Council of the European Union
General Secretariat

Brussels, 01 September 2021

Interinstitutional files:
2020/0361(COD)

WK 10223/2021 INIT

LIMITE

COMPET	**PI**
MI	**AUDIO**
JAI	**CONSOM**
TELECOM	**CODEC**
CT	**IA**
	JUSTCIV

WORKING PAPER

This is a paper intended for a specific community of recipients. Handling and further distribution are under the sole responsibility of community members.

NOTE

From:	PL Delegation
To:	Working Party on Competitiveness and Growth (Internal Market) Working Party on Competitiveness and Growth (Internal Market - Attachés)
Subject:	Digital Services Act: PL written comments on compromise text of Digital Services Act - ST 9288/1/21 REV 1

Warsaw, 27.08.2021

Poland's written comments on compromise text of Digital Services Act – rev 1

-additional comments on articles and recitals.

PT PREZ PROPOSALS – document number ST 9288/1/21 REV 1	**PL COMMENTS**
(10) **This Regulation should be without prejudice to other acts of Union law regulating other aspects of the provision of intermediary services, which are to be considered as *lex specialis* in relation to the generally applicable framework set out in this Regulation such as Directive 2010/13/EU of the European Parliament and of the Council as amended,[1] Regulation (EU) …/.. of the European Parliament and of the Council[2] – proposed Terrorist Content Online Regulation, Regulation (EU) 2019/1148 of the European Parliament and of the Council[3], Regulation (EU) …./…. [on European Production and Preservation Orders for electronic evidence in criminal matters]; Directive (EU) …./…. [laying down harmonised rules on the appointment of legal representatives for the purpose of gathering evidence in criminal proceedings] and Regulation (EU) 2019/1150 of the European Parliament and of the Council[4] ,Directive 2002/58/EC of the European Parliament and of the Council[5] and Regulation […/…] on temporary derogation from certain provisions of Directive 2002/58/EC[6]. Similarly, for reasons of clarity, it should also be**	**Comment:** it is suggested to make a reference to Directive 2011/93/EU in this recital

[1] **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 .**

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

[3] **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).**

[4] **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).**

[5] **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.**

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

specified that this Regulation is without prejudice to Union law on consumer protection, in particular Directive 2005/29/EC of the European Parliament and of the Council[7], Directive 2011/83/EU of the European Parliament and of the Council[8] and Directive 93/13/EEC of the European Parliament and of the Council[9], as amended by Directive (EU) 2019/2161 of the European Parliament and of the Council[10], on the protection of personal data, in particular Regulation (EU) 2016/679 of the European Parliament and of the Council, and 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.[11] 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 and the rules of Union law in the field of judicial cooperation in civil and criminal matters. However, to the extent that these rules pursue the same objectives laid down in this Regulation, 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. ~~For reasons of clarity, it should also be specified~~	

[7] 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').

[8] 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.

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

[10] 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.

[11] 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).

that this Regulation is without prejudice to Regulation (EU) 2019/1148 of the European Parliament and of the Council[12] and Regulation (EU) 2019/1150 of the European Parliament and of the Council,[13], Directive 2002/58/EC of the European Parliament and of the Council[14] and Regulation […/…] on temporary derogation from certain provisions of Directive 2002/58/EC[15] as well as Union law on consumer protection, in particular Directive 2005/29/EC of the European Parliament and of the Council[16], Directive 2011/83/EU of the European Parliament and of the Council[17] and Directive 93/13/EEC of the European Parliament and of the Council[18], as amended by Directive (EU) 2019/2161 of the European Parliament and of the Council[19], and on the protection of personal data, in particular Regulation (EU) 2016/679 of the European Parliament and of the Council.[20] 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	

[12] 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).

[13] 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).

[14] 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.

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

[16] 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').

[17] 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.

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

[19] 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.

[20] 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).

(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 **underpin the general idea that what is illegal offline should also be illegal online. The concept should be defined broadly to cover** 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 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 sale of products or the provision of services in infringement of consumer protection law,** the non-authorised use of copyright protected material**, or the illegal offer of accommodation services** 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.	**Comment:** According to the current version of this recital : *'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-compliant or counterfeit products, the sale of products or the provision of services in infringement of consumer protection law, the non-authorised use of copyright protected material, or the illegal offer of accommodation services or activities involving infringements of consumer protection law*'. According to the third sentence of this recital , *'that concept'* (= of illegal content), should be understood to refer to *'information (…) that (…) is either itself illegal (…) or that relates to activities that are illegal*'. The examples of that concept given in this sentence are: *'illegal hate speech'* or *'terrorist content'*, whereas CSAM should be mentioned here in the first place, as it is a special kind of online illegal content, which should be treated with priority. Furthermore, there are other than *'sharing of images depicting child sexual abuse'* forms of OCSEA, that deserve mentioning in this sentence. It is therefore suggested to redraft this sentence as follows: *'In particular, that concept should be understood to refer to information, irrespective of it is form, such as* ***child sexual abuse materials****, illegal hate speech or terrorist content', or that relates to activities that are illegal,* ***such as those referred to in Articles 3 to 7 of Directive 2011/93/EU****, (…).*
	Drafting: **NEW recital 22a:** **In order to achieve the objectives of this Regulation, in particular to protect freedom of expression and right to receive and communicate information, as well as to prevent censorship, ensuring that intermediary service providers execute orders of national judicial and administrative authorities to restore or provide access to the content that has been removed or disabled pursuant to the unfounded decision of an intermediary service**

	provider is equally important as removing or disabling access to illegal content. Arbitrary decisions taken by intermediary service providers always have serious consequences on the protection of freedom of expression and information, which makes one of the fundamental principles of the EU law as well as of the individual legal systems of the EU Member States. Ensuring the observance of fundamental rights, as enshrined in the Charter, makes one of the main objectives of this Regulation. In this respect, national judicial or administrative authorities should be competent to issue orders to restore or provide access to content that is not contrary to the EU or national legal provisions. **Justification:** Guarantying right to freedom of expression and information and ensuring that there will be no overblocking of content in case of DSA regulation is top priority of Poland. We see the possibility to add an additional provisions to the DSA, making it clear that the purpose of the proposed regulation is to prevent Internet censorship and to protect the right to freedom of expression (provisions of DSA to counter overblocking). There should be a clear indication that DSA duly balance the need for swift removal of illegal content from the Internet with the protection of the freedom of expression and freedom of speech of EU citizens.
(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 and may disseminate through	**Comment:** The role of INHOPE could be stressed in this recital, by adding a sentence after the one that reads as follows: *'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'*. *'This could for instance involve consultations and exchange of information with the local hotline, associated in INHOPE'.*

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.	
(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 **at particular risk of being subject to hate speech, sexual harassments or other discriminatory actions**, protect the relevant 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.	**Comment:** It is suggested to replace an expression *'sexual harassments'* by *'sexual exploitation and abuse'* as this is a well-recognised (including international and European legislation) description of activities of such nature.
(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 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 **but are not limited to**, as the case may be, the right to freedom of expression and information, the right to respect for private and family life, the	**Comment:** According to the current version of this recital : *'Providers of hosting services should act upon notices in a timely manner, in particular, by taking into account the type of illegal content being notified and the urgency of taking action. For instance, providers can be expected to act without delay when allegedly illegal content involving an imminent threat to life or safety of persons is being notified. The provider of hosting services should inform the individual or entity notifying the specific content without undue delay after taking a decision whether to act upon the notice'*.

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. **Providers of hosting services should act upon notices in a timely manner, in particular, by taking into account the type of illegal content being notified and the urgency of taking action. For instance, providers can be expected to act without delay when allegedly illegal content involving an imminent threat to life or safety of persons is being notified. The provider of hosting services should inform the individual or entity notifying the specific content without undue delay after taking a decision whether to act upon the notice.**	It is suggested to give priority to situations involving sexual exploitation and abuse of children in this recital, so the middle sentence of this paragraph could read as follows: *'For instance, providers can be expected to act without delay when allegedly illegal content involving an imminent threat to life, safety of persons or offences referred to in Articles 3 to 7 of Directive 2011/93/EU are being notified'.*
(42a) ***[previous recital 48]*** A **provider of hosting services** ~~n 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~~**provider of hosting services** 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 **or persons**, such as offences specified in Directive 2011/93/EU of the European Parliament and of the Council[21]. In such instances, the ~~online platform~~**provider of hosting services** 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 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 **providers of hosting services**~~online~~	**Comment:** According to the current version of this motive: *'A provider of hosting services 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 provider of hosting services 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 or persons, such as offences specified in Directive 2011/93/EU of the European Parliament and of the Council. In such instances, the provider of hosting services 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 explanation of its suspicion'.* The first observation here is that a procedure described in this recital is not fully reflected in Art. 15 a. That is why it is advised to follow a

[21] 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).

~~platforms~~. **Providers of hosting services**~~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.	specific suggestion made in the part 'Suggestions regarding particular articles of the Regulation' of this analysis. Additionally, for the sake of coherence, *'judicial authorities'* should also be mentioned in this motive as they have been mentioned in Art. 15.a. Furthermore, the role of INHOPE should also be stressed in this motive. If a provider of hosting services notifies LEA or judicial authorities about offences specified in Directive 2011/93/EU, it is expected that the *'all relevant information available'* will also include CSAM. Not every LEA has capacity to adequately classify CSAM and cooperate worldwide within the ICSE database, that is why such material should also be referred to a local hotline associated in INHOPE, where a trained analyst can classify such material accordingly and insert it into ICCAM, through which it is included in the ICSE database (see Argumentation 2).)
(46) Action against illegal content can be taken more quickly and reliably where **providers of** 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 be awarded by the Digital Services Coordinator of establishment and should be recognised by all providers of online platforms within the scope of this Regulation.** 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 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 **private or** 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	**Drafting:** (46) Action against illegal content can be taken more quickly and reliably where **providers of** 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 be awarded by the Digital Services Coordinator of establishment and should be recognised by all providers of online platforms within the scope of this Regulation.**~~ 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 and that they work in a 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 **private or** semi-public bodies, such as the organisations part of the INHOPE network of hotlines for reporting child sexual abuse material and organisations committed to~~

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 **providers of** 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.	~~notifying illegal racist and xenophobic expressions online.~~ **non-governmental organisations and private or 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. The competent national authorities responsible under national law for preventing and combating crime, including terrorism, and European Union Agency for Law Enforcement Cooperation ('Europol') should be considered as trusted flaggers under this Regulation without any obligation to apply for granting this status to Digital Services Coordinator, especially in terms of demonstrating the competence in tackling illegal content.** ~~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 **providers of** 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. **Justification:** On the basis of recital 46 it is understood that law enforcement authorities will be treated as trusted flaggers, and Article 19 provides that it is the Digital Services Coordinator who is to grant such status, inter alia, if the applicant demonstrates that it has the expertise to detect illegal content. Such provision should obviously not apply in relation to law enforcement bodies, e.g. the Police. Therefore, Poland would like to raise doubts as to the wording of recital 46, which seems to suggest that in terms of trusted flaggers status, law enforcement bodies - empowered under national legislation to protect public security and order – should be treated equally with other non-public entities, such as NGOs.

Art. 1.5. This Regulation is without prejudice to the rules laid down by **other specific Union legal acts, in particular,** the following: (a) Directive 2000/31/EC; (b) Directive 2010/13/E**U**~~C~~; (c) Union law on copyright and related rights; (d) Regulation (EU) …/…. on preventing the dissemination of terrorist content online [TCO once adopted]; ~~(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]~~ (f) Regulation (EU) 2019/1148; (g) Regulation (EU) 2019/1150; (h) Union law on consumer protection and product safety, including Regulation (EU) 2017/2394; (i) Union law on the protection of personal data, in particular Regulation (EU) 2016/679 and Directive 2002/58/EC**;** **(j) Union law in the field of judicial cooperation in civil matters, in particular Regulation (EU) 1215/2012;** **(k) Union law in the field of judicial cooperation in criminal matters, in particular Regulation (EU) …./….on European Production and Preservation Orders for electronic evidence in criminal matters;**	**Comment:** it is suggested to make a reference to Directive 2011/93/EU in this article

(l) Directive (EU) …./….laying down harmonised rules on the appointment of legal representatives for the purpose of gathering evidence in criminal proceedings	
NEW paragraph in art. 2	**Drafing:** **NEW paragraph in art. 2:** **'online social networking service' means a platform that enables end users to connect, share, discover and communicate with each other across multiple devices and, in particular, via chats, posts, videos and recommendations;** **Justification:** This additional definition in conjunction with drafting additional paragraph 3 in art. 40.
Art 2 lit (ia) **(ia) 'online marketplace' means an online platform which allows consumers to conclude distance contracts with other traders or consumers;**	**Comment:** As explained by the EC before summer break this definition has the same meaning as definition in 2019/2161 directive. However it might cause doubts and interpretative problems. For the sake of clarity and for the benefit of DSA and P2B regulations it would be necessary to clarify in the recital that meanings of this two definitions is exactly the same.
Art. 2. For the purpose of this Regulation, the following definitions shall apply: (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 the law of a Member State, irrespective of the precise subject matter or nature of that law;	**Comment:** From the protection of children's rights point of view, **a scope of definition of '*illegal content*' is critical in this article**. Its current version, ''*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 the law of a Member State, irrespective of the precise subject matter or nature of that law'*, gives 1). the sale of products or 2). provision of services, as examples of 'illegal content', whereas both CSAM and OCSEA should, in particular, be addressed here due to the reasons raised above. It is therefore suggested to add the following sentence: ***'For purposes of this Regulation 'illegal content' means, in particular, both content and activities as described in Art. 2 c – e as well as Art. 3 – 7***

	of Directive 2011/93/EU'. Furthermore, as from technical point of view, in relation to CSAM, 'any information' means in particular photos or videos, it is also suggested: 1). to add two words 'kind of', so the beginning of that sentence can read: *''illegal content' means any* ***kind of*** *information'* or ***'irrespective of its form'*** as this expression was used in Recital (12). Additionally, it should be acknowledged, that OCSEA is the constantly evolving phenomenon, heavily facilitated through new and emerging technologies, what may lead to a situation, that a particular form of online, harmful behaviour of sexual nature against children may not yet be addressed in substantive criminal law. It is therefore advised to reconsider the current text of Art. 2 g in this regard, especially its limitation of the notion of '*illegal content'* to *'information (that…) is not in compliance with Union law or the law of a Member State'.*

Art. 8. A	**Drafting:** **NEW art. 8. A:** **1. Providers of intermediary services shall, upon the receipt of an order to restore a specific item or multiple items of removed content, issued by the relevant national judicial or administrative authorities, 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.** **2. Member States shall ensure that the orders referred to in paragraph 1 meet the following conditions:** **(a) the orders contain the following elements:** **(i) a statement of reasons explaining that content in question is not contrary to the EU or national legal provisions;** **(ii) information enabling the provider of intermediary services to identify and locate the legal content concerned, such as one or more exact uniform resource locators (URL);** **(iii) information about redress available to the provider of the service who removed the content and to the recipient of the service who notified 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, does not exceed what is strictly necessary to achieve its objective; and** **(c) the order is sent to the point of contact, appointed by the provider, in accordance with Article 10.** **Justification:** As indicated in justification to add new recital 22a there should be a clear indication that DSA duly balance the need for swift removal of illegal content from the Internet with the protection of the freedom of expression and freedom of speech of EU citizens. 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.

Art. 8 (2) b 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;	**Drafting:** **New letter 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.** **Justification:** 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 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. 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.

Art 9 bis/new	**Drafting** **Art 9bis:** **The Member State in which the issusing competent authority is situated has jurisdiction for the purposes art. 8 and 9 of this regulation as regards enforcement and sanctions, excluding online market places as defined in art 2 lit (ia).** Justification: We acknowledge that (as stated in DSA regulation) '*very large online platforms, which due to their reach have acquired a central, systemic role in facilitating the public debate and economic transactions'.* The DSA should provide clear provisions as to jurisdiction over these platforms so that any enforcement measures that we use are effective. **Against this context we think that the art. 8 and 9 are not sufficiently clear as to how their enforcement will look like.** The country of origin principle brings undeniable profits in terms of ensuring growth opportunities for smaller providers of intermediary services within the EU, and therefore it should be kept in the DSA as a general rule. Nevertheless, in the very specific case of very large online platforms (VLOPs) and only when they provide online social networking services, there should be a possibility to derogate this principle in order to ensure effective enforcement by Member States. **In cases that involve a large group of recipients within a country where the service is provided, it is therefore crucial for a Member State to have the juristiction not only over the issuing of the orders but also in their effective enforcement.** We find the regulation should make it clear where exactly lies the responibility to see the order enforced. This provision will not include marketplaces. The derogation's scope should be as limited as possible, and not go beyond what is really necessary to address content moderation challenges. It is the authorities of the issuing Member State that knows best local specificities and cultural context, which national laws have been breached and have specific knowledge of the individual case addressed.

Article 10 **Electronic p**~~P~~oint~~s~~ of contact 1. Providers of intermediary services shall establish a single point of contact allowing for direct communication, by electronic means, with Member States' authorities, the Commission and the Board referred to in Article 47 for the application of this Regulation. 2. Providers of intermediary services shall make public the information necessary to easily identify and communicate with their single **electronic** point~~s~~ of contact. **This information shall be easily accessible.** 3. Providers of intermediary services shall specify in the information referred to in paragraph 2, the official language or languages of the Union **which**, **in addition to a language broadly understood by the largest possible number of Union citizens,** ~~which~~ can be used to communicate with their **electronic** point~~s~~ of contact**,** and which shall include at least one of the official languages of the Member State in which the provider of intermediary services has its main establishment or where its legal representative resides or is established.	**Drafting:** 10.2. Providers of intermediary services shall make public the information necessary to easily identify and communicate with their single ~~**electronic**~~ points of contact, **including postal address, and ensure that that information is up to date. Providers of intermediary services shall notify that information, including the name, postal address, the electronic mail address and telephone number, of their single point of contact, to the Digital Service Coordinator in the Member State where they are established.** **This information shall be easily accessible.** **Justification:** Article 10 should be supplemented by the possibility of contacting with providers of intermediary services not only by electronic means but also by any other available means. Therefore, provider of intermediary services should also publish information on the operator of the service concerned, the postal address, e-mail address and telephone number of the contact point. The risk of state authorities contacting intermediaries solely by electronic means should be eliminated, and every means of contact should be available. **Drafting:** 10.3. Providers of intermediary services shall specify in the information referred to in paragraph 2, the official language or languages of the Union **which**, **in addition to a language broadly understood by the largest possible number of Union citizens,** which can be used to communicate with their ~~**electronic**~~ points of contact**,** and which shall include at least one of the official languages of the Member State in which the provider of intermediary services has its main establishment or where its legal representative resides or is established. **Providers designated as very large online platforms, referred to in Article 25, shall**

	ensure that it is possible to communicate with their points of contact in the same language in which the service is provided. **Furthermore:** 1. We support addition: “which, in addition to a language broadly understood by the largest possible number of Union citizens”. 2. Article 10 should be supplemented. In the case of very large online platforms (VLOPs), it is necessary to ensure that the user can communicate with the service provider in the same language in which the user interact with the service.

Article 11 Legal representatives 1. Providers of intermediary services which do not have an establishment in the Union but which offer services in the Union shall designate, in writing, a legal or natural person as their legal representative in one of the Member States where the provider offers its services. 2. Providers of intermediary services shall mandate their legal representatives to be addressed in addition to or instead of the provider by the Member States' **competent** authorities, the Commission and the Board on all issues necessary for the receipt of, compliance with and enforcement of decisions issued in relation to this Regulation. Providers of intermediary services shall provide their legal representative with the necessary powers and resource to cooperate with the Member States' authorities, the Commission and the Board and comply with those decisions. 3. The designated legal representative can be held liable for non-compliance with obligations under this Regulation, without prejudice to the liability and legal actions that could be initiated against the provider of intermediary services. 4. Providers of intermediary services shall notify the name, address, the electronic mail address and telephone number of their legal representative to the Digital Service Coordinator in the Member State where that legal representative resides or is established. They shall ensure that that information is up to date. 5. The designation of a legal representative within the Union pursuant to paragraph 1 shall not amount to an establishment in the Union.	**Drafting:** 4. Providers of intermediary services shall notify **valid identification data, including the name, postal** address, the electronic mail address and telephone number of their legal representative to the Digital Service Coordinator in the Member State where that legal representative resides or is established. They shall ensure that that information is up to date. **Justification:** It should be ensured that only actually existing entities are designated to perform this function in order to enforce compliance with the Regulation of providers of intermediary services which do not have an establishment in the Union but which offer services in the Union. **Drafting:** **NEW paragraph 6 with accompanying recital:** 6. **Providers designated as very large online platforms, referred to in Article 25, regardless of their establishment in the Union, and which offer online social networking services in the Union, at the request of the Digital Services Coordinator of the Member States where this provider offers its services, shall designate a legal representative to be bound to obligations laid down in this article.** **Justification:** Member States should be given the power to compel very large online platforms, especially those that provide social network services, to set up a representative on their territory so that. This representative would act as a link between the service provider and the users and authorities of the Member State concerned. The establishment of a representative in each Member State would significantly improve communication with the service provider. The absence of such a provision will make it significantly more difficult to supervise and enforce compliance with the obligations imposed on online platforms as laid down in art 8 and 9.

	NEW additional recital X in relation to changes in art 11 new para 6: **It should be recognised that in today's digital economy, very large online platforms have an extremely significant impact on the rights of all internet users. This influence has reached an unprecedented scale, which justifies applying extraordinary supervisory measures to them. In order to ensure effective supervision of the providers of very large online platforms and the enforcement of the obligations imposed on them, they should be obliged to appoint a legal representative whenever requested to do so by the Member State in which they offer their services. This obligation will apply to both providers established in the EU and those that are not, and only when they provide online social networking services.**

Article 12 Terms and conditions 1. Providers of intermediary services shall include information on any restrictions that they impose in relation to the use of their service in respect of information provided by the recipients of the service, in their terms and conditions. That information shall include information on any policies, procedures, measures and tools used for the purpose of content moderation, including algorithmic decision-making and human review. It shall be set out in clear**, plain, intelligible** and unambiguous language and shall be publicly available in an easily accessible format. 2. Providers of intermediary services shall act in a diligent, objective and proportionate manner in applying and enforcing the restrictions referred to in paragraph 1, with due regard to the rights and legitimate interests of all parties involved, including the ~~applicable~~ fundamental rights of the recipients of the service as enshrined in the Charter.	**Drafting, new paragraphs:** **3. Providers designated as very large online platforms, referred to in Article 25, should publish their terms and conditions in all official languages of the Union.** **4. The Digital Services Coordinator of each Member State has the right to request very large online platforms, to apply measures and tools of content moderation, including algorithmic decision-making and human review reflecting Member State's socio-cultural context. Framework for this cooperation as well as specific measures thereof may be laid down in national legislation and be notified to the European Commission.** **5. Notwithstanding the right in article 12(3), the Digital Services Coordinator of each Member State, by means of national legislation, may seek to request from a provider designated as very large online platforms, referred to in Article 25, to cooperate with the Digital Services Coordinator of the Member State in question in handling specific legal content removal cases in which there is reason to believe that Member State's socio-cultural context may have played a vital role.** **Justification:** Article 12 applies to all intermediate service providers. As regards very large online platforms, we believe the requirements for their terms and conditions should be strengthened. Terms and conditions concerning acceptable and non-acceptable content should not be imposed in an entirely arbitrary manner by providers of intermediary services, and in particular by very large online platforms. The management of content by very large platforms - in this case, social networks - should therefore take into account the socio-cultural context of the user's country, and rules should be available in all official languages of the EU countries at which the service is targeted.
New art. X to chapter II section 2	**Drafting:** **New art. X to chapter II section 2:**

	This regulation is without prejudice to the right of the recipient or the individual or entity concerned at any time of the proceeding to appeal against the decision before a court or specialized body of the country where the recipient is established, domiciled or has permanent residence, in accordance with the applicable law of that country. **Accompanying recital:** **In practice, requiring users to pursue their rights before a court and in the law applicable to the place where service providers are established would materially limit the remedial instruments granted to users in this Regulation. Therefore, to protect the rights of users, a set of uniform, effective, proportionate and compulsory rules should be established at the EU level, with such rules being no less favourable to users than the current rules on judicial protection in cases where user personal rights are infringed by content published on websites. Consequently, since the current regulations indicate that the person who is deemed to be an injured party may bring an action for liability for all harm and damage suffered either before the courts of the Member State in which the registered office of the sender of such content is located, or before the courts of a Member State, in which the alleged victim has their centre of interests, it is justified to bring legal clarity and avoid different interpretations with regard to user rights under this Regulation. Such a solution allows the claimants to easily identify the court in which they may sue and the defendants to reasonably foresee before which court they may be sued.** **Justification:** It is necessary to clarify that DSA provisions are without prejudice to the right of the recipient or the individual or entity concerned to appeal against the decision before a court or specialized body of the country where the recipient is established, domiciled or has permanent residence, in accordance with the applicable law of that country. Additional provision should be added to clearly indicate that the recipient of the service has a right at

	any time of the proceeding to appeal against the decision of the platform before a court or specialized body where the recipient is established, domiciled or has permanent residence. This right cannot be limited or excluded in any way by the terms of references adopted by the platforms/providers of intermediary services.
Article 14 Notice and action mechanisms 1. Providers of hosting services shall put mechanisms in place to allow any individual or entity to notify them of the presence on their service of specific items of information that the individual or entity considers to be illegal content. Those mechanisms shall be easy to access, user-friendly, and allow for the submission of notices exclusively by electronic means.	**Drafting:** 1. Providers of hosting services shall put mechanisms in place to allow any individual or entity to notify them of the presence on their service of specific items of information that the individual or entity considers to be illegal content. Those mechanisms shall be easy to access, user-friendly, and allow for the submission of notices exclusively by electronic means. **Those mechanisms must allow notifications to be made in the official language of the Member State where the service is provided and the individual or entity is established, domiciled or resident.**

Article **15a**~~21~~ Notification of suspicions of criminal offences 1. Where a~~n~~ **provider of hosting services** ~~online platform~~ becomes aware of any information giving rise to a suspicion that a ~~serious~~ criminal offence involving a threat to the life or safety of **a person or** persons has taken place, is taking place or is likely to take place, it shall promptly inform the law enforcement or judicial authorities of the Member State or Member States concerned of its suspicion and provide all relevant information available. 2. Where the **provider of hosting services**~~online platform~~ cannot identify with reasonable certainty the Member State concerned, it shall inform the law enforcement authorities of the Member State in which it is established or has its legal representative or inform Europol. For the purpose of this Article, the Member State concerned shall be the Member State where the offence is suspected to have taken place, be taking place and likely to take place, or the Member State where the suspected offender resides or is located, or the Member State where the victim of the suspected offence resides or is located.	**Comment:** The current description of situations, when it is necessary to promptly inform the law enforcement or judicial authorities of the Member State or Member States concerned is quite narrow and it is limited to: *'any information giving rise to a suspicion that a criminal offence involving a threat to the life or safety of a person or persons has taken place, is taking place or is likely to take place*'. The current conditions are: 1). a threat to the life or 2). a threat to safety of a person or persons. The current forms of OCSEA may not necessarily involve a direct threat to life or safety of a person or persons, however, from the protection of children's rights point of view, the LEA or judicial authorities should be promptly notified in such cases. It is therefore suggested to rephrase this sentence into the following: *'***1. Where a provider of hosting services becomes aware of any information giving rise to suspicion that a criminal offence involving a threat to the life or safety of a person or persons has taken place, is taking place or is likely to take place, it shall promptly inform the law enforcement or judicial authorities of the Member State or Member States concerned of its suspicion and provide all relevant information available. Special attention should be given to any kind of information giving rise to suspicion that offences referred to in Articles 3 to 7 of Directive 2011/93/EU have taken place, are taking place or are likely to take place'.** The suggested change will also contribute to coherence of the overall structure of the Regulation, as a similar text is used in Recital, 42a (previous 48).
Art. 17(1) 1. **Providers of o**Online platforms shall provide recipients of the service **and individuals or entities that have submitted a notice**, for a period of at least six months following the decision referred to in this paragraph, the access to an effective internal complaint-handling system, which enables the complaints to be lodged electronically and free of charge, against the **decision taken by the provider of the online platform not to act upon the receipt of a notice or against the** following decisions	**Drafting:** **1. Providers of o**~~O~~nline platforms shall provide recipients of the service **and individuals or entities that have submitted a notice**, for a period of at least six months following the decision referred to in this paragraph, the access to an effective internal complaint-handling system, which enables the complaints to be lodged electronically and free of charge, against the **decision taken by the provider of the online platform not to act upon the receipt**

taken by the **provider of the** online platform on the ground that the information provided by the recipients is illegal content or incompatible with its terms and conditions: (a) decisions **whether or not** to remove or disable access to **or restrict visibility of** the information; (b) decisions **whether or not** to suspend or terminate the provision of the service, in whole or in part, to the recipients; (c) decisions **whether or not** to suspend or terminate the recipients' account**;** **(d) decision whether or not to restrict the ability to monetize content provided by the recipients**.	**of a notice or against the** following decisions taken by the **provider of the** online platform on the ground that the information provided by the recipients is illegal content or incompatible with its terms and conditions: (a) decisions ~~**whether or not**~~ to remove or disable access to **or restrict visibility of** the information; (b) decisions ~~**whether or not**~~ to suspend or terminate the provision of the service, in whole or in part, to the recipients; (c) decisions ~~**whether or not**~~ to suspend or terminate the recipients' account**;** **(d) decision ~~whether or not~~ to restrict the ability to monetize content provided by the recipients**. **Justification:** We are against addition 'whether or not' in art. 17(1). By this additional wording there is a risk that providers will be even under a greater pressure to delete or block content. In this respect we are worrying about over-removal of content. In any event, recipients of the services should have the right to turn to the courts or other competent national authorities in case when they are unsatisfied with the decision that the content was not removed or blocked.
Article 17 Internal complaint-handling system **2. Providers of o**Online platforms shall ensure that their internal complaint-handling systems are easy to access, user-friendly and enable and facilitate the submission of sufficiently precise and adequately substantiated complaints. **4. Providers of o**Online platforms shall inform complainants without undue delay of the decision they have taken in respect of the information to which the complaint relates**,** **clearly justify their decision** and shall inform complainants of the possibility of out-of-court	**Drafting:** **2.Providers of o**Online platforms shall ensure that their internal complaint-handling systems are easy to access, user-friendly and enable and facilitate the submission of sufficiently precise and adequately substantiated complaints **in the official language of the Member State where the service is provided and the individual or entity is established, domiciled or resident**. **Drafting:** **4. Providers of o**nline platforms shall inform complainants without undue delay of the decision they have taken in respect of the information to which the complaint relates**,** **clearly justify their decision** and shall inform complainants of the possibility of out-of-court

dispute settlement provided for in Article 18 and other available redress possibilities.	dispute settlement provided for in Article 18 and other available redress possibilities. **Providers of online platforms shall inform complainants in the official language of the Member State where the complaint was made and the service was provided.**
Art. 19(2) The status of trusted flaggers under this Regulation shall be awarded, upon application by any entities, by the Digital Services Coordinator of the Member State in which the applicant is established, where the applicant has demonstrated to meet all of the following conditions: (a) it has particular expertise and competence for the purposes of detecting, identifying and notifying illegal content; (b) ~~it represents collective interests and~~ **it** is independent from any **provider of** online platform**s**; (c) it carries out its activities for the purposes of submitting notices in a timely, diligent and objective manner.	**Drafting:** 2. The status of trusted flaggers under this Regulation shall be ~~awarded~~ **granted**, upon application by any entities, by the Digital Services Coordinator of the Member State in which the applicant is established, where the applicant has demonstrated to meet all of the following conditions: (…)
NEW Art. 19(2a)	**Drafting:** **NEW Art. 19(2a):** **The competent national law enforcement authorities and Europol are granted a status of trusted flaggers under this Regulation and shall be exempted from the procedure of granting this status in accordance with art. 19 paragraph 2.** **Justification:** See justification in recital 46.

Article 2~~2~~**4a** Traceability of traders 1. ~~Where an online platform allows consumers to conclude distance contracts with traders, it~~ **Providers of online marketplaces** shall ensure that traders can only use ~~its~~ **their** services to promote messages on or to offer products or services to consumers located in the Union if, prior to the use of ~~its~~ **their** services, the **providers of** online ~~platform~~ **marketplaces** ha**ve**~~s~~ obtained the following information**, where applicable**:	**Drafting:** 1. ~~Where an online platform allows consumers to conclude distance contracts with traders, it~~ **Providers of online marketplaces** shall ensure that traders can only use ~~its~~ **their** services to promote messages on or to offer products or services to consumers located in the Union if, prior to the use of ~~its~~ **their** services, the **providers of** online ~~platform~~ **marketplaces** ha**ve**~~s~~ obtained the following information**, ~~where applicable~~**: **Justification:** Deletion of 'where applicable' - to provide more clarity and avoid potential conflicts about the scope of the information which should be provided.
art. 33.1 **1. Providers of v**~~V~~ery large online platforms shall publish the reports referred to in Article 13**, including the information referred to in Article 23** within six months from the date of application referred to in Article 25(4), and thereafter every six months.	**Drafting:** **1. Providers of v**~~V~~ery large online platforms shall publish the reports referred to in Article 13**, including the information referred to in Article 23** within six months from the date of application referred to in Article 25(4), and thereafter every six months. **The reports shall be published in the official languages of the Member States in which the provider offers his services and shall contain information for each Member State separately.** **Justification:** The report shall be published in the official language of the Member State concerned and shall contain information relating only to the service or part thereof offered in that Member State.
Article 35 Codes of conduct 1. The Commission and the Board shall encourage and facilitate the drawing up of codes of conduct at Union level to contribute to the proper application of this Regulation, taking into account in particular the specific challenges of tackling different types of illegal content and systemic risks, in accordance with Union law, in	**Drafting:** 1 The Commission and the Board shall **have the right to request** ~~encourage~~ and facilitate the drawing up of codes of conduct at Union level to contribute to the proper application of this Regulation, taking into account in particular the specific challenges of tackling different types of illegal content and systemic risks, in accordance

particular on competition and the protection of personal data. 2. Where significant systemic risk within the meaning of Article 26(1) emerge and concern several very large online platforms, the Commission may invite the **providers of the** very large online platforms concerned, other **providers of** very large online platforms, ~~other~~ **of** online platforms and ~~other providers~~ of intermediary services, as appropriate, as well as civil society organisations and other interested parties, to participate in the drawing up of codes of conduct, including by setting out commitments to take specific risk mitigation measures, as well as a regular reporting framework on any measures taken and their outcomes. 3. When giving effect to paragraphs 1 and 2, the Commission and the Board shall aim to ensure that the codes of conduct clearly set out their objectives, contain key performance indicators to measure the achievement of those objectives and take due account of the needs and interests of all interested parties, including citizens, at Union level. The Commission and the Board shall also aim to ensure that participants report regularly to the Commission and their respective Digital Service Coordinators of establishment on any measures taken and their outcomes, as measured against the key performance indicators that they contain. 4. The Commission and the Board shall assess whether the codes of conduct meet the aims specified in paragraphs 1 and 3, and shall regularly monitor and evaluate the achievement of their objectives. They shall publish their conclusions. 5. The Board shall regularly monitor and evaluate the achievement of the objectives of the codes of conduct, having regard to the key performance indicators that they may contain.	with Union law, in particular on competition and the protection of personal data. **Justification:** Very large online platforms – here we are referring to social networks - should make a greater effort to combat harmful content, including disinformation, in order to limit the possible negative impact of systemic risk on society and democracy (recital 68). The development of codes of conduct may serve this purpose, and in this aspect the role of the European Commission is important, for the adoption of such commitments by platforms, and should be strengthened. **Drafting:** 2. Where significant systemic risk within the meaning of Article 26(1) emerge and concern several very large online platforms, the Commission **shall request** ~~may invite~~ the **providers of the** very large online platforms concerned, other **providers of** very large online platforms, other **of** online platforms and other providers of intermediary services, as appropriate, as well as civil society organisations and other interested parties, to participate in the drawing up of codes of conduct, including by setting out commitments to take specific risk mitigation measures, as well as a regular reporting framework on any measures taken and their outcomes. **Justification:** See justification in art. 35(1)

Article 37 *Crisis protocols* 1. The Board may recommend the Commission to initiate the drawing up, in accordance with paragraphs 2, 3 and 4, of crisis protocols for addressing crisis situations strictly limited to extraordinary circumstances affecting public security or public health. 2. The Commission shall encourage and facilitate very large online platforms and, where appropriate, other online platforms, with the involvement of the Commission, to participate in the drawing up, testing and application of those crisis protocols, which include one or more of the following measures: (a) displaying prominent information on the crisis situation provided by Member States' authorities or at Union level; (b) ensuring that the **electronic** point of contact referred to in Article 10 is responsible for crisis management; (c) where applicable, adapt the resources dedicated to compliance with the obligations set out in Articles 14, 17, 19, 20 and 27 to the needs created by the crisis situation. 3. The Commission may involve, as appropriate, Member States' authorities and Union bodies, offices and agencies in drawing up, testing and supervising the application of the crisis protocols. The Commission may, where necessary and appropriate, also involve civil society organisations or other relevant organisations in drawing up the crisis protocols. 4. The Commission shall aim to ensure that the crisis protocols set out clearly all of the following: (a) the specific parameters to determine what constitutes the specific extraordinary circumstance the crisis protocol seeks to address and the objectives it pursues; (b) the role of each participant and the measures they are to put in place in preparation and once the crisis protocol has been activated; (c) a clear procedure for determining when the crisis protocol is to be activated; (d) a clear procedure for determining the period during which the measures to be taken once the crisis protocol has been activated are to be taken, which is strictly limited to what is necessary for addressing the specific extraordinary circumstances concerned;	**Drafting:** 3. The Commission ~~may~~ **shall** involve~~, as appropriate,~~ Member States' authorities and **may involve, as appropriate,** Union bodies, offices and agencies in drawing up, testing and supervising the application of the crisis protocols. The Commission may, where necessary and appropriate, also involve civil society organisations or other relevant organisations in drawing up the crisis protocols. **Justification:** The European Commission should, in any event, involve Member States in the process of developing, testing and following up on crisis protocols, if an extraordinary circumstance affects that Member State and the Member State is willing to participate in such work.

(e) safeguards to address any negative effects on the exercise of the fundamental rights enshrined in the Charter, in particular the freedom of expression and information and the right to non-discrimination; (f) a process to publicly report on any measures taken, their duration and their outcomes, upon the termination of the crisis situation. 5. If the Commission considers that a crisis protocol fails to effectively address the crisis situation, or to safeguard the exercise of fundamental rights as referred to in point (e) of paragraph 4, it may request the participants to revise the crisis protocol, including by taking additional measures.	

Article 38 Competent authorities and Digital Services Coordinators 1. Member States shall designate one or more competent authorities as responsible for the application and enforcement of this Regulation ('competent authorities'). 2. Member States shall designate one of the competent authorities as their Digital Services Coordinator. The Digital Services Coordinator shall be responsible for all matters relating to application and enforcement of this Regulation in that Member State, unless the Member State concerned has assigned certain specific tasks or sectors to other competent authorities. The Digital Services Coordinator shall in any event be responsible for ensuring coordination at national level in respect of those matters and for contributing to the effective and consistent application and enforcement of this Regulation throughout the Union. For that purpose, Digital Services Coordinators shall cooperate with each other, other national competent authorities, the Board and the Commission, without prejudice to the possibility for Member States to provide for regular exchanges of views **of the Digital Services Coordinator** with other authorities where relevant for the performance of the**ir respective** tasks ~~of those other authorities and of the Digital Services Coordinator~~. Where a Member State designates more than one competent authority in addition to the Digital Services Coordinator, it shall ensure that the respective tasks of those authorities and of the Digital Services Coordinator are clearly defined and that they cooperate closely and effectively when performing their tasks. The Member State concerned shall communicate the name of the other competent authorities as well as their respective tasks to the Commission and the Board. 3. Member States shall designate the Digital Services Coordinators within ~~two~~ **ten** months from the date of entry into force of this Regulation. Member States shall make publicly available, and communicate to the Commission and the Board, the name of their competent authority designated as Digital Services Coordinator and information on how it can be contacted.	**Comment:** It is necessary to ensure cooperation not only between Digital Service Coordinators, but also with other national authorities involved in the supervision of intermediary service providers. The increasing number of regulations and procedures concerning digital services causes their providers to be subject to supervision of various national authorities. Therefore, in order to act more effectively and efficiently, it seems that activities of regulators should be coordinated. In particular, the relationship between DSC, regulators and law enforcement agencies should be clarified. At the same time, a transparent regulation of the relationship between these entities may help to make it easier for recipients of services to exercise their rights with regard to reporting irregularities in actions of digital service providers.

4. The requirements applicable to Digital Services Coordinators set out in Articles 39, 40 and 41 shall also apply to any other competent authorities that the Member States designate pursuant to paragraph 1.	
Art. 39 Requirements for Digital Services Coordinators 3. Paragraph 2 is without prejudice to the tasks of Digital Services Coordinators within the system of supervision and enforcement provided for in this Regulation and the cooperation with other competent authorities in accordance with Article 38(2). Paragraph 2 shall not prevent **the exercise of judicial review and shall be without prejudice to proportionate accountability requirements regarding financial expenditure or reporting to national parliaments, without endangering the achievement of the objectives of this Regulation.** ~~supervision of the authorities concerned in accordance with national constitutional law~~	**Drafting:** 3. Paragraph 2 is without prejudice to the tasks of Digital Services Coordinators within the system of supervision and enforcement provided for in this Regulation and the cooperation with other competent authorities in accordance with Article 38(2). Paragraph 2 shall not prevent **the exercise of judicial review and shall be without prejudice to proportionate accountability requirements regarding financial expenditure or reporting to national parliaments, without endangering the achievement of the objectives of this Regulation.** ~~supervision of the authorities concerned in accordance with national constitutional law~~ **Carrying the tasks and exercising the powers of Digital Services Coordinators shall not interfere with the activities of Member States' law enforcement authorities and prevent the exercise of their tasks in accordance with applicable national law.** **Justification:** Relationship between DSC, regulators and law enforcement agencies should be clarified. At the same time, a transparent regulation of the relationship between these entities may help to make it easier for recipients of services to exercise their rights with regard to reporting irregularities in actions of digital service providers.
Article 43 Right to lodge a complaint **Both** Rrecipients of the service **and their representative organisations** shall have the right to lodge a complaint against providers of intermediary services alleging an infringement of this Regulation with the Digital Services Coordinator of the Member State where the recipient resides or is established. The Digital Services Coordinator shall assess the complaint and, where appropriate, transmit it to the Digital Services Coordinator of establishment.	**Drafting:** **NEW paragraph 2:** **Pursuant to paragraph 1 the Digital Services Coordinator of establishment in cases concerning complaint transmitted by the Digital Services Coordinator of the Member State where the recipient resides or is established, should assess the matter in a timely manner and should inform the Digital Services Coordinator of the Member State**

Where the complaint falls under the responsibility of another competent authority in its Member State, the Digital Service Coordinator receiving the complaint shall transmit it to that authority.	**where the recipient resides or is established, on how the complaint has been handled.** **Justification:** 1. The right to act should be extended to parties with a legitimate interest and the competent public authorities of Member States. 2. DSC of the Member State where the recipient resides or is established should have actual influence on the process of handling user complaints regarding service providers established in another EU Member State.
Article 45 Cross-border cooperation among Digital Services Coordinators 1. Where a Digital Services Coordinator **of destination** has reasons to suspect that a provider of an intermediary service~~, not under the jurisdiction of the Member State concerned~~, infringed this Regulation, it **may** ~~shall~~ request the Digital Services Coordinator of establishment to assess the matter and take the necessary investigatory and enforcement measures to ensure compliance with this Regulation. Where the Board has reasons to suspect that a provider of intermediary services infringed this Regulation in a manner involving at least three Member States, it may recommend the Digital Services Coordinator of establishment to assess the matter and take the necessary investigatory and enforcement measures to ensure compliance with this Regulation. 2. A request or recommendation pursuant to paragraph 1 shall at least indicate: (a) the **electronic** point of contact of the provider of the intermediary services concerned as provided for in Article 10; (b) a description of the relevant facts, the provisions of this Regulation concerned and the reasons why the Digital Services Coordinator that sent the request, or the Board, suspects that the provider infringed this Regulation; (c) any other information that the Digital Services Coordinator that sent the request, or the Board, considers relevant, including, where appropriate, information gathered on its own initiative or suggestions for specific investigatory or enforcement measures to be taken, including interim measures.	**Drafting:** **New art 45.1a:** **A request or recommendation pursuant to paragraph 1 should not preclude the possibility of Digital Services Coordinator of the Member State where the recipient of the service resides or is established, to be able to carry out its own investigation concerning suspected infringement of this regulation by a provider of an intermediary service.** **NEW art. 45.2a** **A recommendation pursuant to paragraph 1 and 2 may additionally indicate:** **- opinion on matters that involve taking into account national law and socio-cultural context;** **- a draft decision based on investigation pursuant to paragraph 1a** **Comment:** There is a need for greater involvement of the country of where the recipient of services resides or is established when supervising obligations based on DSA. We see art. 45 and art. 46 as the move in this direction. However, we are concerned that cooperation mechanism in art. 45 gives limited powers to act for DSC from the country of destination when there is infringement (or suspicion of infringement) of the DSA concerning users in their jurisdiction. In many cases in order to properly understand and handle the cases of content moderation practices, deep understanding of specificities of national law and socio-cultural context is needed.

3. The Digital Services Coordinator of establishment shall take into utmost account the request or recommendation pursuant to paragraph 1. Where it considers that it has insufficient information to act upon the request or recommendation and has reasons to consider that the Digital Services Coordinator that sent the request, or the Board, could provide additional information, it may request such information. The time period laid down in paragraph 4 shall be suspended until that additional information is provided. 4. The Digital Services Coordinator of establishment shall, without undue delay and in any event not later than two months following receipt of the request or recommendation, communicate to the Digital Services Coordinator that sent the request, or the Board, its assessment of the suspected infringement, or that of any other competent authority pursuant to national law where relevant, and an explanation of any investigatory or enforcement measures taken or envisaged in relation thereto to ensure compliance with this Regulation. 5. Where the Digital Services Coordinator that sent the request, or, where appropriate, the Board, did not receive a reply within the time period laid down in paragraph 4 or where it does not agree with the assessment of the Digital Services Coordinator of establishment, it may refer the matter to the Commission, providing all relevant information. That information shall include at least the request or recommendation sent to the Digital Services Coordinator of establishment, any additional information provided pursuant to paragraph 3 and the communication referred to in paragraph 4. 6. The Commission shall assess the matter within three months following the referral of the matter pursuant to paragraph 5, after having consulted the Digital Services Coordinator of establishment and, unless it referred the matter itself, the Board. 7. Where, pursuant to paragraph 6, the Commission concludes that the assessment or the investigatory or enforcement measures taken or envisaged pursuant to paragraph 4 are incompatible with this Regulation, it shall request the Digital Service Coordinator of establishment to further assess the matter and	Therefore, DSA should give possibility for active and more direct involvement of the Digital Services Coordinator of destination. **Drafting:** 7. Where, pursuant to paragraph 6, the Commission concludes that the assessment or the investigatory or enforcement measures taken or envisaged pursuant to paragraph 4 are incompatible with this Regulation, it shall request the Digital Service Coordinator of establishment to further assess the matter and take the necessary investigatory or enforcement measures to ensure compliance with this Regulation, and to inform it about those measures taken within two months from that request. **This information should be also transmitted to the Digital Services Coordinator or the Board that initiated the proceedings pursuant to paragraph 1.**

take the necessary investigatory or enforcement measures to ensure compliance with this Regulation, and to inform it about those measures taken within two months from that request.	
Article 48 Structure of the Board 1. The Board shall be composed of the Digital Services Coordinators, who shall be represented by high-level officials. Where provided for by national law, other competent authorities entrusted with specific operational responsibilities for the application and enforcement of this Regulation alongside the Digital Services Coordinator shall participate in the Board. Other national authorities may be invited to the meetings, where the issues discussed are of relevance for them. 2. Each Member State shall have one vote. The Commission shall not have voting rights. The Board shall adopt its acts by simple majority. 3. The Board shall be chaired by the Commission. The Commission shall convene the meetings and prepare the agenda in accordance the tasks of the Board pursuant to this Regulation and with its rules of procedure. 4. The Commission shall provide administrative and analytical support for the activities of the Board pursuant to this Regulation. 5. The Board may invite experts and observers to attend its meetings, and may cooperate with other Union bodies, offices, agencies and advisory groups, as well as external experts as appropriate. The Board shall make the results of this cooperation publicly available. 6. The Board shall adopt its rules of procedure, following the consent of the Commission.	**Drafting:** 6. The Board shall adopt its rules of procedure **and inform the Commission thereof.** ~~, following the consent of the Commission~~. Justification: Requirement for Commission consent for rules of procedure is contrary to intended independence of the Board. Therefore 'consent' should be changed for information requirement.
Article 49 Tasks of the Board 1. Where necessary to meet the objectives set out in Article 47(2), the Board shall in particular: (a) support the coordination of joint investigations; (b) support the competent authorities in the analysis of reports and results of audits of	**Drafting:** (d) advise the Commission to take the measures referred to in Article 51 and, ~~where requested by the Commission,~~ adopt opinions ~~on draft Commission measures~~ concerning very large online platforms in accordance with this Regulation; Justification:

very large online platforms to be transmitted pursuant to this Regulation; (c) issue opinions, recommendations or advice to Digital Services Coordinators in accordance with this Regulation; (d) advise the Commission to take the measures referred to in Article 51 and, where requested by the Commission, adopt opinions on draft Commission measures concerning very large online platforms in accordance with this Regulation; (e) support and promote the development and implementation of European standards, guidelines, reports, templates and code of conducts as provided for in this Regulation, as well as the identification of emerging issues, with regard to matters covered by this Regulation. 2. Digital Services Coordinators and other national competent authorities that do not follow the opinions, requests or recommendations addressed to them adopted by the Board shall provide the reasons for this choice when reporting pursuant to this Regulation or when adopting their relevant decisions, as appropriate.	Board should be allowed to issue opinion also on other issues – not only on Commission measures. **Drafting:** **New letter:** **(f) issue opinions, recommendations or advice on matters related to Article 34.** Justification: We wish to ensure that public authorities have an influence on the standards established according to the art. 34. In this respect, an important role should be played by the Board, which could, for example, at the request of the European Commission, provide opinions on the adopted solutions, obtain regular information from the Commission on the activities concerning industry standards, as well as assess the implementation of the already adopted solutions, and in case of a negative assessment of their implementation, influence the imposition of the obligation to take appropriate remedial action. Such solutions would allow the representatives of the EU Member States, acting within the Board, to retain influence over the definition and implementation of important regulations that directly affect the activities of online intermediaries and the protection of users of their services.