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NOTE

From:	SE, IE, FI delegations
To:	Delegations
Subject:	Safeguarding freedom of speech online – a joint non-paper on the DSA by Sweden, Ireland and Finland

Safeguarding freedom of speech online – a joint non-paper on the DSA by Sweden, Ireland and Finland

The Digital Services Act seeks to ensure, among other things, harmonised means to handle illegal content online. A fundamental question arising from our analysis of the proposal is what type of content should be included in the scope of the regulation.

It is vital that people can speak their mind through online platforms. Therefore, the risk of over-removal must be reduced to a minimum.

The assessment of whether a certain piece of information should be deemed illegal often involves difficult legal considerations. We wish to reduce the number of misjudgements in these assessments, especially when platforms manage content by automatic means. To this end, we suggest that **when platforms make assessments of content, the assessment should be limited to whether the content is clearly illegal or not.** When only apparently illegal material is covered by the relevant provisions, no measures are expected against unclear cases, for instance when the material itself lack detail needed to assess the legality of the content or when the available information regarding the legality of the material is insufficient. Nuanced cases that require bespoke analysis of a national law should not necessitate removal. This will limit the overall risk of over-removal and the regulation will thereby be less suppressive on freedom of speech.

This should not affect the capabilities of the platforms to set out conditions for the use of their services, allowing them to act against content that is in violation of their terms and conditions. Platforms should remain free to do so.

We therefore propose to limit **the provisions dealing with expectations on platforms to assess and act against illegal content to apply only to content that is manifestly illegal.** For example, in the case of notice and action mechanisms, the result of the provisions would be that online platforms would only have to take measures against manifestly illegal content. This would require amendment of certain provisions regulating the

notice and action system but is not intended to change the exemption of liability in article 5. The terminology manifestly illegal is already used in the proposal. If the same terminology were to be used in a consequent manner in the articles where platforms are expected to act against illegal content, a balanced regulation could be achieved, that is less restrictive on the fundamental right of freedom of speech. By doing so, we believe we will also increase legal certainty and ease the administrative burden on platforms and consequently upon the national Digital Service Coordinators themselves.