



Coimisiún
na Meán

Response to Consultation: 2025 Levy Order

Publication date: 11th December 2024

Response to Consultation
on the proposed Levy Order
in respect of the levy period
of 1 January 2025 to 31
December 2025, pursuant to
the Broadcasting Act 2009

Table of Contents

Introduction and background	3
Purpose and Summary of Consultation	3
Overview of Main Issues Raised in Response to Consultation	4
Number of Levies (4.1 of the Consultation)	4
Proposed levy approach for TV Broadcasters (4.2 of the Consultation)	5
Section 71 Contractors (4.2.1 of the consultation)	5
Proposed levy approach for radio / sound broadcasters (4.3 of the Consultation)	6
Proposed levy approach for Video-on-demand (VOD) providers (4.4. of the Consultation)	6
Proposed levy approach for Designated Online Services (4.5 of the Consultation)	7
Proposed levy approach for Intermediary service providers (DSA) (4.6 of the Consultation)	8
Proposed levy approach for hosting service providers (TCOR) (4.7 of the Consultation)	8
Geographical scope of metrics (5.1 of the Consultation)	9
Time period of metrics (5.2 of the Consultation)	9
Providers of Multiple Services (5.3 of the Consultation)	9
De minimis exemptions (Section 5.4 of the Consultation)	10
Levy Reconciliation Assurance Program (Section 5.5 of the Consultation)	10
Other Issues	11
Next Steps	11

Introduction and background

The Digital Services (Levy) Act 2024, which has been incorporated into the Broadcasting Act 2009 (the “Act”), expanded the categories of providers that Coimisiún na Meán (“An Coimisiún”) can impose a levy order on. Accordingly, Section 21 of the Act now provides An Coimisiún with the power to impose a levy order on:

- Providers of audiovisual media services;
- Providers of sound broadcasting services;
- Providers of designated online services;
- Intermediary service providers; and
- Hosting service providers.

In 2024, An Coimisiún received exchequer funding in the form of a grant from the Department of Enterprise, Trade and Employment and the Department of Justice. This grant has funded the discharge of the functions conferred on An Coimisiún 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). An Coimisiún also received funding in relation to the Media Fund.

Levy income is required to fund the discharge of An Coimisiún’s regulatory functions in relation to audiovisual media services, sound broadcasting services, designated online services, intermediary services and hosting services. In accordance with Section 21(4) of the Act, An Coimisiún must seek to ensure that levy income is sufficient to meet its expenses properly incurred and working capital requirements for the relevant levy period insofar as those expenses and requirements are not met through other means.

Purpose and Summary of Consultation

An Coimisiún’s consultation on the proposed Levy Order in respect of the levy period from 1 January to 31 December 2025 was published on 2 September 2024, with responses requested by 2 October 2024. The deadline was subsequently extended to 4 October 2024. The consultation invited comments on An Coimisiún’s proposals for a levy order in respect of the levy period from 1 January to 31 December 2025 (the “2025 Levy Order”).

The consultation document noted the reason for making a levy order that covers only one year, namely, as 2025 will be the first year in which An Coimisiún will be imposing levies related to DSA and TCOR activities, An Coimisiún considers it prudent to review the operation of the levy regime before settling on a longer-term regime. An Coimisiún will no longer require exchequer funding for its costs. In addition, information gathered while calculating the 2025 levy may be of use in determining the longer-term approach to future levies. An Coimisiún also outlined that it would consult again during the course of 2025 before making a levy order for 2026 and subsequent periods.

A total of ten submissions were submitted to An Coimisiún by 4 October 2024, with one late submission received on 11 October 2024 by the following entities:

Independent Broadcasters of Ireland	Vodafone
Eir	TG4
Meta (Facebook and Instagram)	Virgin Media
Pinterest	X
RTE	Technology Ireland (IBEC)
Bauer Media (late submission)	



A copy of each submission can be found on our website via the following link https://www.cnam.ie/wp-content/uploads/2024/12/LevyConsultation-2024-Published_Responses_Dec2024.pdf.

Overview of Main Issues Raised in Response to Consultation

This Response to Consultation document provides a summary of the main issues raised in the submissions received by An Coimisiún. However, this document does not purport to set out exhaustively the issues raised in those submissions. All issues raised in the various submissions were considered by An Coimisiún before making any decision. In summary, the main issues identified by the respondents included:

- Metrics used for the separate levies.
- 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 An Coimisiún.

Number of Levies (4.1 of the Consultation)

- *Comments from respondents*

Meta questioned how Intermediary and Hosting services could be levied in circumstances where An Coimisiún has yet to identify all relevant providers within these categories. Meta claimed that the imposition of a levy on intermediary and hosting service providers identified by An Coimisiún, but not on those yet to be identified, would lead to a disproportionate burden on some service providers.

Coimisiún na Meán consideration and final position

As set out in the Consultation proposal, levies for intermediary service providers and hosting service providers are mandated by the amendments to the Act. Accordingly, An Coimisiún has increased the number of applicable levies to account for this.

In the absence of any statutory notification obligation for intermediary service providers, An Coimisiún agrees that there is a risk that it will not be able to identify all intermediary services, particularly those with smaller user numbers. An Coimisiún anticipates that the majority of its regulatory effort will relate to the regulation of online platforms and search engines that have more than 1 million AMARs and thus, is proposing to impose a levy only in respect of online platforms and search engines with AMARs in excess of 1 million. An Coimisiún is using all reasonable endeavours to compile a register of the relevant intermediary service providers. It is not expected that the inclusion or exclusion of smaller, harder to identify providers from this register, will make a material difference to the burden to be borne by those providers for which services have been identified. It is An Coimisiún's intention that such relevant intermediary service providers notified by An Coimisiún that their intermediary services constitute either an online platform or an online search engine will be levied by An Coimisiún during the levy period of 1 January 2025 – 31 December 2025.

The process for calculation of the levy applicable to intermediary service providers is outlined in greater detail in Section 4.6 below.

In respect of hosting service providers, An Coimisiún has decided to impose a levy only in respect of those services where An Coimisiún has made a decision that such services are exposed to terrorist content and where that decision has been notified to the providers of such services. These services are expected to account for the majority of An Coimisiún's regulatory effort in relation to TCOR.

Proposed levy approach for TV Broadcasters (4.2 of the Consultation)

Comments from respondents

TG4 disagreed with An Coimisiún's views and proposed that the levy for TV broadcasters should be based on audience numbers rather than qualifying income. TG4 also suggested that where a provider is subject to payment of a levy under more than one category, the applicable levy should be apportioned. TG4's rationale for this proposal is that TG4 is a minority language broadcaster, with low audience numbers relative to its qualifying income and thus, which TG4 submits costs less to regulate. TG4 also drew attention to the differences in the manner of calculation of the levies applicable to each different category of service provider and specifically, that the use of audience numbers for the calculation of the levy applicable to TV broadcasters would be similar to the use of AMARs in respect of the calculation of the levy for other providers, such as on-demand services, intermediary services and hosting services.

RTE proposed that the levy for TV broadcasters should be based on advertising income only when considering qualifying income. They believe that the changes to the methodology will disproportionately increase RTE's levy contribution.

Coimisiún na Meán consideration and final position

An Coimisiún 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.

As mentioned in An Coimisiún's consultation in respect of the 2024 Levy Order, 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.

In relation to on-demand, intermediary and hosting services, AMARs are used as the basis for the levy because they are a proxy for ability to pay, and not because they are a proxy for the cost of regulation.

Qualifying income of television programme service providers and sound broadcasting providers will be defined in a schedule of the 2025 Levy Order in a similar manner as it was in the 2024 Levy Order. All income including exchequer funding will be included in the calculation of the levy as it is recognised as a form of financing to the provider and therefore should be included in the qualifying income.

An Coimisiún has therefore decided to maintain the approach proposed in the consultation document of basing the levy for television programme service providers on qualifying income and the average of the regressive band-based model and the fixed rate model as it begins the potential transition to fully adopting a fixed rate model (subject to further consultation in 2025). This is based on the rationale that the cost apportionment should reflect ability to pay of different levy payers.

Section 71 Contractors (4.2.1 of the consultation)

Comments from respondents

Virgin Media television welcome the decision to waive the fees charged for Section 71 contractors. There were no other comments from respondents.

An Coimisiún has decided to proceed as laid out in the Consultation proposal and no changes will be made to the manner in which Section 71 Contractors were dealt with in 2024.

Proposed levy approach for radio / sound broadcasters (4.3 of the Consultation)

Comments from respondents

Independent Broadcasters of Ireland (IBI) suggests moving from a 'regressive' mechanism to a 'progressive' mechanism, noting that approaches such as Ofcom's would be more favourable. Clarity was sought in respect of the calculation of qualifying income and the forms of income that would be included. IBI highlighted the challenges the sector is facing and asked An Coimisiún to seek exchequer funding to lift the burden from the sector. IBI requested An Coimisiún to be transparent around the costs the sector would be covering and to ensure the sector would not subsidise the cost of regulating other sectors.

Technology Ireland (IBEC) proposed a fee cap similar to that placed on the European Commission's supervisory fees along with a percentage cap per service type. They echoed comments from IBI seeking transparency of costs per sector, as well as clarity around the levy surplus process and timing of same. They commented that no levy should be charged on sectors where supervision is yet to commence.

Bauer Media highlighted that An Coimisiún's proposed change from a banded/tiered revenue model to a fixed rate levy would likely benefit the majority of operators and those of smaller stations but that the change would unfairly disadvantage the two national services due their larger size

Coimisiún na Meán consideration and final position

An Coimisiún agrees with the proposal of moving from a 'regressive' mechanism. A fixed-rate model was chosen as a more simplistic administrative model in order to allow a fairer approach and to allow the sector to support the development of new and innovative services. Under a fixed rate model, larger services contribute more, and smaller services contribute less than under a regressive model. An Coimisiún considers that this better reflects the ability of different services to contribute to the regulatory costs related to the sector. While we recognise that the industry faces challenges, the calculation is intended to ensure the sector pays its portion (and only its portion) of An Coimisiún's properly incurred expenses and working capital requirements for the period.

An Coimisiún intends to publish financial statements in the annual report along with disclosures required by the Code of Practice for the Governance of State Bodies.

An Coimisiún's response to the proposed cap is detailed further in section 4.6.

An Coimisiún has therefore decided to maintain its proposal that the levy for 2025 should move to a fixed percentage rate of qualifying income model.

Proposed levy approach for Video-on-demand (VOD) providers (4.4. of the Consultation)

Comments from respondents

Eir and Vodafone claimed that their on-demand content derives no additional revenue, separate from what it earns from the same content when broadcast and they therefore consider that there is no additional income

to be levied in respect of VOD services. As Virgin Media, TG4 and RTE all fall under more than one levy category they would welcome an approach to lower levies under VOD services especially if the content is the same. One proposal was to apportion the levy across the services. TG4 proposed the levy should be based on annual viewership figures and not on qualifying income.

Coimisiún na Meán consideration and final position

Qualifying income for the purposes of audiovisual on-demand media service providers will be defined in a schedule of the 2025 Levy Order in the same manner as in the 2024 Levy Order. All income that comes under that definition will be included in the calculation of the levy. An Coimisiún does not accept that the qualifying income from VOD services for these respondents is zero. Neither does An Coimisiún consider that audience numbers are a sound indicator of the cost of regulation of entities, as explained above on the responses from TV broadcasters.

An Coimisiún has therefore decided that the method of calculating the levy for audiovisual on-demand media service providers for 2025 shall remain the same as it was in 2024 for this sector.

Audiovisual on-demand media service providers who provide such services as part of a bundle that includes other services such as live TV and broadband, will continue to be required to apportion their revenues amongst the services in the bundle, and to provide an auditor's confirmation that this has been done in a fair and reasonable manner. The apportionment of revenue between broadcast and audiovisual on-demand media services will determine the levy, this revenue of audiovisual on-demand media service providers reflects the ability to pay.

An Coimisiún will consider the feasibility of different types of levy apportionment approaches in the future, with the benefit of data collected in 2025.

Proposed levy approach for Designated Online Services (4.5 of the Consultation)

Comments from respondents

Pinterest and Meta both disagree with the approach proposed by An Coimisiún. Both propose the use of the number of 'engaged' users and state their intention to provide data to show what these numbers are. Meta also proposed a cap similar to the cap on the European Commission's supervisory levy.

Coimisiún na Meán consideration and final position

An Coimisiún considers that there is some value, in principle, in the proposal that the metric used to calculate the levy could be based on the number of users actively engaging with video rather than on total AMARs for the service in question. However, it is unlikely that data of this type, calculated in a consistent manner across all providers, could be obtained in time for the calculation of the 2025 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 by what percentage of a video was visible on the user's screen. In addition, An Coimisiún notes that the video-sharing functionality is available to all users of a designated service whether or not it is used by them in any particular month.

As with the TV broadcasting levy, An Coimisiún 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, and hence it is fairer overall to base apportionment on a metric that reflects entities' ability to pay, without attempting to adjust this for differences in the cost of regulatory activities that relate to specific sectors or individual services.

In line with An Coimisiún's earlier point that AMARs are a reasonable proxy for the ability to pay, An Coimisiún has therefore decided to maintain its proposal that the levy for 2025 should be proportional to the most recently published AMARs. Designated online services that have not published precise AMARs will be requested to provide figures for the preceding 6-month period prior to the levy being calculated. AMARs should be based on 'logged in' users and should not include any users who had not 'logged in'.

Proposed levy approach for Intermediary service providers (DSA) (4.6 of the Consultation)

Comments from respondents

Pinterest disagrees with An Coimisiún's proposed approach and counter-proposes to move to a profit-based levy, similar to the approach used by the European Commission for calculating its supervisory fees in this sector. Meta expresses concern in respect of the services An Coimisiún proposes to include in the scope of which ISPs are leviable. While Meta agrees that the levy applicable to ISPs should only apply to providers of online platforms and online search engines, and should exclude mere conduit, caching and hosting services that are not online platforms, Meta notes that there is no requirement for ISPs to be designated or registered in advance of the Levy Order. Meta also queried how An Coimisiún will ensure that the levies are imposed fairly and proportionately across all in scope service providers.

Coimisiún na Meán consideration and final position

The calculation of the European Commission supervisory fee is largely based on AMARs but is subject to a cap of 0.05% of an entity's net income (profit).

The cap might reduce the supervisory fee payable by an entity with large AMARs but small profit. It also places some constraint on the total amount that can be recovered through the supervisory fees.

In the case of An Coimisiún, the total amount to be recovered by each levy is related to the costs incurred in discharging the relevant functions. An Coimisiún is under a statutory duty to discharge those functions efficiently and effectively. Together, these limitations provide an appropriate constraint on the total amount to be recovered by way of levy.

An Coimisiún considers it would be administratively complex to introduce a cap on the applicable levy based on an entity's net profit in addition to basing the levy on AMARs. An Coimisiún notes that the risk of a levy burden being placed on a small unprofitable platform has been mitigated by the inclusion of a de minimis threshold of 1 million AMARs for intermediary service providers.

An Coimisiún has set out its position on the issue of identifying service providers in its response to comments on Section 4.1 of the consultation.

Therefore, An Coimisiún has decided to maintain the proposals set out in the consultation document.

Proposed levy approach for hosting service providers (TCOR) (4.7 of the Consultation)

Comments from respondents

Pinterest disagrees with An Coimisiún's approach and proposes the same approach suggested for the DSA. X is seeking clarity around how AMARs will be calculated for the purpose of the Levy. Meta argues that platforms, such as themselves, with previously built-in, processes to deal with instances of non-compliance should not be levied as heavily as platforms where no such safeguards exist therefore posing less of a risk.

As earlier regulations enacted require them to prevent illegal content, they believe this should be taken into account in the form of a discount when their levy contribution is being calculated.

Coimisiún na Meán consideration and final position

An Coimisiún is proposing a similar approach to that taken for the DSA, with levies imposed on relevant providers in respect of such of the provider's services that have been notified to them as being exposed to terrorist content.

AMARs will be calculated in the same way as for the DSA, save that they may need to be separately calculated for hosting services exposed to terrorist content which are not online platforms. However, it is not anticipated that there will be any such services liable for levy in 2025.

An Coimisiún does not consider that it would be practical or appropriate to assess the risk posed by individual services based on the nature of their service or user base.

All services liable to be levied in 2025 will have been notified by An Coimisiún that they are exposed to terrorist content and are required to take specific measure to mitigate the risks. The taking of measures should not therefore be a reason for reducing or discounting the amount of levy payable.

Geographical scope of metrics (5.1 of the Consultation)

No substantive comments were received from respondents on this section

An Coimisiún plans to adopt the policy as described in the Consultation paper of using appropriately audited EU-wide qualifying income and monthly active user metrics for the purposes of calculating all levy contributions.

Time period of metrics (5.2 of the Consultation)

Comments from respondents

TG4 expressed a view that metrics should be based on actual costs known at the beginning of the levy period rather than on forecasts.

Coimisiún na Meán consideration and final position

An Coimisiún has decided to proceed with its proposal of basing levy calculations on August 2024 declared AMARs data and on forecasted costs for 2025 as is required by legislation, which it cannot legally depart from.

Providers of Multiple Services (5.3 of the Consultation)

Comments from respondents

Meta raised the issue of double charging of providers due to the levy being applied on services rather than providers, with this being one of safeguards introduced by the European Commission's cap. Meta note that under the TV/VOD levy qualifying income is apportioned and would like to see a similar apportionment for AMARs to allow a levy to be applied under categories for the same service.



Coimisiún na Meán consideration and final position

An Coimisiún considers it appropriate to base the levy on AMARs for each service, even if the services are operated by the same provider. This means that the levy receivable by An Coimisiún does not depend on the operator of the service for the time being (as long as the service remains under An Coimisiún's jurisdiction). Moreover, An Coimisiún considers that the ability to pay is better proxied by adding the AMARs for different services rather than considering an overall AMARs for all services provided.

Where a service is subject to more than one levy, this is because of the different regulatory regimes applying to the service. There is no double counting of An Coimisiún's costs in calculating the separate levies.

De minimis exemptions (Section 5.4 of the Consultation)

Comments from respondents

Independent Broadcasters of Ireland were of the view that the de minimis exemption should be far higher than at present and should be increased to €3 million of qualifying income before any levy was payable. They added that the %-rate thereafter should also be lower than proposed, by 0.75%. Virgin also commented that the de minimis threshold should be higher than at present and referred to their comments made in 2023 on the 2024 Levy Consultation.

Coimisiún na Meán consideration and final position

An Coimisiún was not persuaded by the above comments from respondents that these considerations outweighed the need to draw in a modest and fair contribution from smaller entities for the regulatory services provided, which would benefit them, as well as other service providers, significantly. It therefore plans to retain the €500,000 de minimis exemption for the 2025 Levy Order.

Levy Reconciliation Assurance Program (Section 5.5 of the Consultation)

Comments from respondents

Meta commented that they did not support a Reconciliation Program as they considered that the data An Coimisiún uses for calculating the levy should be based on actual costs and not on forecasted metrics, which would require no subsequent verification.

Coimisiún na Meán consideration and final position

An Coimisiún notes the administrative complexity involved in the reconciliation process. The levy apportionment is based on metrics that are known at the time that the levy is calculated (e.g. historical AMARs or revenues from completed accounting periods). In this regard, reconciliation is required only if information submitted at a later date turns out to be incorrect.

The levy is based on estimated costs to be incurred during the levy period and the 2009 Act provides for any excess collected to be refunded to levy payers or credited against future levy liabilities. This requires a reconciliation period. If the levy were to be based on actual costs incurred, it would need to be paid after audited accounts for the levy period were available. This would lead to a delay of around 18 months or more in the levy being paid. The later the levy is paid, the greater An Coimisiún's working capital requirements would be. This would impose an additional burden on levy payers, amounting to 18 months or more of An Coimisiún's annual expenditure. An Coimisiún does not consider that this would be in the interests of levy payers.



Other Issues

An Coimisiún notes that some of the comments made by respondents on other sections of the Consultation related to the question of service providers being levied by more than one body. However, these comments did not amount to a clear objection or agreement to the proposal to the levy being charged on a per-service basis. An Coimisiún is required under the Act to impose a levy on providers which will be sufficient to meet the Commission's expenses properly incurred for the levy period and its working capital requirements in that period, in so far as those expenses and requirements are not met in any other way. An Coimisiún therefore confirms that it will retain the approach outlined in the Consultation document.

Next Steps

An Coimisiún is grateful for the engagement from stakeholders from several sectors in this Consultation process. An Coimisiún will lay a Levy Order before the Houses of the Oireachtas before the end of 2024 which will be effective from 1 January 2025.

Guidelines on the operationalisation of the 2025 Levy Order will be issued to all relevant parties in early January 2025.

Information will be sought from levy payers during January 2025 to enable the amounts payable by each levy payer for the 2025 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 2025; and the second will be issued at the start of August 2025 with payments due within 30 calendar days of date of invoice.