbers.

Coimisiún na Meán notes that the user numbers were proposed as the metric for designated online services because this was a simple approach where data was readily available and that an approach based on defining and isolating appropriate revenues for video-sharing platforms would be challenging to implement in a short period. However, the metrics used for all levy models will be reassessed for the 2025 levy period and beyond, as more data becomes available.

Coimisiún na Meán has therefore decided to maintain the approach proposed in the consultation of basing the TV broadcasting levy on qualifying income as in previous years. This is based on the rationale that all entities in a regulated sector should contribute towards the overall costs of regulation of that sector and that the cost apportionment should reflect ability to pay.

### **Metrics Used for Designated Online Services Levy**

#### *Comments from respondents*

Technology Ireland and Meta proposed that the number of users interacting with videos should be used as the metric for calculating the levy payable by providers of designated online services, rather than AMARs (average monthly active recipients). The main rationale was that in 2024 all the designated online services will be video-sharing platform services (VSPS). Some platforms have video-sharing as their principal purpose, whereas for others it is an essential functionality of a broader service. These latter platforms may have many users whose usage does not involve video-sharing and it would be fairer to base the levy calculation on the number of users who use the functionality which led to the designation.

In addition, respondents pointed out that different platforms may not have used a consistent methodology for calculating AMARs and that some smaller platforms had not published precise AMARs as required by the Digital Services Act (DSA), merely stating that they fell below the threshold for designation as Very Large Online Platform under the DSA.

It was also suggested that a metric should be adopted that reflects the relative risk posed by each platform taking account of the nature of its users and differences in service positioning.

After the consultation period had ended, one platform informed us that the European Commission intended to change the way they use AMARs in calculating the administrative fee under the DSA in a way that would reduce the fees paid by the largest platforms and suggested that Coimisiún na Meán should follow the same approach.

#### *Coimisiún na Meán consideration and final position*

Coimisiún na Meán considers that there is some force in the proposal that the metric used to calculate the levy should be based on the number of users engaging with video rather than on total AMARs for the service. However, it would be unlikely that this data could be obtained in a consistent fashion in time for the calculation of the 2024 levy. Responses to statutory information notices issued in the context of VSPS designations indicate that different platforms use different definitions such as whether a video has appeared in a user's feed, whether it has been watched for a minimum length of time, or what percentage of a video was visible on the user's screen. In addition, Coimisiún na Meán notes that the video-sharing functionality is available to all users of a designated service even those who do not use it in any month.

Coimisiún na Meán does not consider that it would be practical to assess the risk posed by individual services based on the nature of their service or user base. In any case, as with the TV broadcasting levy, Coimisiún na Meán considers that, while the benefits of regulation primarily accrue to users, every regulated entity in a segment derives benefit from a level regulatory playing field, and hence it is equitable to base apportionment on a metric that reflects ability to pay, without attempting to adjust this for differences in the cost of regulatory activities that relate to specific entities.

In the consultation, Coimisiún na Meán considered whether to introduce a banding scheme for the calculation of the designated online service levy for 2024. It was determined that there was insufficient evidence to enable it to introduce a robust banding scheme in 2024 and that it would consider the issue again when considering the levy model for 2025. This reconsideration will consider data obtained during 2024, as well as any changes to the European Commission's approach to setting the DSA administration fee. There may also be changes to Irish legislation expanding the scope of Coimisiún na Meán's platform supervision functions that are to be funded by levy.

Coimisiún na Meán has therefore decided to maintain its proposal that the levy for 2024 should be proportional to the most recently published AMARs. Designated online services that have not published precise AMARs will be requested to provide precise figures for the preceding 6 month period prior to the levy being calculated. N

### **Providers subject to multiple levies**

#### *Comments from respondents*

Several respondents expressed concern that they might be subject to multiple levies from Coimisiún na Meán under Section 21 of the Broadcasting Act, as well having to pay European works levies imposed in multiple jurisdictions across the EU. They queried whether this might amount to double taxation.

#### *Coimisiún na Meán consideration and final position*

None of the levy-funded costs incurred by Coimisiún na Meán will be included in the calculation of multiple levies. Coimisiún na Meán will apportion its costs amongst its functions related to TV broadcasting, VOD, sound broadcasting, designated online services and functions that will not be funded by levies in 2024 such as its role as Digital Services Coordinator, as a competent authority under the Terrorism Content Online Regulation and

in administering the Media Fund. There will be no double-recovery of the same costs included in more than one levy calculation.

European Works levies are collected for a different purpose. None of the Coimisiún na Meán levies imposed under Section 21 of the Broadcasting Act will be used for these purposes.

Coimisiún na Meán acknowledges that entities that fall into more than one of the categories of levy payers will need to pay multiple levies, but this merely reflects that their activities may fall within the scope of more than one of Coimisiún na Meán's functions, which are considerable wider than those of its predecessor organisation.

Coimisiún na Meán also notes that the definition of qualifying income will involve entities who provide more than one of TV broadcasting, sound broadcasting and VOD services apportioning their income amongst those services, so that no part of their income will be subject to more than one levy.

Coimisiún na Meán, therefore, does not consider that its proposals amount to double taxation, and it will not be adjusting the proposals for 2024 to take account of the fact that some entities may be paying multiple levies.

However, as stated in the consultation, Coimisiún na Meán will consider, for 2025 and beyond, whether to combine the TV broadcasting and VOD levies. This will involve consideration of the benefits and drawbacks of a model that involves apportioning both Coimisiún na Meán costs and provider income between these two services.

## **Raising the turnover de minimis exemption and introducing a cap on levy payments**

### *Comments from respondents*

Some smaller sound broadcasters indicated that they felt that the turnover exemption should be raised to encourage innovation and reduce the burden on smaller providers.

Conversely, some larger providers proposed there should be a cap on levy amounts payable in order to limit the possible payments of an individual service provider.

### *Coimisiún na Meán consideration and final position*

The de minimis exemption aims to maintain simplicity and to encourage innovation by very small providers. Raising the threshold would result in larger providers having to pay more.

Conversely, Coimisiún na Meán notes that implementing a cap on levies could have a negative impact on smaller providers, as they will then have to pay a higher amount to make up for the lower amount paid by any larger providers that reach the cap.

Coimisiún na Meán notes that basing the sound broadcasting levy on qualifying income relates the amount paid by each provider to its ability to pay.

Coimisiún na Meán acknowledges that the profitability of smaller sound broadcasters may be lower in relation to their income than for larger broadcasters and that the impact of the levy on smaller broadcasters should be considered further in the context of the levy order for 2025 and beyond.

Similarly, the merits of measures to ameliorate the impact of the levy on the largest providers will be considered in future levy orders.

However, for reasons of continuity and simplicity, Coimisiún na Meán will maintain the approach proposed in the consultation. Coimisiún na Meán will take particular care to ensure that the apportionment of its costs to sound broadcasting functions does not result in any over-recovery of costs from this segment.

Coimisiún na Meán also notes that it can support the sound broadcasting sector in other ways, such as through Sound & Vision funding.

## **Information provided by Coimisiún na Meán**

### *Comments from respondents*

Several respondents asked for more clarity around the potential levy amounts and costs of regulating each segment. These requests included asking for specific levy amounts payable for each entity. Additional clarity on the income streams that would be levied was also requested.

### *Coimisiún na Meán consideration and final position*

Coimisiún na Meán considers this to be a reasonable request. Coimisiún na Meán notes that Section 26 of the Broadcasting Act 2009 requires it to publish both estimates of income and expenditure and its audited accounts on its website.

Coimisiún na Meán intends that its estimates of income and expenditure and its accounts should provide transparency about how its costs are apportioned amongst the different sources of funding, including the different levies.

Coimisiún na Meán acknowledges that it would have been desirable if more detail about potential levy rates and amounts to be paid could have been provided during this consultation process. The levy rates will be calculated in line with the Levy Order on receipt of data pursuant to an information request which will be issued in January 2024.

Coimisiún na Meán will publish its 2024 budget and allocation between funding streams in early January 2024.

## **Next Steps**

Coimisiún na Meán will lay a Levy Order before the Houses of the Oireachtas before the end of 2023 which will be effective from 1 January 2024.

Guidelines of the operationalisation of the 2024 Levy Order will be issued to all relevant parties in early January 2024.

Information will be sought from levy payers during January 2024 to enable the amounts payable by each levy payer for the 2024 levy period to be calculated. The total charge will be invoiced in two tranches of equal amounts. The first of these will be issued at the start of March 2024; and the second will be issued at the start of August 2024 with payments due within 30 calendar days of date of invoice.

**List of submissions:**

- Apple
- Clare FM / Tipp FM
- Independent Broadcasters of Ireland
- Meta
- RTÉ
- Technology Ireland
- TG4
- TikTok
- Tumblr
- Virgin Media



## Comments to consultation on the proposed Levy Order

We fully support the need that Coimisiún na Meán be sufficiently resourced to ensure that it can effectively exercise its responsibility of supervising audiovisual on-demand media services under its jurisdiction. We also welcome the approach taken in the consultation document that any future levy be based on the principles of a) predictability, b) simplicity and cost effectiveness in administration, c) proportionality to the costs, and d) regulatory continuity. We therefore ask to consider the following points as you finalise the Levy Order.

- We understand that levy income will be required to fund Coimisiún na Meán's functions in relation to audiovisual media services, sound broadcasting services and designated online services.
- We welcome the fact that a levy model should be cost reflective and proportionate, predictable and simple. We see benefits in either a fixed flat fee or fee based on a fixed percentage of revenue. Whilst a revenue independent flat fee provides more financial stability and predictability, a fee based on revenue allows for a higher level of proportionality.
- Whatever the model the Coimisiún chooses to pursue, it should take into account the following elements:
  - VOD services registered in Ireland, but that are offered in other EU markets are often subject to significant local film funding /financing obligations (either via a levy or direct investments). Whilst the Levy Order is aimed at financing the Coimisiún's regulatory oversight functions, it is important to reflect that these local film funding / financing obligations can have a significant impact on the cost of doing business and impact the ability of services to be profitable.
  - Therefore, we would respectfully suggest that, if the model is based on European revenues, then there must be some ability to offset the above mentioned local film funding obligations.
  - We would recommend that the proposed approach for VOD providers should be based on a flat fixed fee rather than linking it to the qualifying income, in order to take into account the various financial obligations impacting the local revenues.

- VOD services are subject to a different regulatory regime than traditional linear broadcasters and the general oversight burden for the Coimisiún should be a lot lighter. This should be reflected in the Levy Order.
- Whilst we welcome the general principle that the levy should be based on the cost of regulating the segment, we believe some additional granularity about the specificities and characteristic of the service should be taken into account.
- Furthermore, we note that there is an absence of any limit on the potential amount of levy payable under the proposed approach. In order to avoid any one service provider being required to pay a disproportionate fee, purely on the basis of revenue, the Coimisiún should consider a cap on the overall levy payable by a service provider.
- We welcome the fact that for VOD services, the methodology is not based on user numbers. In particular for VOD, user numbers are not considered a good representative proxy for revenue or profitability as it doesn't factor in any free trials or other promotional activities, especially for services that are still developing.

The document notes that 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 financing of a provider and the nature and scale of services provided.

We believe that the proposed levy structure does not give proper consideration to ‘the nature and scale of services provided by a provider’, particularly the significant public service provided by smaller local radio broadcasters. Nor does it correctly reflect ‘the financing of a provider’, with many smaller local radio stations currently operating at breakeven/ modest profit, expected to pay an unfair share of the levy. The payment of the levy under the proposed model will divert resources away from investment in broadcasting output and potentially move some stations to a loss-making situation. We believe that this situation can be easily addressed through a further adjustment to the de minimis exemption.

We welcome the change from the past arrangements under which providers with turnover of less than €500,000 had to pay a levy of €750 and Coimisiún na Meán’s preliminary view that any designated services with a turnover of less than €500,000 should be exempt from paying a levy. This, in reality, is only of benefit to Community Stations and is of no benefit to smaller independent local broadcasters. We suggest that this exemption be increased to €1.5m to ensure that a greater portion of the levy can be carried by those who can afford to pay it and to ensure that a levy is only payable, in general, where a station is broadly profitable. This will also ensure that the payment of the levy will have minimal consequences for station staffing or programming output.

This change will result in a levy model that is more equitable and predictable, yet simple and cost effective in administration.



## **Submission from Independent Broadcasters of Ireland to Coimisiún na Meán's Levy Consultation**

In Q4 2022, the Independent Broadcasters of Ireland (IBI), on behalf of its member stations, made representations to Minister Catherine Martin TD in relation to the Broadcasting Levy.

IBI argued that in the context of the financial pressures being experienced by the independent sector, as well as the fact that in 2023, designated online services and Video-on-Demand providers were not expected to pay any levy, the Minister should suspend the imposition of the Broadcasting Levy for 2023.

IBI pointed out that many stations were experiencing severe challenges in relation to the maintenance of their services and, in particular, maintaining the current level of news and current affairs programming.

An amendment was placed before the Dáil that the Minister would, within 180 days following the passage of the Act, lay before the Oireachtas a report on provision for reduction in the levy in recognition of public information services provided by independent radio services.

The importance of news and current affairs on independent radio and its important contribution to the Irish broadcasting landscape was recognised by the Minister, who said that *“local radio stations are the very essence of public service broadcasting”*.

However, the arguments for reduction or suspension of the levy were rejected by the Minister on the basis that it is an important principle that the regulated entities bear the costs of regulation.

The minister appeared sympathetic to the arguments being presented by IBI that the payment of a levy was challenging.

Addressing the concerns raised by IBI on behalf of our member stations, in the Debate in the final stages of the most recent broadcasting legislation, the Minister stated:

*“When the Executive Chair of Coimisiún na Meán is formally appointed, I will meet them, and I will ask them that they take these concerns into account when it comes to putting in place a new Broadcasting Levy under Coimisiún na Meán, which will take effect in 2024”*.

However, from an analysis of the consultation document related to the proposed Levy Order for the period from January 1, 2024, to December 31, 2024, it remains uncertain whether the Minister and the Executive Chair have had a meeting to address these concerns.

IBI respectfully requests that this process occur before finalizing any Levy Order for 2024.

Due to the continuing uncertain financial situation which our member stations are currently facing, in particular in relation to the delivery of public service broadcasting and News & Current Affairs, IBI requests that this process be undertaken prior to the imposition of a Levy Order in relation to independent radio stations being levied.



MPIL RESPONSE TO THE 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

31 October 2023

**FAO: Rong Jin (By email: LevyConsultation@cnam.ie)**

Dear Rong,

## **Introduction**

Meta Platforms Ireland Limited (**MPIL**) welcomes the opportunity to make submissions in response to Coimisiún na Meán's (the **Commission**) 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 (**Act**).

As explained in MPIL's responses to the Commission's Statutory Notices on 23 October 2023, we expect Facebook and Instagram to be designated as named Video Sharing Platform Services (**VSPS**) under the essential functionality criterion. As such, this response is focused on the proposed levy order applicable to VSPS.

## **Separate levies for different services segments**

We appreciate and agree with the Commission's general proposal to have separate levies addressing specific segments, i.e., TV broadcasters, Radio/Sound broadcasters, Video-On-Demand providers, and Designated online services, including VSPS.

## **Proposed Levy Approach for providers of designated online services**

In its consultation, the Commission emphasises the importance of predictability and proportionality when considering a levy order. Indeed, for all four of the proposed levies, the Commission emphasises that the proposed levy model would be "*proportionate to, the expenses properly incurred, and the*

*working capital required in relation to*” the relevant services. However, MPIL is concerned that the Commission’s current proposal does not take into consideration the different criteria upon which a service can be designated as a VSPS, which raises issues of substantive fairness, proportionality and legal certainty.

In particular, by using published DSA average monthly active recipients (**AMARs**) for all VSPS, the Commission would impose a disproportionate and discriminatory<sup>1</sup> financial burden on those VSPS designated on the basis of essential functionality (as opposed to principal purpose). This is because, for VSPS designated on the basis of essential functionality, those published AMARs capture engagement with all content on a platform and not just video content and so (in some cases vastly) overestimates the level of user engagement with video content on the platform, to which the Audiovisual Media Services (AVMS) Directive applies<sup>2</sup>. This approach, in turn, operates to the benefit of those VSPS designated on the basis of principle purpose by reducing the proportion of the Commission’s costs to which they must contribute via the levy.

A simple, proportionate and non-discriminatory solution to this issue would be to only include those users who actually engage with video content. Indeed, these metrics are clearly considered relevant to VSPS categorisation by the Commission, as they were requested in the Statutory Notices issued by the Commission relating to Instagram and Facebook on 15 September 2023 and, thus, should also be relevant to the levy calculation.

Finally, on a separate but related point, the Commission may already be aware that there have been widely diverging approaches to calculating AMARs under DSA, and the European Commission has yet to publish formal guidance under Article 33(3) DSA. The informal guidance published to date has not provided much additional clarity. In addition, many online platforms have not in fact published actual AMAR figures. This is something the Commission should also bear in mind when considering whether to proceed with the proposed methodology.

Notwithstanding this, as noted in responses to the Statutory Information Notices, to the extent that those numbers for the basis of any calculation, for the purpose of designating Facebook and Instagram as VSPS and calculating the proposed levy, and in the absence of a delegated act to introduce a new methodology, the published DSA AMARs for the Facebook and Instagram VLOPs should be used, subject to our comments above in relation to those users who actually engage with video content.

We thank the Commission for the opportunity to provide comments on the proposed levy order in respect of the levy period from 1 January 2024 to 31 December 2024, under the Act, and we hope that

---

<sup>1</sup> Bearing in mind that the EU principle of equal treatment requires that comparable situations must not be treated differently and that different situations must not be treated in the same way unless such treatment is objectively justified.

<sup>2</sup> In effect, the Commission would, in practice, be including aspects of a service which it is not entitled to regulate under the AVMS Directive. Per Recital 4 of the 2018 AVMS Directive, social media services should be regulated only “*to the extent that they meet the definition of a video-sharing platform service*”.

our comments will assist the Commission in carrying out its regulatory functions. We are available to discuss any aspect of the above with the Commission at any stage.

Yours sincerely,

**Meta Platforms Ireland Limited**

**RTÉ Submission Re VOD Levy**

Rong Jin  
Deputy Director of Finance  
Coimisiún na Meán

31 October 2023

***Re: Consultation Document / Levy Order***

Dear Rong,

I write on behalf of RTÉ in respect of Coimisiún na Meán's Consultation Document of 02 October 2023 regarding the Levy Order.

RTÉ acknowledges that the Coimisiún must put a Levy in place for 2024 but we also welcome the commitment for a fresh consultation on the Levy for 2025 and beyond.

To that end, RTÉ is agreeable to the VOD Levy approach for Video-on-Demand Providers for 2024 as proposed in the Consultation Document (Page 7).

However, as our return of 26 September 2023 indicated, there are issues to be addressed in how income is calculated, and this involves models of operation that pre-date the establishment of the Coimisiún.

Principally, these involve issues around the distinction between 'live' and on demand content access and issues around the licensing by RTÉ of its programme content to other providers to be made available within their own 'on-demand' environment.

As you will note, the RTÉ returns were based on 'composite' figures for income, precisely because we believe some elements of that income are not appropriate for inclusion in the Levy calculation.

RTÉ wishes to facilitate the Coimisiún in discharging its mandate but we also have concerns regarding the financial implications, given our current funding situation.

We would urge a conservative approach to calculating the Levy for 2024 pending a more granular examination of relevant income streams for the year 2025 and beyond.

RTÉ believes there are important issues here that need to be addressed in detail to provide clarity and certainty around those income streams which should count towards the Levy and those that should not.



In this respect the commitment in the Consultation Document for more detailed examination of how they Levy might operate from 2025 and beyond is very welcome, and RTÉ will engage constructively with that process.

Kind Regards



**BRIAN DOWLING**

Head of Editorial Standards and Compliance

Ceannasaí um Chaighdeáin Eagarthóireachta agus Comhlíonadh

Rong Jin,  
Levy Consultation,  
Coimisiún na Meán,  
2-5 Warrington Place,  
Dublin  
D02 XP29.

01 November 2023

**Re: Consultation on the proposed Levy Order in respect of the levy period from 1 January 2024 to 31 December 2024**

Dear Rong Jin,

Technology Ireland welcomes the opportunity to provide input to Coimisiún na Meán's consultation on the proposed levy order in respect of the levy period from 1 January 2024 to 31 December 2024.

Technology Ireland and its members understand that levy income will 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. We understand that this consultation and proposed levy order is focused on providers of these services and the suitability of user numbers in this certain model calculation.

We appreciate the consideration of Coimisiún na Meán in making the levy predictable, simple, and cost effective as well as proportional. Technology Ireland looks forward to inputting to any further consultations ahead of the levy order for 2025.

However, we do have concerns with certain aspects of the proposed approach outlined in the Consultation, which we outline below.

**Number of levies**

Our members have concerns as to how the levy order will be applied if you fall under two or more of the separate levies. Of primary concern to our members would be levy three, Video-On-Demand (VOD) providers and levy four, designated online services, including Video Sharing Platforms (VSPs) and how they will be applied if you fall into each category. Technology Ireland members would welcome any guidance that can be shared with our members ahead of the introduction of the levies on the 01 January.

## Levy Orders applicable to designated online services

Our members have the following concerns as to how the Levy Order will be applied to VSPs:

- We note the levy proposal, to base the methodology on monthly active user (MAU) figures, as are required to be published by the DSA every 6 months. Technology Ireland is conscious that different VSP providers may be taking different approaches to calculating their MAU figures at present, given the lack of any standardised methodology for calculating MAU figures. In addition, we understand that the European Commission has recently informed VSP providers that in respect of the calculation of its DSA supervisory fee for 2023/2024 the EC is not currently proposing to base its supervisory fee for very large online platforms/very large online search engines on the MAU figures published by the providers of such services.
- The formula proposed takes into consideration the total number of service users across the segment as whole and not just user engagement with video content on such service. The concern here is that this approach is disproportionate to VSPs designated under the essential functionality criterion, given that it overestimates the level of user engagement with video content, i.e., the regulated aspect here under the AVMS Directive.
- The popularity of a service does not necessarily have any bearing on the risk of exposure to harmful content for users. Nor does it take into account the resources that service providers deploy to try to reduce the risk of exposure to harmful content for users. These are core aspects which must be taken into account in relation to how designated services will be regulated under the legislation.

In addition to the observations above, we believe that the following could be usefully and reasonably incorporated into Coimisiún na Meán's proposed levy order:

- There should be a reasonable qualification on the costs that Coimisiún na Meán can incur and for which it can charge service providers under the levy.
- We note that there is an absence of any limit on the potential amount of levy payable under the proposed approach. In order to avoid any one service provider being required to pay a disproportionate fee, purely on the basis of the popularity of the service, Coimisiún na Meán should consider a cap on the overall levy payable by a service provider.
- A provisional determination on the amount of the levy to be charged should be communicated to the providers before the adoption of any decision, in order to give them the opportunity to submit observations which would be taken into account in the final provision of the levy order. For this purpose, Coimisiún na Meán should provide all relevant figures and facts relied upon to calculate the relevant levy.
- In order to ensure accountability and transparency of the costs incurred and revenues collected by Coimisiún na Meán for the supervisory tasks carried out, it should annually publish a report on them on its website.

Lastly, our members are also cognizant that a number of the VSPs will also be regulated by the European Commission pursuant to the DSA as very large online platforms, with an annual supervisory fee imposed. Similarly, VOD services may be subject to local film funding / financing obligations in other EU markets. We would be grateful for greater clarity from Coimisiún na Meán on how the level of fees paid to the European Commission, or required levies/direct investments in other markets, will be taken into account when assessing the levy proposed by Coimisiún na Meán, to ensure that VSP and VOD service providers are not subjected to disproportionate regulatory costs.

Once again, we thank you for the opportunity to submit to this consultation.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Una Fitzpatrick', written in a cursive style.

Una Fitzpatrick  
Director  
Technology Ireland

## Aighneacht TG4

MAIDIR LE: 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.

Glacann TG4 buíochas leis an Choimisiún as an deis a thabhairt dúinn moltaí a chur ar aghaidh maidir leis an Consultation thuasluaite. Ar mhaithe le héascaíocht don Choimisiún tá moltaí TG4 i mBéarla. Tá TG4 ar fáil chun tuilleadh plé a dhéanamh de réir mar is gá. Tá moltaí TG4 i gcló trom.

Thank you for the opportunity to engage with Coimisiún na Meán on the 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.

TG4 has the following comments on the Consultation Document. We are available to discuss further as required. Our proposal is in bold.

### *Calculation of the Broadcaster/ video on demand levy*

TG4 notes that 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.

TG4 also notes the 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.

TG4 notes that the Coimisiún has considered a 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.

Coimisiún na Meán expressed its preliminary view that it should maintain the existing broadcasting levy for TV broadcasters in the 2024 levy order based on a percentage of banded qualifying income.

Coimisiún na Meán also expressed the view that the VOD levy which will be introduced should be a fixed percentage of qualifying income without banding for 2024.

TG4 does not agree with these two proposals. TG4 would suggest the following approach to the calculation of the broadcaster/ video on demand provider levy:

**The levy payable by Broadcasters and Video on Demand providers for 2024 should be a fixed amount for each viewer based on the annual viewership figures of the applicable broadcaster/ video on demand provider. Where a broadcaster also provides a video on demand service, the levy should be apportioned between the broadcaster service and the video on demand service. TG4 is happy to engage with the Coimisiún on the amount of this fixed levy.**

TG4's proposal is consistent with the approach which Coimisiún na Meán proposes for designated online services which will be subject to a levy calculated by reference to the monthly active users of the designated online service with the effect that the video sharing platform will pay a fixed amount for each monthly active user.

At present a levy is payable by broadcasters based on a percentage of qualifying banded income regardless of the size of the audience which each broadcaster secures. The current approach does not take into account the nature and the scale of the services provided by TG4 as a minority language broadcaster.

A levy which is calculated by reference to the number of viewers based on the annual viewership figures of the applicable broadcaster/video on demand provider would be consistent with the criteria detailed above which Coimisiún na Meán will have regard to when assessing the levy. The relevant criteria are set out below:

1. s21(9) of the Act requires Coimisiún na Meán to have regard to among other things “the nature and scale of services provided by a provider”.  
TG4 is a minority language broadcaster with a limited audience and the Coimisiún must have regard to this under s21(9) of the Act when assessing the levy payable by TG4.

2. S21(9) of the Act requires Coimisiún na Meán to have regard to “Any other factor that may affect the exercise by Coimisiún na Meán of functions in relation to a provider...”.

Coimisiún na Meán has functions and powers in respect of the Irish language under the Act as follows:

Coimisiún na Meán is empowered to promote and stimulate the development of programmes in the Irish language;

Coimisiún na Meán is empowered to promote and encourage the use of Irish language in communications media operating in the State;

In performing its functions Coimisiún na Meán must endeavour to ensure that its policies best serve the interests of the people of the island of Ireland bearing in mind their languages, the experiences of people of Irish ancestry living abroad and their linguistic diversity;

Coimisiún na Meán is therefore required to have regard to the above functions in respect of the Irish language when assessing the levy. It should take these factors into account when assessing the levy which will be payable by the minority language broadcaster TG4.

3. TG4 also notes that 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; and

Regulatory continuity.

A levy which is calculated in the manner proposed by TG4 would comply with each of these requirements for the following reasons:

**Predictability:** the variation in TG4 audience figures from year to year is minimal and therefore an audience based levy would comply with the requirement for predictability.

**Simplicity and cost effectiveness in administration:** The audience figures are published by Niensens which is an independent third party and using the audience figures instead of qualifying income as a basis for levy calculation allows for simplicity and cost effectiveness in administration.

**Proportionality to the costs incurred by Coimisiún na Meán in performing its regulatory functions:** At present the levy payable by TG4 and RTE is calculated with reference to banded income. The current approach does not take into account the nature and scale of the services provided by TG4 as a minority language broadcaster or the fact that its audience is a fraction of the RTE audience.

It is not reasonable or proportionate that TG4 should pay the 2024 levy based on the 2022 income levels because this does not take into consideration the nature and scale of the services provided by TG4 as a minority language broadcaster, the audience of TG4, or the actual costs which were incurred by the Coimisiún (formerly BAI) in regulating TG4 in 2022.

In 2022 TG4 had a daily audience reach of 379,000 across its linear schedule and RTE had a daily reach of 1,700,000 across its linear schedules. These TG4 figures represent 22.29% of the RTE figures.

The audience which TG4 secures in respect of the TG4 player constitutes in the region of 10% of the RTE player audience.

As detailed on the Coimisiún website, over a 13 year period from 2010 to 2023 a total of 7 complaints were made to the BAI in respect of TG4. In the three years from 2020 to 2023, 196 complaints in total were made to BAI and of these 1 complaint was made against TG4. The one complaint made in respect of TG4 over this three year period represents less than 0.5% of the overall complaints made in that 3 year period. Part of the regulatory cost incurred by Coimisiún na Meán in regulating broadcasters is the cost of assessing complaints. Notwithstanding that the sole complaint made against TG4 from 2020-2023 amounted to 0.5 % of the total number of complaints made over this 3 year period, TG4 is being asked to pay a levy which is calculated on the same basis as the levy which is payable by the other broadcasters against whom complaints were made.

2022 is the reference income year for assessing the 2024 levy. 27 complaints were made to the BAI in 2022 and no complaint was made against TG4 in that year. While we accept that the regulatory costs of BAI in 2022 encompassed more than the cost of dealing with complaints, nevertheless it incurred no cost in dealing with regulatory complaints against TG4 in the reference year.

Because the levy is currently assessed based on a percentage of income RTE is paying a larger levy than TG4. However, if both RTE and TG4 had an identical income in 2022, TG4 would be paying an identical levy to RTE for 2024 based on the current calculation, notwithstanding the difference in the nature and scale of services provided by each organisation; the audience which RTE can secure because it broadcasts in the English language relative to the audience which TG4 can secure as a broadcaster in a minority language; and the fact that no costs were incurred by the BAI in dealing with complaints against TG4 in 2022 because no complaints were made against TG4 in that year.

For the reasons outlined above, the method of calculation of the broadcaster levy/video on demand levy proposed by Coimisiún na Meán which would be payable by TG4 for 2024:

- (i) is not proportionate;
- (ii) is not cost reflective as it does not reflect the actual cost to Coimisiún na Meán of regulating TG4;
- (iii) it does not take account of the statutory obligation on Coimisiún na Meán under s21(9) of the Act which requires Coimisiún na Meán to have regard to among other things “ the nature and scale of services provided by a provider”; and
- (iv) it does not comply with the requirement to have regard to “Any other factor that may affect the exercise by Coimisiún na Meán of functions in relation to a provider...” which includes its statutory obligations in relation to the Irish language as detailed above.

#### *Geographical scope of metrics*

TG4 agrees with Coimisiún na Meán’s preliminary view that qualifying income and monthly active user metrics should be EU-wide.



*Time period of metrics*

TG4 agrees with Coimisiún na Meán's preliminary view 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.

TG4 accepts that the levy for 2024 for TV broadcasters and VOD providers should be with reference to 2022, but as stated above it should be calculated with reference to audience figures and not qualifying income.

**Submissions of TikTok Technology Limited (TikTok Ireland)  
in response to Coimisiún na Meán's (CnaM)**

**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 (the Consultation)**

TikTok Ireland welcomes the opportunity to provide submissions to CnaM in respect of the Consultation, and in particular in respect of the levy that CnaM proposes to impose on providers of designated online services in 2024. We limit our comments to that aspect of the Consultation.

### **Summary**

TikTok Ireland is not in a position to provide concluded views on whether CnaM's current proposal is appropriate, fair and proportionate. This is because the Consultation does not contain sufficient information for TikTok Ireland to be able to assess the actual financial impact of the proposed levy and/or its relative size compared to similar levies / financial contributions levied in other contexts.

TikTok Ireland foresees a risk though that the ultimate outcomes of the proposed approach might be unfair and/or disproportionate. In this context, we note that the principle of proportionality under EU law requires that no action (for example, the imposition of a levy) exceeds what is necessary to achieve its objectives. In circumstances where the Online Safety and Media Regulation 2022 (**OSMR**) is transposing the Audiovisual Media Services Directive 2010/13/EU as amended by Directive (EU) 2018/1808 (**AVMSD**), we consider that the EU principle of proportionality should in particular be reflected in any levy order. Proportionality is also required under the OSMR, which provides that in making a levy order CnaM should consider the nature and scale of services provided (s.21(9)(c), OSMR).

TikTok Ireland therefore makes the submissions below while reserving its rights to make further submissions. In particular, we would welcome CnaM sharing the additional explanations and information requested in this submission and in other submissions it receives, as well as any revisions CnaM proposes to make to the 2024 levy.

In line with taking an iterative and collaborative approach to the 2024 levy, TikTok Ireland notes CnaM's express, and pragmatic, statement for future levies that: "*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.*" TikTok Ireland welcomes CnaM's pragmatic and sensible approach implicitly recognising that it may be necessary to make adjustments or refinements in future years.

### **Rationale for the levy mechanic**

While TikTok Ireland appreciates CnaM has provided certain information about the approach it is proposing to take to the levy mechanic at this stage, CnaM will appreciate that, absent a full view of the financial implications of the proposed levy, TikTok Ireland's feedback is necessarily preliminary in nature.

With this in mind, TikTok Ireland notes that CnaM proposes a per user levy to apply to some providers of designated online services. CnaM states that this is the appropriate mechanic because of “*simplicity, predictability, and recognition of differences in scale and funding of providers.*” It notes that “*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*”.

To allow TikTok Ireland to understand better the approach proposed, it would be helpful for CnaM to explain further the basis on which it has concluded that a per user mechanic is appropriate for designated online service providers when an income based mechanic is appropriate for the other categories of service covered in the Consultation. By way of example, while there are continuity of regulatory approach arguments that exist in respect of retaining an income based mechanic for TV broadcasters and radio/sound broadcasters, those arguments do not apply to Video-on-Demand providers, which the Consultation also proposes will be levied on the basis of an income based mechanic. In the context of advertising funded services in particular user / viewer / listener numbers are equally important commercial metrics, regardless into which of the relevant service categories those services fall. In particular, we would welcome information about how CnaM considered the factors it was required to take into account when developing the approach to the levy as per OSMR Art. 21(9).

Pending provision of that further explanation, TikTok Ireland reserves its position.

### **Uncertainty as to the inputs into the levy mechanic**

TikTok Ireland notes that the information contained within the Consultation does not enable designated online services to determine what the per user levy will be at this stage (nor allow providers to even estimate the levy). Nor does it disclose the total sum a designated service provider, including TikTok Ireland, will be likely to be required to pay in respect of the 2024 year levy.

First, the numerator in the relevant equation - estimated costs of regulation of segment - is not disclosed in the Consultation and is currently known only to CnaM. TikTok Ireland requests that CnaM publish its estimated costs, and the basis for their calculation, in order to provide providers with sufficient information to understand, and comment on, the proposed approach in their consultation document (and do the same for other relevant levy periods in future). This would also allow service providers to verify that the levies have been calculated in accordance with the specific requirements of the OSMR. In particular, s21(4), which requires that levies should be sufficient to meet CnaM’s expenses properly incurred and its working capital requirements in a levy period, in so far as those expenses and requirements are not met in any other way and also s21(5), which requires that levies imposed on the different categories of service providers be proportionate to the expenses incurred by CnaM in performing its function in respect of the category of service provider.

Second, the denominator in the relevant equation - the sum of service users across the segment - is proposed to be based on monthly active recipients (MAR) figures published by service providers pursuant to the DSA. This approach is uncertain and raises the potential for unfair outcomes, for example if it turns out that there are any material variances in how different platforms have approached the calculation. Second, we note that some of the providers have not published specific MAR figures under the DSA, simply noting whether or not they are below or above the threshold of 45m MAR. This has the potential to result in unfair outcomes. Third, by using the sum of service users across the segment it is inherent that the number of individuals using the in-scope services will be double-counted. There is likely to be an overlap between a person using one service and counted in that service’s MARs and a

person using one or more different designated online services. If CnaM adds together the MAR figures published by each service for the purposes of the DSA, CnaM will be counting that person at least twice. Therefore, TikTok Ireland simply notes for present purposes that the fee is in fact a per user, per service fee.

In addition, the Consultation proposes that designated online services with turnover of less than Eur 500,000 should be exempt from paying the levy. We request that CnaM confirm that the MARs for those services should still be included in the denominator for the purposes of the calculation to determine the per user fee. This would be consistent with the logic of the approach proposed by CnaM.

We also note that CnaM's proposal for exempting designated online services with turnover of less than Eur 500,000 from paying the levy is for reasons of administrative simplicity and to promote new and innovative services. However, in order to promote the new or innovative services, which is one of the factors that CnaM must consider when making a levy order in accordance with s21(9)(b) of the OSMR, we consider that the exemption based on turnover should be higher than currently proposed.

### **Cap**

TikTok Ireland notes that CnaM's proposal does not currently contain a cap or reference the possibility of a cap (or upper limit) on the amount any individual provider would be required to pay as a levy. TikTok Ireland suggests that CnaM should consider including such a cap in its intended levy regime in order to seek to ensure, again in line with the principles of fairness and proportionality, that one individual provider does not bear too great a share in absolute terms of CnaM's estimated costs of regulating the VSPS segment as a whole.



Coimisiún na Meán:

This response relates to the 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. Thank you for the opportunity to provide input on the proposed levy.

Our response to the Levy Consultation relates to Tumblr, a microblogging platform that allows users to share small elements of content and connect primarily around common interests. Please see our response to the Information Notice for specific information on usage and volume of video content. While based on the information we provided in our response to the Information Notice Tumblr may not be a VSPS, we want to provide these comments as we believe our perspective as a smaller service provider may be useful to you.

We believe that the proposed levy would disproportionately burden small platforms, in particular those that are not focused on video, for three reasons.

First, the number of monthly active users is not necessarily directly related to the level of risk that the platform poses. For example, Tumblr is a platform focused on sharing art, fandom, and shared interests, and its features don't encourage influencers or virality. That means that in addition to being a small platform, Tumblr also does not have the same risks of spreading harmful content as may be the case on platforms that are more focused on viral content.

Second, the amount of engagement with video varies greatly by platform. We believe it would be more reflective of the nature and scale of each provider to calculate the levy by adjusting the number of monthly active users in accordance with the amount of video content on the platform and time spent engaging with that video content.

Third, the exemption based on annual turnover offers protections for the very smallest of platforms, but should be raised in order to reduce the disproportionate burden on smaller platforms.<sup>1</sup> A common per user cost across (very) large and small platforms would disproportionately burden the latter, and particularly those with lower harm potential and video engagement. The Commission could reduce that burden on smaller platforms by raising the exemption level and/or setting tiers based on annual EU turnover.

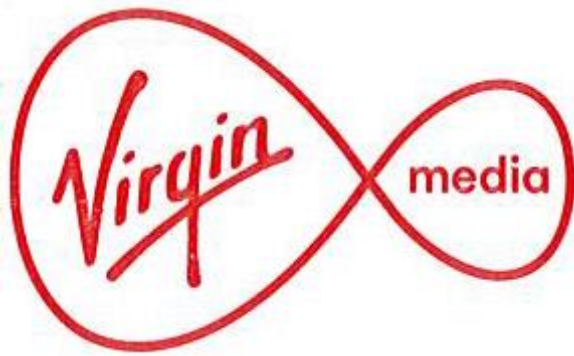
In conclusion, we would recommend that a levy be calculated more holistically, taking into account more factors than just the number of monthly active users. Specifically, we believe that the risk profile of a platform and proportion of video content would be appropriate considerations in determining the levy each platform is responsible for, and that the annual turnover exemption should be raised and/or levy tiers by turnover amounts should be created. We appreciate the

---

<sup>1</sup> We also would expect that the annual turnover is based on EU revenue.

# tumblr

opportunity to provide these comments regarding the proposed levy, and invite you to reach out should you wish to discuss further.



## **Virgin Media TV response to:**

The Coimisiún na Meán 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.

31 October 2023

Non-Confidential

## Introduction

Virgin Media TV (“Virgin Media”) welcomes the opportunity to respond to the Coimisiún na Meán consultation on the proposed Levy Order for the period 1 January 2024 to 31 December 2024 inclusive (“the Consultation”). The response is non-confidential.

Virgin Media is a provider of multiple audiovisual services through offering broadcast TV and on demand services on its Virgin Media Player, the latter services coming within the category of Video-On-Demand (“VOD”). This response therefore focuses on Coimisiún na Meán’s proposed levies in 2024 for: (i) TV broadcasters; and (ii) suppliers of VOD services.

Virgin Media is the country’s number one commercial public service broadcaster offering four free-to-air channels: Virgin Media One, Virgin Media Two, Virgin Media Three, Virgin Media Four, as well as the Virgin Media Player. Virgin Media TV is a significant investor in home produced content, including news, current affairs, and drama, as well as offering the best in international programming. Virgin Media More, a platform exclusive channel for Virgin Media customers, offers the best of first look premium content, including groundbreaking Irish and international drama, documentaries, and sport.

Virgin Media notes that the Consultation is being undertaken “at speed” to put in place arrangements for 2024 only<sup>1</sup>. In various places in the Consultation document Coimisiún na Meán indicates that it will be re-evaluating the matters raised in the Consultation further in 2024 as the basis for determining levy arrangements for 2025 and beyond. The levy arrangements are important matters and apply to a dynamic and changing sector. Given this, Virgin Media considers that it would be desirable to consider the matters raised in the Consultation in greater detail in 2024, and that such a process would need greater stakeholder engagement and more time to consider and respond to the matters in hand than has been possible on this occasion. Virgin Media looks forward to constructively participating in such a process.

In the circumstances described above, the levy arrangements for 2024 appear to be “transitional” in nature, and Coimisiún na Meán is right to say that *“None of the views expressed in this consultation should be taken as precedent for views that might be adopted in relation to the consideration of any subsequent levy order”*<sup>2</sup>. Virgin Media makes the same comment about its response to the Consultation; and it reserves its position on any future consultation responses.

Given that there has not been an opportunity to review the Coimisiún na Meán proposals in greater detail, it is also important that the 2024 levy arrangements adopted provide stability. Coimisiún na Meán should, for example, avoid introducing any “shocks” by increasing the overall levy burden on existing major levy contributors such as Virgin Media.

---

<sup>1</sup> Virgin Media TV notes, for example, the shortness of the Consultation document itself and the short response time allowed to stakeholders.

<sup>2</sup> See Coimisiún na Meán Consultation page 3.



## Executive Summary

Virgin Media, as mentioned above, plays an important and constructive role in Irish broadcasting. This was recognised by the Commission earlier this year when it awarded a new section 70 licence to Virgin Media for its channels Virgin Media One and Two.

Virgin Media invests large amounts to meet its current licence and regulatory obligations. Virgin Media already makes significant payments via the broadcast levy in addition to making further investments to meet an expanding set of licence obligations relating to Irish language, news, climate, and customer complaint handling (to name a few).

Although it has a significant public service remit, as a commercial public service broadcaster Virgin Media does not receive any income from the Irish state (unlike RTÉ and TG4). By not receiving any state funding, Virgin Media therefore operates at a significant financial disadvantage to RTÉ which, in addition to its receipt of public monies, is able to operate in the commercial advertising sector (something which other European countries do not permit). As noted above, Virgin Media is also experiencing rising costs in discharging its licence and other regulatory responsibilities. Virgin Media will of course continue to play a leading and constructive role in the Irish broadcasting market, including through continued effective working with Coimisiún na Meán and other stakeholders, and by continuing to meet all regulatory and licence obligations placed upon it. Given the pressures described, Virgin Media seeks an overall levy settlement that is stable, proportionate and that recognises its specific status as an organisation offering multiple audiovisual services.

As noted above, this Consultation is setting transitional arrangements for 2024 only, and it has not been possible on this occasion to consider the matters raised in the Consultation in detail. It is therefore important that Coimisiún na Meán's proposals offer continuity and do not introduce shocks to existing levy contributors.

In this context, Virgin Media seeks an outcome from the Consultation that:

- Creates a TV broadcasting levy that is predictable, simple to administer, cost reflective and proportionate.
- Does not lead to an increase in the financial burden already imposed on Virgin Media through its levy obligations. Coimisiún na Meán should avoid: (i) increasing the amount payable under the TV broadcasting levy when assessed on a like for like basis; or (ii) imposing a “double tax” on Virgin Media by increasing the overall financial burden when the TV Broadcast and VOD levies are combined.
- Recognises the significant levy burden that is already borne by Virgin Media as a provider of multiple services that is also a public service broadcaster and major levy contributor. Such organisations should not be subject to disproportionately higher levy burdens than other organisations in the TV broadcast and VOD markets.

- Only allocates appropriate costs to levy payers – for example, only allocates costs incurred for a segment to that segment.
- Creates regulatory certainty for the period covered.

Virgin Media considers that there are arguments for reducing the levy payable by public service TV broadcasters (particularly that payable by Virgin Media who unlike RTÉ and TG4 receives no state funding), which it requests that Coimisiún na Meán considers. This is because: (i) such broadcasters already face increased regulatory obligations as described above which bring additional costs and pressures on commercial performance; and (ii) the VAT removal for newspapers has advantaged a competing medium.

Finally, Virgin Media notes that the actual financial impacts of the levy proposals contained in the Consultation are not yet known, because the information required to make such calculations has not yet been worked through<sup>3</sup>. This Virgin Media response is therefore made with these unknowns in mind. Virgin Media would welcome further stakeholder engagement with Coimisiún na Meán at a point in time when the precise construction of the 2024 levies is known, as this will be important for future-looking budget-setting purposes.

---

<sup>3</sup> For example, Coimisiún na Meán's estimated sectoral costs and the overall sectoral qualifying incomes.

## More detailed response to the points raised in the Consultation

### TV broadcasting levy proposals

Virgin Media supports the factors set out by Coimisiún na Meán when considering the levy order, namely: predictability, simplicity and effectiveness, proportionality to the costs incurred by Coimisiún na Meán and regulatory continuity.

As noted in the executive summary above, Virgin Media is experiencing increased overall regulatory costs associated with the expanding list of obligations it needs to meet. This creates additional commercial pressure on a business that is operating in a competitive market, and that cannot rely on receiving any government subsidy. In this environment, Virgin Media needs broadcast levy arrangements in 2024 that are stable, proportionate, and predictable. It follows that Virgin Media supports Coimisiún na Meán's preliminary view that it should maintain the existing structure of the broadcasting TV levy in the 2024 Levy Order.

In Virgin Media's view, Coimisiún na Meán should impose a broadcast TV levy in 2024 that:

- Maintains the structure of the existing broadcasting levy i.e., is one based on a regressive sliding scale where the levy amount paid falls as the value of qualifying income increases. This will help to support predictability, simplicity, and cost effectiveness in administration.
- Does not increase the overall amount payable – i.e., if the qualifying income in 2024 was the same as the qualifying income in 2023, then the amount payable in the levy in 2024 should not be greater than the amount payable in 2023.
- Is cost reflective and proportionate in nature i.e., is based solely on the costs properly incurred by Coimisiún na Meán in discharging its essential regulatory duties in the broadcast TV sector. Given that Coimisiún na Meán will need to forecast its costs for 2024, it is also right that there is a mechanism enabling a “true-up” once actual cost information is known. Virgin Media would also suggest that, where possible, Coimisiún na Meán should communicate with stakeholders during 2024 if costs are departing materially (in either direction) from the earlier estimate – this would help with budgeting and would reduce the risk of “bill-shock” later in the levy period.

Further, Virgin Media agrees with Coimisiún na Meán that qualifying income should exclude income from Section 71 contracts (i.e., content provision contracts). This will keep arrangements clear and help ensure that the levy is based solely on revenues that are “proper” to the accountable broadcaster.

Finally, Coimisiún na Meán indicates that it intends to review the situation again ahead of imposing levy arrangements for 2025 and beyond. Virgin Media TV notes this and requests that Coimisiún na Meán maintains its open, transparent, and evidence-based approach in any future consultations. As noted above, it would also be desirable for any future consultation to allow a more detailed examination of the matters covered in the

Consultation, with a longer period allowed for stakeholder engagement and time to respond. Virgin Media also notes in the Consultation that Coimisiún na Meán refers to a review it undertook of international and Irish levy schemes. Virgin Media requests that Coimisiún na Meán share the results of that survey with stakeholders.

#### Video on demand levy proposals

Coimisiún na Meán is proposing to introduce a new levy for VOD. Virgin Media offers VOD services, but is a very small player in the market, with a very small market share. The Coimisiún na Meán proposal is that the VOD levy should be charged to providers of registered audiovisual on-demand services, and that it should be a fixed percentage of qualifying income (i.e., no sliding scale, unlike the TV broadcast levy). Coimisiún na Meán justifies its proposals on grounds of regulatory continuity, predictability, simplicity, and recognition of the differences in scale and funding of different VOD providers.

Virgin Media's views on the Coimisiún na Meán 2024 VOD levy proposals are that:

- It is right that any VOD levy imposed is cost reflective and proportionate in nature.
- The proposed structure of the VOD levy (i.e., without a sliding scale) seems pragmatic as a stop-gap measure for 2024 given its simplicity.
- There is currently no VOD levy in place, so there is a risk that the proposal will increase the overall levy burden on providers of multiple services, such as Virgin Media. Virgin Media does not support the concept of its levy burden increasing in this manner and believes that it already pays a fair share of the levy burden from the TV broadcast levy payments it makes, which are significant. Coimisiún na Meán should consider the specific circumstances and levy burden already in place on an organisation such as Virgin Media. It should not “double tax” Virgin Media by simply adding to the overall levy burden.

#### Providers of multiple services

Regarding the proposal to have two levies for broadcast and VOD, rather than just a single broadcast levy, Virgin Media considers that this is a significant question that requires more time to consider than has been available to stakeholders in this consultation.

What is of greater immediate concern to Virgin Media, as discussed above, is that the proposals should not create a greater, and disproportionate, levy burden on Virgin Media as an organisation that provides multiple services. Virgin Media already makes significant levy contributions via the broadcast TV levy, and this should in its view be accounted for when considering how the VOD levy is handled. Virgin Media considers, for example, that the levy payments that it already makes via the TV broadcast levy are likely to support work undertaken by Coimisiún na Meán that are tied into VOD. In this scenario, it would not be appropriate to treat Virgin Media on the same terms of organisations that simply provide VOD services – and would lead to Virgin Media carrying a disproportionate levy burden.

Given it is proposing to introduce a new levy for VOD, in addition to continuing the levy for broadcast, it is important that Coimisiún na Meán does not increase the overall effective levy burden being placed on Virgin Media. In other words, if the overall qualifying income was the same in 2024 as it was in 2023, Virgin Media should not be paying more overall via the broadcast and VOD levies being proposed.

Key for Virgin Media is the principle that it should not be penalised above others by bearing a disproportionate levy burden. In this context, Virgin Media would urge that Coimisiún na Meán should publish the register of VOD providers registered with their office. This is important so that there is clarity and transparency on who will be paying the VOD levy. In this vein, Virgin Media also seeks, from a levy perspective, treatment that is proportionate to other public service broadcasters (RTÉ and TG4).

#### Geographical scope of metrics

Virgin Media notes Coimisiún na Meán's proposal that qualifying income and monthly active user metrics should be EU-wide. Virgin Media also notes that in any event, all its qualifying income comes from the Republic of Ireland.

#### Time period of metrics

Virgin Media supports the Coimisiún na Meán proposal to base metrics on actual amounts known at the beginning of the levy period, rather than on estimates that require later reconciliation. This means in practice that the levy for broadcast and VOD for 2024 will be based on audited qualifying income for 2022. In Virgin Media's view, this is sensible, and will help ensure certainty and administrative simplicity.

#### De-minimis exemption

Virgin Media supports Coimisiún na Meán's proposal that any designated services with a turnover of less than €500,000 should be exempt from paying a levy. Coimisiún na Meán is right to simplify arrangements in this way, and to reduce regulatory costs, even very small ones, for nascent / innovative services and their providers.

#### Coimisiún na Meán comments on flat-rate and profit-based levies

Virgin Media agrees with Coimisiún na Meán that, for the purposes of the 2024 Levy Order, flat rate and profit-based levies should be ruled out. Coimisiún na Meán rightly notes that flat rate levies have problems with proportionality. Further, profit-based levies would be a departure from existing approaches, which would bring with it more complexity (and potentially cost) and require a much more detailed review than has been possible on this occasion ahead of any decision to adopt them.