



Rialtas na hÉireann  
Government of Ireland

# Online Safety and Media Regulation Bill

General Scheme



## 1. Introduction

The Audiovisual Media Services Directive sets down the rules and requirements that form the minimum standards that Member States must ensure that audiovisual media services and video sharing platform services established in their jurisdictions abide by.

The Directive was formulated as an amendment to the Television without Frontiers Directive of 1989 and codified in 2010 as a standalone legislative instrument, Directive (EU) 2010/13. At that time, the Directive only concerned audiovisual media services, these being television broadcasting services and “TV-like” video on-demand services.

In May 2016 the European Commission published a proposed revision of the Directive. The proposal was written to update the rules and requirements in the Directive to reflect the rapid changes that the video media market was and is experiencing. The proposal was examined and amended by both the European Parliament and the Council of the European Union and an agreement on a final text of the revised Directive was reached in June 2018. The final text of the revised Directive, Directive (EU) 2018/1808, was officially published in November 2018.

One of the key aspects of the revised Directive is the inclusion, for the first time, of specific rules and requirements for video sharing platform services, for example YouTube. The revised Directive does not extend the rules and requirements for audiovisual media services to video sharing platform services. Instead the revised Directive takes a different approach and requires Member States to ensure that video sharing platform services take appropriate measures to protect minors from harmful content and all users from hate speech and certain criminal content. The approach set out in the Directive is therefore systemic in nature and the role of national regulators is to ensure that the measures taken by video sharing platforms are adequate in practice to address these requirements.

The revised Directive also updates the rules and requirements for audiovisual media services, in particular through further aligning the minimum standards that apply to television broadcasting services and video on-demand services.

As the revisions to the Directive do not have direct effect in the Member States, they must be implemented in Irish law in order to take effect in Ireland. This process is known as transposition.

### a. Irish legislative framework for Directive (EU) 2010/13

The 2010 Directive was transposed into Irish law by three legislative instruments, these being:

- The Broadcasting Act, 2009,

- Statutory Instrument No. 258/2010, and,
- Statutory Instrument No. 247/2020.

The 2009 Act primarily transposed those elements of the Directive that related to television broadcasting services while the two statutory instruments transposed those elements that related to video on-demand services.

The 2009 Act is what is known as primary legislation in Irish law, meaning that it is given effect by the Parliament and the President, collectively known as the Oireachtas. The statutory instruments, or S.I.s, are what is known as secondary legislation, meaning that they are given effect by a Minister of the Government.

As EU law has primacy over Irish law, it is possible to transpose EU law into Irish law by S.I. rather than by an Act of the Oireachtas. However, this is only possible under the Irish Constitution where the EU law in question doesn't require a large multitude of complementary provisions in Irish law in order to take practical effect where those provisions are not explicitly envisaged by the Directive. If such complementary provisions are required then they must be provided for in Irish law by an Act of the Oireachtas and must reflect Irish constitutional requirements and administrative norms arising from those requirements.

#### b. The approach to the transposition of Directive (EU) 2018/1808 in Ireland

Ireland will transpose the revised Directive into Irish law by primary legislation. There are a number of reasons for this approach, including that the nature of the revisions to the Directive are of such an order that they require significant and substantive complementary provisions in Irish law. This includes significant revisions to existing complementary provisions to the 2010 Directive, particularly those regarding the national regulatory authority which is presently responsible for oversight of the provisions of the 2010 Directive, the Broadcasting Authority of Ireland.

On 9 January 2020, the Irish Government approved the General Scheme of the Online Safety and Media Regulation Bill, which, among other things, will transpose the revised Directive. The General Scheme, which serves as a template for legislation, was published on 10 January 2020. Among other things, the General Scheme provides for:

- The establishment of a multi-person Media Commission, including an Online Safety Commissioner,
- The dissolution of the Broadcasting Authority of Ireland and the assignment of all the present functions of the Authority to the Media Commission, and,

- The transposition of the video sharing platform service elements of the revised Directive within a wider regulatory framework for online safety design to address the spread and amplification of harmful online content, to be administered by an Online Safety Commissioner as part of a wider Media Commission.

At this time it was noted that a number of provisions were not included in the General Scheme and would be added subsequently. These additional provisions primarily related to the funding of the new regulatory body and the provisions transposing the updated rules and requirements for audiovisual media services. Following a Government decision on 8 December 2020, these provisions were added to the General Scheme.

### c. General election and Covid-19

The Irish Parliament was dissolved on 14 January 2020 in advance of the general election held on 8 February 2020. Following the results of this election, a Government was not formed until 27 June 2020. Alongside the necessary attention given to responding to the Covid-19 pandemic, which has posed difficult challenges to all Member States in terms of their legislative and administrative resources, this has served to delay progress on the proposed Bill. In addition to this, following its formation on 27 June 2020 the Government decided to realign certain Ministerial responsibilities, including in relation to the function with responsibility for the proposed Bill. This transfer was formalised on 22 September 2020.

Taken together, these issues have resulted in Ireland, like many other Member States, not notifying the European Commission of a complete transposition of the revised Directive by the deadline of 19 September 2020.

However, Ireland is progressing this transposition as priority matter and, as of 8 December 2020, the General Scheme contains all the relevant draft provisions necessary to transpose the revised Directive. The proposed Bill will amend the Broadcasting Act, 2009, repeal S.I.'s 258/2010 and 247/2012 and consolidate the transposition of the Directive in the amended 2009 Act.

### d. Next steps

The Government has now asked the Joint Oireachtas Committee on Tourism, Culture, Arts, Gaeltacht, Sport and Media to consider whether to conduct pre-legislative scrutiny of the proposed Online Safety and Media Regulation Bill on the basis of the General Scheme and the accompanying regulatory impact analysis.

In addition, the Government has requested that the Office of the Attorney General use the framework provided by the General Scheme to create a first legal draft of the Online Safety and Media Regulation Bill. When these processes are complete, the draft Bill will be subject to the typical processes of Oireachtas scrutiny prior to enactment.

## 2. Key points

This document provides an overview of key aspects of the proposed transposition of the revised Audiovisual Media Services Directive by Online Safety and Media Regulation Bill by reference to its General Scheme. A complete correlation table between the articles of the Directive and the Heads of the General Scheme can be found [here](#).

### a. The establishment of a new regulator

The General Scheme of the Online Safety and Media Regulation Bill seeks to dissolve the Broadcasting Authority of Ireland and establish a new regulatory body with responsibility for the regulation of:

- Radio and television broadcasting services,
- Video on-demand services, also known as on-demand audiovisual media services, and,
- Designated online services, including video sharing platform services.

This new regulatory body will be a multi-person Commission with separate commissioners responsible for the regulation of the aforementioned services with certain powers, for example sanction powers, reserved for use only by the Commission acting as a whole. An executive chairperson will oversee the operation of the Commission as a whole. The purpose of establishing this new Media Commission is to move away from the part time board structure of the Broadcasting Authority of Ireland to the more responsive decision making structure provided by a multi-person commission model. A commission model is more appropriate to a media regulator during this time of accelerating media convergence and will serve to make the regulatory structures more adaptable to changes in media and media consumption in the medium term.

The rules and requirements set out in Article 30 of the revised Directive regarding the independence of national regulatory bodies are reflected in Part 2 of the General Scheme (Heads 6-40). In particular:

- Head 8 provides for the independence of the Media Commission in the performance of its functions,
- Head 9 and 10 provide for the objectives and functions of the Media Commission,
- Heads 26 and 27 provide for specific forms of accountability of the Media Commission to the Oireachtas, and,

- Heads 19-22 provide for the rules regarding membership of the Media Commission, including relating to dismissal, and,
- Head 40 provides that the Media Commission shall fund its operations by levying the services it regulates.

A detailed breakdown of the correlations between Article 30 and the General Scheme can be found in the correlation table [here](#).

## **b. The regulatory framework for online safety**

The General Scheme of the Online Safety and Media Regulation Bill seeks to establish a regulatory framework for online safety to address the spread and amplification of certain defined categories of harmful online content. This regulatory framework will encompass the transposition of the rules and requirements for the regulation of video sharing platform services in the revised Directive.

The relevant provisions for the regulatory framework for online safety can be found in Part 4 of the General Scheme of the Bill (Heads 49a-56). A detailed breakdown of the correlations between Articles 28a and 28b of the revised Directive concerning video sharing platform services and Part 4 of the General Scheme can be found in the correlation table [here](#).

### **i. Non-VSPS & non-audiovisual content**

The regulatory framework for online safety is applicable to a wider range of services than video sharing platform services and a wider range of content than video content. The purpose of this is to provide a greater degree of protection from the effects of harmful online content to persons resident in Ireland than can be achieved by solely focusing on video content and the services that host video content. This greater degree of protection will not have any extra jurisdictional effect beyond Ireland.

Any service which is considered a “relevant online service” may be regulated under this framework. A “relevant online service” is defined in Head 2 of the General Scheme as “an information society service established in the State that facilitates the dissemination of or access to user-generated content via an electronic communications network”. As video sharing platform services are “information society services” they are included within this definition.

As it is not possible under EU law to require an information society service to seek authorisation before providing its services and as it would not be desirable to seek that every potential relevant online service register with the Media Commission after establishment, Head 56 provides that the Media Commission may designate a relevant online service or category of such services to be regulated following an assessment of the risk profile of a service or services with regard to the spread and amplification of harmful online content.

This risk-based approach to regulation both ensures that regulation is proportionate and that regulatory resources are appropriately allocated.

## **ii. Identifying VSPS**

Head 56(3) of the General Scheme provides that video sharing platform services are a category of designated online services. This means that the Media Commission is not required to assess the risk posed by a video sharing platform service prior to regulating it as it would with other relevant online services.

However, due to the complexity of the definition of a video sharing platform service it has been recognised by the European Commission and the Member States that it will be necessary for the national regulatory authorities of the Member States to determine whether a service is a video sharing platform service from time to time. As a result of this, where the principal purpose of the service in question is not that of a video sharing platform service, the Media Commission will be called upon to determine whether a dissociable section or essential functionality of the service constitutes a video sharing platform service.

Head 56(2) provides for this assessment by requiring the Media Commission to consider the definition of a video sharing platform service, the guidelines issued by the European Commission regarding the practical application of the essential functionality criterion and the jurisdiction criteria for video sharing platforms in Article 28a of the revised Directive when it is considering designating a relevant online service.

Furthermore, the Media Commission is required by Head 56(14) to maintain a public list of all designated online services, including video sharing platform services.

## **iii. Obligations on VSPS**

Head 50A of the General Scheme provides that the Media Commission shall make Online Safety Codes that designated online services will be required to abide by. These Codes may concern a number of matters regarding content delivery and content moderation by designated online services, including regarding:

- Measures to minimise the availability of harmful online content on designated online services,
- Rules for commercial communications on designated online services,
- User complaints or issues handling mechanisms operated by designated online services,
- Risk and impact assessments to be conducted by designated online services, and,

- Reporting obligations on designated online services.

As set out in Head 56(3)(b), the obligations in Online Safety Codes applicable to video sharing platform services will encompass the obligations set out in Article 28b(2-4), having regard to the matters set out in the first paragraphs of Article 28b(3) that the appropriate obligations shall be determined in light of, for example the nature of the content in question.

In addition, the Media Commission may apply stricter or more detailed obligations to video sharing platform services than those set out in the revised Directive through Online Safety Codes. This is in accordance with Article 28b(6), which permits Member States to adopt stricter obligations.

#### **iv. Oversight of obligations**

The General Scheme of the Bill provides that the Media Commission shall oversee the compliance of designated online services with the Online Safety Codes that apply to them. The General Scheme provides the Media Commission with a number of tools with which to carry out this role, including:

- The power to require designated online services to provide the Media Commission with information relevant to the service's compliance with the Online Safety Codes that apply to it (Head 50B),
- The power to conduct investigations, including through authorized officers, of the compliance of designated online services with Online Safety Codes (Head 50B), and,
- The power to conduct audits of the complaints or issues handling mechanisms operated by designated online services, including by authorized officers (Head 52A).

Where the Media Commission considers that a designated online service is non-compliant, then the Commission may issue a compliance notice to that service (Head 53). Compliance notices will set out the steps that a designated online service will need to take to remedy the non-compliance and the appropriate timeframe for doing so. If a designated online service doesn't take sufficient action to remedy its non-compliance and doesn't provide a sufficient justification for not doing so then the Media Commission may issue a warning notice (Head 53). Similar to a compliance notice, a warning notice will also set out the steps necessary to remedy the non-compliance and the appropriate timeframe. However, a warning notice will also set out the steps that the Media Commission will take if the non-compliance is not remedied. The Media Commission may publish the details of a warning notice. Non-compliance with a warning notice is a criminal offence (Head 53).

This stepped approach of providing for opportunities for an allegedly non-compliant designated online service to remedy its non-compliance is a standard method of ensuring

fair procedures under Irish law. Under Irish law, an absence of sufficient fair procedures would tend to render any sanctions sought by a State body unenforceable.

The above provisions in the General Scheme fulfill the requirement of Article 28b(5) that Member States entrust the assessment of the compliance of video sharing platform services to the national regulatory authority, in this case the Media Commission.

#### **v. Sanctions for non-compliance**

Head 54A of the General Scheme provides the Media Commission with the power to seek the imposition of a number of sanctions on a non-compliant designated online service. The Media Commission can only seek the imposition of a sanction where a designated online service has failed to comply with a warning notice.

The sanctions available to the Media Commission to seek are:

- The imposition of a financial sanction of up to €20 million or 10% of turnover,
- Compelling a designated online service to take certain specified actions, or,
- Blocking access to a designated online service in Ireland.

Due to constitutional limitations on the powers of regulatory bodies in Ireland, the imposition of any of these sanctions requires the confirmation of a Court.

Further to the above, Head 54B provides that where a designated online service fails to comply with a warning notice the Irish Director of Public Prosecutions may seek to hold individuals in influential positions in that designated online service or other relevant entities criminally liable for that act.

#### **vi. Harmful online content**

##### **The revised Directive:**

Article 28b(1) of the revised Directive requires that Member States ensure that video sharing platform services established in their jurisdictions take appropriate measures to:

- **Article 28b(1)(a):** Protect children from content which may impair their physical, mental or moral development,
- **Article 28b(1)(b):** The general public from content containing incitement to violence or hatred directed against a group of persons or a member of a group based on any of the grounds referred to in Article 21 of the Charter of Fundamental Rights of the EU, and,

- **Article 28b(1)(c):** The general public from content the dissemination of which constitutes an activity which is a criminal offence under Union law.

## **The General Scheme**

In order to transpose this provision into Irish law, Head 49A provides for defined categories of harmful online content, these being:

- a. Material which it is a criminal offence to disseminate under Irish or Union law,
- b. Material which is likely to have the effect of intimidating, threatening, humiliating or persecuting a person to which it pertains and which a reasonable person would conclude was the intention of its dissemination,
- c. Material which is likely to encourage or promote eating disorders and which a reasonable person would conclude was the intention of its dissemination, and,
- d. Material which is likely to encourage or promote self-harm or suicide or provides instructions on how to do so and which a reasonable person would conclude was: (i) the intention of its dissemination and (ii) that the intention of its dissemination was not to form part of philosophical, medical and political discourse.

In relation to the category of harmful online content that concerns material which it is a criminal offence to disseminate, Ireland considers that this category transposes:

- Article 28b(1)(c) regarding offences in Union law,
- The incitement to violence element of Article 28b(1)(b) as any incitement to an indictable offence, including those with an element of violence, is an offence in Irish law, regardless of the grounds on which that violence was committed, and,
- The incitement to hatred elements of Article 28b(1)(b) that reflect those in the Incitement to Hatred Act, 1989<sup>1</sup>.

In relation to the other categories of harmful online content set out in Head 49A, these are defined interpretations of material which can be seen as, in relation to adults, falling within the scope of Article 28b(1)(b) and in relation to minors, falling within the scope of Article 28b(1)(a).

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<sup>1</sup> Race, colour, nationality, religion, ethnic or national origins, membership of the travelling community or sexual orientation

## **The approach**

The approach of providing for defined categories of harmful online content is necessary to transpose Article 28b(1) into Irish law for a number of reasons.

First among these is that subparagraphs (a) and (b) require interpretation in order to have practical effect. Under Irish law, the power to interpret such broad provisions and restrict the freedom of expression of individuals on the basis of those interpretations cannot be granted to a regulatory body<sup>2</sup>. As the revised Directive does not provide that national regulatory authorities shall interpret Article 28b(1), such constitutional restrictions regarding law making in Ireland remain in effect. Therefore, an interpretation of Article 28b(1) must be provided through an Act of the Oireachtas

Further to this, it has not been possible to arrive at a suitably robust definition that encompasses all the kinds of content that could be interpreted as falling within the scope of subparagraphs (a) and (b) of Article 28b(1). Therefore, in order to transpose Article 28b(1) into Irish law, it is considered necessary to provide an interpretation of that provision through providing for defined categories of material.

Lastly, subparagraphs (a) and (b) of Article 28b(1) are not sufficiently detailed to ensure uniform agreement on what kinds of material would fall within their scope and that natural differences will arise due to different sociocultural notions of what is considered harmful material by different Member States, including in Ireland.

Taking the above matters together, Ireland considers that the categories of harmful online content set out in Head 49A of the General Scheme will sufficiently transpose Article 28b(1) and reflect the present sociocultural interpretation of that provision in Ireland, however, they do not encompass every notion of harm that may be interpreted from that provision.

## **Further categories**

Head 49B of the General Scheme provides for further defined categories of harmful online content to be added, subject to appropriate public scrutiny and Oireachtas oversight.

Further to this, a definition of age-inappropriate online content is provided in Head 49C to guide the Media Commission in testing new and innovative approaches to protecting children online through Online Safety Guidance Materials (Head 51A). This may lead to new regulatory approaches to protecting children migrating from Online Safety Guidance Materials to Online Safety Codes. It will also inform the Media Commission in proposing the addition of new categories of harmful online content that relate to the protection of children.

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<sup>2</sup> Separate lines of legal reasoning concern editorial content provided by media service providers

## **vii. Dispute resolution**

Article 28b(7) states that “Member States shall ensure that out-of-court redress mechanisms are available for the settlement of disputes between users and video-sharing platform providers relating to the application of paragraphs 1 and 3”.

At a micro level, Head 52C of the General Scheme provides that, where there is a dispute between a designated online service and a user, or group of users, however represented, of that designated online service, both parties shall consider mediation as a method of reaching a mutually acceptable agreement to resolve the dispute.

At a macro level, a member of the public may bring information about, or a dispute with, a designated online service to the attention of the Media Commission and the Commission may decide to investigate or audit the designated online service in question on the basis what has been brought to the Commission’s attention.

Furthermore, Head 10 provides that a function of the Media Commission shall be to promote alternative dispute resolution procedures.

### **c. The regulatory framework for audiovisual media services**

The General Scheme of the Online Safety and Media Regulation Bill seeks to consolidate the regulation of audiovisual media services, these being television broadcasting services and on-demand audiovisual media services, under a single regulatory framework. As noted above, this will involve incorporating the elements of the 2010 Directive that were transposed by S.I.’s 258/2010 and 247/2012 into the Bill.

The relevant provisions specific to the regulation of on-demand audiovisual media services can be found in Part 5 of the General Scheme of the Bill (Heads 57-60). The relevant provisions consolidating the elements of the revised Directive regarding the regulation of audiovisual media services in general can be found in Part 5 of the General Scheme of the Bill (Heads 61-77). A detailed breakdown of the correlations between the relevant Articles of the revised Directive and Parts 5 and 6 of the General Scheme can be found in the correlation table [here](#).

### **i. Identifying ODAVMS**

Head 58 of the General Scheme requires that on-demand audiovisual media services established in Ireland make an application to the Media Commission for entry to a register of such services. This is not a prior authorisation provision, which is not permissible for such services under Union law, as the Media Commission can only refuse an application if the service in question is not an on-demand audiovisual media service.

Further to this, Head 58(10) provides the Media Commission with the power to direct an unregistered on-demand audiovisual media service to make an application for entry into the registry. It is a criminal offence to fail to comply with a direction of the Media Commission to make such an application.

Lastly, the Media Commission is required to review the registry from time to time in order to maintain the accuracy of the information it contains.

## **ii. Obligations on ODAVMS**

### **Media Codes**

Head 62 of the General Scheme provides that the Media Commission shall make Media Codes that audiovisual media services and sound media services (radio broadcasting services) will be required to abide by. Broadly speaking, Media Codes provide for the standards that these services must adhere to in relation to the content of the programmes they make available to the public. This includes standards in relation to:

- Material which it is a criminal offence to disseminate,
- Harmful or offensive material, and,
- The content of advertisements carried by these services, for example what is and isn't permissible in advertising directed at children.

The Media Commission is required to reflect the standards for the content of the programmes provided by audiovisual media services in the revised Directive in its Media Codes, for example the standards regarding commercial communications for foods high in fat, sugar or salt.

### **Media Rules**

Head 70 of the General Scheme provides that the Media Commission shall make Media Rules that audiovisual media services and sound media services will be required to abide by. Broadly speaking, Media Rules provide for the standards that such services must adhere to in relation to the presentation and organisation of the programmes they make available to the public. This includes standards in relation to:

- The timing of commercial communications, and,
- Accessibility requirements.

The Media Commission is required to reflect the standards in relation to the presentation and organisation of the programmes provided by audiovisual media services in the revised Directive in its Media Codes, for example standards in Articles 7b and 8 of the revised Directive regarding signal integrity and the transmission of cinematographic works.

Where the standards set out in the revised Directive do not neatly fall into either governing the content of programming or the presentation and organisation of programming, the Media Commission may choose whether to reflect these standards in either Media Codes or Media Rules. Both Media Codes and Media Rules are binding on audiovisual media services.

### **Stricter rules**

The Media Commission may provide for stricter or more detailed obligations for audiovisual media services through Media Codes and Media Rules than those set out in the revised Directive. This is in accordance with Article 4(1) of the revised Directive, which permits Member States to adopt stricter obligations.

In addition, a number of stricter rules for audiovisual media services are provided for directly in Part 6 of the General Scheme. For example, Head 67 provides for standards that audiovisual media services and sound media services are required to abide by in relation to news and current affairs. In particular, Head 67(7) provides that on-demand audiovisual media services provided by certain kinds of media services providers provide news and current affairs programming in a fair, objective and impartial manner.

### **iii. Oversight of obligations**

Head 61 provides that the Media Commission may investigate the compliance of audiovisual media services with Media Codes, Media Rules or the standards set out in Head 67 on its own initiative or on the basis of a complaint. The Media Commission may appoint authorized officers to carry out such investigations.

In this regard, Head 61 provides for the timelines and steps where a complaint is made to the Media Commission, the necessary requirements for a complaint to be valid, such as a complaint having been first made to the relevant media service provider, and where an investigation is initiated on foot of such complaints. Head 74 provides for further detail as to how media service providers are required to handle complaints and requires media service providers to develop a publically available Code of Practice for how they handle complaints.

As provided for in the Broadcasting Act, 2009, television broadcasting services are regulated on a contractual basis and non-compliance by such services with Media Codes, Media Rules or Head 67 may be pursued by the Media Commission as a breach of contract.

Similarly to the regulation of designated online services under the regulatory framework for online safety, non-compliance by an on-demand audiovisual media service with its obligations is dealt with through a stepped process of compliance and warning notices. Ultimately, non-compliance with a warning notice is a criminal offence. This is provided for in Head 59.

#### **iv. Sanctions for non-compliance by an ODAVMS**

Head 60 of the General Scheme provides the Media Commission with the power to seek the imposition of a number of sanctions on a non-compliant on-demand audiovisual media service. The Media Commission can only seek the imposition of a sanction where an on-demand audiovisual media service has failed to comply with a warning notice.

The sanctions available to the Media Commission to seek are:

- The imposition of a financial sanction of up to €20 million or 10% of turnover,
- Compelling a designated online service to take certain specified actions,
- Removing an on-demand audiovisual media service from the registry of such services, or,
- Blocking access to a designated online service in Ireland.

Due to constitutional limitations on the powers of regulatory bodies in Ireland, the imposition of any of these sanctions requires the confirmation of a Court.

As television broadcasting services are regulated on a contractual basis, a different set of sanctions are available to the Media Commission. This includes revocation of a contract or an administrative financial sanction, the latter of which is subject to court confirmation.

#### **v. European works quotas for ODAVMS**

Article 13(1) of the revised Directive requires Member States to ensure that the catalogues of on-demand audiovisual media services providers established in their jurisdictions are comprised of 30% European Works and that these works are given appropriate prominence.

Head 64 of the General Scheme provides for the obligation on-demand audiovisual media services in respect of the 30% quota, including the relevant exceptions specified in Article 13. Head 64(4) requires the Media Commission to create binding rules regarding the application of this obligation, having regard to any relevant guidance produced by the European Commission. It is a criminal offence for an on-demand audiovisual media service to not comply with this obligation and the relevant rules in its application.

Head 65 provides for the requirement for on-demand audiovisual media services to ensure the appropriate prominence of European Works on their services. Head 65(2) requires the Media Commission to create binding rules regarding the application of this obligation, having regard to any relevant guidance produced by the European Commission. It is a criminal offence for an on-demand audiovisual media service to not comply with this obligation and the relevant rules in its application.

## **vi. Content production levies**

Article 13(2) permits Member States to establish levies known as a Regulation, on audiovisual media services established in their jurisdictions or targeting their jurisdictions while established in another Member State for the purpose of funding the creation of European Works.

Head 76 of the General Scheme provides for the establishment of such a levy on media service providers by the Media Commission, including the manner by which any such levy may be prescribed, exceptions from the levy, and the relevant revenues on which a levy may be based. The Media Commission may only establish such a levy by means of a form of secondary legislation known as a Regulation. Any Regulations made by the Commission are subject to a negative resolution procedure before the Oireachtas, whereby they may be annulled.

Head 77 of the General Scheme provides for the Media Commission to create schemes to disburse monies to fund the production of audiovisual or sound programmes. In relation to audiovisual programmes, the relevant monies may be derived from a content levy established in accordance with Head 76. The Media Commission may only establish such a levy by Regulation. Any Regulations made by the Commission are subject to a negative resolution procedure before the Oireachtas, whereby they may be annulled.

It's intended that Heads 76 and 77 will be subject to a commencement provision in the final Act, whereby they will not come into effect until the relevant Minister is satisfied that the evidence base provided by the Media Commission for the establishment of a content levy and any resulting content production schemes is sufficiently robust.

## **d. Cooperation between the regulatory authorities of the Member States**

In recognition of the ongoing and accelerating convergence and cross-border operation of audiovisual media services, Article 30a of the revised Directive requires Member States to ensure that their national regulatory authorities provide the national regulatory authorities of other Member States and the European Commission with information relevant to and necessary for the application of the Directive throughout the Union.

For the purposes of giving effect to this Article and in providing for avenues for effective cooperation regarding the regulation of video sharing platform services, Head 29 of the General Scheme provides that the Media Commission may enter into cooperation agreements with other bodies as it sees fit and Head 34 provides that the Media Commission may cooperate and enter into cooperation agreements with other bodies outside the State which perform similar functions to the Commission, including members of the European Regulators Group for Audiovisual Media Services.

More specifically regarding the regulation of video sharing platform services, Head 50B(4) provides that the Media Commission may examine the compliance of a designated online service, including a video sharing platform service, on the basis of information brought to the attention of the Commission by members of the European Regulators Group for Audiovisual Media Services. Furthermore, Head 52B provides for the Media Commission to establish a scheme to receive complaints about systemic issues with relevant and designated online services from nominated bodies. The Media Commission will be responsible for determining which organisations will be nominated and it is open for members of the European Regulators Group for Audiovisual Media Services to apply for nominated status.