



Council of the European Union  
General Secretariat

**Brussels, 08 September 2021**

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**Interinstitutional files:  
2020/0361 (COD)**

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**WK 10503/2021 INIT**

**LIMITE**

**COMPET  
MI  
JAI  
TELECOM  
CT**

**PI  
AUDIO  
CONSOM  
CODEC  
JUSTCIV**

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**NOTE**

From:	DK Delegation
To:	Delegations
Subject:	Digital Services Act: DK comments on compromise text on Chapters I and III - ST 9288/21



Council of the  
European Union

Brussels, 4 June 2021  
(OR. en)

9288/21

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Interinstitutional File:  
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LIMITE

COMPET 439  
MI 411  
JAI 667  
TELECOM 241  
CT 74  
PI 47  
AUDIO 60  
CONSOM 129  
CODEC 824

**NOTE**

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From:	Presidency
To:	Delegations
Subject:	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on a Single Market For Digital Services (Digital Services Act) and amending Directive 2000/31/EC - Presidency compromise text on Chapters I and III, with respective recitals

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In view of the upcoming Working Party for Competitiveness and Growth on 10 June 2021, delegations will find in Annex to this note a first Presidency compromise text on Chapters I and III, including their respective Recitals (1-15 and 34-71). An additional compromise text on Chapters II, IV and V and their respective recitals will follow in due time.

Changes compared to the Commission proposal are marked in **bold and underlined** for the new text and in ~~striketrough~~ for the deletions.

2020/0361 (COD)

Proposal for a  
**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on a Single  
Market For Digital Services (Digital Services Act) and amending Directive 2000/31/EC**

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee<sup>1</sup>,

[Having regard to the opinion of the Committee of the Regions<sup>2</sup>,]

~~Having regard to the opinion of the European Data Protection Supervisor<sup>3</sup>,~~

Acting in accordance with the ordinary legislative procedure,

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<sup>1</sup> OJ C , , p. .

<sup>2</sup> OJ C , , p. .

<sup>3</sup> OJ C, p.

Whereas:

- (1) Information society services and especially intermediary services have become an important part of the Union's economy and daily life of Union citizens. Twenty years after the adoption of the existing legal framework applicable to such services laid down in Directive 2000/31/EC of the European Parliament and of the Council<sup>4</sup>, new and innovative business models and services, such as online social networks and marketplaces, have allowed business users and consumers to impart and access information and engage in transactions in novel ways. A majority of Union citizens now uses those services on a daily basis. However, the digital transformation and increased use of those services has also resulted in new risks and challenges, both for individual users and for society as a whole.
- (2) Member States are increasingly introducing, or are considering introducing, national laws on the matters covered by this Regulation, imposing, in particular, diligence requirements for providers of intermediary services. Those diverging national laws negatively affect the internal market, which, pursuant to Article 26 of the Treaty, comprises an area without internal frontiers in which the free movement of goods and services and freedom of establishment are ensured, taking into account the inherently cross-border nature of the internet, which is generally used to provide those services. The conditions for the provision of intermediary services across the internal market should be harmonised, so as to provide businesses with access to new markets and opportunities to exploit the benefits of the internal market, while allowing consumers and other recipients of the services to have increased choice.

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

- (3) Responsible and diligent behaviour by providers of intermediary services is essential for a safe, predictable and trusted online environment and for allowing Union citizens and other persons to exercise their fundamental rights guaranteed in the Charter of Fundamental Rights of the European Union ('Charter'), in particular the freedom of expression and information and the freedom to conduct a business, and the right to non-discrimination.
- (4) Therefore, in order to safeguard and improve the functioning of the internal market, a targeted set of uniform, effective and proportionate mandatory rules should be established at Union level. This Regulation provides the conditions for innovative digital services to emerge and to scale up in the internal market. The approximation of national regulatory measures at Union level concerning the requirements for providers of intermediary services is necessary in order to avoid and put an end to fragmentation of the internal market and to ensure legal certainty, thus reducing uncertainty for developers and fostering interoperability. By using requirements that are technology neutral, innovation should not be hampered but instead be stimulated.
- (5) This Regulation should apply to providers of certain information society services as defined in Directive (EU) 2015/1535 of the European Parliament and of the Council<sup>5</sup>, that is, any service normally provided for remuneration, at a distance, by electronic means and at the individual request of a recipient. Specifically, this Regulation should apply to providers of intermediary services, and in particular intermediary services consisting of services known as 'mere conduit', 'caching' and 'hosting' services, given that the exponential growth of the use made of those services, mainly for legitimate and socially beneficial purposes of all kinds, has also increased their role in the intermediation and spread of unlawful or otherwise harmful information and activities.

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

- (6) In practice, certain providers of intermediary services intermediate in relation to services that may or may not be provided by electronic means, such as remote information technology services, transport, accommodation or delivery services. This Regulation should apply only to intermediary services and not affect requirements set out in Union or national law relating to products or services intermediated through intermediary services. **This Regulation should not apply in situations where the intermediation is indispensable to the provision of the intermediated service and the service provider exercises decisive influence over the conditions under which the intermediated service is provided, as specified in the case law of the Court of Justice of the European Union,** including in situations where the intermediary service constitutes an integral part of another service which is not an intermediary service as specified in the case law of the Court of Justice of the European Union.

Regarding recital 6, we find the wording difficult as the text refers to both ‘service provider’, ‘intermediated service’, ‘providers of intermediary services’ and ‘services’. In order to provide legal certainty, the case law referred to in recital 6 should be specified in the recitals.

- (7) In order to ensure the effectiveness of the rules laid down in this Regulation and a level playing field within the internal market, those rules should apply to providers of intermediary services irrespective of their place of establishment or ~~residence~~**location**, in so far as they ~~provide~~**offer** services in the Union, as evidenced by a substantial connection to the Union.

- (8) Such a substantial connection to the Union should be considered to exist where the service provider has an establishment in the Union or, in its absence, on the basis of the existence of a significant number of users in one or more Member States **in relation to their population**, or the targeting of activities towards one or more Member States. The targeting of activities towards one or more Member States can be determined on the basis of all relevant circumstances, including factors such as the use of a language or a currency generally used in that Member State, or the possibility of ordering products or services, or ~~using~~ **the use of a relevant national** top level domain. The targeting of activities towards a Member State could also be derived from the availability of an application in the relevant national application store, from the provision of local advertising or advertising in the language used in that Member State, or from the handling of customer relations such as by providing customer service in the language generally used in that Member State. A substantial connection should also be assumed where a service provider directs its activities to one or more Member State as set out in Article 17(1)(c) of Regulation (EU) 1215/2012 of the European Parliament and of the Council<sup>6</sup>. On the other hand, mere technical accessibility of a website from the Union cannot, on that ground alone, be considered as establishing a substantial connection to the Union.

It is unclear how a “user” is defined in this context for instance in relation to online marketplaces. This should be clearly defined.

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

**(8a) The place at which a service provider is established in the Union should be determined in conformity with Union law as interpreted by the Court of Justice according to which the concept of establishment involves the actual pursuit of an economic activity through a fixed establishment for an indefinite period. This requirement is also fulfilled where a company is constituted for a given period. The place of establishment of a company providing services via an Internet website is not the place at which the technology supporting its website is located or the place at which its website is accessible but the place where it pursues its economic activity. In cases where a provider has several places of establishment it is important to determine from which place of establishment the service concerned is provided. In cases where it is difficult to determine from which of several places of establishment a given service is provided, this is the place where the provider has the centre of his activities relating to this particular service.**

**(9) This Regulation fully harmonises the rules applicable to intermediary services in the internal market with the objective to ensure a safe, predictable and trusted online environment, where fundamental rights enshrined in the Charter are effectively protected. Accordingly, Member States should not adopt or maintain additional national requirements on those matters falling within the scope of this Regulation, unless explicitly provided for in this Regulation, since this would affect the direct and uniform application of the fully harmonised rules applicable to the providers of intermediary services in accordance with the objectives of this Regulation. This does not preclude the possibility to apply other national legislation applicable to providers of intermediary services in accordance with Union law, including Directive 2000/31/EC, in particular its Article 3, which pursue other legitimate public interest objectives.** This Regulation should complement, yet not affect the application of rules resulting from other acts of Union law regulating certain aspects of the provision of intermediary services, in particular Directive 2000/31/EC, with the exception of those changes introduced by this Regulation, Directive 2010/13/EU of the European Parliament and of the Council as amended,<sup>7</sup> and Regulation (EU) .../.. of the European Parliament and

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<sup>7</sup> 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.



~~of the Council<sup>8</sup>—proposed Terrorist Content Online Regulation. Therefore, this Regulation leaves those other acts, which are to be considered *lex specialis* in relation to the generally applicable framework set out in this Regulation, unaffected. However, the rules of this Regulation apply in respect of issues that are not or not fully addressed by those other acts as well as issues on which those other acts leave Member States the possibility of adopting certain measures at national level.~~

Other Union acts leave the Member States with the possibility of adopting certain measures at national level i.e. the AVMSD and Copyright Directive. It seems unclear whether it will be possible for Member States to maintain such national rules after the DSA has entered into force. Thus, recital 9 should for instance clearly state whether the scope of AVMS art. 7a, Copyright Directive (DSM-directive) art. 12 in connection with art. 15, is in any way covered by the scope of Digital Services Act. We are also still unsure if the recital leads to the conclusion that Member States can in fact uphold national time limits for removal of certain types of illegal content on e.g. Social Media. This should also be clarified in the recital.

- (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,<sup>9</sup> Regulation (EU) .../.. of the European Parliament and of the Council<sup>10</sup> – proposed Terrorist Content Online Regulation, Regulation (EU) 2019/1148 of the European Parliament and of the Council<sup>11</sup>, 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**

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<sup>8</sup> ~~Regulation (EU) .../.. of the European Parliament and of the Council – proposed Terrorist Content Online Regulation.~~

<sup>9</sup> **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.**

<sup>10</sup> **Regulation (EU) .../.. of the European Parliament and of the Council – proposed Terrorist Content Online Regulation.**

<sup>11</sup> **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).**

Regulation (EU) 2019/1150 of the European Parliament and of the Council<sup>12</sup>, Directive 2002/58/EC of the European Parliament and of the Council<sup>13</sup> and Regulation [.../...] on temporary derogation from certain provisions of Directive 2002/58/EC<sup>14</sup>. Similarly, for reasons of clarity, it should also be 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<sup>15</sup>, Directive 2011/83/EU of the European Parliament and of the Council<sup>16</sup> and Directive 93/13/EEC of the European Parliament and of the Council<sup>17</sup>, as amended by Directive (EU) 2019/2161 of the European Parliament and of the Council<sup>18</sup>, 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.<sup>19</sup> The protection of individuals with regard to the processing of personal data

<sup>12</sup> 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).

<sup>13</sup> 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.

<sup>14</sup> Regulation [.../...] on temporary derogation from certain provisions of Directive 2002/58/EC.

<sup>15</sup> 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').

<sup>16</sup> 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.

<sup>17</sup> Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts.

<sup>18</sup> 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.

<sup>19</sup> 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).

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 that this Regulation is without prejudice to Regulation (EU) 2019/1148 of the European Parliament and of the Council<sup>20</sup> and Regulation (EU) 2019/1150 of the European Parliament and of the Council,<sup>21</sup> Directive 2002/58/EC of the European Parliament and of the Council<sup>22</sup> and Regulation [.../...] on temporary derogation from certain provisions of Directive 2002/58/EC<sup>23</sup> as well as Union law on consumer protection, in particular Directive 2005/29/EC of the European Parliament and of the Council<sup>24</sup>, Directive 2011/83/EU of the European Parliament and of the Council<sup>25</sup> and Directive 93/13/EEC of the European Parliament and of the Council<sup>26</sup>, as amended by Directive (EU) 2019/2161 of the European Parliament and of the Council<sup>27</sup>, and on the protection of personal data, in particular

<sup>20</sup> — 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).

<sup>21</sup> — 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).

<sup>22</sup> — 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.

<sup>23</sup> — Regulation [.../...] on temporary derogation from certain provisions of Directive 2002/58/EC.

<sup>24</sup> — 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').

<sup>25</sup> — 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.

<sup>26</sup> — Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts.

<sup>27</sup> — 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

~~Regulation (EU) 2016/679 of the European Parliament and of the Council.<sup>28</sup> 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~~

- (11) It should be clarified that this Regulation is without prejudice to the rules of Union law on copyright and related rights, which establish specific rules and procedures that should remain unaffected.
- (12) In order to achieve the objective of ensuring a safe, predictable and trusted online environment, for the purpose of this Regulation the concept of “illegal content” should **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.

Denmark supports that it is now explicitly stressed what is illegal offline should also be illegal online in recital 12.

Furthermore, we appreciate the additional examples of what is illegal content. This clarifies the concept further also from a consumer protection perspective.

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~~2011/83/EU of the European Parliament and of the Council as regards the better enforcement and modernisation of Union consumer protection rules.~~

<sup>28</sup> ~~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).~~

- (13) Considering the particular characteristics of the services concerned and the corresponding need to make the providers thereof subject to certain specific obligations, it is necessary to distinguish, within the broader category of providers of hosting services as defined in this Regulation, the subcategory of online platforms. Online platforms, such as social networks, or online marketplaces, should be defined as providers of hosting services that not only store information provided by the recipients of the service at their request, but that also disseminate that information to the public, again at their request. However, in order to avoid imposing overly broad obligations, providers of hosting services should not be considered as online platforms where the dissemination to the public is merely a minor and purely ancillary feature that is intrinsically linked to ~~of~~ another service and that feature cannot, for objective technical reasons, be used without that other, principal service, and the integration of that feature is not a means to circumvent the applicability of the rules of this Regulation applicable to online platforms. For example, the hosting of a comments section in an online newspaper could constitute such a feature, where it is clear that it is ancillary to the main service represented by the publication of news under the editorial responsibility of the publisher. In contrast, the hosting of comments in a social network should be considered an online platform service, where it is clear that it is a major feature of the service offered, even if ancillary to the publishing of users' posts.

The DSA should cover all digital services that play an important role in the dissemination of illegal content. However, Denmark [does](#) not consider it necessary to include a fourth category of intermediary services in the proposal.

We agree with the Commission that search engines, and other types of services, are covered to the extent that they provide services such as caching or hosting. It is important to look at the exact service and not the provider itself, since a provider of a certain service could provide several other services, and since the providers' activities might change over time. In that context, we prefer a case-by-case approach.

However, clarity in the proposal and a uniform interpretation in the Member States is very essential for us, so we consider it necessary to clarify in the Recitals, maybe by examples, in what extent a search engine providing one type of service is covered by the DSA and which category of intermediary services. This is a way to ensure that the DSA will be futureproof in relation to providers offering different types of services.

- (14) The concept of ‘dissemination to the public’, as used in this Regulation, should entail the making available of information to a potentially unlimited number of persons, that is, making the information easily accessible to users in general without further action by the recipient of the service providing the information being required, irrespective of whether those persons actually access the information in question. **Accordingly, where access to information requires registration or admittance to a group of users, that information should be considered to be disseminated to the public only where users seeking to access the information are automatically registered or admitted without a human decision or selection of whom to grant access.** ~~The mere possibility to create groups of users of a given service, including a messagings service, should not, in itself, be understood to mean that the information disseminated in that manner is not disseminated to the public. However, the concept should exclude dissemination of information within closed groups consisting of a finite number of pre-determined persons. Interpersonal communication services, as defined in Directive (EU) 2018/1972 of the European Parliament and of the Council,<sup>29</sup> such as emails or private messaging services, fall outside the scope of the~~ **definition on online platforms in Regulation as they are used for interpersonal communication between a finite number of persons which is determined by the sender of the communication. However, the obligations set out in this Regulation for providers of online platforms may apply to services that allow the making available of information to potentially unlimited number of recipients, not determined by the sender of the communication, such as through public groups or open channels.** Information should be considered disseminated to the public within the meaning of this Regulation only where that occurs upon the direct request by the recipient of the service that provided the information. **Consequently, providers of services, such as cloud infrastructure, which are provided at the request of parties other than the content providers and only indirectly benefit the latter, should not be covered by the definition of online platforms.**

We appreciate the amendments in recital 14 to clarify and exemplify how dissemination to the public is to be understood. We agree that private communication is – and should stay – private. It is important to secure the fundamental right to privacy.

<sup>29</sup> Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (Recast), OJ L 321, 17.12.2018, p. 36.

As a starting point, we see a well-balanced distinction of open/public and closed groups.

We do have some concerns about very large closed groups. Some of today's services allow very large groups with high numbers of users in one group. If a group established on a social network has a significant number of users, even though the group is not public but requires the user to enter and someone to admit access – clarity of whether the size could be a factor in determining whether information shared is disseminated to the public would be appreciated.

In addition, we are still uncertain how the DSA will tackle some of the new hybrid services e.g. messaging app's that make use of cloud infrastructure. As we understand some of these services – which allow for e.g. up to 200.000 users in groups – should still be considered as interpersonal communication services, as defined in Directive (EU) 2018/172. Such services might circumvent the purpose of the rules of the DSA and we were wondering if the Commission and the Presidency has made any considerations in this regard.

Also, we are unsure how the last paragraph of the recital should be interpreted in this regard. We find it very difficult to understand. As this kind of services only become more relevant in the future, we find it important that this question is tackled in the recitals to provide legal clarity.

Lastly, the provision refers to Directive (EU) 2018/172. According to this directive 'interpersonal communications service' does not include services, which enable interpersonal and interactive communication merely as a minor ancillary feature that is intrinsically linked to another service. We would appreciate any examples of concrete services that might fall within the scope of this exception.

- (15) Where some of the services ~~provided~~**offered** by a provider are covered by this Regulation whilst others are not, or where the services ~~provided~~**offered** by a provider are covered by different sections of this Regulation, the relevant provisions of this Regulation should apply only in respect of those services that fall within their scope.
- (16) The legal certainty provided by the horizontal framework of conditional exemptions from liability for providers of intermediary services, laid down in Directive 2000/31/EC, has allowed many novel services to emerge and scale-up across the internal market. That framework should therefore be preserved. However, in view of the divergences when transposing and applying the relevant rules at national level, and for reasons of clarity and coherence, that framework should be incorporated in this Regulation. It is also necessary to clarify certain elements of that framework, having regard to case law of the Court of Justice of the European Union.

- (17) The relevant rules of Chapter II should only establish when the provider of intermediary services concerned cannot be held liable in relation to illegal content provided by the recipients of the service. Those rules should not be understood to provide a positive basis for establishing when a provider can be held liable, which is for the applicable rules of Union or national law to determine. Furthermore, the exemptions from liability established in this Regulation should apply in respect of any type of liability as regards any type of illegal content, irrespective of the precise subject matter or nature of those laws.
- (18) The exemptions from liability established in this Regulation should not apply where, instead of confining itself to providing the services neutrally, by a merely technical and automatic processing of the information provided by the recipient of the service, the provider of intermediary services plays an active role of such a kind as to give it knowledge of, or control over, that information. Those exemptions should accordingly not be available in respect of liability relating to information provided not by the recipient of the service but by the provider of intermediary service itself, including where the information has been developed under the editorial responsibility of that provider.
- (19) In view of the different nature of the activities of ‘mere conduit’, ‘caching’ and ‘hosting’ and the different position and abilities of the providers of the services in question, it is necessary to distinguish the rules applicable to those activities, in so far as under this Regulation they are subject to different requirements and conditions and their scope differs, as interpreted by the Court of Justice of the European Union.
- (20) A provider of intermediary services that deliberately collaborates with a recipient of the services in order to undertake illegal activities does not provide its service neutrally and should therefore not be able to benefit from the exemptions from liability provided for in this Regulation.
- (21) A provider should be able to benefit from the exemptions from liability for ‘mere conduit’ and for ‘caching’ services when it is in no way involved with the information transmitted. This requires, among other things, that the provider does not modify the information that it transmits. However, this requirement should not be understood to cover manipulations of a technical nature which take place in the course of the transmission, as such manipulations do not alter the integrity of the information transmitted.
- (22) In order to benefit from the exemption from liability for hosting services, the provider should, upon obtaining actual knowledge or awareness of illegal content, act expeditiously



to remove or to disable access to that content taking into account the potential harm the illegal content in question may create. In order to ensure a harmonized implementation of illegal content removal throughout the Union, the provider should acts expeditiously and within 24 hours to remove or to disable access to content which seriously harm public safety and/or is assessed as manifestly illegal by a layman without further investigation. The provider should acts within 24 hours to remove or to disable access to products which are assessed as manifestly illegal by a layman. Where the illegal content does not seriously harm public policy, public security, public health or consumers' health or safety, the provider shall remove or disable access to illegal content within 7 days. The deadlines referred to in this Regulation shall be without prejudice to specific deadlines set out Union law or within administrative or judicial orders. The provider may derogate to the deadlines referred to in this Regulation on the grounds of force majeure or for justifiable technical or operational reasons but it should be required to inform the competent authorities as provided for in this Regulation. The removal or disabling of access should be undertaken in the observance of the principle of the Charter of Fundamental Rights, including a high level of consumer protection and freedom of expression. The provider can obtain such actual knowledge or awareness, inter alia, through, ~~in particular~~, its own-initiative investigations, or notices submitted to it by individuals or entities in accordance with this Regulation in so far as those notices are sufficiently precise and adequately substantiated to allow a diligent economic operator to reasonably identify, assess and where appropriate act against the allegedly illegal content.

- (23) In order to ensure the effective protection of consumers when engaging in intermediated commercial transactions online, certain providers of hosting services, namely, online platforms that allow consumers to conclude distance contracts with traders, should not be able to benefit from the exemption from liability for hosting service providers established in this Regulation, in so far as those online platforms present the relevant information relating to the transactions at issue in such a way that it leads consumers to believe that the information was provided by those online platforms themselves or by recipients of the service acting under their authority or control, and that those online platforms thus have knowledge of or control over the information, even if that may in reality not be the case. In that regard, it should be determined objectively, on the basis of all relevant circumstances, whether the presentation could lead to such a belief on the side of an average and reasonably well-informed consumer.

- (24) The exemptions from liability established in this Regulation should not affect the possibility of injunctions of different kinds against providers of intermediary services, even where they meet the conditions set out as part of those exemptions. Such injunctions could, in particular, consist of orders by courts or administrative authorities requiring the termination or prevention of any infringement, including the removal of illegal content specified in such orders, issued in compliance with Union law, or the disabling of access to it.
- (25) In order to create legal certainty and not to discourage activities aimed at detecting, identifying and acting against illegal content that providers of intermediary services may undertake on a voluntary basis, it should be clarified that the mere fact that providers undertake such activities does not lead to the unavailability of the exemptions from liability set out in this Regulation, provided those activities are carried out in good faith and in a diligent manner. In addition, it is appropriate to clarify that the mere fact that those providers take measures, in good faith, to comply with the requirements of Union law, including those set out in this Regulation as regards the implementation of their terms and conditions, should not lead to the unavailability of those exemptions from liability. Therefore, any such activities and measures that a given provider may have taken should not be taken into account when determining whether the provider can rely on an exemption from liability, in particular as regards whether the provider provides its service neutrally and can therefore fall within the scope of the relevant provision, without this rule however implying that the provider can necessarily rely thereon.
- (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 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.

- (27) Since 2000, new technologies have emerged that improve the availability, efficiency, speed, reliability, capacity and security of systems for the transmission and storage of data online, leading to an increasingly complex online ecosystem. In this regard, it should be recalled that providers of services establishing and facilitating the underlying logical architecture and proper functioning of the internet, including technical auxiliary functions, can also benefit from the exemptions from liability set out in this Regulation, to the extent that their services qualify as ‘mere conduits’, ‘caching’ or hosting services. Such services include, as the case may be, wireless local area networks, domain name system (DNS) services, top-level domain name registries, certificate authorities that issue digital certificates, or content delivery networks, that enable or improve the functions of other providers of intermediary services. Likewise, services used for communications purposes, and the technical means of their delivery, have also evolved considerably, giving rise to online services such as Voice over IP, messaging services and web-based e-mail services, where the communication is delivered via an internet access service. Those services, too, can benefit from the exemptions from liability, to the extent that they qualify as ‘mere conduit’, ‘caching’ or hosting service.
- (28) Providers of intermediary services should not be subject to a monitoring obligation with respect to obligations of a general nature. This does not concern monitoring obligations in a specific case and, in particular, does not affect orders by national authorities in accordance with national legislation, in accordance with the conditions established in this Regulation. Nothing in this Regulation should be construed as an imposition of a general monitoring obligation or active fact-finding obligation, or as a general obligation for providers to take proactive measures to relation to illegal content.

- (29) Depending on the legal system of each Member State and the field of law at issue, national judicial or administrative authorities may order providers of intermediary services to act against certain specific items of illegal content or to provide certain specific items of information. The national laws on the basis of which such orders are issued differ considerably and the orders are increasingly addressed in cross-border situations. In order to ensure that those orders can be complied with in an effective and efficient manner, so that the public authorities concerned can carry out their tasks and the providers are not subject to any disproportionate burdens, without unduly affecting the rights and legitimate interests of any third parties, it is necessary to set certain conditions that those orders should meet and certain complementary requirements relating to the processing of those orders.
- (30) Orders to act against illegal content or to provide information should be issued in compliance with Union law, in particular Regulation (EU) 2016/679 and the prohibition of general obligations to monitor information or to actively seek facts or circumstances indicating illegal activity laid down in this Regulation. The conditions and requirements laid down in this Regulation which apply to orders to act against illegal content are without prejudice to other Union acts providing for similar systems for acting against specific types of illegal content, such as Regulation (EU) .../.... [proposed Regulation addressing the dissemination of terrorist content online], or Regulation (EU) 2017/2394 that confers specific powers to order the provision of information on Member State consumer law enforcement authorities, whilst the conditions and requirements that apply to orders to provide information are without prejudice to other Union acts providing for similar relevant rules for specific sectors. Those conditions and requirements should be without prejudice to retention and preservation rules under applicable national law, in conformity with Union law and confidentiality requests by law enforcement authorities related to the non-disclosure of information.

- (31) The territorial scope of such orders to act against illegal content should be clearly set out on the basis of the applicable Union or national law enabling the issuance of the order and should not exceed what is strictly necessary to achieve its objectives. In that regard, the national judicial or administrative authority issuing the order should balance the objective that the order seeks to achieve, in accordance with the legal basis enabling its issuance, with the rights and legitimate interests of all third parties that may be affected by the order, in particular their fundamental rights under the Charter. In addition, where the order referring to the specific information may have effects beyond the territory of the Member State of the authority concerned, the authority should assess whether the information at issue is likely to constitute illegal content in other Member States concerned and, where relevant, take account of the relevant rules of Union law or international law and the interests of international comity.
- (32) The orders to provide information regulated by this Regulation concern the production of specific information about individual recipients of the intermediary service concerned who are identified in those orders for the purposes of determining compliance by the recipients of the services with applicable Union or national rules. Therefore, orders about information on a group of recipients of the service who are not specifically identified, including orders to provide aggregate information required for statistical purposes or evidence-based policy-making, should remain unaffected by the rules of this Regulation on the provision of information.
- (33) Orders to act against illegal content and to provide information are subject to the rules safeguarding the competence of the Member State where the service provider addressed is established and laying down possible derogations from that competence in certain cases, set out in Article 3 of Directive 2000/31/EC, only if the conditions of that Article are met. Given that the orders in question relate to specific items of illegal content and information, respectively, where they are addressed to providers of intermediary services established in another Member State, they do not in principle restrict those providers' freedom to provide their services across borders. Therefore, the rules set out in Article 3 of Directive 2000/31/EC, including those regarding the need to justify measures derogating from the competence of the Member State where the service provider is established on certain specified grounds and regarding the notification of such measures, do not apply in respect of those orders.

- (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.
- (35) In that regard, it is important that the due diligence obligations are adapted to the type, **size** and nature of the intermediary service concerned. This Regulation therefore sets out basic obligations applicable to all providers of intermediary services, as well as additional obligations for providers of hosting services and, more specifically, **providers of** online platforms and **of** very large online platforms. To the extent that providers of intermediary services may fall within those different categories in view of the nature of their services and their size, they should comply with all of the corresponding obligations of this Regulation. Those harmonised due diligence obligations, which should be reasonable and non-arbitrary, are needed to achieve the identified public policy concerns, such as safeguarding the legitimate interests of the recipients of the service, addressing illegal practices and protecting fundamental rights **enshrined in the Charter** online.
- (36) In order to facilitate smooth and efficient communications relating to matters covered by this Regulation, providers of intermediary services should be required to establish a single **electronic** point of contact and to publish relevant information relating to that ~~their~~ point of contact, including the languages to be used in such communications. The **electronic** point of contact can also be used by trusted flaggers and by professional entities which are under a specific relationship with the provider of intermediary services. In contrast to the legal representative, the **electronic** point of contact should serve operational purposes and should not **be required** ~~necessarily have~~ to have a physical location.

- (37) Providers of intermediary services that are established in a third country that offer services in the Union should designate a sufficiently mandated legal representative in the Union and provide information relating to their legal representatives, so as to allow for the effective oversight and, where necessary, enforcement of this Regulation in relation to those providers. It should be possible for the legal representative to also function as **electronic** point of contact, provided the relevant requirements of this Regulation are complied with.
- (38) Whilst the freedom of contract of providers of intermediary services should in principle be respected, it is appropriate to set certain rules on the content, application and enforcement of the terms and conditions of those providers in the interests of transparency, the protection of recipients of the service and the avoidance of unfair or arbitrary outcomes.
- (39) To ensure an adequate level of transparency and accountability, providers of intermediary services should annually report, in accordance with the harmonised requirements contained in this Regulation, on the content moderation they engage in, including the measures taken as a result of the application and enforcement of their terms and conditions. However, so as to avoid disproportionate burdens, those transparency reporting obligations should not apply to providers that are micro- or small enterprises as defined in Commission Recommendation 2003/361/EC<sup>30</sup>.
- (40) Providers of hosting services play a particularly important role in tackling illegal content online, as they store information provided by and at the request of the recipients of the service and typically give other recipients access thereto, sometimes on a large scale. It is important that all providers of hosting services, regardless of their size, put in place user-friendly notice and action mechanisms that facilitate the notification of specific items of information that the notifying party considers to be illegal content to the provider of hosting services concerned ('notice'), pursuant to which that provider can decide whether or not it agrees with that assessment and wishes to remove or disable access to that content ('action'). **Such mechanisms should be at least as easy to find and use as notification mechanisms for content that violates the terms and conditions of the hosting service provider.** Provided the requirements on notices are met, it should be possible for individuals or entities to notify multiple specific items of allegedly illegal content through a single notice.-The obligation to put in place notice and action mechanisms should apply, for instance, to file

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<sup>30</sup> Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (OJ L 124, 20.5.2003, p. 36).

storage and sharing services, web hosting services, advertising servers and paste bins, in as far as they qualify as providers of hosting services covered by this Regulation.

- (41) The rules on such notice and action mechanisms should be harmonised at Union level, so as to provide for the timely, diligent and objective processing of notices on the basis of 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 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.**

Regarding recital 41 we support that this recital now reflects that 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. However, we still find that we could be even more ambitious. The DSA should entail a clearly defined timeline for acting on notifications of illegal content including a differentiated time limit so that illegal content with a serious detrimental effect, such as terrorism-related content and illegal products, is taken down more quickly than other illegal content. Thus, we have submitted a proposal for amendments to art. 5.



- (41a) Those mechanisms should allow for the submission of notices which are sufficiently precise and adequately substantiated to enable the hosting provider concerned to take an informed and diligent decision in respect of the content to which the notice relates, in particular whether or not that content is to be considered illegal content and is to be removed or access thereto is to be disabled. Those mechanisms should be such as to facilitate the provision of notices that contain an explanation of the reasons why the notice provider considers that content to be illegal content and a clear indication of the location of that content. Where, on the basis of the information provided in the notice, it is not evident to a layperson, without any substantive analysis, that the content is illegal, such content should not be removed nor should access to it be disabled. Except for the submission of notices relating to offences referred to in Articles 3 to 7 of Directive 2011/93/EU, it is necessary to know the identity of the notice provider, for instance to avoid misuses or to identify alleged infringements to personality rights or intellectual property rights.**
- (42) Where a hosting service provider decides to remove or disable information provided by a recipient of the service, for instance following receipt of a notice or acting on its own initiative, including **exclusively by** ~~through the use of~~ automated means, that provider should inform **in a clear and easily comprehensible way** the recipient of its decision, the reasons for its decision and the available redress possibilities to contest the decision, in view of the negative consequences that such decisions may have for the recipient, including as regards the exercise of its fundamental right to freedom of expression. That obligation should apply irrespective of the reasons for the decision, in particular whether the action has been taken because the information notified is considered to be illegal content or incompatible with the applicable terms and conditions. **Hosting service providers should also publish the same information in a publicly available structured database maintained by the Commission. The database should not include the allegedly illegal content itself or the content infringing the terms and conditions of the service provider, but only the information presented in the statement of reasons for restricting the content, and should exclude personal data.** Available recourses to challenge the decision of the hosting service provider should always include judicial redress **in accordance with the laws of the Member State concerned.**

Regarding recital 42, we are curious as to why it is deemed necessary to have a publicly available structured database maintained by the Commission, where hosting services providers shall publish the reasons for removing content. It could seem unnecessarily burdensome for the enterprises and we fail to see how the information can be of use for Member States or authorities. Especially since they (with due cause) are anonymized.

**(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<sup>31</sup>. 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 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.**

**(42b) [previous recital 48] Action against illegal content can be taken more quickly and reliably where providers of hosting services ~~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~~**

<sup>31</sup> 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).

~~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 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.<sup>32</sup>

- (43) To avoid disproportionate burdens, the additional obligations imposed on **providers of** online platforms under this Regulation should not apply to micro or small enterprises as defined in Recommendation 2003/361/EC of the Commission,<sup>33</sup> unless their reach and impact is such that they meet the criteria to qualify as very large online platforms under this Regulation. The consolidation rules laid down in that Recommendation help ensure that any circumvention of those additional obligations is prevented. The exemption of micro- and small enterprises from those additional obligations should not be understood as affecting their ability to set up, on a voluntary basis, a system that complies with one or more of those obligations.
- (44) Recipients of the service **and individuals and entities that have submitted a notice** should be able to easily and effectively contest certain decisions of **providers of** online platforms that negatively affect them. Therefore, **providers of** online platforms should be required to provide for internal complaint-handling systems, which meet certain conditions aimed at ensuring that the systems are easily accessible and lead to swift and fair outcomes, **and are**

<sup>32</sup> Regulation (EU) 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol) and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA, OJ L 135, 24.5.2016, p. 53.

<sup>33</sup> Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (OJ L 124, 20.5.2003, p. 36).

subject to human review. Such systems should enable all users to lodge a complaint and should not set up formal requirements such as referral to specific, relevant legal provisions or elaborate legal explanations. In addition, provision should be made for the possibility of out-of-court dispute settlement of disputes, including those that could not be resolved in satisfactory manner through the internal complaint-handling systems, by ~~certified~~ **authorised** bodies that have the requisite independence, means and expertise to carry out their activities in a fair, swift and cost-effective manner. **The out-of court procedure should be accessible, attractive and inexpensive. The fees charged by the dispute settlement bodies should be reasonable and proportionate, and assessed on a case-by-case basis. The fees should not exceed a nominal fee for consumers. Recipients of the service should be able to choose between the internal complaint mechanism, an out-of-court dispute settlement or judicial redress.** The possibilities to contest decisions of **providers of** online platforms thus created should complement, yet leave unaffected in all respects, the possibility to seek judicial redress in accordance with the laws of the Member State concerned.

- (45) For contractual consumer-to-business disputes over the purchase of goods or services, Directive 2013/11/EU of the European Parliament and of the Council<sup>34</sup> ensures that Union consumers and businesses in the Union have access to quality-certified alternative dispute resolution entities. In this regard, it should be clarified that the rules of this Regulation on out-of-court dispute settlement are without prejudice to that Directive, including the right of consumers under that Directive to withdraw from the procedure at any stage if they are dissatisfied with the performance or the operation of the procedure.
- ~~(46) Action against illegal content can be taken more quickly and reliably where **providers of hosting services** 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~~

<sup>34</sup> Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (OJ L 165, 18.6.2013, p. 63).

~~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 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.<sup>35</sup> **[moved to Recital 42b]**~~

- (47) The misuse of ~~services of~~ online platforms by frequently providing manifestly illegal content or by frequently submitting manifestly unfounded notices or complaints under the mechanisms and systems, respectively, established under this Regulation undermines trust and harms the rights and legitimate interests of the parties concerned. Therefore, there is a need to put in place appropriate and proportionate safeguards against such misuse. Information should be considered to be manifestly illegal content and notices or complaints should be considered manifestly unfounded where it is evident to a layperson, without any substantive analysis, that the content is illegal respectively that the notices or complaints are unfounded. Under certain conditions, **providers of** online platforms should temporarily suspend their relevant activities in respect of the person engaged in abusive behaviour. This is without prejudice to the freedom by **providers of** online platforms to determine their terms and conditions and establish stricter measures in the case of manifestly illegal content related to serious crimes, **such as child sexual abuse material**. For reasons of transparency, this possibility should be set out, clearly and in sufficiently detail, in the terms and

<sup>35</sup> Regulation (EU) 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol) and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA, OJ L 135, 24.5.2016, p. 53.

conditions of the online platforms. Redress should always be open to the decisions taken in this regard by **providers of** online platforms and they should be subject to oversight by the competent Digital Services Coordinator. **Providers of online platforms should send a prior warning before deciding on the suspension, which should include the reasons for the possible suspension and the means of redress against the decision of the providers of the online platform.** The rules of this Regulation on misuse should not prevent **providers of** online platforms from taking other measures to address the provision of illegal content by recipients of their service or other misuse of their services, in accordance with the applicable Union and national law. Those rules are without prejudice to any possibility to hold the persons engaged in misuse liable, including for damages, provided for in Union or national law.

~~(48) — An online platform may in some instances become aware, such as through a notice by a notifying party or through its own voluntary measures, of information relating to certain activity of a recipient of the service, such as the provision of certain types of illegal content, that reasonably justify, having regard to all relevant circumstances of which the online platform is aware, the suspicion that the recipient may have committed, may be committing or is likely to commit a serious criminal offence involving a threat to the life or safety of person, such as offences specified in Directive 2011/93/EU of the European Parliament and of the Council<sup>36</sup>. In such instances, the online platform should inform without delay the competent law enforcement authorities of such suspicion, providing all relevant information available to it, including where relevant the content in question and an explanation of its suspicion. This Regulation does not provide the legal basis for profiling of recipients of the services with a view to the possible identification of criminal offences by online platforms. Online platforms should also respect other applicable rules of Union or national law for the protection of the rights and freedoms of individuals when informing law enforcement authorities. [moved to Recital 42a]~~

<sup>36</sup> — ~~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).~~

- (49) In order to contribute to a safe, trustworthy and transparent online environment for consumers, as well as for other interested parties such as competing traders and holders of intellectual property rights, and to deter traders from selling products or services in violation of the applicable rules, ~~online platforms allowing consumers to conclude distance contracts with traders~~ **marketplaces** should ensure that such traders are traceable. The trader should therefore be required to provide certain essential information to the **provider of** online ~~platform~~ **marketplace**, including for purposes of promoting messages on or offering products. That requirement should also be applicable to traders that promote messages on products or services on behalf of brands, based on underlying agreements. These online ~~platforms~~ **marketplaces** should store all information in a secure manner for **the duration of their contractual relationship with the trader and 6 months thereafter. This is necessary** ~~a reasonable period of time that does not exceed what is necessary~~, so that ~~it~~ **the information** can be accessed, in accordance with the applicable law, including on the protection of personal data, by public authorities and private parties with a legitimate interest, including through the orders to provide information referred to in this Regulation. **Without prejudice to the definition provided for in this Regulation, any trader, irrespective of whether it is a natural or legal person, identified on the basis of Article 6a, paragraph(1)(b) of Directive 2011/83/EU and Article 7 paragraph (4)(f) of Directive 2005/29/EC should be traceable when offering a product or service through an online platform. Similarly, the traceability of holders of domain names for the purpose of contributing to the security, stability and resilience of domain name systems, which in turn contributes to a high common level of cybersecurity within the Union, is ensured by Directive .../... [proposed Directive on measures for a high common level of cybersecurity across the Union, repealing Directive (EU) 2016/1148], which introduces the obligation for top-level domain registries and the entities providing domain name registration services for the top-level domain, so-called registrars, to collect, maintain in a database and provide lawful access to accurate and complete domain name registration data. Directive 2000/31/EC obliges all information society services providers to render easily, directly and permanently accessible to the recipients of the service and competent authorities certain information allowing the identification of all providers.**

(50) To ensure an efficient and adequate application of that obligation, without imposing any disproportionate burdens, the **providers of the online platforms covered marketplaces** should make reasonable efforts to verify the reliability of the information provided by the traders concerned, in particular by using freely available official online databases and online interfaces, such as national trade registers and the VAT Information Exchange System<sup>37</sup>, or by requesting the traders concerned to provide trustworthy supporting documents, such as copies of identity documents, certified ~~bank~~ **payment accounts'** statements, company certificates and trade register certificates. They may also use other sources, available for use at a distance, which offer a similar degree of reliability for the purpose of complying with this obligation. However, the **providers of online platforms covered marketplaces** should not be required to engage in excessive or costly online fact-finding exercises or to carry out verifications on the spot. Nor should such **providers online platforms**, which have made the reasonable efforts required by this Regulation, be understood as guaranteeing the reliability of the information towards consumer or other interested parties. **Providers of Such online platforms marketplaces** should also design and organise their online interface in a way that enables traders to comply with their obligations under Union law, in particular the requirements set out in Articles 6 and 8 of Directive 2011/83/EU of the European Parliament and of the Council<sup>38</sup>, Article 7 of Directive 2005/29/EC of the European Parliament and of the Council<sup>39</sup> and Article 3 of Directive 98/6/EC of the European Parliament and of the Council<sup>40</sup>. **In order to ensure that the intended effect can be achieved, providers of online marketplaces shall make their best efforts to make sure that the traders provide complete information and ensure that products or services are not offered as long as the information is incomplete. This is not a general monitoring obligation or an obligation for the provider of online marketplaces to assess whether the content provided is in fact compliant with Union law. The obligation could be seen as a more**

<sup>37</sup> [https://ec.europa.eu/taxation\\_customs/vies/vieshome.do?selectedLanguage=en](https://ec.europa.eu/taxation_customs/vies/vieshome.do?selectedLanguage=en)

<sup>38</sup> 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.

<sup>39</sup> 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').

<sup>40</sup> Directive 98/6/EC of the European Parliament and of the Council of 16 February 1998 on consumer protection in the indication of the prices of products offered to consumers.



technical obligation where the provider by design of the online interface ensure that a certain product cannot be uploaded and offered to consumers on their marketplace before certain sections has been completed by the trader. How the provider of an online marketplace will ensure this, is up to the provider to decide. Providers of online marketplaces should store the information received by traders for six months. This obligation leaves unaffected potential obligations to preserve certain content for longer periods of time, on the basis of other Union law or national laws, in compliance with Union law.

The amendment in this Recital is a consequential amendment due to our suggestions to Article 24b, which we refer to.

(51) In view of the particular responsibilities and obligations of **providers of** online platforms, they should be made subject to transparency reporting obligations, which apply in addition to the transparency reporting obligations applicable to all providers of intermediary services under this Regulation. For the purposes of determining whether online platforms may be very large online platforms that are subject to certain additional obligations under this Regulation, the transparency reporting obligations for **providers of** online platforms should include certain obligations relating to the publication and communication of information on the average monthly active recipients of the service in the Union.

(52) Online advertising ~~ingement~~ plays an important role in the online environment, including in relation to the provision of the services of online platforms, **when the service provider receives remuneration as economic consideration for the placement of the specific advertisement on the platform's online interface, for example as direct payment or increased sale commission**. However, online advertising ~~ingement~~ can contribute to significant risks, ranging from advertisements ~~that is itself~~ **are themselves** illegal content, to contributing to financial incentives for the publication or amplification of illegal or otherwise harmful content and activities online, or the discriminatory display of advertising with an impact on the equal treatment and opportunities of citizens. In addition to the requirements resulting from Article 6 of Directive 2000/31/EC, **providers of** online platforms should therefore be required to ensure that the recipients of the service have certain individualised information necessary for them to understand when and on whose

behalf the advertisement is displayed. **They should ensure that the information is salient, including through standardised visual or audio marks, clearly identifiable and unambiguous for the average user.** In addition, recipients of the service should have information on the main parameters used for determining that specific advertisement is to be displayed to them, providing meaningful explanations of the logic used to that end, including when this is based on profiling. **Such explanations should include information on the method used for displaying the advertisement – for example whether it is contextual, behavioural or other type of advertising – and, where applicable, the main profiling criteria used.** The requirements of this Regulation on the provision of information relating to advertisement is without prejudice to the application of the relevant provisions of Regulation (EU) 2016/679, in particular those regarding the right to object, automated individual decision-making, including profiling and specifically the need to obtain consent of the data subject prior to the processing of personal data for targeted advertising. Similarly, it is without prejudice to the provisions laid down in Directive 2002/58/EC in particular those regarding the storage of information in terminal equipment and the access to information stored therein. **Finally, this Regulation complements the application of the Directive 2010/13/EU which imposes measures to enable users to declare audiovisual commercial communications in user-generated videos.**

- (53) Given the importance of very large online platforms, due to their reach, in particular as expressed in number of recipients of the service, in facilitating public debate, economic transactions and the dissemination of information, opinions and ideas and in influencing how recipients obtain and communicate information online, it is necessary to impose specific obligations on **the providers of** those platforms, in addition to the obligations applicable to all online platforms. Those additional obligations on **providers of** very large online platforms are necessary to address those public policy concerns, there being no alternative and less restrictive measures that would effectively achieve the same result.
- (54) Very large online platforms may cause societal risks, different in scope and impact from those caused by smaller platforms. **Providers of such very large online platforms should therefore bear the highest standard of due diligence obligations, proportionate to their societal impact and means.** Once the number of recipients of a platform reaches a significant share of the Union population, the systemic risks the platform poses **may** have a disproportionately negative impact in the Union. Such significant reach should be considered to exist where the number of recipients exceeds an operational threshold set at 45

million, that is, a number equivalent to 10 % of the Union population. **Accordingly, the number of average monthly active recipients of the service should reflect the recipients actually reached by the service either by being exposed to content or by providing content disseminated on the platforms' interface in that period of time.** The operational threshold **and methodology to determine the active recipients of an online platform** should be kept up to date through amendments enacted by delegated acts, where necessary, **and reflect the nature of the service and the way recipients of the service interact with it.** ~~Such very large online platforms should therefore bear the highest standard of due diligence obligations, proportionate to their societal impact and means.~~

- (55) In view of the network effects characterising the platform economy, the user base of an online platform may quickly expand and reach the dimension of a very large online platform, with the related impact on the internal market. This may be the case in the event of exponential growth experienced in short periods of time, or by a large global presence and turnover allowing the online platform to fully exploit network effects and economies of scale and of scope. A high annual turnover or market capitalisation can in particular be an indication of fast scalability in terms of user reach. In those cases, the Digital Services Coordinator should be able to request more frequent reporting from **provider of** the platform on the user base to be able to timely identify the moment at which that platform should be designated as a very large online platform for the purposes of this Regulation.
- (56) Very large online platforms ~~are~~ **can be** used in a way that strongly influences safety online, the shaping of public opinion and discourse, as well as on online trade. The way they design their services is generally optimised to benefit their often advertising-driven business models and can cause societal concerns. ~~In the absence of e~~ **Effective and fundamental rights based** regulation and enforcement **is necessary in order to**, ~~they can set the rules of the game, without effectively identifying and mitigating the risks and the societal and economic harm~~ **that may arise** ~~they can cause~~. Under this Regulation, **providers of** very large online platforms should therefore assess the systemic risks stemming from the functioning and use of their service, as well as by potential misuses by the recipients of the service, and take appropriate mitigating measures.
- (57) Three categories of systemic risks should be assessed in-depth. A first category concerns the risks associated with the misuse of their service through the dissemination of illegal content, such as the dissemination of child sexual abuse material or illegal hate speech<sup>2</sup>, and the conduct of illegal activities, such as the sale of products or services prohibited by Union or

national law, including counterfeit products. For example, and without prejudice to the personal responsibility of the recipient of the service of very large online platforms for possible illegality of his or her activity under the applicable law, such dissemination or activities may constitute a significant systematic risk where access to such content may be amplified through accounts with a particularly wide reach. A second category concerns the impact of the service on the exercise of fundamental rights, as protected by the Charter of Fundamental Rights, including the freedom of expression and information, the right to private life, the right to non-discrimination and the rights of the child. Such risks may arise, for example, in relation to the design of the algorithmic systems used by the very large online platform or the misuse of their service through the submission of abusive notices or other methods for silencing speech or hampering competition. A third category of risks concerns the intentional and, oftentimes, coordinated-manipulation of the platform's service, with a foreseeable impact on health, civic discourse, electoral processes, public security, and protection of minors, having regard to the need to safeguard public order, protect privacy and fight fraudulent and deceptive commercial practices. Such risks may arise, for example, through the creation of fake accounts, the use of bots, and other automated or partially automated behaviours, which may lead to the rapid and widespread dissemination of information that is illegal content or incompatible with an online platform's terms and conditions.

- (58) **Providers of v**Very large online platforms should deploy the necessary means to diligently mitigate the systemic risks identified in the risk assessment. ~~**They**Very large online platforms~~ should under such mitigating measures consider, for example, enhancing or otherwise adapting the design and functioning of their content moderation, algorithmic recommender systems and online interfaces, so that they discourage and limit the dissemination of illegal content, adapting their decision-making processes, or adapting their terms and conditions. They may also include corrective measures, such as discontinuing advertising revenue for specific content, or other actions, such as improving the visibility of authoritative information sources. **Providers of v**Very large online platforms may reinforce their internal processes or supervision of any of their activities, in particular as regards the detection of systemic risks. They may also initiate or increase cooperation with trusted flaggers, organise training sessions and exchanges with trusted flagger organisations, and cooperate with other service providers, including by initiating or joining existing codes of conduct or other self-regulatory measures. **In selecting the appropriate mitigation**

**measures, providers can consider, where appropriate, industry best practices, including as established through self regulatory cooperation, codes of conduct, as well as guidelines from the Commission.**

Any measures adopted should respect the due diligence requirements of this Regulation and be effective and appropriate for mitigating the specific risks identified, in the interest of safeguarding public order, protecting privacy and fighting fraudulent and deceptive commercial practices, and should be proportionate in light of the ~~very large online platform's~~ economic capacity **provider of the very large online platform** and the need to avoid unnecessary restrictions on the use of their service, taking due account of potential negative effects on the fundamental rights of the recipients of the service.

- (59) **Providers of** ~~Very large online platforms~~ should, where appropriate, conduct their risk assessments and design their risk mitigation measures with the involvement of representatives of the recipients of the service, representatives of groups potentially impacted by their services, independent experts and civil society organisations. **In the assessment on whether a measure is reasonable, proportionate and effective, special consideration should be given to the right to freedom of expression.**
- (60) Given the need to ensure verification by independent experts, **providers of** ~~very large online platforms~~ should be accountable, through independent auditing, for their compliance with the obligations laid down by this Regulation and, where relevant, any complementary commitments undertaking pursuant to codes of conduct and crises protocols. They should give the auditor access to all relevant data necessary to perform the audit properly, **including, where appropriate, to data related to algorithmic systems**. Auditors should also be able to make use of other sources of objective information, including studies by vetted researchers. **Audits should be performed according to best industry practices, with due regard, as appropriate, to auditing standards and guidelines.** Auditors should guarantee the confidentiality, security and integrity of the information, such as trade secrets, that they obtain when performing their tasks and have the necessary expertise in the area of risk management and technical competence to audit algorithms. Auditors should be independent, so as to be able to perform their tasks in an adequate and trustworthy manner. If their independence **and technical competence** is not beyond doubt, they should resign or abstain from the audit engagement.
- (61) The audit report should be substantiated, so as to give a meaningful account of the activities undertaken and the conclusions reached. It should help inform, and where appropriate

suggest improvements to the measures taken by the **providers of the** very large online platform to comply with their obligations under this Regulation. The report should be transmitted to the Digital Services Coordinator of establishment and the Board ~~without delay~~**within 30 days following the adoption of the audit implementing report**, together with the risk assessment and the mitigation measures, as well as the platform **provider**'s plans for addressing the audit's recommendations. The report should include an audit opinion based on the conclusions drawn from the audit evidence obtained. A positive opinion should be given where all evidence shows that the very large online platform complies with the obligations laid down by this Regulation or, where applicable, any commitments it has undertaken pursuant to a code of conduct or crisis protocol, in particular by identifying, evaluating and mitigating the systemic risks posed by its system and services. A positive opinion should be accompanied by comments where the auditor wishes to include remarks that do not have a substantial effect on the outcome of the audit. A negative opinion should be given where the auditor considers that the very large online platform does not comply with this Regulation or the commitments undertaken.

- (62) A core part of a very large online platform's business is the manner in which information is prioritised and presented on its online interface to facilitate and optimise access to information for the recipients of the service. This is done, for example, by algorithmically suggesting, ranking and prioritising information, distinguishing through text or other visual representations, or otherwise curating information provided by recipients. Such recommender systems can have a significant impact on the ability of recipients to retrieve and interact with information online. They also play an important role in the amplification of certain messages, the viral dissemination of information and the stimulation of online behaviour. Consequently, **in addition to obligations on assessment and mitigation of risks, providers of** very large online platforms should ensure that recipients are appropriately informed, and can influence the information presented to them. They should clearly present the main parameters for such recommender systems in an easily comprehensible manner to ensure that the recipients understand how information is prioritised for them. They should also ensure that the recipients enjoy alternative options for the main parameters, including options that are not based on profiling of the recipient.
- (63) Advertising systems used by very large online platforms pose particular risks and require further public and regulatory supervision on account of their scale and ability to target and reach recipients of the service based on their behaviour within and outside that platform's

online interface. **Providers of v**Very large online platforms should ensure public access to repositories of advertisements displayed on their online interfaces to facilitate supervision and research into emerging risks brought about by the distribution of advertising online, for example in relation to illegal advertisements or manipulative techniques and disinformation with a real and foreseeable negative impact on public health, public security, civil discourse, political participation, and equality. Repositories should include the content of advertisements and related data on the advertiser and the delivery of the advertisement, in particular where targeted advertising is concerned.

- (64) In order to appropriately supervise **monitor and assess** the compliance of very large online platforms with the obligations laid down by this Regulation, the Digital Services Coordinator of establishment or the Commission may require access to or reporting of specific data. Such a requirement may include, for example, the data necessary to assess the risks and possible harms brought about by the platform's systems, data on the accuracy, functioning and testing of algorithmic systems for content moderation, recommender systems or advertising systems, **including, where appropriate training data and algorithms,** or data on processes and outputs of content moderation or of internal complaint-handling systems within the meaning of this Regulation. **Such data access requests do not include requests to produce specific information about individual recipients of the service for the purpose of determining compliance of the recipients with other applicable Union or national law.** Investigations by researchers on the evolution and severity of online systemic risks are particularly important for bridging information asymmetries and establishing a resilient system of risk mitigation, informing online platforms, Digital Services Coordinators, other competent authorities, the Commission and the public. This Regulation therefore provides a framework for compelling access to data from very large online platforms to ~~vett~~ researchers **vett** **by the Digital Services Coordinator of establishment of a very large online platform provider, or the Commission.** All ~~requirements~~ **requests** for access to data under that framework should be proportionate and appropriately protect the rights and legitimate interests, including trade secrets and other confidential information, of the platform and any other parties concerned, including the recipients of the service.
- (65) Given the complexity of the functioning of the systems deployed and the systemic risks they present to society, **providers of** very large online platforms should appoint compliance officers, which should have the necessary qualifications to operationalise measures and

monitor the compliance with this Regulation within the platform **provider**'s organisation.

**Providers of v**Very large online platforms should ensure that the compliance officer is involved, properly and in a timely manner, in all issues which relate to this Regulation **including in the risk assessment and mitigation strategy and specific measures, as well as assessing compliance, where applicable, with commitments made by the provider of very large online platform provider under the codes of conduct they subscribe to.** In view of the additional risks relating to their activities and their additional obligations under this Regulation, ~~the other transparency requirements set out in this Regulation should be complemented by~~ additional transparency requirements ~~applicable~~ **should apply** specifically to very large online platforms, notably to report **comprehensively** on the risk assessments performed and subsequent measures adopted as provided by this Regulation.

- (66) To facilitate the effective and consistent application of the obligations in this Regulation that may require implementation through technological means, it is important to promote voluntary industry standards covering certain technical procedures, where the industry can help develop standardised means to comply with this Regulation, such as allowing the submission of notices, including through application programming interfaces, or about the interoperability of advertisement repositories. Such standards could in particular be useful for relatively small providers of intermediary services. The standards could distinguish between different types of illegal content or different types of intermediary services, as appropriate.
- (67) The Commission and the Board should encourage the drawing-up of codes of conduct to contribute to the application of this Regulation. While the implementation of codes of conduct should be measurable and subject to public oversight, this should not impair the voluntary nature of such codes and the freedom of interested parties to decide whether to participate. In certain circumstances, it is important that **providers of** very large online platforms cooperate in the drawing-up and adhere to specific codes of conduct. Nothing in this Regulation prevents other service providers from adhering to the same standards of due diligence, adopting best practices and benefitting from the guidance provided by the Commission and the Board, by participating in the same codes of conduct.
- (68) It is appropriate that this Regulation identify certain areas of consideration for such codes of conduct. In particular, risk mitigation measures concerning specific types of illegal content should be explored via self- and co-regulatory agreements. Another area for consideration is the possible negative impacts of systemic risks on society and democracy, such as



disinformation or manipulative and abusive activities. This includes coordinated operations aimed at amplifying information, including disinformation, such as the use of bots or fake accounts for the creation of ~~fake-inaccurate~~ or misleading information, sometimes with a purpose of obtaining economic gain, which are particularly harmful for vulnerable recipients of the service, such as children. In relation to such areas, adherence to and compliance with a given code of conduct by a very large online platform may be considered as an appropriate risk mitigating measure. ~~The refusal without proper explanations by a provider of an online platform of the Commission's invitation to participate in the application of such a code of conduct could be taken into account, where relevant, when determining whether the online platform has infringed the obligations laid down by this Regulation.~~

As we understand, the participation in codes of conduct is voluntary. Thus, we find that the wording of the last sentence of recital 68 can lead to the conclusion that the participation is in fact binding/mandatory.

If participation is voluntary and the VLOP adheres to all legal requirements in the DSA, then it should be stressed, that the refusal to participate in the code of conduct, should not be taken into account when determining whether the VLOP has infringed the obligations in the DSA.

Therefore, we propose to delete the last sentence of recital 68.

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

levels of user-friendliness to ensure that the transparency obligations achieve their objectives.

- (71) In case of extraordinary circumstances affecting public security or public health, the Commission may initiate the drawing up of crisis protocols to coordinate a rapid, collective and cross-border response in the online environment. Extraordinary circumstances may entail any unforeseeable event, such as earthquakes, hurricanes, pandemics and other serious cross-border threats to public health, war and acts of terrorism, where, for example, online platforms may be misused for the rapid spread of illegal content or disinformation or where the need arises for rapid dissemination of reliable information. In light of the important role of very large online platforms in disseminating information in our societies and across borders, such platform **providers** should be encouraged in drawing up and applying specific crisis protocols. Such crisis protocols should be activated only for a limited period of time and the measures adopted should also be limited to what is strictly necessary to address the extraordinary circumstance. Those measures should be consistent with this Regulation, and should not amount to a general obligation for the participating **providers of** very large online platforms to monitor the information which they transmit or store, nor actively to seek facts or circumstances indicating illegal content.
- (72) The task of ensuring adequate oversight and enforcement of the obligations laid down in this Regulation should in principle be attributed to the Member States. To this end, they should appoint at least one authority with the task to apply and enforce this Regulation. Member States should however be able to entrust more than one competent authority, with specific supervisory or enforcement tasks and competences concerning the application of this Regulation, for example for specific sectors, such as electronic communications' regulators, media regulators or consumer protection authorities, reflecting their domestic constitutional, organisational and administrative structure.
- (73) Given the cross-border nature of the services at stake and the horizontal range of obligations introduced by this Regulation, the authority appointed with the task of supervising the application and, where necessary, enforcing this Regulation should be identified as a Digital Services Coordinator in each Member State. Where more than one competent authority is appointed to apply and enforce this Regulation, only one authority in that Member State should be identified as a Digital Services Coordinator. The Digital Services Coordinator should act as the single contact point with regard to all matters related to the application of this Regulation for the Commission, the Board, the Digital Services Coordinators of other

Member States, as well as for other competent authorities of the Member State in question. In particular, where several competent authorities are entrusted with tasks under this Regulation in a given Member State, the Digital Services Coordinator should coordinate and cooperate with those authorities in accordance with the national law setting their respective tasks, and should ensure effective involvement of all relevant authorities in the supervision and enforcement at Union level.

- (74) The Digital Services Coordinator, as well as other competent authorities designated under this Regulation, play a crucial role in ensuring the effectiveness of the rights and obligations laid down in this Regulation and the achievement of its objectives. Accordingly, it is necessary to ensure that those authorities act in complete independence from private and public bodies, without the obligation or possibility to seek or receive instructions, including from the government, and without prejudice to the specific duties to cooperate with other competent authorities, the Digital Services Coordinators, the Board and the Commission. On the other hand, the independence of these authorities should not mean that they cannot be subject, in accordance with national constitutions and without endangering the achievement of the objectives of this Regulation, to national control or monitoring mechanisms regarding their financial expenditure or to judicial review, or that they should not have the possibility to consult other national authorities, including law enforcement authorities or crisis management authorities, where appropriate.
- (75) Member States can designate an existing national authority with the function of the Digital Services Coordinator, or with specific tasks to apply and enforce this Regulation, provided that any such appointed authority complies with the requirements laid down in this Regulation, such as in relation to its independence. Moreover, Member States are in principle not precluded from merging functions within an existing authority, in accordance with Union law. The measures to that effect may include, inter alia, the preclusion to dismiss the President or a board member of a collegiate body of an existing authority before the expiry of their terms of office, on the sole ground that an institutional reform has taken place involving the merger of different functions within one authority, in the absence of any rules guaranteeing that such dismissals do not jeopardise the independence and impartiality of such members.
- (76) In the absence of a general requirement for providers of intermediary services to ensure a physical presence within the territory of one of the Member States, there is a need to ensure clarity under which Member State's jurisdiction those providers fall for the purposes of

enforcing the rules laid down in Chapters III and IV by the national competent authorities. A provider should be under the jurisdiction of the Member State where its main establishment is located, that is, where the provider has its head office or registered office within which the principal financial functions and operational control are exercised. In respect of providers that do not have an establishment in the Union but that offer services in the Union and therefore fall within the scope of this Regulation, the Member State where those providers appointed their legal representative should have jurisdiction, considering the function of legal representatives under this Regulation. In the interest of the effective application of this Regulation, all Member States should, however, have jurisdiction in respect of providers that failed to designate a legal representative, provided that the principle of *ne bis in idem* is respected. To that aim, each Member State that exercises jurisdiction in respect of such providers should, without undue delay, inform all other Member States of the measures they have taken in the exercise of that jurisdiction.

- (77) Member States should provide the Digital Services Coordinator, and any other competent authority designated under this Regulation, with sufficient powers and means to ensure effective investigation and enforcement. Digital Services Coordinators should in particular be able to search for and obtain information which is located in its territory, including in the context of joint investigations, with due regard to the fact that oversight and enforcement measures concerning a provider under the jurisdiction of another Member State should be adopted by the Digital Services Coordinator of that other Member State, where relevant in accordance with the procedures relating to cross-border cooperation.
- (78) Member States should set out in their national law, in accordance with Union law and in particular this Regulation and the Charter, the detailed conditions and limits for the exercise of the investigatory and enforcement powers of their Digital Services Coordinators, and other competent authorities where relevant, under this Regulation.
- (79) In the course of the exercise of those powers, the competent authorities should comply with the applicable national rules regarding procedures and matters such as the need for a prior judicial authorisation to enter certain premises and legal professional privilege. Those provisions should in particular ensure respect for the fundamental rights to an effective remedy and to a fair trial, including the rights of defence, and, the right to respect for private life. In this regard, the guarantees provided for in relation to the proceedings of the Commission pursuant to this Regulation could serve as an appropriate point of reference. A prior, fair and impartial procedure should be guaranteed before taking any final decision,

including the right to be heard of the persons concerned, and the right to have access to the file, while respecting confidentiality and professional and business secrecy, as well as the obligation to give meaningful reasons for the decisions. This should not preclude the taking of measures, however, in duly substantiated cases of urgency and subject to appropriate conditions and procedural arrangements. The exercise of powers should also be proportionate to, *inter alia* the nature and the overall actual or potential harm caused by the infringement or suspected infringement. The competent authorities should in principle take all relevant facts and circumstances of the case into account, including information gathered by competent authorities in other Member States.

- (80) Member States should ensure that violations of the obligations laid down in this Regulation can be sanctioned in a manner that is effective, proportionate and dissuasive, taking into account the nature, gravity, recurrence and duration of the violation, in view of the public interest pursued, the scope and kind of activities carried out, as well as the economic capacity of the infringer. In particular, penalties should take into account whether the provider of intermediary services concerned systematically or recurrently fails to comply with its obligations stemming from this Regulation, as well as, where relevant, whether the provider is active in several Member States.
- (81) In order to ensure effective enforcement of this Regulation, individuals or representative organisations should be able to lodge any complaint related to compliance with this Regulation with the Digital Services Coordinator in the territory where they received the service, without prejudice to this Regulation's rules on jurisdiction. Complaints should provide a faithful overview of concerns related to a particular intermediary service provider's compliance and could also inform the Digital Services Coordinator of any more cross-cutting issues. The Digital Services Coordinator should involve other national competent authorities as well as the Digital Services Coordinator of another Member State, and in particular the one of the Member State where the provider of intermediary services concerned is established, if the issue requires cross-border cooperation.
- (82) Member States should ensure that Digital Services Coordinators can take measures that are effective in addressing and proportionate to certain particularly serious and persistent infringements. Especially where those measures can affect the rights and interests of third parties, as may be the case in particular where the access to online interfaces is restricted, it is appropriate to require that the measures be ordered by a competent judicial authority at the Digital Service Coordinators' request and are subject to additional safeguards. In particular,

third parties potentially affected should be afforded the opportunity to be heard and such orders should only be issued when powers to take such measures as provided by other acts of Union law or by national law, for instance to protect collective interests of consumers, to ensure the prompt removal of web pages containing or disseminating child pornography, or to disable access to services are being used by a third party to infringe an intellectual property right, are not reasonably available.

- (83) Such an order to restrict access should not go beyond what is necessary to achieve its objective. For that purpose, it should be temporary and be addressed in principle to a provider of intermediary services, such as the relevant hosting service provider, internet service provider or domain registry or registrar, which is in a reasonable position to achieve that objective without unduly restricting access to lawful information.
- (84) The Digital Services Coordinator should regularly publish a report on the activities carried out under this Regulation. Given that the Digital Services Coordinator is also made aware of orders to take action against illegal content or to provide information regulated by this Regulation through the common information sharing system, the Digital Services Coordinator should include in its annual report the number and categories of these orders addressed to providers of intermediary services issued by judicial and administrative authorities in its Member State.
- (85) Where a Digital Services Coordinator requests another Digital Services Coordinator to take action, the requesting Digital Services Coordinator, or the Board in case it issued a recommendation to assess issues involving more than three Member States, should be able to refer the matter to the Commission in case of any disagreement as to the assessments or the measures taken or proposed or a failure to adopt any measures. The Commission, on the basis of the information made available by the concerned authorities, should accordingly be able to request the competent Digital Services Coordinator to re-assess the matter and take the necessary measures to ensure compliance within a defined time period. This possibility is without prejudice to the Commission's general duty to oversee the application of, and where necessary enforce, Union law under the control of the Court of Justice of the European Union in accordance with the Treaties. A failure by the Digital Services Coordinator of establishment to take any measures pursuant to such a request may also lead to the Commission's intervention under Section 3 of Chapter IV of this Regulation, where the suspected infringer is a very large online platform

- (86) In order to facilitate cross-border supervision and investigations involving several Member States, the Digital Services Coordinators should be able to participate, on a permanent or temporary basis, in joint oversight and investigation activities concerning matters covered by this Regulation. Those activities may include other competent authorities and may cover a variety of issues, ranging from coordinated data gathering exercises to requests for information or inspections of premises, within the limits and scope of powers available to each participating authority. The Board may be requested to provide advice in relation to those activities, for example by proposing roadmaps and timelines for activities or proposing ad-hoc task-forces with participation of the authorities involved.
- (87) In view of the particular challenges that may emerge in relation to assessing and ensuring a very large online platform's compliance, for instance relating to the scale or complexity of a suspected infringement or the need for particular expertise or capabilities at Union level, Digital Services Coordinators should have the possibility to request, on a voluntary basis, the Commission to intervene and exercise its investigatory and enforcement powers under this Regulation.
- (88) In order to ensure a consistent application of this Regulation, it is necessary to set up an independent advisory group at Union level, which should support the Commission and help coordinate the actions of Digital Services Coordinators. That European Board for Digital Services should consist of the Digital Services Coordinators, without prejudice to the possibility for Digital Services Coordinators to invite in its meetings or appoint ad hoc delegates from other competent authorities entrusted with specific tasks under this Regulation, where that is required pursuant to their national allocation of tasks and competences. In case of multiple participants from one Member State, the voting right should remain limited to one representative per Member State.
- (89) The Board should contribute to achieving a common Union perspective on the consistent application of this Regulation and to cooperation among competent authorities, including by advising the Commission and the Digital Services Coordinators about appropriate investigation and enforcement measures, in particular vis à vis very large online platforms. The Board should also contribute to the drafting of relevant templates and codes of conduct and analyse emerging general trends in the development of digital services in the Union.
- (90) For that purpose, the Board should be able to adopt opinions, requests and recommendations addressed to Digital Services Coordinators or other competent national authorities. While not legally binding, the decision to deviate therefrom should be properly explained and

could be taken into account by the Commission in assessing the compliance of the Member State concerned with this Regulation.

According to Article 49(1)(c), the Board can issue advice, opinions and recommendations to the Digital Services Coordinators. Digital Services Coordinators and other national competent authorities that do not follow these opinions, requests or recommendations addressed to them adopted by the board shall provide the reasons for this choice. Although such advice, opinions and recommendations are not binding according to recital 90, the reason to deviate therefrom can be taken into account in assessing the compliance of the Member State concerned. This seems contradictory and means that the opinions, requests and recommendations will have an indirect binding effect.

- (91) The Board should bring together the representatives of the Digital Services Coordinators and possible other competent authorities under the chairmanship of the Commission, with a view to ensuring an assessment of matters submitted to it in a fully European dimension. In view of possible cross-cutting elements that may be of relevance for other regulatory frameworks at Union level, the Board should be allowed to cooperate with other Union bodies, offices, agencies and advisory groups with responsibilities in fields such as equality, including equality between women and men, and non-discrimination, data protection, electronic communications, audiovisual services, detection and investigation of frauds against the EU budget as regards custom duties, or consumer protection, as necessary for the performance of its tasks.
- (92) The Commission, through the Chair, should participate in the Board without voting rights. Through the Chair, the Commission should ensure that the agenda of the meetings is set in accordance with the requests of the members of the Board as laid down in the rules of procedure and in compliance with the duties of the Board laid down in this Regulation.
- (93) In view of the need to ensure support for the Board's activities, the Board should be able to rely on the expertise and human resources of the Commission and of the competent national authorities. The specific operational arrangements for the internal functioning of the Board should be further specified in the rules of procedure of the Board.
- (94) Given the importance of very large online platforms, in view of their reach and impact, their failure to comply with the specific obligations applicable to them may affect a substantial number of recipients of the services across different Member States and may cause large societal harms, while such failures may also be particularly complex to identify and address.
- (95) In order to address those public policy concerns it is therefore necessary to provide for a common system of enhanced supervision and enforcement at Union level. Once an



infringement of one of the provisions that solely apply to very large online platforms has been identified, for instance pursuant to individual or joint investigations, auditing or complaints, the Digital Services Coordinator of establishment, upon its own initiative or upon the Board's advice, should monitor any subsequent measure taken by the very large online platform concerned as set out in its action plan. That Digital Services Coordinator should be able to ask, where appropriate, for an additional, specific audit to be carried out, on a voluntary basis, to establish whether those measures are sufficient to address the infringement. At the end of that procedure, it should inform the Board, the Commission and the platform concerned of its views on whether or not that platform addressed the infringement, specifying in particular the relevant conduct and its assessment of any measures taken. The Digital Services Coordinator should perform its role under this common system in a timely manner and taking utmost account of any opinions and other advice of the Board.

- (96) Where the infringement of the provision that solely applies to very large online platforms is not effectively addressed by that platform pursuant to the action plan, only the Commission may, on its own initiative or upon advice of the Board, decide to further investigate the infringement concerned and the measures that the platform has subsequently taken, to the exclusion of the Digital Services Coordinator of establishment. After having conducted the necessary investigations, the Commission should be able to issue decisions finding an infringement and imposing sanctions in respect of very large online platforms where that is justified. It should also have such a possibility to intervene in cross-border situations where the Digital Services Coordinator of establishment did not take any measures despite the Commission's request, or in situations where the Digital Services Coordinator of establishment itself requested for the Commission to intervene, in respect of an infringement of any other provision of this Regulation committed by a very large online platform.
- (97) The Commission should remain free to decide whether or not it wishes to intervene in any of the situations where it is empowered to do so under this Regulation. Once the Commission initiated the proceedings, the Digital Services Coordinators of establishment concerned should be precluded from exercising their investigatory and enforcement powers in respect of the relevant conduct of the very large online platform concerned, so as to avoid duplication, inconsistencies and risks from the viewpoint of the principle of *ne bis in idem*. However, in the interest of effectiveness, those Digital Services Coordinators should not be precluded from exercising their powers either to assist the Commission, at its request in the

performance of its supervisory tasks, or in respect of other conduct, including conduct by the same very large online platform that is suspected to constitute a new infringement. Those Digital Services Coordinators, as well as the Board and other Digital Services Coordinators where relevant, should provide the Commission with all necessary information and assistance to allow it to perform its tasks effectively, whilst conversely the Commission should keep them informed on the exercise of its powers as appropriate. In that regard, the Commission should, where appropriate, take account of any relevant assessments carried out by the Board or by the Digital Services Coordinators concerned and of any relevant evidence and information gathered by them, without prejudice to the Commission's powers and responsibility to carry out additional investigations as necessary.

- (98) In view of both the particular challenges that may arise in seeking to ensure compliance by very large online platforms and the importance of doing so effectively, considering their size and impact and the harms that they may cause, the Commission should have strong investigative and enforcement powers to allow it to investigate, enforce and monitor certain of the rules laid down in this Regulation, in full respect of the principle of proportionality and the rights and interests of the affected parties.
- (99) In particular, the Commission should have access to any relevant documents, data and information necessary to open and conduct investigations and to monitor the compliance with the relevant obligations laid down in this Regulation, irrespective of who possesses the documents, data or information in question, and regardless of their form or format, their storage medium, or the precise place where they are stored. The Commission should be able to directly require that the very large online platform concerned or relevant third parties, or than individuals, provide any relevant evidence, data and information. In addition, the Commission should be able to request any relevant information from any public authority, body or agency within the Member State, or from any natural person or legal person for the purpose of this Regulation. The Commission should be empowered to require access to, and explanations relating to, data-bases and algorithms of relevant persons, and to interview, with their consent, any persons who may be in possession of useful information and to record the statements made. The Commission should also be empowered to undertake such inspections as are necessary to enforce the relevant provisions of this Regulation. Those investigatory powers aim to complement the Commission's possibility to ask Digital Services Coordinators and other Member States' authorities for assistance, for instance by providing information or in the exercise of those powers

**(99a) Interim measures can be an important tool to ensure that, while an investigation is ongoing, the infringement being investigated does not lead to serious and irreparable damage for recipients of services of very large online platforms. This tool is important to avoid developments that could be very difficult to reverse by a decision taken by the Commission at the end of the proceedings. The Commission should therefore have the power to impose interim measures by decision in the context of proceedings opened in view of the possible adoption of a decision of non-compliance. This power should apply in cases where the Commission has made a prima facie finding of infringement of obligations concerning very large online platforms and where there is a risk of serious damage for recipients of the service. A decision imposing interim measures should only be valid for a specified period, either until the conclusion of the proceedings by the Commission, or for a fixed time period which can be renewed insofar as it is necessary and appropriate.**

We welcome the adjustments made by the Presidency in the new recital 99a.

(100) Compliance with the relevant obligations imposed under this Regulation should be enforceable by means of fines and periodic penalty payments. To that end, appropriate levels of fines and periodic penalty payments should also be laid down for non-compliance with the obligations and breach of the procedural rules, subject to appropriate limitation periods. **The Court of Justice should have unlimited jurisdiction in respect of fines and penalty payments.**

We welcome the adjustments made by the Presidency.

**(101b) Without prejudice to the rights of recipients of intermediary services to turn to a representative in accordance with the Directive (EU) 2020/1828 of the European Parliament and of the Council of 25 November 2020 on representative actions for the protection of the collective interests of consumers and repealing Directive 2009/22/EC<sup>41</sup>, recipients of the services should also have the right to mandate a legal person or a public body to exercise their rights provided for in this Regulation.**

We can support the Presidency proposal.

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<sup>41</sup> [OJ L 409, 4.12.2020, p. 1.](#)

- (101) The very large online platforms concerned and other persons subject to the exercise of the Commission's powers whose interests may be affected by a decision should be given the opportunity of submitting their observations beforehand, and the decisions taken should be widely publicised. While ensuring the rights of defence of the parties concerned, in particular, the right of access to the file, it is essential that confidential information be protected. Furthermore, while respecting the confidentiality of the information, the Commission should ensure that any information relied on for the purpose of its decision is disclosed to an extent that allows the addressee of the decision to understand the facts and considerations that lead up to the decision.
- (102) In the interest of effectiveness and efficiency, in addition to the general evaluation of the Regulation, to be performed within five years of entry into force, after the initial start-up phase and on the basis of the first three years of application of this Regulation, the Commission should also perform an evaluation of the activities of the Board and on its structure.
- (103) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council<sup>42</sup>.
- (104) In order to fulfil the objectives of this Regulation, the power to adopt acts in accordance with Article 290 of the Treaty should be delegated to the Commission to supplement this Regulation. In particular, delegated acts should be adopted in respect of criteria for identification of very large online platforms and of technical specifications for access requests. It is of particular importance that the Commission carries out appropriate consultations and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

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<sup>42</sup> Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

- (105) This Regulation respects the fundamental rights recognised by the Charter and the fundamental rights constituting general principles of Union law. Accordingly, this Regulation should be interpreted and applied in accordance with those fundamental rights, including the freedom of expression and information, as well as the freedom and pluralism of the media. When exercising the powers set out in this Regulation, all public authorities involved should achieve, in situations where the relevant fundamental rights conflict, a fair balance between the rights concerned, in accordance with the principle of proportionality.
- (106) Since the objective of this Regulation, namely the proper functioning of the internal market and to ensure a safe, predictable and trusted online environment in which the fundamental rights enshrined in the Charter are duly protected, cannot be sufficiently achieved by the Member States because they cannot achieve the necessary harmonisation and cooperation by acting alone, but can rather, by reason of its territorial and personal scope, be better achieved at the Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.

**(107) The European Data Protection Supervisor was consulted in accordance with Article 42(1) of Regulation (EU) 2018/1725 of the European Parliament and of the Council<sup>43</sup> and delivered an opinion on 10 February 2021<sup>44</sup>,**

HAVE ADOPTED THIS REGULATION:

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<sup>43</sup> **OJ L 295, 21.11.2018, p. 39**

<sup>44</sup> **OJ C, p.**

# Chapter I – General provisions

## Article 1

Subject matter, objectives and scope

**0.** The aims of this Regulation ~~are to:~~ **is to**

(a) — contribute to the proper functioning of the internal market for intermediary services **by**;

(b) — ~~setting~~ **out** ~~uniform~~ **harmonised** rules for a safe, predictable and trusted online environment, where fundamental rights enshrined in the Charter are effectively protected.

1. This Regulation lays down harmonised rules on the provision of intermediary services in the internal market. In particular, it establishes:

- (a) a framework for the conditional exemption from liability of providers of intermediary services;
- (b) rules on specific due diligence obligations tailored to certain specific categories of providers of intermediary services;
- (c) rules on the implementation and enforcement of this Regulation, including as regards the cooperation of and coordination between the competent authorities.

~~2. — The aims of this Regulation are to:~~ **[moved to para 0]**

3. This Regulation shall apply to intermediary services ~~provided~~ **offered** to recipients of the service that have their place of establishment or **are located** ~~residence~~ in the Union, irrespective of the place of establishment of the providers of those services.

4. This Regulation shall not apply to any service that is not an intermediary service or to any requirements imposed in respect of such a service, irrespective of whether the service is provided through the use of an intermediary service.

**5. Content from mass media as defined in national legislation is exempted from this regulation to the extent that the mass media and the content in question is already subject to editorial liability due to national legislation.**

6. 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/EU~~€~~;
- (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~~;~~

Denmark wishes to exempt the content of journalistic media, which is subject to editorial liability under the Danish Media Liability Act, in order to ensure the extended freedom of expression that journalists' hold by virtue of their work uncovering and debating critical societal issues. Providers of intermediary services should therefore not be mandated to remove the content of these media.

- (i) 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;
- (l) Directive (EU) ....laying down harmonised rules on the appointment of legal representatives for the purpose of gathering evidence in criminal proceedings

## *Article 2*

### *Definitions*

For the purpose of this Regulation, the following definitions shall apply:

- (a) ‘information society services’ means services within the meaning of Article 1(1)(b) of Directive (EU) 2015/1535;
- (b) ‘recipient of the service’ means any natural or legal person who **for professional ends or otherwise, uses an intermediary service, in particular for the purposes of seeking information or making it accessible**~~the relevant intermediary service;~~
- (c) ‘consumer’ means any natural person who is acting for purposes which are outside his or her trade, business, **craft** or profession;
- (d) ‘to offer services in the Union’ means enabling **natural or** legal ~~or natural~~ persons in one or more Member States to use the services of the provider of ~~information society~~ **intermediary** services which has a substantial connection to the Union;
- (da) ‘such a substantial connection’ means a connection of an provider of intermediary services with the Union resulting either from its** ~~is deemed to exist where the provider has an establishment in the Union **or from**; in the absence of such an establishment, the assessment of a substantial connection is based on specific factual criteria, such as:~~
- a significant number of users in one or more Member States **in relation to their population**; or
  - the targeting of activities towards one or more Member States.
- (e) ‘trader’ means any natural person, or any legal person irrespective of whether privately or publicly owned, who is acting, including through any person acting in his or her name or on his or her behalf, for purposes relating to his or her trade, business, craft or profession;



- (f) ‘intermediary service’ means one of the following **information society** services:
- a ‘mere conduit’ service that consists of the transmission in a communication network of information provided by a recipient of the service, or the provision of access to a communication network;
  - a ‘caching’ service that consists of the transmission in a communication network of information provided by a recipient of the service, involving the automatic, intermediate and temporary storage of that information, for the sole purpose of making more efficient the information's onward transmission to other recipients upon their request;
  - a ‘hosting’ service that consists of the storage of information provided by, and at the request of, a recipient of the service;
- (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;
- (h) ‘online platform’ means ~~a provider of~~ a hosting service which, at the request of a recipient of the service, stores and disseminates to the public information, unless that activity is a minor and purely ancillary feature of another service and, for objective and technical reasons cannot be used without that other service, and the integration of the feature into the other service is not a means to circumvent the applicability of this Regulation;-
- (i) ‘dissemination to the public’ means making information available, at the request of the recipient of the service who provided the information, to a potentially unlimited number of third parties;
- (ia) ‘online marketplace’ means an online platform which allows consumers to conclude distance contracts with other traders or consumers;**
- (j) ‘distance contract’ means a contract within the meaning of Article 2(7) of Directive 2011/83/EU;
- (k) ‘online interface’ means any software, including a website or a part thereof, and applications, including mobile applications;
- (l) ‘Digital Services Coordinator of establishment’ means the Digital Services Coordinator of the Member State where the provider of an intermediary service is established or its legal representative resides or is established;

- (m) ‘Digital Services Coordinator of destination’ means the Digital Services Coordinator of a Member State where the intermediary service is provided;
- (n) ‘advertisement’ means information designed to promote the message of a legal or natural person, irrespective of whether to achieve commercial or non-commercial purposes, and ~~displayed~~**served** by an online platform on its online interface against remuneration specifically for promoting that information;
- (o) ‘recommender system’ means a fully or partially automated system used by an online platform to suggest in its online interface specific information to recipients of the service, including as a result of a search initiated by the recipient or otherwise determining the relative order or prominence of information displayed;
- (p) ‘content moderation’ means the activities, **automated or not**, undertaken by providers of intermediary services aimed, **in particular** at detecting, identifying and addressing illegal content or information incompatible with their terms and conditions, provided by recipients of the service, including measures taken that affect the availability, visibility, and accessibility of that illegal content or that information, such as demotion, **demonetisation**, disabling of access to, or removal thereof, or the recipients’ ability to provide that information, such as the termination or suspension of a recipient’s account;
- (q) ‘terms and conditions’ means all terms and conditions or ~~specifications~~**clauses**, irrespective of their name or form, which govern the contractual relationship between the provider of intermediary services and the recipients of the services.
- (r) **‘turnover’ means the amount derived by an undertaking as defined in Article 5(1) of Regulation (EU) No 139/2004.**

*Article 2 (b) – “recipient of the service”:*

- Denmark supports the amendment that is in line with the same definition of “recipient of the service” in the e-commerce directive.

*Article 2 (da) – “substantial connection” and recital 8:*

- Denmark is positive of the presidency proposal regarding a definition of substantial connection in relating to the definition “to offer services in the Union”.
- We agree that a significant number of users in one or more Member States should be determined in relation to their population.
- Also, it should be clearly described in the recitals how a ‘user’ is defined, i.e. for online marketplaces.

*Article 2 (f) – “intermediary service”:*

- We find it absolutely necessary that the legal status of digital platforms is clarified by determining what requirements a service must meet in order to be considered an ‘intermediary service provider’ within the remit of the DSA.
- The collaborative economy has particularly brought about a new range of digital platforms that allow people to connect various goods and services, e.g. with respect to real estate, transport, labor, vacation and money lending. Depending on their particular configuration, some of these services may be considered intermediary services while others may not.
- We understand that the definition needs to be broad and we also advocate for a flexible definition in order to include both services that exist today but also services that will exist in the future and thereby future proof.
- However, we see a grey area already in the e-commerce directive today and therefore, we believe it is important with clarification in the DSA in order to ensure for the supervisory authorities to determine whether a service is included or not by a mere conduit, caching or a hosting service to ensure legal certainty. This is also important in order to ensure uniform interpretation of the rules across the EU.

*Article 2 (h) – “online platform” and recital 13:*

- We find it very important that the DSA regulates the exact service and not the business at a whole because an online platform, especially a social network, often constitutes of several different business- or service models.
- Therefore, we support the amendment in article 2 (h) and the clarification and example mentioned about social networks in recital 13.

*Article 2 (i) – “dissemination to the public” and recital 14:*

- We agree that private communication is – and should stay – private. It is important to secure the fundamental right to privacy.
- As a starting point, we see a well-balanced distinction of open/public and closed groups.
- We do have some concerns about very large closed groups. Some of today’s services allow very large groups with high numbers of users in one group. If a group established on a social network has a significant number of users, even though the group is not public but requires the user to enter and someone to admit access – clarity of whether the size could be a factor in determining whether information shared is disseminated to the public would be appreciated.
- In addition, we are still uncertain how the DSA will tackle some of the new hybrid services e.g. messaging app’s that make use of cloud infrastructure. As we understand some of these services – which allow for up to 200.000 users in groups – should still be considered as interpersonal communication services, as defined in Directive (EU) 2018/1972. Such services might circumvent the purpose of the rules of the DSA.

*Article 2 (ia) – “online marketplace”:*

- Denmark is positive about the presidency proposal regarding a new definition of an online marketplace.
- Examples of online marketplaces could with advantage be included in a recital, also with a limitation to make the definition more clear.

*Article 2 (r) – “turnover”:*

- Denmark can support the new definition with reference to the already existing EC Merger Regulation.

## Chapter II – Liability of providers of intermediary services

### *Article 3*

#### *‘Mere conduit’*

1. Where an information society service is provided that consists of the transmission in a communication network of information provided by a recipient of the service, or the provision of access to a communication network, the service provider shall not be liable for the information transmitted, on condition that the provider:
  - (a) does not initiate the transmission;
  - (b) does not select the receiver of the transmission; and
  - (c) does not select or modify the information contained in the transmission.
2. The acts of transmission and of provision of access referred to in paragraph 1 include the automatic, intermediate and transient storage of the information transmitted in so far as this takes place for the sole purpose of carrying out the transmission in the communication network, and provided that the information is not stored for any period longer than is reasonably necessary for the transmission.
3. This Article shall not affect the possibility for a court or administrative authority, in accordance with Member States' legal systems, of requiring the service provider to terminate or prevent an infringement.

*Article 4*  
*‘Caching’*

1. Where an information society service is provided that consists of the transmission in a communication network of information provided by a recipient of the service, the service provider shall not be liable for the automatic, intermediate and temporary storage of that information, performed for the sole purpose of making more efficient the information's onward transmission to other recipients of the service upon their request, on condition that:
  - (a) the provider does not modify the information;
  - (b) the provider complies with conditions on access to the information;
  - (c) the provider complies with rules regarding the updating of the information, specified in a manner widely recognised and used by industry;
  - (d) the provider does not interfere with the lawful use of technology, widely recognised and used by industry, to obtain data on the use of the information; and
  - (e) the provider acts expeditiously to remove or to disable access to the information it has stored upon obtaining actual knowledge of the fact that the information at the initial source of the transmission has been removed from the network, or access to it has been disabled, or that a court or an administrative authority has ordered such removal or disablement.
2. This Article shall not affect the possibility for a court or administrative authority, in accordance with Member States' legal systems, of requiring the service provider to terminate or prevent an infringement.

Denmark supports that a service provider should be able to benefit from the exemptions from liability for ‘mere conduit’ and for ‘caching’ services when it does not modify the information transmitted.

The articles from the e-commerce directive have proven to be essential for the development of the platform economy and the development of digital services, and therefore we agree that the framework should be preserved.

## Article 5

### Hosting

1. Where an information society service is provided that consists of the storage of information provided by a recipient of the service the service provider shall not be liable for the information stored at the request of a recipient of the service on condition that the provider:
  - (a) does not have actual knowledge of illegal activity or illegal content and, as regards claims for damages, is not aware of facts or circumstances from which the illegal activity or illegal content is apparent; or
  - (b) upon obtaining such knowledge or awareness, acts expeditiously **and within 24 hours** to remove or to disable access to **content which seriously harm public safety and can be assessed as manifestly illegal by a layman without further investigation; or**
  - (c) upon obtaining such knowledge or awareness, acts expeditiously and within 24 hours to remove or to disable access to products which can be assessed as manifestly illegal by a layman; or**
  - (d) upon obtaining such knowledge or awareness, acts expeditiously and within 7 days to remove or to disable access to content which can be assessed as illegal by a layman after thorough control.**
2. Paragraph 1 shall not apply where the recipient of the service is acting under the authority or the control of the provider.
3. Paragraph 1 shall not apply with respect to liability under consumer protection law, **including product safety and product liability law** ~~of~~ **where an** online **marketplace** ~~platforms allowing consumers to conclude distance contracts with traders, where such an online platform presents the specific item of information or otherwise enables the specific transaction at issue in a way that would lead an average and reasonably well-informed consumer to believe that the information, or the product or service that is the object of the transaction, is provided either by the online platform~~ **marketplace** itself or by a recipient of the service who is acting under its authority or control.
  - 3a. For the assessment of whether the online platform has that control or authority or decisive influence over the trader, relevant criteria shall include:**

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a) the online platform operator withholds the identity of the trader or contact details until after the conclusion of the trader-consumer contract;

b) the online platform operator exclusively uses payment systems which enable the platform operator to withhold payments made by the consumer to the trader;

c) the terms of the trader-consumer contract are essentially determined by the online platform operator;

d) the price to be paid by the consumer is set by the online platform operator;

e) the marketing is focused on the online platform and not on traders.

4. This Article shall not affect the possibility for a court or administrative authority, in accordance with Member States' legal systems, of requiring the service provider to terminate or prevent an infringement.

The DSA should establish a framework for notice and take-down with a clearly defined procedure, safeguards and timeline for acting on notifications on illegal content and ensure uniform procedures in all Member States.

While it is necessary to grant digital platforms time to assess the legality of content, some user-generated content has a very high impact and may pose a greater threat to society or significant damage to the individual.

Thus, it is prudent to have three sets of timelines with a shorter timeframe for such high impact content, and an ambitious timeframe for illegal products corresponding to similar timeframes established elsewhere in the Union product safety legislation.

In order to promote legal clarity we would suggest, that the relevant criteria for the assessment of whether the online marketplace has authority or decisive influence over the trader is pinned out in the legal text.

## *Article 6*

### *Voluntary own-initiative investigations and legal compliance*

Providers of intermediary services shall not be deemed ineligible for the exemptions from liability referred to in Articles 3, 4 and 5 solely because they carry out **in good faith and in a diligent manner** voluntary own-initiative investigations or other activities aimed at detecting, identifying and removing, or disabling of access to, illegal content, or take the necessary measures to comply with the requirements of Union law, including those set out in this Regulation.

## Article 7

### *No general monitoring or active fact-finding obligations*

No general obligation to monitor the information which providers of intermediary services transmit or store, nor actively to seek facts or circumstances indicating illegal activity shall be imposed on those providers.

## Article 8

### *Orders to act against illegal content*

1. Providers of intermediary services shall, upon the receipt of an order to act against **one or more** specific items of illegal content, issued by the relevant national judicial or administrative authorities, on the basis of the applicable Union or national law, in ~~compliance~~ **conformity** with Union law, inform the authority issuing the order of the effect given to the orders, without undue delay, specifying ~~the action taken and the moment if~~ **and** when the **order** ~~action~~ was **applied** ~~executed~~ taken.
2. Member States shall ensure that the orders referred to in paragraph 1 meet **at least** the following conditions, **when transmitted to the provider**:
  - (a) the orders contains the following elements:
    - (i)**— a statement of reasons explaining why the information is illegal content, by reference to the specific provision of Union or national law infringed;
    - (ii)**— ~~one or more exact uniform resource locators and, where necessary, additional~~ information enabling the **provider of intermediary services to identify and locate** ~~identification of the illegal content concerned,~~ **such as one or more exact uniform resource locators (URL)**;
    - (iii)**— information about redress available to the provider of the service and to the recipient of the service who provided the content;
  - (b) the territorial scope of the order, on the basis of the applicable rules of Union and national law, including the Charter, and, where relevant, general principles of international law, does not exceed what is strictly necessary to achieve its objective;
  - (c) the order is ~~drafted~~ **transmitted** in the language declared by the provider **pursuant to Article 10(3) or in another official language of the Union, bilaterally agreed by the authority issuing the order and the provider**, and is sent to the **electronic**



point of contact, ~~appointed~~ **established** by the provider, in accordance with Article 10.

3. **After receiving the order from the competent authority, t**~~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.~~
- 3a. ~~Without prejudice to national criminal procedural law in conformity with Union law, p~~**Providers of intermediary services shall inform the recipient of the service who provided the content, at the latest at the time of the removal or disabling of access, of the order received and the effect given to it, or, where applicable, at the time provided by the issuing authority in its order in accordance with paragraph 1. Such information to the recipient of the service shall, at least, include the statement of reasons, and the redress possibilities, as included in the order pursuant to point a of paragraph 2, and the territorial scope of the order, as included in the order pursuant to paragraph 2.**
4. **This Article shall be without prejudice to national civil and criminal procedural laws**~~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.~~

## *Article 9*

### *Orders to provide information*

1. Providers of intermediary services shall, upon receipt of an order to provide a specific item of information about one or more specific individual recipients of the service, issued by the relevant national judicial or administrative authorities on the basis of the applicable Union or national law, in ~~compliance~~ **conformity** with Union law, inform without undue delay the authority of issuing the order of its receipt, ~~and of the effect given to the order, specifying if and when the order was applied, and the moment when the order was executed.~~
2. Member States shall ensure that orders referred to in paragraph 1 meet the following conditions, **when transmitted to the provider**:

(a) the order contains the following elements:

(i)– a statement of reasons explaining the objective for which the information is required and why the requirement to provide the information is necessary and proportionate to determine compliance by the recipients of the intermediary services with applicable Union or national rules, unless such a statement cannot be provided for reasons related to the prevention, investigation, detection and prosecution of criminal offences;

(ii)– information about redress available to the provider and to the recipients of the service concerned;

(b) the order only requires the provider to provide information already collected for the purposes of providing the service and which lies within its control;

(c) the order is ~~drafted~~ **transmitted** in the language declared by the provider **pursuant to Article 10(3) or in another official language of the Union, bilaterally agreed by the authority issuing the order and the provider,** and is sent to the **electronic** point of contact **established**~~appointed~~ by that provider, in accordance with Article 10;

3. **After receiving the order from the competent authority,** ~~t~~The Digital Services Coordinator from the Member State of the national judicial or administrative authority issuing the order shall, without undue delay, transmit a copy of the order referred to in paragraph 1 to all Digital Services Coordinators through the system established in accordance with Article 67.

**3a.** ~~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 applied** ~~executed,~~ **of the order received and the effect given to it, or where applicable, at the time provided by the issuing authority in its order in accordance with paragraph 1. Such information to the recipient of the service shall, at least, include the statement of reasons and the redress possibilities, as included in the order pursuant to paragraph 2** ~~included in the order.~~

4. **This Article shall be without prejudice to national civil and criminal procedural laws.**  
~~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.~~

From the Danish side we find that the compromise text entails some very important clarifications and changes to the provisions in articles 8 and 9, and we find that the new text is indeed a step in the right direction.

The country of origin principle has been a driver for the development of a well-functioning internal market and the possibilities for business to scale up across borders in EU. From the Danish side it is paramount that we maintain the country of origin principle in its current form.

As we understand from the discussions during the latest working parties, article 8 and 9 entails an obligation to inform authorities about the effect given to an order - an information obligation. One of the purposes of the articles is to ease enforcement across borders given that an order can be issued directly to the provider of an intermediary service and does not have to go through the enforcement authority in the country of establishment. Thus, the provisions are not as such not empowering provisions and does provide a legal basis for authorities to issue orders to service providers in other member states. The legal basis for such orders is union or national law in compliance with union law. We also understand that the articles does not provide an exception to the country of origin principle and that the interpretation of this principle is not altered by the DSA.

Could the Commission confirm that this understanding about the interplay between articles 8 and 9 and the country of origin principle is correct?

We also understand from the discussions, that enforcement of orders will follow the legal basis for issuing the order, meaning that if the legal basis is national legislation, enforcement of the order will also follow national legislation. Denmark finds it important, that it is clarified in the DSA that the DSA in itself does not entail a legal obligation for providers of intermediary services to follow orders issued by authorities from other Member States than the one where the provider is established. The addition of “**if and**” in article 8(1) is an important clarification in this regard.

We support the clarification in recital 31, that the effect of the order is limited to the territory of the issuing Member State, unless the illegality of the content derives directly from Union law or the issuing authority considers that the rights at stake require a wider territorial scope, in accordance with Union and international law, including the interests of international comity.

Regarding the language regime, we support the additional flexibility by the compromise text enabling the issuing of orders in the official language of the national authority. However, it seems unclear how a bilateral agreement between by the authority and the provider is agreed. This should be clarified.

From the discussions during the working parties we understand, that the obligation to inform in art. 8 and 9 will also apply in purely national cases. We are worried that this will lead to an overload of notifications in cases without any trans-border elements. We were wondering if the Commission has made any considerations in this regard?

# Chapter III

## Due diligence obligations for a transparent and safe online environment

### SECTION 1

#### PROVISIONS APPLICABLE TO ALL PROVIDERS OF INTERMEDIARY SERVICES

##### *Article 10*

##### **Electronic points 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** points 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** 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.

*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 **sufficient resources** to cooperate with the Member States' authorities, the Commission and the Board and comply with those decisions **and to comply with their obligations when the provider of intermediary services is liable for infringement of the obligations set out in this Regulation.**
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. **Providers of intermediary services shall ensure that their legal representative meet at least the following conditions;**
  - a. **Is registered in a trade register or similar public register with registration number or equivalent means of identification in that register, where possible in the Member State established;**
  - b. **has sufficient resources;**
  - c. **is not subject to reconstruction proceedings, bankruptcy, personal or corporate insolvency.**

5. The designation of a legal representative within the Union pursuant to paragraph 1 shall not amount to an establishment in the Union.

We are worried that the requirements in article 11(4) could be circumvented by the use of “shell-companies”. In order to prevent this it seems necessary to consider the set up of certain requirements regarding *who* can be notified as legal representative. Especially if the legal responsibility should have any effect in reality.

## *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.

## *Article 13*

### *Transparency reporting obligations for providers of intermediary services*

1. Providers of intermediary services shall publish **in a specific section in their online interface**, at least once a year, clear, easily comprehensible and detailed reports on any content moderation they engaged in during the relevant period. Those reports shall include, in particular, information on the following, as applicable:
  - (a) **for providers of intermediary services**, the number of orders received from Member States’ authorities, categorised by the type of illegal content concerned, including orders issued in accordance with Articles 8 and 9, and the average time needed for taking the action specified in those orders;

- (b) **for providers of hosting services,** the number of notices submitted in accordance with Article 14, categorised by the type of alleged illegal content concerned, any action taken pursuant to the notices by differentiating whether the action was taken on the basis of the law or the terms and conditions of the provider, **the number of notices submitted by trusted flaggers, the number of notices processed exclusively by automated means** and the average time needed for taking the action;
- (c) **for providers of intermediary services, as applicable,** the content moderation engaged in at the providers' own initiative, including the number ~~and type of~~ measures taken ~~that affect~~ **to restrict** the availability, visibility and accessibility of information provided by the recipients of the service and the recipients' ability to provide information **and other related restrictions of the service,** categorised **by the method of detection of the infringement, the type of measure taken, and the type of alleged illegal content or infringement of the terms and conditions of the service provider** ~~by the type of reason and basis for taking those measures;~~
- (d) **for providers of intermediary services, as applicable,** the number of complaints received through the internal complaint-handling systems **in accordance with the provider's terms and conditions and, for providers of online platforms, also in accordance with** ~~referred to in~~ Article 17, the basis for those complaints, decisions taken in respect of those complaints, the average time needed for taking those decisions and the number of instances where those decisions were reversed.

2. Paragraph 1 shall not apply to providers of intermediary services that qualify as micro or small enterprises within the meaning of the Annex to Recommendation 2003/361/EC **and which are not very large online platforms in accordance with Article 25.**
3. **The Commission may adopt implementing acts to lay down templates concerning the form, content and other details of reports pursuant to paragraph 1. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 70.**

Overall, we can support the provision. However, we find that the number of implementing acts should be limited and such acts should only deal with technical issues.

## SECTION 2

### ADDITIONAL PROVISIONS APPLICABLE TO PROVIDERS OF HOSTING SERVICES, INCLUDING ONLINE PLATFORMS

#### *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.
2. The mechanisms referred to in paragraph 1 shall be such as to facilitate the submission of sufficiently precise and adequately substantiated notices, ~~on the basis of which a diligent economic operator can identify the illegality of the content in question.~~ To that end, the providers shall take the necessary measures to enable and facilitate the submission of notices containing all of the following elements:
  - (a) ~~an~~ **sufficiently substantiated** explanation of the reasons why the individual or entity considers the information in question to be illegal content;
  - (b) a clear indication of the electronic location of that information, ~~in particular~~ **such as** the exact URL or URLs, and, where necessary, additional information enabling the identification of the illegal content;
  - (c) the name and an electronic mail address of the individual or entity submitting the notice, except in the case of information considered to involve one of the offences referred to in Articles 3 to 7 of Directive 2011/93/EU;
  - (d) a statement confirming the good faith belief of the individual or entity submitting the notice that the information and allegations contained therein are accurate and complete.
3. Notices ~~that include the elements~~ referred to in paragraph 2 **on the basis of which a diligent provider of hosting services can identify the illegality of the content in question** shall be considered to give rise to actual knowledge or awareness for the purposes of Article 5 in respect of the specific item of information concerned.



4. Where the notice contains ~~the name and~~ an electronic **contact information** ~~mail address~~ of the individual or entity that submitted it, the provider of hosting services shall, ~~promptly~~ **without undue delay**, send a confirmation of receipt of the notice to that individual or entity.
5. The provider shall also, without undue delay, notify that individual or entity of its decision in respect of the information to which the notice relates, providing information on the redress possibilities in respect of that decision.
6. Providers of hosting services shall process any notices that they receive under the mechanisms referred to in paragraph 1, and take their decisions in respect of the information to which the notices relate, in a timely, diligent and objective manner. Where they use automated means for that processing or decision-making, they shall include information on such use in the notification referred to in paragraph **54**.

We can support the amendments as we find they provide clarity and impose responsibility on platforms that should improve the take-down of illegal content. Especially the modification regarding referral to the exact URL, as it is not always possible to provide such information.

Regarding recital 41 we support that this recital now reflects that 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. However, we still find, that we could be even more ambitious. The DSA should entail a clearly defined timeline for acting on notifications of illegal content including a differentiated time limit so that illegal content with a serious detrimental effect, such as terrorism-related content and illegal products, is taken down more quickly than other illegal content.

Furthermore, the largest platforms should be expected to ensure that content that once has been identified as illegal and removed, is quickly detected and removed again if a user uploads it again through a so-called stay-down obligation. This of course without imposing a general monitoring obligation.

According to this, we have submitted amendments to art. 5 and a suggestion for a new art. 24e.

## Article 15

### Statement of reasons

1. Where a provider of hosting services decides to remove or disable access to **or otherwise restrict the visibility of** specific items of information provided by the recipients of the service, **or to suspend or terminate monetary payments related to those items,** irrespective of the means used for detecting, identifying or removing or disabling access to **or for restricting the visibility or monetisation of** that information and of the reason for its decision, it shall inform the recipient **where the electronic contact details are known to the provider, prior to or** at the latest at the time of the removal or disabling of access **or the restriction of visibility or monetisation taking effect,** ~~of the decision and provide~~ **with** a clear and specific statement of reasons for that decision.
2. The statement of reasons referred to in paragraph 1 shall at least contain the following information:
  - (a) whether the decision entails either the removal of, ~~or~~ the disabling of access to, **the restriction of the visibility of,** the information **or the suspension or termination of monetary payments related to that information** and, where relevant, ~~the territorial scope of the disabling of access;~~
  - (b) the facts and circumstances relied on in taking the decision, including where relevant whether the decision was taken pursuant to a notice submitted in accordance with Article 14;
  - (c) where applicable, information on the use made of automated means in taking the decision, including where the decision was taken in respect of content detected or identified using automated means;
  - (d) where the decision concerns allegedly illegal content, a reference to the legal ground relied on and explanations as to why the information is considered to be illegal content on that ground;
  - (e) where the decision is based on the alleged incompatibility of the information with the terms and conditions of the provider, a reference to the contractual ground relied on and explanations as to why the information is considered to be incompatible with that ground;

- (f) information on the redress possibilities available to the recipient of the service in respect of the decision, in particular through internal complaint-handling mechanisms, out-of-court dispute settlement and judicial redress
3. The information provided by the providers of hosting services in accordance with this Article shall be clear and easily comprehensible and as precise and specific as reasonably possible under the given circumstances. The information shall, in particular, be such as to reasonably allow the recipient of the service concerned to effectively exercise the redress possibilities referred to in point (f) of paragraph 2.
4. Providers of hosting services shall publish the decisions and the statements of reasons, referred to in paragraph 1 in a publicly accessible database managed by the Commission. That information shall not contain personal data.

*Article ~~15a~~21*

*Notification of suspicions of criminal offences*

1. Where an **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.

We are pleased to see that the scope of the provision is now extended to hosting services and that micro and small enterprises are not exempted. We can support this extension of the scope, since the requirement of the provision does not seem as an unreasonable requirement or too burdensome.

1. **Providers of hosting services** ~~Online platforms~~ shall take the necessary technical and organisational measures to ensure that notices submitted by trusted flaggers through the mechanisms referred to in Article 14, are processed and decided upon with priority and without delay.
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 platforms;
  - (c) it carries out its activities for the purposes of submitting notices in a timely, diligent and objective manner.
3. Digital Services Coordinators shall communicate to the Commission and the Board the names, addresses and electronic mail addresses of the entities to which they have awarded the status of the trusted flagger in accordance with paragraph 2 **or revoked it in accordance with paragraph 6.**
4. The Commission shall publish the information referred to in paragraph 3 in a publicly available **and easily accessible** database and keep the database updated.
5. Where **a provider of** ~~an online platforms~~ has information indicating that a trusted flagger submitted a significant number of insufficiently precise or inadequately substantiated notices through the mechanisms referred to in Article 14, including information gathered in connection to the processing of complaints through the internal complaint-handling systems referred to in Article 17(3), it shall communicate that information to the Digital Services Coordinator that awarded the status of trusted flagger to the entity concerned, providing the necessary explanations and supporting documents.
6. The Digital Services Coordinator that awarded the status of trusted flagger to an entity shall revoke that status if it determines, following an investigation either on its own

initiative or on the basis information received by third parties, including the information provided by **a provider of an online platform** pursuant to paragraph 5, that the entity no longer meets the conditions set out in paragraph 2. Before revoking that status, the Digital Services Coordinator shall afford the entity an opportunity to react to the findings of its investigation and its intention to revoke the entity's status as trusted flagger.

7. The Commission, after consulting the Board, may issue guidance to assist **providers of online platforms** and Digital Services Coordinators in the application of paragraphs **2, 5** and 6.

We find that the scope of the provision should be extended to hosting services and that micro and small enterprises should not be exempted. The obligations in the provision does not seem as an unreasonable requirement or too burdensome – even for a small service.

We are curious to why the Presidency has chosen to delete the requirement, that the trusted flagger represents collective interests as we find this to be a valid criteria with added-value to the proposal?

### SECTION 3

#### ADDITIONAL PROVISIONS APPLICABLE TO **PROVIDERS OF ONLINE PLATFORMS**

##### *Article 16*

##### *Exclusion for micro and small enterprises*

This Section **and Section 3a** shall not apply to **providers of** online platforms that qualify as micro or small enterprises within the meaning of the Annex to Recommendation 2003/361/EC **and which are not very large online platforms in accordance with Article 25.**

According to the Annex to Recommendation 2003/361/EC, a small enterprise is defined as an enterprise which employs less than 50 persons and whose annual turnover and/or annual balance sheet total does not exceed EUR 10 million. A microenterprise is defined as an enterprise which employs less than 10 persons and whose annual turnover and/or annual balance sheet total does not exceed EUR 2 million.

Overall we support the Commission's recommendation, but in this case, it would be suitable to deviate from the Recommendation. Intermediary Services which has less than 50 or 10 persons with an annual turnover and/or annual balance sheet total that does not exceed EUR 10 or 2 million can still have a great amount of users, and should therefore not be excluded from due diligence

obligations. Therefore, we are positive towards the amendment to this provision. However, we're still concerned that the threshold for VLOP's is too high in this connection. We would suggest an approach similar to the one of the Copyright Directive.

## *Article 17*

### *Internal complaint-handling system*

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 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.**
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.
3. **Providers of** Online platforms shall handle complaints submitted through their internal complaint-handling system in a timely, diligent and objective manner. Where a complaint contains sufficient grounds for the **provider of the** online platform to consider that the information to which the complaint relates is not illegal and is not incompatible with its terms and conditions, or contains information indicating that the complainant's conduct does not warrant the suspension or termination of the service or the account, it shall reverse its decision referred to in paragraph 1 without undue delay.

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 dispute settlement provided for in Article 18 and other available redress possibilities.
5. **Providers of o**Online platforms shall ensure that the decisions, referred to in paragraph 4, are not solely taken on the basis of automated means.

We can support the provision and are especially pleased to see the scope includes decisions not to act upon a notice.

### *Article 18*

#### *Out-of-court dispute settlement*

1. Recipients of the service **and individuals or entities that have submitted notices,** addressed by the decisions referred to in Article 17(1), shall be entitled to select any out-of-court dispute **settlement body**
  - a. **in the Union Member State where the recipient of the service is established or located;**
  - b. **in the Union Member State where the provider of intermediary service is established; or**
  - c. **in the Union Member State where the provider of intermediary service which do not have an establishment in the Union but offer services in the Union, have designated a legal representative.**

**The out-of-court dispute settlement body can be** ~~certified~~ **authorised** in accordance with paragraph 2 in order to resolve disputes relating to those decisions, including complaints that could not be resolved by means of the internal complaint-handling system referred to in that Article. **Providers of** Online platforms shall engage, in good faith, with the body selected with a view to resolving the dispute and shall be bound by the decision taken by the body.

The first subparagraph is without prejudice to the right of the recipient **or the individual or entity** concerned to redress against the decision before a court in accordance with the applicable law.

2. The Digital Services Coordinator of the Member State where the out-of-court dispute settlement body is established **can**, at the request of that body, ~~certify~~ **authorise** the body, where the body has demonstrated that it meets all of the following conditions:
- (a) it is ~~impartial and independent of~~ **providers of** online platforms, ~~of and~~ recipients of the service provided by the online platforms **and of individuals or entities that have submitted notices**;
  - (b) it has the necessary expertise in relation to the issues arising in one or more particular areas of illegal content, or in relation to the application and enforcement of terms and conditions of one or more types of online platforms, allowing the body to contribute effectively to the settlement of a dispute;
  - (c) the dispute settlement is easily accessible through electronic communication technology;
  - (d) it is capable of settling dispute in a swift, efficient and cost-effective manner and in at least one official language of the Union;
  - (e) the dispute settlement takes place in accordance with clear and fair rules of procedure, **in compliance with applicable legislation**.

The Digital Services Coordinator shall, where applicable, specify in the ~~certificate~~ **authorisation** the particular issues to which the body's expertise relates and the official language or languages of the Union in which the body is capable of settling disputes, as referred to in points (b) and (d) of the first subparagraph, respectively.

3. If the body decides the dispute in favour of the recipient of the service **or of the individual or entity that have submitted a notice**, the **provider of the** online platform shall reimburse the recipient **or the individual or entity** for any fees and other reasonable expenses that the ~~recipient has~~ **they have** paid or ~~are~~ to pay in relation to the dispute settlement. If the body decides the dispute in favour of the online platform, the recipient **or the individual or body** shall not be required to reimburse any fees or other expenses that the **provider of the** online platform paid or is to pay in relation to the dispute settlement.

The fees charged by the body for the dispute settlement shall be **reasonable available at a nominal fee for consumers** and shall in any event not exceed the costs thereof.

~~Certified~~ **Authorised** out-of-court dispute settlement bodies shall make the fees, or the mechanisms used to determine the fees, known to the recipient of the services **or to the**



individuals or entities that have submitted a notice and the provider of the online platform concerned before engaging in the dispute settlement.

4. Member States may establish out-of-court dispute settlement bodies for the purposes of paragraph 1 or support the activities of some or all out-of-court dispute settlement bodies that ~~they have~~ been certified-authorised in accordance with paragraph 2.

Member States shall ensure that any of their activities undertaken under the first subparagraph do not affect the ability of their Digital Services Coordinators to ~~certify~~ authorise the bodies concerned in accordance with paragraph 2.

- 4a. The Digital Services Coordinator that awarded the status of out-of-court dispute settlement body to an entity shall revoke that status if it determines, following an investigation either on its own initiative or on the basis information received by third parties, that the body no longer meets the conditions set out in paragraph 2. Before revoking that status, the Digital Services Coordinator shall afford the body an opportunity to react to the findings of its investigation and its intention to revoke the body's authorisation.**

5. Digital Services Coordinators shall notify to the Commission the out-of-court dispute settlement bodies that they have ~~certified~~ authorised in accordance with paragraph 2, including where applicable the specifications referred to in the second subparagraph of that paragraph, as well as the out-of-court dispute settlement bodies whose authorisation they have revoked. The Commission shall publish a list of those bodies, including those specifications, on a dedicated website that is easily accessible, and keep it updated.
6. This Article is without prejudice to Directive 2013/11/EU and alternative dispute resolution procedures and entities for consumers established under that Directive.

From the wording of the provision, it appears that the recipient is entitled to select any out-of-court dispute settlement body. As we understand from the discussions during the working parties this would imply, that the user can choose a body in any Member State – regardless of where the user lives or where the platform is established. From the outset we find this problematic.

It appears from the provision, that the online platform shall be bound by the decisions taken by the body. From our side it is very important that the possibility to seek juridical redress in accordance with the laws of the Member State concerned is not affected. It is our understanding that this has been taken into account in art. 18(1) last paragraph.

As we read article 18(2) the Digital Services Coordinator is obligated to authorize a body, if the body demonstrates, that it meets the five requirements listed in the paragraph. From our side we find it

important that it is the Member State/Digital Services Coordinator who decides, whether a body that meets the requirements must be designated according to this article. Thus, it should be pointed out that:

- A body can only be certified if it meets the requirements of the article, and
- The Digital Services Coordinator decides whether the out-of-court dispute settlement body that meets the requirements shall be certified.

The requirement, that the body is impartial and independent should be elaborated for instance with inspiration from article 6 in Directive 2013/11/EU on alternative dispute resolution.

The provision does not provide sufficient guidance regarding what clear and fair rules of procedure are. This should also be elaborated appropriately, i.e. with inspiration from Directive 2013/11/EU on alternative dispute resolution.

Regarding the fees for the dispute settlement (article 18(3)), we find it of utmost importance that these fees are kept at a low level in order to secure access to out-of-court dispute settlement for all users. Thus, we are satisfied that this has now been set out in the recitals that these fees should be reasonable and proportionate. However, we do still worry that the provision will allow the dispute settlement bodies to charge high fees which in fact will make the access to out-of-court dispute settlement illusory. Thus, we suggest that it – in line with directive 2013/11/EU – is stressed in the recitals that out-of-court procedures should preferably be free of charge. In the event that costs are applied, the out-of court procedure should be accessible, attractive and inexpensive for consumers. To that end, costs should not exceed a nominal fee.

## *Article 20*

### *Measures and protection against misuse*

1. **Providers of o**Online platforms shall suspend, for a reasonable period of time and after having issued a prior warning, the provision of their services to recipients of the service that frequently provide manifestly illegal content.
2. **Providers of** Online platforms shall suspend, for a reasonable period of time and after having issued a prior warning, the processing of notices and complaints submitted through the notice and action mechanisms and internal complaints-handling systems referred to in Articles 14 and 17, respectively, by individuals or entities or by complainants that frequently submit notices or complaints that are manifestly unfounded.
3. **When deciding on the suspension, providers of o**Online platforms shall assess, on a case-by-case basis and in a timely, diligent and objective manner, whether a recipient, individual, entity or complainant engages in the misuse referred to in paragraphs 1 and 2,

taking into account all relevant facts and circumstances apparent from the information available to the **provider of the** online platform. Those circumstances shall include at least the following:

- (a) the absolute numbers of items of manifestly illegal content or manifestly unfounded notices or complaints, submitted in **a given time frame**~~the past year~~;
- (b) the relative proportion thereof in relation to the total number of items of information provided or notices submitted in the ~~past year~~ **a given time frame**;
- (c) the gravity of the misuses, **including the nature of illegal content**, and **of** its consequences;
- (d) **where it is possible to infer it**, the intention of the recipient, individual, entity or complainant.

4. **Providers of** Online platforms shall set out, in a clear and detailed manner, their policy in respect of the misuse referred to in paragraphs 1 and 2 in their terms and conditions, including as regards the facts and circumstances that they take into account when assessing whether certain behaviour constitutes misuse and the duration of the suspension.

#### *Article 21*

##### *Notification of suspicions of criminal offences*

- ~~1. Where an 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 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 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.~~

**[Article 22 moved to Article 24a, into new Section 3a]**

*Article 22*

*Traceability of traders*

1. ~~Where an online platform allows consumers to conclude distance contracts with traders, it shall ensure that traders can only use its services to promote messages on or to offer products or services to consumers located in the Union if, prior to the use of its services, the online platform has obtained the following information:~~
- ~~(a) the name, address, telephone number and electronic mail address of the trader;~~
  - ~~(b) a copy of the identification document of the trader or any other electronic identification as defined by Article 3 of Regulation (EU) No 910/2014 of the European Parliament and of the Council<sup>45</sup>;~~
  - ~~(c) the bank account details of the trader, where the trader is a natural person;~~
  - ~~(d) the name, address, telephone number and electronic mail address of the economic operator, within the meaning of Article 3(13) and Article 4 of Regulation (EU) 2019/1020 of the European Parliament and the Council<sup>46</sup> or any relevant act of Union law;~~
  - ~~(e) where the trader is registered in a trade register or similar public register, the trade register in which the trader is registered and its registration number or equivalent means of identification in that register;~~
  - ~~(f) a self-certification by the trader committing to only offer products or services that comply with the applicable rules of Union law.~~
2. ~~The online platform shall, upon receiving that information, make reasonable efforts to assess whether the information referred to in points (a), (d) and (e) of paragraph 1 is reliable through the use of any freely accessible official online database or online interface made~~

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<sup>45</sup> ~~Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC~~

<sup>46</sup> ~~Regulation (EU) 2019/1020 of the European Parliament and of the Council of 20 June 2019 on market surveillance and compliance of products and amending Directive 2004/42/EC and Regulations (EC) No 765/2008 and (EU) No 305/2011 (OJ L 169, 25.6.2019, p. 1).~~

~~available by a Member States or the Union or through requests to the trader to provide supporting documents from reliable sources.~~

~~3. Where the online platform obtains indications that any item of information referred to in paragraph 1 obtained from the trader concerned is inaccurate or incomplete, that platform shall request the trader to correct the information in so far as necessary to ensure that all information is accurate and complete, without delay or within the time period set by Union and national law.~~

~~Where the trader fails to correct or complete that information, the online platform shall suspend the provision of its service to the trader until the request is complied with.~~

~~4. The online platform shall store the information obtained pursuant to paragraph 1 and 2 in a secure manner for the duration of their contractual relationship with the trader concerned. They shall subsequently delete the information.~~

~~5. Without prejudice to paragraph 2, the platform shall only disclose the information to third parties where so required in accordance with the applicable law, including the orders referred to in Article 9 and any orders issued by Member States' competent authorities or the Commission for the performance of their tasks under this Regulation.~~

~~6. The online platform shall make the information referred to in points (a), (d), (e) and (f) of paragraph 1 available to the recipients of the service, in a clear, easily accessible and comprehensible manner.~~

~~7. The online platform shall design and organise its online interface in a way that enables traders to comply with their obligations regarding pre-contractual information and product safety information under applicable Union law.~~

### *Article 23*

#### *Transparency reporting obligations for providers of online platforms*

1. In addition to the information referred to in Article 13, **providers of** online platforms shall include in the reports referred to in that Article information on the following:
  - (a) the number of disputes submitted to the out-of-court dispute settlement bodies referred to in Article 18, the outcomes of the dispute settlement and the average time needed for completing the dispute settlement procedures;

- (b) the number of suspensions imposed pursuant to Article 20, distinguishing between suspensions enacted for the provision of manifestly illegal content, the submission of manifestly unfounded notices and the submission of manifestly unfounded complaints;
  - (c) any use made of automatic means for the purpose of content moderation, including a specification of the precise purposes, indicators of the accuracy of the automated means in fulfilling those purposes and any safeguards applied
2. **Providers of o**Online platforms shall publish **in a publicly available section of their online interface**, at least once every six months, information on the average monthly active recipients of the service in each Member State, calculated as an average over the period of the past six months, in accordance with the methodology laid down in the delegated acts adopted pursuant to Article 25(2).
  3. **Providers of o**Online platforms shall communicate to the Digital Services Coordinator of establishment, upon its request, the information referred to in paragraph 2, updated to the moment of such request. That Digital Services Coordinator may require the **provider of the** online platform to provide additional information as regards the calculation referred to in that paragraph, including explanations and substantiation in respect of the data used. That information shall not include personal data.
  4. The Commission may adopt implementing acts to lay down templates concerning the form, content and other details of reports pursuant to paragraph 1. **Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 70.**

## *Article 24*

### *Online advertising transparency*

**Providers of o**Online platforms that display advertising on their online interfaces shall ensure that the recipients of the service can identify, for each specific advertisement displayed, **including user-generated advertisements**, to each individual recipient, in a clear, **salient**, and unambiguous manner and in real time:

- (a) that the information displayed **on the interface or parts thereof** is an **online** advertisement, **including through visually prominent marking standardized for the individual service**;
- (b) the natural or legal person on whose behalf the advertisement is displayed;

(c) **clear and** meaningful information about the **main** parameters used to determine the recipient to whom the advertisement is displayed **presented in an easily accessible manner.** **The information shall be directly and easily accessible from the advertisement;**

**2. The visually prominent marking should be adapted to the nature of the individual intermediary interface in the form and degree to which it makes sense for the content. It may vary what elements that makes a visually prominent marking of commercial content dependent on the individual intermediary interface.**

**3. The Commission shall adopt guidelines regarding the requirements for the marking referred to in paragraph 1(a) of this Article.**

Evidence show that a visually prominent and standardised marking of ads across content on the individual intermediary services improves consumers' awareness of the ad. Standardization across content on the individual platforms is essential, but the standardization should be adapted to the individual platform, and should thus not be identical across platforms. The standardized commercial marking should be adapted to the nature of the individual platform and interface in the form and degree to which it makes sense for the content. What is prominent on one intermediary service might not be prominent on another – this will depend on the design and 'look' of the individual intermediary. It should therefore be up to the individual intermediary service to make sure they develop a prominent marking.

Paragraph 3 will allow the Commission to provide guidelines with specifications and suggestions for a visually prominent marking.

From the Danish side we find it necessary to specify that clear and meaningful parameters should be directly and easily accessible from the ad, so the consumers can choose to look at why they are being shown the individual ad, rather than having the information appear together with or as a part of the ad. To avoid that the information about the meaningful parameters for showing the ad will drown in other information and only present noise to the consumer.

## SECTION 3A

### PROVISIONS APPLICABLE TO PROVIDERS OF ONLINE MARKETPLACES

#### *Article 224a*

#### *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** ~~have~~ obtained the following information, **where applicable**:
  - (a) the name, address, telephone number and electronic mail address of the trader;
  - (b) a copy of the identification document of the trader or any other electronic identification as defined by Article 3 of Regulation (EU) No 910/2014 of the European Parliament and of the Council<sup>47</sup>;
  - (c) the ~~bank~~ **payment** account details of the trader, ~~where the trader is a natural person~~;
  - (d) the name, address, telephone number and electronic mail address of the economic operator, within the meaning of Article 3(13) and Article 4 of Regulation (EU) 2019/1020 of the European Parliament and the Council<sup>48</sup> or any relevant act of Union law;
  - (e) where the trader is registered in a trade register or similar public register, the trade register in which the trader is registered and its registration number or equivalent means of identification in that register;
  - (f) a self-certification by the trader committing to only offer products or services that comply with the applicable rules of Union law.
2. The **provider of the** online ~~platform~~ **marketplace** shall, upon receiving that information, make ~~reasonable~~ **best** efforts to assess whether the information referred to in points (a), (d) and (e) of paragraph 1 is reliable through the use of any freely accessible official online

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<sup>47</sup> Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC.

<sup>48</sup> Regulation (EU) 2019/1020 of the European Parliament and of the Council of 20 June 2019 on market surveillance and compliance of products and amending Directive 2004/42/EC and Regulations (EC) No 765/2008 and (EU) No 305/2011 (OJ L 169, 25.6.2019, p. 1).



database or online interface made available by a Member States or the Union or through requests to the trader to provide supporting documents from reliable sources.

3. Where the **provider of the** online ~~platform~~ **marketplace** obtains **sufficient** indications that any item of information referred to in paragraph 1 obtained from the trader concerned is inaccurate or incomplete, that **marketplace** ~~platform~~ shall request the trader to correct the information in so far as necessary to ensure that all information is accurate and complete, without delay or within the time period set by Union and national law.

Where the trader fails to correct or complete that information, the online platform shall suspend the provision of its service to the trader until the request is complied with.

4. The **provider of the** online **marketplace** ~~platform~~ shall store the information obtained pursuant to paragraph 1 and 2 in a secure manner for the duration of **6 months after the end of the** ~~their~~ contractual relationship with the trader concerned. They shall subsequently delete the information.
5. Without prejudice to paragraph 2, the **providers of online marketplaces** ~~platform~~ shall only disclose the information to third parties where so required in accordance with the applicable law, including the orders referred to in Article 9 and any orders issued by Member States' competent authorities or the Commission for the performance of their tasks under this Regulation.
6. The **provider of** online **marketplace** ~~platform~~ shall make the information referred to in points (a), (d), (e) and (f) of paragraph 1 available to the recipients of the service, in a clear, easily accessible and comprehensible manner **prior to the purchase**.
7. ~~The online platform shall design and organise its online interface in a way that enables traders to comply with their obligations regarding pre-contractual information and product safety information under applicable Union law. **[this provision is moved to Article 24b]**~~

**We support the requirements in article 24a and the amendments.**

**Article 24b**  
**Compliance by design**

1. **Providers of online marketplaces shall design and organise ~~its~~ their online interface in a way that enables traders to comply with their obligations regarding pre-contractual information and product safety information under applicable Union law.**
2. **The online interface shall allow traders to provide at least the information necessary for the unequivocal identification of the products or the services offered, and, where applicable, the information concerning the labelling in compliance with rules of applicable Union law on product safety and product compliance.**
3. **The online interface shall be designed in a way that enables the provider of the online marketplace to make their best efforts to make sure that the traders provide complete information referred to in paragraph 1 and 2 and make sure that products or services are not offered as long as the information is incomplete.**

We find that systematic and clear requirements are much needed to help ensure compliance and minimize the spread of illegal content and illegal products. We therefore support the Presidency compromise text on article 24b. However, it seems necessary to specify the required information e.g. in the recitals in order to provide clarity.

The provision seems to lack an obligation for the online marketplace to make an effort to assess whether or not the information provided by the trader is complete, and to make sure that products are not offered as long as the information is incomplete. We find such an obligation to be of great importance in order to ensure that the intended effect can be achieved. Therefore, we suggest inserting paragraph 3 in the Article and a clarification in Recital 50.

**Article 24c**  
**Right to information**

1. **Where a provider of an online marketplace becomes aware, irrespective of the means used to, of the illegal nature of a product or service offered through its services, it shall inform those recipients of the service that had acquired such product or contracted such service during the last six months about the illegality, the identity of the trader and any means of redress.**

2. Where the provider of the online marketplace does not have the contact details of the recipients of the service referred to in paragraph 1, the provider shall make publicly available and easily accessible on their online interface the information concerning the illegal products or services removed, the identity of the trader and any means of redress.

We support the Presidency compromise text regarding the right to information. However, it should be underlined, that is is important, that it appears elsewhere in the regulation at the same time, that a service provider of an online marketplace shall remove an offer or disable access to it, when an authority informs the online marketplace that an offer for a product or service is illegal with regard to applicable legislation on product security and product compliance.

#### Article 24d

##### Use of relevant databases

Where a provider of an online marketplace, who is also considered as a very large online platform, has concrete suspicion, that a specific product or service is not compliant with applicable Union law on product safety and product compliance, that provider shall check relevant databases such as [Safe Gate/Rapex] in order to confirm easily if the product or service is illegal and take the necessary steps to ensure that the product or service is not offered on the online marketplace.

We suggest to add a new Article 24d with an obligation to make use of relevant databases in certain cases. The obligation should only be applied in cases where the provider has concrete suspicion, that a specific product is not compliant with applicable Union legislation on product safety and product compliance. In that case, the provider shall upon specific request check relevant databases for compliance, e.g. Safe Gate/Rapex. If the product is listed, the provider shall not authorize the trader to offer that product on the online marketplace.

#### Article 24e

##### Stay-down obligation

**Where a provider of an online marketplace, who is also considered as a very large online platform, detects and identifies illegal products or services regardless of how, the provider shall immediately take precautionary steps to prevent this and similarly illegal content from reappearing on the platform. This should as a minimum involve the following:**

**(a) Checking the infringing trader's remaining products or services for similarly illegal content, and**

**(b) Monitoring the platform for products or services of the same type that are unequivocally illegal.**

We suggest adding a stay-down obligation for very large online marketplaces. Meaning that content that was previously notified and removed as illegal (counterfeit products for an example), should be prevented from being uploaded again on very large online marketplaces. These online marketplaces should have the means and resources to ensure that illegal content does not re-appear and we should as regulators ensure that they take on this responsibility.

The proposed obligation should be applicable for not only online marketplaces, but very large online platforms in general in relation to not only illegal products and services, but illegal content in general. Therefore, the obligation could instead be moved to Section 4 in the proposal.

We find that such an obligation is compliant to the basic principles in the DSA proposal because the online marketplace will have knowledge of specific illegal content and therefore we see the obligation as concrete monitoring and not general. Furthermore, we find the proposal proportionate, since it only applies to very large online marketplaces.

## **SECTION 4**

### **ADDITIONAL OBLIGATIONS FOR PROVIDERS OF VERY LARGE ONLINE PLATFORMS TO MANAGE SYSTEMIC RISKS**

#### *Article 25*

#### *Very large online platforms*

1. This Section shall apply to online platforms which ~~provide their services~~**reach** to a number of average monthly active recipients of the service in the Union equal to or higher than 45 million, calculated in accordance with the methodology set out in the delegated acts

referred to in paragraph 3, **and which are designated as very large online platforms pursuant to paragraph 4.**

2. The Commission shall adopt delegated acts in accordance with Article 69 to adjust the number of average monthly recipients of the service in the Union referred to in paragraph 1, where the Union's population increases or decreases at least with 5 % in relation to its population in 2020 or, after adjustment by means of a delegated act, of its population in the year in which the latest delegated act was adopted. In that case, it shall adjust the number so that it corresponds to 10% of the Union's population in the year in which it adopts the delegated act, rounded up or down to allow the number to be expressed in millions.
3. The Commission shall adopt delegated acts in accordance with Article 69, after consulting the Board, to lay down a specific methodology for calculating the number of average monthly active recipients of the service in the Union, for the purposes of paragraph 1. The methodology shall specify, in particular, how to determine the Union's population and criteria to determine the average monthly active recipients of the service in the Union, taking into account different accessibility features.
4. The Digital Services Coordinator of establishment shall **adopt a decision designating as a very large online platform for the purposes of this Regulation the online platform under their jurisdiction which have a** ~~verify, at least every six months, whether the~~ number of average monthly active recipients of the service ~~in the Union of online platforms under their jurisdiction is equal to or higher than the number referred to in~~ paragraph 1. **The Digital Services Coordinator of establishment shall take its decision on the basis of data reported by the provider of the online platform pursuant to Article 23(2), additional information requested pursuant to Article 23(3) and any other reliable data sources at its disposal.** ~~On the basis of that verification, it shall adopt a decision designating the online platform as a very large online platform for the purposes of this Regulation, or terminating that designation, and communicate that decision, without undue delay, to the online platform concerned and to the Commission.~~
5. **Pursuant to the designation, the Digital Services Coordinator shall verify, at least every six months, that the very large online platform continues to have a number of average monthly active recipients of the service equal to or higher than the number referred to in paragraph 1. If the service has a lower number of average monthly active recipients during one year, the Digital Services Coordinator of establishment shall terminate the designation.**

**6. The Digital Services Coordinator shall communicate its decisions pursuant to paragraphs 4 and 5, without undue delay, to the provider of the online platform concerned and to the Commission.**

The Commission shall ensure that the list of designated very large online platforms is published in the *Official Journal of the European Union* and keep that list updated. The obligations of this Section shall apply, or cease to apply, to the very large online platforms concerned from four months after that publication.

We are worried that some of the largest online marketplaces will not be subject to the provisions regarding the VLOP's if the definition of monthly active recipients does not take into account the fact that many users of online marketplaces does not register when purchasing products. Thus, when determining the calculation of average monthly active recipients of the service in the Union it is very important to bear this characteristic in mind. Further, Member States should be closely involved in the drafting of delegated acts, which in general should be reduced to a minimum and *only* be of *technical* character.

*Article 26*

*Risk assessment*

1. **Providers of v**Very large online platforms shall identify, analyse and assess, from the date of application referred to in the second subparagraph of Article 25(4), at least once a year thereafter, any ~~significant~~ systemic risks stemming from the functioning and use made of their services in the Union. This risk assessment shall be specific to their services and shall include the following systemic risks:
  - (a) the dissemination of illegal content through their services;
  - (b) any negative effects for the exercise of the fundamental rights to respect for private and family life, freedom of expression and information, the prohibition of discrimination and the rights of the child, as enshrined in Articles 7, 11, 21 and 24 of the Charter respectively;
  - (c) intentional manipulation of their service, including by means of inauthentic use or automated exploitation of the service, with an actual or foreseeable negative effect on the protection of public health, minors, civic discourse, or actual or foreseeable effects related to electoral processes and public security.

2. When conducting risk assessments, **providers of** very large online platforms shall take into account, in particular, how their content moderation systems, recommender systems and systems for selecting and displaying advertisement influence any of the systemic risks referred to in paragraph 1, including the potentially rapid and wide dissemination of illegal content and of information that is incompatible with their terms and conditions.

## *Article 27*

### *Mitigation of risks*

1. **Providers of** very large online platforms shall put in place reasonable, proportionate and effective mitigation measures, tailored to the specific systemic risks identified pursuant to Article 26. Such measures may include, where applicable:
- (a) adapting content moderation or recommender systems, their decision-making processes, the features or functioning of their services, or their terms and conditions;
  - (b) targeted measures aimed at limiting the display of advertisements in association with the service they provide;
  - (c) reinforcing the internal processes or supervision of any of their activities in particular as regards detection of systemic risk;
  - (d) initiating or adjusting cooperation with trusted flaggers in accordance with Article 19;
  - (e) initiating or adjusting cooperation with other **providers of** online platforms through the codes of conduct and the crisis protocols referred to in Article 35 and 37 respectively.
  - (f) **taking awareness-raising measures and adapting their online interface for increased user information.**
2. The Board, in cooperation with the Commission, shall publish comprehensive reports, once a year, which shall include the following:
- (a) identification and assessment of the most prominent and recurrent systemic risks reported by **providers of** very large online platforms or identified through other information sources, in particular those provided in compliance with Article 31 and 33;

- (b) best practices for **providers of** very large online platforms to mitigate the systemic risks identified.
- 3. The Commission, in cooperation with the Digital Services Coordinators, may issue general guidelines on the application of paragraph 1 in relation to specific risks, in particular to present best practices and recommend possible measures, having due regard to the possible consequences of the measures on fundamental rights enshrined in the Charter of all parties involved. When preparing those guidelines the Commission shall organise public consultations.

#### *Article 28*

#### *Independent audit*

- 1. **Providers of** Very large online platforms shall be subject, at their own expense and at least once a year, to audits to assess compliance with the following:
  - (a) the obligations set out in Chapter III;
  - (b) any commitments undertaken pursuant to the codes of conduct referred to in Articles 35 and 36 and the crisis protocols referred to in Article 37.
- 2. Audits performed pursuant to paragraph 1 shall be performed **according to best industry practices** by organisations which:
  - (a) are independent from the **provider of** very large online platforms concerned;
  - (b) have proven expertise in the area of risk management, technical competence and capabilities;
  - (c) have proven objectivity and professional ethics, based in particular on adherence to codes of practice or appropriate standards~~;~~



3. The organisations that perform the audits shall establish an audit report for each audit. The report shall be **substantiated** in writing and include at least the following:
- (a) the name, address and the point of contact of the very large online platform subject to the audit and the period covered;
  - (b) the name and address of the organisation performing the audit;
  - (c) a description of the specific elements audited, and the methodology applied;
  - (d) a description of the main findings drawn from the audit;
  - (e) an audit opinion on whether the **provider of the** very large online platform subject to the audit complied with the obligations and with the commitments referred to in paragraph 1, either positive, positive with comments or negative;
  - (f) where the audit opinion is not positive, operational recommendations on specific measures to achieve compliance **and the expected timeframe to achieve compliance**.
4. **Providers of v**Very large online platforms receiving an audit report that is not positive shall take due account of any operational recommendations addressed to them with a view to take the necessary measures to implement them. They shall, within one month from receiving those recommendations, adopt an audit implementation report setting out those measures. Where they do not implement the operational recommendations, they shall justify in the audit implementation report the reasons for not doing so and set out any alternative measures they ~~may~~ have taken to address any instances of non-compliance identified.

## Article 29

### Recommender systems

1. **Providers of v**Very large online platforms that use recommender systems shall set out in their terms and conditions, in a clear, accessible and easily comprehensible manner, the main parameters used in their recommender systems, as well as any options for the recipients of the service to modify or influence those main parameters that they ~~may~~ have made available, including at least one option which is not based on profiling, within the meaning of Article 4 (4) of Regulation (EU) 2016/679. **Providers of very large online platforms shall also make this information directly and easily accessible on a specific section of the online interface where the information is recommended.**
2. Where several options are available pursuant to paragraph 1, **providers of** very large online platforms shall provide **a directly and** ~~an~~ easily accessible functionality on their online interface **where the information is recommended,** allowing the recipient of the service to select and to modify at any time their preferred option for each of the recommender systems that determines the relative order of information presented to them.

We can support the amendments made by the Precedency.

## Article 30

### Additional online advertising transparency

1. **Providers of v**Very large online platforms that display advertising on their online interfaces shall compile and make publicly available **in a specific section of their online interface and** through application programming interfaces a repository containing the information referred to in paragraph 2, until one year after the advertisement was displayed for the last time on their online interfaces. They shall ensure that the repository does not contain any personal data of the recipients of the service to whom the advertisement was or could have been displayed.

2. The repository shall include at least all of the following information:
  - (a) the content of the advertisement, **including the name of the product, service or brand and the subject matter of the advertisement;**
  - (b) the natural or legal person on whose behalf the advertisement is displayed;
  - (c) the period during which the advertisement was displayed;
  - (d) whether the advertisement was intended to be displayed specifically to one or more particular groups of recipients of the service and if so, the main parameters used for that purpose;
  - (e) the total number of recipients of the service reached and, where applicable, aggregate numbers **in each Member State** for the group or groups of recipients to whom the advertisement was targeted specifically.

### *Article 31*

#### *Data access and scrutiny*

1. **Providers of v**Very large online platforms shall provide the Digital Services Coordinator of establishment or the Commission, upon their reasoned request and within a reasonable period, specified in the request, access to data that are necessary to monitor and assess compliance with this Regulation. That Digital Services Coordinator and the Commission shall only use that data for those purposes.
2. Upon a reasoned request from the Digital Services Coordinator of establishment or the Commission, **providers of** very large online platforms shall, within a reasonable period, as specified in the request, provide access to data to vetted researchers who meet the requirements in paragraphs 4 of this Article, for the sole purpose of conducting research that contributes to the identification and understanding of systemic risks as set out in Article 26(1) , **taking into account the rights and interests of the providers of very large online platforms and the recipients of the service concerned, including the protection of confidential information, in particular trade secrets, and maintaining the security of their service.**

3. **Providers of v**Very large online platforms shall **facilitate and** provide access to data pursuant to paragraphs 1 and 2 through **appropriate interfaces, including** online databases or application programming interfaces, as **specified in the request**appropriate.
4. In order to be vetted, researchers shall be affiliated with academic institutions, be independent from commercial interests, have proven records of expertise in the fields related to the risks investigated or related research methodologies, and shall commit and be in a capacity to preserve the specific data security and confidentiality requirements corresponding to each request.
5. The Commission shall, after consulting the Board, adopt delegated acts laying down the technical conditions under which **providers of** very large online platforms are to share data pursuant to paragraphs 1 and 2 and the purposes for which the data may be used. Those delegated acts shall lay down the specific conditions **and procedures** under which such sharing of data with vetted researchers can take place in compliance with Regulation (EU) 2016/679, taking into account the rights and interests of the **providers of** very large online platforms and the recipients of the service concerned, including the protection of confidential information, in particular trade secrets, and maintaining the security of their service.
6. Within 15 days following receipt of a request as referred to in paragraph 1 and 2, **providers of a** very large online platforms may request the Digital Services Coordinator of establishment or the Commission, as applicable, to amend the request, where it considers that it is unable to give access to the data requested because one of following two reasons:
  - (a) it does not have access to the data;
  - (b) giving access to the data will lead to significant vulnerabilities for the security of its service or the protection of confidential information, in particular trade secrets.
7. Requests for amendment pursuant to point (b) of paragraph 6 shall contain proposals for one or more alternative means through which access may be provided to the requested data or other data which are appropriate and sufficient for the purpose of the request.

The Digital Services Coordinator of establishment or the Commission shall decide upon the request for amendment within 15 days and communicate to the **provider of** very large online platforms its decision and, where relevant, the amended request and the new time period to comply with the request.

It is important for Denmark to provide better frameworks for researcher's access to data, while taking into account the protection of business secrets and information that may compromise the security of services.

As a general remark regarding paragraph 5, we would like to underline that delegated acts should be reduced to a minimum and *only* be of *technical* character. Further, Member States should be closely involved in the formulation thereof.

## Article 32

### Compliance officers

1. **Providers of v**Very large online platforms shall appoint one or more compliance officers responsible for monitoring their compliance with this Regulation.
2. **Providers of v**Very large online platforms shall only designate as compliance officers persons who have the professional qualifications, knowledge, experience and ability necessary to fulfil the tasks referred to in paragraph 3. Compliance officers may either be staff members of, or fulfil those tasks on the basis of a contract with, the **provider of the** very large online platform concerned.
3. Compliance officers shall have the following tasks:
  - (a) cooperating with the Digital Services Coordinator of establishment and the Commission for the purpose of this Regulation;
  - (b) organising and supervising the very large online platform's activities relating to the independent audit pursuant to Article 28;
  - (c) informing and advising the management and employees of the **provider of the** very large online platform about relevant obligations under this Regulation;
  - (d) monitoring the **compliance of the provider of the** very large online platform's ~~compliance~~ with its obligations under this Regulation;
  - (e) **where applicable, monitoring compliance of the provider of the very large online platform with commitments made under the codes of conduct pursuant to Articles 35 and 36 or the crisis protocols pursuant to Article 37.**
4. **Providers of v**Very large online platforms shall take the necessary measures to ensure that the compliance officers ~~can~~ perform their tasks in an independent manner.

5. **Providers of v**Very large online platforms shall communicate the name and contact details of the compliance officer to the Digital Services Coordinator of establishment and the Commission.
6. **Providers of v**Very large online platforms shall support the compliance officer in the performance of his or her tasks and provide him or her with the resources necessary to adequately carry out those tasks. The compliance officer shall directly report to the highest management level of the platform.

### *Article 33*

#### *Transparency reporting obligations for very large online platforms*

1. **Providers of v**Very 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.
2. In addition to the reports provided for in Article 13, **including the information referred to in Article 23**, **providers of** very large online platforms shall make publicly available and transmit to the Digital Services Coordinator of establishment and the Commission, at least once a year and within 30 days following the adoption of the audit implementing report provided for in Article 28(4):
  - (a) a report setting out the results of the risk assessment pursuant to Article 26;
  - (b) the related risk mitigation measures identified and implemented pursuant to Article 27;
  - (c) the audit report provided for in Article 28(3);
  - (d) the audit implementation report provided for in Article 28(4).
3. Where a **provider of** very large online platforms **considers** that the publication of information pursuant to paragraph 2 may result in the disclosure of confidential information of that platform or of the recipients of the service, may cause significant vulnerabilities for the security of its service, may undermine public security or may harm recipients, the ~~platform~~ **provider** may remove such information from the reports. In that case, ~~that platform~~ **the provider** shall transmit the complete reports to the Digital Services Coordinator of establishment and the Commission, accompanied by a statement of the reasons for removing the information from the public reports.

## SECTION 5

### OTHER PROVISIONS CONCERNING DUE DILIGENCE OBLIGATIONS

#### *Article 34*

##### *Standards*

1. The Commission shall support and promote the development and implementation of voluntary ~~industry~~ standards set by relevant European and international standardisation bodies at least for the following:
  - (a) electronic submission of notices under Article 14;
  - (b) electronic submission of notices by trusted flaggers under Article 19, including through application programming interfaces;
  - (c) specific interfaces, including application programming interfaces, to facilitate compliance with the obligations set out in Articles 30 and 31;
  - (d) auditing of very large online platforms pursuant to Article 28;
  - (e) interoperability of the advertisement repositories referred to in Article 30(2);
  - (f) transmission of data between advertising intermediaries in support of transparency obligations pursuant to points (b) and (c) of Article 24.
2. The Commission shall support the update of the standards in the light of technological developments and the behaviour of the recipients of the services in question. **The relevant information regarding the update of the standards shall be publicly available and easily accessible.**

#### *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 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.

### *Article 36*

#### *Codes of conduct for online advertising*

1. The Commission shall encourage and facilitate the drawing up of codes of conduct at Union level between, **providers of** online platforms and other relevant service providers, such as providers of online advertising intermediary services or organisations representing recipients of the service and civil society organisations or relevant authorities to contribute to further transparency in online advertising beyond the requirements of Articles 24 and 30.
2. The Commission shall aim to ensure that the codes of conduct pursue an effective transmission of information, in full respect for the rights and interests of all parties



involved, and a competitive, transparent and fair environment in online advertising, in accordance with Union and national law, in particular on competition and the protection of personal data. The Commission shall aim to ensure that the codes of conduct address at least:

(a) the transmission of information held by providers of online advertising intermediaries to recipients of the service with regard to requirements set in points (b) and (c) of Article 24;

(b) the transmission of information held by providers of online advertising intermediaries to the repositories pursuant to Article 30.

3. The Commission shall encourage the development of the codes of conduct within one year following the date of application of this Regulation and their application no later than six months after that date.

### *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;
  - (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.

## Chapter IV

### Implementation, cooperation, sanctions and enforcement

#### SECTION 1

#### COMPETENT AUTHORITIES AND NATIONAL DIGITAL SERVICES COORDINATORS

##### *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 with other authorities where relevant for the performance of the 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 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.

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.

#### *Article 39*

##### *Requirements for Digital Services Coordinators*

1. Member States shall ensure that their Digital Services Coordinators perform their tasks under this Regulation in an impartial, transparent and timely manner. Member States shall ensure that their Digital Services Coordinators have adequate technical, financial and human resources to carry out their tasks.
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.
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~~

#### *Article 40*

##### *Jurisdiction*

1. The Member State in which the main establishment of the provider of intermediary services is located shall have jurisdiction for the purposes of **application and enforcement of the obligations placed on intermediaries by this Regulation by the national competent authorities in accordance with this Chapter** ~~Chapters III and IV of this Regulation.~~

2. A provider of intermediary services which does not have an establishment in the Union but which offers services in the Union shall, for the purposes of **this Article**~~Chapters III and IV~~, be deemed to be under the jurisdiction of the Member State where its legal representative resides or is established.
3. Where a provider of intermediary services fails to appoint a legal representative in accordance with Article 11, all Member States shall have jurisdiction for the purposes of ~~Chapters III and IV~~**this Article**. Where a Member State decides to exercise jurisdiction under this paragraph, it shall inform all other Member States and ensure that **the applicable safeguards afforded by the Charter are respected**~~the principle of ne bis in idem is respected~~.
4. Paragraphs 1, 2 and 3 are without prejudice to the second subparagraph of Article 50(4) and the second subparagraph of Article 51(2) and the tasks and powers of the Commission under Section 3.

#### *Article 41*

##### *Powers of Digital Services Coordinators*

1. Where needed for carrying out their tasks, Digital Services Coordinators shall have at least the following powers of investigation, in respect of conduct by providers of intermediary services under the jurisdiction of their Member State:
  - (a) the power to require those providers, as well as any other persons acting for purposes related to their trade, business, craft or profession that may reasonably be aware of information relating to a suspected infringement of this Regulation, including, organisations performing the audits referred to in Articles 28 and 50(3), to provide such information within a reasonable time period;
  - (b) the power to carry out, **or request a judicial authority to order**, on-site inspections of any premises that those providers or those persons use for purposes related to their trade, business, craft or profession, or to request other public authorities to do so, in order to examine, seize, take or obtain copies of information relating to a suspected infringement in any form, irrespective of the storage medium;
  - (c) the power to ask any member of staff or representative of those providers or those persons to give explanations in respect of any information relating to a suspected infringement and to record the answers.

2. Where needed for carrying out their tasks, Digital Services Coordinators shall have at least the following enforcement powers, in respect of providers of intermediary services under the jurisdiction of their Member State:

- (a) the power to accept the commitments offered by those providers in relation to their compliance with this Regulation and to make those commitments binding;
- (b) the power to order the cessation of infringements and, where appropriate, to impose remedies proportionate to the infringement and necessary to bring the infringement effectively to an end;
- (c) the power to impose fines, **or request a judicial authority to do so,** in accordance with Article 42 for failure to comply with this Regulation, including with any of the **investigatory** orders issued pursuant to paragraph 1;
- (d) the power to impose a periodic penalty payment, **or request a judicial authority to do so,** in accordance with Article 42 to ensure that an infringement is terminated in compliance with an order issued pursuant to point (b) of this paragraph or for failure to comply with any of the **investigatory** orders issued pursuant to paragraph 1;
- (e) the power to adopt interim measures to avoid the risk of serious harm.

As regards points (c) and (d) of the first subparagraph, Digital Services Coordinators shall also have the enforcement powers set out in those points in respect of the other persons referred to in paragraph 1 for failure to comply with any of the orders issued to them pursuant to that paragraph. They shall only exercise those enforcement powers after having provided those other persons in good time with all relevant information relating to such orders, including the applicable time period, the fines or periodic payments that may be imposed for failure to comply and redress possibilities.

3. Where needed for carrying out their tasks, Digital Services Coordinators shall also have, in respect of providers of intermediary services under the jurisdiction of their Member State, where all other powers pursuant to this Article to bring about the cessation of an infringement have been exhausted, the infringement persists and causes serious harm which cannot be avoided through the exercise of other powers available under Union or national law, the power to take the following measures:

- (a) require the management body of the providers, within a reasonable time period, to examine the situation, adopt and submit an action plan setting out the necessary

measures to terminate the infringement, ensure that the provider takes those measures, and report on the measures taken;

- (b) where the Digital Services Coordinator considers that the provider has not sufficiently complied with the requirements of the first indent, that the infringement persists and causes serious harm, and that the infringement entails a serious criminal offence involving a threat to the life or safety of persons, request the competent judicial authority of that Member State to order the temporary restriction of access of recipients of the service concerned by the infringement or, only where that is not technically feasible, to the online interface of the provider of intermediary services on which the infringement takes place.

The Digital Services Coordinator shall, except where it acts upon the Commission's request referred to in Article 65, prior to submitting the request referred to in point (b) of the first subparagraph, invite interested parties to submit written observations within a time period that shall not be less than two weeks, describing the measures that it intends to request and identifying the intended addressee or addressees thereof. The provider, the intended addressee or addressees and any other third party demonstrating a legitimate interest shall be entitled to participate in the proceedings before the competent judicial authority. Any measure ordered shall be proportionate to the nature, gravity, recurrence and duration of the infringement, without unduly restricting access to lawful information by recipients of the service concerned.

The restriction shall be for a period of four weeks, subject to the possibility for the competent judicial authority, in its order, to allow the Digital Services Coordinator to extend that period for further periods of the same lengths, subject to a maximum number of extensions set by that judicial authority. The Digital Services Coordinator shall only extend the period where it considers, having regard to the rights and interests of all parties affected by the restriction and all relevant circumstances, including any information that the provider, the addressee or addressees and any other third party that demonstrated a legitimate interest may provide to it, that both of the following conditions have been met:

- (a) the provider has failed to take the necessary measures to terminate the infringement;

- (b) the temporary restriction does not unduly restrict access to lawful information by recipients of the service, having regard to the number of recipients affected and whether any adequate and readily accessible alternatives exist.

Where the Digital Services Coordinator considers that those two conditions have been met but it cannot further extend the period pursuant to the third subparagraph, it shall submit a new request to the competent judicial authority, as referred to in point (b) of the first subparagraph.

4. The powers listed in paragraphs 1, 2 and 3 are without prejudice to Section 3.
5. The measures taken by the Digital Services Coordinators in the exercise of their powers listed in paragraphs 1, 2 and 3 shall be effective, dissuasive and proportionate, having regard, in particular, to the nature, gravity, recurrence and duration of the infringement or suspected infringement to which those measures relate, as well as the economic, technical and operational capacity of the provider of the intermediary services concerned where relevant.
6. Member States shall ensure that any exercise of the powers pursuant to paragraphs 1, 2 and 3 is subject to adequate safeguards laid down in the applicable national law in conformity with the Charter and with the general principles of Union law. In particular, those measures shall only be taken in accordance with the right to respect for private life and the rights of defence, including the rights to be heard and of access to the file, and subject to the right to an effective judicial remedy of all affected parties.

It is important for Denmark, that the Member States have the authority to decide which bodies can impose fines. As we understand the current proposal, this has been taken into account.

As the largest digital platforms are cross-border in nature, Denmark emphasizes that the Commission should play an active role in investigating the offenses of the largest digital platforms, as it can be challenging for national enforcement authorities to ensure effective enforcement of consumer protection rules for especially the largest online platforms.

## *Article 42*

### *Penalties*

1. Member States shall lay down the rules on penalties applicable to infringements of this Regulation by providers of intermediary services under their jurisdiction and shall take all the necessary measures to ensure that they are implemented in accordance with Article 41.



2. Penalties shall be effective, proportionate and dissuasive. Member States shall notify the Commission of those rules and of those measures and shall notify it, without delay, of any subsequent amendments affecting them.
3. Member States shall ensure that the maximum amount of penalties imposed for a failure to comply with the obligations laid down in this Regulation shall not exceed 6 % of the annual income or turnover of the provider of intermediary services concerned **in the preceding financial year**. Penalties for the supply of incorrect, incomplete or misleading information, failure to reply or rectify incorrect, incomplete or misleading information and to submit to an on-site inspection shall not exceed 1% of the annual income or turnover of the provider **or person** concerned **in the preceding financial year**.
4. Member States shall ensure that the maximum amount of a periodic penalty payment shall not exceed 5 % of the average daily turnover **or income** of the provider of intermediary services concerned in the preceding financial year per day, calculated from the date specified in the decision concerned.

It is important for Denmark, that the Member States have the authority to decide what bodies can impose fines.

As the largest digital platforms are cross-border in nature, Denmark emphasizes that the Commission should play an active role in investigating the offenses of the largest digital platforms, as it can be challenging for national enforcement authorities to ensure effective enforcement of consumer protection rules for especially the largest online platforms.

#### *Article 43*

##### *Right to lodge a complaint*

**Both** Recipients 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. 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.

Article 17 gives the recipients of the service access to an effective internal complaint-handling system, against the decision taken by the provider of the online platform, e.g. whether or not to remove or disable access information. According to Article 18, recipients of the service, addressed by the decisions referred to in Article 17(1), shall be entitled to select any out-of-court dispute settlement body.

Article 43 states that recipients 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.

We find it difficult to understand whether the recipient after Article 43 have the right to lodge an individual complaint to the DSC regarding a decision made by the provider of the online platform to remove specific information and if the DSC then should make a new decision of whether certain content is illegal or not. Or if the right to lodge a complaint in Article 43 only relates to infringement of this Regulation (for instance the due diligence requirements in chapter 3), and therefore give no individuals the right to lodge a complaint regarding individual decisions made by the provider of the online platform.

We find that it should be clarified in Article 43 what kind of complaints the recipient has the right to lodge – whether they are limited to the DSA requirements mentioned in chapter 3 and 5, or does it include the right for individuals to lodge a complaint to the DSC regarding decisions as mentioned in Article 17. The coherence between the Articles could advantageously be described in a recital.

#### *Article 44*

##### *Activity reports*

1. Digital Services Coordinators shall draw up an annual report on their activities under this Regulation. They shall make the annual reports available to the public, and shall communicate them to the Commission and to the Board.
2. The annual report shall include at least the following information:
  - (a) the number and subject matter of orders to act against illegal content and orders to provide information issued in accordance with Articles 8 and 9 by any national judicial or administrative authority of the Member State of the Digital Services Coordinator concerned;

(b) the effects given to those orders, as communicated to the Digital Services Coordinator pursuant to Articles 8 and 9.

3. Where a Member State has designated several competent authorities pursuant to Article 38, it shall ensure that the Digital Services Coordinator draws up a single report covering the activities of all competent authorities and that the Digital Services Coordinator receives all relevant information and support needed to that effect from the other competent authorities concerned.

Article 49(1)(c): The Board can issue advice, opinions and recommendations to the Digital Services Coordinators. Digital Services Coordinators and other national competent authorities that do not follow these opinions, requests or recommendations addressed to them adopted by the board shall provide the reasons for this choice. Although such advice, opinions and recommendations are not binding according to the recitals, it also appears from recital 90, that the reason to deviate therefrom can be taken into account in assessing the compliance of the Member State concerned. This seems contradictory.

#### *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.

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 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 46

### *Joint investigations and requests for Commission intervention*

1. **Any** Digital Services Coordinators may participate in joint investigations, which may be coordinated with the support of the Board, with regard to matters covered by this Regulation, concerning providers of intermediary services operating in several Member States. **The competent national authority of the Member State in whose territory the intermediary service is established shall be given the opportunity to participate in such investigations at all times.**

Such joint investigations are without prejudice to the tasks and powers of the participating Digital Coordinators and the requirements applicable to the performance of those tasks and exercise of those powers provided in this Regulation. The participating Digital Services Coordinators shall make the results of the joint investigations available to other Digital Services Coordinators, the Commission and the Board through the system provided for in Article 67 for the fulfilment of their respective tasks under this Regulation.

2. Where a Digital Services Coordinator of establishment has reasons to suspect that a very large online platform infringed this Regulation, it may request the Commission to take the necessary investigatory and enforcement measures to ensure compliance with this Regulation in accordance with Section 3. Such a request shall contain all information listed in Article 45(2) and set out the reasons for requesting the Commission to intervene. **If the Commission intends to initiate proceedings pursuant to Article 51, it shall communicate it to the Digital Services Coordinator of establishment within three months upon the receipt of the request.**

In general, we welcome the compromise text. However, we think that the article could advantageously address which kind of joint investigations could be carried out and what powers the Digital Services Coordinators have when they conduct the joint investigations. For example, whether the Digital Services Coordinators can conduct on-site inspections and request documents from intermediary services that are not established in their Member States.

The national DSC's opportunity to influence the investigations could be clarified further.

## SECTION 2

### EUROPEAN BOARD FOR DIGITAL SERVICES

#### *Article 47*

##### *European Board for Digital Services*

1. An independent advisory group of Digital Services Coordinators on the supervision of providers of intermediary services named ‘European Board for Digital Services’ (the ‘Board’) is established.
2. The Board shall advise the Digital Services Coordinators and the Commission in accordance with this Regulation to achieve the following objectives:
  - (a) Contributing to the consistent application of this Regulation and effective cooperation of the Digital Services Coordinators and the Commission with regard to matters covered by this Regulation;
  - (b) coordinating and contributing to guidance and analysis of the Commission and Digital Services Coordinators and other competent authorities on emerging issues across the internal market with regard to matters covered by this Regulation;
  - (c) assisting the Digital Services Coordinators and the Commission in the supervision of very large online platforms.

#### *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.

**We find it important to involve Member States in the drafting of the rules of procedures of the Board.**

#### *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 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.

Article 49(1)(c): The Board can issue advice, opinions and recommendations to the Digital Services Coordinators. Digital Services Coordinators and other national competent authorities that do not follow these opinions, requests or recommendations addressed to them adopted by the board shall provide the reasons for this choice. Although such advice, opinions and recommendations are not binding according to the recitals, it also appears from recital 90, that the reason to deviate therefrom can be taken into account in assessing the compliance of the Member State concerned. This seems contradictory.

### SECTION 3

#### SUPERVISION, INVESTIGATION, ENFORCEMENT AND MONITORING IN RESPECT OF VERY LARGE ONLINE PLATFORMS

##### *Article 50*

##### *Enhanced supervision for very large online platforms*

1. Where the Digital Services Coordinator of establishment adopts a decision finding that a **provider of** very large online platform has infringed any of the provisions of Section 4 of Chapter III, it shall make use of the enhanced supervision system laid down in this Article. It shall take utmost account of any opinion and recommendation of the Commission and the Board pursuant to this Article.

The Commission acting on its own initiative, or the Board acting on its own initiative or upon request of at least three Digital Services Coordinators of destination, may, where it has reasons to suspect that a **provider of** very large online platform infringed any of those provisions, recommend the Digital Services Coordinator of establishment to investigate the suspected infringement with a view to that Digital Services Coordinator adopting such a decision ~~within a reasonable time period~~ **within a time period predefined in the recommendation.**

**Where other competent authorities in that Member State are empowered to establish the existence of an infringement and to ensure the enhanced supervision in respect of a given provider of a very large online platform, the Digital Services Coordinator of establishment shall involve them in accordance with the applicable national law.**



2. When communicating the decision referred to in the first subparagraph of paragraph 1 to the **provider of** the very large online platform concerned, the Digital Services Coordinator of establishment shall request it to draw up and communicate to the Digital Services Coordinator of establishment, the Commission and the Board, within one month from that decision, an action plan, specifying how that platform intends to terminate or remedy the infringement. The measures set out in the action plan may include, where appropriate, participation in a code of conduct as provided for in Article 35.
  
3. Within one month following receipt of the action plan, the Board shall communicate its opinion on the action plan to the Digital Services Coordinator of establishment. Within one month following receipt of that opinion, that Digital Services Coordinator shall decide whether the action plan is appropriate to terminate or remedy the infringement.  
  
~~Where the Digital Services Coordinator of establishment has concerns on the ability of the measures to terminate or remedy the infringement, it may request the very large online platform concerned to subject itself to an additional, independent audit to assess the effectiveness of those measures in terminating or remedying the infringement. In that case, that platform shall send the audit report to that Digital Services Coordinator, the Commission and the Board within four months from the decision referred to in the first subparagraph. When requesting such an additional audit, the Digital Services Coordinator may specify a particular audit organisation that is to carry out the audit, at the expense of the platform concerned, selected on the basis of criteria set out in Article 28(2).~~
  
4. The Digital Services Coordinator of establishment shall communicate to the Commission, the Board and the provider of the very large online platform concerned its views as to whether the provider of very large online platform has terminated or remedied the infringement and the reasons thereof. It shall do so within the following time periods, as applicable:
  - ~~(a) within one month from the receipt of the audit report referred to in the second subparagraph of paragraph 3, where such an audit was performed;~~
  - (a) at the same time as the decision adopted pursuant to paragraph 3, where it does not consider the action plan appropriate to terminate or remedy the infringement;**
  - (b) within three months from the decision on the action plan referred to in the first subparagraph of paragraph 3, **where the action plan was considered appropriate to terminate or remedy the infringement**, ~~where no such audit was performed;~~
  - (c) immediately upon the expiry of the time period set out in paragraph 2, where that platform failed to communicate the action plan within that time period.

~~Pursuant to that communication, the Digital Services Coordinator of establishment shall no longer be entitled to take any investigatory or enforcement measures in respect of the relevant conduct by the very large online platform concerned, without prejudice to Article 66 or any other measures that it may take at the request of the Commission.~~

We support the amendments in the proposed text to article 50 (1), as “within a reasonable time” was a very unclear timeframe and the recitals did not provide any guidance. Thus, we welcome the amendment saying, that the Digital Services Coordinator shall adopt a decision within *a time period predefined in the recommendation* as this could provide more clarity. However, from our side it is important, that the Member States will be given an opportunity to influence the content of the recommendation.

It appears from article 50(1), subparagraph 2, that the Commission, The Board or minimum three Digital Services Coordinators can recommend the Digital Service Coordinator to investigate a suspected infringement. It is unclear what the consequences, if any, are for the Digital Services Coordinator if he/she decides not to investigate the alleged infringement, since the text uses the word “recommend”.

According to article 50(3), subparagraph 1, the Board shall communicate its opinion to the Digital Services Coordinator. It is unclear why the Commission is not obliged to communicate a decision.

From the Danish side it is a priority that the very large online platforms take upon themselves a much larger responsibility – hence, we are at the outset critical towards the deletion of the possibility for the coordinators to request the relevant VLOP to undergo independent revision.

#### *Article 51*

##### *Intervention by the Commission and opening of proceedings*

1. The Commission, acting either upon the Board’s recommendation or on its own initiative after consulting the Board, may initiate proceedings in view of the possible adoption of decisions pursuant to Articles 58 and 59 in respect of the relevant conduct by the **provider of the** very large online platform that:
  - (a) is suspected of having infringed any of the provisions of this Regulation and the Digital Services Coordinator of establishment did not take **the necessary** any investigatory or enforcement measures, pursuant to the request of the Commission referred to in Article 45(7), upon the expiry of the time period set in that request;
  - (b) is suspected of having infringed any of the provisions of this Regulation and the Digital Services Coordinator of establishment requested the Commission to intervene in accordance with Article 46(2), upon the reception of that request;

(c) has been found to have infringed any of the provisions of Section 4 of Chapter III, upon the expiry of the relevant time period for the communication referred to in Article 50(4).

2. Where the Commission decides to initiate proceedings pursuant to paragraph 1, it shall notify all Digital Services Coordinators, the Board and the **provider of the** very large online platform concerned.

~~As regards points (a) and (b) of paragraph 1, p~~Pursuant to that notification, the Digital Services Coordinator of establishment concerned shall no longer be entitled to take any investigatory or enforcement measures in respect of the relevant conduct by **the provider of** the very large online platform concerned, without prejudice to Article 66 or any other measures that it, may take at the request of the Commission. **The Commission shall inform the Digital Services Coordinator of establishment of its preliminary findings pursuant to Article 63(1).**

3. The Digital Services Coordinator referred to in Articles 45(7), 46(2) and 50(1), as applicable, shall, without undue delay upon being informed, transmit to the Commission:
- (a) any information that that Digital Services Coordinator exchanged relating to the infringement or the suspected infringement, as applicable, with the Board and with the **provider of the** very large online platform concerned;
  - (b) the case file of that Digital Services Coordinator relating to the infringement or the suspected infringement, as applicable;
  - (c) any other information in the possession of that Digital Services Coordinator that may be relevant to the proceedings initiated by the Commission.
4. The Board, and the Digital Services Coordinators making the request referred to in Article 45(1), shall, without undue delay upon being informed, transmit to the Commission any information in their possession that may be relevant to the proceedings initiated by the Commission.

We welcome the amendments, but it is unclear how discrepancy is handled in the case, where the Members State has acted, in its own view correctly, but incorrectly in the Commission's view.

## Article 52

### Requests for information

1. In order to carry out the tasks assigned to it under this Section, the Commission may by simple request or by decision require the **provider of the** very large online platforms concerned, as well as any other **natural or legal** persons acting for purposes related to their trade, business, craft or profession that may be reasonably be aware of information relating to the suspected infringement or the infringement, as applicable, including organisations performing the audits referred to in Articles 28 and 50(3), to provide such information within a reasonable time period.
2. When sending a simple request for information to the **provider of the** very large online platform concerned or other person referred to in **paragraph Article 52(1 of this Article)**, the Commission shall state the legal basis and the purpose of the request, specify what information is required and set the time period within which the information is to be provided, and the penalties provided for in Article 59 for supplying incorrect or misleading information.
3. Where the Commission requires the **provider of the** very large online platform concerned or other person referred to in **paragraph Article 52(1 of this Article)** to supply information by decision, it shall state the legal basis and the purpose of the request, specify what information is required and set the time period within which it is to be provided. It shall also indicate the penalties provided for in Article 59 and indicate or impose the periodic penalty payments provided for in Article 60. It shall further indicate the right to have the decision reviewed by the Court of Justice of the European Union.
4. The owners of the very large online platform concerned or other person referred to in ~~Article 52~~**(paragraph 1)** or their representatives and, in the case of legal persons, companies or firms, or where they have no legal personality, the persons authorised to represent them by law or by their constitution shall supply the information requested on behalf of the **provider of the** very large online platform concerned or other person referred to in ~~Article 52~~**(paragraph 1)**. Lawyers duly authorised to act may supply the information on behalf of their clients. The latter shall remain fully responsible if the information supplied is incomplete, incorrect or misleading.
5. At the request of the Commission, the Digital Services Coordinators and other competent authorities shall provide the Commission with all necessary information to carry out the tasks assigned to it under this Section.

Regarding article 52, it appears from paragraph 1 that the Commission by simple request or by decision may require to provide such information within *reasonable time*. In addition, the recitals

do not provide any guidance in this matter. This is a very unclear timeframe and it should be defined more clearly in order to provide efficiency and legal certainty, as in the amendments in article 50 (1); “within a time period predefined in the recommendation”. In this case, it is important to clarify which recommendation the provision refers to.

Further, the Commission may require information from the VLOP or any other persons acting for purposes related to their trade, business, craft or profession. However, the wording of the recital suggests a broader approach, i.e. for instance information from persons not acting for purposes related to their trade, business, craft or profession (private or natural persons/consumers). The circle of people covered by the provision is unclear and could be defined more precisely.

### *Article 53*

#### *Power to take interviews and statements*

In order to carry out the tasks assigned to it under this Section, the Commission may interview any natural or legal person which consents to being interviewed for the purpose of collecting information, relating to the subject-matter of an investigation, in relation to the suspected infringement or infringement, as applicable.

### *Article 54*

#### *Power to conduct on-site inspections*

1. In order to carry out the tasks assigned to it under this Section, the Commission may conduct on-site inspections at the premises of the **provider of the** very large online platform concerned or other person referred to in Article 52(1).
2. On-site inspections may also be carried out with the assistance of auditors or experts appointed by the Commission pursuant to Article 57(2), **as well as with the competent national authority of the Member State in whose territory the inspection is to be conducted.**
3. During on-site inspections the Commission, ~~and~~ auditors **and** experts appointed by **the Commission, as well as the competent national authority of the Member State in whose territory the inspection is to be conducted** may require the **provider of the** very large online platform concerned or other person referred to in Article 52(1) to provide explanations on its organisation, functioning, IT system, algorithms, data-handling and

business conducts. The Commission and auditors or experts appointed by it may address questions to key personnel of the **provider of the** very large online platform concerned or other person referred to in Article 52(1).

4. The **provider of the** very large online platform concerned or other **natural or legal** person referred to in Article 52(1) is required to submit to an on-site inspection ordered by decision of the Commission. The decision shall specify the subject matter and purpose of the visit, set the date on which it is to begin and indicate the penalties provided for in Articles 59 and 60 and the right to have the decision reviewed by the Court of Justice of the European Union.

We welcome the adjustments made by the Presidency in order to include the competent national authority in the on-site inspections.

#### *Article 55*

##### *Interim measures*

1. In the context of proceedings which may lead to the adoption of a decision of non-compliance pursuant to Article 58(1), where there is an urgency due to the risk of serious damage for the recipients of the service, the Commission may, by decision, order interim measures against the **provider of the** very large online platform concerned on the basis of a prima facie finding of an infringement.
2. A decision under paragraph 1 shall apply for a specified period of time and may be renewed in so far this is necessary and appropriate.

#### *Article 56*

##### *Commitments*

1. If, during proceedings under this Section, the **provider of the** very large online platform concerned offers commitments to ensure compliance with the relevant provisions of this Regulation, the Commission may by decision make those commitments binding on the **provider of the** very large online platform concerned and declare that there are no further grounds for action.
2. The Commission may, upon request or on its own initiative, reopen the proceedings:

- (a) where there has been a material change in any of the facts on which the decision was based;
  - (b) where the **provider of the** very large online platform concerned acts contrary to its commitments; or
  - (c) where the decision was based on incomplete, incorrect or misleading information provided by the **provider of the** very large online platform concerned or other person referred to in Article 52(1).
3. Where the Commission considers that the commitments offered by the **provider of the** very large online platform concerned are unable to ensure effective compliance with the relevant provisions of this Regulation, it shall reject those commitments in a reasoned decision when concluding the proceedings.

#### *Article 57*

##### *Monitoring actions*

- 1. For the purposes of carrying out the tasks assigned to it under this Section, the Commission may take the necessary actions to monitor the effective implementation and compliance with this Regulation by the **provider of the** very large online platform concerned. The Commission may also order that ~~platform~~ **provider** to provide access to, and explanations relating to, its databases and algorithms.
- 2. The actions pursuant to paragraph 1 may include the appointment of independent external experts and auditors, **including from competent national authorities**, to assist the Commission in monitoring compliance with the relevant provisions of this Regulation and to provide specific expertise or knowledge to the Commission.

We welcome the adjustments made by the Presidency that include external experts and auditors from competent national authorities. However, Article 57(1) sets out, that the Commission may order platforms to provide access to, and explanations relating to, its databases and algorithms. The extensions of the Commission's rights are unclear and should be clarified further.

#### *Article 58*

##### *Non-compliance*

- 1. The Commission shall adopt a non-compliance decision where it finds that the very large online platform concerned does not comply with one or more of the following:

- (a) the relevant provisions of this Regulation;
  - (b) interim measures ordered pursuant to Article 55;
  - (c) commitments made binding pursuant to Article 56,
2. Before adopting the decision pursuant to paragraph 1, the Commission shall communicate its preliminary findings to the very large online platform concerned. In the preliminary findings, the Commission shall explain the measures that it considers taking, or that it considers that the very large online platform concerned should take, in order to effectively address the preliminary findings.
  3. In the decision adopted pursuant to paragraph 1 the Commission shall order the very large online platform concerned to take the necessary measures to ensure compliance with the decision pursuant to paragraph 1 within a reasonable time period and to provide information on the measures that that platform intends to take to comply with the decision.
  4. The very large online platform concerned shall provide the Commission with a description of the measures it has taken to ensure compliance with the decision pursuant to paragraph 1 upon their implementation.
  5. Where the Commission finds that the conditions of paragraph 1 are not met, it shall close the investigation by a decision.

#### *Article 59*

#### *Fines*

1. In the decision pursuant to Article 58, the Commission may impose on the **provider of the** very large online platform concerned fines not exceeding 6% of its total **worldwide** turnover in the preceding financial year where it finds that that ~~platform~~ **provider**, intentionally or negligently:
  - (a) infringes the relevant provisions of this Regulation;
  - (b) fails to comply with a decision ordering interim measures under Article 55; or
  - (c) fails to comply with a voluntary measure made binding by a decision pursuant to Articles 56.
2. The Commission may by decision impose on the **provider of the** very large online platform concerned or other **natural or legal** person referred to in Article 52(1) fines not



exceeding 1 % of the total turnover in the preceding financial year, where they intentionally or negligently:

- (a) **fail to supply or** supply incorrect, incomplete or misleading information in response to a request pursuant to Article 52 or, when the information is requested by decision, fail to reply to the request within the set time period;
  - (b) fail to rectify within the time period set by the Commission, incorrect, incomplete or misleading information given by a member of staff, or fail or refuse to provide complete information;
  - (c) refuse to submit to an on-site inspection pursuant to Article 54.
3. Before adopting the decision pursuant to paragraph 2, the Commission shall communicate its preliminary findings to the **provider of the** very large online platform concerned or other person referred to in Article 52(1).
4. In fixing the amount of the fine, the Commission shall have regard to the nature, gravity, duration and recurrence of the infringement and, for fines imposed pursuant to paragraph 2, the delay caused to the proceedings.

**We support the clarification about the worldwide turnover in relation to the amount of the fine. It is important with effective sanctions.**

#### *Article 60*

##### *Periodic penalty payments*

1. The Commission may, by decision, impose on the **provider of the** very large online platform concerned or other person referred to in Article 52(1), as applicable, periodic penalty payments not exceeding 5 % of the average daily **income or worldwide** turnover in the preceding financial year per day, calculated from the date appointed by the decision, in order to compel them to:
- (a) supply correct and complete information in response to a decision requiring information pursuant to Article 52;
  - (b) submit to an on-site inspection which it has ordered by decision pursuant to Article 54;

- (c) comply with a decision ordering interim measures pursuant to Article 55(1);
  - (d) comply with commitments made legally binding by a decision pursuant to Article 56(1);
  - (e) comply with a decision pursuant to Article 58(1).
2. Where the **provider of the** very large online platform concerned or other person referred to in Article 52(1) has satisfied the obligation which the periodic penalty payment was intended to enforce, the Commission may fix the definitive amount of the periodic penalty payment at a figure lower than that which would arise under the original decision.

We support the clarification about the worldwide turnover in relation to the amount of the periodic penalty payments.

#### *Article 61*

##### *Limitation period for the imposition of penalties*

1. The powers conferred on the Commission by Articles 59 and 60 shall be subject to a limitation period of five years.
2. Time shall begin to run on the day on which the infringement is committed. However, in the case of continuing or repeated infringements, time shall begin to run on the day on which the infringement ceases.
3. Any action taken by the Commission or by the Digital Services Coordinator for the purpose of the investigation or proceedings in respect of an infringement shall interrupt the limitation period for the imposition of fines or periodic penalty payments. Actions which interrupt the limitation period shall include, in particular, the following:
  - (a) requests for information by the Commission or by a Digital Services Coordinator;
  - (b) on-site inspection;
  - (c) the opening of a proceeding by the Commission pursuant to Article 51(2).
4. Each interruption shall start time running afresh. However, the limitation period for the imposition of fines or periodic penalty payments shall expire at the latest on the day on which a period equal to twice the limitation period has elapsed without the Commission having imposed a fine or a periodic penalty payment. That period shall be extended by the time during which the limitation period is suspended pursuant to paragraph 5.

5. The limitation period for the imposition of fines or periodic penalty payments shall be suspended for as long as the decision of the Commission is the subject of proceedings pending before the Court of Justice of the European Union.

#### *Article 62*

##### *Limitation period for the enforcement of penalties*

1. The power of the Commission to enforce decisions taken pursuant to Articles 59 and 60 shall be subject to a limitation period of five years.
2. Time shall begin to run on the day on which the decision becomes final.
3. The limitation period for the enforcement of penalties shall be interrupted:
  - (a) by notification of a decision varying the original amount of the fine or periodic penalty payment or refusing an application for variation;
  - (b) by any action of the Commission, or of a Member State acting at the request of the Commission, designed to enforce payment of the fine or periodic penalty payment.
4. Each interruption shall start time running afresh.
5. The limitation period for the enforcement of penalties shall be suspended for so long as:
  - (a) time to pay is allowed;
  - (b) enforcement of payment is suspended pursuant to a decision of the Court of Justice of the European Union.

#### *Article 63*

##### *Right to be heard and access to the file*

1. Before adopting a decision pursuant to Articles 58(1), 59 or 60, the Commission shall give the very large online platform concerned or other person referred to in Article 52(1) the opportunity of being heard on:
  - (a) preliminary findings of the Commission, including any matter to which the Commission has taken objections; and
  - (b) measures that the Commission may intend to take in view of the preliminary findings referred to point (a).

2. The very large online platform concerned or other person referred to in Article 52(1) may submit their observations on the Commission's preliminary findings within a reasonable time period set by the Commission in its preliminary findings, which may not be less than 14 days.
3. The Commission shall base its decisions only on objections on which the parties concerned have been able to comment.
4. The rights of defence of the parties concerned shall be fully respected in the proceedings. They shall be entitled to have access to the Commission's file under the terms of a negotiated disclosure, subject to the legitimate interest of the very large online platform concerned or other person referred to in Article 52(1) in the protection of their business secrets. The right of access to the file shall not extend to confidential information and internal documents of the Commission or Member States' authorities. In particular, the right of access shall not extend to correspondence between the Commission and those authorities. Nothing in this paragraph shall prevent the Commission from disclosing and using information necessary to prove an infringement.
5. The information collected pursuant to Articles 52, 53 and 54 shall be used only for the purpose of this Regulation.
6. Without prejudice to the exchange and to the use of information referred to in Articles 51(3) and 52(5), the Commission, the Board, Member States' authorities and their respective officials, servants and other persons working under their supervision,; and any other natural or legal person involved, including auditors and experts appointed pursuant to Article 57(2) shall not disclose information acquired or exchanged by them pursuant to this Section and of the kind covered by the obligation of professional secrecy.

#### *Article 64*

##### *Publication of decisions*

1. The Commission shall publish the decisions it adopts pursuant to Articles 55(1), 56(1), 58, 59 and 60. Such publication shall state the names of the parties and the main content of the decision, including any penalties imposed.
2. The publication shall have regard to the rights and legitimate interests of the very large online platform concerned, any other person referred to in Article 52(1) and any third parties in the protection of their confidential information.

### Article 64a

#### Review by the Court of Justice of the European Union

**In accordance with Article 261 of the Treaty on the Functioning of the European Union, the Court of Justice of the European Union has unlimited jurisdiction to review decisions by which the Commission has imposed fines or periodic penalty payments. It may cancel, reduce or increase the fine or periodic penalty payment imposed.**

We support the Presidency proposal regarding the right to a review by the Court of Justice of the European Union in relation to imposed fines and periodic penalty payment.

### *Article 65*

#### *Requests for access restrictions and cooperation with national courts*

1. Where all powers pursuant to this Article to bring about the cessation of an infringement of this Regulation have been exhausted, the infringement persists and causes serious harm which cannot be avoided through the exercise of other powers available under Union or national law, the Commission may request the Digital Services Coordinator of establishment of the very large online platform concerned to act pursuant to Article 41(3).

Prior to making such request to the Digital Services Coordinator, the Commission shall invite interested parties to submit written observations within a time period that shall not be less than two weeks, describing the measures it intends to request and identifying the intended addressee or addressees thereof.

2. Where the coherent application of this Regulation so requires, the Commission, acting on its own initiative, may submit written observations to the competent judicial authority referred to Article 41(3). With the permission of the judicial authority in question, it may also make oral observations.

For the purpose of the preparation of its observations only, the Commission may request that judicial authority to transmit or ensure the transmission to it of any documents necessary for the assessment of the case.

## Article 66

### *Implementing acts relating to Commission intervention*

1. In relation to the Commission intervention covered by this Section, the Commission may adopt implementing acts concerning the practical arrangements for:
  - (c) the proceedings pursuant to Articles 54 and 57;
  - (a) the hearings provided for in Article 63;
  - (b) the negotiated disclosure of information provided for in Article 63.
2. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 70. Before the adoption of any measures pursuant to paragraph 1, the Commission shall publish a draft thereof and invite all interested parties to submit their comments within the time period set out therein, which shall not be less than one month.

As a general remark, we would like to underline that implementing acts and delegated acts should be reduced to a minimum and *only* be of *technical* character. Further, Member States should be closely involved in the drafting of such acts.

## SECTION 4

### COMMON PROVISIONS ON ENFORCEMENT

## Article 67

### *Information sharing system*

1. The Commission shall establish and maintain a reliable and secure information sharing system supporting communications between Digital Services Coordinators, the Commission and the Board.
2. The Digital Services Coordinators, the Commission and the Board shall use the information sharing system for all communications pursuant to this Regulation.
3. The Commission shall adopt implementing acts laying down the practical and operational arrangements for the functioning of the information sharing system and its interoperability with other relevant systems. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 70.

As a general remark, we would like to underline that implementing acts and delegated acts should be reduced to a minimum and *only* be of *technical* character. Further, Member States should be closely involved in the drafting of such acts.

## *Article 68*

### *Representation*

Without prejudice to Directive 2020/XX/EU of the European Parliament and of the Council<sup>49</sup>, recipients of intermediary services shall have the right to mandate a body, organisation or association to exercise the rights **conferred by this Regulation**~~referred to in Articles 17, 18 and 19~~ on their behalf, provided the body, organisation or association meets all of the following conditions:

- (a) it operates on a not-for-profit basis;
- (b) it has been properly constituted in accordance with the law of a Member State;
- (c) its statutory objectives include a legitimate interest in ensuring that this Regulation is complied with.

We can support the Presidency proposal.

## **SECTION 5**

### **DELEGATED ACTS**

## *Article 69*

### *Exercise of the delegation*

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The delegation of power referred to in Articles 23, 25, and 31 shall be conferred on the Commission for an indeterminate period of time from [date of expected adoption of the Regulation].

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<sup>49</sup>——[Reference]

3. The delegation of power referred to in Articles 23, 25 and 31 may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of power specified in that decision. It shall take effect the day following that of its publication in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
5. A delegated act adopted pursuant to Articles 23, 25 and 31 shall enter into force only if no objection has been expressed by either the European Parliament or the Council within a period of three months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by three months at the initiative of the European Parliament or of the Council.

As a general remark, we would like to underline that implementing acts and delegated acts should be reduced to a minimum and *only* be of *technical* character. Further, Member States should be closely involved in the drafting of such acts.

#### *Article 70*

#### *Committee*

1. The Commission shall be assisted by the Digital Services Committee. That Committee shall be a Committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this Article, Article 4 of Regulation (EU) No 182/2011 shall apply.



## Chapter V

### Final provisions

#### *Article 71*

##### *Deletion of certain provisions of Directive 2000/31/EC*

1. Articles 12 to 15 of Directive 2000/31/EC shall be deleted.
2. References to Articles 12 to 15 of Directive 2000/31/EC shall be construed as references to Articles 3, 4, 5 and 7 of this Regulation, respectively.

#### *Article 72*

##### *Amendments to Directive 2020/XX/EC on Representative Actions for the Protection of the Collective Interests of Consumers*

3. The following is added to Annex I:  
“(X) Regulation of the European Parliament and of the Council on a Single Market for Digital Services (Digital Services Act) and amending Directive 2000/31/EC”

#### *Article 73*

##### *Evaluation*

1. By five years after the entry into force of this Regulation at the latest, and every five years thereafter, the Commission shall evaluate this Regulation and report to the European Parliament, the Council and the European Economic and Social Committee.
2. For the purpose of paragraph 1, Member States and the Board shall send information on the request of the Commission.

3. In carrying out the evaluations referred to in paragraph 1, the Commission shall take into account the positions and findings of the European Parliament, the Council, and other relevant bodies or sources.
4. By three years from the date of application of this Regulation at the latest, the Commission, after consulting the Board, shall carry out an assessment of the functioning of the Board and shall report it to the European Parliament, the Council and the European Economic and Social Committee, taking into account the first years of application of the Regulation. On the basis of the findings and taking into utmost account the opinion of the Board, that report shall, where appropriate, be accompanied by a proposal for amendment of this Regulation with regard to the structure of the Board.

#### *Article 74*

##### *Entry into force and application*

1. This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.
2. It shall apply from [date - three months after its entry into force].

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

*For the European Parliament*

*The President*

*For the Council*

*The President*

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