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NOTE

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

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

DSA- Questions Chapter I and II – AT

1) Relationship to existing sector-specific acts

Article 1(5): The relationship to other directives needs to be defined or explained more precisely. For example: The “noticed-and-action” mechanism in the Article 26b AVMSD is similar but differently worded compared to the mechanism in Article 14 DSA. Also,

What would take precedence here? Would *lex specialis* apply in such a case?

2) Relationship to existing law of the Member States

Existing law of member states may not restrict the freedom to provide information society services from another Member State (Art. 3 para 2 ECD). Recital 33 clarifies that orders from an authority or a court relate to specific items of illegal content and information and therefore do not restrict the freedom to provide services. But every order of a competent authority or a court has to have a legal base, which is Union law or the law of a Member State. The question remains, does the law of a Member State that requires a provider with an establishment in another Member State to remove illegal content or to provide the sought information restrict the freedom to provide service? If yes, can such law of a Member State be regarded as “measure” that is capable of the derogations in Art. 3 para 4 ECD?

3) Scope

What is the EC's position in principle regarding additional exceptions with regard to certain platforms (e.g. educational platforms, platforms that are not for profit but very much have the character of a service)?

4) Art. 8 and 9 and their relation to (EU) civil procedural law

We think that it could be useful to discuss this topic with the experts dealing with the recognition and enforcement of court decisions within DG Justice and Consumers.

As far as we understood, Art. 8 DSA tends to establish an additional possibility for national authorities to address the provider directly in order to achieve - under certain conditions closer defined in Art. 8 - that the provider complies with its decision and takes down illegal content or ensures that the illegal content is not uploaded again. We wonder whether this new system affects existing recognition and enforcement systems of civil law decisions between the Member States and between a Member State and a third country (since according to Art. 1 para 3 DSA the establishment of the provider does not necessarily have to be in the EU).

Against this background we would like to ask the following questions:

- Does Art. 8 DSA affect the Brussels Ia-Regulation? Do any other provisions of the DSA have implications on the Brussel Ia-Regulation? If not, why is the Brussels Ia-Regulation not mentioned in Art. 1 para 5 DSA, nor is „national civil procedural law“ mentioned in Art. 8 para 4 DSA?
- Does Art. 8 para 2 DSA intend to regulate additional requirements and conditions of national decisions, in particular decisions of civil courts in general (as far as these decisions concern the termination or prevention of an infringement)? This could be contrary to national civil procedural law, since a decision of a court does not necessarily contain the exact URL of the illegal content (see, for example, the ruling of the Austrian courts in the Glawischnig-case C-18/18). Also a default decision could be issued without a statement of reasons, if the provider as the defending party has not reacted to the lawsuit. Would such a decision that is not in totally in line with Art. 8 Abs. 2 DSA be not enforceable according to Brussels Ia? This could be contrary to Art. 3 para 3, Art. 4 para 2

and Art. 5 para 4, which leaves the possibility for a court to require termination or prevention of an infringement untouched. Or does Art. 8 cover purposes different from enforcement (which purposes would that be)?

- Does Art. 8 DSA have any implications on national provisions (not based on Union law) according to which a take-down-decision or a decision concerning an injunctive relief of another State can be recognized and enforced due to these national provisions (e.g. bilateral enforcement treaties)?

These questions could also be discussed in the context of **Art. 9 DSA**.