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**NOTE**

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From: LV 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 LV delegation: Digital Services Act - Chapters I and II

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- 1. To which intermediary service liability regime type (“mere conduits”, “caching” or hosting) exactly does each of intermediary service providers that are mentioned in the regulation (including Recital 27) belong? If possible, can this be indicated in tabular form?**
- 2. Given mentioned considerations, to which of the service provider liability regime type (“mere conduits”, “caching” or hosting) do domain registries, registrars and other domain name system service providers belong and why?**

*Background info:*

While intermediary service classification by their obligations (Chapter III) is clear, there is no clarity with the classification of intermediary service providers in relation to the liability regime (Chapter II). Recital 27 provides several examples of services that qualify as “mere conduits”, “caching” or hosting services but does not clearly state to which liability type exactly does particular service provider qualify. Such legal uncertainty regarding the liability regime could potentially lead to a situation that mediation providers will constantly have to achieve certainty in respect of the applicable exemption from liability in court.

More specifically, domain registries and registrars do not transmit the information provided by the recipient of the service in the communication network, nor do they perform access to the communication network, nor do they store this information. Thus, with current wording, domain registries and registrars does not qualify for any of the intermediary services types (“mere conduit”, “caching”, hosting) and exemption from liability for them is not clear.

- 3. How proportionality principle will be ensured in the process of removal of illegal content, given that the Regulation does not impose an obligation to initially use more lenient means?**

*Background info:*

Capabilities of intermediary service providers to remove illegal content online are vastly different in nature and effect, especially that refers to specific capabilities of domain name system operators and electronic communications operators (Internet access providers/telecommunications services) to block access to platforms. For example, domain registries are capable to delete domain name which affects not only illegal content but accessibility to other services and content of online platform. Such measure is disproportional in comparison to targeted deletion of illegal content by online platform itself and should be used only as a last resort measure.

Recital 26 states that “*where possible, third parties affected by illegal content transmitted or stored online should attempt to resolve conflicts relating to such content without involving the providers of intermediary services in question*”. However, Article 8 does not stipulate that national judicial or administrative authorities must ascertain whether a third party has tried to resolve a conflict over particular online content by other effective means (e.g. contacting the content owner without involving the intermediary service providers concerned). In practice, third parties as well as the authorities do not always respect this principle of proportionality and graduality and Article 8 does not address this issue.