[IE] Irish Media Commission publishes a Designation Decision Framework for video-sharing platform services

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On 10 November 2023, the Irish media regulator *Coimisiún na Meán* (the Media Commission) published a Designation Decision Framework (further referred to as "Framework") for video-sharing platforms services (VSPS) to inform individual providers of online services of the assessment and decision-making process it intends to follow in order to determine whether a named service meets the defining criteria of a VSPS, and whether the provider of such a service is under Irish jurisdiction.

The Online Safety and Media Regulation Act of 2022 amending the Broadcasting Act of 2009, which transposed the Audiovisual Media Services Directive (AVMSD) in Ireland and foresaw the creation of the Media Commission, also provided for a regulatory framework for online safety. Under the Act, the Media Commission is granted the power to designate relevant online services as services to which the online safety codes may apply. On 14 August 2023, it published a notice designating VSPs as a category of relevant online services, which became effective on 11 September 2023.

As indicated in the Framework itself, it aims to inform providers of online services of the Media Commission's assessment and decision-making process to "determine whether a named service meets the defining criteria of a 'video-sharing platform service' and the provider of such service is under the jurisdiction of Ireland," based on criteria established in Articles 1(1)(aa), 28a and 28b AVMSD.

The process involved in the Framework is divided into a legal and evidential review, the first stage ending – if the Media Commission has "reason to believe" that a relevant online service may be a VSP – with the issue of one or more Information Notices, "requiring the provision of any information that appears to the Commission to be relevant for the purpose of designation." This first stage is followed by an initial view and consultation stage, taking into consideration the elements provided by the service provider in response to the Information Notice(s) issued, before the final decision and designation. According to the Framework, the final decision is taken on the basis of "the information, data and evidence that is available to the Commission." However, if a provider fails to "provide the requested information and/or fails to engage in the consultation process, the initial view taken at Stage 2 will inform the final decision."

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Services designated as VSP within the context of the Framework will have the details of their provider and service included in the Register of Designated Online Services published and maintained by the Media Commission. If a services estimates that it was wrongfully qualified as VSPS, it has the possibility of providing the Media Commission with additional elements to overturn the initial qualification.

VSPS Designation Decision Framework

https://www.cnam.ie/wp-content/uploads/2023/11/DecisionFrameworkVSPS.pdf

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