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**WK 12385/2021 INIT**

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**NOTE**

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From:	LV Delegation
To:	Delegations

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Subject:	Digital Services Act: Proposal of Latvia on the enhancement of powers of Digital Services Coordinators and collective actions (Art.41(3) and Art.65)
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WK 12385/2021 INIT

**LIMITE**

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## Digital Services Act: Proposal of Latvia on the enhancement of powers of Digital Services Coordinators and collective actions (Art.41(3) and Art.65)

### *Article 41 (3)*

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

~~(a) require the management body of the providers, within a reasonable time period, to examine the situation, adopt and submit an action plan setting out the necessary measures to terminate the infringement, ensure that the provider takes those measures, and report on the measures taken;~~

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

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

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

- ~~(a) the provider has failed to take the necessary measures to terminate the infringement;~~
- ~~(b) the temporary restriction does not unduly restrict access to lawful information by recipients of the service, having regard to the number of recipients affected and whether any adequate and readily accessible alternatives exist.~~

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

- (a) to restrict access to the service affected by an infringement, or where that is not technically feasible, to the online interface of the provider of the services, or to order the explicit display of a warning in the event of access to an online interface;**
- (b) to order a hosting service provider to remove, disable or restrict access to an online interface; or**
- (c) where appropriate, to order domain registries or registrars to delete a fully qualified domain name and to allow the competent authority concerned to register it.**

**Before exercising the powers listed in this paragraph, the Digital Services Coordinator shall give a notice of the intention to adopt any of the measures to the provider, describing the measures it intends to request and the addressees thereof.**

**The Digital Services Coordinator exercising the powers listed in this paragraph shall, without undue delay, inform all other Digital Services Coordinators, indicating in a clear and precise manner the reasons for the decision taken, the type of restrictive measure and its duration, through the system established in accordance with Article 67.**

Justification:

*It is necessary to ensure that the Digital Services Coordinators can stop infringements of Digital Services Act quickly and effectively by using technological means if all other powers are exhausted. These technological means should include such tools as blocking of the IP address of a service provider in the national electronic communications network or disabling website domain name.*

*In order to ensure this, LV proposes to provide Digital Services Coordinators with the same powers which are provided to the competent consumer protection authorities by the European Parliament and Council Regulation No 2006/2004 n cooperation between national authorities responsible for the enforcement of consumer protection laws and repealing Regulation (EC) No 2006/2004 (CPC Regulation) Article 9 (4) (g). For effective enforcement of the DSA, Latvia considers it proportionate to grant the powers to act upon violations of the DSA to maintain safety of users and fair competition within the EU.*

*Article 65 Requests for access restrictions ~~and cooperation with national courts~~ and collective actions*

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

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

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

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

**2. The Commission may request the Board to adopt a request in accordance with the procedure laid down in Article 48 to the Digital Services Coordinators of all Member States to act pursuant to Article 41(3) against the very large online platform, if any of these conditions is met:**

- (a) following the consultations referred to in the paragraph 1 of this Article, the Commission and the Digital Services Coordinator concerned conclude that unilateral action pursuant to Article 41(3) by the Digital Services Coordinator of establishment of the provider of the very large online platform [or of the very large online search engine] concerned will not be effective or will not achieve the objective;**
- (b) after the unilateral action pursuant to Article 41(3) by the Digital Services Coordinator of establishment of the provider of the very large online platform [or of the very large online search engine] concerned the Commission and the Digital Services Coordinator concerned conclude that this unilateral action was not effective and did not achieve the objective;**
- (c) where the provider of the very large online platform [or of the very large online search engine] does not have an establishment in the Union but offers services in the Union and all powers pursuant to this Article to bring about the cessation of an infringement of this Regulation by the very large online platform or of the very large online search engine concerned have been exhausted, the infringement persists and causes serious harm which**

**cannot be avoided through the exercise of other powers available under Union or national law.**

Justification:

*There is a need to ensure effective capacity to act against large players in the digital market. Given that infringements of this Regulation are harmonized, unilateral blocking does not prevent the infringement from continuing in other Member States. Acting against large platform in only one Member State may not be a sufficient measure to affect their economic position or revenue in the Single Market.*

*It is therefore necessary to ensure that Member States can act collectively pursuant to Article 41(3) in cases where the powers of the Digital Services Coordinator of one Member State or the Commission has been exhausted and the infringement of this Regulation persists.*

*In our view, the collective action mechanism could operate on the basis of a request from the European Board for Digital Services, adopted on the basis of a MS vote. This would allow MS to maintain control over this process. In addition, Article 49 paragraph 2 allows for an opt-out, which must be justified by the MS authority. Organised collective action under Art.65 would also ensure that the violation is treated in uniformed way and ne bis in idem principle is respected.*

*The inclusion of paragraph 2 (c) of the proposal is conditional on Article 25 providing that platforms which are not established in Union may also be designated as VLOPs.*