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NOTE

From:	ES Delegation
To:	Delegations

Subject:	Digital Services Act: ES Comments on compromise text: Chapter II, IV and V
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(74)

(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 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.

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The requirement of independence should apply only in relation to private parties. Otherwise, it would interfere with internal administrative structures of Member States.

**Article 8.2.
a: Orders to
act against
illegal
content**

(a) the order contains the following elements:
—a statement of reasons explaining why the information is illegal content, by reference to the specific provision of Union or national law infringed;

...

(a) the order contains the following elements:
—a statement of reasons explaining why the information is illegal content, by reference to the specific provision of Union or national law infringed ~~unless such a statement cannot be provided for reasons related to the prevention, investigation, detection and prosecution of criminal offences;~~...

The statement of reasons should not be provided when there is a risk of interfering with ongoing criminal investigations. This wording is already present in article 9.2(a).

**Article 8.3:
Orders to
act against
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The Digital Services Coordinator from the Member State of the judicial or 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.

3(a). Without prejudice to national criminal procedural law in conformity with Union law, providers of intermediary services shall inform the recipient of the service concerned, at the latest at the time when the order is executed, of the order received and the effect given to it. Such information to the recipient of the service shall, at least, include the statement of reasons and the redress possibilities included in the order.

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.

The Digital Services Coordinator from the Member State of the judicial or 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. *Where the order received has been issued by the competent authority in the context of criminal proceedings, such information shall be excluded or adapted to the applicable rules of criminal procedure.*

3(a). *Without prejudice to national criminal procedural law in conformity with Union law, p*Providers of intermediary services shall inform the recipient of the service concerned, at the latest at the time when the order is executed, of the order received and the effect given to it. Such information to the recipient of the service shall, at least, include the statement of reasons and the redress possibilities included in the order. *Where the order received has been issued by the competent authority in the context of criminal proceedings, such information shall be governed by the applicable rules of criminal procedure.*

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, *in particular as regards the rules on securing and obtaining evidence in criminal matters.*

It should be guaranteed that DSA provision do not interfere with criminal proceedings and the confidentiality of criminal investigations is not compromised.

It should be ensured that DSA provisions do not become a way of circumventing criminal procedural law requirements when obtaining national or cross-border evidence

Article 9: Orders to provide information	<p>3. The Digital Services Coordinator from the Member State of the judicial or 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.</p> <p>3(a). Without prejudice to national criminal procedural law in conformity with Union law, providers of intermediary services shall inform the recipient of the service concerned, at the latest at the time when the order is executed, of the order received and the effect given to it. Such information to the recipient of the service shall, at least, include the statement of reasons and the redress possibilities included in the order.</p> <p>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.</p>	<p>3. The Digital Services Coordinator from the Member State of the judicial or 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. <i>Where the order received has been issued by the competent authority in the context of criminal proceedings, such information shall be excluded or adapted to the applicable rules of criminal procedure.</i></p> <p>3 (a). Without prejudice to national criminal procedural law in conformity with Union law, pProviders of intermediary services shall inform the recipient of the service concerned, at the latest at the time when the order is executed, of the order received and the effect given to it. Such information to the recipient of the service shall, at least, include the statement of reasons and the redress possibilities included in the order. <i>Where the order received has been issued by the competent authority in the context of criminal proceedings, such information shall be governed by the applicable rules of criminal procedure.</i></p> <p>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, <i>in particular as regards the rules on securing and obtaining evidence in criminal matters.</i></p>	<p>It should be guaranteed that DSA provision do not interfere with criminal proceedings and the confidentiality of criminal investigations is not compromised.</p> <p>It should be ensured that DSA provisions do not become a way of circumventing criminal procedural law requirements when obtaining national or cross-border evidence</p>
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**Article 39.2:
Requirements for DSC**

2. When carrying out their tasks and exercising their powers in accordance with this Regulation, the Digital Services Coordinators shall act with complete independence.

They shall remain free from any external influence, whether direct or indirect, and shall neither seek nor take instructions from any other public authority or any private party

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~~They shall~~ remain free from any ~~external~~ influence, whether direct or indirect, ~~and shall neither seek nor take instructions~~ from ~~any other public authority or~~ any private party

The requirement of independence is contrary to the internal administrative structures of Member States.