



Coimisiún
na Meán

Decision Framework: Video On-Demand Registration

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1. Preface

The Online Safety and Media Regulation Act 2022 amended the Broadcasting Act 2009 (the “**Act**”), to provide for a regulatory framework applicable to broadcasting services, on-demand audiovisual media services, video-sharing platform services and other relevant online services.

Section 46A of the Act imposes an obligation on Coimisiún na Meán (the “**Commission**”) to establish and maintain a Register of Media Service Providers (the “**Register**”). The Register is published on the Commission’s website www.cnam.ie. The Register is subject to updates and amendments on a continuing basis.

A media service provider is subject to registration if: a) it is under the jurisdiction of the State (determined in accordance with section 2A of the Act), and b) it provides an audiovisual on-demand media service. Defined terms are set out in full in the Annex to this Decision Framework (“**Framework**”).

Media service providers must notify the Commission of specified information for the purposes of the registration process and in relation to changes to such information (sections 46B and 46C of the Act).

Registration Rules for Media Service Providers (the “**Rules**”) published by the Commission provide detail on the following matters:

- the information to be provided by media service providers;
- the information to be included in the Register;
- review and correction of the Register by the Commission;
- requests for further information by the Commission; and
- directions by the Commission to comply with relevant sections of the Act.

The Commission has also published Guidelines for Media Service Providers (the “**Guidelines**”). The Guidelines are intended to assist providers in the operation and understanding of the registration process. They also set out factors and indicators regarding the application of statutory definitions and summarise the obligations of registered media service providers.

The Commission’s decision-making is informed by Irish and European legislation, consultation, data-gathering, and independent research. A decision framework supports evidence-based, transparent, consistent, and proportionate decision-making by the Commission in the exercise of its statutory functions.

This Framework may be updated or augmented from time to time to reflect additional processes or considerations associated with the Commission’s responsibilities. The Framework is not a substitute for any statutory provision(s) and does not constitute legal advice. Providers of audiovisual on-demand media services that may be subject to registration are advised to obtain their own independent legal advice on the relevant statutory provisions.

2. Purpose of this Decision Framework

Under section 46B of the Act, media service providers subject to registration are required to give the Commission a notification containing the information identified in section 46B(5) of the Act (“**Notification**”).

The Commission has developed this Framework to inform providers of audiovisual on-demand media services of its processes for:

- determining whether a provider is subject to registration where a Notification has been received (section 46D of the Act); and
- considering a request for review and correction of the Register (section 46E of the Act); and
- determining whether a provider is subject to registration in circumstances where a Notification has not been received (section 46F of the Act).

Where a Notification is received, the steps in the registration process are explained in Stage 4 below. The additional stages 1-3 listed below detail the actions and decisions that may be taken by the Commission in circumstances where a Notification has not been submitted.

3. Stages of the Decision Framework

Stage 1: Legislative and Evidential Review – Where it appears to the Commission that a media service provider may be subject to registration, it conducts a legislative and evidential review of the media service provider and the relevant service(s).

Stage 2: Initial View and Consultation – Where the Commission has reason to believe that a media service provider may be subject to registration based on the information available to it following Stage 1, it will form an initial view and consult with the media service provider.

Stage 3: Outcome of Consultation and possible Direction to Comply – The Commission will consider the written response from the provider (if any) and determine whether the provider falls within scope of registration. If the Commission determines that the provider is subject to registration, the Commission may by notice in writing direct the provider to submit a Notification under section 46B.

Stage 4: Receipt of Notification and Registration – On receipt of a Notification, the Commission will consider the Notification and decide whether or not the media service provider is subject to registration. The Commission may seek further information from the media service provider on receipt of a Notification.

Stage 5: Updates and Changes to the Register – Amendments to the Register may be required following notification from a media service provider or following review by the Commission.

These stages are described in detail below.

Stage 1: Legislative and Evidential Review

1.1 Legislative Review

In the first instance, the Commission will conduct a review of the legal provisions and the evidence and information available to it to identify services that may be audiovisual on-demand media services subject to registration. The review will encompass an assessment of the defining criteria and the jurisdiction criteria as set out in the Act.

Under the Act, a media service provider is subject to registration if:

- (a) it is under the jurisdiction of the State, and
- (b) it provides an audiovisual on-demand media service.

In practice, the Commission may first consider the nature of the service provided in advance of considering jurisdiction.

Audiovisual On-Demand Media Service

The relevant definitions are set out in full in the Annex.

The following questions are relevant to the Commission's assessment:

- i. Is the service provided over an electronic communications network.
- ii. Is the service provided on a commercial basis.
- iii. Does the service or a dissociable section of the service provide audiovisual programmes.
- iv. Is the service provided to the general public.
- v. Can a viewer select a programme of their choice and view it at a time of their choosing on the basis of a catalogue.
- vi. Does the provider of the service have effective control over the selection of programmes or user-generated videos available on the service.
- vii. Does the provider of the service determine the organisation of programmes or user-generated videos on the service.
- viii. Is the principal purpose of the service (or of a dissociable section of the service) devoted to providing audiovisual programmes to the general public in order to inform, educate or entertain.
- ix. Does the service provide audiovisual commercial communications.

Jurisdiction

The Commission will have regard to the following questions in order to determine whether a service appears to be under the jurisdiction of the State (determined in accordance with section 2A of the Act):

- i. Does the provider have its head office in the State and are relevant editorial decisions taken in the State.
- ii. If the provider has its head office in the State, but the relevant editorial decisions are taken in another EU Member State, does a significant part of the workforce involved in the pursuit of the programme-related audiovisual media service activity operate in Ireland.
- iii. If the head office is not in Ireland (but is in another EU Member State), and relevant editorial decisions are taken in Ireland, does a significant part of the workforce involved in the pursuit of the programme-related audiovisual media service activity operate in Ireland.
- iv. If the provider's head office is in the State but relevant editorial decisions are taken in another EU Member State, or vice versa, did the provider first begin its activity in accordance with the law of Ireland, and does it maintain a stable and effective link with the economy of Ireland.
- v. If the provider's head office is in the State but relevant editorial decisions are taken in another country outside the EU, or vice versa, does a significant part of the workforce involved in the pursuit of the programme-related audiovisual media service activity operate in Ireland.
- vi. Does the provider use a satellite up-link situated in Ireland, or does it use satellite capacity appertaining to Ireland.
- vii. Is the provider otherwise pursuing an economic activity through a fixed establishment for an indefinite period in Ireland.

1.2 Evidential Review

The Commission will independently verify its analysis as set out above by reference to: (i) a review of the service itself from a user perspective and open-source information concerning the service, including branding, promotional and other information published by the provider of the service, and third party information about the service; and (ii) the place of establishment of the provider of a service, including company registration information, head office and staff locations, official documents referencing the place of establishment and information published by the provider of the service in relation to its place of business. The Commission's assessment may, as it considers necessary, include a review of published databases and resources, consultation with other media regulators and expert research as may be commissioned by the Commission from time to time.

Stage 2: Initial View and Consultation

Where, following Stage 1, the Commission has reason to believe that a media service provider may be subject to registration, the Commission will consult with the provider on its initial view. The Commission will give the provider notice in writing of its initial view that it appears to be subject to registration and a statement of the reasons for its view. This initial view will have regard to the legislative and evidential review. The Commission will request a written response from the provider within a specified timeframe on whether it believes that it is subject to registration.

At this stage in the process a provider may submit a Notification to the Commission. If a Notification is made, the next step in the process is Stage 4, set out below.

A provider's failure to respond or engage with the Commission under Stage 2 of this Framework does not preclude the Commission from taking a decision based on the evidence available to it. This does not preclude a provider from submitting information, data or evidence at a later date that demonstrates that the service does not satisfy the defining criteria of an audiovisual on-demand media service within the jurisdiction of the State.

Stage 3: Outcome of Consultation and possible Direction to Comply

The Commission will consider the written response from the provider (if any) and determine whether the provider falls within scope of registration.

If the Commission concludes that the provider is not subject to registration, it will notify the provider of that conclusion. Such a conclusion is without prejudice to the Commission's ability to revisit the position in the event of an apparent change in circumstances or in the activities of the provider.

If the Commission determines that the provider does fall within scope of registration, it will consider whether a direction to comply with the requirement to notify should be issued to the provider, in accordance with section 46F of the Act.

Before issuing a direction to make a Notification, the Commission will notify the media service provider that it intends to make such a direction under section 46F and afford the provider an opportunity to make representations about the apparent failure within a specified timeframe.

At this stage in the process a provider may submit a Notification to the Commission without the need for a direction. If a Notification is made, the next step in the process is Stage 4, set out below.

The Commission will consider the provider's representations (if any) and decide whether to issue a direction under section 46F requiring the provider to submit a Notification under section 46B. The provider may appeal a direction to the Circuit Court within 28 days of receipt of the direction. Failure to comply with a direction is an offence.

The Commission's preference is for media service providers to engage on an open and co-operative basis with it and expects to exercise the power to issue directions under section 46F on rare occasions only.

Stage 4: Receipt of Notification and Registration

On receipt of a Notification the Commission will review and verify the information provided by the media service provider to decide if the provider is subject to registration. In considering the substance of a Notification, the Commission will apply the substantive and jurisdictional analysis set out in Stage 1 of this Framework.

At this stage, the Commission may engage further with the media service provider or may issue a statutory information notice to the provider of the service requesting further information (section 46D(2) of the Act). The Commission will conduct a review of the information available to it, including the Notification and any additional information submitted, to decide whether the service provider is a media service provider subject to registration.

If the Commission decides that the provider is not subject to registration, it will notify the provider of that decision and the reasons for that decision. That is without prejudice to the Commission's ability to revisit the position in the event of an apparent change in circumstances or in the activities of the provider.

If the Commission decides that the provider is subject to registration, it will provide the following to the media service provider:

- Statement of the Decision of the Commission; and
- A copy of the appropriate entry in the Register.

Upon the completion of the above steps, the Register will be updated with the information related to the media service provider and published on the Commission's website.

Stage 5: Updates and Changes to the Register

The Register is subject to updates and amendments on a continuing basis. Amendments may be required following notification from a media service provider or following review by the Commission.

Pursuant to section 46C of the Act, a registered media service provider must notify the Commission in writing of any change to the information recorded in the Register relating to either the provider or the service(s) provided by the provider. The Commission may require a registered media service provider to provide further information in order to decide whether to make an amendment to the Register.

The Commission may also review and update the Register as appropriate (section 46E of the Act). Before doing so it may request further information from the provider and, where practicable, consult the provider on the proposed amendments.

If the Commission determines that an entry in the Register requires amendment, the Commission will amend the entry and provide the media service provider with a statement of the amendment. If it removes an entry from the Register it will enter a statement in the Register to that effect and a statement of the reasons for the removal. The Commission will also furnish the provider with a copy of such statement.

Where it appears to the Commission that a provider has failed to comply with the requirement to notify changes under section 46C or the request to provide further information under section 46D(2) or section 46E(4), it may, by notice in writing, direct the provider to take any action stated in the notice to comply with that section or that request. Before issuing a direction the Commission will notify the media service provider that it intends to make such a direction under section 46F, and afford the provider an opportunity to make representations about the apparent failure within a specified timeframe. A failure by a media service provider to comply with a direction is an offence.

Parts 4 to 6 of the Rules set out further information on updates to the Register.



Annex

Statutory Definitions

“media service provider” means a person who provides an audiovisual media service.

“audiovisual media service” means

- (a) a service, within the meaning of Articles 56 and 57 of the Treaty on the Functioning of the European Union, where—
 - (i) the principal purpose of the service is devoted to, or
 - (ii) the principal purpose of a dissociable section of the service is devoted to, providing audiovisual programmes, by electronic communications networks, to the general public, under the editorial responsibility of the provider of the service, in order to inform, entertain or educate, or
- (b) an audiovisual commercial communication.

“audiovisual on-demand media service” means an audiovisual media service provided for the viewing of programmes at the moment chosen by the user and at the user’s request on the basis of a catalogue of programmes selected by the provider of the service.

“audiovisual programme” means a set of moving images with or without sound which, in the case of an audiovisual media service, constitutes an individual item, irrespective of its length, within a programme schedule or a catalogue.

“programme schedule” means as a chronological schedule of audiovisual or sound programmes.



Section 2A (“under the jurisdiction of the State”)

- (1) For the purposes of this Act, the question whether a media service provider is under the jurisdiction of the State (or another Member State) is to be determined in accordance with this section.
- (2) A media service provider is under the jurisdiction of a Member State if under subsection (5) it is established in that state.
- (3) If a media service provider is not, under subsection (5), established in a Member State, then the provider is under the jurisdiction of a Member State if –
 - (a) it uses a satellite up-link situated in that state, or
 - (b) it uses satellite capacity appertaining to that state.
- (4) If subsections (2) and (3) do not determine the question in relation to a media service provider, then the provider is under the jurisdiction of the Member State in which it is established within the meaning of Articles 49 to 55 of the Treaty on the Functioning of the European Union.
- (5) The following provisions apply to a media service provider for the purposes of subsections (2) and (3):
 - (a) if the provider has its head office in a Member State, and the relevant editorial decisions are taken in the same Member State, the provider is established in that Member State;
 - (b) if the provider has its head office in a Member State, and the relevant editorial decisions are taken in another Member State, then—
 - (i) if a significant part of the workforce involved in the pursuit of the programme-related audiovisual media service activity operates in the Member State where the provider has its head office, the provider is established in that Member State,
 - (ii) if subparagraph (i) does not apply but a significant part of the workforce involved in the pursuit of the programme-related audiovisual media service activity operates in the Member State where relevant editorial decisions are taken, the provider is established in that Member State, and
 - (iii) if neither subparagraph (i) nor subparagraph (ii) applies, the provider is established in the Member State where it first began its activity in accordance with the law of that Member State, provided that it maintains a stable and effective link with the economy of that Member State;
 - (c) if the place where the provider has its head office and the place where the relevant editorial decisions are taken are different, and only one of them is in a Member State, the provider is established in that Member State, provided that a significant part of the workforce involved in the pursuit of the audiovisual media service activity operates in that Member State.
- (6) In this section—

“audiovisual media service activity” means activity relating to the audiovisual media service concerned;

“relevant editorial decisions” means editorial decisions about the audiovisual media service concerned.