
Response to Consultation

Response to Consultation on the proposed designation of video-sharing platform services as a category of relevant online services under the Broadcasting Act 2009 as amended.

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Coimisiún na Meán

1. Introduction

Coimisiún na Meán (the “Commission”) was established on 15 March 2023 in accordance with the provisions of the Broadcasting Act 2009 as amended by the Online Safety and Media Regulation Act 2022 (the “Act”). The Act establishes a new regulatory framework for online safety and transposes into Irish law the revised Audio-Visual Media Services Directive (the “**AVMS Directive**”).¹ The Act is applicable to broadcasting services, on-demand audiovisual media services and video-sharing platform services established in the State on a European Union (EU)-wide basis. Video-sharing platform services (“**VSPS**”) are a type of online service where users can upload, share and engage in video and other social media content.

The AVMS Directive requires Member States to ensure that VSPS providers under their jurisdiction take appropriate measures to protect minors from potentially harmful content (which may impair their physical, mental or moral development) and to protect the general public from incitement to violence or hatred and illegal content (such as public provocation to commit terrorist offences, child sexual exploitation and abuse, and racism or xenophobia). It also requires Member States to ensure that VSPS providers comply with requirements and standards around advertising on the services.²

Under the Act, VSPS are identified as a form of relevant online service that the Commission *must* designate, both as a category of services³ and as a named service where the provider of the service is under the jurisdiction of the State.⁴

The Act provides that online safety codes may be applied to designated online services and *shall* be applied to designated VSPS in order to ensure that service providers take appropriate measures to provide the protections referred to in Article 28b of the AVMS Directive and comply with the requirements set out in Article 9(1) of the Directive.⁵ Designation is, therefore, a necessary procedural first step in ensuring that VSPS comply with online safety codes that will be developed and enforced by the Commission and with other requirements of the Act.

2. Consultation on VSPS Category Designation

Before designating a category of services, the Commission is required to consult with a number of persons, including an organisation representative of providers of services falling within the relevant category, the providers of those services (so far as the Commission is able to consult them), any advisory committee the Commission has established for assistance and advice on designation,⁶ and any other person the Commission considers appropriate.⁷

¹ Directive 2010/13 as amended by Directive 2018/1808:

<https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:02010L0013-20181218&qid=1686866051928>.

² Article 28b(1).

³ Section 139G(1) of the Act.

⁴ Section 139G(2) of the Act.

⁵ Section 139K of the Act.

⁶ Section 19 of the Act enables the Commission to establish committees to assist and advise it on matters relating to its functions or on such other matters as the Commission may determine. Section 139H requires the Commission to consult with any advisory committees established under section 19 for that purpose (i.e. to assist and advise the Commission on designation).

⁷ Section 139H(1) of the Act prescribes the consultation procedure.

Coimisiún na Meán

In accordance with the statutory consultation procedure, on 23 June 2023, the Commission published a Consultation Document on its proposal to designate VSPS as a **category of relevant online services** to which online safety codes may be applied.⁸ The Commission invited comments and observations from interested members of the public, from Technology Ireland (the organisation representative of providers of VSPS falling within this category of services) and from the providers of services that may meet the criteria of a VSPS⁹ and are established in the State (of which the Commission is aware and so far as the Commission was able to consult them). The Commission has not, at this time, established any advisory committee. The consultation process was also promoted via the Commission's website, news alerts and social media.

Interested parties were invited to make submissions on the following two matters:

- i. The Commission's proposal to discharge its statutory obligation pursuant to Section 139G to designate, as a category of relevant online services under section 139E of the Act, video-sharing platform services, the provider of which is under the jurisdiction of the State.
- ii. The draft *Notice of Video-Sharing Platform Services Category Designation*.

The closing date for submissions was 26 July 2023. A total of seven (7) responses were received. The respondents included two individuals, three providers of online services who are established in the State (Google Ireland Limited, Pinterest and Tik Tok Technology Limited IE), the broadcaster, Virgin Media Television and Technology Ireland. Copies of the submissions are available on the Commission's website www.cnam.ie/publications.

This Response to Consultation provides a summary of the submissions and explains the outcome of the consultation process.

3. Overview of Responses arising from the Consultation

The opportunity for consultation was welcomed by many respondents, certain of which noted that they did not have comments on the following:

- i. The Commission's proposal to discharge its statutory obligation pursuant to Section 139G to designate, as a category of relevant online services under section 139E of the Act, video-sharing platform services, the providers of which are under the jurisdiction of the State.
- ii. The draft *Notice of Video-Sharing Platform Services Category Designation*.

One respondent confirmed its agreement with the draft *Notice of Video-Sharing Platform Services Category Designation*.

One respondent provided views on the principles to which the designation of individual named VSPS should adhere: Legal clarity, Uniform application, Avoiding conflicts and Transparency. Avoiding conflicts and ensuring alignment with current EU legislative frameworks, updates and developments of EU laws and codes was also highlighted by Technology Ireland.

⁸Section 139E(1) of the Act confers on the Commission the power to designate an online service as a service to which online safety codes may be applied. Section 139E(2) provides that this designation may be made in relation to a named service or in relation to all services falling within a category. Section 139G requires the Commission to designate video-sharing platform services, under Irish jurisdiction, as both a named service and a category of services under section 139E.

⁹ Services that provide user-generated videos and programmes among other forms of media content.

One individual respondent provided information and views on the defining criteria for VSPS as set out in the AVMS Directive and the EC Guidelines on the Application of the Essential Functionality Criterion (“EC Guidelines”). Another individual respondent requested that the Commission consider adding “sensor capture sharing platform services” to the VSPS category designation.

The Commission has taken account of the responses to this consultation. In the case of the principles highlighted by one respondent, the Commission would note that these align with the principles that underpin the Commission’s regulatory approach in the discharge of its statutory functions and duties as set out in the Act. These include transparency, fairness, consistency, evidence-based decision making and accountability. Regarding the request for alignment with EU legislation, the provisions of the Act reflect this alignment, for example section 139G(4) of the Act requires the Commission to have regard to the EC Guidelines for the purpose of VSPS designation. Also of relevance and import in this regard, is the designation of the Commission as Ireland’s Digital Service Coordinator under the EU Digital Services Act 2022. Therefore, as a matter of both law and practice, the Commission will be required to take account of the entire relevant regulatory environment.

Where suggestions were made regarding the VSPS definitional criteria, these observations were outside the scope of this consultation on category designation. The future designation of individual named VSPS will be informed by the criteria for VSPS set out in the legislative provisions and the EC Guidelines.

4. Designation of VSPS as a category of relevant online services

Following the conclusion of this statutory consultation process and pursuant to its statutory powers and duties, the Commission has today, 14 August 2023, published a *Notice of Video-Sharing Platform Services Category Designation* (“Designation”) under section 139E(1) of the Act and a copy of this Notice can be found on the Commission’s website www.cnam.ie/designation-notices/

In accordance with section 139H(3)(b) of the Act, this Designation will take effect at the end of the period of 28 days after the date on which this Notice is published on the Commission’s website.