



Minutes of Meeting of the Authority of **Broadcasting Authority of Ireland**

Date 03/03/2021 **Time:** 9.30am **Venue:** Conference Call

Attendance

Authority: Rosemary Day (Chairperson of Meeting), Alan McDonnell, Denis Wolinski, Grace Smith, Maeve McDonagh, Mary Curtis, Rosemary Day, Seán Ó Mórdha.

Executive: *Michael O’Keeffe, Celene Craig, Andrew Robinson (Secretary), Declan McLoughlin, Deborah Molloy Bergin, Patrick Goodliffe.*

1. Appointment of Chairperson of the Meeting

The Authority agreed that Rosemary Day would chair the meeting.

2. Leadership in Change

2.1 BAI response to Joint Committee on Media, Tourism, Arts, Culture, Sport and Gaeltacht on the General Scheme of the Online Safety and Media Regulation Bill

At its February 25th meeting, the Authority agreed to hold an additional, single-item, meeting to consider the emerging issues arising in the development of a BAI written submission to the Joint Committee on Media, Tourism, Arts, Culture, Sport and Gaeltacht on the General Scheme of the Online Safety and Media Regulation Bill.

Members were presented with an Executive Note setting out the key policy issues for Authority consideration. The note recorded a strong alignment between the published General Scheme and the regulatory approach proposed in the original BAI submission to the Department of Communications, Climate Action and Environment’s public consultation in March 2019. However, members noted a number of areas of divergence and agreed to the following in respect of those matters:

(i) The categories of Harmful Online Content

The Authority agreed that the four categories of harmful online content as set out in the General Scheme were appropriate. However, it noted proposals to consider the following potential additional categories of harmful online content.

Gender-based harm

The Authority noted that the Executive has been regularly engaging with harmful online content stakeholders to understand the key areas of concern. Through those interactions, significant concerns arose around the prevalence of online gender-based harm, including, in particular, the negative targeting of women in the online environment.

Disinformation

In addition, the Authority noted the societal harm caused by disinformation and misinformation, both at a national and European level. Examples included the rapid



spread of disinformation which resulted in acts of vandalism on 5G masks and the continuing public unrest concerning vaccines, lockdowns, and the wearing of face masks in public areas.

The Authority agreed that the written response would highlight these two matters, noting that these potential additional categories may warrant further consideration by the Joint Committee and the Department.

- (ii) *The 'reasonable person' test and whether a reasonable person would conclude that the 'intention' of the dissemination of the content would be likely to have the effect (of causing harm).*

The Authority was satisfied that the application of a 'reasonable person' test was an appropriate approach, reflecting well established legal practice. However, the Authority agreed that the inclusion of 'intent' had the potential to create additional obligations on both the Media Commission and regulated entities (and possibly service users) which could have an impact on the speed and effectiveness of any actions taken to comply with the statutory provisions. The phrasing may also have the potential to exclude from regulation harmful content which has inadvertently caused harm to an individual.

Following discussion, the Authority agreed that these concerns would be set out in the written submission to the Joint Committee.

- (iii) *Take-down notices*

The Authority noted the almost universal concerns raised by harmful online content stakeholders that the take-down notice system highlighted during the 2019 public consultation was not included in the General Scheme of the OSMR Bill. A consistent message received by the Executive was that the inclusion of a system facilitating the swift removal of content was vital to the achievement of the overall policy objectives in respect of harmful online content, and the protection of online users, most especially children and vulnerable adults.

The Authority noted the strength of stakeholder feedback and likely public expectation on this matter, and agreed that there should be the potential for the Media Commission ultimately to order the timely, fair and proportionate removal of content, subject to any necessary regulatory safeguards that would be desirable to accompany such interventions.

In parallel, the Authority agreed that further consideration should be given to exploring other practical and speedy regulatory means by which the same objective could be achieved, e.g. an online safety code could encourage the relevant service to suspend content while a review of the content is taking place, all the while ensuring the principle of freedom of expression and the implementation of proportionate regulatory responses.

The Authority agreed that these concerns would be set out in the written submission as requiring further consideration during the legislative development process.



(iv) The governance structure of the new Media Commission

The Authority noted that, during the initial public consultation phase in 2019, it had no strong views on the most appropriate governance structure for the new Media Commission.

Noting that the multi-person Media Commission as set out in the General Scheme appeared to have significant political and stakeholder support, and was likely to be the ultimate governance structure, the Authority was satisfied to support the Media Commission structure as proposed. However, the Authority noted that in order to leverage the value provided by a statutory board-led structure, a Commissioner-led governance model may benefit in availing of a structured support mechanism. In that context, the Authority agreed that it would endorse the inclusion of a power for the establishment of advisory committees by the Media Commission under Head 32 which would provide the Media Commission with sufficient latitude to bring together a wide and diverse range of societal and/or other expert representatives to assist the Media Commission in specific aspects of its work.

(v) Compliance Powers of the new Media Commission

The Authority welcomed the various compliance and enforcement powers for the Media Commission in respect of each of the categories of services which will fall to be regulated under the General Scheme. However, it was of the view that the approach set out in the General Scheme may not be the most effective or efficient model of compliance and enforcement.

While the Authority noted that the Department intends to restructure these compliance and enforcement powers within a broader compliance framework, it agreed that the written submission would highlight the value of a streamlined compliance framework so as to provide clarity and certainty to stakeholders and to ensure consistent implementation across all service types.

(vi) Independence of new Media Commission and staffing matters

The Authority noted the provisions of the AVMSD that Member States are required to ensure that their national regulatory authorities are (i) legally distinct from Government and (ii) that they have adequate financial and human resources and enforcement powers.

The Authority noted the inclusion of Head 8 of the General Scheme which provides that the Media Commission shall be independent in the performance of its functions. It also noted Head 23 which provides that the Media Commission, with the consent of the Minister given with the approval of the Minister for Public Expenditure and Reform, appoint such and so many persons to be members of the staff of the Commission as it may from time to time determine.

The Authority agreed that the written submission would highlight the importance of ensuring the relevant provisions of the AVMSD would be reflected in the General Scheme and that the



new Media Commission should have the necessary range and number of staff, from the outset, to deliver on the objectives of the legislation.

On the basis of the deliberations above, the Authority noted that the written submission would now be finalised by the Executive and submitted to the Joint Committee. The Authority also agreed that it would set aside time at future meetings to continue its assessment of the various strands of the General Scheme.

A handwritten signature in blue ink, which appears to read 'Rosemary Day', is written over a horizontal line.

Rosemary Day
Chairperson of Meeting
1st April 2021