Message 201

Communication from the Commission - TRIS/(2024) 2044

Directive (EU) 2015/1535

Notification: 2024/0374/IE

Forwarding of the response of the Member State notifying a draft (Ireland) to request for supplementary information (INFOSUP) of European Commission.

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1. MSG 201 IND 2024 0374 IE EN 04-10-2024 30-07-2024 IE ANSWER 04-10-2024

2. Ireland

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4. 2024/0374/IE - SERV60 - Internet services

5.

6. The Irish authorities respond to the Commission's request for supplementary information in respect of Notification 2024/0374/IE as follows:

By way of initial comment, which will resonate in many of the below responses to these queries of the Commission, the Irish Authorities' intend to implement Regulation (EU) 2022/2065 in such a manner that many authorities in the State will have obligations under this Regulation but not all such authorities will be designated as competent authorities responsible for the supervision of providers of intermediary services and enforcement of this Regulation.

We note that Article 9 of Regulation (EU) 2022/2065 refers to orders to act against one or more specific items of illegal content, issued by "the relevant national judicial or administrative authorities".

Currently, there are a very wide range of authorities in the State with power to require an intermediary service provider to act against a specific item of illegal content. These include, but are not limited to, the Health and Safety Authority, the Data Protection Commissioner, An Coimisiún Toghcháin, the Central Bank of Ireland, the Legal Services Regulatory Authority, the Medical Council, An Garda Síochána etc. In carrying out such powers, they must now adhere to the requirements of Regulation (EU) 2022/2065. These authorities have important responsibilities in their own sphere of competence, ranging from the protection of public health and safety to ensuring public order and security. An Coimisiún Toghcháin bears the responsibility of protecting the integrity of the democratic processes of elections and referendums.

In contrast, the Irish Authorities have designated Coimisiun na Meán as Digital Services Coordinator ("DSC") under Article 49 of Regulation (EU) 2022/2065, responsible for ensuring coordination at national level and for contributing to the effective and consistent supervision and enforcement of this Regulation throughout the Union. The Irish Authorities have also designated the Competition and Consumer Protection Commission as a competent authority, with specific responsibility for the enforcement of Articles 30, 31 and 32 of Regulation (EU) 2022/2065 in respect of the protection of

consumers.

Coimisiún na Meán will work closely and engage with national judicial and administrative authorities possessing powers under Regulation (EU) 2022/2065. This will include but will not be limited to An Coimisiún Toghcháin.

1. The Commission services kindly invite the Irish authorities to explain:

a. Whether the monitoring and investigative powers conferred to Ireland's Electoral Commission (An Coimisiún Toghcháin) by the notified draft with regard to the dissemination of disinformation online relating to electoral processes, misinformation online relating to electoral processes as well as functions to prevent manipulative or inauthentic behaviours online in the context of electoral processes concern any online service provider, including Very Large Online Platforms and Search Engines (hereinafter, "VLOPs and VLOSEs");
Subject to the enactment and commencement of the amendments to Part 5 of the Electoral Reform Act 2022, as proposed under the General Scheme of the Electoral Reform (Amendment) Bill 2024 (the "General Scheme"), Ireland's independent Electoral Commission (An Coimisiún Toghcháin) will be assigned a central role in protecting the integrity of elections and referendums held in Ireland against the publication and dissemination of electoral process disinformation, as well as tackling manipulative or inauthentic behaviour from hidden sources, in the online sphere.

In exercising its functions under Part 5 of the Electoral Reform Act 2022, it is intended that An Coimisiún Toghcháin will be assigned a comprehensive suite of monitoring and investigatory powers to enable it to respond effectively to specific instances of electoral process disinformation and/or, as the case may be, manipulative or inauthentic behaviour that may appear on intermediary services (including on Very Large Online Platforms and Very Large Online Search Engines), whether on the basis of information obtained itself or provided to it by any person or entity. These powers are set out in section 150, with the provisions of sections 130 and 137 to apply mutatis mutandis, and are complemented by a range of notices set out in sections 153 to 157 respectively that may be served where non-compliances with the requirements of Part 5 have been identified.

In respect of the additional obligations on VLOPs and VLOSEs under Section 5 of Chapter III of Regulation (EU) 2022/2065, Article 56 of the Regulation makes clear that the European Commission shall have exclusive powers to supervise and enforce such obligations. In respect of other obligations under Regulation (EU) 2022/2065, where the European Commission has not initiated proceedings for the same infringement, the Member State in which the main establishment of the provider of very large online platform or of very large online search engine is located shall have powers to supervise and enforce the obligations under this Regulation, other than those laid down in Section 5 of Chapter III, with respect to those providers.

The Digital Services Act, as an EU Regulation, is binding in its entirety and directly applicable in the State. These provisions of Regulation (EU) 2022/2065 are binding on An Coimisiún Toghcháin.

b. The intended interplay between the enforcement structure of the Electoral Commission set out in the notified draft with the enforcement powers of the European Commission under the Regulation (EU) 2022/2065, in particular its Chapter IV, Section 4.
Part 5 of the Electoral Reform Act 2022 assigns responsibilities to An Coimisiún Toghcháin to combat electoral process disinformation and manipulative or inauthentic behaviour arising in the online environment. In effect, on the commencement of Part 5 of the Electoral Reform Act 2022 (as amended), An Coimisiún Toghcháin will become a national regulator in the specific areas of electoral process disinformation and manipulative or inauthentic behaviour as defined in section 144 of the Act. It is not intended that An Coimisiún Toghcháin will become a competent authority under Regulation (EU) 2022/2065 with responsibility for the implementation and oversight of specific provisions of the Regulation nor the more systemic issues that fall within the remit of Coimisún na Meán, as Ireland's Digital Services Coordinator, and the Competition and Consumer Protection Commission, as a competent authority designated by Ireland's Digital Services Act 2024.

In the context of Regulation (EU) 2022/2065, the provisions of section 166 of the Electoral Reform Act 2022 (as amended)

will, de facto, bring the making or publication of electoral process disinformation during an electoral period or election campaign period within the meaning of "illegal content" as set out in Article 3(h) of the aforesaid Regulation. Accordingly, where an investigation into a suspected instance of electoral process disinformation might take place, any orders for information, or compliance notices, that An Coimisiún Toghcháin may determine are necessary, under new section 149 or sections 153 to 156 respectively, will be required to comply with the requirements of Articles 9 and 10 as well as all other applicable requirements under Regulation (EU) 2022/2065.

As a sectoral regulator, An Coimisiún Toghcháin will work, and cooperate, with Ireland's Digital Services Coordinator. It is intended that Coimisiún Toghcháin will enter into a co-operation agreement with Coimisiún na Meán under section 144A of the General Scheme. This will ensure that Coimisiún na Meán is aware of activities of An Coimisiún Toghcháin as they relate Regulation (EU) 2022/2065 and is in a position to take action as necessary as the Digital Services Coordinator.

Pursuant to section 148(2) (Head 6 of the General Scheme), Coimisiún na Meán shall forward a copy of a risk assessment carried out by a VLOP or a VLOSE pursuant to Article 34(1) of Regulation (EU) 2022/2065 to An Coimisiún Toghcháin.

Section 152(7) (Head 10 of the General Scheme) provides that any notice or order issued by An Coimisiún Toghcháin under Part 5 shall be transmitted to Coimisiún na Meán, and such transmission shall include any information received by An Coimisiún Toghcháin from the provider of intermediary services in accordance with the requirements of Article 9(1) of Regulation (EU) 2022/2065. This subsection could be removed if the European Commission views this as preferable on the grounds that it duplicates the provisions of Article 9(3) of Regulation (EU) 2022/2065.

Section 164 of Part 5 already provides for ongoing communication between An Coimisiún Toghcháin and various national authorities, including Coimisiún na Meán.

Coimisiún na Meán shall in turn cooperate with the European Commission in particular respect of the latter's enforcement powers under Chapter IV, Section 4 of Regulation (EU) 2022/2065.

In respect of the additional obligations on VLOPs and VLOSEs under Section 5 of Chapter III of Regulation (EU) 2022/2065, Article 56 of the Regulation makes clear that the European Commission shall have exclusive powers to supervise and enforce such obligations. In respect of other obligations under Regulation (EU) 2022/2065, where the European Commission has not initiated proceedings for the same infringement, the Member State in which the main establishment of the provider of very large online platform or of very large online search engine is located shall have powers to supervise and enforce the obligations under this Regulation, other than those laid down in Section 5 of Chapter III, with respect to those providers.

As set out earlier, the Digital Services Act, as an EU Regulation, is binding in its entirety and directly applicable in the State. These provisions of Regulation (EU) 2022/2065 are binding on An Coimisiún Toghcháin.

2. The Commission services kindly invite the Irish authorities to clarify the relation between the Electoral Commission and the Coimisiún na Meán (the Irish Digital Services Coordinator) and whether the former constitutes a competent authority under Article 49 of the DSA.
It is not proposed under the General Scheme to designate An Coimisiún Toghcháin as a competent authority under Article 49 of Regulation (EU) 2022/2065. An Coimisiún Toghcháin is not being assigned any oversight or enforcement functions in respect of the implementation in Ireland of Regulation (EU) 2022/2065. Part 5 proposes to assign specific functions to An Coimisiún Toghcháin to protect the integrity of elections and referendums held in Ireland from the publication of electoral process disinformation and manipulative or inauthentic behaviour in the online sphere. An Coimisiún Toghcháin will operate as an administrative authority within the meaning of Articles 9 and 10 of Regulation (EU) 2022/2065.

3. The Commission services kindly ask the Irish authorities to clarify whether (online) "electoral process disinformation" and "electoral process misinformation" is considered to be illegal content under this or any other Irish law.
An Coimisiún Toghcháin has enforcement powers under the Part 5 of the Electoral General Scheme in respect of electoral process disinformation. Section 166 of the Electoral Reform Act 2022 (as amended) will also create a criminal offence of

making, publishing or promoting electoral process disinformation during an electoral period or election campaign. Electoral process disinformation would as such constitute “illegal content” within the meaning of Article 3(h) of Regulation (EU) 2022/2065.

While it is proposed that An Coimisiún Toghcháin will have a role in monitoring, investigating and identifying trends in relation to electoral process misinformation, these are soft powers aimed at facilitating the build-up of knowledge and expertise within the organisation in respect of such content. There are no offence provisions or enforcement powers under Part 5 in respect of electoral process misinformation. Such material is not considered to be illegal content within the meaning of Article 3(h) of Regulation (EU) 2022/2065.

4. The Commission services kindly ask the Irish authority to clarify what are exactly the obligations that the notified draft imposes on intermediary services as defined in Regulation (EU) 2022/2065. In particular the Irish authorities are asked to identify the obligations that would apply to online platforms as defined in Regulation (EU) 2022/2065.
Primarily, Part 5 of the Electoral Reform Act 2022 would place a number of obligations on An Coimisiún Toghcháin in order to ensure that the integrity of Ireland’s elections and referendums are protected and safeguarded from the publication or dissemination of electoral process disinformation and from manipulative or inauthentic behaviour in the online sphere.

Part 5 is intended to complement the rights, enforcement system and rules set out in Regulation (EU) 2022/2065 as they apply to intermediary services. The standardised procedures for notifying illegal content, the complaints and redress mechanisms, the standards for transparency in terms of content moderation or advertising and the risk mitigation strategies prepared by VLOPs and VLOSEs as set out in Regulation (EU) 2022/2065 would remain unaffected by Part 5.

Section 148 provides that the providers of intermediary services shall notify An Coimisiún Toghcháin if their services may be being used for the purposes of electoral process disinformation, there may be electoral process misinformation on its services or there may be manipulative or inauthentic behaviour on its services. In the first instance, this obligation is subject to the providers of intermediary services having actual knowledge or awareness of electoral process disinformation or, as the case may be, of electoral process misinformation arising on their intermediary services by virtue of a notification received under, and in compliance with, Article 16 of Regulation (EU) 2022/2065. Secondly, this obligation would only apply during an electoral campaign period as defined by section 144 of the Electoral Reform Act 2022.

While the provisions of sections 153 to 157 and section 163 of Part 5 of the Electoral Reform Act 2022 do not impose any general obligations on the providers of intermediary services, nevertheless, they would be obligated to comply with the requirements of any compliance notice that might be served on an intermediary service provider and would similarly be obligated to comply with any mandatory code of conduct that might apply to intermediary service providers during a specified electoral campaign period. The draft of any mandatory code of conduct will be notified to the European Commission pursuant to Directive (EU) 2015/1535.

5. The Commission services kindly ask the Irish authorities to clarify whether (online) “electoral process disinformation” and “electoral process misinformation” is considered to be illegal content under this or any other Irish law.
Please see response to Question 3 above.

6. The Irish authorities are kindly asked to explain whether online platforms, in the context of the different obligations imposed by the notified draft concerning electoral process disinformation, are obliged to actively monitor and assess themselves whether a specific piece of content falls under the scope of this definition or is the responsibility of the Electoral Commission to determine this. In this regard, the Irish authorities are also invited to explain whether intermediary services shall take down content that is considered to be disinformation or whether the decision of taking down such content can only be made by the Electoral Commission in the form of orders.
Section 145 of the Electoral Reform Act 2022 (as proposed to be amended), would impose an obligation on An Coimisiún Toghcháin to, inter alia, monitor, investigate and combat the dissemination of electoral process disinformation, monitor, investigate, identify and combat manipulative or inauthentic behaviour and to monitor, investigate and identify trends in

respect of electoral process misinformation in order to protect the integrity of elections and referendums held in Ireland. Part 5 does not introduce a general monitoring obligation on the providers of intermediary services. Articles 4, 5 and 6 of Regulation (EU) 2022/2065 apply to the providers of intermediary services.

In light of the fact that electoral process disinformation is considered to be “illegal content” within the meaning of Article 3(h) of Regulation (EU) 2022/2065, the notice and action mechanisms required to be put in place by the providers of hosting services under Article 16 of Regulation (EU) 2022/2065 would be available to any individual or entity to enable them to notify said hosting services of the presence on their service of any specific items of electoral process disinformation. The Irish authorities would view these notice and action mechanisms as the primary port of call for any individual or entity who wishes to report a specific instance of electoral process disinformation. Providers of hosting services must comply with Articles 16 and 17 of Regulation (EU) 2022/2065.

Notwithstanding the provisions of Article 16 of Regulation (EU) 2022/2065, section 160 of the Electoral Reform Act 2022 (as proposed to be amended) makes provision for An Coimisiún Toghcháin to provide a direct reporting facility to it which would allow individuals and entities to report suspected instances of electoral process disinformation on intermediary services. Where a report is made directly to An Coimisiún Toghcháin in connection with the presence of suspected electoral process disinformation on an intermediary service, it may use its investigatory powers to enable it to make an appropriate decision in the matter and, where it considers necessary to protect the integrity of an election or referendum, issue a compliance notice under sections 153 to 156 in respect such illegal content. Where suspected manipulative or inauthentic behaviour is reported directly to An Coimisiún Toghcháin, it may issue a notice under section 157 following an investigation into the alleged behaviour. Section 152(7) of the draft scheme requires any notice or order issued by An Coimisiún Toghcháin to be transmitted to Coimisiún na Meán, with any information received from the provider of intermediary services in accordance with the requirements of Article 9(1) of Regulation (EU) 2022/2065. Section 152(7) could be removed if the European Commission views this as preferable on the grounds that it duplicates the provisions of Article 9(3) of Regulation (EU) 2022/2065.

7. Subsection (2) of Section 148 of the notified draft mentions the risk assessments required from VLOPs and VLOSEs in the context of Regulation (EU) 2022/2065. The Irish authorities are kindly invited to explain how provisions of the notified draft related to the risk assessment and mitigation concerning electoral processes interplay with Articles 34 and 35 of Regulation 2022/2065. In a similar vein, the Commission kindly invites the Irish authorities to clarify what are the powers, if any, of the Irish Electoral Commission in relation to these risk assessments.
At the outset, Part 5 of the Electoral Reform Act 2022 does not provide any powers nor does it assign a specific role to An Coimisiún Toghcháin in the context of the risk assessments and mitigation strategies prepared by very large online platforms and very large online search engines under Articles 34 and 35 of Regulation (EU) 2022/2065. The purpose of section 148(2) is solely informational.

As the competent authority with responsibility for protecting the integrity of elections and referendums against the publication or dissemination of electoral process disinformation and the use of manipulative or inauthentic behaviour in the online sphere, it would be important for An Coimisiún Toghcháin to have sight of the systemic risks identified by very large online platforms and very large online search engines, and the plans to mitigate such risks, having particular regard to Article 34(1)(c) of Regulation (EU) 2022/2065, i.e. “any actual or foreseeable negative effects on civic discourse and electoral processes, and public security”.

8. Section 148A of the notified draft mentions the applicability of the liability exemptions of Articles 4, 5 and 6 of Regulation 2022/2065 in relation to this part of the notified draft. The Commission services invite the Irish authorities to clarify the intended interplay between Section 148A with the one established under Articles 4, 5 and 6 of Regulation 2022/2065, which applies as regards illegal activities or content.
It was intended in section 148A to confirm, for the avoidance of doubt, that Articles 4, 5 and 6 of Regulation (EU) 2022/2065 apply in respect of intermediary services in the context of the dissemination or publication of electoral process disinformation on an intermediary service. On further consideration, a decision has been taken to delete this section as it is not necessary.

9. The provisions of the notified draft, such as Sections 149 and 153, empower the Electoral Commission to issue, in cases of established or suspected presence of electoral process disinformation, notices and orders in accordance with Articles 9 and 10 of Regulation 2022/2065. The Commission kindly invites the Irish authorities to explain how this mechanism interplays with the those established under Article 9 and 10 of Regulation 2022/2065.
Section 149 is intended to make provision for An Coimisiún Toghcháin to serve an order to require the provider of an intermediary service to provide specific information about one or more specific individual recipients of its service which the Commission suspects may be responsible for electoral process disinformation on that intermediary service. Such an order might issue where An Coimisiún Toghcháin has used its investigatory powers under the Electoral Reform Act 2022 (as proposed to be amended), is satisfied that electoral process disinformation is present on an intermediary service and may wish to take appropriate action against the individual or entity responsible for the illegal content (notwithstanding a notice requiring the provider of intermediary services to take down said content). All orders under section 149 will be required to comply with the requirements of Article 10 of Regulation (EU) 2022/2065 and are to be copied to Ireland's Digital Services Coordinator.

Similarly, section 153 makes provision for An Coimisiún Toghcháin to serve a compliance notice to require the provider of an intermediary service to take down or remove specific instances of electoral process disinformation from its service. Such a notice might issue where An Coimisiún Toghcháin has used its investigatory powers under the Electoral Reform Act 2022 (as amended), is satisfied that electoral process disinformation is present on an intermediary service and considers that such content should be taken down and removed in order to protect the integrity of an election or referendum. It is considered that the various notices and orders specified under sections 153 to 156 are orders to act against illegal content, i.e. electoral process disinformation, and, accordingly, such notices and orders will be required to comply with the requirements of Article 9 of Regulation (EU) 2022/2065 and are to be copied to Ireland's Digital Services Coordinator.

The references to Articles 9 and 10 of Regulation (EU) 2022/2065 are for the avoidance of doubt and to make clear that all notices and orders specified in sections 153 to 156 must comply with the requirements of Articles 9 and 10 of Regulation (EU) 2022/2065. They are intended to reinforce the provisions of Regulation (EU) 2022/2065. However, the Irish Authorities would be agreeable to removing these references to Articles 9 and 10 of Regulation (EU) 2022/2065 if the European Commission was of the view that this was a preferable approach.

10. Section 160(1) of the notified draft extends the notice and action mechanism of Article 16 of Regulation 2022/2065 to content concerning suspected electoral process disinformation. In this regard, the Commission services invite the Irish authorities to explain:

a. how this mechanism interplays with the one established under Article 16 of Regulation 2022/2065 applicable to content considered to be illegal.
Intermediary service providers must have in place a notice and action mechanism in accordance with Article 16 of Regulation (EU) 2022/2065. Section 160 as proposed to be amended in the General Scheme refers to this mechanism and the intention is that this would be the primary complaint mechanism for members of the public.

Section 160 further would provide for the establishment of a direct reporting facility to An Coimisiún Toghcháin whereby individuals and entities, if they so choose, can report suspected instances of electoral process disinformation, suspected instances of electoral process misinformation or suspected manipulative or inauthentic behaviour for the attention of An Coimisiún Toghcháin. This recognises that for any number of reasons, an individual or entity may prefer to make a report to An Coimisiún Toghcháin than to an intermediary service.

The language used in section 160(1) will be examined during the drafting process to better clarify that the use of the notice and action mechanism will be voluntary.

Unlike a complaint to the Digital Services Coordinator under Article 53 of Regulation (EU) 2022/2065, a report under section 160 may not relate to any suspected infringement by an intermediary services provider under Regulation (EU) 2022/2065. If it does relate to such an infringement and An Coimisiún Toghcháin issues any notice or order under

sections 153 to 157, it must inform Coimisiún na Meán, as the Digital Services Coordinator, of any such action taken.

b. whether this provision makes it mandatory for individuals to notify the provider of intermediary services suspected presence of electoral process disinformation. If yes, the Irish authorities are invited to clarify what are the consequences of not doing so for both the individuals and the reported content. If not, how the notice and action mechanism of Article 16 DSA is given prevalence in practice.
It is not the intention of the Irish authorities to make it mandatory for individuals and entities to notify either the Electoral Commission or the providers of intermediary services of suspected instances of electoral process disinformation present on intermediary services. The direct reporting mechanism provided for under section 160 will be optional for individuals and entities.

c. how the direct reporting facility on the Electoral Commission's website (Section 160(2) of the notified draft) and the notices of Article 16 DSA mentioned in Section 160(1) of the notified draft interrelate, as well as whether there is any prevalence among them.
The Irish authorities would view these notice and action mechanisms that the providers of hosting services are required to have in place under Article 16 of Regulation (EU) 2022/2065 as the primary port of call for any individual or entity who wishes to report a specific instance of electoral process disinformation. It is envisaged that the direct reporting facility to An Coimisiún Toghcháin will complement the notice and action mechanisms under Article 16 and will provide an additional mechanism for individuals and entities who may wish to report suspected instances of electoral process disinformation without creating an obligation to do so.

The direct reporting mechanism to An Coimisiún Toghcháin will not impose any obligations on the providers of intermediary services and is solely intended to provide a mechanism for individuals and entities to report suspected electoral process disinformation and manipulative / inauthentic behaviour directly to the sectoral regulator.

11. The Irish authorities are kindly invited to clarify whether the provisions in the notified draft are intended to apply to providers of information society services as per the meaning of Directive 2000/31/EC. In the affirmative, the Commission services would like to receive further information on:

a. whether the notified draft would apply to providers of information society services established in the territory of other Member States than Ireland;
Part 5 of the Electoral Reform Act 2022 (as amended) is intended to apply to the providers of intermediary services within the meaning of Article 3(g) of Regulation (EU) 2022/2065.

It is envisaged that it will mainly concern providers of intermediary services established in Ireland. Having considered Article 56(1) of Regulation (EU) 2022/2065, the Irish authorities intend to clarify that the country of origin principle applies.

Article 1(4) of the E-Commerce Directive 2000/31/EC confirms that that Directive does not deal with the jurisdiction of Courts. In Joined Cases C-509/09 and C-161/10, eDate Advertising GmbH, the CJEU held that articles 3(1) and (2) of this Directive do not operate as conflict of law provisions, but rather, operate as corrective provisions to ensure effective free movement of services. The court observed that "the fact of making electronic commerce services subject to the legal system of the Member State in which their providers are established pursuant to Article 3(1) does not allow the free movement of services to be fully guaranteed if the service providers must ultimately comply, in the host Member State, with stricter requirements than those applicable to them in the Member State in which they are established" (para. 66). The court concluded that "in relation to the coordinated field, Member States must ensure that, subject to the derogations authorised in accordance with the conditions set out in Article 3(4) of the Directive, the provider of an electronic commerce service is not made subject to stricter requirements than those provided for by the substantive law applicable in the Member State in which that service provider is established" (para. 68).

In respect of the criminal offences in Part 5 of the Electoral Reform Act 2022, section 170 provides for extraterritorial jurisdiction.

b. what would be the obligations applicable to those service providers resulting from the notified draft;
Intermediary services established in another Member State would have the same obligations as those established in Ireland, unless they could demonstrate that in relation to the coordinated field of the E-Commerce Directive, they would be made subject to stricter requirements than those provided for by the substantive law applicable in the Member State in which that service provider is established. In such circumstances, in accordance with the principle in Joined Cases C-509/09 and C-161/10, eDate Advertising GmbH, and to ensure the free movement of services, the intermediary services established in another Member State would not be required to comply with civil obligations greater than in their Member State of establishment, subject to the conditions authorised in accordance with Article 3(4) and (5) of that Directive. Such services would however be subject to the same criminal standards as those established in the State in accordance with section 170 of Part 5.

c. whether the Irish authorities have identified those providers or what would be the basis for identifying them;
It is envisaged that the providers of intermediary services established in other Member States would be identified on a case-by-case basis where An Coimisiún Toghcháin has used its investigatory powers under the Electoral Reform Act 2022 (as amended), is satisfied that electoral process disinformation is present on an intermediary service of a provider established in another Member State and considers that such content is directed towards the Irish electorate, or a part thereof, with a view to influencing the outcome of an election or referendum held in Ireland.

d. how do the Irish authorities intend to comply with the requirements set out in Article 3(4) of Directive 2000/31/EC, in particular in view of the CJEU judgement in case C-376/22.
“Illegal content” is defined in a broad manner at Article 3(h) of Regulation (EU) 2022/2065 as “any information that, in itself or in relation to an activity, including the sale of products or the provision of services, is not in compliance with Union law or the law of any Member State which is in compliance with Union law, irrespective of the precise subject matter or nature of that law”. What is illegal content will necessarily be different from one Member State to the next as it has not been substantively harmonised at EU level. The General Scheme creates new forms of illegal content and obligations in relation to that illegal content which must be complied with by entities providing services within the State.

In case C-376/22, the CJEU expressly contrasted article 3(4) of Directive 2000/31 with the TRIS notification procedure:
“37. …if Article 3(4) of Directive 2000/31 were to be understood as including measures of a general and abstract nature which apply without distinction to any provider of a category of information society services, then the prior notification provided for in the second indent of Article 3(4)(b) of that directive would be likely to duplicate that required by Directive 2015/1535”.

The purpose of the TRIS notification procedure is to draw the European Commission and other Member States’ attention to technical regulations adopted in a Member State in a field that is not harmonised by EU law and with which service providers will need to comply.

Intermediary services established in other Member States providing services in the State would be required to comply with this notified draft to the extent that it does not come within the coordinated field of Directive 2000/31/EC.

The country of origin principle of Article 56(1) of Regulation (EU) 2022/2065 will apply.

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