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NOTE

From:	EE Delegation
To:	Delegations
Subject:	Digital Services Act: EE comments on articles 1-24 and recitals 1-52

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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,		

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Having regard to the opinion of the European Economic and Social Committee[1],		
[Having regard to the opinion of the Committee of the Regions[2],**]**		
~~Having regard to the opinion of the European Data Protection Supervisor[3],~~		
Acting in accordance with the ordinary legislative procedure,		
Whereas:		
(1) 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		

[1] OJ C , , p. .

[2] OJ C , , p. .

[3] ~~OJ C, p.~~

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existing legal framework applicable to such services laid down in Directive 2000/31/EC of the European Parliament and of the Council[4], new and innovative business models and services, such as online social networks and marketplaces, have allowed business users and consumers to impart and access information and engage in transactions in novel ways. A majority of Union citizens now uses those services on a daily basis. However, the digital transformation and increased use of those services has also resulted in new risks and challenges, both for individual ~~users~~ **recipients of the service** 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		

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

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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. **Both business users, consumers and other users can be "recipients of the service" for the purpose of this Regulation.**		
(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.		

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(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[5], that is, any service normally		

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

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provided for remuneration, at a distance, by electronic means and at the individual request of a recipient. Specifically, this Regulation should apply to providers of intermediary services, and in particular intermediary services consisting of services known as 'mere conduit', 'caching' and 'hosting' services, given that the exponential growth of the use made of those services, mainly for legitimate and socially beneficial purposes of all kinds, has also increased their role in the intermediation and spread of unlawful or otherwise harmful information and activities.		
(6) In practice, certain providers of intermediary services intermediate in relation to services that may or may not be provided by electronic means, such as remote information technology services, transport, accommodation or delivery services. This Regulation should apply only to intermediary services and not affect requirements set out in Union or national law relating to products or services intermediated through intermediary services**.** **This Regulation should not apply in situations where the intermediation is indispensable to the provision of the**		

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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.~~		
(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 **recipients of the service**~~users~~ in one or		

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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[6]. On the other hand, mere technical accessibility of a website from the		

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

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Union cannot, on that ground alone, be considered as establishing a substantial connection to the Union.		
(8a) The place at which a service provider is established in the Union should be determined in compliance ~~conformity~~ with Union law as interpreted by the Court of Justice of the European Union 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~~ offering 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~~ offered. In cases where it is difficult to determine from which of several places of establishment a given service is ~~provided~~		

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offered, 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~~		

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~~complement, yet not affect the application of rules resulting from other acts of Union law regulating certain aspects of the provision of intermediary services, in particular Directive 2000/31/EC, with the exception of those changes introduced by this Regulation, Directive 2010/13/EU of the European Parliament and of the Council as amended,[7] and Regulation (EU) …/.. of the European Parliament and of the Council[8] – proposed Terrorist Content Online Regulation. 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.~~		
(10) **This Regulation should be without**		

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

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

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prejudice to other acts of Union law regulating the provision of information society services in general, other aspects of the provision of intermediary services in the internal market or specifying and complementing the harmonised rules set out in this Regulation, ~~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,[9] Regulation (EU) …/.. of the European Parliament and of the Council[10] – proposed Terrorist Content Online Regulation, Regulation (EU) 2019/1148 of the European Parliament and of the Council[11], Regulation (EU) …./…. [on European Production and Preservation Orders for electronic evidence in criminal matters]; Directive (EU) …./…. [laying down harmonised rules on the		

[9] **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 .**

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

[11] **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).**

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appointment of legal representatives for the purpose of gathering evidence in criminal proceedings] and Regulation (EU) 2019/1150 of the European Parliament and of the Council[12] ,Directive 2002/58/EC of the European Parliament and of the Council[13] and Regulation […/…] on temporary derogation from certain provisions of Directive 2002/58/EC[14]. 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[15], Directive		

12 **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).**

13 **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.**

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

15 **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').**

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2011/83/EU of the European Parliament and of the Council[16] and Directive 93/13/EEC of the European Parliament and of the Council[17], as amended by Directive (EU) 2019/2161 of the European Parliament and of the Council[18], 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.[19] The protection of individuals with regard to the processing of personal data is solely governed by the rules of		

16 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.

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

18 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.

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

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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[20] and Regulation (EU) 2019/1150 of the European Parliament and of the Council,[21] , Directive 2002/58/EC of~~		

[20] ~~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).~~

[21] ~~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).~~

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~~the European Parliament and of the Council[22] and Regulation […/…] on temporary derogation from certain provisions of Directive 2002/58/EC[23] as well as Union law on consumer protection, in particular Directive 2005/29/EC of the European Parliament and of the Council[24], Directive 2011/83/EU of the European Parliament and of the Council[25] and Directive 93/13/EEC of the European Parliament and of the Council[26], as amended~~		

~~[22] 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.~~

~~[23] Regulation […/…] on temporary derogation from certain provisions of Directive 2002/58/EC.~~

~~[24] 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').~~

~~[25] 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.~~

~~[26] Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts.~~

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~~by Directive (EU) 2019/2161 of the European Parliament and of the Council[27];~~ ~~and on the protection of personal data, in particular Regulation (EU) 2016/679 of the European Parliament and of the Council.[28]~~ ~~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**, and their enforcement**.		

~~[27] 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.~~

~~[28] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).~~

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(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		

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law or from national law that is ~~consistent~~ **in compliance** with Union law and what the precise nature or subject matter is of the law in question.		
(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		

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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'~~ the posts of recipients of the service.**		
(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~~ **recipients of the service** 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**	Accordingly, where access to information requires registration or admittance to a group of recipients of the service, that information should be considered to be disseminated to the public only where recipients of the service seeking to access the information are automatically registered or admitted without a **meaningful** human decision or selection of whom to grant access. **The human selection should be such to ensure that the closed group consist of a finite number of pre-determined persons.**	We find the new text to be unclear on what is a public group with unlimited members. We believe that the notions of "meaningful human decision and selection" , "finite number" and "pre-determined persons" are important in limiting the scope of this exclusion and avoiding loopholes. If just about anyone could be accepted to a group, then the number of members of that group is still unlimited. We are concerned that the current exemption in the compromise text might be too wide

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recipients of the service~~users~~, that information should be considered to be disseminated to the public only where recipients of the service ~~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,[29] such as emails or private messaging services, fall outside the scope of th**e definition on online platforms**~~is 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**		and increase the dissemination of illegal content online. Illegal activities are often carried out in closed groups to avoid authorities. In such groups harmful and dangerous products, such as sodium chloride solutions (MMS) or otherwise illegal goods, such as counterfeit goods are marketed. It should also be noted that of 12 largest FB groups, 5 are private groups with 3,3 to 2,4 million users. At the same time, these groups are not considered online platforms and do not need to follow the applicable obligations.

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

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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.**		
(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.		

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

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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		

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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. **This is the case, in particular, where it provides its service with the main purpose of facilitating illegal activities. The fact alone that a service offers encrypted transmissions should not in itself qualify as deliberate collaboration.**		
(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		

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requirement should not be understood to cover manipulations of a technical nature which take place in the course of the transmission, as ~~such~~ **long as these** 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. The removal or disabling of access should be undertaken in the observance of the ~~principle of~~**right to** 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. **However, such actual knowledge cannot be considered to be obtained solely on the ground that that operator is aware, in a general sense, of**		

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the fact that its service is also used to share illegal content and that it therefore has an abstract knowledge that such content is being made available illegally through its service. Furthermore, the fact that an operator automatically indexes content uploaded to its service, that it has a search function and that it recommends content on the basis of the profiles or preferences of the recipients of the service is not a sufficient ground for the conclusion that that operator has 'specific' knowledge of illegal activities carried out on that platform or of illegal information stored on it.		
(22a) The exemption of liability should not apply where the recipient of the service is acting under the authority or the control of the provider of a hosting service. In particular, where the provider of the online marketplace does not allow traders to determine the basic elements of the trader-consumer contract, such as the terms and conditions governing such relationship or the price, it should be considered that the trader acts under the authority or control of that online marketplace.	(22a) The exemption of liability should not apply where the recipient of the service is acting under the authority or the control of the provider of a hosting service. In particular, where the provider of the online marketplace does not allow traders to determine the basic elements of the trader-consumer contract, such as ~~the terms and conditions governing such relationship or~~ the price, it should be considered that the trader acts under the authority or control of that online marketplace.	Suggest deleting this as it is not in accordance with the more recent ECJ judgement C- 390/18 (Airbnb) point 68, which considers determining the price and selecting the sellers or the goods as the main criteria for having decisive influence over the conditions for the provision of the services. Standard contracts are important in protecting the consumers' rights and providing a high level of trust and security for the consumers and other users on the online platform. Online marketplaces play a

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		crucial role in reaching the goals of the green transition and circular economy as they facilitate the selling of used goods. There is an Estonian marketplace, which sells both B2C and C2C clothes. They have a clause that the buyer can withdraw from the contract within 48 hours and get their money back if the goods do not match the description or are damaged. This increases the consumers' trust that even if they buy from another natural person, they could get their money back easily and without any problems. There should be an opportunity to provide the consumer with this kind of added security. It must be considered that most marketplaces are both C2C ja B2C since some natural persons selling there act in a trading capacity with the aim of making a profit, which designates them as traders.
(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~~**marketpaces**, should not be able to benefit from the exemption from liability for hosting service providers established in		

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this Regulation, in so far as those ~~online platforms~~**marketplaces** 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~~ **marketplaces** themselves or by recipients of the service acting under their authority or control, and that those online ~~platforms~~ **marketplaces** thus have knowledge of or control over the information, even if that may in reality not be the case. **This is the case where the online marketplace fails to display clearly the identity of the trader following this Regulation.** In that regard, is should be determined objectively, on the basis of all relevant circumstances, whether the presentation could lead to such a belief on the side of an average **consumer who is reasonably well informed and reasonably observant and circumspect**~~and reasonably well-informed consumer~~. **In particular, it is relevant whether the online marketplace withholds such identity or contact details until after the conclusion of the trader-consumer contract, or is marketing the product or service in its own name rather than using the name of the trader who will supply it.**		

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(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~~**to encourage** activities aimed at detecting, identifying and acting against illegal content that providers of **all categories 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		

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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~~ **offers** 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. **Voluntary actions should not be used to circumvent the obligations of this Regulation of all providers of intermediary services.**		
(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		

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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 **specific provider** ~~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.		

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(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, **registrars,** 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		

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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.		
(27a) Intermediary services span a wide range of economic activities which take place online and that develop continually to provide for transmission of information that is swift, safe and secure, and to ensure convenience of all participants of the online ecosystem. For example, 'Mere conduit' intermediary services include generic categories of services such as internet exchange points, wireless access points, virtual private networks, voice over IP and other interpersonal communication services, while generic examples of 'caching' intermediary services include the sole provision of content delivery networks, reverse proxies or content adaptation proxies. Such services are crucial to ensure smooth and efficient transition of information delivered on the internet. Examples of "hosting services" include categories of services such as cloud computing, web		

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hosting, or services enabling sharing information and content online, including file storage and sharing. Intermediary services may be provided in isolation, as a part of another type of intermediary service, or simultaneously with other intermediary services. Whether a specific service constitutes a mere conduit, caching or hosting service depends solely on its technical functionalities, that might evolve in time, and should be assessed on a case-by-case basis.		
(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. **Such orders should not consist in requiring a service provider to introduce, exclusively at its own expense, a screening system which entails general and permanent monitoring in order to prevent any future infringement. However, such orders may require a provider of hosting**		

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services to remove information which it stores, the content of which is identical or equivalent to the content of information which was previously declared to be unlawful, or to block access to that information, irrespective of who requested the storage of that information, provided that the monitoring of and search for the information concerned is limited to information properly identified in the injunction, such as the name of the person concerned by the infringement determined previously, the circumstances in which that infringement was determined and equivalent content to that which was declared to be illegal, and does not require the provider of hosting services to carry out an independent assessment of that content. Nothing in this Regulation should be construed as an imposition of a general monitoring obligation or **a general** active fact-finding obligation, or as a general obligation for providers to take proactive measures to relation to illegal content.		
(29) Depending on the legal system of each Member State and the field of law at issue, national judicial or administrative		

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authorities may order providers of intermediary services to act against **one or more** ~~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**, in particular in a cross-border context**, 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. **This Regulation harmonises only certain specific minimum requirements for such orders, without providing a legal basis for their issuing. The applicable Union or national law on the basis of which those orders are issued, should also be the basis for the enforcement of the respective orders~~, without prejudice to Union or bilateral instruments relating to the cross-border recognition and enforcement of those~~**		

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~~orders~~. In case of non-compliance with such orders, the issuing Member State should be able to enforce them in accordance with its national law. The applicable national laws should be in compliance with Union law, ~~in particular~~ including the Charter and the Treaty provisions on the freedom of establishment and to provide services within the Union in particular with regard to online gambling and betting services. The application of those national laws for the enforcement of the respective orders is without prejudice to applicable Union legal acts or international agreements concluded by the Union or by Member States relating to the cross-border recognition, execution and enforcement of those orders, in particular in civil and criminal matters. The requirements relating to the obligation to inform on the processing of those orders, which are laid down in this Regulation, should be subject to the rules in Chapter IV. The provider of intermediary services should inform the issuing authority about the effect given to the orders without undue delay after executing the requested actions in compliance with the deadlines set out in the relevant Union or national		

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law.		
(30) ~~**A Member State**~~ **Relevant national authorities should be able to issue such orders against content considered illegal or orders to provide information on the basis of Union or its national laws, in compliance with Union law, and address them to providers of intermediary services, including those which are established in another Member State.** Orders to act against illegal content or to provide information should be issued in compliance with Union law, in particular **the Charter; however, this should be without prejudice to Union law in the field of judicial cooperation in civil or criminal matters, including Regulation (EU) …/… on European production and preservation orders for electronic evidence in criminal matters, and to national criminal or civil procedural law. In particular, the obligation on the Digital Services Coordinator from the Member State of the judicial authority to transmit a copy of the orders to all other Digital Services Coordinators may not apply in the context of criminal proceedings or may be adapted, where such an obligation**		

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conflicts with the applicable national criminal procedural laws. Furthermore, the obligation on the providers of intermediary services to inform the recipient of the service may be delayed in accordance with the applicable laws, in particular in the context of criminal or civil proceedings. In addition, the orders should be issued in compliance with 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],-**Regulation (EU) 2019/1020, or** ~~or~~ Regulation (EU) 2017/2394~~,~~ **~~or Regulation (EU) 2019/1020,~~** 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		

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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~~ **compliance** with Union law and confidentiality requests by law enforcement authorities related to the non-disclosure of information. The conditions and requirements for orders to act against illegal content under this Regulation should not affect the possibility for Member States to require a provider of intermediary services to prevent an infringement, in compliance with this Regulation, in particular the prohibition of general monitoring obligations, and with Union law as interpreted by the Court of Justice of the European Union. Such conditions and requirements should be fulfilled at the latest when the order is transmitted to the provider concerned. The order may be adopted in one of the official languages of the issuing authority of the Member State. Where this language is different from the language declared by the provider of intermediary services or from another official language of the Union, bilaterally agreed between the authority issuing the order and the provider of		

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intermediary services, the transmission of the order should be accompanied by a translation of at least the main elements of the order which are set out in this Regulation.		
(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 particular in a cross-border context, the effect of the order should be 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**		

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international comity. ~~In addition, where the order referring to the specific information may have effects beyond the territory of the Member State of the authority concerned~~**, in particular in a cross-border context**, ~~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. **Such orders could request information aiming to enable the identification of the recipients of the intermediary service concerned.** 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		

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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.		

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(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		

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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~~ **designate** a single **electronic** point of contact and to publish relevant information relating to th**at**~~eir~~ point of contact, including the languages to be used in such communications. The **electronic** point of contact can also be used by trusted		

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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**. This should allow for the effective oversight and, where necessary, enforcement of this Regulation by the Board, the Commission and the national competent authorities, including ~~the~~ authorities executing the powers ~~referred to~~ of these competent authorities** ~~, 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.		

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(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. **When applying and enforcing restrictions imposed in relation to the use of their service, providers of intermediary services should pay regard to international standards for the protection of fundamental rights, such as the UN Guiding Principles on Business and Human Rights, which can provide guidance to observe the applicable fundamental rights as enshrined in the Charter of Fundamental Rights of the European Union.**		
(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,		

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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[30].		
(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		

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

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('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 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**		

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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.**		
(41a) Those mechanisms should allow		

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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. The information provided in the notice should contain sufficient information to enable the provider of intermediary services to identify, without a detailed legal examination, that that content is manifestly illegal and that its removal is compatible with freedom of expression. ~~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		

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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 **or to otherwise restrict its visibility or monetisation**, 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		

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conditions. **Restriction of visibility may consist in demotion in ranking or in recommender systems, as well as in limiting accessibility by one or more receipients of the service, including 'shadow banning'. The monetisation via advertising revenue of content provided by the recipient of the service can be restricted by suspending or terminating the monetary payment or revenue associated to that content. Hosting service providers should also publish such decisions and respective statement of reasons ~~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~~ing~~ 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.**		
(42a) *[previous recital 48]* A **provider of**		

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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 2011/36/EU of the European Parliament and of the Council**[31]**,** Directive 2011/93/EU of the European Parliament and of the Council[32] **or Directive (EU) 2017/541 of the European Parliament and of the Council** [33]**.** In such instances, the ~~online platform~~**provider of**		

31 **Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA (OJ L 101, 15.4.2011, p. 1).**

32 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).

33 **Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA (OJ L 88, 31.3.2017, p. 6).**

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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.		
(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,[34] unless their reach and impact is such that they meet the criteria to qualify		

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

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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 subject to human review**. **Such systems should enable all recipients of the service ~~users~~ to lodge a complaint and should not set up formal requirements such as referral to specific, relevant legal provisions or elaborate legal**	(44) 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 dispute settlement body shall only take decisions whether the restrictions imposed on the recipients of the service were lawful and justified. The dispute settlement body shall not be able to decide on matters related to compensation for damage.** The fees charged by the dispute settlement	**It should be made clear in the recital that according to the regulation, dispute settlement bodies are not competent to tackle monetary claims and shall not make binding decisions, e.g decisions that are directly enforceable. We would like to emphasize that this is a red line for us.** We need clarity that the scope of these dispute resolutions under art 18 is limited to decisions referred to in art 17(1). That is, the dispute resolution body shall only be able to take decisions whether the restrictions imposed on the users were legal and justified. It is of high importance to us that these dispute settlement bodies shall not be able to solve disputes regarding damages.

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explanations. The possibility to lodge a complaint for the reversal of the contested decisions should be available for at least six months, to be calculated from the time of informing the recipient of the service of the decision. In addition, provision should be made for the possibility of out-of-court dispute settlement of disputes **in good faith**, 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 fees charged by the dispute settlement bodies should be reasonable, accessible, attractive, inexpensive for consumer and proportionate, and assessed on a case-by-case basis. Online platforms should be able to refuse to engage in dispute settlement in the case when the same dispute regarding the same content has already been resolved or is being reviewed by another dispute settlement body provided that they comply with the existing or future outcome of the dispute settlement consistently. Recipients of the service and individuals and entities that have submitted notices should be able to**	bodies should be reasonable and proportionate, and assessed on a case-by-case basis. **The decisions taken by the bodies are not enforceable in enforcement proceedings. However, non-compliance with these decisions may lead to administrative procedures or penalties by the competent Digital Service Coordinator.** 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.	We would like it made clear in the text that "*resolve disputes relating to those decisions*" – "*relating to*" does not mean claims for damages. According to our vision, the user should be able to dispute in the out-of-court dispute settlement body the decisions taken by the platform regarding their content (restricting the visibility, removal, disabling access, limiting ad revenue) or their account (suspension, termination). The user should not be able to claim damages, such as loss for profit from the out-of-court dispute settlement body. For example, the dispute settlement body could decide that the termination of monetary payments was unlawful, but it cannot order damages for the loss of ad revenue. It should be made clear that binding decisions in the meaning of this article does not mean decisions enforceable in enforcement proceedings. Binding decisions in the context of this article means decisions that could lead to administrative procedures or penalties by the competent Digital Service Coordinator if these decisions are not complied with. Could also be worded as following to mirror

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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**, and ultimately exercising their right of access to the judicial system as provided for in Article 47 of the Charter of Fundamental Rights of the European Union**.		the wording in rec 29: "**However, non-compliance with the decisions taken by the body should be subject to the rules in Chapter IV.**"
(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[35] 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		

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

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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** 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 the Member State in which the applicant is established ~~establishment~~ and should be recognised by all providers of online platforms within the scope of this Regulation.** Such trusted flagger status should only be awarded to entities, and not individuals, that have demonstrated, among other things, that they have particular expertise and competence in tackling illegal content~~, that they represent collective interests~~ and that they work in a diligent and objective manner. **Industry associations**		

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representing their members' interests should apply for the status of trusted flaggers, so as to limit the number of trusted flaggers awarded by the Digital Services Coordinator, without prejudice to the right of private parties to enter into bilateral agreements with online platforms. 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		

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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.[36]		
(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		

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

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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 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		

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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[37]. 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~~		

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

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~~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]***		
(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		

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messages on products or services on behalf of brands, based on underlying agreements. Th~~ose~~ 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**		

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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		

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and the VAT Information Exchange System[38], 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		

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

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of Directive 2011/83/EU of the European Parliament and of the Council[39], Article 7 of Directive 2005/29/EC of the European Parliament and of the Council[40] and Article 3 of Directive 98/6/EC of the European Parliament and of the Council[41]. **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.**		
(51) In view of the particular responsibilities and obligations of **providers of** online platforms, they should be made subject to transparency reporting		

39 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.

40 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').

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

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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 advertis**ing**~~ement~~ plays an important role in the online environment, including in relation to the provision of ~~the services of~~ online platforms**, when the ~~service provider~~ provider of online platform 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 advertis**ing** ~~ement~~ can contribute to significant risks, ranging from advertisement**s** that ~~is itself~~**are themselves** illegal content, to contributing to		

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financial incentives for the publication or amplification of illegal or otherwise harmful content and activities online, or the discriminatory **presentation**~~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~~**presented**. **They should ensure that the information is salient, including through standardised visual or audio marks, clearly identifiable and unambiguous for the average user, and should be adapted to the nature of the individual service's online interface.** In addition, recipients of the service should have information on the main parameters used for determining that specific advertis**ment**~~ing~~ is ~~to be displayed~~ **presented** 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**		

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~~displaying~~ presenting 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.**		

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HAVE ADOPTED THIS REGULATION:		
Chapter I – General provisions		
Article 1 *Subject matter**, objectives** and scope*		
The aim~~s~~ of this Regulation ~~are to:~~**is to**		
~~(a)~~ contribute to the proper functioning of the internal market for intermediary services **by** ~~;~~		
~~(b)~~ set**ting** 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:		

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(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 paragraph 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.		

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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.		
4a. This Regulation shall not affect the application of Directive 2000/31/EC.		
5. This Regulation is without prejudice to the rules laid down by **other ~~specific~~ Union legal acts regulating other aspects of the provision of intermediary services in the internal market or specifying and complementing this Regulation, in particular,** the following:		
(a) ~~Directive 2000/31/EC;~~		
(b) Directive 2010/13/E**U**~~C~~;		
(c) Union law on copyright and related		

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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		

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personal data, in particular Regulation (EU) 2016/679 and Directive 2002/58/EC**;**		
(j) Union law in the field of judicial cooperation in civil matters, in particular Regulation (EU) 1215/2012 or any Union legal act in the field of law applicable to contractual and non-contractual obligations;		
(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.		

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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		

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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~~ **recipients of the service** in one or more Member States **in relation to its or 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		

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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;		

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[– an 'online search engine' service that allows users to input queries in order to perform searches of, in principle, all websites, or all websites in a particular language, on the basis of a query on any subject in the form of a keyword, voice request, phrase or other input, and returns results in any format in which information related to the requested content can be found;][42]		
(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 **which is in compliance with Union law**, 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		

[42] *[Note: this definition will not be discussed in the COMPCRO WP meeting on 9 September, but later together with the amendments to Chapter III.]*

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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		

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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 ~~presented~~** 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		

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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		

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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.		
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:		

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

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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		

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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.		

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GENERAL COMMENTS:		
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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 to remove or to disable access to the illegal content.		
2. Paragraph 1 shall not apply where the recipient of the service is acting under the authority or the control of the provider.		

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3. Paragraph 1 shall not apply with respect to liability under consumer protection 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.		
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.		

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GENERAL COMMENTS:		
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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.		

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GENERAL COMMENTS:		
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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 item**s** 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 orderof the effect given to the orders, without undue delay, specifying ~~the action taken and the moment~~ **if and** when the **order** ~~action~~ was **appliedexecuted**~~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 contain~~s~~ the following elements:		
(i)~~–~~ a statement of reasons explaining why the information is illegal content, by		

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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**		

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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 designated** by the provider, in accordance with Article 10. **Where the order is not drafted in the language declared by the provider or in another language bilaterally agreed, the order may be transmitted in the language of the authority issuing the order, provided that it is accompanied by a translation of at least the elements set out in points (a) and (b) of this paragraph.**		
2a. The authority issuing the order shall transmit the order and the information received from the provider of intermediary services as to the effect given to the order to the Digital Services Coordinator from the Member State of the issuing authority.		
3. **After receiving the order from the competent authority, t**~~T~~he Digital Services Coordinator from the Member State of the judicial or administrative authority issuing the order shall, without undue delay,		

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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~~		

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~~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 ~~conformity~~ **compliance** 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**:		

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(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;		

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(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 **designated** ~~**established**~~~~appointed~~ by that provider, in accordance with Article 10**. Where the order is not drafted in the language declared by the provider or in another language bilaterally agreed, the order may be transmitted in the language of the authority issuing the order, provided that it is accompanied by a translation of at least the elements set out in points (a) and (b) of this paragraph.**~~;~~		
2a. The authority issuing the order shall transmit the order and the information received from the provider of intermediary services as to the effect given to the order to the Digital Services Coordinator from the Member State of the issuing authority.		
3. **After receiving the order from the competent authority, t**~~T~~he Digital Services		

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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, p~~Providers of intermediary services shall inform the recipient of the service concerned, at the latest at the time when the order is ~~executed~~applied, 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.		
4. **This Article shall be without prejudice to national civil and criminal procedural laws.** ~~The conditions and~~		

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~~requirements laid down in this article shall be without prejudice to requirements under national criminal procedural law in conformity with Union law.~~		
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 p****~~P~~oints~~s~~ of contact*		
1. Providers of intermediary services shall ~~establish~~**designate** 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		

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of this Regulation.		
2. Providers of intermediary services shall make public the information necessary to easily identify and communicate with their single **electronic** point~~s~~ of contact. **This information shall be easily accessible.**		
3. Providers of intermediary services shall specify in the information referred to in paragraph 2, the official language or languages of the Union **which**, **in addition to a language broadly understood by the largest possible number of Union citizens,** ~~which~~ can be used to communicate with their **electronic** point~~s~~ of contact**,** and which shall include at least one of the official languages of the Member State in which the provider of intermediary services has its main establishment or where its legal representative resides or is established.		
Article 11 *Legal representatives*		
1. Providers of intermediary services		

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which do not have an establishment in the Union but which offer services in the Union shall designate, in writing, a legal or natural person as their legal representative in one of the Member States where the provider offers its services.		
2. Providers of intermediary services shall mandate their legal representatives to be addressed in addition to or instead of the provider by the Member States' **competent** authorities, the Commission and the Board on all issues necessary for the receipt of, compliance with and enforcement of decisions issued in relation to this Regulation. Providers of intermediary services shall provide their legal representative with the necessary powers and resource to cooperate with the Member States' **competent** authorities, the Commission and the Board and comply with those decisions.		
3. The designated legal representative can be held liable for non-compliance with obligations under this Regulation, without prejudice to the liability and legal actions that could be initiated against the provider of		

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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 **accurate and** up to date.		
5. The designation of a legal representative within the Union pursuant to paragraph 1 shall not amount to an establishment in the Union.		
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,		

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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 **and machine-readable** format.		
1a. Where an intermediary service is primarily aimed at minors or is predominantly used by them, the provider shall explain conditions and restrictions for the use of the service in a way that minors can understand, including conditions and restrictions imposed to comply with its obligations under this Regulation, where applicable.		
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.		

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Article 13 *Transparency reporting obligations for providers of intermediary services*		
1. Providers of intermediary services shall ~~publish~~ **make publicly available in a specific section in their online interface**, at least once a year, clear **and**~~,~~ 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, **including orders issued in accordance with Articles 8 and 9,** categorised by the type of illegal content concerned, ~~including orders issued in accordance with Articles 8 and 9,~~ and the **median** ~~average~~ time needed for taking the action specified in those orders;		
(b) **for providers of hosting services,**		

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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 **median**~~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 **removals or other restrictions of the availability,** ~~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 **through the service, and other related restrictions of the service. The information reported shall be**~~,~~ categorised **by the type of illegal content or violation of the terms and conditions of the service provider, by the detection method and by the type of**		

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restriction applied ~~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 system**s 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 **median** ~~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**		

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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.		
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		

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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) a~~n~~ **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;		

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(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		

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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 **5**~~4~~.		

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Article 15 *Statement of reasons*		
1. Providers of hosting services shall provide a clear and specific statement of reasons to any affected recipients of the service for any of the following restrictions imposed:		
a) any restrictions of the visibility of specific items of information provided by the recipient of the service, including removal of content, or disabling access to content;		
b) suspension, termination or other restriction of monetary payments (monetisation);	b) suspension, termination or other restriction of monetary payments **via advertising revenue** (monetisation)	Should be clear in the article as it is in the recital that monetisation is linked to ad revenue. "*Suspension, termination or other restriction of monetary payments*" could also mean payments related to copyright ownership, selling of goods on online marketplaces or providing of services on shared economy platforms. It should be clear that monetisation here is only related to ad revenue and does not affect other types of platform economy.

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c) **suspension or termination of the provision of the service in whole or in part;**		
d) **suspension or termination of the recipient's accounts.**		
This paragraph shall only apply where the relevant electronic contact details are known to the provider. It shall apply at the latest when the restriction is imposed, and regardless of why or how it was imposed.		
~~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~~		

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~~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;		

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(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		

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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.		Support the comments of other MS that this obligation should not be compulsory for micro and small hosting service providers as the anonymisation of decisions and statements of reasons could be too burdensome for them.
*Article **15a**~~21~~* *Notification of suspicions of criminal offences*		
1. Where a~~n~~ **provider of hosting services** ~~online platform~~ becomes aware of		

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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.		

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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 except when they arewhich are not very large online platforms in accordance with Article 25.**		
Article 17 *Internal complaint-handling system*		
1. **Providers of o**~~O~~nline platforms shall provide recipients of the service **and individuals or entities that have submitted a notice**, for a period of at least six months following the decision referred to in this paragraph, the access to an effective internal		

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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 suspend, terminate or otherwise restrict monetary payments related to ~~restrict the ability to monetize~~ content provided by the		

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recipients.		
2. **Providers of o**~~O~~nline 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** ~~O~~nline 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 **its decision not to act upon the request of a notice is unfounded or 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 **or the restriction to monetary payments related to content**, it shall reverse its decision referred to in paragraph 1 without undue delay.		

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4. **Providers of o~~O~~**nline platforms shall inform ~~complainants~~ without undue delay of the decision they have taken in respect of the information to which the complaint relates**, clearly justify their decision** and ~~shall~~ inform ~~complainants~~ of the possibility of out-of-court dispute settlement provided for in Article 18 and other available redress possibilities.		
5. **Providers of o~~O~~**nline platforms shall ensure that the decisions, referred to in paragraph 4, are not solely taken on the basis of automated means.		
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** that has been ~~certified~~ **authorised** in accordance with paragraph 2 in order to resolve disputes relating to those decisions,	(1) 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~~.	For us it is unacceptable that there is a reference to binding decisions in a directly applicable regulation. According to the current text, the dispute settlement body does not have to be impartial, while its decisions are directly enforceable and it is still not clear which claims are in the scope - what does „

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including complaints that could not be resolved by means of the internal complaint-handling system referred to in that Article. **Providers of o**~~O~~nline 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.		disputes relating to those decisions" in para 1 mean, e.g. whether the body has competence to tackle monetary claims. Current text leads to constitutional problem. **It should be made clear in the recital that according to the regulation, dispute settlement bodies are not competent to tackle monetary claims and shall not make binding decisions, e.g decisions that are directly enforceable. We would like to emphasize that this is a red line for us.** In our view, the EU does not have the competence to regulate national enforcement law and create new national enforceable documents. We are strongly against the solution that the EU will create sector-specific alternatives to national court litigation systems. Such a solution is unsystematic and dangerous precedent that could easily be extended to other sector-specific areas in the future, jeopardizing Member States' procedural autonomy and the objectives of the EU.
	Non-compliance with the decision taken by the body is subject to the rules in Chapter IV.	This provision was added to reflect the explanations of the Commission that binding decisions here does not mean decisions enforceable in enforcement proceedings. Binding decisions here means decisions that could lead to administrative procedures or penalties. Worded similar to art 8 and rec 29,

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		where the same principle applies.
The first subparagraph is without prejudice to the right of the recipient **or the individual or entity** concerned**, or the provider of online platforms** to redress against the decision before a court in accordance with the applicable law.		
Online platform may refuse to engage in dispute settlement when the same dispute regarding the same content has already been resolved or is being reviewed by another dispute settlement body.		
2. The Digital Services Coordinator of the Member State where the out-of-court dispute settlement body is established shall, 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**;	(a) it is **impartial** and independent of providers of online platforms, of recipients of the service provided by the online platforms and of individuals or entities that have submitted notices;	We believe that any dispute resolution body that makes decisions should be impartial. If impartiality is not guaranteed, the decisions should not be compulsory for the platforms or bring about any kind of consequences for

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		them.
(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**.		

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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.		
2a. Where an out-of-court dispute settlement body is authorised by the competent Digital Services Coordinator pursuant to paragraph 2, that authorisation shall be valid in all Member States.		
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**~~is to pay~~ in relation to the dispute settlement **or waive any such fees or reasonable expenses that may otherwise be due**. If the body decides the dispute in favour of the online platform, the		

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recipient **or the individual or ~~body~~ entity,** 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 **unless the recipient or the individual or entity acted in manifestly bad faith.**		
The fees charged by the body for the dispute settlement shall be reasonable**, accessible, attractive and inexpensive 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		

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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 of the 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		

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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.		
Article 19 *Trusted flaggers*		
1. **Providers of o**~~O~~nline 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		

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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:	2. The status of trusted flaggers under this Regulation shall be awarded, upon application by any **non-governmental** 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.	We believe that it is essential that the competent authorities of Member State issue removal orders instead of delegating the decision of whether to remove the content because it is illegal or not to the service provider. The competent authority has already assessed the case and taken a decision that the content should be removed. Platforms should not be able to reassess the illegality of the content. Thus, we are of the opinion that the status of trusted flaggers under DSA should be awarded only to non-governmental entities.
(a) it has particular expertise and competence for the purposes of detecting, identifying and notifying illegal content;		
(b) ~~it represents collective interests and~~ **it** is independent from any **provider of** online platform**s**;		
(c) it carries out its activities for the purposes of submitting notices in a timely,		

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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 platform**s** 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		

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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**s** 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.		

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Article 20 *Measures and protection against misuse*		
1. **Providers of o**~~O~~nline 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** ~~O~~nline platforms ~~shall~~**may** 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**~~O~~nline platforms shall assess, on a case-by-case basis and in a timely, diligent and objective manner, whether a recipient, individual, entity or complainant		

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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.		

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4. **Providers of o**~~O~~nline 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.~~		

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~~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~~		

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~~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[43];~~		
~~(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)~~		

~~[43] 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~~

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~~2019/1020 of the European Parliament and the Council[44] 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 available by a Member States or the Union or through~~		

~~[44] 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).~~

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~~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~~		

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~~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.~~		

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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 **median** ~~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		

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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**~~O~~nline 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**~~O~~nline 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.		

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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~~O~~nline platforms that **present**~~display~~ advertising on their online interfaces shall ensure that the recipients of the service can identify, for each specific advertisement ~~displayed~~ **presented** to each individual recipient, in a clear**, salient** and unambiguous manner and in real time:		
(a) that the information ~~displayed~~ **presented** is an advertisement**, including through prominent marking**;		

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(b) the natural or legal person on whose behalf the advertisement is ~~displayed~~**presented**;		
(c) meaningful information about the main parameters used to determine the recipient to whom the advertisement is ~~displayed~~**presented~~, presented displayed in an easily accessible manner~~ . The information shall be directly and easily accessible from the advertisement.**		
Providers of online platforms shall provide recipients of the service with a functionality to declare whether the content they provide is or contains commercial communications within the meaning of Article 2(f) of Directive 2000/31/EC.		We believe that hidden advertising on social media platforms is a very nuanced issue of consumer protection that needs separate thorough discussions and analysis involving all the relevant stakeholders. If a platform has the obligation to introduce this feature, they must also explain to their users how to use it, f.e in their terms and conditions. In order to reach the aim of this provision, it needs to be defined more clearly what is a commercial communication on a social media platform. Everything that a company posts about themselves on social

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		media is considered a commercial communication, since the aim of the post is to promote the goods, services, or image of a company. Does this obligation mean that business users need to mark every post? This would lead to an information overload for the consumers, which would eventually desensitise them. We also have a question about the scope of the term "advertisement", due to the specific reference to commercial communications. **We believe that non-commercial advertising should also be included in the scope.** According to article 2 (n) of the DSA proposal, 'advertisement' means information designed to promote the message of a legal or natural person, irrespective of whether to achieve commercial or non-commercial purposes. Yet in the new wording there is reference only to the definition of "commercial communications". That definition does not include non-commercial advertising, for example, political advertising.
When the content provider submits a		

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declaration pursuant to this paragraph, the provider of online platform shall ensure that other recipients of the service can identify in a clear and unambiguous manner and in real time, through prominent marking, that the content provided by the recipients of the service is or contains commercial communications.		