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NOTE

From:	DK Delegation
To:	Working Party on Competitiveness and Growth (Internal Market - Attachés) Working Party on Competitiveness and Growth (Internal Market)
Subject:	Questions from DK delegation: Digital Services Act - Chapters I and II

January 27, 2021

Danish written questions: Chapter I+II, Digital Services Act

Chapter I

- The collaborative economy has particularly brought about a new range of digital platforms that allow people to connect various goods and services, e.g. with respect to real estate, transport, labour, vacation and money lending. Depending on their particular configuration, some of these services may be considered intermediary services while others may not. Unfortunately, we do not find that the first chapter brings clarity to this issue. From the Danish side, we find it absolutely necessary for the Commission to clarify the legal status of digital platforms by determining what requirements a service must meet in order to be considered an *'intermediary service provider'* within the remit of the DSA. If - for instance - a product is sold on an online marketplace by a seller, but the delivery is carried out by the online marketplace itself. Will the online marketplace be covered by the liability exemption in article 5?

- It is important that the DSA regulates the service and not the business as a whole because a platform often constitutes of several different business- or service models. Ideally, the DSA should offer legal certainty both for existing services as well as for future services. As the DSA is without prejudice to several pieces of EU legislation, such as the Audiovisual Media Services Directive or the Copyright Directive, that among other things constitute exceptions to the liability exemption, we fail to see how the DSA can address the fragmentation of EU-legislation regarding online platforms. How will the Commission address this problem? Do you expect to issue guidance for platforms on their liability and requirements according to all the relevant EU-legislation?

- Regarding the definition in art. 2 (d) *'to offer service in the Union':* In order to establish legal certainty, we find it necessary that the Commission provides a clear indication as to when the provider has 'a significant number of users in one or more Member States'.

- It is the Danish Government's assessment that both militant groups and extremist political groups are increasingly using closed groups/channels and alternative platforms (which are characterized, among other things, by offering a high degree of anonymity and a low degree of content moderation) for communication and dissemination of violent extremist and terrorism-related online content. It's important, that the definition of "dissemination to the public" (article 2 (i)) does not preclude the Regulation from also covering the spreading of violent extremism and terror-related online content, which takes place via closed groups/channels. Therefore, we would appreciate further clarification and definition of the distinctions between public vs. private communication and what is meant by closed and open groups/channels respectively.

Chapter II

- Could the Commission elaborate on its choice – on the grounds of the impact assessment – of not setting clearly defined timeframes for acting on notifications on illegal content, i.e. a shorter timeframe for high impact content? As some Member States already have introduced timeframes for takedown of notified content, is the Commission not worried that the DSA won't adequately address the fragmentation of national legislation as this was one of the objectives in the impact assessment?

- And to supplement this, we would like the Commission to elaborate on why there are no proactive requirements for the platforms to detect illegal content?

- Further, we experience challenges with illegal content being re-uploaded. Therefore, we would like the Commission to elaborate on why there is no "stay-down"-requirement for the platforms when first they have already been notified about specific illegal content on their platform and this content later reappears?

- Regarding Chapter II, Article 8 (orders to act against illegal content) and 9 (orders to provide information) we would appreciate further elaboration from the Commission.

- More specifically, do the Articles mean that the authorities in the Member State, where the provider of an intermediary service is established, will be able to issue an order to act against illegal content and an order to provide information? Or will the authorities in another Member State issue these orders to providers of intermediary services established in yet another member state?

- Furthermore, we would like to ask how Article 8 (2)(b) should be understood, specifically what "territorial scope of the order" means. The same paragraph refers to "the applicable rules of Union and national law" as well as "general principles of international law". What rules and principles are specifically thought of in this paragraph?

- A concrete example: If a comment on a social media is illegal in the Member State where the commenting user is living, but not illegal in the Member State where the online platform is established, could the Member State of the user then give direct orders to the online platform - and this without cooperation with the Member State of the online platform's establishment?