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LIMITE

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NOTE

From:	Presidency
To:	Working Party on Competitiveness and Growth (Internal Market - Attachés) Working Party on Competitiveness and Growth (Internal Market)
Subject:	Digital Services Act: Consolidated comments on Chapters 1 + 2 and respective recitals

COMMISSION PROPOSAL	**Drafting suggestions**	**Comments**
2020/0361 (COD)		**DK** (Comments): • The Danish government has a general parliamentary reservation on the whole text. The comments made in this document are based on the preliminary position of the Danish government. • The Danish government generally supports the intention to create a more responsible platform economy. Digitization has brought many opportunities for both consumers and businesses. But we also see challenges arising, which calls for stricter requirements. • It is highly problematic that private companies effectively decide how freedom of expression and information can be exercised on their platforms. European citizens experience their fundamental rights infringed when their content is removed, or their accounts are blocked with no democratic safeguards or transparency/without explanation or due process. At the same time, the platforms' efforts are not proving adequate in the removal of illegal content, which is distributed with speed and efficacy on the platforms. Thus, citizens risk increasingly being exposed to i.e. terrorist content, appeals to violence, and the sharing of child pornography. • For the Danish Government it is important that we find the right balance between the freedom to exercise fundamental rights and

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		removal of illegal content. • The proposal is broadly well-balanced and contains many positive elements. Among other things we are pleased that the DSA preserves and builds on the core principles of the e-commerce directive and that the measures introduced in the DSA to counter online harm focus on illegal content. • It is also positive that the DSA applies to third-country intermediary service providers in so far as they provide services to recipients that have their place of establishment or residence in the Union, irrespective of the place of establishment of the providers of those services. Together with the principle of "traceability of traders" set out in article 22, this is a very important step in order to avoid consumers unknowingly buying i.e. dangerous products, cosmetics containing dangerous chemicals or phone chargers that set on fire • Moreover, the strengthened cooperation and coordination between Member State Authorities and the Commission should lead to a more effective and consistent application and enforcement of the horizontal framework and ensure a level playing field for businesses. **EL** (Comments) We would like to thank the Presidency, the General Secretariat of the Council, and the European Commission for their efforts in this

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		legislative file. We clarify that we hold a general scrutiny reservation on the whole text of the proposal, and the following comments are only preliminary in nature, and non binding for our final position. **LU** (Comments) These comments on the Digital Services Act (DSA) proposal are preliminary and do not preclude comments and positions expressed in future discussions. Consultations within the Luxembourg Government and with relevant stakeholders are ongoing. **IE** (Comments) The recitals have been considered up to the point of the Articles that have been discussed at Working Party. There is a risk in commenting any further as until Articles have been considered it cannot be clear as to the implications of the relevant recitals. We therefore reserve the right to comment on later recitals at such time that the related articles have been duly considered. **AT** (Comments) We are grateful to the Presidency for this opportunity to provide comments on Chapters I and II. Please kindly note that consultations on national level are still ongoing and we maintain our scrutiny reservation on the whole file. We would therefore also like to reserve our right to ask further questions or provide further comments on these Chapters at a later stage.

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Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on a Single Market For Digital Services (Digital Services Act) and amending Directive 2000/31/EC		
(Text with EEA relevance)		
THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,		
Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,		
Having regard to the proposal from the European Commission,		
After transmission of the draft legislative act to the national parliaments,		
Having regard to the opinion of the European Economic and Social Committee[1],		
Having regard to the opinion of the Committee of the Regions[2],		
Having regard to the opinion of the European Data Protection Supervisor[3],		
Acting in accordance with the ordinary legislative procedure,		
Whereas:		

[1] OJ C , , p. .
[2] OJ C , , p. .
[3] OJ C, p.

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(1) Information society services and especially intermediary services have become an important part of the Union's economy and daily life of Union citizens. Twenty years after the adoption of the existing legal framework applicable to such services laid down in Directive 2000/31/EC of the European Parliament and of the Council[4], new and innovative business models and services, such as online social networks and marketplaces, have allowed business users and consumers to impart and access information and engage in transactions in novel ways. A majority of Union citizens now uses those services on a daily basis. However, the digital transformation and increased use of those services has also resulted in new risks and challenges, both for individual users and for society as a whole.		
(2) Member States are increasingly introducing, or are considering introducing, national laws on the matters covered by this Regulation, imposing, in particular, diligence requirements for providers of intermediary services. Those diverging national laws negatively affect the internal market, which,		**DE** (Comments) With regard to the rules of the proposal, we are not sure if the DSA does pursue the goal of full harmonisation. Unlike the draft DMA (Art. 1(1)), the DSA does not provide for an outspoken full

[4] Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce') (OJ L 178, 17.7.2000, p. 1).

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pursuant to Article 26 of the Treaty, comprises an area without internal frontiers in which the free movement of goods and services and freedom of establishment are ensured, taking into account the inherently cross-border nature of the internet, which is generally used to provide those services. The conditions for the provision of intermediary services across the internal market should be harmonised, so as to provide businesses with access to new markets and opportunities to exploit the benefits of the internal market, while allowing consumers and other recipients of the services to have increased choice.		harmonisation approach. We see the necessity for national legislation in specific areas. There must be exemptions, e.g. for diverging domestic rules to promote cultural and linguistic diversity and to ensure pluralism, as long as the regulatory competence for these areas lies with the MS. Also, there must be room for national provisions with regard to combating hate speech, the protection of minors and for public safety. The current approach of the draft with its horizontal approach leaves many regulatory gaps in this respect. This should not lead to a substantial reduction of the current level of protection in MS. This room for national legislation should be explicitly mentioned either in the recitals (e.g. in recitals 1-11) or even better in Art. 1 (see comment there). As these issues are of upmost importance to us, we ask the Council Legal Service for a legal opinion re. the scope of the harmonisation approach of the draft.
(3) Responsible and diligent behaviour by providers of intermediary services is essential for a safe, predictable and trusted online environment and for allowing Union citizens and other persons to exercise their fundamental rights guaranteed in the Charter of Fundamental Rights	**SE** (Drafting): (3) Responsible and diligent behaviour by providers of intermediary services is essential for a safe, predictable and trusted online environment and for allowing Union citizens and	**IT** (Comments): We attach a great importance to the Charter of Fundamental Rights of the European Union. Therefore, we suggest to **recall all the rights** guaranteed in the Charter directly in recital (3)

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of the European Union ('Charter'), in particular the freedom of expression and information and the freedom to conduct a business, and the right to non-discrimination.	other persons to exercise their fundamental rights guaranteed in the Charter of Fundamental Rights of the European Union ('Charter'), in particular the freedom of expression and information and the freedom to conduct a business, and the right to non-discrimination and gender equality.	rather than – or in addition to - recital (41). The actual provision not only might lead to different interpretation, but it also seems to give different value to some of the rights listed by the Charter than others.
(4) Therefore, in order to safeguard and improve the functioning of the internal market, a targeted set of uniform, effective and proportionate mandatory rules should be established at Union level. This Regulation provides the conditions for innovative digital services to emerge and to scale up in the internal market. The approximation of national regulatory measures at Union level concerning the requirements for providers of intermediary services is necessary in order to avoid and put an end to fragmentation of the internal market and to ensure legal certainty, thus reducing uncertainty for developers and fostering interoperability. By using requirements that are technology neutral, innovation should not be hampered but instead be stimulated.		
(5) This Regulation should apply to providers of certain information society services as defined		

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in Directive (EU) 2015/1535 of the European Parliament and of the Council[5], that is, any service normally provided for remuneration, at a distance, by electronic means and at the individual request of a recipient. Specifically, this Regulation should apply to providers of intermediary services, and in particular intermediary services consisting of services known as 'mere conduit', 'caching' and 'hosting' services, given that the exponential growth of the use made of those services, mainly for legitimate and socially beneficial purposes of all kinds, has also increased their role in the intermediation and spread of unlawful or otherwise harmful information and activities.		
(6) In practice, certain providers of intermediary services intermediate in relation to services that may or may not be provided by electronic means, such as remote information technology services, transport, accommodation or delivery services. This Regulation should apply only to intermediary services and not affect requirements set out in Union or national law relating to products or services intermediated through intermediary services, including in situations where the intermediary service		**ES** (Comments): **ES** welcomes the clarification regarding intermediaries services that constitute an integral part of another underlying service that may or may not be provided by electronic means. In such cases, the provisions of the CJEU jurisprudence will be taking into account to discern whether it is an information society service, **making it advisable to list in this recital the most recent Judgments (Uberpop,**

[5] Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services (OJ L 241, 17.9.2015, p. 1).

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constitutes an integral part of another service which is not an intermediary service as specified in the case law of the Court of Justice of the European Union.		**AirBnB)**. **DK** (Comments): The recital refers to case law of the Court of Justice of the European Union. As this is an area which gives rise to many questions and in order to secure correct application of the regulation, it would be preferable, if this case law could be specified or explained more detailed. **IE** (Comments): Clarification is requested on the effect of this recital say when comparing Booking. Com with a site like AirBnB. Which elements of these platforms that clearly deal with accommodation are in scope and which are out of scope. **SK** (Comments): *On this recital (and within this regulation in general), we find that a clearer, more substantial definition of the intermediary service is missing – Could the Commission clarify, when (for which cases) an intermediary service is considered to be an integral part of providing an another service, and when it is not? This specification could provide more clarity and legal certainity for providers, f.i. whether they fall under the scope of this Regulation* *Furthermore, lack of precision might obstruct an*

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		effective monitoring of the martket. We would welcome a more detailed definition of what all is not considered to be an intermediary service when provided through the use of an intermediary service (reliable and foreseeable criteria strengthening legal certainty)
(7) In order to ensure the effectiveness of the rules laid down in this Regulation and a level playing field within the internal market, those rules should apply to providers of intermediary services irrespective of their place of establishment or residence, in so far as they provide services in the Union, as evidenced by a substantial connection to the Union.	**AT** (Drafting): (7) In order to ensure the effectiveness of the rules laid down in this Regulation and a level playing field within the internal market, those rules should apply to providers of intermediary services irrespective of their place of establishment or residence, in so far as they <u>offer</u> services in the Union, as evidenced by a substantial connection to the Union.	**AT** (Comments): The wording should be in line with Art. 2(d); there is a difference between "offering" and "providing" services. **DE** (Comments) We find it imperative to respect the rules on jurisdiction established in international law, especially with regard to third countries. On the one hand, these rules allow (as an element of the "**jurisdiction to prescribe**") to prescribe binding rules for contractual relationships with businesses or consumers established in the internal market. On the other hand, international law with the rules on the "**jurisdiction to enforce"** asks for respect of the territorial boundaries of any enforcement action. That is also applicable for enforcement in the internet (rf. Tallinn Manual 2.0 on the International Law Applicable to Cyber

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		Operations). Therefore, we suggest to insert language detailing the imperative of respect for international law with respect to prescription of law applicable on transactions and with respect to enforcement respectively
(8) Such a substantial connection to the Union should be considered to exist where the service provider has an establishment in the Union or, in its absence, on the basis of the existence of a significant number of users in one or more Member States, or the targeting of activities towards one or more Member States. The targeting of activities towards one or more Member States can be determined on the basis of all relevant circumstances, including factors such as the use of a language or a currency generally used in that Member State, or the possibility of ordering products or services, or using a national top level domain. The targeting of activities towards a Member State could also be derived from the availability of an application in the relevant national application store, from the provision of local advertising or advertising in the language used in that Member State, or from the handling of customer relations such as by providing customer service in the language generally used in that Member State. A substantial connection should also be assumed	**DE** (Drafting) "[…] The targeting of activities towards one or more Member States can be determined on the basis of all relevant circumstances, including factors such as the use of a language or a currency generally used in that Member State, or the possibility of ordering products or services, or **the use of** ~~using~~ a national top level domain **of a Member State.** […]"	**IT** (Comments): Unclear when you consider that a number of users is significant in one or more Member states. This may lead to different interpretations by the MS. Can the Commission provide details? **ES** (Comments): **ES** supports Art. 1(3), which establishes the application of this Regulation to all intermediary services that provide their services to users established in the EU, regardless of the place of establishment of the service provider (within or outside the EU). In this regard, in order to be able to assess whether a provider established in a third country directs its services to the territory of a Member State, the CJEU in the "Pammer Case" established a non-exhaustive list of criteria that may constitute evidence in this regards. These criteria have been correctly included in this recital, in development of the definition contained in article 2 (d).

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where a service provider directs its activities to one or more Member State as set out in Article 17(1)(c) of Regulation (EU) 1215/2012 of the European Parliament and of the Council[6]. On the other hand, mere technical accessibility of a website from the Union cannot, on that ground alone, be considered as establishing a substantial connection to the Union.		**DK** (Comments): We support the provision, however it seems necessary that it is specified when a provider of intermediary service has a significant number of users. **DE** (Comments) See drafting suggestion re. national top level domain of a MS. We also propose to consider, whether the top level domain ”eu” should also be referred to.
(9) This Regulation should complement, yet not affect the application of rules resulting from other acts of Union law regulating certain aspects of the provision of intermediary services, in particular Directive 2000/31/EC, with the exception of those changes introduced by this Regulation, Directive 2010/13/EU of the European Parliament and of the Council as amended,[7] and Regulation (EU) …/.. of the European Parliament and of the Council[8] – proposed Terrorist Content Online Regulation.	**DE** (Drafting) […] leave Member States the possibility of adopting certain measures at national level. **Furthermore, obligations to keep records for other purposes, in particular in the field of taxation, remain unaffected by this Regulation**	**IT** (Comments): See specific comments to art.1.5 on the necessity of further clarification of the relationship between “lex specialis” and the DSA provisions. **SE** (Comments): In the field of IPR, not only copyright, the InfoSoc Directive (2001/29) and the Enforcement Directive (2004/28) contains

[6] Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ L351, 20.12.2012, p.1).

[7] Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) (Text with EEA relevance), OJ L 95, 15.4.2010, p. 1 .

[8] Regulation (EU) …/.. of the European Parliament and of the Council – proposed Terrorist Content Online Regulation

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Therefore, this Regulation leaves those other acts, which are to be considered lex specialis in relation to the generally applicable framework set out in this Regulation, unaffected. However, the rules of this Regulation apply in respect of issues that are not or not fully addressed by those other acts as well as issues on which those other acts leave Member States the possibility of adopting certain measures at national level.		provisions on injunctions and right to information. However, the provisions are not as detailed as articles 8-9 in this regulation and leave Member States the possibility of adopting more detailed measures at national level. The last sentence of recital 9 seems to suggest that national provisions implementing the relevant provisions in the Infosoc- and enforcement directives must comply with articles 8-9 in this regulation. Is that a correct interpretation? At the same time recital 30 seems to suggest that the conditions and requirements laid down in this regulation (connected to article 8-9) are without prejudice to other Union acts providing for similar systems, which could include the InfoSoc Directive (2001/29) and the Enforcement Directive (2004/28) that contains provisions on injunctions and right to information. **BE** (Comments): "the rules of this Regulation apply in respect of issues … on which those other acts leave Member States the possibility of adopting certain measures at national level" . This policy space of member states now seems to be occupied by the DSA. How much space is left for specific policy in this respect of the member states? **For example** we refer to art. 7a of AVMS directive which states that Member States may

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		take measures to ensure the appropriate prominence of audiovisual media services of general interest. Member states should have the necessary policy space to define appropriate measures without being completely regulated by DSA. **DE** (Comments) We welcome that recital 9 does clarify that the DSA leaves those other acts, "which are to be considered lex specialis in relation to the generally applicable framework set out in this Regulation", unaffected. However, questions still arise about the relation of the DSA and those other acts (eCD, AVMSD) (please see comment re. Art. 1(5).) It must be ensured that MS domestic rules that are currently legally permissible under European Law do *stay* permissible. This is why we take a critical stance re. the last sentence of recital 9 of the proposal. In any case, it must be ensured that the application of Union law in the field of taxation, in particular Directive 2006/112/EC, Directive 2011/16/EU and Implementing Regulation (EU) 282/2011, will not be limited by this regulation. This is notably the case for record keeping obligations for platforms going beyond Article 22.

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(10) For reasons of clarity, it should also be specified that this Regulation is without prejudice to Regulation (EU) 2019/1148 of the European Parliament and of the Council[9] and Regulation (EU) 2019/1150 of the European Parliament and of the Council,[10], Directive 2002/58/EC of the European Parliament and of the Council[11] and Regulation […/…] on temporary derogation from certain provisions of Directive 2002/58/EC[12] as well as Union law on consumer protection, in particular Directive 2005/29/EC of the European Parliament and of the Council[13], Directive 2011/83/EU of the European Parliament and of the Council[14] and Directive 93/13/EEC of the European Parliament and of the Council[15], as amended by Directive (EU)	**AT** (Drafting): (10) For reasons of clarity, it should also be specified that this Regulation is without prejudice to the rules of criminal procedural law, irrespective if such rules stem from national, Union or international law, and Regulation (EU) 2019/1148 […] , Regulation (EU) 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters as well as Union law on consumer protection, in particular […] and on the protection of personal data, in particular […]. The protection of individuals with regard to the processing of personal data is	**AT** (Comments): See the proposed amendments to Art. 1 paragraph 5, Art. 8 and Art. 9.

[9] Regulation (EU) 2019/1148 of the European Parliament and of the Council on the marketing and use of explosives precursors, amending Regulation (EC) No 1907/2006 and repealing Regulation (EU) No 98/2013 (OJ L 186, 11.7.2019, p. 1).

[10] Regulation (EU) 2019/1150 of the European Parliament and of the Council of 20 June 2019 on promoting fairness and transparency for business users of online intermediation services (OJ L 186, 11.7.2019, p. 57).

[11] Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications), OJ L 201, 31.7.2002, p. 37.

[12] Regulation […/…] on temporary derogation from certain provisions of Directive 2002/58/EC.

[13] Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive')

[14] Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council.

[15] Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts.

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2019/2161 of the European Parliament and of the Council[16], and on the protection of personal data, in particular Regulation (EU) 2016/679 of the European Parliament and of the Council.[17] The protection of individuals with regard to the processing of personal data is solely governed by the rules of Union law on that subject, in particular Regulation (EU) 2016/679 and Directive 2002/58/EC. This Regulation is also without prejudice to the rules of Union law on working conditions.	solely governed by the rules of Union law on that subject, in particular Regulation (EU) 2016/679 and Directive 2002/58/EC. This Regulation is also without prejudice to the rules of Union law on working conditions.	
(11) It should be clarified that this Regulation is without prejudice to the rules of Union law on copyright and related rights, which establish specific rules and procedures that should remain unaffected.		
(12) In order to achieve the objective of ensuring a safe, predictable and trusted online environment, for the purpose of this Regulation the concept of "illegal content" should be defined broadly and also covers information relating to illegal content, products, services and activities. In particular, that concept should be understood	**AT** (Drafting): (12) […] In particular, that concept should be understood to refer to information, irrespective of its form, that under the applicable law is either itself illegal, such as illegal hate speech or	**AT** (Comments): The offering of short-term rentals that are illegal according to the law of member states should also fall under "illegal content", as it is stated on page 12 of the Impact Assessment.

[16] Directive (EU) 2019/2161 of the European Parliament and of the Council of 27 November 2019 amending Council Directive 93/13/EEC and Directives 98/6/EC, 2005/29/EC and 2011/83/EU of the European Parliament and of the Council as regards the better enforcement and modernisation of Union consumer protection rules

[17] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

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to refer to information, irrespective of its form, that under the applicable law is either itself illegal, such as illegal hate speech or terrorist content and unlawful discriminatory content, or that relates to activities that are illegal, such as the sharing of images depicting child sexual abuse, unlawful non-consensual sharing of private images, online stalking, the sale of non-compliant or counterfeit products, the non-authorised use of copyright protected material or activities involving infringements of consumer protection law. In this regard, it is immaterial whether the illegality of the information or activity results from Union law or from national law that is consistent with Union law and what the precise nature or subject matter is of the law in question.	terrorist content and unlawful discriminatory content, or that relates to activities that are illegal, such as the sharing of images depicting child sexual abuse, unlawful non-consensual sharing of private images, online stalking, the sale of non-compliant or counterfeit products, the non-authorised use of copyright protected material, accommodation services not compliant with Union law or the law of a Member State on short-term rental platforms or activities involving infringements of consumer protection law. […] **PL** (Drafting): In order to achieve the objective of ensuring a safe, predictable and trusted online environment, for the purpose of this Regulation the concept of "illegal content" should underpin the general idea that what is illegal offline should also be illegal online. The concept should be defined broadly ~~and also~~ to covers information relating to illegal content, products, services and activities. In particular, that concept should be understood to refer to information, irrespective of its form, that under the applicable law is either itself illegal, such as illegal hate speech or terrorist content and unlawful discriminatory content, or that relates to activities that are illegal, such as the sharing of images depicting child sexual abuse, unlawful non-consensual sharing of private images, online stalking, the sale of non-	**PL** (Comments): Introducing the wording what is illegal offline is also illegal online would certainly reinforce the purpose of the entire regulation. Recital 12 refers to "illegal content" in extremely general terms. The regulation should provide a clear distinction between information/activities being illegal on the grounds of UE and national law. **DK** (Comments): It appears from this recital, that it is immaterial whether the illegality of the information or activity results from Union law or from national law that is consistent with Union law. The wording 'national law that is consistent with Union law' is unclear. If it refers to national law that is consistent with fundamental rights recognised by the Charter and fundamental rights constituting general principles of Union Law, it should be clarified. **LU** (Comments): We understand the reference to "information relating to…" as meaning that the focus is therefore exclusively on information conveyed, not for instance on product non-conformity.

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	compliant or counterfeit products, the non-authorised use of copyright protected material or activities involving infringements of consumer protection law. In this regard, it is immaterial whether the illegality of the information or activity results from Union law or from national law ~~that is consistent with Union law~~ and what the precise nature or subject matter is of the law in question. **SE** (Drafting): (12) In order to achieve the objective of ensuring a safe, predictable and trusted online environment, for the purpose of this Regulation the concept of "illegal content" should be defined broadly and also covers information relating to illegal content, products, services and activities. In particular, that concept should be understood to refer to information, irrespective of its form, that under the applicable law is illegal, such as illegal hate speech, explicit threats of a sexual nature or terrorist content and unlawful discriminatory content. It also relates to illegal dissemination of activities that are illegal, such as the sharing of images depicting child sexual abuse, unlawful non-consensual sharing of private images, and online stalking. The sale of non-compliant or counterfeit products, the non-authorised use of copyright protected material or activities involving infringements of consumer	**DE** (Comments) We are not sure whether animals and plants, especially specimens taken from the wild, are included in the concept of "illegal content", the same applies to plants and seeds imported illegally in the EU, to GMO-plants and feed as well as to fish and other animals (esp. puppies) traded illegally in the EU. The question arises as those objects are not "produced", they are thus no "products". We ask for an explicit clarification in recital 12 that the concept also includes the illegal trade and use of animals and plants (see also comment re. Art. 2 lit. g). In Environmental Law, there are different definitions of "product". These could be an obstacle to the implementation of this Regulation. We recommend to specify the meaning of "product" in the context of this Regulation, for instance by inserting a definition. From the viewpoint of Chemicals Law, it is not clear whether the term "product" in this context also encompasses substances or mixtures/composites, as well as intermediate products or articles containing such substances or mixtures, that are traded via online-platforms in violation of Chemicals Law, e.g. Regulation 1907/2006 (REACH), Regulation 517/2014 on fluorinated greenhouse gases or Regulation 1005/2009 on substances that deplete the ozone

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	protection law are also covered. In this regard, it is immaterial whether the illegality of the information or activity results from Union law or from national law that is consistent with Union law and what the precise nature or subject matter is of the law in question. **DE** (Drafting) "[…] also covers information relating to illegal content, products, services and activities. **In this context, animals and plants also qualify as "products".** In particular, […]".	layer, and not just end-products containing these substances. We assume that a broader definition is intended
(13) Considering the particular characteristics of the services concerned and the corresponding need to make the providers thereof subject to certain specific obligations, it is necessary to distinguish, within the broader category of providers of hosting services as defined in this Regulation, the subcategory of online platforms. Online platforms, such as social networks or online marketplaces, should be defined as providers of hosting services that not only store information provided by the recipients of the service at their request, but that also disseminate that information to the public, again at their request. However, in order to avoid imposing overly broad obligations, providers of hosting services should not be considered as online		**BE** (Comments): We understand that comment section in online newspaper should not be considered as an online platform? Is it then merely a hosting service? The information in this comment section is however disseminated to the public, at the request of the publisher, and is most of the time moderated by the publisher… **What about the liability for these ancillary services?**

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platforms where the dissemination to the public is merely a minor and purely ancillary feature of another service and that feature cannot, for objective technical reasons, be used without that other, principal service, and the integration of that feature is not a means to circumvent the applicability of the rules of this Regulation applicable to online platforms. For example, the comments section in an online newspaper could constitute such a feature, where it is clear that it is ancillary to the main service represented by the publication of news under the editorial responsibility of the publisher.		
(14) The concept of 'dissemination to the public', as used in this Regulation, should entail the making available of information to a potentially unlimited number of persons, that is, making the information easily accessible to users in general without further action by the recipient of the service providing the information being required, irrespective of whether those persons actually access the information in question. The mere possibility to create groups of users of a given service should not, in itself, be understood to mean that the information disseminated in that manner is not disseminated to the public.	**AT** (Drafting): (14) The concept of 'dissemination to the public', […]. Interpersonal communication services, as defined in Directive (EU) 2018/1972 of the European Parliament and of the Council,[19] such as emails or private messaging services, ~~fall outside the scope of this Regulation~~ can not be considered as an online platform. […] **CZ** (Drafting): (14) The concept of 'dissemination to the	**AT** (Comments): Since the concept of "dissemination to the public" is only relevant for the qualification of an "online platform", it does not mean that interpersonal communication services fall outside the scope of the regulation. They still qualify as a "mere conduit"- intermediary service. **PL** (Comments): It is necessary to clearly specify whether and which interpersonal communication services, are

[19] Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (Recast), OJ L 321, 17.12.2018, p. 36

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However, the concept should exclude dissemination of information within closed groups consisting of a finite number of pre-determined persons. Interpersonal communication services, as defined in Directive (EU) 2018/1972 of the European Parliament and of the Council,[18] such as emails or private messaging services, fall outside the scope of this Regulation. Information should be considered disseminated to the public within the meaning of this Regulation only where that occurs upon the direct request by the recipient of the service that provided the information.	public', as used in this Regulation, should entail the making available of information to a potentially unlimited number of persons, that is, making the information easily accessible to users in general without further action by the recipient of the service providing the information being required, irrespective of whether those persons actually access the information in question. The mere possibility to create groups of users of a given service should not, in itself, be understood to mean that the information disseminated in that manner is not disseminated to the public. However, the concept should exclude dissemination of information within closed groups consisting of a finite number of pre-determined persons. Interpersonal communication services, as defined in Directive (EU) 2018/1972 of the European Parliament and of the Council, such as emails or private messaging services, fall **within** ~~outside~~ the scope of this Regulation. Information should be considered disseminated to the public within the meaning of this Regulation only where that occurs upon the direct request by the recipient of the service that provided the information. **DE** (Drafting) "[…] However, the concept should exclude	covered by the requirements of the Regulation. Recital 14 excludes from the scope of the regulation services defined in Directive 2018/1972 such as email and private messaging - at the same time, from Recital 27, it can be inferred that services such as "VOiP, messaging services, web-based e-mails" may benefit from exceptions from liability under a specific condition, which would suggest that they are, nevertheless, to some extent covered by the regulation. **ES** (Comments): The concept of 'dissemination to the public' should **include all the functionalities that enable the massive distribution of information, including channels, pages or groups**. The wording of 'potentially unlimited number of persons' or 'closed group' excludes groups of up to 200.000 (Telegram) or 250 people (in other social networks), where illegal content is made available to a wide audience. As the maximum number of users in (chat) groups is constantly increased, these groups become potentially a tool for wide dissemination of content. Perhaps, a threshold (number of users > X) could be foreseen for when a **group ceases to be a**

[18] Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (Recast), OJ L 321, 17.12.2018, p. 36

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	dissemination of information within closed groups consisting of a finite number of pre-determined persons. **Regarding** interpersonal communication services, as defined in Directive (EU) 2018/1972 of the European Parliament and of the Council, such as emails or private messaging services, **it has to be assessed on a case-by-case basis of its technical functionalities whether the service mediates the dissemination of information to the public and therefore qualifies as an "online platform"**. Information should be considered disseminated to the public […]."	**private chat and starts to behave as a tool for massive communication.** **DK** (Comments): We are unsure if we understand the last paragraph: *'Information should be considered disseminated to the public within the meaning of this Regulation only where that occurs upon the direct request by the recipient of the service that provided the information.'* Clarification and exemplification could be a help in this matter. **BE** (Comments): We understand from the discussions with the Commission that it wishes to align this concept with the Regulation on preventing the dissemination of terrorist content. We agree and consider useful to ensure, unless not applicable, a consistency between both definitions. We are wondering why there are some differences between recital 14 of the DSA and recital 10a of the TCO Regulation. If it is deemed necessary to include some differences between both definitions, we would like to ask the reasons for those. For example, we should examine if the example of cloud infrastructures has to be included in the

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		DSA due to the differences between the scope of both instruments. See also our comment on Recital (26). **CZ** (Comments): **CZ** accepts the corresponding explanation provided by the Commission at the WP. **DE** (Comments) The statement that all interpersonal communication services fall outside the scope of this Regulation, seems to be misleading and should be deleted. It should be clarified, whether the definition of ”dissemination to the public” (Art. 2 lit. i) also covers the spreading of content, which takes place via public groups/channels of interpersonal communication services
(15) Where some of the services provided by a provider are covered by this Regulation whilst others are not, or where the services provided by a provider are covered by different sections of this Regulation, the relevant provisions of this Regulation should apply only in respect of those services that fall within their scope.		

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(16) The legal certainty provided by the horizontal framework of conditional exemptions from liability for providers of intermediary services, laid down in Directive 2000/31/EC, has allowed many novel services to emerge and scale-up across the internal market. That framework should therefore be preserved. However, in view of the divergences when transposing and applying the relevant rules at national level, and for reasons of clarity and coherence, that framework should be incorporated in this Regulation. It is also necessary to clarify certain elements of that framework, having regard to case law of the Court of Justice of the European Union.		
(17) The relevant rules of Chapter II should only establish when the provider of intermediary services concerned cannot be held liable in relation to illegal content provided by the recipients of the service. Those rules should not be understood to provide a positive basis for establishing when a provider can be held liable, which is for the applicable rules of Union or national law to determine. Furthermore, the exemptions from liability established in this Regulation should apply in respect of any type of liability as regards any type of illegal content, irrespective of the precise subject matter or nature of those laws.		

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(18) The exemptions from liability established in this Regulation should not apply where, instead of confining itself to providing the services neutrally, by a merely technical and automatic processing of the information provided by the recipient of the service, the provider of intermediary services plays an active role of such a kind as to give it knowledge of, or control over, that information. Those exemptions should accordingly not be available in respect of liability relating to information provided not by the recipient of the service but by the provider of intermediary service itself, including where the information has been developed under the editorial responsibility of that provider.		**IT** (Comments): 1) Recitals (18) (20) (25) seem to introduce a new distinction, no longer between active and passive, but between active and neutral. Any new classification or clarification of passive/active should respect the EU acquis: the jurisprudence of the CJEU and Commission communications on the subject. 2) The active roles of intermediaries should be clarified. It is necessary to clear up the role of search engines providers regarding the merely technical and automatic processing of the information provided. **PL** (Comments): We support the clear indication in the recitals that a provider of intermediary services, who deliberately collaborates with a recipient of a service in order to undertake illegal activity, is not providing a service neutrally and should therefore not benefit from the exemption from liability provided by the regulation (recital 20). Nor should such exclusion apply to a provider of intermediary services who takes an active role in the management of content submitted by the recipient of the service, as rightly stated in

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		Recital 18. It would be useful to provide examples of this type of activities such as optimization, indexing, promotion and monetization of illegal content provided by third parties, that are not neutral and should not benefit from the exemption from liability. **ES** (Comments): The recital should **include references to the jurisprudential criteria of the European Court of Justice in relation to the active or passive/neutral nature of the intermediary**. For example, the L'Oreal / eBay Judgment established that when an online platform actively assists in the optimization of the presentation or the promotion of offers, it loses the liability exemption. Establishing **objective criteria** based on the jurisprudence of the ECJ that allow discerning when an intermediary becomes "active" by obtaining knowledge or control over the information, and consequently, loses the liability exemption, will provide legal certainty. **DE** (Comments) The references to the concept of "active role" is too narrow. It should be possible to take other aspects into account besides the "knowledge or control" test, e.g. incentives for committing

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		infringements in compensation systems. There is an increasing number of providers which do not remain completely passive, e.g. platforms which, in addition to hosting, also influence the presentation of content or deliberately commercialise the content of their users without posting it themselves. Those platforms should be distinguished from passive hosts and they should not be able to enjoy the same liability privileges as passive hosts do.
(19) In view of the different nature of the activities of 'mere conduit', 'caching' and 'hosting' and the different position and abilities of the providers of the services in question, it is necessary to distinguish the rules applicable to those activities, in so far as under this Regulation they are subject to different requirements and conditions and their scope differs, as interpreted by the Court of Justice of the European Union.		
(20) A provider of intermediary services that deliberately collaborates with a recipient of the services in order to undertake illegal activities does not provide its service neutrally and should therefore not be able to benefit from the exemptions from liability provided for in this Regulation.	**PL** (Drafting): (20) A provider of intermediary services that deliberately collaborates with a recipient of the services in order to undertake illegal activities or the main purpose of which is to engage in or facilitate such activities ~~does not provide its service neutrally and~~ should therefore not be able	**PL** (Comments): Strengthening of wording related to providers of intermediary services that engage in illegal activities. See comment concerning recital 18. **DE**

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	to benefit from the exemptions from liability provided for in this Regulation.	(Comments) It should be clarified, that not only providers that deliberately collaborate with recipients should be excluded from benefits, but also providers of such platforms that have the purpose of accessory to crimes, especially to criminal trade. The wording "deliberately collaborates […] to undertake illegal activities" leaves the question open as to what exactly is required to be covered by intent: The collaboration is always deliberate. Without prejudice to the policy issue in this point, a workable solution appears to be: "intent to illegally contribute […]". But the crucial question is how this intent can be established?
(21) A provider should be able to benefit from the exemptions from liability for 'mere conduit' and for 'caching' services when it is in no way involved with the information transmitted. This requires, among other things, that the provider does not modify the information that it transmits. However, this requirement should not be understood to cover manipulations of a technical nature which take place in the course of the transmission, as such manipulations do not alter the integrity of the information transmitted.	**BE** (Drafting): … However, this requirement should not be understood to cover manipulations of a technical nature which take place in the course of the transmission, **as long as these** manipulations do not alter the integrity of the information transmitted.	**BE** (Comments): Is the establishment of age verification systems, parental control systems or other measures applied by video-sharing platforms following art. 28b AVMD a form of involvement with the information transmitted? Manipulations of a technical nature in the course of the transmission may very well alter the integrity of the information transmitted, eg change the format

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(22) In order to benefit from the exemption from liability for hosting services, the provider should, upon obtaining actual knowledge or awareness of illegal content, act expeditiously to remove or to disable access to that content. The removal or disabling of access should be undertaken in the observance of the principle of freedom of expression. The provider can obtain such actual knowledge or awareness through, in particular, its own-initiative investigations or notices submitted to it by individuals or entities in accordance with this Regulation in so far as those notices are sufficiently precise and adequately substantiated to allow a diligent economic operator to reasonably identify, assess and where appropriate act against the allegedly illegal content.	**SE** (Drafting): In order to benefit from the exemption from liability for hosting services, the provider should, upon obtaining actual knowledge or awareness of illegal content, act expeditiously to remove or to disable access to that content. The removal or disabling of access should be undertaken in the observance of the right to freedom of expression. The provider can obtain such actual knowledge or awareness through, in particular, its own-initiative investigations or notices submitted to it by individuals or entities in accordance with this Regulation in so far as those notices are sufficiently precise and adequately substantiated to allow a diligent economic operator to reasonably identify, assess and where appropriate act against the allegedly illegal content. **BE** (Drafting): **(…)** The provider can obtain such actual knowledge or awareness through, in particular, its own-initiative investigations **and should obtain such actual knowledge through orders issued by the relevant national judicial or administrative authorities** or **through** notices submitted to it by individuals or entities in accordance with this Regulation in so far as those orders and notices are sufficiently precise and adequately substantiated to allow a diligent	**HU** (Comments): We consider it extremely important that the deletion of illegal content is carried out with maximum respect for the right to freedom of expression. **SE** (Comments): Freedom of expression, freedom of the press and media plurality are important priorities for the Swedish government. Freedom of expression is a right, not a principle. It could also be clarified in this recital that the provider can obtain knowledge or awareness of illegal content through an order according to article 8? **ES** (Comments): **ES** welcomes the text of this recital as it makes it clear that when the intermediary carries out its own investigations, it can obtain actual knowledge. **BE** (Comments): We consider that an intermediary, receiving an order in accordance with article 8 of this Regulation should, as it is the case when it receives a notice in accordance with article 14,

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	economic operator to reasonably identify, assess and where appropriate act against the allegedly illegal content.	be considered to give rise to actual knowledge, provided that such order includes the elements referred to in article 8.2. Indeed, if a complete notice, submitted by individuals or entities should lead to a presumption of actual knowledge**, as it seems to be the case reading the text** ("**shall** give rise to"/"sont **réputés** donner lieu à"/ "worden **verondersteld** aanleiding te geven tot"), we believe it is legitimate that an order submitted by a national authority should lead to the same presumption of actual knowledge for the application of articles 4.1 (e) and 5.1 (a). Furthermore, this recital only refers to notices submitted in accordance with this Regulation (DSA). What about the notices submitted in accordance with **other specific instruments,** in the framework of specific "Notice and Action" procedures (e.g. AVMS directive, Copyright directive,….). Could those notices, submitted in accordance with other regulatory instruments, also give rise to "actual knowledge" for the application of the liability regime of the DSA? **SK** (Comments): *We would like to remark, that since the exemption from liability relates to illegal content, it seems rather conflicting to mention that the removal or disabling of access to it should observe the freedom of expression. Once the*

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		content is appropriately deemed to be illegal, its spread is not a form of a freedom of expression.
(23) In order to ensure the effective protection of consumers when engaging in intermediated commercial transactions online, certain providers of hosting services, namely, online platforms that allow consumers to conclude distance contracts with traders, should not be able to benefit from the exemption from liability for hosting service providers established in this Regulation, in so far as those online platforms present the relevant information relating to the transactions at issue in such a way that it leads consumers to believe that the information was provided by those online platforms themselves or by recipients of the service acting under their authority or control, and that those online platforms thus have knowledge of or control over the information, even if that may in reality not be the case. In that regard, is should be determined objectively, on the basis of all relevant circumstances, whether the presentation could lead to such a belief on the side of an average and reasonably well-informed consumer.		**IT** (Comments): With regard to the reference *to an average and reasonably well-informed consumer,* why the Commission is not referring to consumers based in one or more EU Member States? Perception of consumers in the EU and in third countries may be different. **ES** (Comments): It should **specified some of the criteria or circumstances that would be relevant** to decide if a presenting the information in a way that leads consumers to believe the information is provided by the online platform itself.
(24) The exemptions from liability established in this Regulation should not affect the possibility of injunctions of different kinds		

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against providers of intermediary services, even where they meet the conditions set out as part of those exemptions. Such injunctions could, in particular, consist of orders by courts or administrative authorities requiring the termination or prevention of any infringement, including the removal of illegal content specified in such orders, issued in compliance with Union law, or the disabling of access to it.		
(25) In order to create legal certainty and not to discourage activities aimed at detecting, identifying and acting against illegal content that providers of intermediary services may undertake on a voluntary basis, it should be clarified that the mere fact that providers undertake such activities does not lead to the unavailability of the exemptions from liability set out in this Regulation, provided those activities are carried out in good faith and in a diligent manner. In addition, it is appropriate to clarify that the mere fact that those providers take measures, in good faith, to comply with the requirements of Union law, including those set out in this Regulation as regards the implementation of their terms and conditions, should not lead to the unavailability of those exemptions from liability. Therefore, any such activities and measures that a given provider may have taken should not be taken into account when determining whether the provider	**CZ** (Drafting): (25) In order to create legal certainty and not to discourage activities aimed at detecting, identifying and acting against illegal content that providers of intermediary services may undertake on a voluntary basis, it should be clarified that the mere fact that providers undertake such activities does not lead to the unavailability of the exemptions from liability set out in this Regulation, provided those activities are carried out in good faith and in a diligent manner. In addition, it is appropriate to clarify that the mere fact that those providers take measures, in good faith, to comply with the requirements of Union law, including those set out in this Regulation as regards the implementation of their terms and conditions, should not lead to the unavailability of those exemptions from liability. Therefore, any such activities and measures that a given	**CZ** (Comments): See also comment to recital 31. Justification: In order to keep a right balance between the checks and balances in Chapter II, **CZ** is of the opinion that an element of stating that the rights of all players involved are on equal footing is missing. This provision may either be included here or at the beginning of Chapter II. While the objective for this addition are clearer for art. 8 and 9, **CZ** is of the opinion that there is potential for misuse also in article 6. **DE** (Comments) It is unclear which voluntary actions would be considered as not undertaken in a "diligent manner". The proposal lacks specifications in this regard, which could lead to considerable legal uncertainty. It should be ensured, that

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can rely on an exemption from liability, in particular as regards whether the provider provides its service neutrally and can therefore fall within the scope of the relevant provision, without this rule however implying that the provider can necessarily rely thereon.	provider may have taken should not be taken into account when determining whether the provider can rely on an exemption from liability, in particular as regards whether the provider provides its service neutrally and can therefore fall within the scope of the relevant provision, without this rule however implying that the provider can necessarily rely thereon. **While acting in accordance with article 6 of this Regulation, the relevant national judicial or administrative authorities should not go beyond what is necessary in order to attain the objectives followed therein.**	voluntary actions are undertaken in a manner, that prevents and minimises any possible negative effects for the rights of users, especially their right to freedom of expression. Also, voluntary actions may not be used as a tool to circumvent the DSA's platform content regulation requirements
(26) Whilst the rules in Chapter II of this Regulation concentrate on the exemption from liability of providers of intermediary services, it is important to recall that, despite the generally important role played by those providers, the problem of illegal content and activities online should not be dealt with by solely focusing on their liability and responsibilities. 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. Recipients of the service should be held liable, where the applicable rules of Union and national law determining such liability so provide, for the illegal content that they provide		**BE** (Comments): We understand from the discussions with the Commission that closed user groups are not by definition excluded from the scope of the DSA, but that this has to be examined on a case by case basis, taking into account different factual elements. However, there still seems to be room for discussion and we hope this instrument to provide enough legal certainty. Moreover, the coherence between Recital (26) (which mentions that group moderators in closed online environments should help to avoid the spread of illegal content online) and Recital (14)

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and may disseminate through intermediary services. Where appropriate, other actors, such as group moderators in closed online environments, in particular in the case of large groups, should also help to avoid the spread of illegal content online, in accordance with the applicable law. Furthermore, where it is necessary to involve information society services providers, including providers of intermediary services, any requests or orders for such involvement should, as a general rule, be directed to the actor that has the technical and operational ability to act against specific items of illegal content, so as to prevent and minimise any possible negative effects for the availability and accessibility of information that is not illegal content.		(which states that dissemination of information within closed groups of a finite number of predetermined persons is no dissemination to the public) seems a bit unclear to us. Could you clarify? **RO** (Comments): Where in the operative part is reflected this indication about the manner the orders/requests should target the ”best-placed information society service provider”? How does the authority issuing the order recognise the ”best placed” information society service provider?
(27) Since 2000, new technologies have emerged that improve the availability, efficiency, speed, reliability, capacity and security of systems for the transmission and storage of data online, leading to an increasingly complex online ecosystem. In this regard, it should be recalled that providers of services establishing and facilitating the underlying logical architecture and proper functioning of the internet, including technical auxiliary functions, can also benefit from the exemptions from liability set out in this Regulation, to the extent that their services qualify as ‘mere conduits’, ‘caching’ or hosting		**IT** (Comments): We appreciate the reference to domain name systems (DNS) services, and underline the need to strengthen the recall, also in line with the Cybersecurity strategy. The resilience, stability and security of core services such as DNS are a precondition for online digital services to be effectively delivered to internet users, in line with the EU legal framework. We also suggest to insert an explicit reference to:

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services. Such services include, as the case may be, wireless local area networks, domain name system (DNS) services, top–level domain name registries, certificate authorities that issue digital certificates, or content delivery networks, that enable or improve the functions of other providers of intermediary services. Likewise, services used for communications purposes, and the technical means of their delivery, have also evolved considerably, giving rise to online services such as Voice over IP, messaging services and web-based e-mail services, where the communication is delivered via an internet access service. Those services, too, can benefit from the exemptions from liability, to the extent that they qualify as 'mere conduit', 'caching' or hosting service.		• Network Information Centers (NIC) • Payment Service Providers (PSP) • Advertising networks and affiliate marketing operators. **PL** (Comments): Recalling our comment to recital 14, it is necessary to clearly specify whether and which interpersonal communication services, are covered by the requirements of the Regulation. Recital 14 excludes from the scope of the regulation of services defined in Directive 2018/1972 such as email and private messaging - at the same time, from Recital 27, it can be inferred that services such as "VOiP, messaging services, web-based e-mails" may benefit from exceptions from liability under a specific condition, which would suggest that they are, nevertheless, to some extent covered by the regulation. **ES** (Comments): It should be **clarified under which type of intermediary** (caching or hosting), DNS services, TLD registries, CAs that issue digital certificates or CDNs are framed. Same for "Voice over IP" communications, messaging and web-based email services.

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		LV (Comments) Definition "intermediary service" lacks clarity without specific examples for each of the types of services. Recital 27 needs to include examples for each of the types of intermediaries mentioned in the definition separately.
(28) Providers of intermediary services should not be subject to a monitoring obligation with respect to obligations of a general nature. This does not concern monitoring obligations in a specific case and, in particular, does not affect orders by national authorities in accordance with national legislation, in accordance with the conditions established in this Regulation. Nothing in this Regulation should be construed as an imposition of a general monitoring obligation or active fact-finding obligation, or as a general obligation for providers to take proactive measures to relation to illegal content.	**DE** (Drafting) "[…] Nothing in this Regulation should be construed as an imposition of a general monitoring obligation or **a general** active fact-finding obligation, or as a general obligation for providers to take proactive measures to relation to illegal content."	**IT** (Comments): The Recital and the provision of article 7 are based on the general principle consolidated in the EU legislation (originating from art. 15 of the e-commerce Directive and further detailed by the ECJ decisions). The draft DSA regulation introduces specific tasks and duties for all intermediaries and, in particular, for online platforms and very large online platforms – LOPs (see Chapters 3 and 4). Without prejudice to the mentioned principle, it could be therefore worth clarifying in this Recital the relationship between the general principle and the obligations enlisted in Chapters 3 and 4. **ES** (Comments): It should be up to the providers to implement the proactive measures they deem appropriate to comply with this Regulation, respecting

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		fundamental rights such as the freedom of expression. **DE** (Comments) Obligations in regard to specific items of illegal content should generally not be covered by the prohibition of general monitoring requirements in Art. 7. Thus, to avoid misunderstandings, it should be clarified in recital 28, that Art. 7 only prohibits a *general* obligation to actively seek facts. In addition, it has to be ensured that the prohibition of general monitoring and active fact-finding obligations does not prevent specific monitoring or specific active fact-finding obligations, particularly for commercial and other transactions on e-commerce platforms and online market places or platforms offering a variety of services. Platforms that allow for commercial activities and other transactions should have more responsibilities to protect customers online. The Covid-19 crisis has shown crucial shortcomings in this area. We need to implement more duties of care for e-commerce platforms and online market places in the DSA. E-Commerce platforms and online marketplaces should be legally obliged to take possible, reasonable and, where appropriate, automated due diligence measures to protect consumers (no blanket upload filters). To the extent that it is

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		possible for them to do so at economically reasonable expense and effort, platforms should ensure that no prohibited or counterfeit products are advertised and no fake shops or other fraudulent offerings appear on the platform
(29) Depending on the legal system of each Member State and the field of law at issue, national judicial or administrative authorities may order providers of intermediary services to act against certain specific items of illegal content or to provide certain specific items of information. The national laws on the basis of which such orders are issued differ considerably and the orders are increasingly addressed in cross-border situations. In order to ensure that those orders can be complied with in an effective and efficient manner, so that the public authorities concerned can carry out their tasks and the providers are not subject to any disproportionate burdens, without unduly affecting the rights and legitimate interests of any third parties, it is necessary to set certain conditions that those orders should meet and certain complementary requirements relating to the processing of those orders.	**AT** (Drafting): (29) Depending on the legal system of each Member State and the field of law at issue, […]. The national laws on the basis of which such orders are issued differ considerably […]. In order to ensure that those orders can be complied with in an effective and efficient manner within the scope of this Regulation, so that the public authorities concerned can carry out their tasks and the providers are not subject to any disproportionate burdens, without unduly affecting the rights and legitimate interests of any third parties, it is necessary to set certain conditions that those orders should meet and certain complementary requirements relating to the processing of those orders. However, Art. 8 and 9 are without prejudice to the requirements and conditions as well as the scope of application of civil law claims such as for injunctive relief, removal or information and the enforcement of such claims but provide for additional remedies. This means that the requirements of Article 8 paragraph 2 do not affect the requirements or	**AT** (Comments): See the amendments proposed to Art. 8 and 9 **DE** (Comments) We urge for more clarification about the relationship between Art. 8 and 9 and existing national and European regulation (e.g. the established system of European and international legal assistance). We also ask whether Art. 8 also addresses orders to act against content that is not illegal itself, but infringes ancillary obligations, like information requirements. This is the case when a product is for example presented on a platform without the necessary information laid down in other legal regulation. If such cases are covered, we ask to address the issue that in these cases there are usually a number of options how to fulfill the order (e.g. how to comply with information requirements). Suppressing the offer completely would clearly

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	conditions of national civil law judgements or orders, as it stipulates only the conditions and requirements under which such orders can fall within the scope of Article 8. In addition this means that existing enforcement systems, such as bilateral agreements or the Regulation (EU) 1215/2012 are not affected by this Regulation.	be excessive in the light of the limited obligation.
(30) Orders to act against illegal content or to provide information should be issued in compliance with Union law, in particular Regulation (EU) 2016/679 and the prohibition of general obligations to monitor information or to actively seek facts or circumstances indicating illegal activity laid down in this Regulation. The conditions and requirements laid down in this Regulation which apply to orders to act against illegal content are without prejudice to other Union acts providing for similar systems for acting against specific types of illegal content, such as Regulation (EU) …/…. [proposed Regulation addressing the dissemination of terrorist content online], or Regulation (EU) 2017/2394 that confers specific powers to order the provision of information on Member State consumer law enforcement authorities, whilst the conditions and requirements that apply to orders to provide information are without prejudice to other Union acts providing for similar relevant rules for specific sectors. Those conditions and		**DE** (Comments) In addition, the meaning of the last sentence in recital 30 is not clear to us, especially the last part of the sentence: "[...] and requests by law enforcement authorities for confidential treatment in connection with the non-disclosure of information". Which cases are covered? What is the reference point of this recital in the articles of the draft?

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requirements should be without prejudice to retention and preservation rules under applicable national law, in conformity with Union law and confidentiality requests by law enforcement authorities related to the non-disclosure of information.		
(31) The territorial scope of such orders to act against illegal content should be clearly set out on the basis of the applicable Union or national law enabling the issuance of the order and should not exceed what is strictly necessary to achieve its objectives. In that regard, the national judicial or administrative authority issuing the order should balance the objective that the order seeks to achieve, in accordance with the legal basis enabling its issuance, with the rights and legitimate interests of all third parties that may be affected by the order, in particular their fundamental rights under the Charter. In addition, where the order referring to the specific information may have effects beyond the territory of the Member State of the authority concerned, the authority should assess whether the information at issue is likely to constitute illegal content in other Member States concerned and, where relevant, take account of the relevant rules of Union law or international law and the interests of international comity.	**AT** (Drafting): (31) Without prejudice to civil law claims for injunctive relief, removal or information and the enforcement of such claims such as rights provided by Directive 2004/48/EG, the territorial scope of such orders to act against illegal content should be clearly set out on the basis of the applicable Union or national law enabling the issuance of the order ~~and should not exceed what is strictly necessary to achieve its objectives~~. In that regard, the national judicial or administrative authority issuing the order should balance the objective that the order seeks to achieve, in accordance with the legal basis enabling its issuance, with the rights and legitimate interests of all third parties that may be affected by the order, in particular their fundamental rights under the Charter. In addition, where the order referring to the specific information may have effects beyond the territory of the Member State of the authority concerned, the authority should assess whether the information at issue is likely to	**AT** (Comments): See the amendments proposed to Art. 8. **CZ** (Comments): In connection to our drafting suggestion to Chapter II, this wording is suggested for the corresponding recital. See justification below (Art. 8(4)). **DE** (Comments) It is technically impossible to control a territorial limitation of content in the internet (unless you suppress encryption and exercise full control over IP-address-allocation). Therefore, a provider has at best a statistical indication about the likely location of users, but no means to definitely identify the location of any given user. Therefore, to ask for an effective geographic limitation of an order is not a valid option. To “take account” of international law is not

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	constitute illegal content in other Member States concerned and, where relevant, take account of the relevant rules of Union law or international law and the interests of international comity. **CZ** (Drafting): (31) The territorial scope of such orders to act against illegal content should be clearly set out on the basis of the applicable Union or national law enabling the issuance of the order and should not exceed what is strictly necessary to achieve its objectives. In that regard, the national judicial or administrative authority issuing the order should balance the objective that the order seeks to achieve, in accordance with the legal basis enabling its issuance, with the rights and legitimate interests of all third parties that may be affected by the order, in particular their fundamental rights under the Charter. In addition, where the order referring to the specific information may have effects beyond the territory of the Member State of the authority concerned, the authority should assess whether the information at issue is likely to constitute illegal content in other Member States concerned and, where relevant, take account of the relevant rules of Union law or international law and the interests of international comity. **While acting in accordance with articles 8 and 9 of this Regulation the respective authorities should**	sufficient. International law is binding and needs to be fully respected, disregarding it as a result of balancing interests involved is not an option. To be clear what is at stake here, it is helpful to name the aspect of the limitations of jurisdiction.

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	strike the right balance between the objective that the order seeks to achieve and the legitimate interests of the intermediaries. **DE** (Drafting) "[…] take account of the relevant rules of Union law ~~or international law and the interests of international comity~~, **fully respect international law, especially with regard to the limitations of jurisdiction, and observe the interests of international comity**."	
(32) The orders to provide information regulated by this Regulation concern the production of specific information about individual recipients of the intermediary service concerned who are identified in those orders for the purposes of determining compliance by the recipients of the services with applicable Union or national rules. Therefore, orders about information on a group of recipients of the service who are not specifically identified, including orders to provide aggregate information required for statistical purposes or evidence-based policy-making, should remain unaffected by the rules of this Regulation on the provision of information.		**ES** (Comments): An example or a clarification regarding the scope of the orders to provide information would be convenient. Specifically, that a **local competent authority can issue an order to a platform, temporary or periodic in nature, and be referred to all users or to a set of individuals.**

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(33) Orders to act against illegal content and to provide information are subject to the rules safeguarding the competence of the Member State where the service provider addressed is established and laying down possible derogations from that competence in certain cases, set out in Article 3 of Directive 2000/31/EC, only if the conditions of that Article are met. Given that the orders in question relate to specific items of illegal content and information, respectively, where they are addressed to providers of intermediary services established in another Member State, they do not in principle restrict those providers' freedom to provide their services across borders. Therefore, the rules set out in Article 3 of Directive 2000/31/EC, including those regarding the need to justify measures derogating from the competence of the Member State where the service provider is established on certain specified grounds and regarding the notification of such measures, do not apply in respect of those orders.		**DK** (Comments): According to the wording of this recital the rules set out in Article 3 of Directive 2000/31/EC do not apply in respect of orders according to article 8 and 9 because these orders relate to specific items of illegal content and information. Is this correct? Thus, as we understand this recital it will be possible for the authorities in another Member State to issue orders to providers of intermediary services established in yet another member state. **BE** (Comments): What about the case of an order to disable access to an entire website (e.g.because all of its content is found to be counterfeiting products)? Would this type of order be considered as not "specific" enough and restrict the provider's freedom to provide their services across borders? Should the authority, in this case, continue to use the current procedure under article 3.4 ECD? (see also our comments on articles 1.5 (a) and 8)

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		DE (Comments) We welcome the clarification in recital 33 that cross-border orders in relation to specific items of illegal content and information do not restrict the providers' freedom to provide their services cross-border. However, there are still some open questions in relation hereto, which should be addressed in the recital. For example: Is our understanding correct that recital 33 exempts administrative and judicial decisions on specific items of illegal content from the application of the country-of-origin principle? And does this understanding lead to consequences also for the underlying civil law claims?
(34) In order to achieve the objectives of this Regulation, and in particular to improve the functioning of the internal market and ensure a safe and transparent online environment, it is necessary to establish a clear and balanced set of harmonised due diligence obligations for providers of intermediary services. Those obligations should aim in particular to guarantee different public policy objectives such as the safety and trust of the recipients of the service, including minors and vulnerable users, protect the relevant fundamental rights enshrined in the Charter, to ensure meaningful accountability of those providers and to empower recipients and	**SE** (Drafting): (34) In order to achieve the objectives of this Regulation, and in particular to improve the functioning of the internal market and ensure a safe and transparent online environment, it is necessary to establish a clear and balanced set of harmonised due diligence obligations for providers of intermediary services. Those obligations should aim in particular to guarantee different public policy objectives such as the safety and trust of the recipients of the service, including minors and users at particular risk of	

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other affected parties, whilst facilitating the necessary oversight by competent authorities.	being subject to hate speech, sexual harassments or other discriminatory actions, protect the fundamental rights enshrined in the Charter, to ensure meaningful accountability of those providers and to empower recipients and other affected parties, whilst facilitating the necessary oversight by competent authorities.	
(35) In that regard, it is important that the due diligence obligations are adapted to the type and nature of the intermediary service concerned. This Regulation therefore sets out basic obligations applicable to all providers of intermediary services, as well as additional obligations for providers of hosting services and, more specifically, online platforms and very large online platforms. To the extent that providers of intermediary services may fall within those different categories in view of the nature of their services and their size, they should comply with all of the corresponding obligations of this Regulation. Those harmonised due diligence obligations, which should be reasonable and non-arbitrary, are needed to achieve the identified public policy concerns, such as safeguarding the legitimate interests of the recipients of the service, addressing illegal practices and protecting fundamental rights online.	**SE** (Drafting): (35) In that regard, it is important that the due diligence obligations are adapted to the type and nature of the intermediary service concerned. This Regulation therefore sets out basic obligations applicable to all providers of intermediary services, as well as additional obligations for providers of hosting services and, more specifically, online platforms and very large online platforms. To the extent that providers of intermediary services may fall within those different categories in view of the nature of their services and their size, they should comply with all of the corresponding obligations of this Regulation. Those harmonised due diligence obligations, which should be reasonable and non-arbitrary, are needed to achieve the identified public policy concerns, such as safeguarding the legitimate interests of the recipients of the service, addressing illegal practices and protecting the fundamental rights	

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	guaranteed by the Charter online.	
(36) In order to facilitate smooth and efficient communications relating to matters covered by this Regulation, providers of intermediary services should be required to establish a single point of contact and to publish relevant information relating to their point of contact, including the languages to be used in such communications. The point of contact can also be used by trusted flaggers and by professional entities which are under a specific relationship with the provider of intermediary services. In contrast to the legal representative, the point of contact should serve operational purposes and should not necessarily have to have a physical location .		
(37) Providers of intermediary services that are established in a third country that offer services in the Union should designate a sufficiently mandated legal representative in the Union and provide information relating to their legal representatives, so as to allow for the effective oversight and, where necessary, enforcement of this Regulation in relation to those providers. It should be possible for the legal representative to also function as point of contact, provided the relevant requirements of		

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this Regulation are complied with.		
(38) Whilst the freedom of contract of providers of intermediary services should in principle be respected, it is appropriate to set certain rules on the content, application and enforcement of the terms and conditions of those providers in the interests of transparency, the protection of recipients of the service and the avoidance of unfair or arbitrary outcomes.		
(39) To ensure an adequate level of transparency and accountability, providers of intermediary services should annually report, in accordance with the harmonised requirements contained in this Regulation, on the content moderation they engage in, including the measures taken as a result of the application and enforcement of their terms and conditions. However, so as to avoid disproportionate burdens, those transparency reporting obligations should not apply to providers that are micro- or small enterprises as defined in Commission Recommendation 2003/361/EC.[20]		
(40) Providers of hosting services play a		

[20]Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (OJ L 124, 20.5.2003, p. 36).

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particularly important role in tackling illegal content online, as they store information provided by and at the request of the recipients of the service and typically give other recipients access thereto, sometimes on a large scale. It is important that all providers of hosting services, regardless of their size, put in place user-friendly notice and action mechanisms that facilitate the notification of specific items of information that the notifying party considers to be illegal content to the provider of hosting services concerned ('notice'), pursuant to which that provider can decide whether or not it agrees with that assessment and wishes to remove or disable access to that content ('action'). Provided the requirements on notices are met, it should be possible for individuals or entities to notify multiple specific items of allegedly illegal content through a single notice. The obligation to put in place notice and action mechanisms should apply, for instance, to file storage and sharing services, web hosting services, advertising servers and paste bins, in as far as they qualify as providers of hosting services covered by this Regulation.		
(41) The rules on such notice and action mechanisms should be harmonised at Union level, so as to provide for the timely, diligent and objective processing of notices on the basis of	**SE** (Drafting): (41) The rules on such notice and action mechanisms should be harmonised at Union	**SK** (Comments): *Could the Commission please kindly clarify the interpretation of this phrase: "the timely, diligent*

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rules that are uniform, transparent and clear and that provide for robust safeguards to protect the right and legitimate interests of all affected parties, in particular their fundamental rights guaranteed by the Charter, irrespective of the Member State in which those parties are established or reside and of the field of law at issue. The fundamental rights include, as the case may be, the right to freedom of expression and information, the right to respect for private and family life, the right to protection of personal data, the right to non-discrimination and the right to an effective remedy of the recipients of the service; the freedom to conduct a business, including the freedom of contract, of service providers; as well as the right to human dignity, the rights of the child, the right to protection of property, including intellectual property, and the right to non-discrimination of parties affected by illegal content.	level, so as to provide for the timely, diligent and objective processing of notices on the basis of rules that are uniform, transparent and clear and that provide for robust safeguards to protect the right and legitimate interests of all affected parties, in particular their fundamental rights guaranteed by the Charter, irrespective of the Member State in which those parties are established or reside and of the field of law at issue. The fundamental rights include, as the case may be, the right to freedom of expression and information, the right to respect for private and family life, the right to protection of personal data, the right to non-discrimination, the right to gender equality and the right to an effective remedy of the recipients of the service; the freedom to conduct a business, including the freedom of contract, of service providers; as well as the right to human dignity, the rights of the child, the right to protection of property, including intellectual property, and the right to non-discrimination of parties affected by illegal content.	*and objective processing of notices?* *How would it be evaluated? What exactly is meant by "timely, diligent and objective processing"?*
(42) Where a hosting service provider decides to remove or disable information provided by a recipient of the service, for instance following receipt of a notice or acting on its own initiative, including through the use of automated means, that provider should inform the recipient of its		

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decision, the reasons for its decision and the available redress possibilities to contest the decision, in view of the negative consequences that such decisions may have for the recipient, including as regards the exercise of its fundamental right to freedom of expression. That obligation should apply irrespective of the reasons for the decision, in particular whether the action has been taken because the information notified is considered to be illegal content or incompatible with the applicable terms and conditions. Available recourses to challenge the decision of the hosting service provider should always include judicial redress.		
(43) To avoid disproportionate burdens, the additional obligations imposed on online platforms under this Regulation should not apply to micro or small enterprises as defined in Recommendation 2003/361/EC of the Commission,[21] unless their reach and impact is such that they meet the criteria to qualify as very large online platforms under this Regulation. The consolidation rules laid down in that Recommendation help ensure that any circumvention of those additional obligations is prevented. The exemption of micro- and small enterprises from those additional obligations		

[21] Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (OJ L 124, 20.5.2003, p. 36).

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should not be understood as affecting their ability to set up, on a voluntary basis, a system that complies with one or more of those obligations.		
(44) Recipients of the service should be able to easily and effectively contest certain decisions of online platforms that negatively affect them. Therefore, online platforms should be required to provide for internal complaint-handling systems, which meet certain conditions aimed at ensuring that the systems are easily accessible and lead to swift and fair outcomes. In addition, provision should be made for the possibility of out-of-court dispute settlement of disputes, including those that could not be resolved in satisfactory manner through the internal complaint-handling systems, by certified bodies that have the requisite independence, means and expertise to carry out their activities in a fair, swift and cost-effective manner. The possibilities to contest decisions of online platforms thus created should complement, yet leave unaffected in all respects, the possibility to seek judicial redress in accordance with the laws of the Member State concerned.		
(45) For contractual consumer-to-business disputes over the purchase of goods or services, Directive 2013/11/EU of the European		

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Parliament and of the Council[22] ensures that Union consumers and businesses in the Union have access to quality-certified alternative dispute resolution entities. In this regard, it should be clarified that the rules of this Regulation on out-of-court dispute settlement are without prejudice to that Directive, including the right of consumers under that Directive to withdraw from the procedure at any stage if they are dissatisfied with the performance or the operation of the procedure.		
(46) Action against illegal content can be taken more quickly and reliably where online platforms take the necessary measures to ensure that notices submitted by trusted flaggers through the notice and action mechanisms required by this Regulation are treated with priority, without prejudice to the requirement to process and decide upon all notices submitted under those mechanisms in a timely, diligent and objective manner. Such trusted flagger status should only be awarded to entities, and not individuals, that have demonstrated, among other things, that they have particular expertise and competence in tackling illegal content, that they represent collective interests and that they work in a	**HU** (Drafting): Such trusted flagger status should only be awarded to ~~entities~~ **legal persons**, and not individuals, that have demonstrated, among other things, that they have particular expertise and competence in tackling illegal content, that they represent collective interests and that they work in a diligent and objective manner. **PL** (Drafting): We propose to delete part of the sentence in Recital 46: *Such entities can be public in nature, such as, for*	**HU** (Comments): In our view, the expression "*by any entities*" can be understood in a broad sense which may give rise to misunderstandings. In order to be consistent with the text, we hold the same opinion about Article 19 as well. **PL** (Comments): Introducing general information on the types of organizations gives greater/free access to all relevant entities without excluding any organization from the start.

[22] Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (OJ L 165, 18.6.2013, p. 63).

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diligent and objective manner. Such entities can be public in nature, such as, for terrorist content, internet referral units of national law enforcement authorities or of the European Union Agency for Law Enforcement Cooperation ('Europol') or they can be non-governmental organisations and semi-public bodies, such as the organisations part of the INHOPE network of hotlines for reporting child sexual abuse material and organisations committed to notifying illegal racist and xenophobic expressions online. For intellectual property rights, organisations of industry and of right-holders could be awarded trusted flagger status, where they have demonstrated that they meet the applicable conditions. The rules of this Regulation on trusted flaggers should not be understood to prevent online platforms from giving similar treatment to notices submitted by entities or individuals that have not been awarded trusted flagger status under this Regulation, from otherwise cooperating with other entities, in accordance with the applicable law, including this Regulation and Regulation (EU) 2016/794 of the European Parliament and of the Council.[23]	*terrorist content, internet referral units of national law enforcement authorities or of the European Union Agency for Law Enforcement Cooperation ('Europol') or they can be non-governmental organisations and semi-public bodies, ~~such as the organisations part of the INHOPE network of hotlines for reporting child sexual abuse material and organisations committed to notifying illegal racist and xenophobic expressions online~~* **SE** (Drafting): (46) Action against illegal content can be taken more quickly and reliably where online platforms take the necessary measures to ensure that notices submitted by trusted flaggers through the notice and action mechanisms required by this Regulation are treated with priority, without prejudice to the requirement to process and decide upon all notices submitted under those mechanisms in a timely, diligent and objective manner. Such trusted flagger status should only be awarded to entities, and not individuals, that have demonstrated, among other things, that they have particular expertise and competence in tackling illegal content, that they represent collective interests and that they work in a diligent and objective manner. Such entities can	

[23] Regulation (EU) 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol) and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA, OJ L 135, 24.5.2016, p. 53

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	be public in nature, such as, for terrorist content, internet referral units of national law enforcement authorities or of the European Union Agency for Law Enforcement Cooperation ('Europol') or they can be non-governmental organisations and semi-public bodies, such as the organisations part of the INHOPE network of hotlines for reporting child sexual abuse material,organisations committed to notifying illegal racist and xenophobic expressions online, and organisations committed to combating discriminatory expressions, including those based on gender. For intellectual property rights, organisations of industry and of right-holders could be awarded trusted flagger status, where they have demonstrated that they meet the applicable conditions. The rules of this Regulation on trusted flaggers should not be understood to prevent online platforms from giving similar treatment to notices submitted by entities or individuals that have not been awarded trusted flagger status under this Regulation, from otherwise cooperating with other entities, in accordance with the applicable law, including this Regulation and Regulation (EU) 2016/794 of the European Parliament and of the Council.	
(47) The misuse of services of online platforms by frequently providing manifestly illegal content or by frequently submitting		**IT** (Comments): Could the Commission provide examples of what

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manifestly unfounded notices or complaints under the mechanisms and systems, respectively, established under this Regulation undermines trust and harms the rights and legitimate interests of the parties concerned. Therefore, there is a need to put in place appropriate and proportionate safeguards against such misuse. Information should be considered to be manifestly illegal content and notices or complaints should be considered manifestly unfounded where it is evident to a layperson, without any substantive analysis, that the content is illegal respectively that the notices or complaints are unfounded. Under certain conditions, online platforms should temporarily suspend their relevant activities in respect of the person engaged in abusive behaviour. This is without prejudice to the freedom by online platforms to determine their terms and conditions and establish stricter measures in the case of manifestly illegal content related to serious crimes. For reasons of transparency, this possibility should be set out, clearly and in sufficiently detail, in the terms and conditions of the online platforms. Redress should always be open to the decisions taken in this regard by online platforms and they should be subject to oversight by the competent Digital Services Coordinator. The rules of this Regulation on misuse should not prevent online platforms from taking other measures to address the provision of		is to be understood under *serious crimes*? Are such crimes only those against people? If any reference to EU legal provisions in this regard is available, it would be useful to include them.

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illegal content by recipients of their service or other misuse of their services, in accordance with the applicable Union and national law. Those rules are without prejudice to any possibility to hold the persons engaged in misuse liable, including for damages, provided for in Union or national law.		
(48) An online platform may in some instances become aware, such as through a notice by a notifying party or through its own voluntary measures, of information relating to certain activity of a recipient of the service, such as the provision of certain types of illegal content, that reasonably justify, having regard to all relevant circumstances of which the online platform is aware, the suspicion that the recipient may have committed, may be committing or is likely to commit a serious criminal offence involving a threat to the life or safety of person, such as offences specified in Directive 2011/93/EU of the European Parliament and of the Council[24]. In such instances, the online platform should inform without delay the competent law enforcement authorities of such suspicion, providing all relevant information available to it, including where relevant the content in question and an		**IT** (Comments): Does this provision imply that in case there is no serious criminal offence involving a threat to the life or safety of a person, there is no obligation for the platform to inform enforcement authorities? Reference to Directive 2011/93/EU on combating the sexual abuse is included in order to provide just an example of serious crimes, or is it to be understood that this provision applies only to such a criminal threat? The translation into Italian may lead to conclude that this is not an example.

[24]Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA (OJ L 335, 17.12.2011, p. 1).

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explanation of its suspicion. This Regulation does not provide the legal basis for profiling of recipients of the services with a view to the possible identification of criminal offences by online platforms. Online platforms should also respect other applicable rules of Union or national law for the protection of the rights and freedoms of individuals when informing law enforcement authorities.		
(49) In order to contribute to a safe, trustworthy and transparent online environment for consumers, as well as for other interested parties such as competing traders and holders of intellectual property rights, and to deter traders from selling products or services in violation of the applicable rules, online platforms allowing consumers to conclude distance contracts with traders should ensure that such traders are traceable. The trader should therefore be required to provide certain essential information to the online platform, including for purposes of promoting messages on or offering products. That requirement should also be applicable to traders that promote messages on products or services on behalf of brands, based on underlying agreements. Those online platforms should store all information in a secure manner for a reasonable period of time that does not exceed what is necessary, so that it can be accessed, in		**ES** (Comments): An example or a clarification would be convenient to indicate that it includes platforms where economic activities such as rental of tourist apartments are carried out.

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accordance with the applicable law, including on the protection of personal data, by public authorities and private parties with a legitimate interest, including through the orders to provide information referred to in this Regulation.		
(50) To ensure an efficient and adequate application of that obligation, without imposing any disproportionate burdens, the online platforms covered should make reasonable efforts to verify the reliability of the information provided by the traders concerned, in particular by using freely available official online databases and online interfaces, such as national trade registers and the VAT Information Exchange System[25], or by requesting the traders concerned to provide trustworthy supporting documents, such as copies of identity documents, certified bank statements, company certificates and trade register certificates. They may also use other sources, available for use at a distance, which offer a similar degree of reliability for the purpose of complying with this obligation. However, the online platforms covered should not be required to engage in excessive or costly online fact-finding exercises or to carry out verifications on the spot. Nor should such online platforms, which have made the reasonable		**ES** (Comments): *"However, the online platforms covered should not be required to engage in excessive or costly online fact-finding exercises or to carry out verifications on the spot. Nor should such online platforms, which have made the reasonable efforts required by this Regulation, be understood as guaranteeing the reliability of the information towards consumer or other interested parties."* The exemption of online platforms from liability regarding the accuracy of the information to be shown to consumers is excessive.

[25] https://ec.europa.eu/taxation_customs/vies/vieshome.do?selectedLanguage=en

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efforts required by this Regulation, be understood as guaranteeing the reliability of the information towards consumer or other interested parties. Such online platforms should also design and organise their online interface in a way that enables traders to comply with their obligations under Union law, in particular the requirements set out in Articles 6 and 8 of Directive 2011/83/EU of the European Parliament and of the Council[26], Article 7 of Directive 2005/29/EC of the European Parliament and of the Council[27] and Article 3 of Directive 98/6/EC of the European Parliament and of the Council[28].		
(51) In view of the particular responsibilities and obligations of online platforms, they should be made subject to transparency reporting obligations, which apply in addition to the transparency reporting obligations applicable to all providers of intermediary services under this Regulation. For the purposes of determining whether online platforms may be very large online platforms that are subject to certain additional obligations under this Regulation, the		

[26] Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council

[27] Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive')

[28] Directive 98/6/EC of the European Parliament and of the Council of 16 February 1998 on consumer protection in the indication of the prices of products offered to consumers

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transparency reporting obligations for online platforms should include certain obligations relating to the publication and communication of information on the average monthly active recipients of the service in the Union.		
(52) Online advertisement plays an important role in the online environment, including in relation to the provision of the services of online platforms. However, online advertisement can contribute to significant risks, ranging from advertisement that is itself illegal content, to contributing to financial incentives for the publication or amplification of illegal or otherwise harmful content and activities online, or the discriminatory display of advertising with an impact on the equal treatment and opportunities of citizens. In addition to the requirements resulting from Article 6 of Directive 2000/31/EC, online platforms should therefore be required to ensure that the recipients of the service have certain individualised information necessary for them to understand when and on whose behalf the advertisement is displayed. In addition, recipients of the service should have information on the main parameters used for determining that specific advertising is to be displayed to them, providing meaningful explanations of the logic used to that end, including when this is based on profiling. The		

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requirements of this Regulation on the provision of information relating to advertisement is without prejudice to the application of the relevant provisions of Regulation (EU) 2016/679, in particular those regarding the right to object, automated individual decision-making, including profiling and specifically the need to obtain consent of the data subject prior to the processing of personal data for targeted advertising. Similarly, it is without prejudice to the provisions laid down in Directive 2002/58/EC in particular those regarding the storage of information in terminal equipment and the access to information stored therein.		
(53) Given the importance of very large online platforms, due to their reach, in particular as expressed in number of recipients of the service, in facilitating public debate, economic transactions and the dissemination of information, opinions and ideas and in influencing how recipients obtain and communicate information online, it is necessary to impose specific obligations on those platforms, in addition to the obligations applicable to all online platforms. Those additional obligations on very large online platforms are necessary to address those public policy concerns, there being no alternative and less restrictive measures that would effectively		

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achieve the same result.		
(54) Very large online platforms may cause societal risks, different in scope and impact from those caused by smaller platforms. Once the number of recipients of a platform reaches a significant share of the Union population, the systemic risks the platform poses have a disproportionately negative impact in the Union. Such significant reach should be considered to exist where the number of recipients exceeds an operational threshold set at 45 million, that is, a number equivalent to 10% of the Union population. The operational threshold should be kept up to date through amendments enacted by delegated acts, where necessary. Such very large online platforms should therefore bear the highest standard of due diligence obligations, proportionate to their societal impact and means.	**SE** (Drafting): Very large online platforms may cause societal risks, different in scope and impact from those caused by smaller platforms. Once the number of recipients of a platform reaches a significant share of the Union population, the systemic risks the platform poses may have a disproportionate impact in the Union. Such significant reach should be considered to exist where the number of recipients exceeds an operational threshold set at 45 million, that is, a number equivalent to 10% of the Union population. The operational threshold should be kept up to date through amendments enacted by delegated acts, where necessary. Such very large online platforms should therefore bear the highest standard of due diligence obligations, proportionate to their societal impact and means.	**SE** (Comments): We wish for a balanced approach to the impact of platforms, as they may not only cause societal risks but also offer valuable services.
(55) In view of the network effects characterising the platform economy, the user base of an online platform may quickly expand and reach the dimension of a very large online platform, with the related impact on the internal market. This may be the case in the event of exponential growth experienced in short periods		**SK** (Comments): *In connection with the definition of asymmetric obligations of very large platforms (danger of potential circumvention), we draw attention to the possible risks, such as relocating and*

COMMISSION PROPOSAL	**Drafting suggestions**	**Comments**
of time, or by a large global presence and turnover allowing the online platform to fully exploit network effects and economies of scale and of scope. A high annual turnover or market capitalisation can in particular be an indication of fast scalability in terms of user reach. In those cases, the Digital Services Coordinator should be able to request more frequent reporting from the platform on the user base to be able to timely identify the moment at which that platform should be designated as a very large online platform for the purposes of this Regulation.		*disseminating illegal content to less regulated platforms (eg in relation to terrorist content, violent extremism or child abuse records), slowing down innovative growth and the potential of smaller companies to grow only to a certain extent (will have motivation to stay below thresholds)*
(56) Very large online platforms are used in a way that strongly influences safety online, the shaping of public opinion and discourse, as well as on online trade. The way they design their services is generally optimised to benefit their often advertising-driven business models and can cause societal concerns. In the absence of effective regulation and enforcement, they can set the rules of the game, without effectively identifying and mitigating the risks and the societal and economic harm they can cause. Under this Regulation, very large online platforms should therefore assess the systemic risks stemming from the functioning and use of their service, as well as by potential misuses by the recipients of the service, and take appropriate mitigating measures.	**SE** (Drafting): Very large online platforms can be used in a way that strongly influences safety online, the shaping of public opinion and discourse, as well as on online trade. The way they design their services is generally optimised to benefit their often advertising-driven business models and can cause societal concerns. Effective and human rights based regulation and enforcement, is necessary in order to effectively identify and mitigate the risks and the societal and economic harm that may arise. Under this Regulation, very large online platforms should therefore assess the systemic risks stemming from the functioning and use of their service, as well as by potential misuses by the recipients of the service, and take	**SE** (Comments): See comment above under (54). **SK** (Comments): *SK agrees with the duty of very large platforms to identify, analyze and assess any significant systemic risks stemming from the functioning and use made of their services, however what we miss here is a benchmark against which this evaluation of risk assessment should be done. The way in which recitals 56 and 57 (and Art. 26) are currently phrased, leaves an impression that very large platforms are free in their practice and conduct of their risk assessment. We would therefore suggest to add some to the*

COMMISSION PROPOSAL	**Drafting suggestions**	**Comments**
	appropriate mitigating measures.	*benchmark references.*
(57) Three categories of systemic risks should be assessed in-depth. A first category concerns the risks associated with the misuse of their service through the dissemination of illegal content, such as the dissemination of child sexual abuse material or illegal hate speech, and the conduct of illegal activities, such as the sale of products or services prohibited by Union or national law, including counterfeit products. For example, and without prejudice to the personal responsibility of the recipient of the service of very large online platforms for possible illegality of his or her activity under the applicable law, such dissemination or activities may constitute a significant systematic risk where access to such content may be amplified through accounts with a particularly wide reach. A second category concerns the impact of the service on the exercise of fundamental rights, as protected by the Charter of Fundamental Rights, including the freedom of expression and information, the right to private life, the right to non-discrimination and the rights of the child. Such risks may arise, for example, in relation to the design of the algorithmic systems used by the very large online platform or the misuse of their service through the submission of abusive notices or other methods for silencing speech or hampering competition. A third	**SE** (Drafting): (57) Three categories of systemic risks should be assessed in-depth. A first category concerns the risks associated with the misuse of their service through the dissemination of illegal content, such as the dissemination of child sexual abuse material or illegal hate speech, including explicit threats of a sexual nature and the conduct of illegal activities, such as the sale of products or services prohibited by Union or national law, including counterfeit products. For example, and without prejudice to the personal responsibility of the recipient of the service of very large online platforms for possible illegality of his or her activity under the applicable law, such dissemination or activities may constitute a significant systematic risk where access to such content may be amplified through accounts with a particularly wide reach. A second category concerns the impact of the service on the exercise of fundamental rights, as protected by the Charter of Fundamental Rights, including the freedom of expression and information, the right to private life, gender equality and the right to non-discrimination and the rights of the child. Such risks may arise, for example, in relation to the design of the algorithmic systems used by the	**SK** (Comments): *We find, that the impact of the service on the exercise of fundamental rights is very broadly defined and hence gives an impression that it is left up to very large platforms to define and identify which rights for which situation are being violated, in their risk assessments that they are obliged to conduct at least once a year. We would appreciate here, either an adoption of a delegated act or more profound explanation of how should very large platform assess violation of fundamental rights for this recital and for the corresponding article in the Regulation.*

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category of risks concerns the intentional and, oftentimes, coordinated manipulation of the platform's service, with a foreseeable impact on health, civic discourse, electoral processes, public security and protection of minors, having regard to the need to safeguard public order, protect privacy and fight fraudulent and deceptive commercial practices. Such risks may arise, for example, through the creation of fake accounts, the use of bots, and other automated or partially automated behaviours, which may lead to the rapid and widespread dissemination of information that is illegal content or incompatible with an online platform's terms and conditions.	very large online platform or the misuse of their service through the submission of abusive notices or other methods for silencing speech or hampering competition. A third category of risks concerns the intentional and, oftentimes, coordinated manipulation of the platform's service, with a foreseeable impact on health, civic discourse, electoral processes, public security and protection of minors, having regard to the need to safeguard public order, protect privacy and fight fraudulent and deceptive commercial practices. Such risks may arise, for example, through the creation of fake accounts, the use of bots, and other automated or partially automated behaviours, which may lead to the rapid and widespread dissemination of information that is illegal content or incompatible with an online platform's terms and conditions.	
(58) Very large online platforms should deploy the necessary means to diligently mitigate the systemic risks identified in the risk assessment. Very large online platforms should under such mitigating measures consider, for example, enhancing or otherwise adapting the design and functioning of their content moderation, algorithmic recommender systems and online interfaces, so that they discourage and limit the dissemination of illegal content, adapting their decision-making processes, or	**PL** (Drafting): Very large online platforms should deploy the necessary means to diligently mitigate the systemic risks identified in the risk assessment. Very large online platforms should under such mitigating measures consider, for example, enhancing or otherwise adapting the design and functioning of their content moderation, algorithmic recommender systems and online interfaces, so that they discourage and limit the	**PL** (Comments): We need a more effective mechanism for very large online platforms to mitigate systemic risks. Therefore, we propose to strengthen the wording of this recital and make it clear that very large platforms should undertake actions to mitigate illegal and harmful content in the services they provide. We expect very large online platforms to be more active in this process.

COMMISSION PROPOSAL	**Drafting suggestions**	**Comments**
adapting their terms and conditions. They may also include corrective measures, such as discontinuing advertising revenue for specific content, or other actions, such as improving the visibility of authoritative information sources. Very large online platforms may reinforce their internal processes or supervision of any of their activities, in particular as regards the detection of systemic risks. They may also initiate or increase cooperation with trusted flaggers, organise training sessions and exchanges with trusted flagger organisations, and cooperate with other service providers, including by initiating or joining existing codes of conduct or other self-regulatory measures. Any measures adopted should respect the due diligence requirements of this Regulation and be effective and appropriate for mitigating the specific risks identified, in the interest of safeguarding public order, protecting privacy and fighting fraudulent and deceptive commercial practices, and should be proportionate in light of the very large online platform's economic capacity and the need to avoid unnecessary restrictions on the use of their service, taking due account of potential negative effects on the fundamental rights of the recipients of the service.	dissemination of illegal content, adapting their decision-making processes, or adapting their terms and conditions. They may also include corrective measures, such as discontinuing advertising revenue for specific content, or other actions, such as improving the visibility of authoritative information sources. Very large online platforms ~~may~~ should reinforce their internal processes or supervision of any of their activities, in particular as regards the detection of systemic risks. They ~~may~~ should also initiate or increase cooperation with trusted flaggers, organise training sessions and exchanges with trusted flagger organisations, and cooperate with other service providers, including by initiating or joining existing codes of conduct or other self-regulatory measures. Any measures adopted should respect the due diligence requirements of this Regulation and be effective and appropriate for mitigating the specific risks identified, in the interest of safeguarding public order, protecting privacy and fighting fraudulent and deceptive commercial practices, and should be proportionate in light of the very large online platform's economic capacity and the need to avoid unnecessary restrictions on the use of their service, taking due account of potential negative effects on the fundamental rights of the recipients of the service.	This recital allows for so-called "content demonetization" based on arbitrary decisions taken by online platforms. This is particularly dangerous for those who derive income from publishing content on online platforms, as it provides for the possibility to deprive the publisher of its income (often the main one), even when based on decisions made by algorithmic recommender systems and digital interfaces. Such actions should not be taking place, as they are a threat to freedom of expression online, and consequently may constitute an abuse of position by international online actors.

COMMISSION PROPOSAL	**Drafting suggestions**	**Comments**
(59) Very large online platforms should, where appropriate, conduct their risk assessments and design their risk mitigation measures with the involvement of representatives of the recipients of the service, representatives of groups potentially impacted by their services, independent experts and civil society organisations.		
(60) Given the need to ensure verification by independent experts, very large online platforms should be accountable, through independent auditing, for their compliance with the obligations laid down by this Regulation and, where relevant, any complementary commitments undertaking pursuant to codes of conduct and crises protocols. They should give the auditor access to all relevant data necessary to perform the audit properly. Auditors should also be able to make use of other sources of objective information, including studies by vetted researchers. Auditors should guarantee the confidentiality, security and integrity of the information, such as trade secrets, that they obtain when performing their tasks and have the necessary expertise in the area of risk management and technical competence to audit algorithms. Auditors should be independent, so as to be able to perform their tasks in an adequate and trustworthy manner. If their independence is	**IE** (Drafting): Given the specific technical competence that is required of auditors, it is suggested that the phrase "If their independence is not beyond doubt," should have " and technical competence" added after "independence"	

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not beyond doubt, they should resign or abstain from the audit engagement.		
(61) The audit report should be substantiated, so as to give a meaningful account of the activities undertaken and the conclusions reached. It should help inform, and where appropriate suggest improvements to the measures taken by the very large online platform to comply with their obligations under this Regulation. The report should be transmitted to the Digital Services Coordinator of establishment and the Board without delay, together with the risk assessment and the mitigation measures, as well as the platform's plans for addressing the audit's recommendations. The report should include an audit opinion based on the conclusions drawn from the audit evidence obtained. A positive opinion should be given where all evidence shows that the very large online platform complies with the obligations laid down by this Regulation or, where applicable, any commitments it has undertaken pursuant to a code of conduct or crisis protocol, in particular by identifying, evaluating and mitigating the systemic risks posed by its system and services. A positive opinion should be accompanied by comments where the auditor wishes to include remarks that do not have a substantial effect on the outcome of the audit. A		

COMMISSION PROPOSAL	**Drafting suggestions**	**Comments**
negative opinion should be given where the auditor considers that the very large online platform does not comply with this Regulation or the commitments undertaken.		
(62) A core part of a very large online platform's business is the manner in which information is prioritised and presented on its online interface to facilitate and optimise access to information for the recipients of the service. This is done, for example, by algorithmically suggesting, ranking and prioritising information, distinguishing through text or other visual representations, or otherwise curating information provided by recipients. Such recommender systems can have a significant impact on the ability of recipients to retrieve and interact with information online. They also play an important role in the amplification of certain messages, the viral dissemination of information and the stimulation of online behaviour. Consequently, very large online platforms should ensure that recipients are appropriately informed, and can influence the information presented to them. They should clearly present the main parameters for such recommender systems in an easily comprehensible manner to ensure that the recipients understand how information is prioritised for them. They should also ensure that the recipients enjoy alternative options for the		**IE** (Comments): It is unclear whether the intention of the final sentence of this Recital is carried forward into Article 29 due to the use of the word "may" in that Article **SK** (Comments): *Question on the Commission:* *Does this recital (and consequently art. 29) refer only to the recommender systems that are used to prioritize and present information on the very large online platform or also to the recommender systems for prioritization and presentation of advertisement besides the usual content? If it is not the case, we would welcome if the Regulation could include the recommendation systems of advertisement by very large platforms.*

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main parameters, including options that are not based on profiling of the recipient.		
(63) Advertising systems used by very large online platforms pose particular risks and require further public and regulatory supervision on account of their scale and ability to target and reach recipients of the service based on their behaviour within and outside that platform's online interface. Very large online platforms should ensure public access to repositories of advertisements displayed on their online interfaces to facilitate supervision and research into emerging risks brought about by the distribution of advertising online, for example in relation to illegal advertisements or manipulative techniques and disinformation with a real and foreseeable negative impact on public health, public security, civil discourse, political participation and equality. Repositories should include the content of advertisements and related data on the advertiser and the delivery of the advertisement, in particular where targeted advertising is concerned.	**SE** (Drafting): (63) Advertising systems used by very large online platforms pose particular risks and require further public and regulatory supervision on account of their scale and ability to target and reach recipients of the service based on their behaviour within and outside that platform's online interface. Very large online platforms should ensure public access to repositories of advertisements displayed on their online interfaces to facilitate supervision and research into emerging risks brought about by the distribution of advertising online, for example in relation to illegal advertisements or manipulative techniques and disinformation with a real and foreseeable negative impact on public health, public security, civil discourse, political participation, gender equality and equality. Repositories should include the content of advertisements and related data on the advertiser and the delivery of the advertisement, in particular where targeted advertising is concerned.	**SK** (Comments): *Question on the Commission: Does this recital and its corresponding art. 30 include all sorts of advertisement and sponsored content?*

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(64) In order to appropriately supervise the compliance of very large online platforms with the obligations laid down by this Regulation, the Digital Services Coordinator of establishment or the Commission may require access to or reporting of specific data. Such a requirement may include, for example, the data necessary to assess the risks and possible harms brought about by the platform's systems, data on the accuracy, functioning and testing of algorithmic systems for content moderation, recommender systems or advertising systems, or data on processes and outputs of content moderation or of internal complaint-handling systems within the meaning of this Regulation. Investigations by researchers on the evolution and severity of online systemic risks are particularly important for bridging information asymmetries and establishing a resilient system of risk mitigation, informing online platforms, Digital Services Coordinators, other competent authorities, the Commission and the public. This Regulation therefore provides a framework for compelling access to data from very large online platforms to vetted researchers. All requirements for access to data under that framework should be proportionate and appropriately protect the rights and legitimate interests, including trade secrets and other confidential information, of the platform and any other parties concerned, including the recipients of the service.		**SK** (Comments): *SK would preferably suggest to introduce a new function, that of "data arbiter", into this recital. Subsequently, he could act as a judge between platforms and vetted researchers in case of a conflict concerning the extent of data that platform discloses to researchers upon their requests. We have not found any clues on how to proceed in case of such a conflict in this proposal. The same adjustment are valid for art. 31 of this Regulation.*

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(65) Given the complexity of the functioning of the systems deployed and the systemic risks they present to society, very large online platforms should appoint compliance officers, which should have the necessary qualifications to operationalise measures and monitor the compliance with this Regulation within the platform's organisation. Very large online platforms should ensure that the compliance officer is involved, properly and in a timely manner, in all issues which relate to this Regulation. In view of the additional risks relating to their activities and their additional obligations under this Regulation, the other transparency requirements set out in this Regulation should be complemented by additional transparency requirements applicable specifically to very large online platforms, notably to report on the risk assessments performed and subsequent measures adopted as provided by this Regulation.		**SK** (Comments): *Given the additional transparency requirements applicable specifically to very large online platforms, we would recommend Guidelines on ranking transparency pursuant to Regulation (EU) 2019/1150 of the European Parliament and of the Council (2020/C 424/01.*
(66) To facilitate the effective and consistent application of the obligations in this Regulation that may require implementation through technological means, it is important to promote voluntary industry standards covering certain technical procedures, where the industry can help		

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develop standardised means to comply with this Regulation, such as allowing the submission of notices, including through application programming interfaces, or about the interoperability of advertisement repositories. Such standards could in particular be useful for relatively small providers of intermediary services. The standards could distinguish between different types of illegal content or different types of intermediary services, as appropriate.		
(67) The Commission and the Board should encourage the drawing-up of codes of conduct to contribute to the application of this Regulation. While the implementation of codes of conduct should be measurable and subject to public oversight, this should not impair the voluntary nature of such codes and the freedom of interested parties to decide whether to participate. In certain circumstances, it is important that very large online platforms cooperate in the drawing-up and adhere to specific codes of conduct. Nothing in this Regulation prevents other service providers from adhering to the same standards of due diligence, adopting best practices and benefitting from the guidance provided by the Commission and the Board, by participating in the same codes of conduct.		

COMMISSION PROPOSAL	**Drafting suggestions**	**Comments**
(68) It is appropriate that this Regulation identify certain areas of consideration for such codes of conduct. In particular, risk mitigation measures concerning specific types of illegal content should be explored via self- and co-regulatory agreements. Another area for consideration is the possible negative impacts of systemic risks on society and democracy, such as disinformation or manipulative and abusive activities. This includes coordinated operations aimed at amplifying information, including disinformation, such as the use of bots or fake accounts for the creation of fake or misleading information, sometimes with a purpose of obtaining economic gain, which are particularly harmful for vulnerable recipients of the service, such as children. In relation to such areas, adherence to and compliance with a given code of conduct by a very large online platform may be considered as an appropriate risk mitigating measure. The refusal without proper explanations by an online platform of the Commission's invitation to participate in the application of such a code of conduct could be taken into account, where relevant, when determining whether the online platform has infringed the obligations laid down by this Regulation.	**SE** (Drafting): (68) It is appropriate that this Regulation identify certain areas of consideration for such codes of conduct. In particular, risk mitigation measures concerning specific types of illegal content should be explored via self- and co-regulatory agreements. Another area for consideration is the possible negative impacts of systemic risks on society and democracy, such as disinformation or manipulative and abusive activities. This includes coordinated operations aimed at amplifying information, including disinformation, such as the use of bots or fake accounts for the creation of inaccurate or misleading information, sometimes with a purpose of obtaining economic gain, which are particularly harmful for vulnerable recipients of the service, such as children. In relation to such areas, adherence to and compliance with a given code of conduct by a very large online platform may be considered as an appropriate risk mitigating measure. The refusal without proper explanations by an online platform of the Commission's invitation to participate in the application of such a code of conduct could be taken into account, where relevant, when determining whether the online platform has infringed the obligations laid down by this	**SE** (Comments): We cannot accept using "fake" when speaking about information as this is often used in order to limit freedom of expression. Disinformation is the correct term and sufficient, or if necessary e.g. inaccurate can be used.

COMMISSION PROPOSAL	**Drafting suggestions**	**Comments**
	Regulation.	
(69) The rules on codes of conduct under this Regulation could serve as a basis for already established self-regulatory efforts at Union level, including the Product Safety Pledge, the Memorandum of Understanding against counterfeit goods, the Code of Conduct against illegal hate speech as well as the Code of practice on disinformation. In particular for the latter, the Commission will issue guidance for strengthening the Code of practice on disinformation as announced in the European Democracy Action Plan.		
(70) The provision of online advertising generally involves several actors, including intermediary services that connect publishers of advertising with advertisers. Codes of conducts should support and complement the transparency obligations relating to advertisement for online platforms and very large online platforms set out in this Regulation in order to provide for flexible and effective mechanisms to facilitate and enhance the compliance with those obligations, notably as concerns the modalities of the transmission of the relevant information. The involvement of a wide range of stakeholders should ensure that those codes of conduct are		

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widely supported, technically sound, effective and offer the highest levels of user-friendliness to ensure that the transparency obligations achieve their objectives.		
(71) In case of extraordinary circumstances affecting public security or public health, the Commission may initiate the drawing up of crisis protocols to coordinate a rapid, collective and cross-border response in the online environment. Extraordinary circumstances may entail any unforeseeable event, such as earthquakes, hurricanes, pandemics and other serious cross-border threats to public health, war and acts of terrorism, where, for example, online platforms may be misused for the rapid spread of illegal content or disinformation or where the need arises for rapid dissemination of reliable information. In light of the important role of very large online platforms in disseminating information in our societies and across borders, such platforms should be encouraged in drawing up and applying specific crisis protocols. Such crisis protocols should be activated only for a limited period of time and the measures adopted should also be limited to what is strictly necessary to address the extraordinary circumstance. Those measures should be consistent with this Regulation, and should not amount to a general obligation for the		

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participating very large online platforms to monitor the information which they transmit or store, nor actively to seek facts or circumstances indicating illegal content.		
(72) The task of ensuring adequate oversight and enforcement of the obligations laid down in this Regulation should in principle be attributed to the Member States. To this end, they should appoint at least one authority with the task to apply and enforce this Regulation. Member States should however be able to entrust more than one competent authority, with specific supervisory or enforcement tasks and competences concerning the application of this Regulation, for example for specific sectors, such as electronic communications' regulators, media regulators or consumer protection authorities, reflecting their domestic constitutional, organisational and administrative structure.		
(73) Given the cross-border nature of the services at stake and the horizontal range of obligations introduced by this Regulation, the authority appointed with the task of supervising the application and, where necessary, enforcing this Regulation should be identified as a Digital Services Coordinator in each Member State. Where more than one competent authority is		

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appointed to apply and enforce this Regulation, only one authority in that Member State should be identified as a Digital Services Coordinator. The Digital Services Coordinator should act as the single contact point with regard to all matters related to the application of this Regulation for the Commission, the Board, the Digital Services Coordinators of other Member States, as well as for other competent authorities of the Member State in question. In particular, where several competent authorities are entrusted with tasks under this Regulation in a given Member State, the Digital Services Coordinator should coordinate and cooperate with those authorities in accordance with the national law setting their respective tasks, and should ensure effective involvement of all relevant authorities in the supervision and enforcement at Union level.		
(74) The Digital Services Coordinator, as well as other competent authorities designated under this Regulation, play a crucial role in ensuring the effectiveness of the rights and obligations laid down in this Regulation and the achievement of its objectives. Accordingly, it is necessary to ensure that those authorities act in complete independence from private and public bodies, without the obligation or possibility to seek or receive instructions, including from the government, and without prejudice to the specific		

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duties to cooperate with other competent authorities, the Digital Services Coordinators, the Board and the Commission. On the other hand, the independence of these authorities should not mean that they cannot be subject, in accordance with national constitutions and without endangering the achievement of the objectives of this Regulation, to national control or monitoring mechanisms regarding their financial expenditure or to judicial review, or that they should not have the possibility to consult other national authorities, including law enforcement authorities or crisis management authorities, where appropriate.		
(75) Member States can designate an existing national authority with the function of the Digital Services Coordinator, or with specific tasks to apply and enforce this Regulation, provided that any such appointed authority complies with the requirements laid down in this Regulation, such as in relation to its independence. Moreover, Member States are in principle not precluded from merging functions within an existing authority, in accordance with Union law. The measures to that effect may include, inter alia, the preclusion to dismiss the President or a board member of a collegiate body of an existing authority before the expiry of their terms of office, on the sole ground that an institutional		

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reform has taken place involving the merger of different functions within one authority, in the absence of any rules guaranteeing that such dismissals do not jeopardise the independence and impartiality of such members.		
(76) In the absence of a general requirement for providers of intermediary services to ensure a physical presence within the territory of one of the Member States, there is a need to ensure clarity under which Member State's jurisdiction those providers fall for the purposes of enforcing the rules laid down in Chapters III and IV by the national competent authorities. A provider should be under the jurisdiction of the Member State where its main establishment is located, that is, where the provider has its head office or registered office within which the principal financial functions and operational control are exercised. In respect of providers that do not have an establishment in the Union but that offer services in the Union and therefore fall within the scope of this Regulation, the Member State where those providers appointed their legal representative should have jurisdiction, considering the function of legal representatives under this Regulation. In the interest of the effective application of this Regulation, all Member States should, however, have jurisdiction in respect of providers that failed to		**PL** (Comments): The term "jurisdiction" may refer to judicial jurisdiction. This provision, on the other hand, does not refer to judicial proceedings - especially civil proceedings. It can be assumed that the term "jurisdiction" will have its own autonomous interpretation under the DSA Regulation. Therefore, it should refer to the supervision and enforcement of obligations under the DSA Regulation (administrative regulatory oversight). That is why we would like to propose the introduction of an additional recital in the draft DSA Regulation that would remove the raised interpretative uncertainties. Alternatively, the word "jurisdiction" used in the text of the DSA Regulation could be clarified for this purpose.

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designate a legal representative, provided that the principle of *ne bis in idem* is respected. To that aim, each Member State that exercises jurisdiction in respect of such providers should, without undue delay, inform all other Member States of the measures they have taken in the exercise of that jurisdiction.		
(77) Member States should provide the Digital Services Coordinator, and any other competent authority designated under this Regulation, with sufficient powers and means to ensure effective investigation and enforcement. Digital Services Coordinators should in particular be able to search for and obtain information which is located in its territory, including in the context of joint investigations, with due regard to the fact that oversight and enforcement measures concerning a provider under the jurisdiction of another Member State should be adopted by the Digital Services Coordinator of that other Member State, where relevant in accordance with the procedures relating to cross-border cooperation.		
(78) Member States should set out in their national law, in accordance with Union law and in particular this Regulation and the Charter, the detailed conditions and limits for the exercise of		

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the investigatory and enforcement powers of their Digital Services Coordinators, and other competent authorities where relevant, under this Regulation.		
(79) In the course of the exercise of those powers, the competent authorities should comply with the applicable national rules regarding procedures and matters such as the need for a prior judicial authorisation to enter certain premises and legal professional privilege. Those provisions should in particular ensure respect for the fundamental rights to an effective remedy and to a fair trial, including the rights of defence, and, the right to respect for private life. In this regard, the guarantees provided for in relation to the proceedings of the Commission pursuant to this Regulation could serve as an appropriate point of reference. A prior, fair and impartial procedure should be guaranteed before taking any final decision, including the right to be heard of the persons concerned, and the right to have access to the file, while respecting confidentiality and professional and business secrecy, as well as the obligation to give meaningful reasons for the decisions. This should not preclude the taking of measures, however, in duly substantiated cases of urgency and subject to appropriate conditions and procedural arrangements. The exercise of powers should also be proportionate to, inter alia		

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the nature and the overall actual or potential harm caused by the infringement or suspected infringement. The competent authorities should in principle take all relevant facts and circumstances of the case into account, including information gathered by competent authorities in other Member States.		
(80) Member States should ensure that violations of the obligations laid down in this Regulation can be sanctioned in a manner that is effective, proportionate and dissuasive, taking into account the nature, gravity, recurrence and duration of the violation, in view of the public interest pursued, the scope and kind of activities carried out, as well as the economic capacity of the infringer. In particular, penalties should take into account whether the provider of intermediary services concerned systematically or recurrently fails to comply with its obligations stemming from this Regulation, as well as, where relevant, whether the provider is active in several Member States.		
(81) In order to ensure effective enforcement of this Regulation, individuals or representative organisations should be able to lodge any complaint related to compliance with this Regulation with the Digital Services Coordinator		

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in the territory where they received the service, without prejudice to this Regulation's rules on jurisdiction. Complaints should provide a faithful overview of concerns related to a particular intermediary service provider's compliance and could also inform the Digital Services Coordinator of any more cross-cutting issues. The Digital Services Coordinator should involve other national competent authorities as well as the Digital Services Coordinator of another Member State, and in particular the one of the Member State where the provider of intermediary services concerned is established, if the issue requires cross-border cooperation.		
(82) Member States should ensure that Digital Services Coordinators can take measures that are effective in addressing and proportionate to certain particularly serious and persistent infringements. Especially where those measures can affect the rights and interests of third parties, as may be the case in particular where the access to online interfaces is restricted, it is appropriate to require that the measures be ordered by a competent judicial authority at the Digital Service Coordinators' request and are subject to additional safeguards. In particular, third parties potentially affected should be afforded the opportunity to be heard and such orders should only be issued when powers to take such		

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measures as provided by other acts of Union law or by national law, for instance to protect collective interests of consumers, to ensure the prompt removal of web pages containing or disseminating child pornography, or to disable access to services are being used by a third party to infringe an intellectual property right, are not reasonably available.		
(83) Such an order to restrict access should not go beyond what is necessary to achieve its objective. For that purpose, it should be temporary and be addressed in principle to a provider of intermediary services, such as the relevant hosting service provider, internet service provider or domain registry or registrar, which is in a reasonable position to achieve that objective without unduly restricting access to lawful information.		
(84) The Digital Services Coordinator should regularly publish a report on the activities carried out under this Regulation. Given that the Digital Services Coordinator is also made aware of orders to take action against illegal content or to provide information regulated by this Regulation through the common information sharing system, the Digital Services Coordinator should include in its annual report the number and categories of		

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these orders addressed to providers of intermediary services issued by judicial and administrative authorities in its Member State.		
(85) Where a Digital Services Coordinator requests another Digital Services Coordinator to take action, the requesting Digital Services Coordinator, or the Board in case it issued a recommendation to assess issues involving more than three Member States, should be able to refer the matter to the Commission in case of any disagreement as to the assessments or the measures taken or proposed or a failure to adopt any measures. The Commission, on the basis of the information made available by the concerned authorities, should accordingly be able to request the competent Digital Services Coordinator to re-assess the matter and take the necessary measures to ensure compliance within a defined time period. This possibility is without prejudice to the Commission's general duty to oversee the application of, and where necessary enforce, Union law under the control of the Court of Justice of the European Union in accordance with the Treaties. A failure by the Digital Services Coordinator of establishment to take any measures pursuant to such a request may also lead to the Commission's intervention under Section 3 of Chapter IV of this Regulation, where the suspected infringer is a very large		

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online platform		
(86) In order to facilitate cross-border supervision and investigations involving several Member States, the Digital Services Coordinators should be able to participate, on a permanent or temporary basis, in joint oversight and investigation activities concerning matters covered by this Regulation. Those activities may include other competent authorities and may cover a variety of issues, ranging from coordinated data gathering exercises to requests for information or inspections of premises, within the limits and scope of powers available to each participating authority. The Board may be requested to provide advice in relation to those activities, for example by proposing roadmaps and timelines for activities or proposing ad-hoc task-forces with participation of the authorities involved.		
(87) In view of the particular challenges that may emerge in relation to assessing and ensuring a very large online platform's compliance, for instance relating to the scale or complexity of a suspected infringement or the need for particular expertise or capabilities at Union level, Digital Services Coordinators should have the possibility to request, on a voluntary basis, the Commission		

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to intervene and exercise its investigatory and enforcement powers under this Regulation.		
(88) In order to ensure a consistent application of this Regulation, it is necessary to set up an independent advisory group at Union level, which should support the Commission and help coordinate the actions of Digital Services Coordinators. That European Board for Digital Services should consist of the Digital Services Coordinators, without prejudice to the possibility for Digital Services Coordinators to invite in its meetings or appoint ad hoc delegates from other competent authorities entrusted with specific tasks under this Regulation, where that is required pursuant to their national allocation of tasks and competences. In case of multiple participants from one Member State, the voting right should remain limited to one representative per Member State.	**SE** (Drafting): (88) In order to ensure a consistent application of this Regulation, it is necessary to set up an independent advisory group at Union level, which should support the Commission and help coordinate the actions of Digital Services Coordinators. That European Board for Digital Services should consist of the Digital Services Coordinators, without prejudice to the possibility for Digital Services Coordinators to invite in its meetings or appoint ad hoc delegates from other competent authorities entrusted with specific tasks under this Regulation, where that is required pursuant to their national allocation of tasks and competences. In case of multiple participants from one Member State, the voting right should remain limited to one representative per Member State. The composition of the European Board for Digital Services should be gender balanced.	
(89) The Board should contribute to achieving a common Union perspective on the consistent application of this Regulation and to cooperation among competent authorities, including by		

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advising the Commission and the Digital Services Coordinators about appropriate investigation and enforcement measures, in particular vis à vis very large online platforms. The Board should also contribute to the drafting of relevant templates and codes of conduct and analyse emerging general trends in the development of digital services in the Union.		
(90) For that purpose, the Board should be able to adopt opinions, requests and recommendations addressed to Digital Services Coordinators or other competent national authorities. While not legally binding, the decision to deviate therefrom should be properly explained and could be taken into account by the Commission in assessing the compliance of the Member State concerned with this Regulation.		
(91) The Board should bring together the representatives of the Digital Services Coordinators and possible other competent authorities under the chairmanship of the Commission, with a view to ensuring an assessment of matters submitted to it in a fully European dimension. In view of possible cross-cutting elements that may be of relevance for other regulatory frameworks at Union level, the Board should be allowed to cooperate with other	**SE** (Drafting): (91) The Board should bring together the representatives of the Digital Services Coordinators and possible other competent authorities under the chairmanship of the Commission, with a view to ensuring an assessment of matters submitted to it in a fully European dimension. In view of possible cross-cutting elements that may be of relevance for	

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Union bodies, offices, agencies and advisory groups with responsibilities in fields such as equality, including equality between women and men, and non-discrimination, data protection, electronic communications, audiovisual services, detection and investigation of frauds against the EU budget as regards custom duties, or consumer protection, as necessary for the performance of its tasks.	other regulatory frameworks at Union level, the Board should be allowed to cooperate with other Union bodies, offices, agencies and advisory groups with responsibilities in fields such as equality, including gender equality, and non-discrimination, data protection, electronic communications, audiovisual services, detection and investigation of frauds against the EU budget as regards custom duties, or consumer protection, as necessary for the performance of its tasks.	
(92) The Commission, through the Chair, should participate in the Board without voting rights. Through the Chair, the Commission should ensure that the agenda of the meetings is set in accordance with the requests of the members of the Board as laid down in the rules of procedure and in compliance with the duties of the Board laid down in this Regulation.		
(93) In view of the need to ensure support for the Board's activities, the Board should be able to rely on the expertise and human resources of the Commission and of the competent national authorities. The specific operational arrangements for the internal functioning of the Board should be further specified in the rules of procedure of the Board.		

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(94) Given the importance of very large online platforms, in view of their reach and impact, their failure to comply with the specific obligations applicable to them may affect a substantial number of recipients of the services across different Member States and may cause large societal harms, while such failures may also be particularly complex to identify and address.		
(95) In order to address those public policy concerns it is therefore necessary to provide for a common system of enhanced supervision and enforcement at Union level. Once an infringement of one of the provisions that solely apply to very large online platforms has been identified, for instance pursuant to individual or joint investigations, auditing or complaints, the Digital Services Coordinator of establishment, upon its own initiative or upon the Board's advice, should monitor any subsequent measure taken by the very large online platform concerned as set out in its action plan. That Digital Services Coordinator should be able to ask, where appropriate, for an additional, specific audit to be carried out, on a voluntary basis, to establish whether those measures are sufficient to address the infringement. At the end of that procedure, it should inform the Board, the Commission and the platform concerned of its views on whether or not that platform addressed		

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the infringement, specifying in particular the relevant conduct and its assessment of any measures taken. The Digital Services Coordinator should perform its role under this common system in a timely manner and taking utmost account of any opinions and other advice of the Board.		
(96) Where the infringement of the provision that solely applies to very large online platforms is not effectively addressed by that platform pursuant to the action plan, only the Commission may, on its own initiative or upon advice of the Board, decide to further investigate the infringement concerned and the measures that the platform has subsequently taken, to the exclusion of the Digital Services Coordinator of establishment. After having conducted the necessary investigations, the Commission should be able to issue decisions finding an infringement and imposing sanctions in respect of very large online platforms where that is justified. It should also have such a possibility to intervene in cross-border situations where the Digital Services Coordinator of establishment did not take any measures despite the Commission's request, or in situations where the Digital Services Coordinator of establishment itself requested for the Commission to intervene, in respect of an infringement of any other provision of this		

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Regulation committed by a very large online platform.		
(97) The Commission should remain free to decide whether or not it wishes to intervene in any of the situations where it is empowered to do so under this Regulation. Once the Commission initiated the proceedings, the Digital Services Coordinators of establishment concerned should be precluded from exercising their investigatory and enforcement powers in respect of the relevant conduct of the very large online platform concerned, so as to avoid duplication, inconsistencies and risks from the viewpoint of the principle of *ne bis in idem*. However, in the interest of effectiveness, those Digital Services Coordinators should not be precluded from exercising their powers either to assist the Commission, at its request in the performance of its supervisory tasks, or in respect of other conduct, including conduct by the same very large online platform that is suspected to constitute a new infringement. Those Digital Services Coordinators, as well as the Board and other Digital Services Coordinators where relevant, should provide the Commission with all necessary information and assistance to allow it to perform its tasks effectively, whilst conversely the Commission should keep them informed on the exercise of its powers as appropriate. In that		

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regard, the Commission should, where appropriate, take account of any relevant assessments carried out by the Board or by the Digital Services Coordinators concerned and of any relevant evidence and information gathered by them, without prejudice to the Commission's powers and responsibility to carry out additional investigations as necessary.		
(98) In view of both the particular challenges that may arise in seeking to ensure compliance by very large online platforms and the importance of doing so effectively, considering their size and impact and the harms that they may cause, the Commission should have strong investigative and enforcement powers to allow it to investigate, enforce and monitor certain of the rules laid down in this Regulation, in full respect of the principle of proportionality and the rights and interests of the affected parties.		
(99) In particular, the Commission should have access to any relevant documents, data and information necessary to open and conduct investigations and to monitor the compliance with the relevant obligations laid down in this Regulation, irrespective of who possesses the documents, data or information in question, and regardless of their form or format, their storage		

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medium, or the precise place where they are stored. The Commission should be able to directly require that the very large online platform concerned or relevant third parties, or than individuals, provide any relevant evidence, data and information. In addition, the Commission should be able to request any relevant information from any public authority, body or agency within the Member State, or from any natural person or legal person for the purpose of this Regulation. The Commission should be empowered to require access to, and explanations relating to, data-bases and algorithms of relevant persons, and to interview, with their consent, any persons who may be in possession of useful information and to record the statements made. The Commission should also be empowered to undertake such inspections as are necessary to enforce the relevant provisions of this Regulation. Those investigatory powers aim to complement the Commission's possibility to ask Digital Services Coordinators and other Member States' authorities for assistance, for instance by providing information or in the exercise of those powers		
(100) Compliance with the relevant obligations imposed under this Regulation should be enforceable by means of fines and periodic penalty payments. To that end, appropriate levels		

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of fines and periodic penalty payments should also be laid down for non-compliance with the obligations and breach of the procedural rules, subject to appropriate limitation periods.		
(101) The very large online platforms concerned and other persons subject to the exercise of the Commission's powers whose interests may be affected by a decision should be given the opportunity of submitting their observations beforehand, and the decisions taken should be widely publicised. While ensuring the rights of defence of the parties concerned, in particular, the right of access to the file, it is essential that confidential information be protected. Furthermore, while respecting the confidentiality of the information, the Commission should ensure that any information relied on for the purpose of its decision is disclosed to an extent that allows the addressee of the decision to understand the facts and considerations that lead up to the decision.		
(102) In the interest of effectiveness and efficiency, in addition to the general evaluation of the Regulation, to be performed within five years of entry into force, after the initial start-up phase and on the basis of the first three years of application of this Regulation, the Commission		

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should also perform an evaluation of the activities of the Board and on its structure.		
(103) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council[29].		
(104) In order to fulfil the objectives of this Regulation, the power to adopt acts in accordance with Article 290 of the Treaty should be delegated to the Commission to supplement this Regulation. In particular, delegated acts should be adopted in respect of criteria for identification of very large online platforms and of technical specifications for access requests. It is of particular importance that the Commission carries out appropriate consultations and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the		

[29] Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

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Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.		
(105) This Regulation respects the fundamental rights recognised by the Charter and the fundamental rights constituting general principles of Union law. Accordingly, this Regulation should be interpreted and applied in accordance with those fundamental rights, including the freedom of expression and information, as well as the freedom and pluralism of the media. When exercising the powers set out in this Regulation, all public authorities involved should achieve, in situations where the relevant fundamental rights conflict, a fair balance between the rights concerned, in accordance with the principle of proportionality.		**SE** (Comments): Freedom of expression, freedom of the press and media plurality are important priorities for the Swedish government.
(106) Since the objective of this Regulation, namely the proper functioning of the internal market and to ensure a safe, predictable and trusted online environment in which the fundamental rights enshrined in the Charter are duly protected, cannot be sufficiently achieved by the Member States because they cannot achieve the necessary harmonisation and		

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cooperation by acting alone, but can rather, by reason of its territorial and personal scope, be better achieved at the Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective,		
HAVE ADOPTED THIS REGULATION:		
Chapter I – General provisions		**LU** (Comments) **General remarks on chapters I-II** Luxembourg generally supports the objective of the Regulation to update the rules on procedures for online intermediaries to act on illegal content. The liability regime and exemptions thereof need more clarity and legal certainty given that business models and online services have evolved since the entry into force of the e-Commerce Directive. We therefore agree with the targeted approach proposed by the Commission, which focusses on modernising Articles 12-15 of the e-Commerce Directive and addressing evidenced shortcomings.

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		In particular, we welcome the fact that the proven principles of the e-Commerce Directive remain in place, in particular the country-of-origin principle, which are essential for the well-functioning of the Single Market by ensuring that businesses do not have to adapt to all the details of 27 different national legislations. The fragmentation observed in the Single Market, and which hampers cross-border trade and SME growth, results from areas that the e-Commerce Directive does *not* cover, such as applicable law or minimum harmonisation clauses in consumer protection law. In that sense, we also believe that the DSA will not be a panacea for online services in the Single Market: given its targeted approach on procedures for tackling illegal content online, the DSA does not address many of the existing obstacles to cross-border e-commerce. To reach the objective of a borderless Single Market for digital services, the DSA should be accompanied by other initiatives aiming at removing the existing legal fragmentation. Within the targeted scope of the DSA, we will therefore pay close attention to **ensure that the maximum harmonisation objective is secured and that the DSA will indeed provide a single set of rules to be applied in a unified manner across the Single Market.** This goal should be set out more explicitly in the Regulation and we propose a self-standing Article in this respect

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		(see table, new Article 1a). In order to achieve a fully functioning Single Market for digital services, any existing or new national legislation in the areas covered by the DSA should not be tolerated as they would lead to a fragmentation of rules and limit the added value of the DSA. **Any flexibility or opening clauses for Member States to derogate, specify or complement the rules of the DSA would directly undermine the goal of harmonisation and a uniform safe online environment across the EU**. Online intermediaries wishing to comply with their obligations would still need to adapt their content and procedures to 27 national rules – an impossible ask for smaller business and a major disincentive for engaging in cross-border sales. Like many other Member States, we also insist on a **clear overall legal framework for online services**. The DSA does not exist in a vacuum and multiple other existing EU legislations, many of which were adopted recently, are relevant for online intermediaries. Therefore, the DSA's articulation with other legislations needs to be understandable for all intermediaries (including those that will not be able to afford legal consultants!), provide legal certainty and avoid overlaps. To this end, we would welcome if the Commission could provide concrete examples illustrating the interaction between the DSA and each of the legislations listed in Article 1(5) and

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		explain which provisions of the DSA apply under which circumstances. For the same reasons it is important to **use clear and known legal concepts and definitions**. Similar but different definitions (for example "terms and conditions") will lead to confusion and legal uncertainty, ultimately hampering the goal of the Regulation.
	LU (Drafting): **Article 1a - Objective** **The aim of this Regulation is to contribute to the proper functioning of the internal market by setting out harmonised rules for a safe, predictable and trusted online environment, where fundamental rights enshrined in the Charter are effectively protected.**	**LU** (Comments): Article 1 of a Regulation should explain its ultimate objectives and the link with the legal basis, and not only provide a table of contents. That is also the constant line of the Council Legal Service. The current wording of Article 1 summarises the "what" of the DSA. We propose to extract paragraph 2 into a self-standing Article 1a **explaining the "why**". This would also be in line with the legal technique used in Article 1 of the e-Commerce Directive (and other important Single Market legislations like the consumer rights Directive).

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Article 1 *Subject matter and scope*		**CZ** (Comments): **CZ** welcomes the proposal in general and supports the wording of the Article 1. We believe that the DSA reflects the current situation in the internal market and aims at issues which are necessary to solve. Accordingly, **CZ** considers the aims of the proposal adequate and clearly based on the well-founded Impact Assessment. **EL** (Comments) Chapter I-Articles 1 and 2: The retention in the DSA proposal of the internal market clause (country of origin) that exists in article 3 of the "Electronic Commerce Directive" is essential, as it is the cornerstone of the single market for digital services, ensuring the free movement of information society services in the EU. It is also important that the scope of the DSA proposal is extended to cover providers established in third countries and whose activities are aimed at recipients of services that have their place of establishment or residence in the EU. This is very important, as there is a growing number of intermediary services providers from third countries, that offer illegal content, including unsafe, counterfeit, non compliant products and services over the internet. Article 1: With regard to the provision in recital 6, according to which an information society

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		service is not an intermediary service in situations where the intermediary service constitutes an integral part of another service which is not an intermediary service, we agree with its mention, as it incorporates the case of cooperative economy and the related judgments of the CJEU. However, in the DSA proposal the case of the cooperative economy on online platforms is not mentioned. Given the dynamic development of the platforms of the cooperative economy, especially in the transport and tourism sector, but also in order to avoid any misinterpretations, **we propose to mention cooperative economy both in the operative part of the DSA proposal, and in recital 13 of art. 2, where the examples of online platforms are listed.**
1. This Regulation lays down harmonised rules on the provision of intermediary services in the internal market. In particular, it establishes:	**IT** (Drafting): This Regulation establishes harmonised rules on the provision of intermediation services in the internal market ***[whilst respecting the rights established by the Charter of Fundamental Rights of the European Union]*** **LU** (Drafting): 1. This Regulation lays down harmonised rules on the provision of intermediary services **in**	**IT** (Comments): We attach a great importance to all fundamental rights set out in the Charter, therefore we suggest to introduce a recall in art. 1 and strengthen recital (3) **DK** (Comments): From the Danish side, we find it absolutely necessary that the legal status of digital platforms is clarified by determining what requirements a

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	<u>order to improve the functioning of</u> the internal market. In particular, it establishes: **RO** (Drafting): This Regulation lays down harmonised rules on the provision of intermediary services in the internal market. I~~n~~t also ~~particular, it~~ establishes	service must meet in order to be considered an 'intermediary service provider' within the remit of the DSA. 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, labor, vacation and money lending. Depending on their particular configuration, some of these services may be considered intermediary services while others may not. **LU** (Comments): We propose to make a link with the Article 114 TFEU legal basis and the objectives of the Regulation by adding this reference. This is also in line with Better Regulation principles: the EU legislator needs to be clear why it legislates. We support the reference to "harmonised rules" and propose to use the term "harmonised" instead of "uniform" (cf paragraph 2). **RO** (Comments): T**he expression "in particular" could be problematic, we proposed deletion.** **In addition,** CION explained that being a Regulation, the DSA pursues the goal of harmonization for the issues covered by it. Member States shall therefore not impose on

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		providers of intermediary services within the meaning of the DSA further obligations by way of laws, regulations or administrative actions for the matters falling within the scope of, and exhaustively regulated by, the DSA. *For example,* in the case of Article 14 (Notice and action mechanisms), if the national law provides for fixed timelines for processing the notice refered in para.6 or for certain obligation for the architecture of the mechanisms to be put in place by the providers could it be considered that the MS are beyond the scope/goal of the Regulation? **DE** (Comments) As already stated re. recital 2: There must be scope for exemptions, e.g. for diverging domestic rules to promote cultural and linguistic diversity and to ensure pluralism, as the regulatory competence lies with the MS (and as set out in Art. 1(6) eCD) and for domestic rules regarding public safety and law enforcement. There must also be room for national provisions with regard to combating hate speech and the protection of minors. The approach of the proposal leaves many regulatory gaps in this respect and would lead to a substantial reduction of the current level of protection in the MS. In order to achieve the greatest possible legal certainty on these issues, which are of central

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		importance to us, we suggest to ask the Council Legal Service for its opinion on the remaining national scop
(a) a framework for the conditional exemption from liability of providers of intermediary services;		
(b) rules on specific due diligence obligations tailored to certain specific categories of providers of intermediary services;		
(c) rules on the implementation and enforcement of this Regulation, including as regards the cooperation of and coordination between the competent authorities.		
2. The aims of this Regulation are to:		**LU** (Comments): Luxembourg proposes to extract this paragraph into a self-standing article entitled “objective” (see new Article 1a further up).
(a) contribute to the proper functioning of the internal market for intermediary services;		

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(b) set out uniform rules for a safe, predictable and trusted online environment, where fundamental rights enshrined in the Charter are effectively protected.	**IT** (Drafting): (b) set out uniform rules for a safe, predictable and trusted online environment, where fundamental rights enshrined in the Charter are effectively ***[and efficiently]*** protected ***[and enforced].]*** **LU** (Drafting): (b) set out ~~uniform~~ **harmonised** rules for a safe, predictable and trusted online environment, where fundamental rights enshrined in the Charter are effectively protected.	**IT** (Comments): We welcome the mention of "fundamental rights enshrined in the Charter" and suggest to strengthen the wording of point b) **LU** (Comments): We propose to replace "uniform" by "harmonised", in order to align with paragraph 1 and reflect the wording of the Treaties. **DE** (Comments) We are not sure whether "uniform rules" means that the proposal aims at full harmonisation. Please see comment re. Art. 1(1) and/or recital 2.
3. This Regulation shall apply to intermediary services provided to recipients of the service that have their place of establishment or residence in the Union, irrespective of the place of establishment of the providers of those services.	**AT** (Drafting): This Regulation shall apply to intermediary services that offer services in the Union, irrespective of the place of establishment of the providers of those services. **SK** (Drafting): This Regulation shall apply to intermediary services ~~provided~~offered to recipients of the	**AT** (Comments): According to recital 7, the Regulation should apply to providers that offer services in the Union, as defined in Art. 2(d). This is not reflected in the current text. **BE** (Comments): It seems possible, for video-sharing platforms, that the AVMS directive is not applicable (no

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	service that have their place of establishment or residence in the Union, irrespective of the place of establishment of the providers of those services.	parent undertaking, subsidiary undertaking nor other undertakings of the same group in the Union), while the DSA is still applicable? **SK** (Comments): *We suggest to replace a word "provide" by a word "offer" related to Ar. 2 (d). We consider to be a crucial the time of the fist "offer", not the time of first "provision".* **RO** (Comments): TCO Regulation in Article 1 provides that the *Regulation shall apply to hosting service providers offering services in the Union, irrespective of their place of main establishment, which disseminate information to the public.* Why DSA proposal does not define "establishment" or "main establishment" although lett. d) indicates it as a condition? **DE** (Comments) We expressly welcome the fact that the DSA creates a "level-playing-field". However, there are still some open questions, e.g. as to how the regulation can be enforced with regard to providers from third countries. This problem especially arises when providers openly claim not to cooperate with officials from MS (neither fulfil general regulations nor

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		respond to removal orders for specific content) with reference to protecting the general freedom of expression against official interference. Enforcement measures with corresponding effect abroad are generally not permissible under international law without the consent of the target state. Especially in the area of "enforcement jurisdiction" the distinction between territoriality and extraterritoriality can of course be difficult. International law does not connect the jurisdiction to prescribe with an effet utile link to the jurisdiction to enforce. Therefore, we ask to make a clear distinction between invoking the jurisdiction to prescribe and invoking the jurisdiction to enforce (see also comment re. recital 7). We suggest examining in detail how the DSA provisions will be enforced in practice against providers from third countries. Further regulations or technical tools may be required in this area, e.g., if a provider does not comply with the obligation under Article 11.
4. This Regulation shall not apply to any service that is not an intermediary service or to any requirements imposed in respect of such a service, irrespective of whether the service is provided through the use of an intermediary service.	**SE** (Drafting): Content disseminated for educational, journalistic, artistic or research purposes or under editorial responsibility, including content which represents an expression of polemic or	**SE** (Comments): **SE** is of the view that it will be necessary to clarify and make more precise the relation between the DSA and content disseminated for educational, journalistic, artistic or research

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	controversial views in the course of public debate shall not be considered illegal content. An assessment shall determine the true purpose of dissemination and examine whether material is disseminated for the purposes referred to in this paragraph. This Regulation shall not have the effect of modifying the obligation to respect the rights, freedoms and principles as referred to in Article 6 of the Treaty on the European Union, and shall apply without prejudice to fundamental principles relating to freedom of expression, freedom of the press and the freedom and pluralism of the media.	purposes or under editorial responsibility as well as between the DSA fundamental principles relating to freedom of expression, freedom of the press and the freedom and pluralism of the media. These particular issues will inevitably also be a core interest of stakeholders. Consequently, Sweden proposes in order to pave the way for further discussions on the best way to ensure a clear and precise relation between the DSA and the indicated interests the introduction of one or two paragraphs in Article 1, both inspired by the agreed text of the TCO Regulation (soon to be adopted). **SK** (Comments): *We would welcome a more detailed definition of what is not an intermediary service when the service is provided through the use of an intermediary service (reliable and foreseeable criteria strengthening legal certainty) – as per the comment on recital 6*
5. This Regulation is without prejudice to the rules laid down by the following:	**AT** (Drafting): This Regulation is without prejudice to the rules <u>of criminal procedural law, irrespective if such rules stem from national, Union or international law</u>, <u>and</u> by the following: …	**AT** (Comments): Not only should criminal procedural law remain unaffected (see recital 26 of the E-Commerce-Directive), but it should also be clarified that (future) international agreements in the context

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		of e-evidence, such as the Second Additional Protocol to the Cybercrime Convention, are not affected by the DSA. **IT** (Comments): 1) During the WP meeting the Commission has clarified that this list of legislations is non-exhaustive. If this is the case, the wording should clarify this aspect. Otherwise, readers may misunderstand its implications. 2) As mentioned on recital (9), the consistency of DSA provisions with sector-specific rules is not always evident and might need further explanations Concerning AVMS Directive, the provisions on video-sharing platforms do not set effective sanctions in case of violation of the rules that oblige platforms to adopt adequate measures to protect minors (art.28ter lett.a), to counter hate speech (art.28ter lett.b) and to prevent the dissemination of criminal content (art.28ter lett.c). In that case, it **is worth clarifying whether the national authorities have the option of using the sanctioning protection of the DSA, much more incisive.** The consistency of DSA horizontal provisions with sectorial rules is fundamental issue to take in to account in the ongoing national transposition process of Directive 2018/1808

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		AVMS and Directive 2019/790 on Copyright. **PL** (Comments): It is our view there is a need for further clarification as to whether and to what extent interventions based on sectoral legislation are envisaged (whether Article 1(5) exhausts the list of legal acts allowing such interventions) and how to ensure consistent application of different legal acts to the same entities. **DK** (Comments): Article 1 (5) establishes that the DSA is without prejudice to several EU regulations and directives, including proposals still under negotiation. A number of these acts have exceptions to the liability exemption for intermediaries directed at online platforms. **DK** finds that the DSA ought to address this legal fragmentation, as it causes legal uncertainty, administrative burdens and favours larger, well-established firms that can afford the compliance costs. A way of doing this could be to establish that the Commission shall draw up guidelines that clarify which requirements online platforms are obliged to comply with according to EU legislation. The guidelines should make clear what liability and due diligence requirements apply depending on the size of the platform, as well as any other criteria that is used in the

COMMISSION PROPOSAL	**Drafting suggestions**	**Comments**
		relevant EU legislation to distinguish between online platforms that the legislation applies to and those that are exempted (e.g. in the Copyright Directive, new online content-sharing service providers which have been available to the public in the Union for less than three years and which have an annual turnover below EUR 10 million, calculated in accordance with Commission Recommendation 2003/361/EC (20) are exempted from certain provisions). **LU** (Comments): Could the Commission provide a table explaining for each legislation listed in Article 1(5) how the articulation with the DSA would work? I.e. is the DSA « without prejudice » to specific provisions, or entire issues ? Is there complementarity or exclusivity between the DSA and these other texts? Which regulator will be enforcing provisions for companies that are covered by provisions in several texts? **DE** (Comments) We welcome the fact that para. 5 clarifies that the regulation is without prejudice to the rules laid down, inter alia, by the eCD and the AVMSD. We also welcome the fact that recital 9 does clarify that the DSA leaves those other acts, "which are to be considered lex specialis in relation to the generally applicable framework set

COMMISSION PROPOSAL	**Drafting suggestions**	**Comments**
		out in this Regulation", unaffected. However, we are not absolutely sure what this means. For example, the AVMSD does contain rules adressing illegal content on video sharing platforms; but (unlike the DSA), the AVMSD does only address "illegal content" under *European Law*. We wonder what regime will apply in the future concerning illegal content under national law on those video sharing platforms. It must be ensured, that the reference to the AVMSD in Art. 1 does not block national regulations which would be explicitely possible under the AVMSD even when the new DSA regime came into force. With respect to content provided by Audiovisual Media Services such as broadcasting and video on demand services, the AVMSD includes specific material regulation for those services and prohibits restrictions to the transmission of those services for all reasons falling within the fields coordinated by the AVMSD by other MS. Will the regulation allow restrictions to the transmission of audivisual media services under the jurisdiction of one MS via intermediary services in another MS? Also, we wonder whether Directive 2004/48/EG (IP Rights enforcement Directive, IPRED) is being affected by the DSA or if it is without prejudice to the rules laid down in the IPRED

COMMISSION PROPOSAL	**Drafting suggestions**	**Comments**
(a) Directive 2000/31/EC;		**BE** (Comments): What about the case of an order to disable access to an entire website (e.g.because all of its content is found to be counterfeiting products)? Would this type of order be considered as not "specific" enough and restrict the provider's freedom to provide their services across borders? Should the authority, in this case, continue to use the current procedure under article 3.4 ECD? In this case, would this regulation still be "without prejudice" to the Country of Origin principle set in article 3 of ECD. (see also our comments on recital (33) and article 8)
(b) Directive 2010/13/EC;		**BE** (Comments): How should these regulatory instruments be applied together? The relationship between the AVMS Directive and the DSA is not entirely clear. Indeed, when rules already exist in a *lex specialis*, such as the AVMS Directive, but these rules are specified in the regulation, the question arises as to what prevails. Admittedly, the Commission states in

COMMISSION PROPOSAL	**Drafting suggestions**	**Comments**
		the explanatory memorandum to the DSA that the DSA supplements the sectoral law, but this is not so obvious in practice. **For example**, the reporting mechanism provided for in the AVMS Directive is much less detailed than that of the DSA Regulation. The AVMS Directive provides for minimum harmonisation rules at the level of video sharing platforms and leaves Member States room for manoeuvre to set more detailed standards. In this respect, the DSA could be considered to contravene the AVMS Directive, in particular Article 28b, §6, which states: "Member States may impose more detailed or stricter measures on providers of video-sharing platforms (...)". Furthermore, DSA seems to do more than complement the regulation on video-sharing platforms in the AVMS directive. **By way of example**: does the statement of reasons (article 15) also apply to providers of video-sharing platforms who take measures according to art. 28b AVMS directive? In that case, an assessment of these measures by the NRA is necessary.
(c) Union law on copyright and related rights;		**RO** (Comments): **RO** suggests including a detailed list of the Union law on copyright and related rights, in an

COMMISSION PROPOSAL	**Drafting suggestions**	**Comments**
		annex
(d) Regulation (EU) …/…. on preventing the dissemination of terrorist content online [TCO once adopted];		**DE** (Comments) The Regulation (EU) …/…. on preventing the dissemination of terrorist content online [TCO once adopted] prescribes that ***"Material disseminated for educational, journalistic, artistic or research purposes or for the purposes of preventing or countering terrorism including the content which represents an expression of polemic or controversial views in the course of public debate shall not be considered terrorist content."*** Has such a provision also been discussed with respect to the regulation? And if not, what will the fact, that the regulation shall be without prejudice to the TCO, mean with regard to this content?
(e) Regulation (EU) …./….on European Production and Preservation Orders for electronic evidence in criminal matters and Directive (EU) …./….laying down harmonised rules on the appointment of legal representatives for the purpose of gathering evidence in criminal proceedings [e-evidence once adopted]		

COMMISSION PROPOSAL	**Drafting suggestions**	**Comments**
(f) Regulation (EU) 2019/1148;		
(g) Regulation (EU) 2019/1150;		
(h) Union law on consumer protection and product safety, including Regulation (EU) 2017/2394;	**RO** (Drafting): To be added h bis) **Regulation EU 2019/1020**	**RO** (Comments): **RO** suggests adding the Regulation EU 2019/1020 to point.5 For (h) **RO** suggests including a detailed list of the Union law on consumer protection and product safety, in an annex
(i) Union law on the protection of personal data, in particular Regulation (EU) 2016/679 and Directive 2002/58/EC.	**AT** (Drafting): (i) Union law on the protection of personal data, in particular Regulation (EU) 2016/679 and Directive 2002/58/EC; **DE** (Drafting) **“(j) Union law on taxation, in particular obligations to keep records in Directive 2006/112/EC, Directive 2011/16/EU and Implementing Regulation (EU) 282/2011.”**	**DE** (Comments) We wonder whether the DSA, especially Art. 8 and 9, applies to data transfers that are within the scope of the Directive 2016/680. If so, Directive 2016/680 should be explicitly mentioned in this section to avoid any doubt about its applicability. It has to be ensured that the application of Union law in the field of taxation will not be limited by this regulation. This is notably true for the record keeping obligations for platforms going beyond Article 22

COMMISSION PROPOSAL	**Drafting suggestions**	**Comments**
	AT (Drafting): (j) Regulation (EU) 1215/2012.	**SE** (Comments): Did the Commission consider also making a referal in Article 1.5 to Regulation (EU) 2019/1020 on market surveillance and compliance of products, and if so, why was no reference added?
Article 2 Definitions		**ES** (Comments): General consideration. **Alignment with the final wording of the Regulation against terrorist content (TCO) is recommended**, once approved, particularly in definitions such as "dissemination to the public", "to offer services in the Union" or "terms and conditions". **CZ** (Comments): **CZ** agrees with the wording of Article 2, which is clearly based on the well-founded Impact Assessment. We appreciate the definitions of intermeriary service and online platform, which would improve legal clarity.
For the purpose of this Regulation, the following definitions shall apply:		
(a) 'information society services' means		

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services within the meaning of Article 1(1)(b) of Directive (EU) 2015/1535;		
(b) 'recipient of the service' means any natural or legal person who uses the relevant intermediary service;		**IT** (Comments): It would be preferred to use the "recipient of the service" definition, as set out in Article 2 of Directive 2000/13/EC **SK** (Comments): *We find this definition slightly unclear, notably we struggle to apprehend, whether a provider of a good/service who uses the intermediary service to find its customers can also be considered as a "recipient of a service" – they might use an intermediary service, but are not receiving the related services as such (e.g. a company offering its services via a platform)*
(c) 'consumer' means any natural person who is acting for purposes which are outside his or her trade, business or profession;	**IT** (Drafting): 'consumer' means any natural person who is acting for purposes which are outside his or her trade, business, ***craft*** or profession;	**IT** (Comments): We suggest to align the wording with Article 2 (1) of Directive 2011/83/EU: *(1)'consumer' means any natural person who, in contracts covered by this Directive, is acting for purposes which are outside his trade, business, **craft** or*

COMMISSION PROPOSAL	**Drafting suggestions**	**Comments**
		profession; **LV** (Comments) Definition "consumer" differs from its usage in Consumer Rights Directive, CPC Regulation and other EU acts on consumer protection ("craft" is not included). We consider that this definition should be aligned with the newest consumer legislation adopted in order to ensure legal consistency and avoid misunderstandings
(d) 'to offer services in the Union' means enabling legal or natural persons in one or more Member States to use the services of the provider of information society services which has a substantial connection to the Union; such a substantial connection is deemed to exist where the provider has an establishment in the Union; in the absence of such an establishment, the assessment of a substantial connection is based on specific factual criteria, such as:		**PL** (Comments): It may seem that the concept of an offer (developed in the field of consumer law in the rulings C 585/08 and 144/09) has been complemented by the requirement for the provider of information society services to have a substantial connection to the Union. However, we were wondering whether such narrowing of the concept of is necessary or advisable. **DK** (Comments): Regarding the definition '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

COMMISSION PROPOSAL	**Drafting suggestions**	**Comments**
		Member States' – preferably through a numeric span or other quantitative measures. **SK** (Comments): *We find, that if the existence of a substantial connection is a prerequisite for being a subject to this Regulation, this should be more precisely defined* **RO** (Comments): TCO Regulation provides in Article 2 para 4 that 'to offer services in the Union' means: enabling legal or natural persons in one or more Member States to use the services of the hosting service provider which has a substantial connection to that Member State or Member States. Such a substantial connection shall be deemed to exist where the hosting service provider has an establishment in the Union. In the absence of such an establishment, the assessment of a substantial connection shall be based on specific factual criteria, such as (a) establishment of the hosting service provider in the Union; (ba) significant number of users in one or more Member States. **We suggest harmonizing these definitions in both legal acts.** Targeting of activities as provided in lett. d) is too vague to qualify as a factual criteria therefore

COMMISSION PROPOSAL	**Drafting suggestions**	**Comments**
		additional wording in needed **DE** (Comments) We suggest to examine whether and how this definition should be specified, given its crucial importance for the scope of the application of the DSA (see Article 1(1) lit. c).
– a significant number of users in one or more Member States; or		**IT** (Comments): Given that the Proposal makes a considerable effort in establishing a quantitative threshold to assess whether an online platform can be recognized as "very large", it could be worth considering some similar threshold to clarify the meaning of "significant number of users" **SE** (Comments): Could the Commission specifiy what "a significant number of users" is in this regard? **SK** (Comments): *We find, that if the existence of a substantial connection is a prerequisite for being a subject to this Regulation, this should be more precisely defined – e.g. how many users are considered (with no doubts) as "a significant number"?*

COMMISSION PROPOSAL	**Drafting suggestions**	**Comments**
		RO (Comments): Given the fact that two different notion are utlised in the text ”users” and ”active recipients” (as provided in Article 25) we are asking for clarifications of defining these notions to avoid lack of clarity. **LV** (Comments) Definition “to offer services in the Union” as factual criteria names a significant number of users. It should be specified, at least, in recitals what number or percentage of the population of EU can be considered “a significant number of users”.
– the targeting of activities towards one or more Member States.		
(e) ‘trader’ means any natural person, or any legal person irrespective of whether privately or publicly owned, who is acting, including through any person acting in his or her name or on his or her behalf, for purposes relating to his or her trade, business, craft or profession;		**SE** (Comments): Can an individual selling his/her used products/closed be considered a trader? If so, could the requirements in Article 22 regarding traceability of traders negatively impact circular economy platforms?

COMMISSION PROPOSAL	**Drafting suggestions**	**Comments**
		ES (Comments): It should be **clarified whether the term "trader" also includes suppliers of short-term tourist rental accommodation**, whose data should be accessible by the competent authorities of the Member States where the underlying physical service is provided. **DE** (Comments) We ask for further refinement of the definition. Does the definition of trader also include any natural or any legal person, who is acting for purposes relating to an illegal trade, business craft or profession? For example, is an illegal trafficker of drugs, arms, wild animals, plant species, stolen ID documents or someone who trades in illegal timber a trader within the scope of Art. 2 lit. e?
(f) 'intermediary service' means one of the following services:	**AT** (Drafting): (f) 'intermediary service' means one of the following <u>information society</u> services:	**AT** (Comments): It should be clear that all intermediary services are also information society services. **PL** (Comments): The DSA applies the definition of intermediary service (Article 2(f)) to mere conduit (Article 3),

COMMISSION PROPOSAL	**Drafting suggestions**	**Comments**
		caching (Article 4) and hosting (Article 5). At the same time, when defining what mere conduit, caching and hosting are, reference is made to "information society service". Connecting the definition of intermediary services with the concept of information society service causes the problem of qualification of a given service as an information society service, which is mentioned, among others, in the Impact assessment to the DSA (example of rulings on Uber and Airbnb) will not be solved. Therefore, when drafting the DSA it could be worthwhile to resolve this uncertainty. It is worth considering either to modify the definition of 'information society service' or extending the concept of 'intermediary service' to include services which, in the opinion of the Court, do not meet the requirements set in the definition of 'information society service'. **BE** (Comments): What about Information Society Services that do not fall under one of the three categories of "intermediary services" ? We think especially of the **natural** referencing service of search engine which, if we understand it correctly, cannot be qualified as "hosting provider" because it does not store information ***at the request of*** the recipient of service. We believe it is important for the DSA to target this kind of service also (ex: possibility of an

COMMISSION PROPOSAL	**Drafting suggestions**	**Comments**
		injunction (article 8) to order the dereferencing to limit the access to fraudulent websites). **DE** (Comments) We expressly ask to ensure unequivocally that so-called Instant Messenger Services that encompass both transaction and interaction opportunities (like "Telegram" or "Messenger") fall within the scope of the regulation. How can it be ensured that the requirements of the DSA are specifically tailored to transaction and interaction opportunities?
– a 'mere conduit' service that consists of the transmission in a communication network of information provided by a recipient of the service, or the provision of access to a communication network;		**HU** (Comments): At present, the normative content of mere conduit does not include ancillary services that play an indispensable role in the Internet infrastructure and cannot be classified as Internet access services, such as domain name system (DNS) resolution, domain name registration and data exchange service (internet exchange). Given that these services are already included in the definition framework of the NIS Directive, it would be appropriate to define them in the DSA either as a separate entity or as part of an Internet access service. Although this issue is also addressed in Recital 27, it would be important to categorize the examples there in the operative

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		part of the proposal.
– a 'caching' service that consists of the transmission in a communication network of information provided by a recipient of the service, involving the automatic, intermediate and temporary storage of that information, for the sole purpose of making more efficient the information's onward transmission to other recipients upon their request;		**IT** (Comments): It is not clear, also having regard to recital 27, if reverse proxy providers fall within the definition of caching or mere conduit.
– a 'hosting' service that consists of the storage of information provided by, and at the request of, a recipient of the service;		**SE** (Comments): To what extent is the Digital Services Act applicable to search engines. According to EU court cases C-236/08 and C-238/08 Google Adwords is a hosting service. Is the automatic indexing that is not done due to a request on search engines a hosting service? MS seems to interpret this differently. How does the definitions in Article 2 relate to the distinction between 'platforms' and 'search engines' in the P2B regulation?
(g) 'illegal content' means any information,~~,~~ which, in itself or by its reference to an activity, including the sale of products or provision of services is not in compliance with Union law or		**IT** (Comments): We are in favour of a broad definition of "illegal

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the law of a Member State, irrespective of the precise subject matter or nature of that law;		content". We should further reflect on how to deal with political and media contents, since the freedom of speech of parties, movements and press representatives has to be balanced with the safeguard of the institutions and the public order. **SE** (Comments): **SE** suggests the wording ”manifestly illegal” should be used in articles where an intermediary service itself must assess and act against illegal content. . In any case, the regulation should apply only to illegal content and not harmful or inappropriate content, as this could affect the right to freedom of expression negatively. **SE** cannot accept a definition of illegal content that includes sharing content of illegal activities when the dissemination itself is not illegal by national legislation or EU-law. Such definition would, for example, include images related to media reports of illegal activities. **LU** (Comments): How is the notion “by its reference to an activity” to be understood? Could the post on a social network of a CCTV video showing a

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		robbery of a petrol station qualify as illegal content? **EL** (Comments) Article 2 (g): Concerning the definition of illegal content, we would like to express our concern about how to ensure the uniform application and effectiveness of the rules of DSA proposal, as the MS in some cases define the meaning of illegal content differently. Regarding the definition of online marketplace, we take note of the explanation of the EC regarding technological neutrality, however this concept is already defined in the consumer protection legislation i.e. Directive 2011/83 as amended by Directive 2019/2161 defines online marketplace as a service using software, including a website, part of a website or an application, operated by or on behalf of a trader which allows consumers to conclude distance contracts with other traders or consumers. We note that in recital 25 of Directive 2019/2161 is stated that the above updated definition of the online marketplace is technologically neutral. Therefore, for reasons of unity of law, **we propose the add in Article 2 the definition of online marketplace.** **DE** (Comments) Lit. g introduces the concept of "illegal content".

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		In conjunction with recital 12, the definition clarifies that it also covers "information relating to illegal content, products, services and activities". We regret that the proposal does not differentiate between illegal information on the one hand which is in itself illegal (e.g. insult), and information that relates to illegal goods and services on the other hand. We advocate a clear distinction between "interaction functions" and "transaction functions" (which sometimes are both offered by the same platform) to reflect the different rights and values at stake. In addition to strengthening the digital single market from a business perspective the aim today is also to make it more trustworthy for consumers than before and to protect our democracies under the rule of law. Therefore, the fight against illegal information like hate speech is a special case because the objective is to eliminate such types of illegal information in order to considerably strengthen democratic principles and the rule of law. Especially regarding information, that in itself is illegal, another central question that arises is whether the "illegality of content" is determined by the law of the country of origin or (also) by the law of the country in which the provider provides its services. While there seems to be some agreement between MS which statements are tolerable and which are criminal there are also substantial differences in a lot of cases.

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		Criminal law assessments of MS in which the effects of a statement/content occur may not be ignored, especially since the effects of any unhindered dissemination of unlawful content can have a direct impact on national democratic systems. The proposal should clarify that the illegality of the content is also determined by the law of the country in which the provider provides its services and what consequences a request of deletion of that country and its authorities will have (unionwide deletion of the content?). Obligations under Environmental Law are not always literally linked to the term "product" but also to "substances and mixtures of substances", "articles" (REACH-Regulation, CLP-Regulation), "equipment" (Reg. 1005/2009; Reg. 517/2014), or to specific items such as electronic devices, refrigerators (Annex III of Reg. 517/2014) or paint, etc. We also wonder whether (wild) animals and plants are included in the concept of "illegal content" or not. As stated above (recital 12), the question arises as neither wild animals nor wild plants are "produced", they are thus not "products" *stricto sensu*. To ensure the uniform interpretation and application of the regulation in this respect, we ask for an explicit clarification in recital 12 that the concept also includes the illegal trade and use of animals and plants, especially specimens taken from the wild (see also comment re. recital 12), as well as

COMMISSION PROPOSAL	**Drafting suggestions**	**Comments**
		substances and mixtures as ingredients or components of intermediate or end products. We also recommend to consider a specifying definition of "product". We also wonder whether the concept of illegal content also covers the sale of products or the provision of services that is not illegal itself, but infringes ancillary obligations, like information requirements. We also wonder whether the concept also covers such products that are only considered illegal through their trade or import, e.g. non-domestic or gmo-plants, animals (puppies).
(h) 'online platform' means a provider of a hosting service which, at the request of a recipient of the service, stores and disseminates to the public information, unless that activity is a minor and purely ancillary feature of another service and, for objective and technical reasons cannot be used without that other service, and the integration of the feature into the other service is not a means to circumvent the applicability of this Regulation.		**IT** (Comments): Since online platforms have additional obligations and having regard to recitals 13 and 27, it is necessary to clarify which providers fall within this definition (for example, cyberlockers, instant messaging software and application services). **SK** (Comments): *Considering that the online platforms include social networks and online marketplaces (as per recital 13), it might therefore be more expedient to use the term 'content' here. Online marketplaces concentrate rather on the*

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		distribution/dissemination of goods and services (for example of free traders), not so much on information. It might also be helpful to include the term content in the definitions defined as information (textual or audio-visual), services and goods. For the purpose of this Regulation, online advertisement should also be understood as 'content'. *It should be clearly defined, what is considered under the term "information" within this Regulation.* **LU** (Comments): Why did the Commission choose a different definition than the one of "online intermediation service" in the platform-to-business Regulation? **DE** (Comments) We wonder whether app stores and search engines are covered by the definition of online plattforms. If not, we ask o consider whether the rules for (very) large online platforms should apply to them.
	AT (Drafting): (h1) 'online marketplace' means an online platform allowing consumers to conclude distance contracts with traders.	**AT** (Comments): The specific role of online marketplaces justify special rules (see, for example, Art. 5 para 3 or Art. 22)

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(i) 'dissemination to the public' means making information available, at the request of the recipient of the service who provided the information, to a potentially unlimited number of third parties;		**IT** (Comments): Having regard to recital 14, and to the definition of "communication to the public" as interpreted by CJUE it is necessary to clarify if sharing information within closed groups of users of a given service should be considered as dissemination to the public, in particular if these closed groups consist of a considerable number of persons. **SE** (Comments): With regards to the definition of online platforms (article 2.h) we consider the concept of "dissemination to the public" to be of particular interest. In this regard, we would appreciate clarification as to the distinction between public and private forums. Some internet forums with a large audience still require membership applications to be able to see content. Would such forums be considered as private even though anyone can apply to access them? Similarly, Facebook users can limit their posts to reach only a certain category of members (friends, friends of friends, etc.). Would posting by such users be considered private and thus fall outside the scope of the regulation? How does the commission assess the risk of illegal content being spread in private forums?

COMMISSION PROPOSAL	**Drafting suggestions**	**Comments**
		ES (Comments): As mentioned in recital 14, the concept of 'dissemination to the public' should **include all the functionalities that enable the massive distribution of information, including channels, pages or groups**. The wording of 'potentially unlimited number of persons' excludes groups of up to 200.000 (Telegram) or 250 people (in other social networks), where illegal content is made available to a wide audience. As the maximum number of users in (chat) groups is constantly increased, these groups become potentially a tool for wide dissemination of content. Perhaps, a threshold (number of users > X) could be foreseen for when a group ceases to be a private chat and starts to behave as a tool for massive communication. **DK** (Comments): 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.

COMMISSION PROPOSAL	**Drafting suggestions**	**Comments**
		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. **BE** (Comments): See comment on recital 14 and 26. **RO** (Comments): The concept of "dissemination to the public" should entail the making available of information to a potentially unlimited number of persons that is, making the information easily accessible to users in general without further action by the content provider being required, irrespective of whether those persons actually access the information in question. In TCO Regulation, Article 2 para.7 - 'dissemination to the public means the making available of information, at the request of the content provider, to a potentially unlimited number of persons. An explanation from the CION would be very

COMMISSION PROPOSAL	**Drafting suggestions**	**Comments**
		useful **DE** (Comments) We suggest to clarify what constitutes „dissemination to the public" with regard to messenger services because there is a widespread public debate about the exact distinction between public and private messaging. It should be clarified, that the definition of "dissemination to the public" (Article 2 lit. i) also covers the spreading of content, which takes place via public groups/channels of interpersonal communication services.
(j) 'distance contract' means a contract within the meaning of Article 2(7) of Directive 2011/83/EU;		
(k) 'online interface' means any software, including a website or a part thereof, and applications, including mobile applications;		
	RO (Drafting): **k bis) "trusted flagger" means any entity that has been appointed by the Digital Services Coordinator based on specific conditions such as expertise and competence, independence of any online platform while representing**	**RO** (Comments): Two new definitions are necessary

COMMISSION PROPOSAL	**Drafting suggestions**	**Comments**
	collective interest and capacity of delivering notices. **l 0)'Digital Services Coordinator' means an authority established in a Member State responsible for all matters relating to application and enforcement of this Regulation in that Member State**	
(l) 'Digital Services Coordinator of establishment' means the Digital Services Coordinator of the Member State where the provider of an intermediary service is established or its legal representative resides or is established;		
(m) 'Digital Services Coordinator of destination' means the Digital Services Coordinator of a Member State where the intermediary service is provided;		
(n) 'advertisement' means information designed to promote the message of a legal or natural person, irrespective of whether to achieve commercial or non-commercial purposes, and displayed by an online platform on its online interface against remuneration specifically for promoting that information;	**SK** (Drafting): (n) 'online advertisement' means information designed to promote the message of a legal or natural person, irrespective of whether to achieve commercial or non-commercial purposes, and displayed by an online platform on its online interface against remuneration specifically for promoting that information;	**IT** (Comments): The definition of "advertising" does not coincide with Article 2, letter a) of Directive 2006/114 / EC, nor with "commercial communication" referred to in Article 2, letter f) Directive 2000 / 31 / EC. This misalignment could generate uncertainty, therefore we suggest referring to the notion of

COMMISSION PROPOSAL	**Drafting suggestions**	**Comments**
		“**paid communication”** **BE** (Comments): Are the exceptions, stated in article 2. f) of the ECD also applicable when it comes to “advertisement”? E.g.: information such as domain name or email address should not be considered as advertisement. What is meant by “remuneration”? Should it be the same interpretation as for the definition of Information Society Services? Does this mean there has to be a contract between the legal/natural person and the online platform in order to qualify a message as an advertisement? Is the definition of ‘advertisement’ compatible with the definition of ‘audiovisual commercial communication’ in the AVMS directive? The definition of ‘audiovisual commercial communication’ includes images ‘in return for payment or for similar consideration’. Suppose an exchange contract is made between an advertiser and an online platform: is there ‘remuneration’ in the sense of this article 2, (n)? Whouldn’t it be more coherent to use the term “promoting that message” in the last part of the sentence, instead of “information **SK** (Comments):

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		We would like to add the term "online" to the advertisement in order to achieve more clarity and accuracy. **LU** (Comments): Does "remuneration" only mean pecuniary remuneration, or could it also be understood for example as data or other benefits in kind? **DE** (Comments) The definition is too narrow. It only covers advertising messages from natural or legal persons. However, parts of non-commercial or political advertising could also originate from groups that do not qualify as legal persons; in addition, the question could arise as to whether there could be sub-areas of non-commercially offered intermediary services that should also be covered (e.g., pro bono political advertising).
(o) 'recommender system' means a fully or partially automated system used by an online platform to suggest in its online interface specific information to recipients of the service, including as a result of a search initiated by the recipient or otherwise determining the relative order or prominence of information displayed;	**SK** (Drafting): (o) 'recommender system' means a fully or partially automated system used by an online platform to suggest in its online interface specific ~~information~~content to recipients of the service, including as a result of a search initiated by the recipient or otherwise determining the relative	**IT** (Comments): It would be important to clarify whether such recommender system could also be referred to the ones featured within search engines, also in light of the provisions addressing very large online platforms. **SK**

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	order or prominence of information displayed;	(Comments): *We suggest to use the term 'content', as the recommender systems also decides on the order of the goods and services on the online marketplaces. These manage also the display of online advertisements.*
(p) 'content moderation' means the activities undertaken by providers of intermediary services aimed at detecting, identifying and addressing illegal content or information incompatible with their terms and conditions, provided by recipients of the service, including measures taken that affect the availability, visibility and accessibility of that illegal content or that information, such as demotion, disabling of access to, or removal thereof, or the recipients' ability to provide that information, such as the termination or suspension of a recipient's account;	**RO** (Drafting): p) 'content moderation' means the activities undertaken by providers of intermediary services aimed at detecting, identifying and addressing illegal content or information incompatible with their terms and conditions, **which are** provided by recipients of the service.~~,including measures taken that affect the availability, visibility and accessibility of that illegal content or that information, such as demotion, disabling of access to, or removal thereof, or the recipients' ability to provide that information, such as the termination or suspension of a recipient's account~~	**ES** (Comments): The definition of "content moderation" could **indicate that the activities can be, at least partially, automated,** depending on the decision made by the intermediary in this regard. **BE** (Comments): We would like to stress that the role of content moderation should always be in balance with the prohibition of censorship and the respect for fundamental rights when engaging in preventive measures. Defining illegal content and related enforcement should always be the competence of individual EU member states or Union Law, as the case may be. **RO** (Comments): Content moderation is defined as an activity aimed at *detecting information incompatible with their terms and conditions*. This definition should

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		be concise and avoid explanations of any kind, because these explanations are meant to be given in the relevant article. **DE** (Comments) The term "content moderation" is defined too narrowly. The rules on content moderation should cover all decisions on how content is published, as e.g. content ranking, timing as well as fact-checking notices have a significant influence on the visibility of content and the respective expression of opinion and democratic discourse. In order to ensure that all fundamental rights affected are protected, it is crucial that the decisions of the platform operators in this regard are taken solely on the basis of narrowly defined and transparent criteria that respect pluralism of opinion and are taken only after careful and targeted examination, and that there is scope for effective review, i.e. appeal procedures and judicial redress.
(q) 'terms and conditions' means all terms and conditions or specifications, irrespective of their name or form, which govern the contractual relationship between the provider of intermediary services and the recipients of the services.	**DE** (Drafting) "q) ''terms and conditions' means all terms and conditions or specifications, irrespective of their name or form, which govern the contractual relationship between the provider of intermediary	**LU** (Comments): Why did the Commission choose a different definition than the one in the platform-to-business Regulation?

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	services and the recipients of the services**, <u>and are unilaterally determined by the provider of online intermediary services, that unilateral determination being evaluated on the basis of an overall assessment, for which the relative size of the parties concerned, the fact that a negotiation took place, or that certain provisions thereof might have been subject to such a negotiation and determined together by the relevant provider and business user is not, in itself, decisive;".</u>** **<u>"(r) "Dark pattern" means a user interface designed or manipulated with the substantial effect of subverting or impairing user autonomy, decision-making or choice, as further defined by regulation".</u>**	**DE** (Comments) The definition of terms and conditions has to be expanded to include the aspect of the unilateral provision of such terms and conditions. Regulation (EU) 2019/1150 (P2B Regulation) e.g. also refers to the unilateral provision of general terms and conditions, the wording of which can serve as model for the definition in this Regulation. Digital goods and services for consumers should be designed in a user-friendly way from the outset ('by design' and 'by default'). In this context there should be a legal requirement for websites and digital services to be designed in a fair, appropriate and user-friendly way. This also includes stronger measures against misleading 'design tricks' and 'psychological tricks'. Therefore, we suggest to add a definition of dark patterns and establish rules on them in chapter III e.g. a prohibition to deploy dark patterns to obtain agreement (see California Privacy Rights Act of 2020 (CPRA)).
Chapter II – Liability of providers of intermediary services		**SK** (Comments): *We find, that with regard to limited liability in articles 3,4,5 the exceptions to liability should be sufficiently clearly justified and fairly determined*

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		to all parties involved. We do not see a sufficient definition of justification in the DSA proposal. **CZ** (Comments): Regarding Articles 3-7, the **CZ** appreciates that the Commission built on the experience with the eCommerce Directive and kept its core principles preserved. **EL** (Comments) **Chapter II-Articles 3 to 9**: We support these provisions in order to ensure the availability of content on the internet and protect the fundamental rights of users. More specifically, Article 5 (3): We consider that the phrase "and reasonably informed" can be deleted as unnecessary, as the concept of "average consumer", according to case law of CJEU, includes "the consumer who has the usual information and is reasonably attentive and informed" (C-186/16, p. 47). In addition, **we propose to have a special provision for cases where an intermediary service is addressed to specific groups**, for example online games for children. In such cases it could be envisaged that the belief that the product or service is provided by the online platform is viewed from the perspective of the average consumer of that specific group. A similar distinction is made in consumer protection law i.e. in Article 5 (3) of

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		Directive 2005/29 on unfair commercial practices, commercial practices which may substantially distort the economic conduct of a specific group of consumers who are particularly vulnerable to this practice or to that product due to mental or physical disability, age or disability, in such a way that the trader can reasonably predict it, the practices are assessed in the light of the average member of that group and not of the average consumer.
Article 3 *'Mere conduit'*		
1. Where an information society service is provided that consists of the transmission in a communication network of information provided by a recipient of the service, or the provision of access to a communication network, the service provider shall not be liable for the information transmitted, on condition that the provider:	**RO** (Drafting): 1. Where an information society service is provided that consists of the **act of** transmission in a communication network of information provided by a recipient of the service, or the **act of** provision of access to a communication network, the service provider shall not be liable for the information transmitted, on condition that the provider:	**IT** (Comments): On art. 3, 4 and 5, it would be appropriate to specify whether the responsibility lies with the natural person or the entity (on the model of law 231/2001). **RO** (Comments): Addition seems necessary for a better understanding . The word act is also used in para.2) **DE** (Comments)

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		It has to be clear, that such platforms that have the purpose of accessory to crimes, especially to criminal trade, are excluded from any privileges. In these cases, exclusion does not require actual knowledge of certain illegal activities. The fact alone that a service offers encrypted transmissions should not in itself qualify as "purpose of accessory to crimes". Instead, a clear and comprehensive definition is needed. **LV** (Comments) Domain registries and registrars (domain name system providers) 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 do not qualify for any of the intermediary services types ("mere conduit", "caching", hosting) and exemption from liability for them is not clear. Given that, definition of "mere conduit" should be extended to include domains name system service providers. It could be done, for example, by extending the scope of "mere conduit" definition and by inclusion of electronic communications network addressing into it

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(a) does not initiate the transmission;		
(b) does not select the receiver of the transmission; and		
(c) does not select or modify the information contained in the transmission.		
2. The acts of transmission and of provision of access referred to in paragraph 1 include the automatic, intermediate and transient storage of the information transmitted in so far as this takes place for the sole purpose of carrying out the transmission in the communication network, and provided that the information is not stored for any period longer than is reasonably necessary for the transmission.		
3. This Article shall not affect the possibility for a court or administrative authority, in accordance with Member States' legal systems, of requiring the service provider to terminate or prevent an infringement.		**IT** (Comments): When required to "terminate an infringement", the mere conduit has no longer the obligation of *"acting expeditiously to (...) disable access to the illegal content",* as set in art.4e (for catching) and 5b (for hosting). Such provision does not seems consistent with

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		Decree 70/2003 on e-commerce, transposing Directive 2000/31/EC. According to art.17.3, after the order has been issued by judicial or administrative court, the service provider has the obligation of acting promptly to disable access.
Article 4 *'Caching'*		
1. Where an information society service is provided that consists of the transmission in a communication network of information provided by a recipient of the service, the service provider shall not be liable for the automatic, intermediate and temporary storage of that information, performed for the sole purpose of making more efficient the information's onward transmission to other recipients of the service upon their request, on condition that:	**HU** (Drafting): *„ ...performed for the sole purpose of making more efficient **and more secure** the information's onward transmission to other recipients…"*	**IT** (Comments): On art. 3, 4 and 5, it would be appropriate to specify whether the responsibility lies with the natural person or the entity (on the model of law 231/2001). **HU** (Comments): Currently, caching CDN providers (e.g. CloudFlare) also provide a number of other services, typically of a cybersecurity nature (e.g. data encryption, DoS protection, etc.) as part of the caching service, so it would be useful to add text for security purposes. **DE** (Comments) It has to be clear, that such platforms that have the purpose of accessory to crimes, especially to

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		criminal trade, are excluded from any privileges. In these cases, exclusion does not require actual knowledge of certain illegal activities. The fact alone that a service offers encrypted transmissions should not in itself qualify as "purpose of accessory to crimes". Instead, a clear and comprehensive definition is needed.
(a) the provider does not modify the information;		**HU** (Comments): As the concept of information also includes content transmitted over electronic communications networks and related metadata, a restriction on the modification of all information may void the provision, as caching providers typically modify content-related metadata to optimize network transmission (e.g. "anycast routing"). It would be more appropriate to link the exemption to changes to "content" instead of "information," although in many cases caching providers also modify the content itself for network optimization (e.g. media transcoding with degraded quality).
(b) the provider complies with conditions on access to the information;		

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(c) the provider complies with rules regarding the updating of the information, specified in a manner widely recognised and used by industry;		
(d) the provider does not interfere with the lawful use of technology, widely recognised and used by industry, to obtain data on the use of the information; and		
(e) the provider acts expeditiously to remove or to disable access to the information it has stored upon obtaining actual knowledge of the fact that the information at the initial source of the transmission has been removed from the network, or access to it has been disabled, or that a court or an administrative authority has ordered such removal or disablement.	**IT** (Drafting): (e) the provider acts expeditiously to remove or to disable access to the information it has stored ***upon obtaining actual knowledge of the fact that information at the initial source of the transmission are illegal or related to illegal activities, or upon obtaining actual awareness of facts or circumstances from which the illegality of the same informations is apparent,or*** upon obtaining actual knowledge of the fact that the information at the initial source of the transmission has been removed from the network, or access to it has been disabled, or that a court or an administrative authority has ordered such removal or disablement.	**IT** (Comments): It is not always possible to obtain the removal or disable access to illegal contents (provided by recipients of the service that are not easily identifiable or traceable). Therefore, also for the purpose of better coordination of article 4 with article 5, we suggest to provide for the disabling of access or the removal of information temporarily stored by the caching provider - in addition to the hypotheses already provided - even when the provider of services becomes aware that the information is illegal or related to illegal activities or becomes aware of facts or circumstances that make their illegality manifest. In this way, greater protection would be guaranteed through an intervention on search

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		engines, based on caching services, aimed at preventing the retrieval of illegal information still on the web. The modification must be coordinated with consistent amendments to art. 14 - notification and action mechanism - and 15 - motivation - in order to extend the additional provisions of Section II also to caching providers. **BE** (Comments): We understand from the last part of the sentence that an order issued by a court or an administrative authority should lead to actual knowledge of the provider. Why isn't it the case also in article 5.1 b) ? See also our comment on recital (22) Furthermore, could you confirm that providers of intermediary services should never be responsible for a content provided by a media service? Indeed, such content already complies with national and European legislation, is guided by journalistic and editorial principles and is monitored and supervised by a competent NRA. It would then be difficultly understandable if that content should be removed, modified or blocked by a provider of intermediary service. It is important that the editorial responsibility of audiovisual media services (and even of publishers for that matter) is protected.

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2. This Article shall not affect the possibility for a court or administrative authority, in accordance with Member States' legal systems, of requiring the service provider to terminate or prevent an infringement.		
Article 5 Hosting		**ES** (Comments): **Mentions are lacking to the jurisprudential criteria advanced by the European Court of Justice (for all, the L'Oreal / eBay Judgment), or others, in relation to the active or passive / neutral nature of the intermediary.** Those could be included in recital 18, which comes from recital 42 in Directive 2000/31. In recent years, the legal uncertainty, about the meaning of an "active role" of such a kind as to give it "knowledge" of, or "control over" the information, has been problematic. **DK** (Comments): We regret that the Commission has chosen not to set clearly defined timeframes for acting on notifications on illegal content. We would further prefer to have two sets of timelines with a shorter timeframe for high impact content. In this regard we are also concerned that the

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		DSA will not adequately address the fragmentation in national legislation regarding notice and action procedures. From the Danish side we agree that 'hosting services' still should be protected from the liability exemption as seen in the e-commerce directive. However, we also find, that the liability regime in the DSA should reflect the role a digital service provider plays in the value chain, and the responsibility to act should correspond to the kind of measures the service has at its disposal. Especially, larger digital platforms have the ability to take proportionate and pro-active measures to combat illegal content on their services but lack the legal incentive to do so. This is due to the distinction made between active and passive actors entails a disincentive to act pro-actively to tackle illegal content. Thus, we regret that the DSA does not contain proactive requirements for the platforms to detect illegal content.
		SE (Comments): **SE** would appreciate a clarification on what provisions laid down in the proposal that could trigger the limitation of liability set out in Article 5?

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1. Where an information society service is provided that consists of the storage of information provided by a recipient of the service the service provider shall not be liable for the information stored at the request of a recipient of the service on condition that the provider:		**IT** (Comments): 1) On art. 3, 4 and 5, it would be appropriate to specify whether the responsibility lies with the natural person or the entity (on the model of law 231/2001). 2) The active role of the intermediary represents the fundamental element that should be considered verifying whether the provider is liable or not. Therefore it could be useful a clarification on what are the conditions that make a platform "active" and therefore able to have control and knowledge on the contents (only recital 18 tries to explain the difference). This clarified difference between active and passive hosting providers should also consider that also passive “ones” have certain duties, has reported by recitals 40-47-48 of E-commerce Directive, regarding duties for all intermediaries. Plus, the CJEU jurisprudence stated that a certain degree of control must also be applied to some passive providers; for example in 2019, in the famous case involving Facebook, the Court stated that a specific monitoring obligation applies to identical and equivalent information (i.e. content already declared illegal) for platforms (judgment in case C - 18/18, Eva Glawischnig - Piesczek v Facebook Ireland Limited, 3 October 2019). Liability exemption should finally have clear and narrow boundaries, following CJEU case-law

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		and certainty needs. **DE** (Comments) It has to be clear, that such platforms that have the purpose of accessory to crimes, especially to criminal trade, are excluded from any privileges. In these cases, exclusion does not require actual knowledge of certain illegal activities. Additionally, providers of infrastructure for such platforms must be excluded from privileges in case of knowledge of the criminal purposes of the platforms.
(a) does not have actual knowledge of illegal activity or illegal content and, as regards claims for damages, is not aware of facts or circumstances from which the illegal activity or illegal content is apparent; or		
(b) upon obtaining such knowledge or awareness, acts expeditiously to remove or to disable access to the illegal content.		**LU** (Comments): Luxembourg wonders why removal or disabling access of illegal content are the only two options for "action" by the service provider. Indeed, in some cases, the "freezing" or securing of the online content should be preferred to removal in order to help fight the illegal activity at the source (for example getting to the perpetrators),

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		and give more means to the law enforcement authorities to investigate. Possibly, "disabling access" could be defined as including such a "freeze" and incentivized in certain cases.
2. Paragraph 1 shall not apply where the recipient of the service is acting under the authority or the control of the provider.		
3. Paragraph 1 shall not apply with respect to liability under consumer protection law of online platforms allowing consumers to conclude distance contracts with traders, where such an online platform presents the specific item of information or otherwise enables the specific transaction at issue in a way that would lead an average and reasonably well-informed consumer to believe that the information, or the product or service that is the object of the transaction, is provided either by the online platform itself or by a recipient of the service who is acting under its authority or control.	**SK** (Drafting): 3. Paragraph 1 shall not apply with respect to liability under consumer protection law of online platforms allowing consumers to conclude distance contracts with traders, where such an online platform presents the specific item of information or otherwise enables the specific transaction at issue in a way that ~~would~~could lead an average and reasonably well-informed consumer to believe that the information, or the product or service that is the object of the transaction, is provided either by the online platform itself or by a recipient of the service who is acting under its authority or control. **DE** (Drafting) 3. "Paragraph 1 shall not apply with respect to liability ~~**under consumer protection law**~~ of	**AT** (Comments): This paragraph seems to run into the void, since there is no provision of union law that actually holds the online marketplace liable for creating the erroneous impression that the consumer is contracting with the platform and not with a supplier. Futhermore, there is no situation thinkable in which this provision could apply: if the online marketplace presents the specific item in this specific way, it plays an "active role" according to the ECJ judgement C- 324/09, and wouldn't be eligible for the exemption provided for in paragraph 1 anyway. **IT** (Comments): It would be appropriate to reformulate the paragraph taking into account the jurisprudence that over the years has further limited the scope

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	online platforms allowing consumers to conclude distance contracts with traders, where such an online platform **has a predominant influence over the trader or** presents the specific item of information or otherwise enables the specific transaction at issue in a way that would lead an average and reasonably well-informed consumer to believe that the information, or the product or service that is the object of the transaction, is provided either by the online platform itself or by a recipient of the service who is acting under its authority or control. **When assessing whether the consumer can reasonably rely on the online platforms predominant influence over the trader, the following criteria may be considered in particular:** **a) The distance contract is offered exclusively through facilities provided on the online platform;** **b) The online platform exclusively uses payment systems which enable the online platform to withhold payments made by the customer to the supplier;** **c) The terms and conditions of the distance contract are essentially determined by the online platform;** **d) The price to be paid by the consumer is set by the online platform;** **e) The marketing is focused on the online**	of the exemption from liability for hosting service providers (for example, for "active" platforms, which assist in the optimization and presentation of commercial offers). **ES** (Comments): This provision makes sense to guarantee marketplaces do not present third-party products as their own, causing confusion to the final consumer. However**, the specification of some of the objective criteria and circumstances that would be relevant to clarify when this situation occurs is missing**. It could be done in recital 23. **SK** (Comments): *Related to Art. 1 (5), DSA makes preference to special consumer protection law (lex specialis derogate legi generalis). If a special consumer protection law does not include hosting provider as a trader or other responsible person, could it be outperformed by a general law?* *If so, we prefer to extend this exemption (in the context of the conclusion of distance contracts between consumers and traders) to other non-commercial relations.* *SK would appreciate a better definition of the scope of the liability. What is the range of the liability – is the liability of a hosting provider*

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	platform and not on the trader; or **f) The online platform promises to monitor the conduct of traders and to enforce compliance with its standards beyond what is required by law."**	*exactly the same as a liability of a trader according consumer protection law?* **LU** (Comments): According to recital 17, the DSA does not «provide a positive basis for establishing when a provider can be held liable, which is for the applicable rules of Union or national law to determine ». How are we to understand this paragraph which seems to determine a liability basis for online platforms (as opposed to the exemptions to liability)? **DE** (Comments) We suggest the deletion of the limitation on consumer protection law; the exception should apply to all claims that may arise from the contract. Furthermore, we suggest an extension of the exception in the case of a predominant influence of the online platform over the trader. We also suggest to insert a list of criteria for which such predominant influence applies (adoption of the criteria from "Article 20: Liability of the Platform Operator with Predominant Influence" of the European Law Institutes Model Rules on Online Platforms). Moreover, we wonder whether the liability exemption in para. 1 should still apply in case of

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		a violation of due diligence obligations under Chapter III of the draft DSA (in particular the violation of the obligations under Art. 22).
4. This Article shall not affect the possibility for a court or administrative authority, in accordance with Member States' legal systems, of requiring the service provider to terminate or prevent an infringement.		
Article 6 Voluntary own-initiative investigations and legal compliance		**ES** (Comments): This clause would be unnecessary, since Directive 2000/31 allows good faith measures to be taken to comply with the legal framework and enforce "terms and conditions" (recital 40), without losing the liability exemption. In other words, the Commission has repeatedly indicated that voluntary proactive measures to detect and remove illegal content do not automatically mean the loss of the liability exemption. Although the idea of adding this article is shared**, we insist in the need, expressed in our comment in art. 5, to guarantee legal certainty and establish objective criteria based on the jurisprudence of the CJEU that allow discerning when an intermediary acquires an "active" role** of such a kind as to give it knowledge or control over the information, and consequently, lose the liability

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		exemption. **SK** (Comments): *We would welcome to extend the support of voluntary investigations of providers of intermediary services, that they could not be held liable (on law or contractual basis). E. g. we suggest a harmonisation of precautionary measures (taken by providers of intermediary services), if there is a suspicion of illegal content.* **EL** (Comments) **Article 6**: We agree with Article 6 and the possibility for providers to take an active role in dealing with illegal content as it gives the necessary flexibility to self-regulate their actions. We also agree with the provision that any voluntary action taken by providers against illegal content should not be a sufficient condition for them to be held liable for the content, as they may act in good faith and diligently (recital 25). However, because it can be considered that a provider with the voluntary measures it takes (for example introduction of a content filter) has become aware of the illegal content, which in fact should be removed immediately (recital 22) and therefore not entitled to be excluded from liability; in our view the framework of liability should be better clarified so as not to discourage providers from

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		taking voluntary action. Moreover, in recital 27, it would be appropriate to clarify the liability status by category of service, given the complex technical nature of these services, in order to be clear of the exemption from their liability in the context of their voluntary own-initiative investigations. Finally, **we propose to add in article 6 reference to technical auxiliary functions.** **DE** (Comments) We welcome the clarification that the mere fact, that providers undertake voluntary own-initiative investigations etc. does not lead to the result of losing the exemption from liability referred to in Articles 3, 4 and 5. However, the requirements of Article 6 are too vague. For instance, how successful do voluntary measures have to be? What voluntary actions would be considered as not undertaken in a "diligent manner"? The proposal lacks specification in this regard This could lead to considerable legal uncertainty for authorities, users and platforms. It should be ensured, that voluntary actions are undertaken in a manner that prevents and minimizes any possible negative effects for the rights of users, especially their right to freedom of expression. We welcome the explanation by the COM, that if the provider of hosting services has obtained

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		actual knowledge in the context of the voluntary measures employed, the provider can only benefit from the liability exemption if it acts expeditiously to remove or disable access to such content. In any case the proposal lacks substantial safeguards regarding voluntary measures by the providers. The often automated processes carry a high risk potential which is not fully adressed by the proposal. The risks of automated systems lie in their lack of transparency for the general public and the opacity of the assumptions underlying their decisions. Special safeguards should be laid down when it comes to the use of systems that are likely to undermine the protection of individual rights or the interests of civil society. The obligation for very large online plattforms to assess and minimise risks are not sufficient in this regard. Obligations could include inter alia: mandatory requirements on training data, including but not limited to documentation obligations; access to the automated systems including the training data for supervisory and research purposes; information rights for those affected by automated decision making systems

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Providers of intermediary services shall not be deemed ineligible for the exemptions from liability referred to in Articles 3, 4 and 5 solely because they carry out voluntary own-initiative investigations or other activities aimed at detecting, identifying and removing, or disabling of access to, illegal content, or take the necessary measures to comply with the requirements of Union law, including those set out in this Regulation.	**AT** (Drafting): Providers of intermediary services shall not be deemed ineligible for the exemptions from liability referred to in Articles 3, 4 and 5 solely because they carry out <u>in good faith and in a diligent manner</u> voluntary own-initiative investigations or other activities aimed at detecting, identifying and removing, or disabling of access to, illegal content, or take the necessary measures to comply with the requirements of Union law, including those set out in this Regulation.	**AT** (Comments): Add the requirement "*in good faith and in a diligent manner"* from recital 25. **IT** (Comments): 1) we have doubts about the effectiveness of art. 6. There is a risk that voluntary investigations may in fact be carried out only by the largest platforms (which have more resources), causing problems of competitiveness and inequity. 2) Such virtuous behaviours should be promoted, at least: otherwise the providers are not inclined to the own-initiative, which from their point of view is only a burden in economic and organizational terms. For example, an incentive system could be planned. **SE** (Comments): **SE** would appreciate confirmation that it is correctly understood that the provision in Article 6 is concerned with the distinction between active and passive intermediary services (i.e. the general requirements on neutrality of the service). This distinction is not codified in the articles in the Digital Services Act (mentioned in recitals only). Is there a risk the article might be

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		misunderstood in its current setting? Given the exemption set in Article 6, **SE** would appreciate clarification on which obligations, if any, are imposed on platforms that obtain "actual knowledge of illegal activity or illegal content" as a result of "voluntary own-initiative investigations"? Has the Commission considered to clarify the provision in some regards, to make it clear the 'good samaritan' provision applies to the distinction between active and passive intermediaries? This could for example be done by introducing an article codifying the general requirements for neutral/passive intermediary services in line with case law of the CJEU. **CZ** (Comments): **CZ** appreciates the clarification that voluntary measures to address illegal activities do not remove intermediaries from the scope of the liability exemptions. **RO** (Comments): **Algorithmic amplification practices or recommendation algorithms could lead to the liability of the providers? We appreciate an explanation for such situations.**

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Article 7 No general monitoring or active fact-finding obligations		**IT** (Comments): With specific reference to **IPR**: we shoud reflect on possible balance between "no general monitoring obbligation" and the fact that providers have no (legal) liability before the infringement is ascertained and may only act after an IPR infringement has been committed and notified by the IPR holders or by the trusted flaggers (set out in Article 19), or act upon the request of an order (set out in Article 8(1)). A good starting points are recital 40-47-48 of Ecommerce directive, regarding duties of care for all intermediaries, in particular for passive ones, without prejudice to Art. 15 of the directive itself. The CJEU states that Art. 15 of the ECD does not mean an absolute ban; a certain degree of control must also be applied to some passive or active operators (see case C - 70/10 SABAM VS Scarlet, C - 360/10 SABAM vs Netlog) The Facebook 2019 case reflects this logic, stating that a specific monitoring obligation applies to identical and equivalent information for passive platforms (judgment in case C - 18/18, Eva Glawischnig - Piesczek v Facebook Ireland Limited, 3 October 2019).

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		HU (Comments): We welcome the fact that the proposal prohibits active fact-finding obligations for online platforms. **ES** (Comments): **ES** supports the prohibition of general monitoring, which is already contained in article 15(1) of Directive 2000/31, and which could lead to the excessive and indiscriminate removal of content and affect fundamental rights of users, such as the freedom of expression and access to information. The above is understood **without prejudice to specific monitoring obligations, nor should it affect orders from competent authorities** (recital 28). **LU** (Comments): We support the maintaining of this principle from the e-Commerce Directive. However, we wonder the extent to which it still stands as a horizontal rule given that the Copyright Directive (DSM) derogates from this principle. **DE** (Comments) We establish that Art. 15(1) eCD ("no general obligation to monitor") has been transferred to

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		Art. 7 of the proposal. However, we wonder where Art. 15(2) eCD ("MS may establish obligations for information society service providers promptly to inform the competent public authorities of alleged *illegal activities* undertaken or information provided by recipients of their service […]."") went. It is unclear whether Art. 15(2) eCD is now to be found in Art. 21(1) of the proposal – although Art. 21(1) is limited to "serious criminal offence involving a threat to the life or safety of persons". In addion. the relationship between Art. 7 and Chapter III is unclear. Does Art. 7 e.g. apply to the obligation of very large online plattforms to adress and minimise systemic risks stemming from the functioning and use made of their services in the Union which is laid down in Art. 26 and Art. 27? Finally, as said before, it should be underlined that Art. 7 does not apply/provide privileges to any platform having the purpose of accessory to crimes, especially to criminal trade.
No general obligation to monitor the information which providers of intermediary services transmit or store, nor actively to seek facts or circumstances indicating illegal activity shall be imposed on those providers.		**IT** (Comments): The article is acceptable to the extent that it prohibits the imposition of general surveillance obligations, which could excessively limit the

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		freedom of expression and the freedom to receive information from users. A generalized obligation to monitor illegal content could actually penalize smaller companies and concentrate digital services in the hands of a few intermediaries equipped with adequate structures to meet the obligation. **SE** (Comments): **SE** notes that the provision fully corresponds to that currently contained in Article 15 of the E-Commerce Directive (Directive 200/21/EC) and it is the preliminary view of the Swedish government to welcome the transposing of the provision into the regulation. **CZ** (Comments): **CZ** appreciates that the Commission preserved the core principle of eCommerce Directive - prohibition of general monitoring obligations - in DSA. **DE** (Comments) It should be clarified that sectoral due diligence obligations for online platforms (i.e. e-commerce platforms/online marketplaces and other platforms that can be used for transactional services such as commercial transactions) are not excluded by Art. 7. These platforms should be

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		legally obliged to take possible, reasonable and, where appropriate, automated due diligence measures to protect consumers (no blanket upload filters). To the extent that it is possible for them to do so at economically reasonable expense and effort, these platforms should ensure that no illegal, prohibited or counterfeit products are advertised and no fake shops or other fraudulent offerings appear on the platform. Especially for very large online platforms it is not an undue burden to check user data with previous findings of illegal activity or to carry out automated searches for indications of illegal activity (adjusted to known patterns of such activity), possibly in cooperation with COM or the competent Digital Services Coordinator.If such a due diligence requirement were stipulated in the proposal, the consequence of failure to comply must also be discussed. The same consideration applies to the illegal trade with specimens of protected animal and plant species or their products. A number of recent studies show that intermediary services are a central hub and facilitator for buyers and sellers of protected species. The same consideration applies to the trade with stolen ID documents of MS. Such platforms are a central hub and facilitator for human trafficing, violation of the European external borders and illegal access to social security and social

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		insurance benefits. Given the severity of the of the situation, we ask to make sure that the online trade with ID documents of MS is impeded by the regulation. In addition, for large online platforms it is not an undue burden to be obligated to report the trade with ID documents to the law enforcement authorities.
Article 8 Orders to act against illegal content		**FI** (Comments) **WRITTEN COMMENTS OF FINLAND** Articles 8 and 9 of the DSA Finland emphasizes that Digital Services Act is still a new proposal and needs to be processed in the Finnish parliament. Therefore, we do not have an official position until the proposal has been discussed in our national parliament. During the last WP meeting, the Commission explained at length the content, objectives of and reasoning behind the proposed articles 8 and 9 of the DSA. The aim of the proposed articles is sufficiently clear. However, we find the content as well as the usability of the articles still very unclear. The relationship between the articles and the competence of the relevant national judicial or administrative authority to issue such orders on the basis of national law against providers in another MS as well as the question of enforcing them cross borders need to be understood.

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		Therefore, we still have reservation on articles 8 and 9 as they now stand. We are also considering whether the Digital Service Coordinator of the country where the service provider is receiving the order should be involved in the process some way. **IT** (Comments): There could be possible interference with the administrative cooperation mechanism for consumer protection pursuant to EU Regulation 2394/2017. Until now the cross-border application of Directive 2000/31 / EC was ensured through the instruments of Reg. 2394/2017, therefore the creation of a **parallel network of enforcers** for digital markets raises some concerns regarding the coordination between the two laws. For example, the power of the national judicial and administrative authorities to send an order to the intermediary service providers to oppose or remove specific illegal content, pursuant to article 8 of the proposal, is already provided for in article 9, paragraph 4, letter g), number ii), of EU Regulation 2394/2017. It is not clear, however, whether the more detailed conditions referred to in paragraph 2 of article 8 are also applicable to the corresponding instrument that can be used in the field of consumer protection. Similar considerations concern the power to

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		address requests for information to intermediary service providers, with possible sanctions, referred to in Article 9 of the proposal - also already provided for in Article 9 of EU Regulation 2394/2017. **HU** (Comments): Articles 8 and 9 break the country of origin principle and allow the authorities of the country of destination to turn directly to the platform for illegal content or requests for information. In our view, specific procedural deadlines could be considered for the platforms in order to apply harmonized deadlines within the EU. In practice, it would be easier for the service provider to respond to requests from authorities in different Member States in a more uniform way. **ES** (Comments): **ES** value positively this article, which does not affect competent authorities in their respective competences. However, its **application must be carried out in accordance with and without prejudice to national applicable laws**, which could include prior judicial authorization in certain cases, as explained in recitals 29 et seq, and **not affect sectoral legislation** such as the Regulation against terrorist content (TCO). Include the possibility to issue an order to act against a piece of illegal content and **further**

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		reapparences of the same content (**notice & stay down**), without the need to receive a new order from the competent authority. In Judgment C-18/18 (Eva Glawischnig-Piesczek / Facebook Case), the ECJ indicates that Directive 2000/31/EC (whose articles related to liability are transferred to the DSA) does not oppose a court of a Member State from being able to oblige a provider of data hosting services (in this case, Facebook) to delete the data that it stores, and whose content is **identical** to the information previously declared illegal, or to block access to it, as well as to delete the data that it stores, and whose content is **similar** to that of an information declared illegal previously. The ECJ clarifies that although the regulation must not require service providers to carry out general monitoring or to carry out active searches for facts or circumstances that indicate illicit activities (Article 7), it must allow and encourage the development and the use of automated, proportionate and effective tools that prevent the reappearance of illegal content that has already been removed previously (as is the case in sectoral regulations such as the Copyright Directive for the protection of intellectual property rights) without affecting fundamental rights. Such a provision on stay-down must be included in relation to articles 8 and 14.

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		DK (Comments): ***General comments regarding the understanding of article 8 and 9:*** If article 8 and 9 mean that the authorities in another Member State can issue orders to providers of intermediary services established in Denmark, it can possibly give rise to constitutional problems in Denmark. A concrete question: If a comment on a social media platform is illegal in the Member State where the commenting user is living, could the Member State of the user then give direct orders to the online platform established in another Member State – and this without cooperation with the Member State of the online platform's establishment? Moreover, would the online platform be obliged to remove this content in all Member States? We are very interested in hearing more about the interplay between the rules set out in article 8 and 9 and the existing procedural EU rules on recognition and enforcement. **IE** (Comments): It is considered that this Article may be unenforceable in a cross border context given that Article 40 limits the jurisdiction of Digital Services Co-ordinators to the enforcement of

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		Chapters 3 and 4 of this Regulation. It is understood that the Commission believes that the powers of DSCs in Article 42 and the general obligation to co-operate cross borders in Artcle 45 will be sufficient to ensure such enforcement because of the reference to "this Regulation". However there is a considerable risk that those words would be interpreted by a Court in the light of the contents of Article 40 as it confers a specific and limited jurisdication on the DSCs. This wouldd take the contents of Chapter 2 outside the perview of DSCs other than with respect to keeping records. **LU** (Comments): Given the possibility for disagreements or backs-and-forths between intermediaries and authorities, we suggest a mediating role for the Commission in this process, in particular when it is about illegal content as defined in EU law. Luxembourg generally holds a scrutiny reseve on this Article pending consultation with concerned Ministries. **EL** (Comments) <u>Articles 8 and 9:</u> We take note that Article 3 of the "E-Commerce Directive" is still applicable, according to which each MS ensures that the information society services provided by an organization established in its territory comply

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		with its applicable national provisions, which fall within the coordinated field and that MS may not restrict the free movement of information society services originating in another MS. We also take note that in the cross-border cases the countries of origin and destination should cooperate. It is also important to note that Articles 8 and 9 do not constitute empowering provisions, and that the obligation to comply with the order does not constitute an obligation under the DSA proposal, but under national law. In view of the above, **we consider that these issues should be explicitly clarified**, so that there is no doubt as to whether the illegality of the content is determined by the law of the country of origin or (also) by the law of the country of destination, and which is the national judicial or administrative authority, which the provider is obliged to comply with its order. Furthermore, it is not clear which court the intermediary service provider will go to (in its country of origin or in the country that issued the order), so as to defend its case concerning an order. **The "general provisions" do not contain any provision regarding the receipt of administrative acts by foreign countries. Also, on a practical level, if it challenges an order of Article 9 in the court of the country of establishment, it is not clear how the judge will be able to decide the legality of a foreign administrative act, and how the foreign**

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		authority that issued the act, will be present and be represented in this court. Finally, we value the importance of strengthening the level of technical capacity of public administration in MS, of effective cooperation at EU level, and of the critical role of supervision and enforcement to ensure the success of this legislative intervention. **DE** (Comments) • We assume that a MS shall be allowed to set sector-specific (and European law-compliant) exceptions that contain obligations to take action against specific sorts of illegal content. Such national regulation would *then* be the legal basis for an enforcement order under Art. 8 of the proposal. Is this correct? • In any case, we ask for a clearer description ofthe relationship between Art. 8 and 9 and the existing national and internatonal procedural rules. • For us, it is unclear how Art. 8 and 9 can be reconciled with the existing national procedural rules and the rules on judicial and administrative cooperation, for example in the area of civil or criminal law. It should be clarified that Art. 8 and 9 do not affect the instruments on PIL / judicial cooperation in civil law matters. A recital and possibly a clarification in Art. 1(5) would be a better

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		way. • E.g. would an order under the new regime be equivalent to a formal delivery or notice under national law with all legal consequences, like the start of time limits ? Do Art. 8 and 9 complement the existing (national) requirements regarding orders to act against illegal orders / provide information, e.g. regarding the elements the order has to contain? • How does DSA interact with the Market Surveillance Regulation 2019/1020 regarding the competent authorities and their powers, also in light of the obligation of MS in Art. 38 to designate Digital Service Coordinators? • We also wonder which competent national judicial or administrative authorities should be able to issue such orders under Art. 8. Should criminal proceedings be included here at all in accordance with the meaning and purpose of the DSA? Does "action against specific illegal content" in Article 8 (1) also cover criminal prosecution or, because only the content and not persons are to be "acted against", its removal? • Should MS be given leeway in identifying the competent authorities which could be defined in the necessary legislation for putting the Regulation in force on a national level, or should all national authorities be subject to Articles 8 and 9 if they "take

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		action" against illegal content or request information about users in their respective areas of responsibility? Are EU authorities covered by Art. 8 or 9? How can the DSA take into account the different authorities at the national level, i.e. how can be made sure that the local authorities can intervene within their own scope of authority with regards to violations within their jurisdiction? **LV** (Comments) 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 the intermediary service provider. Such measure would be disproportional in comparison to targeted deletion of illegal content by online platform itself and should be used only as a last resort measure. However, Article 8 does not stipulate that national judicial or administrative authorities must ascertain whether a third party has tried to

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		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. Given that, Article 8 or at least Recital 83 should include clear and unambiguous obligation for law enforcers to respect the principles of proportionality and graduality. An example is the legal structure contained in Article 9, paragraph four (g) of the CPC Regulation
1. Providers of intermediary services shall, upon the receipt of an order to act against a specific item of illegal content, issued by the relevant national judicial or administrative authorities, on the basis of the applicable Union or national law, in conformity with Union law, inform the authority issuing the order of the effect given to the orders, without undue delay, specifying the action taken and the moment when the action was taken.	**AT** (Drafting): 1. Without prejudice to civil law claims brought to act against illegal content, such as for injunctive relief or removal and the enforcement of such claims, providers of intermediary services shall, upon the receipt of an order to act against a specific item of illegal content, issued by the relevant national judicial or administrative authorities, on the basis of the applicable Union or national law, in conformity with ~~Union law~~ the conditions set out in this article, comply with the order or contest it and inform the authority	**AT** (Comments): It should be made clear that civil law claims follow the rules of Brussels Ia-Regulation. It should not be up to the provider, nor left to Member States law whether the provider wants to comply with the order or not. If the order is in conformity with the law, it should be followed. What reason should the information of redress available (para 2) have, if the provider was not bound to follow the order anyway? **IT**

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	issuing the order of the effect given to the orders, without undue delay, specifying the action taken and the moment when the action was taken. **PL** (Drafting): Providers of intermediary services shall, upon the receipt of an order to act against a specific item or multiple items of illegal content, issued by the relevant national judicial or administrative authorities, on the basis of the applicable Union or national law, in conformity with Union law, inform the authority issuing the order of the effect given to the orders, without undue delay, specifying the action taken and the moment when the action was taken.	(Comments): 1) The proposed procedure is appreciable, however excessively articulated and not suited to the need to intervene promptly to combat illegal content. We propose to evaluate the introduction of injunctive measures: - dynamic, flexible and fast enough to remain effective over time, - independent from online addresses, which can easily evolve (eg URL addresses); - cross-border, to avoid lengthy and costly legal actions by country. 2) It could be worth to establish that the orders issued by the relevant national or administrative authorities contain also the time for taking the action specified in those orders, to ensure compliance within a defined time period, considering the different nature of the activities of providers and the severity of the violations 3) The meaning of "undue delay" is not specified, nor is a specific time for taking the action specified in the orders. Furthermore, it is not specified how the intermediary should comply with the order received (cancellation, modification etc.). "Specifying the action taken" may imply that there is no certainty on which specific action should be taken. Likewise, no reference is made to the possible sanctions referred to in Chapter IV of the same Regulation.

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		Instead, the elements that must contain the orders of the authorities are defined in a very detailed way. We suggest articulating the process that regards providers' obligations with more certainty and effectiveness **PL** (Comments): The right to act against multiple items under a single order should be reflected in the text of the Draft DSA. Additional comments below. 1. Comment to Articles 8 and 9 - clarification of the term "order". Articles 8 and 9 use the term "order". Consideration should be given to the possibility of clarifying what is meant by this term. Will this be any order issued by an administrative authority or Member State court or will a specific form of such an act be required (in administrative proceedings - an administrative decision; in the judicial proceedings - a judicial ruling)? Different interpretations by Member States of what constitutes an order may aggravate possible disputes between Member States' authorities as regards recognition and enforceability of cross-border removal orders. In this respect, we cannot limit ourselves to decisions and court rulings only. For example Polish courts may also issue resolutions (e.g. in civil proceedings), which also ought to be

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		respected by service providers. In addition, we must take into consideration that the definition of a court in EU law is extremely broad and does not refer only to entities explicitly referred to as a "court. These entities should also be considered when drafting this article. 2. Cross-border removal order Under the DSA, it is envisaged that an authority from one Member State will be able to order the removal of content against an intermediary established in another Member State. Cross-border removal orders are part of the Regulation on the prevention of the online dissemination of terrorist content, COM(2018)640. When drafting changes to this regulation, the possibility to object to a cross-border removal order by the authority of the country where the host provider is established/has legal representation was introduced. **A solution for the process of dispute resolution between Member State authorities in case of cross-border removal orders should also be provided in the DSA. In this aspect, removal of illegal content on the territory of the MS issuing the order should be of absolute enforceability. A possible dispute should concern the legality of the content and its removal on the territory of another MS.** 3. Consideration for technical capabilities of the intermediary.

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		It is important to precisely define the responsibilities and obligations provided in Article 8 for the different types of Internet intermediaries. **With regard to illegal content, it is necessary to take into account the technical capacity of the entities falling under the categories as mere conduit (Article 3) and caching (Article** 4). One example is the top level domain registries, which are generally responsible for the technical layer/infrastructure of the functioning of the Internet network, but not for the content published by intermediaries. **SE** (Comments): Regarding jurisdiction, we find it difficult to determine whether the examination of an order is to be carried out in accordance with national law where the supplier has its registered office or whether the supplier also has to comply with the legislation of the issuing state. We believe some clarification is needed regarding how the articles 8-9 relates to intellectual property law, specifically the injunction orders and right to information according to InfoSoc Directive (2001/29) and the Enforcement Directive (2004/28). See further comments on recital 9. Furthermore, **SE** finds that clarification is needed regarding how the sanction mechanisms proposed in the DSA relates to the articles 8-9.

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		Can the wording "specific item of illegal content" refer to an entire webpage with large amounts of illegal content or is it limited to specific items on that webpage? It seems that a common misconception from Member States, as is demonstrated by the Q&A document, that this Regulation provides the legal basis for orders to provide or remove information. The wording of Article 8.1 seems to indicate such a legal basis. This needs to be clarified in clear terms in the Regulation. Also, in order to ensure that such legislation does not go beyond what is allowed by the Charter, a more transparent provision outlining the conditions for such legislation should be developed. **ES** (Comments): Establishing a **deadline** for intermediaries to inform the authority will avoid vague legal concepts, guarantee a response from the provider within a reasonable period and harmonize the procedure at the EU level. A deadline could be proposed **depending on the severity of the illegal content**, ranging from 24 to 72 hours. **BE** (Comments): This obligation to inform the competent authority of the actions taken to give effect to its request constitutes a real added-value. Indeed, our competent authorities do not currently receive

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		any acknowledgement of receipt and are not notified of the execution of a withdrawal. However, we are wondering why this is only limited to an obligation to *inform* the competent authority of the follow-up without referring to an obligation to *comply* to this request. It is important for us to explicitly mention that the content, considered illegal according to the national law (which is the legal basis of the order issued by the authority) should be removed, at least in first instance, by the intermediary. We therefore would like to ask to include in the text an explicit reference to an obligation to execute the request. We also would like to clarify that the intermediary should be considered having an 'actual knowledge' in case all the elements referred to in article 8 are included in the order, as it is the case following a notice from an individual or entity that includes the elements referred to in article 14. See also our comment on recital (22) We understand from the discussions with the Commission that in case of infringement, the State issuing the order is competent to apply sanctions as provided for in its National law. For the sake of clarity, it should be clearly stated in this instrument. It is finally unclear, in the current text, how the sanctions provided for though articles 45,51,58,59 should effectively apply in case of a

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		breach of article 8 (the intermediary does not respond at all to the order) and what would be the relationship between this "EU" sanction and the one at national level. To what extend is a content considered "specific" enough ? What if the order to act does not relate to a "specific item of illegal content" but is broader (e.g. disable access to a website) ? Should the authority then use article 3.4 ECD, in respect of the provider's freedom to provide is services cross-border? (see also our comments on recital 33 and on article 1.5 (a)) **SK** (Comments): *We would like to remark, that any kind of consequence/s of acting with delay or not acting at all (full non-compliance) is missing for art. 8 and art. 9 – We would like to ask the Commission to elaborate on this* **CZ** (Comments): Given that the Commission explained, that the only obligation for providers under Article 8 is to reply to the order and specify the action taken, we are of the opinion that the Czech translation of the paragraph 1 says otherwise. "Inform … of the effect given to the orders" is translated as "informují … o provedení příkazů", which is in

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		CZ translated as "inform of the carrying out the orders", which is, in our view, not in compliance with the explanation of the Commission. We would like to ask for clarification in both English and the subsequent translations. (**CZ** will also raise this in connection to the comment on the **CZ** translation of the proposal.) **RO** (Comments): i. It was explained that the order is mandatory for the addressee (as is any other administrative or judicial decision), so the addressee does not have discretion on whether to comply or not with it. Still, in case the addressee considers that the order is invalid (including due to breach of EU or national law), it can be challenged. Is it possible that the service provider indicates to the authority issuing the order that no effect was given to the respective order because of possible breach of EU/national law? ii. According to the explanation provided, the orders under Articles 8 and 9 are issued on the basis of applicable Union or national law. In case the intermediary service provider considers that the order is not lawful because it fails to respect the requirements of Articles 8 or 9, in the light of the EU law principle of effective judicial protection, Member States must ensure that there are effective means to challenge the order before national courts.

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		If an authority from MS A issues an order failing to respect the requirements of Article 8/9 and this order is received by the provider established in MS B, which court will be competent (from MS A or MS B?) **DE** (Comments) We wonder whether "specific item of illegal content" does mean that rules to enforce age verification/access restriction mechanisms do not fall within the scope of the proposal. **LV** (Comments) We are still assessing Articles 8 and 9, however, we do have serious doubts on the effectiveness and practical applicability of this provision. In our view, to fight the illegal content online cross-border effectively, DSA needs to provide stronger means for authorities to enforce their decisions cross border, while Art.8 provides only an option to impose a fine if the provider fails to inform the authority on its actions and not if it refuses to comply. MS are currently struggling with cross-border cases unless the respective EU legislation sets up a strong cooperation mechanism for enforcement, therefore in our view an article that does not set any obligations on providers except informing does not provide a great added value.

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		PL (Comments): Currently, Article 8 only addresses removal of content through the use of an order to act against illegal content. However, the DSA should also provide here for the possibility to issue an order with the opposite effect, i.e. order to restore access to content. The measures currently available in this regard are insufficient for member states to ensure freedom of expression and protection of freedom of speech. It is crucial to counteract the arbitrary and unjustified isolation of certain actors from the primary sources of information that are widely functioning in public life today. Exclusion from participation in this common forum of information exchange leads to marginalization within the public discourse. The functioning of courts indicates that there are no effective legal instruments that would create opportunities for persons excluded by unverifiable decisions of unknown decision-makers to return to this forum. These regulations should provide for legal tools ensuring protection against arbitrary restrictions on the exercise of the right to freely express one's views, and at the same time they must be in line with contemporary forms of information exchange on the Internet, providing a real, and not only an illusory, possibility of legal

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		protection of access to true information, as is currently the case on the basis of regulations in force, the drafting of which did not take into account the conditions of a modern information society.
2. Member States shall ensure that the orders referred to in paragraph 1 meet the following conditions:	**AT** (Drafting): The conditions referred to in paragraph 1 are as follows: **LU** (Drafting): 2. ~~**Member States shall ensure that t**~~**T**he orders referred to in paragraph 1 **shall** meet the following conditions:	**AT** (Comments): Whereas para 1 should only be applicable if the orders meet the conditions, orders that do not meet the conditions should not be regulated (like judgements according to Brussels Ia-Regulation). Otherwise it leaves the question open what happens to orders that do not meet the conditions. **IT** (Comments): The notification of the order could be problematic. Provider data is often obscured by cyberlocking and the notification becomes onerous and difficult. It does not seem sufficient to establish a generic contact point, a more stringent registration obligation or to declare a valid physical address in the EU would be necessary **PL** (Comments): **The online intermediary should be able to verify the authenticity of the orders to act against illegal content (Article 8) or orders to**

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		provide information (Article 9). Such verification of authenticity of the orders issued is all the more justified in the case of cross-border orders - issued by an authority other than the establishment/legal representation of the online intermediary. At the same time, it should be ensured that the procedures for confirming the authenticity of the order do not lead to excessive prolongation of the whole procedure. This could be achieved by a presumption of legality of the order and of its origin from the competent authority (similar to the enforcement of criminal court rulings). This would not, however, prevent the state performing the authentication from verifying certain elements of the order or requesting additional clarifications in order to allow for its correct execution. **BE** (Comments): These elements are similar to the ones provided for in the TCO Regulation but differs in some extent to the last version of this instrument as agreed in December. We consider useful to examine this last version and ensure, unless not applicable, a consistency between both provisions. **LU** (Comments): In order to avoid derogations or diverging

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		specifications by Member States, and given the direct applicability of the Regulation, this provision needs to be slightly reformulated. **DE** (Comments) We challenge the necessity of these requirements. The list does not even cover all basic requirements (e.g. identification of the issuing authority). Without spelling out consequences of failure to comply (is the order valid but voidable or is it void?) this is not workable We find it more coherent to leave all of this to the national law, which provides the legal basis for the action of the authority.
(a) the orders contains the following elements:		**BE** (Comments): For the sake of clarity and legal certainty, we believe it would be useful to add that the order must make reference to the specific deadline for removal of content, as provided for in national law.
– a statement of reasons explaining why the information is illegal content, by reference to the specific provision of Union or national law infringed;		**IE** (Comments): Where a national judicial or administrative authority makes a statement confirming content is illegal then the intermediary service to which

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		that is addressed should be able to rely on that statement. If that intermediary service relies upon that statement it should not be liable for any errors within it. Therefore the authority issuing the order should be liable for such error and for any consequences thereof. It is considered that this is a very specific situation that may occur and a specific clause should be inserted to ensure safeguards for the Intermediary service in such a case rather than relying upon the more general provision set out in Article 6, which is open to interpretation.
– one or more exact uniform resource locators and, where necessary, additional information enabling the identification of the illegal content concerned;	**SK** (Drafting): one or more exact uniform resource locators ~~and~~or, where necessary, additional information enabling the identification of the illegal content concerned;	**SK** (Comments): *We find, that the URL indicator may change or the content may be moved elsewhere in the meantime. Furthermore, does "additional information" cover e.g. screenshots?*
– information about redress available to the provider of the service and to the recipient of the service who provided the content;		
(b) 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,	**AT** (Drafting): (b) the territorial scope of the order, on the	**AT** (Comments): It should be up to the authority to decide which

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does not exceed what is strictly necessary to achieve its objective;	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~~; **PL** (Drafting): **New point in art. 8** The Digital Services Coordinator of each Member State, on its own initiative, within 72 hours of receiving the copy of the order to act, has the right to scrutinise the order to determine whether it seriously or manifestly infringes the respective Member State's law and revoke the order/make the order ineffective/make the order not applicable) on its own territory. **LU** (Drafting): (b) 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**, and is applicable, as the case may be:** **- to all Union Member States where the order is based on illegal content as defined in Union law; taking into account the Charter, and, where relevant, general principles of**	territorial scope is necessary to achieve the objects. As a minimum, the order has to contain the territorial scope. **IT** (Comments): It should be clarified whether the removal can be ordered with reference to illegal contents that have some relevance only to the EU or not (for example, hate speech limited to another continent). **HU** (Comments): What happens when, in the case of a service available in more than one Member State, one State considers content to be illegal but the other does not? According to the first paragraph of Article 8, action may also be taken against the content in question under national law, but national laws could provide disparities and deviations. It is not clear how the resulting contradictions will be resolved by the proposal. **PL** (Comments): Article 8(2)(b) provides that when issuing an order to act, the relevant national judicial or administrative authority should assess the territorial scope of the order. **However, consideration should be given to the possibility of disputes between Member State**

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	international law; or **- exclusively to the territory of the Member State issuing the order, where the order is based on illegal content as defined in that Member State's national law taking into account the Charter, and, where relevant, general principles of international law.**	**authorities about cross-border orders to act and how such disputes might be resolved.** These disputes may concern the territorial scope of the removal order. We should propose a change that would prohibit removal of content that is illegal under the law of one of the Member States, but legal in the place where the service is offered, i.e. on the territory of the country where the user is using the service. There can be no consent to censoring posts published by for example Polish users (with permanent establishment in Poland) on the grounds of incompatibility with, for example, Spanish law. Safeguards should therefore be put in place so that European-wide orders to act for content that violates national law of one or more member states are not issued. If disputes of this type arise, it should be possible to limit the territorial scope of the order. **It should be underlined that what is illegal in one member state may be legal in another.** Without safeguards, European-wide orders to act could lead to unjustified removal/blocking of content and violate the right to freedom of expression and information. **SE** (Comments): It seems, including from the many questions from the Q&A-document, that the cross-border effects or jurisdiction when it comes to orders to

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		act against illegal content needs to be clarified. Regarding jurisdiction, we still find it difficult to determine whether the examination of an order is to be carried out in accordance with national law where the provider has its registered office or whether the provider also has to comply with the legislation of the issuing state. **SE** would like clarification as to whether the domicile of the recipient of the service, responsible for a specific illegal content, is relevant to the determination on jurisdiction. **SE** finds that cross-border effects or jurisdiction when it comes to orders to act against illegal content needs to be clarified. We understand from the jurisprudence of the ECJ that not only are such orders possible to issue with global effects without it conflicting with the country of origin-principle of the eCommerce Directive. We also understand, from the explanations given by the Commission, that the intention is that such orders will be possible to issue by a competent national authority directly to a service provider established in another Member State. **DK** (Comments): Furthermore, we suggest clarification regarding article 8 (2)(b) as it is unclear what is meant by "territorial scope of the order". Also, the same paragraph refers to "the applicable rules of Union and national law" as well as "general principles

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		of international law". It seems necessary to clarify what specific rules and principles this paragraph refers to. **LU** (Comments): We propose to clarify that for orders that are based on illegal content as defined in EU law, the territorial scope shall always be EU-wide. In this case, there shall be mutual recognition of such an order by other authorities. Where orders are about illegal content as defined in national law, a national authority can in any case only order action within its (national) jurisdiction. **DE** (Comments) It is technically impossible to control a territorial limitation of content in the internet (unless you suppress encryption and exercise full control over IP address allocation). Therefore, a provider has at best a statistical indication about the location of users, but no means to definitely identify the location of any given user. Therefore, to ask for an effective geographic limitation of an order is not a valid option and other options should be examined.
(c) the order is drafted in the language declared by the provider and is sent to the point of contact, appointed by the provider, in	**LV** (Drafting)	**IT** (Comments):

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accordance with Article 10.	(c) the order is drafted in the language declared by the provider **or in another official language of the Union bilaterally agreed between the authority and the provider** and is sent to the point of contact, appointed by the provider, in accordance with Article 10	Drafting the order in the language declared by the providers can, in some cases, be complicate for the issuing Authorities and cause delays in the process. Moreover the administrative cooperation mechanisms in the field of consumer protection do not provide for the same **linguistic regime** as envisaged in the DSA proposal. **ES** (Comments): The order **should not be required to be written in the language declared by the provider**, due to the excessive burden on the authorities. **DK** (Comments): It seems unnecessarily burdensome for the Member States that they have to draft the order in the language declared by the provider. **BE** (Comments): As other member states, we are a bit concerned that this obligation to translate any order to be issued in the language chosen by the intermediary would constitute a real administrative and financial burden on the competent national authorities. On the other hand, we understand that, for efficiency and proportionality reasons, this burden should not fall entirely on the

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		intermediary either. As a “balanced solution”, we would like to support the option of using templates for issuing orders, translated as Annexes of this Regulation, as this also foreseen in TCO Regulation. **DE** (Comments) We wonder what the advantage is of having the orders in only one language. It should be possible to use any language that the provider understands and offers its services. If a provider offers services in a MS it should be able to comply with an order which is drafted in the language of that MS. Moreover, we advocate for an obligation of the provider to appoint domestic contact persons in every MS it operates in, e.g. authorised agents for legal proceedings. This is crucial e.g. to make it easier for citizens to bring disputes with “their” providers before independent courts. **LV** (Comments) Current proposal, which provides that intermediary service providers have the right to unilaterally determine the language of communication with the competent authorities of the Member states alone, is a matter of concern. It should be noted that the ability of competent authorities to communicate in different languages

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		is also limited. In particular, if a particular intermediary service provider targets its activities in a particular Member state and there is a higher likelihood that a particular intermediary service provide will have to communicate with the authorities of that Member state. Thus, it would be disproportionate to give the intermediary service provider the right to unilaterally determine the language of communication. It should be borne in mind that legal entities (intermediary service provider), unlike natural ones, have more resources and intellectual capacity, so they may be subject to stricter requirements. Therefore, we would like to recommend revising this paragraph on the communication language between authorities and providers following an example of other EU legislation (e.g. ECN + directive) which allows to find an agreement between parties on the mutually understandable language to be used in communication. Orders are legal documents and therefore precision and correct expression is key for the order not to be questioned, automated means of translation therefore cannot be used as Commission proposed. This provision also interferes with the procedural law of MS that sets the language for drafting legal orders
3. The Digital Services Coordinator from the Member State of the judicial or		**IT** (Comments):

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administrative authority issuing the order shall, without undue delay, transmit a copy of the orders referred to in paragraph 1 to all other Digital Services Coordinators through the system established in accordance with Article 67.		The communication flow could be heavy. We suggest to evaluate the possibility of introducing a centralized database accessible to all the DSC where it is possible to upload and access to the orders according to this article and to article 9.3 **PL** (Comments): It is not clear from where the Digital Services Coordinator (hereinafter DSC) is to obtain information about the order, given that it may not be the author of the order addressed to the intermediary service provider. The provision should explicitly indicate that such orders are to be transmitted to the DSC if an authority other than the DSC issued them. (Similarly, Article 9.3). Anticipating the discussion of Article 67.If the system is to operate as part of IMI, the advisory procedure would be acceptable. If this is to be a different system, then a procedure with a stronger involvement of the MS should be considered. It should also be borne in mind a possible complication on a national level, due to the possible need to ensure the involvement of different authorities competent for different orders potentially falling within the scope of the DSA. The regulation which requires intermediation of a coordinator for digital services of the place of establishment might lead to unnecessary

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		prolongation of the procedure. We would like to propose the introduction of a provision that will require service providers to establish a representative (or a contact point) in each country where the service is offered by the service provider. This will significantly shorten the time needed to carry out the necessary procedures. Other solutions might lead to excessive, and unnecessary bureaucracy and will generate additional costs. **BE** (Comments): This obligation is similar to the one provided for in the Regulation on preventing the dissemination of terrorist content online and is justified by the need to ensure as well the role of the hosting state with regard to the enforcement of the issuing State's request. In case of a terrorist content, should the competent authority transmit the request to the authority provided for in the TCO Regulation and to the DSC, inter alia to ensure the respect of some specific obligations (due diligence) that would not be included in the TCO? More generally, what will be the specific role of the other DSC in this case? Furthermore, do you confirm that there is then an implicit obligation for the authority issuing the order to transmit a copy of the order to the nation

COMMISSION PROPOSAL	**Drafting suggestions**	**Comments**
		DSC? Shouldn't this obligation be explicitly mentioned in the text? (see also article 9.3). **IE** (Comments): Rather than transmit individual orders it is considered preferable that Digital Services Coordinators should post copies of the orders to an online facility that is viewable by DSCs from all Member States thus reducing the administrative burden that such record making and keeoing would incur. **SK** (Comments): *We would like to ask, if the Commission would be a recipient, too.* **LU** (Comments): This presupposes that judges, for instance, are to be obliged to share the orders with the national DSC. This may infringe upon the independence of the judiciary to prescribe such a transfer. **RO** (Comments): If two divergent orders are received by the same service provider, how will this situation be solved? How will be decided what is strictly necessary to achieve its objective? (**eg. blocking access to a specific content vs a broader**

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		removal)
4. The conditions and requirements laid down in this article shall be without prejudice to requirements under national criminal procedural law in conformity with Union law.	**AT** (Drafting): 4. The conditions and requirements laid down in this article shall be without prejudice to requirements under national criminal procedural law or civil procedural law ~~in conformity with Union law~~. **CZ** (Drafting): The conditions and requirements laid down in this article shall be without prejudice to requirements under national criminal procedural law **and administrative law** in conformity with Union law. **While acting in accordance with articles 8 and 9 of this Regulation, the relevant national judicial or administrative authorities should not go beyond what is necessary in order to attain the objectives followed therein.** **LV** (Drafting) 4. The conditions and requirements laid down in this article shall be without prejudice to requirements under national criminal**, administrative or civil** procedural law in conformity with Union law.	**AT** (Comments): Civil procedural law should also remain unaffected; otherwise, there would be a contradiction 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. **CZ** (Comments): As to the comment on administrative law, this is to make the text more future-proof. As raised by other delegations at the WP, some elements covered under this article fall or may fall under the administrative system of law in the MS. As to the additional text on checks and balances, this also refers to recital 31. Justification: In order to keep a right balance between the checks and balances in Chapter II, **CZ** is of the opinion that an element of stating that the rights of all players involved are on equal footing is missing. This provision may either be included here or at the beginning of Chapter II. **LV** (Comments) As the term “illegal content” is used very widely

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		in DSA and can amount not only to a criminal offense, we think this provision should be revised, mentioning also administrative and civil procedures allowing MS to use the existing procedures for issuing of orders without changing significantly the procedural law
	AT (Drafting): 5. This Article does not affect the possibility for Member States of regulating further procedures governing the removal or disabling of access to information.	**AT** (Comments): Since many aspects are not regulated (for example the time frame in which the provider has to comply with the order), the rule of Art. 14 para 3 last sentence ECD should remain intact.
Article 9 *Orders to provide information*		**HU** (Comments): Articles 8 and 9 break the country of origin principle and allow the authorities of the country of destination to turn directly to the platform for illegal content or requests for information. In our view, specific procedural deadlines could be considered for the platforms in order to apply harmonized deadlines within the EU. In practice, it would be easier for the service provider to respond to requests from authorities in different Member States in a more uniform way. **DK** (Comments): See comment above under article 8. **CZ**

COMMISSION PROPOSAL	**Drafting suggestions**	**Comments**
		(Comments): Generally, **CZ** agrees to include obligations to provide specific item of information about one or more specific individual recepients of the service to judicial or administrative authorities. Yet such procedure cannot pose excessive administrative burden to digital services. Moreover, it has to be ensured that digital services would be contacted only in cases relevant to effictive enforcement of national or Union law. Transfer of information on individual users must remain in accordance with Union law. Article 9 does not apply to aggregated information excluded from DSA (Recital 32). Therefore, Article 9 does not solve fragmentation of rules on the Single Market caused by different obligations. As a general comment, **CZ** would like to state its support for improvements of the text which would go in the direction of reducing this fragmentation. **DE** (Comments) It seems to be the intention of Art. 9 to provide a purely domestic order with transnational effect. When it comes to enforcement, however, the DSA seems to refer to national law (according to written answer no. 74 (supplied by COM), ”[t]he obligation to comply with the obligations [...] to provide information contained in such orders is set out in national or Union law, hence the

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		enforcement of such obligations must also be done on the basis of such laws."). National criminal procedural law, however, is by definition limited to the national realm. So no national law will provide for transnational enforcement. As a result, Art. 9 would only have the desired effect if the service provider complies voluntarily. If it does not, no enforcement measure would be possible (as long as the order was based on national law). Apart from this question, we have serious concerns as to the compatibility of the intended transnational effect with the established system of mutual recognition in the area of criminal law. Also, for us it is unclear, wether the information relating to a specific individual information or user in Article 9 (1) also serve law enforcement purposes? If this is the case, would the national criminal procedural law be enriched by the supplementary conditions and obligations under Art. 9? We also wonder how MS can protect the public interest, especially with regard to the local level. We suggest with regard to enforcement in the internet to adapt the draft to the limitations of jurisdiction to enforce according to the Tallinn Manual 2.0 (see comment to recital 7).

COMMISSION PROPOSAL	**Drafting suggestions**	**Comments**
1. Providers of intermediary services shall, upon receipt of an order to provide a specific item of information about one or more specific individual recipients of the service, issued by the relevant national judicial or administrative authorities on the basis of the applicable Union or national law, in conformity with Union law, inform without undue delay the authority of issuing the order of its receipt and the effect given to the order.	**AT** (Drafting): 1. Without prejudice to civil law claims for information and the enforcement of such claims, providers of intermediary services shall, upon receipt of an order to provide a specific item of information about one or more specific individual recipients of the service, issued by the relevant national judicial or administrative authorities on the basis of the applicable Union or national law, in conformity with ~~Union law~~ the conditions set out in this Article, inform without undue delay the authority of issuing the order of its receipt and provide the requested information or contest the order. **LU** (Drafting): 1. Providers of intermediary services shall, upon receipt of an order to provide a specific item of information about one or more specific individual recipients of the service, issued by the relevant national judicial or administrative authorities on the basis of the applicable Union or national law, in conformity with Union law, **and transmitted to the provider of intermediary services by the Digital Services Coordinator of establishment,** inform without undue delay the authority of issuing the order of its receipt and the effect given to the order.	**AT** (Comments): It should be made clear that civil law claims follow the rules of Brussels Ia-Regulation. If the order is in conformity with Union law, why should the provider not provide the requested information? What reason should the information of redress available (para 2) have, if the provider was not bound to follow the order anyway? **IT** (Comments): As mentioned above related to art.8.1, it would be worth providing the national authorities – when issuing some orders - with the power of defining the specific deadlines to comply for the order recipients. The deadlines for the actions specified in those order is not precisely defined, but even more the expression "inform **without undue delay** the authority of issuing the order of its receipt and the effect given to the order", does not specify what is the actual correct way to process the order. Again, there is no reference to the possible sanctions referred to in Chapter IV. The elements that must contain the orders of the authorities, instead, are defined in a very detailed manner in paragraph 2 and in recitals 32 and 33. We suggest articulating the process that regards providers' obligations with more certainty and

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		effectiveness A univocal means of communication for judicial documents would be desirable, which at the same time guarantees certainty of notification (acknowledgment of receipt), and information on the progress of the procedure. **PL** (Comments): Same comment as in art. 8 (1) **Articles 8 and 9 use the term "order". Consideration should be given to the possibility of clarifying what is meant by this term**. Will this be any order issued by an administrative authority or Member State court or will a specific form of such an act be required (in administrative proceedings - an administrative decision; in the judicial proceedings - a judicial ruling)? **SE** (Comments): **SE** is analysing whether there could be any reason to consider some sort of requirement to store information for further supervision, reviews, criminal investigations etc. We wish for some clarification as to the allowed extent of an order, given that they could refer to law enforcement purposes.

COMMISSION PROPOSAL	**Drafting suggestions**	**Comments**
		ES (Comments): Establishing a **deadline** for intermediaries to inform the authority will avoid vague legal concepts, guarantee a response from the provider within a reasonable period and harmonize the procedure at the EU level. A deadline could be proposed **depending on the severity of the illegal content**, ranging from 24 to 72 hours. **BE** (Comments): This obligation to inform the competent authority of the actions taken to give effect to its request constitutes a real added-value. Indeed, our competent authorities do not currently receive any acknowledgement of receipt and are not notified of the execution of their requests to provide information. However, we are wondering why this is only limited to an obligation to inform the competent authority of the follow-up without referring to an obligation to comply to this request. We therefore would like to ask to include in the text an explicit reference to an obligation to execute the request. It is finally unclear, in the current text, how the sanctions provided for though articles 45,51,58,59 should effectively apply in case of a breach of article 9 (the intermediary does not respond at all to the order) and what would be the relationship between this "EU"

COMMISSION PROPOSAL	**Drafting suggestions**	**Comments**
		sanction and the one at national level. **SK** (Comments): *We would like to remark, that any kind of consequence/s of acting with delay or not acting at all (full non-compliance) is missing for art. 8 and art. 9 – We would like to ask the Commission to elaborate on this* **CZ** (Comments): Given that the Commission explained, that the only obligation for providers under Article 9 is to reply to the order and specify the action taken, we are of the opinion that the Czech translation of the paragraph 1 says otherwise. "Inform … of the effect given to the order" is translated as "informují … o provedení", which means "inform of the carrying out", which is, in our view, not in compliance with the explanation of the Commission. We would like to ask for clarification in both English and the subsequent translations. (**CZ** will also raise this in connection to the comment on the **CZ** translation of the proposal.) **LU** (Comments): For orders to provide information, we propose to limit the interaction of the intermediary service provider in principle to the authority of its main

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		establishment. The Digital Services Coordinator of establishment should be the main interlocutor for the provider, centralise these requests for information and channel them to the provider. This reflects the objective of creating a fully functioning Single Market and reduce cross-border obstacles as much as possible. **DE** (Comments) We wonder why authorities issuing orders should be informed that an order has been complied with? The authority should take note of this when receiving the information? And what data could a request for information under Art. 9 refer to? Content data, inventory data, usage data? **LV** (Comments) Similar to the Art.8, also here the DSA fails to provide a stronger tool for actually receiving the information placing no obligation on the provider to provide the authority with the information requested, instead allowing to fine the failure to inform the authority about the receipt of the order. We have doubts whether this provision provides enough added value compared to the current situation where MS are struggling to impose their national laws to entities registered in outer countries.

COMMISSION PROPOSAL	**Drafting suggestions**	**Comments**
2. Member States shall ensure that orders referred to in paragraph 1 meet the following conditions:	**AT** (Drafting): The conditions referred to in paragraph 1 are as follows: **LU** (Drafting): 2. ~~Member States shall ensure that~~ **O**rders referred to in paragraph 1 **shall** meet the following conditions:	**AT** (Comments): Whereas para 1 should only be applicable if the orders meet the conditions, orders that do not meet the conditions should not be regulated (like judgements according to Brussels Ia-Regulation). Otherwise it leaves the question open what happens to orders that do not meet the conditions. **PL** (Comments): Article 9 does not contain the necessary safeguards. **There is no provision which would provide secure communication between the intermediary and the authority issuing the order to provide information**. Addressing this issue in the DSA would reflect strong European tradition to protect privacy - given that the data transferred under Article 9 may be of a sensitive nature. At the same time, it would be inappropriate to allow service providers to challenge an order issued by a national authority. Such regulation of orders would cause chaos in the execution of orders by allowing digital platforms to act arbitrarily and selectively. Therefore, our comment seeks to indicate that, taking into account the principle of

COMMISSION PROPOSAL	**Drafting suggestions**	**Comments**
		proportionality, secure communication should be ensured under Article 9. **BE** (Comments): We need to examine the consistency between this provision and the one provided for in the e-evidence Regulation. **LU** (Comments): In order to avoid derogations or diverging specifications by Member States, and given the direct applicability of the Regulation, this provision needs to be slightly reformulated. **DE** (Comments) We challenge the necessity of these requirements. The list does not even cover all basic requirements (e.g. identification of the issuing authority). Without spelling out consequences of failure to comply (is the order valid but voidable or is it void?) this is not workable. We find it more coherent to leave all of this to the national law, which provides the legal basis for the action of the authority.
(a) the order contains the following elements:		

COMMISSION PROPOSAL	**Drafting suggestions**	**Comments**
– a statement of reasons explaining the objective for which the information is required and why the requirement to provide the information is necessary and proportionate to determine compliance by the recipients of the intermediary services with applicable Union or national rules, unless such a statement cannot be provided for reasons related to the prevention, investigation, detection and prosecution of criminal offences;	**SK** (Drafting): a statement of reasons explaining the objective for which the information is required and why the requirement to provide the information is necessary and proportionate to determine compliance by the recipients of the intermediary services with applicable Union or national rules, unless such a statement cannot be provided for reasons related to the prevention, investigation, detection and prosecution of criminal or administrative offences;	
– information about redress available to the provider and to the recipients of the service concerned;		
(b) the order only requires the provider to provide information already collected for the purposes of providing the service and which lies within its control;		**SE** (Comments): **SE** wishes for clarification regarding when information should be considered to be within the providers control.

COMMISSION PROPOSAL	**Drafting suggestions**	**Comments**
(c) the order is drafted in the language declared by the provider and is sent to the point of contact appointed by that provider, in accordance with Article 10;	**LV** (Drafting) (c) the order is drafted in the language declared by the provider **or in another official language of the Union bilaterally agreed between the authority and the provider** and is sent to the point of contact appointed by that provider, in accordance with Article 10;	**ES** (Comments): The order **should not be required to be written in the language declared by the provider**, due to the excessive burden on the authorities. **DK** (Comments): It seems unnecessarily burdensome for the Member States that they have to draft the order in the language declared by the provider. **BE** (Comments): See comment on article 8.2 c) **DE** (Comments) National authorities may lack a legal basis to work in foreign languages. In any case, we wonder what the advantage is of having orders in only one language. It should be possible to use any language that the provider understands, i.e. in whose MS it operates Moreover, we advocate for an obligation of the provider to appoint domestic contact persons in every MS it operates in, e.g. authorised agents for legal proceedings. This is crucial e.g. to make it easier for citizens to bring disputes with "their" providers before independent courts.

COMMISSION PROPOSAL	**Drafting suggestions**	**Comments**
		LV (Comments) Current proposal, which provides that intermediary service providers have the right to unilaterally determine the language of communication with the competent authorities of the Member states alone, is a matter of concern. It should be noted that the ability of competent authorities to communicate in different languages is also limited. In particular, if a particular intermediary service provider targets its activities in a particular Member state and there is a higher likelihood that a particular intermediary service provide will have to communicate with the authorities of that Member state. Thus, it would be disproportionate to give the intermediary service provider the right to unilaterally determine the language of communication. It should be borne in mind that legal entities (intermediary service provider), unlike natural ones, have more resources and intellectual capacity, so they may be subject to stricter requirements. Therefore, we would like to recommend revising this paragraph on the communication language between authorities and providers following an example of other EU legislation (e.g. ECN + directive) which allows to find an agreement between parties on the mutually understandable language to be used in communication. Orders are legal documents and therefore precision and correct expression is key

COMMISSION PROPOSAL	**Drafting suggestions**	**Comments**
		for the order not to be questioned, automated means of translation therefore cannot be used as Commission proposed. This provision also interferes with the procedural law of MS that sets the language for drafting legal orders.
3. The Digital Services Coordinator from the Member State of the national judicial or administrative authority issuing the order shall, without undue delay, transmit a copy of the order referred to in paragraph 1 to all Digital Services Coordinators through the system established in accordance with Article 67.		**PL** (Comments): It is not clear from where the Digital Services Coordinator (hereinafter DSC) is to obtain information about the order, given that it may not be the author of the order addressed to the intermediary service provider. The provision should explicitly indicate that such orders are to be transmitted to the DSC if an authority other than the DSC issued them. (Similar comment in Article 8.3). **BE** (Comments): With regard to this paragraph, similar comments as the ones related to Article 8.3 need to be addressed on the role of the DSC as well as the relationship with the competent authorities in the e-evidence Regulation. Furthermore, do you confirm that there is then an implicit obligation for the authority issuing the order to transmit a copy of the order to the nation DSC? Shouldn't this obligation be explicitly mentioned in the text?

COMMISSION PROPOSAL	**Drafting suggestions**	**Comments**
		SK (Comments): *We would like to ask, if the Commission would be a recipient, too.* **CZ** (Comments): **CZ** agrees that Digital Services Coordinators should inform each other about the orders in order to have general awareness about the situation. We will get back to the cooperation mechanism of Digital Services Coordinators later with the relevant articles. **LU** (Comments): This presupposes that judges, for instance, are to be obliged to share the orders with the national DSC. This may infringe upon the independence of the judiciary to prescribe such a transfer.
4. The conditions and requirements laid down in this article shall be without prejudice to requirements under national criminal procedural law in conformity with Union law.	**AT** (Drafting): 4. The conditions and requirements laid down in this article shall be without prejudice to requirements under national criminal procedural law or civil procedural law ~~in conformity with Union law~~. **CZ**	**AT** (Comments): Civil procedural law should also remain unaffected. **CZ** (Comments): This is to make the text more future-proof. As raised by other delegations at the WP, some

COMMISSION PROPOSAL	**Drafting suggestions**	**Comments**
	(Drafting): The conditions and requirements laid down in this article shall be without prejudice to requirements under national criminal procedural law **and administrative law** in conformity with Union law. **LV** (Drafting) 4. The conditions and requirements laid down in this article shall be without prejudice to requirements under national criminal**, administrative or civil** procedural law in conformity with Union law.	elements covered under this article fall or may fall under the administrative system of law in the MS. **LV** (Comments) As the term "illegal content" is used very widely in DSA and can amount not only to a criminal offense, we think this provision should be revised, mentioning also administrative and civil procedures allowing MS to use the existing procedures for issuing of orders without changing significantly the procedural law
	AT (Drafting): 5. Member States may establish obligations for intermediary service providers to inform the competent public authorities of information provided by recipients of their service or obligations to communicate to the competent authorities, at their request, information enabling the identification of recipients of their service with whom they have storage agreements. **LU** (Drafting): **4a. Paragraph 1 shall not apply where providers receive multiple orders to provide a same specific item of information about one or more specific individual recipients of the**	**AT** (Comments): This part of Art. 15 para 2 ECD needs to remain in force, since otherwise there would be no provision allowing Member States to regulate such duties to inform. **LU** (Comments): We propose an additional safeguard to ensure proportionality and avoid any fishing expeditions. Indeed, on the basis of this Article, providers could be exposed to multiple information requests from authorities from one or several Member States with little means to defend against potential disproportionate number of requests coming from a same Member State

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	service, issued by relevant national judicial or administrative authorities on the basis of the applicable Union or national law, in conformity with Union law, from the same Member State.	(“once only”).