



Coimisiún  
na Meán

# Article 21 Out-of-Court Dispute Settlement

## Application Form and Guidance

Publication date:  
12 February 2024



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## Introduction

Article 21 of the Digital Services Act (“**DSA**”) mandates the entitlement of recipients of a service (“**recipient**” or “**user**”) including individuals and entities to select any certified out-of-court dispute settlement (“**ODS**”) body to resolve disputes relating to content moderation decisions of online platforms and also complaints that have not been resolved by means of the internal complaint-handling system of an online platform.

Article 20(1) specifies the decisions of the online platform that can be referred to an ODS body.

- (a), decisions whether or not to remove or disable access to or restrict visibility of the information;
- (b), decisions whether or not to suspend or terminate the provision of the service, in whole or in part, to the recipients;
- (c), decisions whether or not to suspend or terminate the recipients’ account;
- (d), decisions whether or not to suspend, terminate or otherwise restrict the ability to monetise information provided by the recipients.

Recipients can avail of the ODS procedure at any stage in the process even where they did not initiate an internal appeal or did initiate it, but it is still pending (Article 21(1)).<sup>1</sup> Article 21 does not specify a time limit to initiate the ODS procedure.

ODS bodies must be certified by the Digital Services Coordinator (“**DSC**”) of the Member State where the bodies are established, and this certification should be valid in all Member States. In order to be certified, applicant bodies must demonstrate they satisfy the conditions in Article 21(3) of the DSA (hereinafter referred to as the “**Certification Conditions**”). The application process is subject to the relevant rules and procedures of the DSC which may be in place.

The Certification Conditions require the ODS body to demonstrate that:

- (a) *it is impartial and independent, including financially independent, of providers of online platforms and of recipients of the service provided by providers of online platforms, including of individuals or entities that have submitted notices;*<sup>2</sup>
- (b) *it has the necessary expertise in relation to the issues arising in one or more particular areas of illegal content, or in relation to the application and enforcement of terms and conditions of one or more types of online platform, allowing the body to contribute effectively to the settlement of a dispute;*
- (c) *its members are remunerated in a way that is not linked to the outcome of the procedure;*
- (d) *the ODS that it offers is easily accessible, through electronic communications technology and provides for the possibility to initiate the dispute settlement and to submit the requisite supporting documents online;*
- (e) *it is capable of settling disputes in a swift, efficient and cost-effective manner and in at least one of the official languages of the institutions of the Union;*
- (f) *the ODS that it offers takes place in accordance with clear and fair rules of procedure that are easily and publicly accessible, and that comply with applicable law, including this Article.*

<sup>1</sup> Per recital 59: “Recipients of the service should be able to choose between the internal complaint mechanism, an out-of-court dispute settlement and the possibility to initiate, at any stage, judicial proceedings.”

<sup>2</sup> Recital 59 of the DSA specifies that bodies seeking certification *and* the natural persons they use to make decisions (“decision-makers”) must be independent and impartial.

The right of access to the certified ODS body is without prejudice to the user's right to take legal action in the courts. Article 21 is also without prejudice to Directive 2013/11/EU<sup>3</sup> and alternative dispute resolution procedures and bodies for consumers established under that Directive.

## Guide

Coimisiún na Meán has developed this Guide, which includes an application form, to inform interested bodies of its assessment and decision-making process to determine whether a body meets the Certification Conditions set out in Article 21(3). The Guide supports evidence-based, transparent, consistent, and proportionate decision-making by Coimisiún na Meán in the exercise of its statutory functions.

The aim of the Guide is to help applicant ODS bodies (hereinafter referred to as “**you**”) to understand what is required of your ODS body for both the certification process and your ongoing obligations with which you must continue to comply as a certified ODS body under Article 21.

The Guide is informed by Irish and European legislation, consultation, data-gathering, and independent research. The Guide is not a substitute for any statutory provision(s) and does not constitute legal advice. You are advised to obtain your own independent legal advice on the relevant statutory provisions. This guide will be reviewed periodically, and any changes will be published on the Coimisiún na Meán website.

The Guide divides the Certification Conditions into five sections as follows: (1) General Information; (2) Impartiality and Independence; (3) Expertise; (4) Efficiency, Access & Transparency; and (5) Fairness (Decision-Making and Rules of Procedure).

**Section (1)** identifies the **information** we need from you to process and consider your application, such as the ODS body's name, official address and, the areas of expertise and the period for which you are applying to be certified.

**Section (2)** requests information in relation to your ODS body, its organisational structure, its **impartiality and independence** and its **financial independence**. These matters are relevant to Coimisiún na Meán's assessment of the certification conditions set out in Article 21(3)(a) and (c).

**Section (3)** focuses on the **expertise** of your ODS body and the persons who will be charged with resolving disputes and how you will ensure that this expertise is maintained and enhanced over the period of certification. These matters are relevant to Coimisiún na Meán's assessment of the certification conditions set out in Article 21(3)(b) and (e).

**Section (4)** focuses on your proposed **dispute settlement procedure** and **fee model** as well as the **technologies** you will employ to settle disputes for example case management systems. This section also seeks confirmations in relation to your reporting obligations. These matters are relevant to Coimisiún na Meán's assessment of the certification conditions set out in Article 21(3)(d), (e) and Article 21(5).

**Section (5)** focuses on your **decision-making framework** and your **Rules of Procedure** and how you will ensure the framework, rules and procedures are clear, fair, easily and publicly accessible and comply with applicable law in accordance with the certification conditions set out in Article 21(3)(f).

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<sup>3</sup> Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32013L0011>

The **Appendix** provides a **Schedule of Documentary Evidence** that must (where applicable) be submitted with the completed application form.

The application form at page 7 contains a list of **questions** under each section that you must respond to. For each section, we also provide **guidance** to help you understand why we are asking these questions. In the *Appendix* to this Guide, we provide a **Schedule of Documentary Evidence** that identifies records and documents that you are requested to submit to meet the conditions and/or to verify the information and representations you have provided in your application.

You are responsible for demonstrating that your ODS body satisfies the Certification Conditions and you must submit all of the information and the documentary evidence specified in this Guide and/or as may be requested at a later stage by Coimisiún na Meán. It is important that you ensure full and accurate information is provided to all of the questions to avoid any delays to the application process.

Coimisiún na Meán will have regard to the information submitted and also information available to it from its own independent information-gathering and research that may be relevant to its verification of the information submitted by you at this application stage and to its **continuous assessment** of the Certification Conditions. It should be noted that, in circumstances where it is established following an investigation that a body no longer meets the Certification Conditions, Coimisiún na Meán is required to revoke the certification.

Completed applications or any queries or requests for clarification in relation to the contents of this Guide should be directed to [outofcourtapplications@cnam.ie](mailto:outofcourtapplications@cnam.ie).

## Application Instructions

- **Completed application:** Please ensure you provide **full and accurate** information to all of the questions asked and include any **documentary evidence** referenced in the appended Schedule.
- **Additional Information:** Coimisiún na Meán may also require additional information and/or other documentary evidence following its review of your application in order to assess whether you meet the requirements to be certified. In addition to the documentary evidence specified you can submit any other information that provides context to the information being supplied or supports the answers provided.
- **Declaration:** Your application should include a Declaration signed by Chief Executive Officer or equivalent, certifying that the information contained in the application form and documentary evidence is true and correct to the best of that person's knowledge and belief.
- **Changes:** You must notify in writing, without undue delay, any events or changes to your circumstances which in any way relate to, or are connected with, the information and/or confirmations you have provided in your initial application and relied upon by Coimisiún na Meán in assessing your compliance with the Certification Conditions. **Note:** this is an ongoing obligation throughout the period of certification.
- **Decision:** Coimisiún na Meán shall endeavour, within three months of receipt of all information that enables Coimisiún na Meán to process the application, to communicate in writing its approval of, or its refusal to approve, certification. The timeframe indicated is based on Coimisiún na Meán receiving a complete application with all of the requisite information and supporting evidence to make its determination on certification. Coimisiún na Meán will provide you with a statement of reasons as to why your application for certification was approved or refused.
- **Publication:** The decision to certify a body and the certificate issued by Coimisiún na Meán will be published on its website. Coimisiún na Meán is required to notify to the European Commission of the

ODS bodies it has certified in accordance with Article 21(3). The European Commission will also publish a list of certified bodies on its website.

- **Confidential and Commercially Sensitive Information:** Any information you consider to be confidential and/or commercially sensitive must be included in a [Confidential Appendix](#) and clearly cross-referenced to the relevant sections of this Guide. The reasons why you consider the information to be confidential should be clearly set out.
- **Freedom of Information:** Records held by Coimisiún na Meán may be requested by persons under the Freedom of Information Act 2014 (“FOI Act”). The provisions of the FOI Act exempt certain records containing commercially sensitive and other confidential information from publication. Coimisiún na Meán will consult with you in respect of any request received prior to making a decision under the FOI Act.
- **Personal Data:** Coimisiún na Meán is obligated and committed to protecting all personal data submitted in accordance with its obligations under the General Data Protection Regulation, the Data Protection Act 2018 and any other applicable data and privacy laws and regulations. Coimisiún na Meán's published policy is at: [Coimisiún na Meán | Data Protection \(cnam.ie\)](#) In this notice, Coimisiún na Meán has requested the name and contact details including email addresses of specified persons. The information collected will be used only for the purposes stated herein.

# Application Form and Guidance

## Section (1): Applicant Body & Certification

<b>Registered &amp; Trading Name of Body</b>	<b>Registered Number and Company Number</b>	
<b>Body Type</b> (public, private)	<b>If public, under which statute was it formed? If private, what is its legal form?</b>	
<b>Provide details of the membership of the ODS body.</b>		
<b>Address of registered office and place of establishment/business.</b>	Is the ODS body a member of any <b>networks</b> of ODS entities facilitating dispute settlement relating to online platforms?	
Does the ODS body provide other <b>(non-ODS) services</b> and, if so, list these services and specify to whom they are made available?	<b>Contact person</b> who will liaise with Coimisiún na Meán in respect of this application.	
	<b>Name</b>	
	<b>Position</b>	
	<b>Email</b>	
	<b>Phone</b>	
	<b>Post</b>	

### Certification Details

<b>1.1</b>	What is the <b>period of certification</b> you are requesting?	
<b>1.2</b>	Please tick your <b>areas of expertise</b> :	
	a) One or more areas of illegal content;	
	b) The application and enforcement of terms and conditions of one or more types of online platforms (such as marketplaces, social networks, content-	



	sharing platforms, app stores, and online travel and accommodation platforms.)	
	c) Specify the types of online platforms.	
<b>1.3</b>	<p>a) Specify at least <b>one official language</b> of an Institution of the European Union in which the ODS procedure will be provided.</p> <p>b) List any <b>additional languages</b> in which it is proposed to provide the ODS procedure.</p>	

### **Guidance**

*The information requested in this section helps us to process your application in a swift and efficient manner.*

*The maximum period of certification which can be sought is 5 years (as per Art. 21.3 of the DSA). Article 21(3) also enables a renewal of the certification at the end of this period subject to continued compliance with all of the Certification Conditions. Coimisiún na Meán may consider it appropriate to certify for shorter periods in certain cases (based on your application) and you can also request a shorter period for example if you are planning an initial pilot period or you plan to expand your expertise over time.*

*You must continue to comply with the certification conditions and the other obligations under Article 21 for the entire period of certification.*

**Note:** *Additional details about the ODS body's areas of expertise, including language expertise are requested in section 3 below.*

*A list of documentary evidence that may be requested under this heading is set out in the Schedule at Appendix 1.*





## Section (2): Impartiality, Independence

### Organisation, Directors/Senior Managers and Individuals in charge of resolving disputes

#### Guidance

*Impartiality and Independence on the part of decision-makers are core tenets of any dispute settlement procedure. Coimisiún na Meán will assess the impartiality and independence of an ODS body holistically.*

*It is important for Coimisiún na Meán to understand the organisational structure, the impartiality and independence and the financial independence of the ODS body and the policies, controls and procedures that you will put in place to safeguard this impartiality and independence.*

### 2.1 Impartiality and Independence of Individuals charged with resolving disputes (“Case Decision-Makers”)

2.1.1	What is your process for the appointment or procurement of <b>case decision-makers</b> <sup>4</sup> ? e.g., how individuals can apply to be decision-makers, any background/verification checks you carry out and the nature of the legal relationship the ODS body will have with case decision-makers.	
2.1.2	Explain your procedures for the appointment, terms of office and termination of the office of case decision-makers. <sup>5</sup>	
2.1.3	How will you ensure the case decision-makers you appoint are <b>independent</b> from online platforms and the recipients of their services and will remain so for their term of office? How will you ensure that case decision-makers can approach decision-making in an impartial and objective manner for the duration of their appointment?	
2.1.4	What are your rules or procedures on <b>conflicts of interest</b> for employees and case decision-makers? <sup>6</sup>	
2.1.5	How will employees and case decision-makers be <b>remunerated</b> (e.g., variable, fixed salary, per diem basis, per dispute processed)?	

<sup>4</sup> Case decision-makers are individuals in charge of making decisions on selection, escalation and resolving the disputes referred to the body.

<sup>5</sup> Where such procedures/rules are not included in your Rules of Procedure.

<sup>6</sup> A copy of such procedures is listed in the Schedule of Documentary Evidence.

2.1.6	Do you have a <b>remuneration policy</b> for employees and case decision-makers? Explain how you will ensure that case decision-makers are <u>not</u> remunerated in a way that is linked to the outcome of the ODS procedure.	
2.1.7	Where the ODS body provides other (non-ODS) services, how will you ensure that the provision and funding of such services, cannot affect the <b>independence or impartiality of your case decision-makers</b> ?	

### **Guidance**

ODS bodies' processes for **appointing case decision-makers** may vary. It is important for us to understand (in addition to providing details of your dispute settlement model) how you propose to appoint or employ case decision-makers and the processes you will have in place to ensure they have the requisite knowledge, skills, expertise, independence and impartiality. You should also have clear processes and policies that provide for the termination of the office of a case decision-maker if there are valid reasons to do so and also make clear the circumstances in the office may be terminated.

We expect you to have specific, detailed processes and policies in place to ensure your case decision-makers are independent from online platforms and recipients of their services and will approach cases and decision making in an impartial and objective manner for the duration of the certification period. Examples of policies and procedures could include Rules on Conflicts of Interest, Rules on Terms of Office, Codes of Conduct, (Sworn) Declarations by case decision-makers etc. These policies and procedures will vary between ODS bodies.

Your policy or rules on **conflicts of interest** for staff, Board members and case decision-makers should set out the actions that must be taken and process that will be followed in circumstances where a conflict of interest may arise, for example, by enabling the individual to declare the conflict and to recuse themselves from the matter.

Article 21(3) requires that the remuneration of members of the body must not be linked to the outcome of the dispute settlement procedure. It follows that the fee structure should be neutral and not favour any particular outcome. For example, members or case decision-makers may be paid an annual salary by the ODS body, or they may be paid a flat rate per dispute resolved irrespective of its outcome.

A list of documentary evidence that may be requested under this heading is set out in the Schedule at Appendix 1.



## 2.2 Organisational Independence

2.2.1	Is the ODS body an entity in a larger <b>company group structure</b> ? If yes, provide details of the ODS body's relationship with, or interests <sup>7</sup> in, any other undertakings.	
2.2.2	Please list any persons <sup>8</sup> with a controlling or other interest in the ODS body, including <b>members, shareholders and directors</b> , <sup>9</sup> as applicable.	
2.2.3	What are your rules on <b>conflicts of interest</b> for shareholders/members and directors?	
2.2.4	For all <b>members, shareholders and directors</b> please detail any interests or other involvement <sup>10</sup> they have in other entities.	

### Guidance

ODS bodies must be **impartial and independent of online platforms and recipients of services including individuals or entities that have submitted notices (Article 21(2)(a))**.

We request information in relation to the members or shareholders (as applicable) of your ODS body because it is important for Coimisiún na Meán to understand who owns the ODS body and the extent of their control or influence over the decision making and operations of the ODS body.

We also request information about your Board of Directors (or equivalent) because it is important for Coimisiún na Meán to understand who makes strategic decisions for the ODS body and whether such decisions may be made on behalf of another person (for example a shareholder in the ODS body).

It is important that Coimisiún na Meán understands your formal and informal relationship/s, if any, with other persons (both individuals and entities) to assess whether the arrangements and controls you put in place to ensure the independence of your ODS body and the impartiality of its decision-making are appropriate.

Likewise, if you are a public body, it is important for us to understand your legal objectives and to ensure you do not have obligations that might impact on your independence or your impartiality from platforms or recipients of their services.

A list of documentary evidence that may be requested under this heading is set out in the Schedule at Appendix 1.

<sup>7</sup> Interests may be direct or indirect and can include directorships of, and shareholdings (including beneficial) in, another entity.

<sup>8</sup> Individuals and entities. Where entities are identified as shareholders, details of the ownership of such entities may be requested.

<sup>9</sup> A copy of the share register is listed in the Schedule of Documentary Evidence. Where your ODS body does not have shares, details of the members must be provided here.

<sup>10</sup> To include employment (including in a contractor capacity).

## 2.3 Financial Independence of Body

2.3.1	<p>Please outline the <b>funding model</b> and <b>financial strategy</b> for the set-up costs and the ongoing operation of the dispute settlement procedure over the period of certification. Details of the following sources (as applicable) should be included:</p> <ul style="list-style-type: none"> <li>• Fees for services provided. (<b>Note:</b> further detail of your proposed fee model is requested in section 4.2 below).</li> <li>• Previous or ongoing funding from providers of online platforms and any other external sources of funding.</li> <li>• Public funding (from the State, EU or other).</li> <li>• Share capital and investors (where applicable).</li> <li>• Other sources.</li> </ul> <p>If the funding model comprises a combination of the above, detail the <b>percentages</b> and <b>proportion</b> of each source of funding to the financing of the ODS procedure.</p>	
2.3.2	<p>In respect of (a) funding received during the period of <u>3 years</u> preceding the date of application; and (b) funding that will be received on an ongoing basis from external sources, provide the following details:</p> <ul style="list-style-type: none"> <li>- The persons (individuals and entities) who have provided/will provide funding.</li> <li>- Any <b>funding arrangement/s</b> or <b>agreement/s</b> between you and any external funder.</li> </ul>	
2.3.3	Do you have policies or procedures regarding the receipt and use of any external funding?	Please indicate YES or NO here:

### Guidance

“Independence” in Article 21(3) includes financial independence from providers of online platforms and recipients of services. It is important for us to understand how the ODS body is financed and any ongoing arrangements and controls you have in place regarding funding to ensure this is the case.

The DSA enables ODS bodies to use different kinds of funding models. For example, the operation of the ODS body may be funded entirely by the fees charged for dispute settlement. The ODS body may also be in receipt of public funding or have a diversity of funding sources, including funds from third parties/entities. In the latter case, there should be no dependency on any one source of funding that could give rise to a conflict of interest or call into question the independence of the body or the impartiality of the ODS body’s decision-making process. It is expected that ODS bodies will be fully transparent about their sources of funding.

Coimisiún na Meán will have regard to the particulars of the funding model proposed for example, the diversification of funding sources; the amount and proportion of each funding source to the totality of the ODS body’s funding requirements; the nature of the funding (one-off, ongoing etc.); the relationship between the ODS body and any third-party funders; agreements or arrangements in respect of any such funding; the ODS

body's policies on funding etc. This is a non-exhaustive list of factors that may be taken into account but each application will be assessed on its own merits.

Coimisiún na Meán will also have regard to information available to it from its own independent information-gathering and research about third-party funders identified and the relationship between the ODS body and such funders.

A list of documentary evidence that may be requested under this heading is set out in the Schedule at Appendix 1.

## Section (3): Expertise (Directors/Senior Managers, Case Decision-Makers)

3.1	What relevant <b>prior experience</b> does your ODS body have providing, or facilitating access to <b>dispute settlement services</b> ?
3.2	What is the general background, <b>expertise, qualifications, or certifications</b> , that you will require of <b>senior managers and director-equivalent</b> roles responsible for overseeing the proposed ODS dispute settlement service?

### Illegal Content

3.3	List the <b>specific categories of illegal content</b> (from the specified list <sup>11</sup> ) in which the ODS has expertise.
3.4	Describe the <b>experience, qualifications, or certifications</b> that you will require of the <b>case decision-makers</b> settling disputes relating to one or more areas of illegal content and training you will require the case decision-makers to undertake on appointment and/or during their tenure.
3.5	Where decisions on disputes are decided by a <b>panel</b> , explain how you will ensure the panel has the requisite range of expertise.

<sup>11</sup> This list is being prepared by the DSC Subgroup on Article 22.



## Terms and Conditions

3.6	Confirm that the ODS procedure will apply to all of the terms and conditions of the type/s of platform/s identified in Section 1 and if this is not the case, please explain.
3.7	Describe the <b>experience, qualifications, or certifications</b> that you will require of the <b>case decision-makers</b> settling disputes relating to the terms and conditions of one or more types of online platforms, and training you will require the case decision-makers to undertake on appointment and/or during their tenure?
3.8	List the criteria you will apply in determining whether a <u>type</u> of online platform is in scope of your ODS body's expertise.
3.9	Where decisions on disputes are decided by a <b>panel</b> , explain how you will ensure the panel has the requisite range of expertise.

## Other relevant expertise

3.10	Detail any <b>other relevant expertise</b> you possess that you consider supports or strengthens your application for certification. See <i>Guidance</i> below.



## Language/s

3.11	Describe how your ODS body will provide the dispute settlement procedure in the language/s identified in Section 1 above (i.e. native speaking employees, translation services, proven language skills etc.)

### Guidance

*Understanding the ODS body and any history it has providing or facilitating access to dispute settlement services helps us to assess whether you have the institutional knowledge, expertise, and experience to meet the requirements set out in Article 21(3). However, if the ODS body is newly established or does not have prior experience in dispute settlement this will not necessarily work against you. In this case we may place a greater emphasis on assessing the capabilities and expertise of your senior managers/directors and procedures for the selection and training of case decision-makers.*

*Article 21(3) specifies two areas of **subject-matter expertise**: (i) one or more categories of illegal content; or (ii) the application and enforcement of the terms and conditions of one or more **types** of online platforms; It also specifies **language** expertise in at least one of the official languages of the institutions of the European Union.*

*A non-exhaustive list of illegal content (with main and subheadings) is available.*

*You should be as clear as possible when you provide this information as this will determine the scope of the issues for which you will be certified if your application is approved. This information will also be made publicly available on the Certificate issued to you and published by Coimisiún na Meán and on the EU Commission's website.*

*You should be able to demonstrate that your case decision-makers will have the necessary knowledge, expertise and skills in the type/s of illegal content (which is the subject matter of the dispute) or in respect of the terms and conditions of one or more types of platforms for which you are seeking certification and other relevant expertise to ensure they can carry out their functions effectively. Case decision-makers should also have experience in and/or formal training and certifications that are relevant to resolving disputes (e.g. dispute settlement training) such that case decision-makers will approach decision-making in an impartial and objective manner having due regard to the rights and interests of all parties to the dispute.*

*Other relevant experience may include market or regional expertise so that decision-makers will approach decision-making with knowledge and expertise in a country's or region's culture to understand the local content context as may be required. Coimisiún na Meán assessment of the 'expertise' criterion will also be informed by the dispute settlement model you propose. For example, if your operating model involves a committee or panel of decision-makers then the overall range of skills and expertise will be more important than the range of experience that an individual case decision-maker may possess.*

*You can provide information on the case decision-makers' qualifications and knowledge, work history and outline the role they will play in your dispute settlement procedure. If you have not identified individuals, then you must be clear on how you will procure and maintain the necessary level and range of expertise (e.g. a panel of experts etc.) over the period of certification.*

*Details of any training you provide (on appointment or ongoing) should be set out and Coimisiún na Meán may also require details of such training activity to be included in your annual report.*

*A list of documentary evidence that may be requested under this heading is set out in the Schedule in Appendix 1.*



## Section (4): Efficiency, Accessibility & Transparency (Dispute Settlement Model, Fees, Technology & Reporting)

### 4.1 Dispute Settlement Procedure

4.1.1	Provide details of your proposed <b>dispute settlement procedure</b> , including your approach to case selection, triaging, case management and escalation by reference to volume estimates and the complexity and nature of the cases you will decide.
4.1.2	Provide details of <b>resources</b> (e.g., case teams, individual case decision-makers or collegiate decision making by a panel of experts), <b>procedures, technology and systems</b> (including by automatic means) employed to ensure a <b>scalable dispute settlement procedure</b> .
4.1.3	How will you ensure the dispute settlement procedure you provide is <b>transparent and easily accessible</b> ?
4.1.4	<p>What is the expected average and/or maximum timeframes you expect to meet from the commencement to the conclusion of the procedure?</p> <p>Outline the expected timeframes for each key step in the dispute settlement procedure (if this is not set out in your Rules of Procedure).</p>





## Guidance

The DSA supports ODS bodies using different kinds of dispute settlement models. For example, some ODS bodies may use internal boards or expert committees while others may focus on facilitating access to external expert decision-makers. The model may draw on aspects of mediation, arbitration etc. but the outcome under Article 21 will be a non-binding decision.

The information you provide will enable Coimisiún na Meán to understand how you will make a decision about the dispute and how your model can operate in a responsive, effective and efficient manner over the period of certification.

We need to understand how the dispute settlement procedure proposed will ensure you can resolve disputes swiftly and efficiently and in compliance with the strict timelines for resolving disputes, specified in Article 21. Decisions must be made available to the parties within a reasonable period not exceeding 90 days after the receipt of the complaint. Only exceptionally, in highly complex disputes, can the period be extended to 180 days (Article 21(4)).

The information you provide about your model should set out clearly who will be involved in decision-making (i.e. subject matter experts etc.) and whether the final decision will be made by an individual, a panel of decision-makers or full-time staff of the body. In addition, you should explain your case management or case escalation systems and procedures insofar as these may impact on the final decision in relation to the dispute, for example, how dispute eligibility, triaging and escalation will be managed and decided.

Where your dispute settlement model is such that the dispute is examined by a panel of members you must explain how collegiate decision-making will be undertaken (e.g. by votes, consensus) and the role of the Chair and your answers to section 3 above must demonstrate how you will ensure the panel members, collectively, possess the requisite expertise and skills.

We also encourage you to highlight any track record you have in providing or facilitating access to dispute settlement services.

You should also explain your scalable capabilities by reference to technical, human and financial resources. The dispute settlement procedure must be adequately resourced to ensure that disputes can be fairly, effectively and expeditiously investigated and resolved. Where your case management system involves automated capabilities, you should explain at which stages in the procedure human expertise will be deployed.

A list of documentary evidence that may be requested under this heading is set out in the Schedule at Appendix 1.

## 4.2 Fee Model

4.2.1	Will the ODS procedure be provided <b>free of charge</b> to recipients of online platforms' services, or will <b>nominal fees</b> be charged to recipients or their representative bodies?	
4.2.2	Where <b>nominal fees</b> are proposed, detail the amount of the fee/s and/or how such fees will be calculated.	



4.2.3	Describe the proposed <b>fee model</b> for <b>online platforms</b> (will fees be fixed or vary in different circumstances and set out relevant underlying fee <b>criteria</b> , i.e., time allocation, case complexity etc.) Set out your: <ul style="list-style-type: none"> <li>• Calculation of costs per dispute settlement procedure;</li> <li>• Average cost per case;</li> <li>• Scale of fees/costs.</li> </ul>	
4.2.4	How will you ensure fees charged <b>do not exceed the actual costs</b> incurred for providing the dispute settlement procedure (the <b>costs</b> should be clearly identified in your annual budgets).	
4.2.5	What <b>system</b> will you employ for the <b>payment of fees</b> (e.g., deposit, cost clearance, fees held in escrow etc.)	
4.2.6	What <b>system</b> will you employ for the <b>reimbursement of fees</b> to recipients or their representative bodies under Article 21(5) and how will you assess 'reasonable expenses'?	
4.2.7	Specify how you will be transparent and clear about the <b>criteria</b> you will use to determine fees and the systems or mechanisms you will employ for the payment and reimbursement of fees.	

### Guidance

*ODS bodies may charge **fees** to recipients of services and online platforms when they provide their services. These fees are subject to several requirements in Article 21 of the DSA which are further explained in Recital 59. Recital 59 notes that the fees charged should be reasonable, accessible, attractive and inexpensive for consumers and proportionate and assessed on a case-by-case basis.*

*The fees ODS bodies charge must be cost-effective. Cost-effective fee structures benefit recipients of services and providers of online platforms and ensure that ODS bodies activities are sustainable.*

*You are required to provide your service free of charge to recipients of services or to charge only a nominal fee.*

*What constitutes a nominal fee will be dependent upon a number of factors specific to each ODS body and the nature of the dispute. A nominal fee could be a fixed amount or a percentage relative to the actual costs incurred by the body.*

*The fee model you employ may be based on various models for example, fees may be tiered, depending on*

*the nature and complexity of the dispute, time allocation etc. Different fees may apply depending on the case type and complexity which will impact on the time and effort required to settle the dispute.*

*The fees you charge online platforms must be reasonable and proportionate. The calculation of fees should be based on sensible, objective criteria that are rationally connected to the nature and volume of work involved in resolving any particular dispute. Fees charged should not exceed the costs you appropriately and necessarily incur in providing your ODS procedure (including the remuneration of staff and experts and ongoing investment in the service).*

*In considering whether the fees you charge are appropriate, you may consider, inter alia, the interests of recipients of services, online platforms, the role the ODS body plays in ensuring the effective implementation of the DSA's objectives and the characteristics of any particular dispute.*

*You should strive to ensure the fees you charge are attractive to recipients and online platforms and are competitive compared to other dispute settlement services. You could consider imposing "caps" on fees or introducing other measures to improve the parties' confidence in the value of the service you propose to provide.*

*You should ensure that full and accurate information is made available in relation to your fee model and your policies and systems on the payment and reimbursement of fees and the assessment of expenses must be clear and transparent (for example by publishing a list of qualifying and non-qualifying expenses).*

*A list of documentary evidence that may be requested under this heading is set out in the Schedule at Appendix 1.*

### 4.3 Electronic Communications Technology

4.3.1	Describe how the <b>functionality of your proposed electronic communications technology</b> will comply with the requirements of Article 21(3) (i.e., initiating the procedure, uploading of documents, an online forum for communication between the parties, security etc.).
4.3.2	What measures will you take to ensure the technology employed is <b>user-friendly, easily accessible</b> and supports a <b>swift, efficient and cost-effective ODS procedure</b> ?



### Guidance

The DSA requires the ODS procedure to be provided through easily accessible electronic communications technology that can be used to initiate the dispute settlement and to submit requisite supporting documents online.

You should have a robust, secure and user-friendly online interface to provide your service. It is expected that the interface will:

- a) Provide information about your organisation;
- b) Provide information on the ODS procedure (including your areas of expertise, language/s, fee model, rules of procedure etc.);
- c) Facilitate the submission of an initial application and the requisite supporting information and evidence online;
- d) Facilitate the secure submission and/or exchange of information and evidence as may be required from the parties at all stages of the settlement procedure;
- e) Facilitate the provision of information, at the parties' request, with information concerning the settlement procedure.
- f) Provide a link to the EC database.

It is important that the Rules of Procedure and all information about the ODS body and its dispute settlement procedure are available to online platforms and recipients of their services in advance, to inform their choice of body.

A **translated version** of the interface should be made available in each of the languages you listed in Section 1.

A list of documentary evidence that may be requested under this heading is set out in the Schedule in Appendix 1.

## 4.4 Transparency, Reporting and Cooperation

4.4.1	Please confirm:	Y/N
	(a) The <b>website</b> maintained by you will provide full details of the ODS body, its members, ODS procedure, Rules of Procedure and annual reports to Coimisiún na Meán.	<input checked="" type="checkbox"/> <input type="checkbox"/>
	(b) You will comply with the <b>annual reporting obligation</b> in the format specified by Coimisiún na Meán in accordance with Article 21(4).	<input checked="" type="checkbox"/> <input type="checkbox"/>
	(c) You will cooperate and exchange best practice with other dispute ODS bodies in the resolution of cross-border disputes.	<input checked="" type="checkbox"/> <input type="checkbox"/>
4.4.2	Provide details of any reports or information you intend to publish about your ODS procedure in addition to your reporting obligations under Article 21(4) (including the publication of your decisions and/or information about outcome successes or failures.) See <i>Guidance</i> below.	

### **Guidance**

*It is important that online platforms and the recipients of their services have all of the information they need to inform their choice of ODS body. Details of your ODS body, its areas of expertise, dispute settlement procedure, fee model and Rules of Procedure must be easily and publicly accessible.*

*The information that you are required to provide annually in your report is set out in Article 21(4). Coimisiún na Meán may specify additional matters to be reported on.*

*There should be full transparency around the decision-making of the ODS body. In this section, you are invited to submit details of any policies or proposals in relation to the publication of decisions i.e. categories of decisions that will be published, categories or information within decisions that would be excluded from publication (personal data etc.) and/or any additional reports you propose to publish in addition to the annual report to Coimisiún na Meán as required under Article 21(4).*

*Article 21(2) specifies reasons why an online platform may refuse to engage with an ODS body and this information, where applicable, should also be included in any reports published by you.*

*The reporting period is January to December and must be submitted to the Coimisiún na Meán within 3 months of the end of the preceding calendar year. The first report should be submitted in the first three months of the year following the date your ODS body was granted approval.*

*Where Coimisiún na Meán specifies additional information that may be required in an annual report it will provide notice of this requirement.*

*Coimisiún na Meán may require additional information from you and/or action/s to be taken on foot of the information provided in the report.*

## Section (5): Fairness (Decision Making & Rules of Procedure)

<b>5.1</b>	Describe the <b>procedures</b> you will put in place to ensure fair decision-making. See <i>Guidance</i> below.
<b>5.2</b>	Explain the <b>normative framework</b> (as applicable) you will employ for decision-making on disputes. See <i>Guidance</i> below.
<b>5.3</b>	Set out the <b>rules of procedure</b> for the ODS procedure you will offer. See <i>Guidance</i> below.
<b>5.4</b>	How will your ODS body comply with the obligation under Art. 21(3)(f) to make its rules of procedure easily and publicly available?



<b>5.5</b>	Confirm that the rules of procedure comply in all respects with Article 21 and applicable law.

**Guidance**

Your **Rules of Procedure** (“Rules”) should comprehensively describe and explain the rules your ODS body will employ to settle disputes in accordance with the specific requirements that Article 21 imposes on ODS bodies and on the parties engaging in the dispute settlement procedure.

Article 21 requires the parties to engage in good faith in the ODS procedure with a view to resolving the dispute. The principle of good faith is established in Community law and, in this context, imposes positive obligations of behaviour on the parties to cooperate with the ODS body’s processes and procedures with the genuine aim or intention of resolving the dispute, for example by cooperating with the evidence gathering process, adhering to agreed timeframes and generally refraining from behaviour or actions that could frustrate or undermine the ODS process. It therefore includes respect for the process, cooperation, honesty and sincerity of intention, reasonableness and regard for the other party’s interests. Good faith is often presented as the corollary of the concept of abuse of process.

The Rules should set out the positive obligations on the parties engaging in the settlement procedure and the consequences of failure and/or refusal to comply with such obligations. The Rules should be clear and fair to all parties to a dispute and have due regard to their rights and interests.

Coimisiún na Meán will assess the fairness of the proposed procedural rules holistically.

A non-exhaustive list of matters that should be included in the Rules is set out below:

Procedures and related obligations on the body and the parties in relation to:

- Dispute admissibility requirements (if any).
- Rules of engagement by the parties to the dispute.
- Evidence-gathering by the body (written submissions, oral representations etc.).
- Communication between the body and the parties and (where applicable) between the parties.
- Confidentiality.
- Time estimates for the dispute settlement procedure and decision making and the point at which this commences and notice of a proposed extension to the 90 days' time period.
- Fee Model and Schedule of Fees, Costs and Expenses (case complexity, reimbursement mechanism, qualifying and non-qualifying expenses)
- Appointment and removal of case decision-makers.
- Impartiality and independence of decision-makers and rules on conflicts of interest.
- Rights of the parties (e.g., the right to seek independent advice or be represented or assisted by a third party at any stage of the procedure; the right to withdraw from the procedure at any stage if a party is dissatisfied with the operation of the ODS procedure; the right to initiate legal proceedings at any stage in the process).
- Grounds for termination of the ODS procedure.
- Fairness of the decision-making process and final (non-binding) decision.
- Waivers.
- The consequence/s of a breach of a rule or rules by a party.

Normative Decision-Making Framework

You should explain the standards and norms that will govern the ODS body’s decision-making on disputes i.e., rights and legitimate interests of the parties, legal instruments etc. For example, where an ODS body is settling disputes in relation to the application and enforcement of the terms and conditions of one or more types of online platforms and these terms and/or conditions relate to restrictions on the use of the platforms’ service, the ODS body’s normative decision-making framework should include the rights and freedoms enshrined in the Charter of



*Fundamental Rights. This is because Article 14(4) of the DSA requires online platforms to have regard to such rights and freedoms when applying and enforcing any restrictions in relation to the use of their service.*

**Fair Decision Making**

*Decisions must be evidence-based, to the extent possible, and have regard to the principles of law, fair and impartial procedure.*

*A reasonable period of time must be allowed at all stages in the process (i.e., for the parties to engage with each other and/or the ODS body, comment on the information and evidence presented, make submissions and consider the decision and whether they want to accept the proposed resolution). You should explain how this will be achieved for example by providing a copy of the draft decision to each party for final comment, evidence rebuttal etc.*

*A statement of reasons for the (final) decision should be provided to the parties. The decision should be clear and actionable without significant difficulty.*

*A list of documentary evidence that may be requested under this heading is set out in the Schedule in Appendix 1.*

## Section (6): Declaration

**By signing this Declaration, I confirm that:**

I have been authorised by [name of Applicant body] to provide the information requested in this application form.

I confirm that all of the information, including statements of facts provided herein and in any appended documentation are true and accurate and no relevant information has been withheld.

I [name of Applicant body] will notify Coimisiún na Meán immediately if there is a material change in the information provided.

Name and Title:	Signed:	Date:





# Appendix 1 - Schedule of Documentary Evidence

## Section (1): GENERAL INFORMATION

Provide the ODS body's **founding legal documents** or, if you are a public body, a link to and an outline of the relevant provisions of law that establish the ODS body and determine its objectives.

Provide the following documentation and information:

- *The ODS body's certificate of incorporation.*
- *The ODS body's Constitution.*
- *Company registration office details.*

## Section (2): IMPARTIALITY AND INDEPENDENCE

### 2.1 Impartiality and Independence and of Case Decision-Makers

- *Copies of policies or other documents to ensure case decision-makers you appoint are independent from online platforms and their recipients and will make decisions impartially.*
- *Copies of rules or procedures on the terms of office of case decision-makers, their appointment and termination of their appointment that ensure they can function independently and approach decision-making in an impartial and objective manner for the duration of their appointment.*
- *Template contract of employment or service agreement for case decision-makers.*

### 2.2 Organisational Independence

Provide the following documentation and information:

- *A copy of the Share Register / Commercial Register.*
- *Shareholders' Agreements.*
- *Partnership Agreements.*
- *Illustration, in diagrammatic form, of the corporate group structure, in the case of a group of companies.*
- *A list of the directors of the Board and whether any directors sit in a representative capacity for a shareholder in the body.*
- *Rules on conflicts of interest for directors, employees and case decision-makers.*

### 2.3 Financial Independence

Provide the following documentation and information:

- *Affidavit<sup>12</sup> of a director or equivalent position verifying the sources of funding and that no conditions are attached to funding arrangements that would impact on the independence of the bodies or the impartiality of its decision making.*
- *Letters of financial commitment from third parties (where applicable).*
- *Audited financial statements for the preceding financial year.*
- *Annual budgets and profit and loss statements with notes on anticipated sources of income (including the identity of the funders) for the first 2 years of operation.*
- *Copies of agreements between the body and external funders.*

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<sup>12</sup> Sworn statement



- *Copies of the body's policies, procedure or other controls in relation to external funding.*

### **Section (3): EXPERTISE**

#### **3.1 Expertise of Body and Case Decision-Makers**

Provide the following documentation and information:

- *Biographies or curricula vitae of identified panel members/case decision makers.*
- *Details of training courses provided or required of case decision-makers.*

### **Section (4): EFFICIENCY, ACCESSIBILITY & TRANSPARENCY**

#### **4.1 Dispute Settlement Procedure:**

Provide the following documentation and information:

- *A list of costs that will be covered by the fees charged.*
- *A list of qualifying and non-qualifying expenses that online platforms will be required to reimburse where a decision is made in favour of the recipient of the service.*

### **Section (5): FAIRNESS (Rules of Procedure)**

Provide the following documentation:

- *A copy of the body's Rules of Procedure.*

