

National Advisory Council for Online Safety – Technical Briefing, 12 February 2020

Purpose of the Meeting

The Council convened in order to receive a technical briefing from the Secretariat in relation to the draft general scheme of the proposed Online Safety and Media Regulation Bill. This comprised presentations and Q&A opportunities on key elements of the draft general scheme, as set out below.

1. Adoption of minutes of meeting of 3/10/19

The minutes of the Council's meeting on 3 October 2019 were agreed.

ACTIONS ARISING:

Secretariat to finalise and publish minutes on the website of the Department of Communications, Climate Action and Environment.

2. Presentation: Online Safety and Media Regulation Bill

Ciarán Shanley and Triona Quill (Secretariat) gave an overview and brief background on the proposed Bill and the next steps envisioned in progressing it. The overview gave a broad outline on the development of the draft general scheme to this point, including the revision of the Audiovisual Media Services Directive, the public consultation from Q1 2019, drafting challenges faced by the Department and ultimately Government's approval of the draft general scheme on 9 January 2020 and its publication on 10 January 2020.

The next steps include detailed drafting by the AG's office, approval of a number of remaining heads of Bill related to the funding model of the Media Commission and the regulation of audiovisual media services, pre-legislative scrutiny in the Oireachtas, technical conformity assessment by European Commission, creation of final Bill and approval by Government and passage through the Oireachtas.

The following five aspects of the Bill were considered, with a presentation from the Secretariat followed by a Q&A opportunity for each session.

A. Establishment of a Media Commission

The Secretariat presented on this topic. It is envisaged that there will be 3 Commissioners plus a chairperson initially, with scope for a maximum of six Commissioners if required. The number of employees is expected to rise from the current c.40 employed by the BAI to levels akin to the Data Protection Commission. The Commission will be statutorily independent, and it is proposed that it will be funded by an industry levy.

Discussion:

In relation to this topic, discussion covered the Media Commission's flexibility and ability to expand to meet future demand. There was also discussion of funding models and a comparison of the proposed Media Commission with other jurisdictions and regulators.

B. Categories of Harmful Online Content

The categories of harmful online content proposed in the general scheme were set out by the Secretariat. It was noted that defining harmful content in itself is a difficult task, with it being important to strike a balance between the various viewpoints and fundamental rights. It was noted that the purpose of the categories was to inform the creation of binding online safety codes by the Media Commission. The Media Commission's ability to issue non-binding online safety guidance material was also noted.

Discussion:

Discussion on this section centred on what is covered by the proposed definition of harmful online content and whether there was scope for exceptions within that. Also discussed were the Media Commission's powers to prepare both online safety codes and online safety guidance materials, and the distinction between the two.

C. Designation of Online Services

This section covered which online services were included in the scope of the regulatory framework, particularly in the area of interpersonal communications services. It was noted at this stage that private communications services and private online storage services are proposed to be treated differently from a rights-balancing perspective.

Discussion:

Discussions on this section focused on the types of services that would be included in scope, and the different obligations that could apply to different services. The ability of a designated online service to appeal its designation was also raised.

D. Online Safety Codes

This section detailed the approach to regulation, whereby the Media Commission will make Online Safety Codes. In doing this, the Media Commission will be required to take a risk based and proportionate approach. The intention is that the Codes will be designed to address the issues within the systems in place within the designated operators that may facilitate or amplify the spread of harmful online content and that the framework will be flexible. The Codes, for example, could cover reporting requirements, risk assessments, complaints procedures and measures that must be taken to minimise the availability of harmful online content on its services.

Discussion:

Discussions on this section covered how the Media Commission will adopt codes, and whether it could accept proposals from industry. Similarities and differences with the approach being developed in the UK were also mentioned.

E. Compliance and Enforcement

This section covered how the Media Commission can assess compliance by the operators with the Online Safety Codes, through reporting obligations, investigations and audits of complaints handling systems. The Commission can also issue compliance notices directing online services to take actions within a timeframe decided by the Commission. If the actions are not taken the Commission can issue a warning notice. It is an offence not to comply with a warning notice and sanctions, such as financial penalties, can be pursued by the Media Commission against non-compliant online services.

Discussion:

Discussion on this section covered the benefits of the systemic approach as opposed to an approach led by individual complaints. Additionally, given the pan-EU aspects of some of the Media Commission's work, points were raised in relation to the capacity of the Commission to deal with content in a foreign language, and in understanding cultural differences which could affect the interpretation of online content.

3. Potential NACOS collective view of the Online Safety and Media Regulation Bill

The NACOS decided to form a high-level collective view on the draft general scheme, noting that the progress made to date is positive.

ACTIONS ARISING:

The members of the NACOS to give consideration to drafting a collective view on the Bill.

4. Date of next meeting

The Secretariat will revert with a suggested date for the next meeting.

5. AOB

N/A

NACOS Secretariat
26/02/2020