



Council of the European Union
General Secretariat

Brussels, 01 February 2021

**Interinstitutional files:
2020/0361 (COD)**

WK 1432/2021 INIT

LIMITE

**COMPET
MI
JAI
TELECOM**

**CT
PI
AUDIO
CONSOM
CODEC**

This is a paper intended for a specific community of recipients. Handling and further distribution are under the sole responsibility of community members.

NOTE

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

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

1. Clarification is requested on the relationship between the DSA and sectoral legal instruments

Ireland's understands that an overarching purpose of the DSA, as reflected in Articles 8 and 9, is to specify the parameters consistent with the aim to promote harmonised and standardised processes to support the efficiency, effectiveness and simplicity of cross-border processes established on a sectoral basis, as is the case at EU-level in terms of the recently provisionally agreed EU Regulation to prevent the dissemination of Terrorist Content online (TCOR) when implemented, as is the intention regarding the forthcoming public consultation for long-term legislation to effectively tackle child sexual abuse online and the possible creation of a European centre to prevent and counter child sexual abuse and, in the context of the EU Code of conduct on countering illegal hate speech online and the Framework Decision on racism and xenophobia, per the proposed EU Commission initiative to extend the list of EU crimes under Article 83(1) of the Treaty on the Functioning of the European Union to cover hate crime and hate speech, including online hate speech.

Is this an accurate understanding?

2. Following on from above question, and more specifically on 'territorial scope',

Article 8 (2) (b) provides that an order issued to act against a specific item of illegal content must specify "the territorial scope of the order, on the basis of the applicable rules of Union and national law, including the Charter, and, where relevant, general principles of international law, does not exceed what is strictly necessary to achieve its objective". Can the Commission explain with explicit detail what is specifically intended by the term 'territorial scope' in this context, and how they define and practically understand 'what is strictly necessary to achieve its objective'?

- Does Article 8 intend to provide an agreed system for the issuing of cross-border removal orders, similar to the TCOR, for the removal of content online, and in which case what is the status of content that is illegal in one Member State but not in another, particularly not in the Member State in which the service provider has its main establishment?
- Or, is Article 8 intended to simply provide a uniform process for a Member State to enforce the disabling of access to illegal content from its own jurisdiction, irrespective of where the service provider has its main establishment?
- Or, is it that the DSA will provide the legal basis?
- Or, is it that the legal basis has to be provided for in either national law of a MS or in Union law such as the TCOR?

For example, concerning the blocking/removal of illegal content, with the Nordic Resistance Movement banned in Finland, is the Finnish authority empowered to issue an order to a service provider based in another Member State to disable access to NRM content across all Member States, or just in their jurisdiction? Similarly, in relation to provision of services, and where it is illegal to sell alcohol online in Sweden, is it correct to understand that a Swedish authority can disable access to online retailers of alcohol in the Swedish jurisdiction, but that this retailer can continue to operate in other Member States? And what would occur, either relating to the Nordic Resistance Movement or the sale of alcohol online as merely illustrative examples, if the issuing authority requested that access to this content be disabled outside of their respective jurisdictions?

3. How can the Digital Services Co-ordinator become involved in the enforcement of non-compliance with Articles 8 and 9 (which are contained in Chapter 2) when Article 40 limits the jurisdiction of the Digital Services Co-ordinator to the provisions of Chapters 3 and 4.
4. If an intermediary service removes content in utmost good faith based upon the explanation of illegality provided by a Member State national administrative authority yet it is subsequently held liable for breach of the material provider's right to freedom of expression and it transpires that the statement of illegality was issued in error what indemnity is available to the intermediary service?
5. What is the reason for individual notification to all Member State DSCs whenever a notice is issued (Article 8 subpara 3) when an online register of such notices would be far less labour intensive?

It is believed that such an approach, by providing a register with limited details of each notice, would address some concerns around disseminating full details of the notice such as:

- Whether it would be necessary to provide for scenarios where the fact of an ongoing criminal investigation would make the dissemination of a content removal order to all DSCs or the publication of such orders inappropriate, and
- Whether it is possible that the uniform resource locators and potential other information required to be contained in content removal could be considered personal data or even sensitive personal data, and whether therefore, there is sufficient legal basis in the DSA for the dissemination of all content removal order to all DSCs or the publication of such orders?