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**NOTE**

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From: BE Delegation  
To: Working Party on Competitiveness and Growth (Internal Market - Attachés)  
Working Party on Competitiveness and Growth (Internal Market)

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Subject: Questions from BE delegation: Digital Services Act - Chapters I and II

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- **Article 6** : The Commission explained that an intermediary service can still acquire “actual knowledge” as a result of conducting own initiative investigations. If the intermediary service discovers illegal content through such voluntary measures and still does not remove the content, it can be held liable.

Should Article 6 be understood as establishing a kind of “presumption” for intermediary services, i.e. that the latter do not acquire “actual knowledge” solely by carrying out voluntary own-initiative investigations?

In the affirmative, would it be possible to “reverse” this presumption if it can be proven that the intermediary service effectively had actual knowledge of the illegality on the basis of the information obtained through own-initiative investigations and omitted to take adequate action?

- **Article 8**: If the intermediary service fails to inform within a reasonable delay the requesting authority of the effect given to the order to act against illegal content, can the DSC of the Member State of the requesting authority initiate the cross border procedure among Digital Services Coordinators as provided in Article 45 (breach of Article 8 DSA: obligation to inform the authorities without undue delay) ?
- **Article 8**: Does the intermediary service, upon receiving an order from a national authority to act against illegal content, still have a choice as regards the decision to be taken regarding content moderation (the effect given to the order)? E.g. the service deems the measures included in the order too far-reaching and detrimental to fundamental rights of the users of the service. Or will the intermediary service have absolutely no choice as regards the decision to be taken, and will have to proceed to remove the content. In that event, can the authorities of the Member State that requested the order be held liable in the event that higher norms (such as the European Charter of Fundamental Rights) have been breached?
- **Article 8(3)** obliges the Digital Service Coordinator from the Member State of the judicial or administrative authority issuing the order to transmit a copy of the order to other Digital Service Coordinators. The text does however not provide an obligation for the authority issuing the order to inform its own national Digital Service Coordinator (either to put the DSC in copy when sending its order, or to transmit the DSC a copy without undue delay ). Does the text impose an "implicit obligation" for national authorities issuing the order to notify ("put in cc") their country's Digital Services Coordinator or is there room for further clarifying this in Article 8(3)?