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General Secretariat

Brussels, 20 October 2021

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

WK 12543/2021 INIT

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NOTE

From: EE Delegation
To: Delegations

Subject: Digital Services Act: EE comments on Chapters IV and V

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GENERAL COMMENTS:		
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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 Supervisor³,		
Acting in accordance with the ordinary legislative procedure,		
Whereas:		
(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		

¹ OJ C , , p. .

² OJ C , , p. .

³ OJ C, p.

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<p>in the Union and provide information relating to their legal representatives. <u>In order to comply with this obligation, moreover, the providers of intermediary services should ensure that the designated legal representative has the necessary powers and resources to cooperate with the relevant authorities. This could be the case, for example, where a provider appoints a subsidiary undertaking of the same group of the provider, or a fortiori its parent undertaking, if they are established in the Union. 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 authorities executing the powers of these competent authorities</u>, 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 <u>electronic</u> point of contact, provided the relevant requirements of this Regulation are complied with.</p>		
(72) The task of ensuring adequate oversight and enforcement of the obligations		

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<p>laid down in this Regulation should in principle be attributed to the Member States. To this end, they should appoint at least one authority with the task to apply and enforce this Regulation, <u>without prejudice to the possibility to appoint an existing authority</u>. Member States should however be able to entrust more than one competent authority, with specific supervisory or enforcement tasks and competences concerning the application of this Regulation, for example for specific sectors, such as electronic communications’ regulators, media regulators or consumer protection authorities, reflecting their domestic constitutional, organisational and administrative structure, <u>where also existing authorities may be empowered with these tasks. In the exercise of their tasks all appointed competent authorities should contribute to the achievement of the objectives of this Regulation, namely to the proper functioning of the internal market for intermediary services where the harmonised rules for a safe, predictable and trusted online environment laid down in this Regulation, and in particular the due diligence obligations applicable to different categories of providers of intermediary</u></p>		

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<p><u>services, are effectively supervised and enforced, with a view to ensure that fundamental rights, as enshrined in the Charter, are effectively protected. On the other hand, this regulation does not require Member States to confer to competent authorities the task to adjudicate on the lawfulness of individual pieces of content.</u></p>		
<p>(73) Given the cross-border nature of the services at stake and the horizontal range of obligations introduced by this Regulation, the<u>one</u> authority appointed with the task of supervising the application and, where necessary, enforcing this Regulation should be identified as a Digital Services Coordinator in each Member State. Where more than one competent authority is appointed to apply and enforce this Regulation, only one authority in that Member State should be identified as a Digital Services Coordinator. The Digital Services Coordinator should act as the single contact point with regard to all matters related to the application of this Regulation for the Commission, the Board, the Digital Services Coordinators of other Member States, as well as for other competent</p>		

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<p>authorities of the Member State in question. In particular, where several competent authorities are entrusted with tasks under this Regulation in a given Member State, the Digital Services Coordinator should coordinate and cooperate with those authorities in accordance with the national law setting their respective tasks <u>and without prejudice to the independent assessment of the other competent authorities. While not entailing any hierarchical supraordination over other competent authorities in the exercise of their tasks, the Digital Services Coordinator</u>, and should ensure effective involvement of all relevant <u>competent authorities and should timely report their assessment</u> in the <u>context of cooperation on</u> supervision and enforcement at Union level. <u>Moreover, in addition to the specific mechanisms provided for in this Regulation as regards cooperation at European level, Member State should also ensure cooperation among the Digital Services Coordinator and other designated competent authorities at national level, where applicable, through appropriate tools, such as by pooling of resources, joint task forces, joint investigations and mutual assistance</u></p>		

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<u>mechanisms.</u>		
<p>(74) The Digital Services Coordinator, as well as other competent authorities designated under this Regulation, play a crucial role in ensuring the effectiveness of the rights and obligations laid down in this Regulation and the achievement of its objectives. Accordingly, it is necessary to ensure that those authorities <u>have the necessary means to supervise all the providers of intermediary services under their jurisdiction, in the interest of all Union citizens. Given the variety of providers of intermediary services and their use of advanced technology in providing their services, it is also essential that the Digital Services Coordinator and the relevant competent authorities are equipped with the necessary number of staff and experts with specialised skills, advanced technical means, and financial resources to carry out their tasks. Furthermore, the level of resources should take into account the size, complexity and potential societal impact of the providers under their jurisdiction, as well as the reach of their services across the Union. Those authorities</u></p>		

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<p><u>should also</u> act in complete independence from private and public bodies, without the obligation or possibility to seek or receive instructions, including from the government, and without prejudice to the specific duties to cooperate with other competent authorities, the Digital Services Coordinators, the Board and the Commission. On the other hand, the independence of these authorities should not mean that they cannot be subject, in accordance with national constitutions and without endangering the achievement of the objectives of this Regulation, to national control or monitoring <u>proportionate accountability</u> mechanisms regarding <u>the general activities of the Digital Services Coordinators, such as</u> their financial expenditure or to judicial review, or that they should not have the possibility to consult <u>reporting to the national parliaments. It should also not prevent the exercise of judicial review, or the possibility to consult or regularly exchange views with</u> other national authorities, including law enforcement authorities or crisis management authorities, where appropriate.</p>		

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<p>(75) Member States can designate an existing national authority with the function of the Digital Services Coordinator, or with specific tasks to apply and enforce this Regulation, provided that any such appointed authority complies with the requirements laid down in this Regulation, such as in relation to its independence. Moreover, Member States are in principle not precluded from merging functions within an existing authority, in accordance with Union law. The measures to that effect may include, inter alia, the preclusion to dismiss the President or a board member of a collegiate body of an existing authority before the expiry of their terms of office, on the sole ground that an institutional reform has taken place involving the merger of different functions within one authority, in the absence of any rules guaranteeing that such dismissals do not jeopardise the independence and impartiality of such members.</p>		
<p>(76) In the absence of a general requirement for providers of intermediary services to ensure a physical presence within the territory of one of the Member States, there is a need to ensure clarity under which</p>		

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<p>Member State's jurisdiction those providers fall for the purposes of <u>applying and enforcing the obligations set out in this Regulation</u> rules laid down in Chapters III and IV by the national competent authorities, <u>including judicial remedies against their decisions, in accordance with Chapter IV of this Regulation. This jurisdiction is therefore without prejudice to private international law rules concerning conflict of jurisdiction and laws applicable to court proceedings based on this Regulation and brought by natural persons or legal persons other than national competent authorities, such as proceedings brought by consumers in the courts of the Member State where they are domiciled in accordance with Union law in the field of judicial cooperation in civil matters. It is also without prejudice to the rules of international private law concerning civil law claims based on this Regulation or any other jurisdictional rules applicable to obligations applicable to on providers of intermediary services providers pursuant to other Union law or national law in compliance with Union law, such as the jurisdiction for the application and enforcement of consumer protection law</u></p>		

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<p><u>or the jurisdiction for disputes on individual pieces of content. It also applies only to the obligations placed by this Regulation upon intermediary services to inform the issuing authority of the effect given to the orders to act against illegal content and orders to provide information adopted in accordance with this Regulation, but not to the order itself.</u> A provider should be under the jurisdiction of the Member State where its main establishment is located, that is, where the provider has its head office or registered office within which the principal financial functions and operational control are exercised. In respect of providers that do not have an establishment in the Union but that offer services in the Union and therefore fall within the scope of this Regulation, the Member State where those providers appointed their legal representative should have jurisdiction, considering the function of legal representatives under this Regulation. In the interest of the effective application of this Regulation, all Member States should, however, have jurisdiction in respect of providers that failed to designate a legal representative, provided that <u>the provider is not subject to enforcement proceedings for the same facts by another Member</u></p>		

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<p><u>State</u> the principle of <i>ne bis in idem</i> is respected. To that aim, each Member State that exercises jurisdiction in respect of such providers should, without undue delay, inform all other Member States of the measures they have taken in the exercise of that jurisdiction <u>through the common information sharing system to be used for all communications among authorities pursuant to this Regulation. In such cases, priority should be given to the earliest among those proceedings and all existing proceedings in other Member States concerning the same facts and effects should be suspended.</u></p>		
<p>(77) Member States should provide the Digital Services Coordinator, and any other competent authority designated under this Regulation, with sufficient powers and means to ensure effective investigation and enforcement. <u>This includes the power of competent authorities to adopt interim measures in accordance with national law in case of risk of serious harm. Such interim measures, which may include orders to terminate or remedy a given alleged infringement, should not go beyond what is necessary to ensure that</u></p>		

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<p><u>serious harm is prevented pending the final decision.</u> Digital Services Coordinators should in particular be able to search for and obtain information which is located in its territory, including in the context of joint investigations, with due regard to the fact that oversight and enforcement measures concerning a provider under the jurisdiction of another Member State should be adopted by the Digital Services Coordinator of that other Member State, where relevant in accordance with the procedures relating to cross-border cooperation.</p>		
<p>(78) Member States should set out in their national law, in accordance with Union law and in particular this Regulation and the Charter, the detailed conditions and limits for the exercise of the investigatory and enforcement powers of their Digital Services Coordinators, and other competent authorities where relevant, under this Regulation.</p>		
<p>(79) In the course of the exercise of those powers, the competent authorities should comply with the applicable national rules regarding procedures and matters such as the</p>		

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<p>need for a prior judicial authorisation to enter certain premises and legal professional privilege. Those provisions should in particular ensure respect for the fundamental rights to an effective remedy and to a fair trial, including the rights of defence, and, the right to respect for private life. In this regard, the guarantees provided for in relation to the proceedings of the Commission pursuant to this Regulation could serve as an appropriate point of reference. A prior, fair and impartial procedure should be guaranteed before taking any final decision, including the right to be heard of the persons concerned, and the right to have access to the file, while respecting confidentiality and professional and business secrecy, as well as the obligation to give meaningful reasons for the decisions. This should not preclude the taking of measures, however, in duly substantiated cases of urgency and subject to appropriate conditions and procedural arrangements. The exercise of powers should also be proportionate to, inter alia the nature and the overall actual or potential harm caused by the infringement or suspected infringement. The competent authorities should in principle take all relevant facts and circumstances of the case</p>		

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into account, including information gathered by competent authorities in other Member States.		
<p>(80) Member States should ensure that violations of the obligations laid down in this Regulation can be sanctioned in a manner that is effective, proportionate and dissuasive, taking into account the nature, gravity, recurrence and duration of the violation, in view of the public interest pursued, the scope and kind of activities carried out, as well as the economic capacity of the infringer. In particular, penalties should take into account whether the provider of intermediary services concerned systematically or recurrently fails to comply with its obligations stemming from this Regulation, as well as, where relevant, whether the provider is active in several Member States. <u>Where this Regulation provides for a maximum amount of fines or of a periodic penalty payment, this maximum amount should apply per infringement of this Regulation. When deciding the amount of such penalties within those limits, the Digital Services Coordinator or, where applicable, any other competent authority should ensure</u></p>		

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<p><u>that those penalties are effective, proportionate and dissuasive, taking into account all the above-mentioned criteria.</u></p>		
<p>(81) In order to ensure effective enforcement of this Regulation, individuals or representative organisations should be able to lodge any complaint related to compliance with this Regulation with the Digital Services Coordinator in the territory where they received the service, without prejudice to this Regulation’s rules on jurisdiction <u>and to the applicable rules on handling of complaints in accordance with national principles of good administration.</u> Complaints should provide a faithful overview of concerns related to a particular intermediary service provider’s compliance and could also inform the Digital Services Coordinator of any more cross-cutting issues. The Digital Services Coordinator should involve other national competent authorities as well as the Digital Services Coordinator of another Member State, and in particular the one of the Member State where the provider of intermediary services concerned is established, if the issue requires cross-border cooperation.</p>		

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<p>(82) Member States should ensure that Digital Services Coordinators can take measures that are effective in addressing and proportionate to certain particularly serious and persistent infringements <u>of this Regulation</u>. Especially where those measures can affect the rights and interests of third parties, as may be the case in particular where the access to online interfaces is restricted, it is appropriate to require that the measures be ordered by a competent judicial authority at the Digital Service Coordinators' request and are subject to additional safeguards. In particular, third parties potentially affected should be afforded the opportunity to be heard and such orders should only be issued when powers to take such measures as provided by other acts of Union law or by national law, for instance to protect collective interests of consumers, to ensure the prompt removal of web pages containing or disseminating child pornography, or to disable access to services are being used by a third party to infringe an intellectual property right, are not reasonably available.</p>		

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<p>(83) Such an order to restrict access should not go beyond what is necessary to achieve its objective. For that purpose, it should be temporary and be addressed in principle to a provider of intermediary services, such as the relevant hosting service provider, internet service provider or domain registry or registrar, which is in a reasonable position to achieve that objective without unduly restricting access to lawful information.</p>		
<p>(84) The Digital Services Coordinator should regularly publish, <u>for example on its website</u>, a report on the activities carried out under this Regulation. Given that the Digital Services Coordinator is also made aware of orders to take action against illegal content or to provide information regulated by this Regulation through the common information sharing system, the Digital Services Coordinator should include in its annual report the number and categories of these orders addressed to providers of intermediary services issued by judicial and administrative authorities in its Member State.</p>		

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<p><u>(84a) Given the cross-border and cross-sectoral relevance of intermediary services, a high level of cooperation is necessary to ensure the consistent application of this Regulation and the availability of relevant information for the exercise of enforcement tasks through the common information sharing system. Cooperation may take different forms depending on the issues at stake, without prejudice to specific joint investigation exercises. It is in any case necessary that the Digital Services Coordinator of establishment of a provider of intermediary services informs other Digital Services Coordinators about issues, investigations and actions which are going to be taken vis à vis such a provider. Moreover, when a competent authority in a Member State holds relevant information for an investigation carried out by the competent authorities in the Member State of establishment, or is able to gather such information located in its territory to which the competent authorities in the Member State of establishment do not have access, the Digital Services Coordinator of destination should assist the Digital Services Coordinator of establishment in</u></p>		

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<p><u>a timely manner, including through the exercise of its investigatory powers in accordance with the applicable national procedures. The addressee of such investigatory measures should comply with them and be liable in case of failure to comply, and the competent authorities in the Member State of establishment should be able to rely on the information gathered through mutual assistance, in order to ensure compliance with this Regulation. Moreover, where a potential infringement by a provider of a very large online platform or of a very large online search engine could seriously affect public security, public order or public health in the territory of a Member State, the Digital Services Coordinator of that Member State should be able to timely obtain the relevant information held by the competent authorities in the Member State of establishment, upon the request by that Digital Services Coordinator justifying the existence of such specific circumstances. That information could be used to monitor and eventually support further investigatory and enforcement action by the competent authorities in the Member State of establishment, by the Board or by the Commission.</u></p>		

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<p>(85) Where aThe Digital Services Coordinator <u>of destination, in particular on the basis of complaints received or of the input of other national competent authorities where appropriate, or the Board in case of issues involving more than three Member States, should be able to request</u> task s another <u>the Digital Services Coordinator of establishment to take investigatory or enforcement actions with regard to a provider under its jurisdiction, including with regard to alleged infringements of one of the provisions of this Regulation that solely apply to the providers of very large online platforms and the providers of very large online search engines. The Digital Services Coordinator of establishment should be able to rely on mutual assistance or invite the requesting Digital Services Coordinator to a joint investigation in case further information is needed to take a decision.</u>†The requesting Digital Services Coordinator, or the Board in case it issued a recommendation to assess issues involving more than three Member States, should be able to refer the matter to the Commission in</p>		

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<p>case of any disagreement as to the assessments or the measures taken or proposed or a failure to adopt any measures <u>in accordance with this Regulation.</u></p> <p><u>Where t</u>The Commission, on the basis of the information made available by the concerned authorities, <u>considers that the proposed measures, including the proposed level of fines, cannot ensure teh effective enforcement of the and its assessment of the applicable obligations laid down in this Regulation, it</u> should accordingly be able to <u>express its serious doubts and</u> request the competent Digital Services Coordinator to re-assess the matter and take the necessary measures to ensure compliance <u>with this Regulation</u> within a defined time period. This possibility is without prejudice to the Commission’s general duty to oversee the application of, and where necessary enforce, Union law under the control of the Court of Justice of the European Union in accordance with the Treaties. A failure by the Digital Services Coordinator of establishment to take any<u>the necessary</u> measures pursuant to such a request may also lead to the Commission’s intervention under Section 3 of Chapter IV of this Regulation, where the suspected infringer is a <u>provider of</u> very large online</p>		

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<p>platform <u>or a provider of very large online search engine.</u></p>		
<p>(86) In order to facilitate cross-border supervision and investigations <u>of obligations laid down in this Regulation</u> involving several Member States, the Digital Services Coordinators <u>of establishment</u> should be able, <u>through the common information sharing system, to invite other Digital Services Coordinators, as well as other competent authorities where appropriate, to a joint investigation concerning an alleged infringement of</u> to participate, on a permanent or temporary basis, in joint oversight and investigation activities concerning matters covered by this Regulation. <u>Other Digital Services Coordinators, and other competent authorities where appropriate, should be able to join the investigation proposed by the Digital Services Coordinator of establishment, unless the latter considers that an excessive number of participating authorities may affect the effectiveness of the exercise taking into account the features of the alleged infringement and the lack of direct effects on the recipients in these Member States. Joint</u></p>		

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<p>investigation Those activities may include <u>the Digital Services Coordinators of establishment of the specific provider concerned, as well as other competent authorities and may cover a variety of actions to be coordinated by the Digital Services Coordinator of establishment in accordance with the availabilities of the participating authorities, such as issues, ranging from coordinated data gathering exercises, pooling of resources, task forces, coordinated</u> to requests for information or <u>common</u> inspections of premises. <u>All competent authorities participating to the joint investigation should accordingly be able to exercise their investigatory powers within their territory, in accordance with the applicable national procedures. The joint investigation should be concluded within a given timeframe with a final report taking into account the contribution of all participating competent authorities. On the basis of this final report, the Digital Services Coordinator of establishment should communicate the preliminary position on the infringement, including the measures it intends to adopt or, where applicable, those that other competent authorities in that Member State intend to adopt. Other</u></p>		

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<p><u>Digital Services Coordinators may request the Commission to assess such issue where, on the basis of the final report and information gathered during the joint investigation, they disagree with such preliminary position or where no preliminary position is communicated within a given timeline. Also the Board, where this is requested by at least three Digital Services Coordinator of destination, may recommend to a Digital Services Coordinator of establishment to launch such joint investigation and give indications on its organisation. In such a case, the Board may refer the matter to the Commission also where the Digital Services Coordinator of establishment refuses to launch the investigation and the Board does not agree with the justification given. Finally, upon recommendation of the Board, the Commission may also directly set-up by decision a joint investigation concerning a provider of a very large online platform or of a very large search engine, which shall involve the Digital Services Coordinator of establishment and any other Digital Services Coordinator that triggered the Board’s recommendation, including the competent authorities in</u></p>		

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<p><u>these Member States that also gave their availability. The Digital Services Coordinator of establishment should accordingly coordinate the exercise in accordance with the indications provided by the Commission. Where, upon completion of the joint investigation, no preliminary position is issued or the Commission considers the measures envisaged therein, including the proposed level of fines, not in line with this Regulation or insufficient to ensure its effective enforcement, the Commission should be able to raise its serious doubts and request the Digital Services Coordinator of establishment to take appropriate action.</u> , within the limits and scope of powers available to each participating authority. The Board may be requested to provide advice in relation to those activities, for example by proposing roadmaps and timelines for activities or proposing ad hoc task forces with participation of the authorities involved.</p>		
<p>(87) In view of the particular challenges that may emerge in relation to assessing and ensuring a very large online platform's <u>or very large online search engine's</u></p>		

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<p>compliance, for instance relating to the scale or complexity of a suspected infringement or the need for particular expertise or capabilities at Union level, the Digital Services Coordinator <u>of establishments</u> should have the possibility to request, on a voluntary basis, the Commission to intervene and exercise its investigatory and enforcement powers under this Regulation. <u>Moreover, also the Board, upon request of at least three Digital Services Coordinators, could ask that the Commission exercises its investigatory and enforcement powers under this Regulation, where an alleged infringement of this Regulation by a provider of a very large online platform or of a very large online search engine could cause serious harm, justifying the direct involvement of the Commission. The Commission should take into account the seriousness and complexity of the alleged infringement when deciding whether and when initiating the proceedings.</u></p>		
<p>(88) In order to ensure a consistent application of this Regulation, it is necessary to set up an independent advisory group at</p>		

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<p>Union level, which should support the Commission and help coordinate the actions of Digital Services Coordinators. That European Board for Digital Services should consist of the Digital Services Coordinators, without prejudice to the possibility for Digital Services Coordinators to invite in its meetings or appoint ad hoc delegates from other competent authorities entrusted with specific tasks under this Regulation, where that is required pursuant to their national allocation of tasks and competences. In case of multiple participants from one Member State, the voting right should remain limited to one representative per Member State.</p>		
<p>(89) The Board should contribute to achieving a common Union perspective on the consistent application of this Regulation and to cooperation among competent authorities, including by advising the Commission and the Digital Services Coordinators about appropriate investigation and enforcement measures, in particular vis à vis the providers of very large online platforms or very large online search engines. The Board should also contribute to the drafting of relevant templates and codes of conduct and analyse emerging general</p>		

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trends in the development of digital services in the Union.		
(90) For that purpose, the Board should be able to adopt opinions, requests and recommendations addressed to Digital Services Coordinators or other competent national authorities. While not legally binding, the decision to deviate therefrom should be properly explained and could be taken into account by the Commission in assessing the compliance of the Member State concerned with this Regulation.		
(91) The Board should bring together the representatives of the Digital Services Coordinators and possible other competent authorities under the chairmanship of the Commission, with a view to ensuring an assessment of matters submitted to it in a fully European dimension. In view of possible cross-cutting elements that may be of relevance for other regulatory frameworks at Union level, the Board should be allowed to cooperate with other Union bodies, offices, agencies and advisory groups with responsibilities in fields such as equality, including gender equality between women		

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<p>and men, and non-discrimination, data protection, electronic communications, audiovisual services, detection and investigation of frauds against the EU budget as regards custom duties, or consumer protection, or competition law, as necessary for the performance of its tasks.</p>		
<p>(92) The Commission, through the Chair, should participate in the Board without voting rights. Through the Chair, the Commission should ensure that the agenda of the meetings is set in accordance with the requests of the members of the Board as laid down in the rules of procedure and in compliance with the duties of the Board laid down in this Regulation.</p>		
<p>(93) In view of the need to ensure support for the Board's activities, the Board should be able to rely on the expertise and human resources of the Commission and of the competent national authorities. The specific operational arrangements for the internal functioning of the Board should be further specified in the rules of procedure of the Board.</p>		

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<p>(94) Given the importance of very large online platforms or very large online search engines, in view of their reach and impact, their failure to comply with the specific obligations applicable to them may affect a substantial number of recipients of the services across different Member States and may cause large societal harms, while such failures may also be particularly complex to identify and address.</p>		
<p>(95) In order to address those public policy concerns it is therefore necessary to provide for a common system of enhanced supervision and enforcement at Union level. Once an infringement of one of the provisions of this Regulation that solely apply to very large online platforms or very large online search engines has been identified ascertained and, where necessary, sanctioned, for instance pursuant to following to individual or joint investigations, audits' reports, ing or complaints, cross-border cooperation requests, as well as pursuant to a direct recommendation of the Commission or of the Board to investigate the matter, the</p>		

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<p>Digital Services Coordinator of establishment, upon its own initiative or upon the Board's advice, should <u>also request the provider of such platform or such search engine to draw a detailed action plan to remedy any effect of the infringement. Where, following a recommendation of the Commission, the Digital Services Coordinator of establishment does not take a decision on the alleged infringement, the Commission may be able to initiate proceedings to ascertain and, where necessary, impose penalties. In this case the Commission should also request the concerned provider of a very large online platform or of a very large online search engine to draw up a detailed action plan. It should also</u> monitor any subsequent measure taken by the <u>provider of</u> very large online platform concerned as set out in its action plan. That <u>The</u> Digital Services Coordinator <u>of establishment</u> should be able to ask, where appropriate, for an additional, specific audit to be carried out, on a voluntary basis, to establish whether the <u>those</u> measures <u>included in the action plan</u> are sufficient to address the infringement, <u>taking also into account whether adherence to relevant code of conduct is included among the</u></p>		

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<p><u>measures proposed. The Digital Services Coordinator of establishment should also monitor any subsequent measure taken by the provider of a very large online platform or of a very large online search engine concerned as set out in its action plan, taking into account also an independent audit carried out by the provider.</u> At the end of that procedure, it should inform the Board, the Commission and the platform provider concerned of its views on whether or not that platform provider addressed the infringement, specifying in particular the relevant conduct and its assessment of any measures taken. The Digital Services Coordinator should perform its role under this common system in a timely manner, <u>involving other competent authorities where appropriate,</u> and taking utmost account of any opinions and other advice of the Board <u>and of the Commission, when deciding and providing justification for any course of action in the context of the enhanced supervision.</u></p>		
(96) Where the infringement of the provision that solely applies to very large online platforms <u>or very large online</u>		

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<p>search engines is not effectively addressed by their provider of such that platform pursuant to the action plan, only, or where the Digital Services Coordinator of establishment has not investigated such alleged infringement in spite of a recommendation of the the Commission, the latter may, on its own initiative or upon advice recommendation of the Board, decide to take over and further investigate the alleged infringement concerned, or, where the infringement was ascertained by the Digital Services Coordinator of establishment, and the measures that the platform provider has subsequently taken, by taking over from to the exclusion of the Digital Services Coordinator of establishment the adoption of the additional measures necessary to ensure compliance. After having conducted the necessary investigations, the Commission should be able to issue decisions finding an infringement, or a persisting continuing infringement, and imposing sanctions in respect of providers of a very large online platforms or very large online search engine where that is justified. It should also have such a possibility to intervene in cross-border situations where the Digital Services Coordinator of establishment did not take</p>		

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<p>the necessaryany measures despite the Commission’s request, or in situations where the Digital Services Coordinator of establishment itself or the Board requested for the Commission to intervene, in respect of an infringement of any other provision of this Regulation committed concerning by a very large online platform or a very large online search engine.</p>		
<p>(97) <u>In order to effectively perform its tasks,</u> ¶the Commission should <u>maintain a margin of discretion as to the decision</u> remain free to decide whether or not it wishes to intervene in any of the situations where it is empowered to do so under this Regulation. Once the Commission initiated the proceedings, the Digital Services Coordinators of establishment concerned should be precluded from exercising their investigatory and enforcement powers in respect of the relevant conduct <u>of the provider</u> of the very large online platform <u>or of very large online search engine</u> concerned, so as to avoid duplication, inconsistencies and risks from the viewpoint of the principle of <i>ne bis in idem</i>. However, in the interest of effectiveness, those Digital Services Coordinators should not be</p>		

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<p>precluded from exercising their powers either to assist the Commission, at its request in the performance of its supervisory tasks, or in respect of other conduct, including conduct by the same <u>provider of the very large online platform or of the very large online search engine</u> that is suspected to constitute a new infringement. Those Digital Services Coordinators, as well as the Board and other Digital Services Coordinators where relevant, should provide the Commission with all necessary information and assistance to allow it to perform its tasks effectively, <u>including information gathered in the context of formal investigations as well as in the context of other data gathering or data access exercises.</u> whilst Conversely the Commission should keep them informed on the exercise of its powers as appropriate. In that regard, the Commission should, where appropriate, take account of any relevant assessments carried out by the Board or by the Digital Services Coordinators concerned, <u>including fines already imposed,</u> and of any relevant evidence and information gathered by them, without prejudice to the Commission's powers and responsibility to carry out additional investigations as necessary.</p>		

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<p>(98) In view of both the particular challenges that may arise in seeking to ensure compliance by providers of very large online platforms or of very large online search engines and the importance of doing so effectively, considering their size and impact and the harms that they may cause, the Commission should have strong investigative and enforcement powers to allow it to investigate, enforce and monitor certain of the rules laid down in this Regulation, in full respect of the fundamental right to be heard and to have access to the file in the context of enforcement proceedings, the principle of proportionality and the rights and interests of the affected parties.</p>		
<p>(99) The Commission should be able to request information necessary for the purpose of this Regulation, throughout the Union. In particular, the Commission should have access to any relevant documents, data and information necessary to open and conduct investigations and to monitor the compliance with the relevant obligations laid down in this Regulation,</p>	<p>(99) The Commission should be able to request information necessary for the purpose of this Regulation, throughout the Union. In particular, the Commission should have access to any relevant documents, data and information necessary to open and conduct investigations and to monitor the compliance with the relevant obligations laid down in this Regulation, irrespective of who possesses the</p>	<p>Suggest deleting this since it is unclear in which cases the Commission could request for information and which safeguards apply. The right to ask for information is too wide and undefined. This provision should not apply to information concerning criminal proceedings or national security.</p>

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<p>irrespective of who possesses the documents, data or information in question, and regardless of their form or format, their storage medium, or the precise place where they are stored. The Commission should be able to directly require by means of a request for information that the provider of the very large online platform or of the very large online search engine concerned as well as any other natural or legal persons acting for purposes related to their trade, business, craft or profession that may be reasonably-aware of information relating to the suspected infringement or the infringement, as applicable or relevant third parties, or than individuals, provide any relevant evidence, data and information. In addition, the Commission should be able to request any relevant information from any public authority, body or agency within the Member State for the purpose of this Regulation, or from any natural person or legal person for the purpose of this Regulation. The Commission should be able empowered to require access to, and explanations by means of exercise of investigatory powers, such as requests for information or interviews, relating to documents, data, information, data-bases</p>	<p>documents, data or information in question, and regardless of their form or format, their storage medium, or the precise place where they are stored. The Commission should be able to directly require by means of a request for information that the provider of the very large online platform or of the very large online search engine concerned as well as any other natural or legal persons acting for purposes related to their trade, business, craft or profession that may be reasonably-aware of information relating to the suspected infringement or the infringement, as applicable or relevant third parties, or than individuals, provide any relevant evidence, data and information. In addition, the Commission should be able to request any relevant information from any public authority, body or agency within the Member State for the purpose of this Regulation, or from any natural person or legal person for the purpose of this Regulation. The Commission should be able empowered to require access to, and explanations by means of exercise of investigatory powers, such as requests for information or interviews, relating to documents, data, information, data-bases and algorithms of relevant persons, and to</p>	

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<p>and algorithms of relevant persons, and to interview, with their consent, any natural or legal persons who may be in possession of useful information and to record the statements made by any technical means. The Commission should also be empowered to undertake such inspections as are necessary to enforce the relevant provisions of this Regulation. Those investigatory powers aim to complement the Commission’s possibility to ask Digital Services Coordinators and other Member States’ authorities for assistance, for instance by providing information or in the exercise of those powers.</p>	<p>interview, with their consent, any natural or legal persons who may be in possession of useful information and to record the statements made by any technical means. The Commission should also be empowered to undertake such inspections as are necessary to enforce the relevant provisions of this Regulation. Those investigatory powers aim to complement the Commission’s possibility to ask Digital Services Coordinators and other Member States’ authorities for assistance, for instance by providing information or in the exercise of those powers.</p>	
<p><u>(99-a) The Commission should be able to take the necessary actions to monitor the effective implementation and compliance with the obligations laid down in this Regulation. Such actions should include the ability of the Commission to appoint independent external experts, such as auditors, to assist the Commission in this process, including, where applicable, from competent authorities of Member States, such as data or consumer protection authorities. When appointing the external experts, the Commission should ensure</u></p>		

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<p><u>that these experts are exercising their role in an independent manner, ensuring also that they are free of any conflicts of interest.</u></p>		
<p><u>(99a) Interim measures can be an important tool to ensure that, while an investigation is ongoing, the infringement being investigated does not lead to serious and irreparable damage for recipients of services of very large online platforms or of very large online search engines. This tool is important to avoid developments that could be very difficult to reverse by a decision taken by the Commission at the end of the proceedings. The Commission should therefore have the power to impose interim measures by decision in the context of proceedings opened in view of the possible adoption of a decision of non-compliance. This power should apply in cases where the Commission has made a prima facie finding of infringement of obligations concerning very large online platforms or of very large online search engines and where there is a risk of serious damage for recipients of the service. A decision imposing interim measures should only be valid for a</u></p>		

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<p><u>specified period, either until the conclusion of the proceedings by the Commission, or for a fixed time period which can be renewed insofar as it is necessary and appropriate.</u></p>		
<p>(100) Compliance with the relevant obligations imposed under this Regulation should be enforceable by means of fines and periodic penalty payments. To that end, appropriate levels of fines and periodic penalty payments should also be laid down for non-compliance with the obligations and breach of the procedural rules, subject to appropriate limitation periods. <u>The Court of Justice should have unlimited jurisdiction in respect of fines and penalty payments.</u></p>		
<p>(101) The <u>provider of the very large online platforms or of very large online search engine</u> concerned and other persons subject to the exercise of the Commission's powers whose interests may be affected by a decision should be given the opportunity of submitting their observations beforehand, and the decisions taken should be widely publicised. While ensuring the rights of defence of the parties concerned, in</p>		

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<p>particular, the right of access to the file, it is essential that confidential information be protected. Furthermore, while respecting the confidentiality of the information, the Commission should ensure that any information relied on for the purpose of its decision is disclosed to an extent that allows the addressee of the decision to understand the facts and considerations that lead up to the decision.</p>		
<p><u>(101a) The effective enforcement and monitoring of this Regulation requires a seamless and real-time exchange of information among the Digital Services Coordinators, the Board and the Commission, as well as access to these information by other competent authorities where appropriate. At the same time, given that the information exchanged may be confidential or involving personal data, it should remain protected from unauthorised access, in accordance with the purposes for which the information has been gathered. For this reason all communications between these authorities should take place on the basis of a reliable and secure information sharing system, whose details should be</u></p>		

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<u>laid down in an implementing act. The information sharing system may be based on existing internal market tools, to the extent that they can meet the objectives of this Regulation in a cost-effective manner.</u>		
<u>(101b) Without prejudice to the rights of recipients of intermediary services to turn to a representative in accordance with the Directive (EU) 2020/1828 of the European Parliament and of the Council of 25 November 2020 on representative actions for the protection of the collective interests of consumers and repealing Directive 2009/22/EC⁴, recipients of the services should also have the right to mandate a legal person or a public body to exercise their rights provided for in this Regulation. Such rights may for example include the recipients of services rights related to the submission of notices, the challenging of the decisions taken by providers of intermediary services, and the lodging of complaints against the providers for infringing this Regulation.</u>	<u>(101b) Without prejudice to the rights of recipients of intermediary services to turn to a representative in accordance with the Directive (EU) 2020/1828 of the European Parliament and of the Council of 25 November 2020 on representative actions for the protection of the collective interests of consumers and repealing Directive 2009/22/EC⁵, recipients of the services should also have the right to mandate a legal person or a public body to exercise their rights provided for in this Regulation. Such rights may for example include the recipients of services rights related to the submission of notices, the challenging of the decisions taken by providers of intermediary services, and the lodging of complaints against the providers for infringing this Regulation.</u>	Suggest deleting the last sentence as it is unclear. Does this mean that only those representatives may be representatives under national law who also meet the requirements of Article 68? E.g it has to be a NGO and its statutory objectives include a legitimate interest in ensuring that this Regulation is complied with? Restricting the use of national law is not justified in this case and would create a constitutional problem for us. Or does this last sentence mean that national law can be applied if it does not say that the representation of the regulation is not applicable? Such a rule cannot be established at national level because the regulation is directly applicable. Deletion would mean that recipients of intermediary services are free to turn to a lawyer or an attorney of their choice

⁴ OJ L 409, 4.12.2020, p. 1.

⁵ OJ L 409, 4.12.2020, p. 1.

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<p><u>The right of representation of recipients of intermediary services under this Regulation should not preclude the application of additional rights of representation under national laws, provided that they do not affect the right of representation under this Regulation.</u></p>	<p><u>The right of representation of recipients of intermediary services under this Regulation should not preclude the application of additional rights of representation under national laws, provided that they do not affect the right of representation under this Regulation.</u></p>	<p>according to national civil law. The situations according to this regulation and according to the directive of representative actions are different. This Regulation does not deal with representative actions or damages. Thus, there is no risk of class action.</p>
<p>(102) In the interest of effectiveness and efficiency, in addition to the general evaluation of the Regulation, to be performed within five years of entry into force, after the initial start-up phase and on the basis of the first three years of application of this Regulation, the Commission should also perform an evaluation of the activities of the Board and on its structure.</p>		
<p>(103) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation</p>		

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(EU) No 182/2011 of the European Parliament and of the Council ⁶ .		
(104) In order to fulfil the objectives of this Regulation, the power to adopt acts in accordance with Article 290 of the Treaty should be delegated to the Commission to supplement this Regulation. In particular, delegated acts should be adopted in respect of criteria for identification of very large online platforms and of very large online search engines and of technical specifications for access requests. It is of particular importance that the Commission carries out appropriate consultations and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the		

⁶ Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

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preparation of delegated acts.		
<p>(105) This Regulation respects the fundamental rights recognised by the Charter and the fundamental rights constituting general principles of Union law. Accordingly, this Regulation should be interpreted and applied in accordance with those fundamental rights, including the freedom of expression and information, as well as the freedom and pluralism of the media. When exercising the powers set out in this Regulation, all public authorities involved should achieve, in situations where the relevant fundamental rights conflict, a fair balance between the rights concerned, in accordance with the principle of proportionality.</p>		
<p>(106) Since the objective of this Regulation, namely the proper functioning of the internal market and to ensure a safe, predictable and trusted online environment in which the fundamental rights enshrined in the Charter are duly protected, cannot be sufficiently achieved by the Member States because they cannot achieve the necessary harmonisation and cooperation by acting</p>		

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alone, but can rather, by reason of its territorial and personal scope, be better achieved at the Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective. ⁵		
<u>(107) The European Data Protection Supervisor was consulted in accordance with Article 42(1) of Regulation (EU) 2018/1725 of the European Parliament and of the Council⁷ and delivered an opinion on 10 February 2021⁸,</u>		
HAVE ADOPTED THIS REGULATION:		

⁷ OJ L 295, 21.11.2018, p. 39

⁸ OJ C, p.

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Chapter IV Implementation, cooperation, sanctions and enforcement		
SECTION 1 COMPETENT AUTHORITIES AND NATIONAL DIGITAL SERVICES COORDINATORS		
<i>Article 38 Competent authorities and Digital Services Coordinators</i>		
1. Member States shall designate one or more competent authorities as responsible for the application and enforcement of this Regulation ('competent authorities').		
2. Member States shall designate one of the competent authorities as their Digital Services Coordinator. The Digital Services Coordinator shall be responsible for all		

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<p>matters relating to application and enforcement of this Regulation in that Member State, unless the Member State concerned has assigned certain specific tasks or sectors to other competent authorities. The Digital Services Coordinator shall in any event be responsible for ensuring coordination at national level in respect of those matters and for contributing to the effective and consistent application and enforcement of this Regulation throughout the Union.</p>		
<p>For that purpose, Digital Services Coordinators shall cooperate with each other, other national competent authorities, the Board and the Commission, without prejudice to the possibility for Member States to provide for regular exchanges of views of the Digital Services Coordinator with other national authorities where relevant for the performance of their respective tasks of those other authorities and of the Digital Services Coordinator.</p>		
<p>Where a Member State designates one or more more than one competent authority in addition to the Digital Services Coordinator,</p>		

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<p>it shall ensure that the respective tasks of those authorities and of the Digital Services Coordinator are clearly defined and that they cooperate closely and effectively when performing their tasks. The Member State concerned shall communicate the name of the other competent authorities as well as their respective tasks to the Commission and the Board.</p>		
<p>3. Member States shall designate the Digital Services Coordinators within twoten months from the date of entry into force of this Regulation.</p>		
<p>Member States shall make publicly available, and communicate to the Commission and the Board, the name of their competent authority designated as Digital Services Coordinator and information on how it can be contacted.</p>		
<p>4. The provisionsrequirements applicable to Digital Services Coordinators set out in Articles 39, 40 and 41 shall also apply to any other competent authorities that the Member States designate pursuant to</p>		

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paragraph 1.		
<i>Article 39 Requirements for Digital Services Coordinators</i>		
1. Member States shall ensure that their Digital Services Coordinators perform their tasks under this Regulation in an impartial, transparent and timely manner. Member States shall ensure that their Digital Services Coordinators have <u>all necessary means to carry out their tasks, including sufficient adequate</u> technical, financial and human resources to carry out their tasks, -taking into account in particular the reach, the nature and the extent of activities of the providers of intermediary services under their jurisdiction. Each Member State shall ensure that each Digital Services Coordinator has separate, public annual budgets, which may be part of the overall state or national budget, without affecting the independence of the Digital Services Coordinator.	1. Member States shall ensure that their Digital Services Coordinators perform their tasks under this Regulation in an impartial, transparent and timely manner. Member States shall ensure that their Digital Services Coordinators have <u>all necessary means to carry out their tasks, including sufficient adequate</u> technical, financial and human resources to carry out their tasks, -taking into account in particular the reach, the nature and the extent of activities of the providers of intermediary services under their jurisdiction. Each Member State shall ensure that each Digital Services Coordinator has separate, public annual budgets, which may be part of the overall state or national budget, without affecting the independence of the Digital Services Coordinator.	We suggest deleting this as it is too detailed and it is unclear how Member States could comply with this obligation, especially when they plan to appoint an existing authority instead of establishing a separate authority.
2. When carrying out their tasks and		

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<p>exercising their powers in accordance with this Regulation, the Digital Services Coordinators shall act with complete independence. They shall remain free from any external influence, whether direct or indirect, and shall neither seek nor take instructions from any other public authority or any private party.</p>		
<p>3. Paragraph 2 is without prejudice to the tasks of Digital Services Coordinators within the system of supervision and enforcement provided for in this Regulation and the cooperation with other competent authorities in accordance with Article 38(2). Paragraph 2 shall not prevent <u>the exercise of judicial review and shall also be without prejudice to proportionate accountability requirements regarding the general activities of the Digital Services Coordinators, such as financial expenditure or reporting to national parliaments. The exercise of the judicial review and proportionate accountability requirements shall not undermine, without endangering the achievement of the objectives of this Regulation.</u> supervision of the authorities concerned in accordance with national constitutional law.</p>		

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<i>Article 40 Jurisdiction</i>		
1. The Member State in which the main establishment of the provider of intermediary services is located shall have jurisdiction for the purposes of <u>application and enforcement of the obligations placed on providers of intermediary services by this Regulation by the national competent authorities in accordance with this Chapter</u> Chapters III and IV of this Regulation.		
2. A provider of intermediary services which does not have an establishment in the Union but which offers services in the Union shall, for the purposes of <u>this Article</u> Chapters III and IV , be deemed to be under the jurisdiction of the Member State where its legal representative resides or is established.		
3. Where a provider of intermediary services fails to appoint a legal		

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<p>representative in accordance with Article 11, all Member States shall have jurisdiction for the purposes of Chapters III and IV<u>this Article</u>. Where a Member State decides to exercise jurisdiction under this paragraph, it shall inform all other Member States and ensure that <u>the applicable safeguards afforded by the Charter are respected.</u>the principle of <i>ne bis in idem</i> is respected. <u>Proceedings for the same facts and effects as those referred to in the information given in accordance with this paragraph shall not be launched by competent authorities in other Member States or shall be suspended.</u></p>		
<p>4. Paragraphs 1, 2 and 3 are without prejudice to the second subparagraph of Article 50(4) and the second subparagraph of Article 51(2) and the tasks and powers of the Commission under Section 3.</p>		
<p><i>Article 41</i> <i>Powers of Digital Services Coordinators</i></p>		
<p>1. Where needed for carrying out their tasks <u>under this Regulation</u>, Digital</p>		

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<p>Services Coordinators shall have at least the following powers of investigation <u>in accordance with the procedures laid down in national law</u>, in respect of conduct by providers of intermediary services under the jurisdiction of their Member State:</p>		
<p>(a) the power to require those providers, as well as any other persons acting for purposes related to their trade, business, craft or profession that may reasonably be aware of information relating to a suspected infringement of this Regulation, including, organisations performing the audits referred to in Articles 28 and 50(3), to provide such information within a reasonable time period;</p>		
<p>(b) the power to carry out, <u>or request a judicial authority in their Member State to order,</u> on-site inspections of any premises that those providers or those persons use for purposes related to their trade, business, craft or profession, or to request other public authorities to do so, in order to examine, seize, take or obtain copies of information relating to a suspected infringement in any form, irrespective of the storage medium;</p>		

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(c) the power to ask any member of staff or representative of those providers or those persons to give explanations in respect of any information relating to a suspected infringement and to record the answers.		
2. Where needed for carrying out their tasks under this Regulation , Digital Services Coordinators shall have at least the following enforcement powers in accordance with the procedures laid down in national law , in respect of providers of intermediary services under the jurisdiction of their Member State:		
(a) the power to accept the commitments offered by those providers in relation to their compliance with this Regulation and to make those commitments binding;		
(b) the power to order the cessation of infringements and, where appropriate, to impose remedies proportionate to the infringement and necessary to bring the infringement effectively to an end;		

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(c) the power to impose fines, or request a judicial authority in their Member State to do so , in accordance with Article 42 for failure to comply with this Regulation, including with any of the investigatory orders issued pursuant to paragraph 1;		
(d) the power to impose a periodic penalty payment, or request a judicial authority in their Member State to do so , in accordance with Article 42 to ensure that an infringement is terminated in compliance with an order issued pursuant to point (b) of this paragraph or for failure to comply with any of the investigatory orders issued pursuant to paragraph 1;		
(e) the power to adopt interim measures to avoid the risk of serious harm.		
As regards points (c) and (d) of the first subparagraph, Digital Services Coordinators shall also have the enforcement powers set out in those points in respect of the other		

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<p>persons referred to in paragraph 1 for failure to comply with any of the orders issued to them pursuant to that paragraph. They shall only exercise those enforcement powers after having provided those others persons in good time with all relevant information relating to such orders, including the applicable time period, the fines or periodic payments that may be imposed for failure to comply and redress possibilities.</p>		
<p>3. Where needed for carrying out their tasks, Digital Services Coordinators shall also have, in respect of providers of intermediary services under the jurisdiction of their Member State, where all other powers pursuant to this Article to bring about the cessation of an infringement have been exhausted, the infringement persists and causes serious harm which cannot be avoided through the exercise of other powers available under Union or national law, the power to take the following measures:</p>	<p>Where needed for carrying out their tasks, <u>in relation to any infringement of this Regulation,</u> Digital Services Coordinators shall also have, in respect of providers of intermediary services under the jurisdiction of their Member State, where all other powers pursuant to this Article to bring about the cessation of an infringement have been exhausted, the infringement persists and causes serious harm which cannot be avoided through the exercise of other powers available under Union or national law, the power to take the following measures <u>or request a judicial authority to do so:</u></p>	<p>We believe that it is necessary to ensure that the Digital Services Coordinators can stop infringements of the Digital Services Act quickly and effectively if all other powers are exhausted and the infringement causes serious harm.</p> <p>We also find this useful to clarify that this measure only applies to infringements stemming from this Regulation and the powers to take such measures as provided by other acts of Union law or by national law are not affected.</p>
<p>(a) require the management body of the providers, within a reasonable time period,</p>	<p><u>(a) to remove content or to restrict access to an online interface or to order the explicit display of a warning in the event</u></p>	

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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;	<u>of access to an online interface;</u>	
(b) where the Digital Services Coordinator considers that the provider has not sufficiently complied with the requirements of the first indent, that the infringement persists and causes serious harm, and that the infringement entails a serious criminal offence involving a threat to the life or safety of persons, request the competent judicial authority of that Member State to order the temporary restriction of access of recipients of the service concerned by the infringement or, only where that is not technically feasible, to the online interface of the provider of intermediary services on which the infringement takes place.	<u>(b) to order a hosting service provider to remove, disable or restrict access to an online interface; or</u>	
	<u>(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.</u>	
The Digital Services Coordinator shall,	The Digital Services Coordinator shall, except where it acts upon the Commission's	

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<p>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.</p>	<p>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.</p>	
<p>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</p>	<p>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</p>	

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<p>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:</p>	<p>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:</p>	
<p>(a) the provider has failed to take the necessary measures to terminate the infringement;</p>	<p>(a) — the provider has failed to take the necessary measures to terminate the infringement;</p>	
<p>(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.</p>	<p>(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.</p>	
<p>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)</p>	<p>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)</p>	

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

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and of access to the file, and subject to the right to an effective judicial remedy of all affected parties.		
<i>Article 42</i> <i>Penalties</i>		
1. Member States shall lay down the rules on penalties applicable to infringements of this Regulation by providers of intermediary services under their jurisdiction and shall take all the necessary measures to ensure that they are implemented in accordance with Article 41.		
2. Penalties shall be effective, proportionate and dissuasive. Member States shall notify the Commission of those rules and of those measures and shall notify it, without delay, of any subsequent amendments affecting them.		
3. Member States shall ensure that the maximum amount of penalties imposed for a failure to comply with the <u>any</u> obligations laid down in this Regulation shall not be	Member States shall ensure that the maximum amount of penalties imposed for a failure to comply with the <u>any</u> obligations laid down in this Regulation may shall not	We believe that the text should reflect that imposing fines should remain a discretionary decision of the competent authority and should not be a compulsory outcome of the

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<p>subject to a fine which shall not exceed 6 % of the annual income or turnover of the provider of intermediary services concerned in the preceding financial year. Penalties Fines for the supply of incorrect, incomplete or misleading information, failure to reply or rectify incorrect, incomplete or misleading information and failure to submit to an on-site inspection shall not exceed 1% of the annual income or turnover of the provider or person concerned in the preceding financial year.</p>	<p>be subject to a fine which shall not exceed 6 % of the annual income or turnover of the provider of intermediary services concerned in the preceding financial year. Penalties Fines for the supply of incorrect, incomplete or misleading information, failure to reply or rectify incorrect, incomplete or misleading information and failure to submit to an on-site inspection shall not exceed 1% of the annual income or turnover of the provider or person concerned in the preceding financial year.</p>	<p>infringement proceedings.</p>
<p>4. Member States shall ensure that the maximum amount of a periodic penalty payment shall not exceed 5 % of the average daily turnover or income of the provider of intermediary services concerned in the preceding financial year per day, calculated from the date specified in the decision concerned.</p>		
<p><i>Article 43 Right to lodge a complaint</i></p>		
<p>Both Recipients of the service and their representative organisations shall have the</p>		

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<p>right to lodge a complaint against providers of intermediary services alleging an infringement of this Regulation with the Digital Services Coordinator of the Member State where the recipient resides or is established. The Digital Services Coordinator shall assess the complaint and, where appropriate, transmit it to the Digital Services Coordinator of establishment, accompanied, where considered appropriate, by a possible opinion. Where the complaint falls under the responsibility of another competent authority in its Member State, the Digital Service Coordinator receiving the complaint shall transmit it to that authority.</p>		
<p><i>Article 44</i> <i>Activity reports</i></p>		
<p>1. Digital Services Coordinators shall draw up an annual report on their ir activities under this Regulation, including the number of complaints received pursuant to Article 43 and an overview of their follow-up. These reports may include information provided by national competent authorities, where applicable.</p>		

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<p>The <u>Digital Services Coordinators</u> shall make the annual reports available to the public, without prejudice to the applicable rules on confidential information, and shall communicate them to the Commission and to the Board.</p>		
<p>2. The annual report shall also include at least the following information:</p>		
<p>(a) the number and subject matter of orders to act against illegal content and orders to provide information issued in accordance with Articles 8 and 9 by any national judicial or administrative authority of the Member State of the Digital Services Coordinator concerned;</p>		
<p>(b) the effects given to those orders, as communicated to the Digital Services Coordinator pursuant to Articles 8 and 9.</p>		
<p>3. Where a Member State has designated several competent authorities pursuant to Article 38, it shall ensure that the Digital Services Coordinator draws up a</p>		

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single report covering the activities of all competent authorities and that the Digital Services Coordinator receives all relevant information and support needed to that effect from the other competent authorities concerned.		
<u>Article 44a</u> <u>Mutual assistance</u>	<u>Article 44a</u> <u>Mutual assistance</u>	
<p><u>1. The Digital Services Coordinators and competent authorities, where applicable, shall provide each other with relevant information and mutual assistance in order to apply this Regulation in a consistent and efficient manner and shall put in place measures for effective cooperation with each other. Mutual assistance shall include, in particular, information exchanges in accordance with this Article and the duty of the Digital Services Coordinator of establishment to inform all other Digital Services Coordinators of destination, the Board and the Commission about the opening of an investigation and the intention to take a final decision in respect of a given provider of intermediary</u></p>	<p><u>1. The Digital Services Coordinators and competent authorities, where applicable, shall provide each other with relevant information and mutual assistance in order to apply this Regulation in a consistent and efficient manner and shall put in place measures for effective cooperation with each other. Mutual assistance shall include, in particular, information exchanges in accordance with this Article and the duty of the Digital Services Coordinator of establishment to inform all other Digital Services Coordinators of destination, the Board and the Commission about the opening of an investigation and the intention to take a final decision in respect of a given provider of intermediary</u></p>	<p>We believe that DSCs should only have to communicate with DSCs in other MS and not competent authorities. The DSCs could then coordinate the information sharing with other competent authorities within their territory. This also reflects their role as coordinator. We are concerned that the obligation to interact with competent authorities in other Member States could be too burdensome for the DCSs. Communication through the DSCs guarantees that both DSCs are aware of the relevant issues and exchanged information. The DSA should not regulate the way the DSCs cooperate with other national competent authorities in their own country.</p>

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<u>services.</u>	<u>services.</u>	
<p>2. <u>Where necessary to conduct an investigation and without prejudice to the possibility to directly launch a joint investigation pursuant to Article 46(1), the Digital Services Coordinator of establishment may request other Digital Services Coordinators to provide specific information in their possession as regards a specific provider of intermediary services or to exercise their investigatory powers pursuant to Article 41(1) with regards to specific information located in their territory. Where appropriate, the Digital Services Coordinator receiving the request shall involve other competent national authorities. The Digital Services Coordinator receiving such request shall reply without undue delay and no later than one month after receiving the request.</u></p>	<p>2. <u>Where necessary to conduct an investigation and without prejudice to the possibility to directly launch a joint investigation pursuant to Article 46(1), the Digital Services Coordinator of establishment may request other Digital Services Coordinators to provide specific information in their possession as regards a specific provider of intermediary services or to exercise their investigatory powers pursuant to Article 41(1) with regards to specific information located in their territory. Where appropriate, the Digital Services Coordinator receiving the request shall involve other competent national authorities. The Digital Services Coordinator receiving such request shall reply without undue delay and no later than one two months after receiving the request.</u></p>	<p>The DSA should not regulate the way the DSCs cooperate with other national competent authorities in their own country.</p>
<p>3. <u>Upon reasoned request of a Digital Services Coordinator of destination, a Digital Services Coordinator of establishment shall provide information already in its possession as regards</u></p>	<p>3. <u>Upon reasoned request of a Digital Services Coordinator of destination, a Digital Services Coordinator of establishment shall provide information already in its possession as regards</u></p>	<p>This provision should only be used where the risk concerned is reasonably well established and the action is necessary and proportionate.</p>

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<p><u>specific activities of a given provider of a very large online platform or of a very large online search engine in that Member State, without undue delay and no later than within one month after receiving the request. The Digital Services Coordinator of destination may only issue such request when it justifies the specific circumstances showing that a potential infringement of this Regulation by that provider could raise a serious risk affecting public security, public order or public health of recipients of the service in its territory. Where appropriate, the Digital Services Coordinator receiving the request shall involve other competent national authorities.</u></p>	<p><u>specific activities of a given provider of a very large online platform or of a very large online search engine in that Member State, without undue delay and no later than within one two months after receiving the request. The Digital Services Coordinator of destination may only issue such request when it justifies the specific circumstances showing that there is a reasonable suspicion of an infringement a potential infringement of this Regulation by that provider that constitutes a serious and immediate risk to could raise a serious risk affecting public security, public order or public health of recipients of the service in its territory. Where appropriate, the Digital Services Coordinator receiving the request shall involve other competent national authorities.</u></p>	
<p><u>4. The requested Digital Services Coordinator shall comply with the requests pursuant to paragraph 2 or 3, unless:</u></p>		
<p><u>(a) the scope of the subject matter of the request is not sufficiently specified; or</u></p>		

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<u>(b) neither the requested Digital Service Coordinator nor other national competent authority is in possession of the requested information nor has competence to request it; or</u>		
<u>(c) compliance with the request would infringe Union or Member State law to which the competent authority receiving the request is subject to.</u>		
<i>Article 45 Cross-border cooperation among Digital Services Coordinators</i>		
1. Where a Digital Services Coordinator <u>of destination</u> has reasons to suspect that a provider of an intermediary service, not under the jurisdiction of the Member State concerned, infringed this Regulation <u>affecting recipients in its territory</u> , it may shall request the Digital Services Coordinator of establishment to assess the matter and take the necessary investigatory and enforcement measures to		

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ensure compliance with this Regulation.		
<p><u>Upon request of at least three Digital Services Coordinators of destination alleging a reasonable suspicion of an infringement by a given provider of intermediary services affecting recipients in their territory, the Board</u> Where the Board has reasons to suspect that a provider of intermediary services infringed this Regulation in a manner involving at least three Member States, it may recommend the Digital Services Coordinator of establishment to assess the matter and take the necessary investigatory and enforcement measures to ensure compliance with this Regulation.</p>		
2. A request or recommendation pursuant to paragraph 1 shall at least indicate:		
(a) the <u>electronic</u> point of contact of the provider of the intermediary services concerned as provided for in Article 10;		

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<p>(b) a description of the relevant facts, the provisions of this Regulation concerned and the reasons why the Digital Services Coordinator that sent the request, or the Board, suspects that the provider infringed this Regulation;</p>		
<p>(c) any other information that the Digital Services Coordinator that sent the request, or the Board, considers relevant, including, where appropriate, information gathered on its own initiative or suggestions for specific investigatory or enforcement measures to be taken, including interim measures.</p>		
<p>3. The Digital Services Coordinator of establishment shall take into utmost account the request or recommendation pursuant to paragraph 1 of this Article. Where it considers that it has insufficient information to act upon the request or recommendation and has reasons to consider that the Digital Services Coordinator that sent the request, or the Board, could provide additional information, it may request such information in accordance with Article 44a or, alternatively, shall launch a joint investigation pursuant to Article 46(1)</p>		

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<p><u>involving at least the requesting Digital Services Coordinator.</u> The time period laid down in paragraph 4 <u>of this Article</u> shall be suspended until that additional information is provided <u>or the invitation to join the joint investigation is refused.</u></p>		
<p>4. The Digital Services Coordinator of establishment shall, without undue delay and in any event not later than twoone months following receipt of the request or recommendation, communicate to the Digital Services Coordinator that sent the request, or the Board, its assessment of the suspected infringement, or that of any other competent authority pursuant to national law where relevant, and an explanation of any investigatory or enforcement measures taken or envisaged in relation thereto to ensure compliance with this Regulation.</p>	<p>4. The Digital Services Coordinator of establishment shall, without undue delay and in any event not later than twoone months following receipt of the request or recommendation, communicate to the Digital Services Coordinator that sent the request, or the Board, its assessment of the suspected infringement, or that of any other competent authority pursuant to national law where relevant, and an explanation of any investigatory or enforcement measures taken or envisaged in relation thereto to ensure compliance with this Regulation.</p>	
<p>5. Where the Digital Services Coordinator that sent the request, or, where appropriate, the Board, did not receive a reply within the time period laid down in paragraph 4 or where it does not agree with the assessment of the Digital Services Coordinator of establishment, it may refer</p>		

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<p>the matter to the Commission, providing all relevant information. That information shall include at least the request or recommendation sent to the Digital Services Coordinator of establishment, <u>arguments on why it does not agree with the assessment of the Digital Services Coordinator of establishment.</u> any additional information provided pursuant to paragraph 3 and the communication referred to in paragraph 4.</p>		
<p>6. The Commission shall assess the matter within three two months following the referral of the matter pursuant to paragraph 5, after having consulted the Digital Services Coordinator of establishment and, unless it referred the matter itself, the Board.</p>		
<p>7. Where, pursuant to paragraph 6, the Commission concludes <u>disagrees with</u> that the assessment or the investigatory or enforcement measures taken or envisaged pursuant to paragraph 4 <u>because they</u> are incompatible with this Regulation <u>or insufficient to ensure its effective enforcement.</u> it shall <u>communicate its serious doubts to the concerned Digital</u></p>		

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<p><u>Services Coordinators and the Board and</u> request the Digital Service Coordinator of establishment to further assess the matter.</p> <p><u>The Digital Services Coordinator of establishment shall</u> and take the necessary investigatory or enforcement measures to ensure compliance with this Regulation, <u>taking into utmost account the serious doubts and request of the Commission,</u> and to inform it about those measures taken within two months from that request, <u>without prejudice to the possibility by the Commission to initiate proceedings upon expiry of such period pursuant to point a of Article 51(1) as regards alleged infringements of providers of very large online platforms or of very large online search engines.</u></p>		
<p><i>Article 46</i> <i>Joint investigations and requests for</i> <i>Commission intervention</i></p>		
<p>1. <u>The Digital Services Coordinator of establishment may invite other Digital Services Coordinator of destination, or other competent authorities where applicable, to set up a joint investigation</u></p>	<p>1. <u>The Digital Services Coordinator of establishment may invite other Digital Services Coordinator of destination, or other competent authorities where applicable, to set up a joint investigation</u></p>	<p>We believe that DSCs should only have to communicate with DSCs in other MS and not competent authorities. The DSCs could then coordinate the information sharing with other competent authorities within their</p>

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<p><u>to investigate an alleged infringement of this Regulation concerning a given provider of intermediary services in several Member States. Any Digital Services Coordinator of destination directly concerned by such alleged infringement and, where applicable, other competent authorities</u> s may <u>express an interest in participating</u> participate in joint investigations <u>proposed by the Digital Services Coordinator of establishment. The Digital Services Coordinator of establishment shall coordinate the joint investigation and shall agree with other participating competent authorities on a deadline for the conclusion of the joint investigation. Such deadline shall not exceed 3 months, unless all participating competent authorities agree to a longer timeline. When finalising the investigation, the Digital Services Coordinator of establishment shall take into account the views of participating competent authorities. Within 1 month from the conclusion of the joint investigation and taking into account its final findings, the Digital Services Coordinator of establishment shall communicate its preliminary position concerning the alleged infringement to all</u></p>	<p><u>to investigate an alleged infringement of this Regulation concerning a given provider of intermediary services in several Member States. Any Digital Services Coordinator of destination directly concerned by such alleged infringement and, where applicable, other competent authorities</u> s may <u>express an interest in participating</u> participate in joint investigations <u>proposed by the Digital Services Coordinator of establishment. The Digital Services Coordinator of establishment shall coordinate the joint investigation and shall agree with other participating competent authorities on a deadline for the conclusion of the joint investigation. Such deadline shall not exceed 3 months, unless all participating competent authorities agree to a longer timeline. When finalising the investigation, the Digital Services Coordinator of establishment shall take into account the views of participating Digital Services Coordinatorseompetent authorities. Within 1 month from the conclusion of the joint investigation and taking into account its final findings, the Digital Services Coordinator of establishment shall communicate its preliminary position concerning the</u></p>	<p>territory.</p>

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<p><u>Digital Services Coordinators, the Commission and the Board, including, where applicable, the position on the enforcement measures to be adopted,</u> which may be coordinated with the support of the Board, with regard to matters covered by this Regulation, concerning providers of intermediary services operating in several Member States.</p>	<p><u>alleged infringement to all Digital Services Coordinators, the Commission and the Board, including, where applicable, the position on the enforcement measures to be adopted,</u> which may be coordinated with the support of the Board, with regard to matters covered by this Regulation, concerning providers of intermediary services operating in several Member States.</p>	
<p>Such joint investigations are without prejudice to the tasks and powers of the participating Digital Coordinators and the requirements applicable to the performance of those tasks and exercise of those powers provided in this Regulation. The participating Digital Services Coordinators shall make the results of the joint investigations available to other Digital Services Coordinators, the Commission and the Board through the system provided for in Article 67 for the fulfilment of their respective tasks under this Regulation.</p>		
<p><u>1a. The participating Digital Services Coordinators may refer the matter to the Commission pursuant to Article 45(5)</u></p>		

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<u>where:</u>		
<u>(a) a preliminary position pursuant to paragraph 1 of this Article is not communicated or</u>		
<u>b) they substantiate their disagreement with the preliminary position of the Digital Services Coordinator of establishment, taking into account all the information collected in the joint investigation.</u>		
<u>2. Upon request of at least three Digital Services Coordinators of destination alleging a reasonable suspicion of an infringement by a given provider of intermediary services affecting recipients of the service in their Member States, the Board may recommend the Digital Services Coordinator of establishment to launch and coordinate a joint investigation, which shall at least include the requesting Digital Services Coordinators. The Board shall propose a deadline by when the authorities involved shall conclude the</u>	<u>2. Upon request of at least three Digital Services Coordinators of destination alleging a reasonable suspicion of an infringement by a given provider of intermediary services affecting recipients of the service in their Member States, the Board may recommend the Digital Services Coordinator of establishment to launch and coordinate a joint investigation, which shall at least include the requesting Digital Services Coordinators. The Board shall propose a deadline by when the authorities involved shall conclude the</u>	The COO principle also covers procedural autonomy – the possibility of national authorities to take independent decisions according to the best of their knowledge regarding the proceedings. COO principle is not fulfilled if the country of establishment leads the investigation only formally, but in reality the decisions are made by someone else – the country of destination, the Commission. It is unacceptable that a Member State can be prescribed what to do and how to conduct their proceedings. Nevertheless, the strictly recommendatory language in art 45 is acceptable to us.

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<p><u>joint investigation, which shall not exceed 3 months, unless all authorities involved agree to a longer timeline. When finalising the investigation, the Digital Services Coordinator of establishment shall take into account the views of participating competent authorities. Within 1 month from conclusion of the joint investigation and taking into account its final findings, the Digital Services Coordinator of establishment shall communicate its preliminary position concerning the alleged infringement to all Digital Services Coordinators, the Commission and the Board, including, where applicable, the position on the enforcement measures to be adopted.</u></p>	<p>joint investigation, which shall not exceed 3 months, unless all authorities involved agree to a longer timeline. When finalising the investigation, the Digital Services Coordinator of establishment shall take into account the views of participating competent authorities. Within 1 two months from conclusion of the joint investigation and taking into account its final findings, the Digital Services Coordinator of establishment shall communicate its preliminary position concerning the alleged infringement to all Digital Services Coordinators, the Commission and the Board, including, where applicable, the position on the enforcement measures to be adopted.</p>	
<p><u>2a. The Board may refer the matter to the Commission pursuant to Article 45(5), where:</u></p>		
<p><u>a) the Digital Services Coordinator or, where applicable, other competent authorities of establishment refuse to launch the joint investigation;</u></p>	<p>a) the Digital Services Coordinator or, where applicable, other competent authorities of establishment refuses to launch the joint investigation;</p>	

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<p>b) <u>the Digital Services Coordinator of establishment fails to communicate the preliminary position pursuant to paragraph 2 of this Article;</u> <u>or</u></p>		
<p>c) <u>the Board substantiates its disagreement with the preliminary position, taking into account all the information collected in the joint investigation.</u></p>		
<p><u>3. In carrying on the joint investigation, the Digital Services Coordinators and, where applicable, other competent authorities participating in the joint investigation, shall cooperate closely under the coordination of the Digital Services Coordinator of establishment, taking into account the indications of the Board’s recommendation pursuant to paragraph 2, where applicable. Without prejudice to the powers of the Digital Services Coordinator of establishment, the Digital Services Coordinators of destination and, where applicable, other competent authorities participating in the joint</u></p>	<p><u>3. In carrying on the joint investigation, the Digital Services Coordinators and, where applicable, other competent authorities participating in the joint investigation, shall cooperate closely under the coordination of the Digital Services Coordinator of establishment, taking into account the indications of the Board’s recommendation pursuant to paragraph 2, where applicable. Without prejudice to the powers of the Digital Services Coordinator of establishment, tThe Digital Services Coordinators of destination and, where applicable, other competent authorities participating in the</u></p>	<p>If the DSC of establishment leading the investigation considers these actions necessary, they should be able to order them through a mutual assistance mechanism. The DSC of destination should not be able to take these measures on their own initiative without any certainty whether they will be used in the case or taken into consideration while making the decision. We believe that this undermines the COO principle as enforcement measures could be taken by all MS that have joined the investigation. Also, the lack of a clear purpose and mandate could infringe fundamental procedural rights.</p>

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<p><u>investigation shall be entitled to exercise their investigatory powers pursuant to Article 41(1) in respect of the providers of intermediary services concerned by the alleged infringement, with regard to information and premises located within their territory.</u></p>	<p><u>joint investigation under the coordination of the Digital Services Coordinator of establishment may shall be entitled to exercise their investigatory powers pursuant to Article 41(1) in respect of the providers of intermediary services concerned by the alleged infringement, with regard to information and premises located within their territory.</u></p>	
<p>2. — Where a Digital Services Coordinator of establishment has reasons to suspect that a very large online platform infringed this Regulation, it may request the Commission to take the necessary investigatory and enforcement measures to ensure compliance with this Regulation in accordance with Section 3. Such a request shall contain all information listed in Article 45(2) and set out the reasons for requesting the Commission to intervene. <u>If the Commission intends to initiate proceedings pursuant to Article 51, it shall communicate it to the Digital Services Coordinator of establishment within three months upon the receipt of the request.</u></p>		

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<u>Article 46a</u> <u>Joint investigations related to a provider of a very large online platform or of a very large online search engine</u>	Article 46a Joint investigations related to a provider of a very large online platform or of a very large online search engine	We propose to delete this article as it is not clear what is the added value compared to the previous article concerning joint investigations and also the Commission's right to open proceedings against VLOPs.
<u>1. Upon request of at least three Digital Services Coordinators of destination alleging a reasonable suspicion that an infringement by a provider of a very large online platform or of a very large online search engine affects a large number of recipients of the service in those Member States, the Board may recommend to the Commission to launch a joint investigation. Pursuant to such recommendation, the Commission may, by its decision, set up a joint investigation to be coordinated by the Digital Services Coordinator of establishment and involving the requesting Digital Services Coordinators and, where applicable, any other competent authority in the concerned Member States within 1 month.</u>	1. Upon request of at least three Digital Services Coordinators of destination alleging a reasonable suspicion that an infringement by a provider of a very large online platform or of a very large online search engine affects a large number of recipients of the service in those Member States, the Board may recommend to the Commission to launch a joint investigation. Pursuant to such recommendation, the Commission may, by its decision, set up a joint investigation to be coordinated by the Digital Services Coordinator of establishment and involving the requesting Digital Services Coordinators and, where applicable, any other competent authority in the concerned Member States within 1 month.	The COO principle also covers procedural autonomy – the possibility of national authorities to take independent decisions according to the best of their knowledge regarding the proceedings. COO principle is not fulfilled if the country of establishment leads the investigation only formally, but in reality the decisions are made by someone else – the country of destination, the Commission. It is unacceptable that a Member State can be prescribed what to do and how to conduct their proceedings. Nevertheless, the strictly recommendatory language in art 45 is acceptable to us.
<u>2. The Digital Services Coordinators and, where applicable, other competent</u>	2. The Digital Services Coordinators and, where applicable, other competent	

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<p><u>authorities participating in the joint investigation, shall cooperate closely under the coordination of the Digital Services Coordinator of establishment and in accordance with the indications of the Commission. Without prejudice to the powers of the Digital Services Coordinator of establishment, the Digital Services Coordinators of destination and, where applicable, other competent authorities participating in the joint investigation shall be entitled to exercise their investigatory powers pursuant to Article 41(1) in respect of the provider of intermediary services concerned by the alleged infringement, with regard to information and premises located within its territory.</u></p>	<p>authorities participating in the joint investigation, shall cooperate closely under the coordination of the Digital Services Coordinator of establishment and in accordance with the indications of the Commission. Without prejudice to the powers of the Digital Services Coordinator of establishment, the Digital Services Coordinators of destination and, where applicable, other competent authorities participating in the joint investigation shall be entitled to exercise their investigatory powers pursuant to Article 41(1) in respect of the provider of intermediary services concerned by the alleged infringement, with regard to information and premises located within its territory.</p>	
<p><u>3. The Commission decision shall define a deadline by when all authorities involved shall conclude the joint investigation which shall not exceed 3 months. When finalising the investigation, the Digital Services Coordinator of establishment shall take into account the views of participating competent authorities. Within one month from conclusion of the joint investigation and</u></p>	<p>3. The Commission decision shall define a deadline by when all authorities involved shall conclude the joint investigation which shall not exceed 3 months. When finalising the investigation, the Digital Services Coordinator of establishment shall take into account the views of participating competent authorities. Within one month from conclusion of the joint investigation and taking into account its final findings, the</p>	

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<p><u>taking into account its final findings, the Digital Services Coordinator of establishment shall communicate its preliminary position concerning the alleged infringement to all Digital Services Coordinators, the Commission and the Board, including, where applicable, the position on the enforcement measures to be adopted.</u></p>	<p>Digital Services Coordinator of establishment shall communicate its preliminary position concerning the alleged infringement to all Digital Services Coordinators, the Commission and the Board, including, where applicable, the position on the enforcement measures to be adopted.</p>	
<p><u>If the Digital Services Coordinator of establishment fails to communicate its preliminary position pursuant to paragraph 2 of this Article or if the Commission disagrees with that preliminary position because it is incompatible with this Regulation or insufficient to ensure its effective enforcement, the Commission may, within 1 month from the preliminary position pursuant to paragraph 3 of this Article, communicate its serious doubts and request the Digital Service Coordinator of establishment to further assess the matter pursuant to Article 45(7).</u></p>	<p>If the Digital Services Coordinator of establishment fails to communicate its preliminary position pursuant to paragraph 2 of this Article or if the Commission disagrees with that preliminary position because it is incompatible with this Regulation or insufficient to ensure its effective enforcement, the Commission may, within 1 month from the preliminary position pursuant to paragraph 3 of this Article, communicate its serious doubts and request the Digital Service Coordinator of establishment to further assess the matter pursuant to Article 45(7).</p>	

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<u>Article 46b</u> <u>Request for Commission intervention</u>		
<p><u>Where a Digital Services Coordinator of establishment has reasons to suspect that a provider of a very large online platform or of a very large online search engine infringed this Regulation, it may request the Commission to take necessary investigatory and enforcement measures to ensure compliance with this Regulation in accordance with Section 3 of this Chapter. Upon the request of at least three Digital Services Coordinators alleging a reasonable suspicion that an infringement by a provider of a very large online platform or of a very large online search engine may cause a serious harm to a large number of recipients of the service in those Member States, the Board may also recommend the Commission to take the necessary investigatory and enforcement measures to ensure compliance with this Regulation in accordance with Section 3 of this Chapter.</u></p>		
<u>Such a request or recommendation pursuant to the first subparagraph shall</u>		

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<u>contain all information listed in Article 45(2) and set out the reasons for requesting the Commission to intervene. If the Commission intends to initiate proceedings pursuant to Article 51, it shall communicate this to the Digital Services Coordinator of establishment within three months upon the receipt of the request.</u>		
SECTION 2 EUROPEAN BOARD FOR DIGITAL SERVICES		
<i>Article 47 European Board for Digital Services</i>		
1. An independent advisory group of Digital Services Coordinators on the supervision of providers of intermediary services named ‘European Board for Digital Services’ (the ‘Board’) is established.		
2. The Board shall advise the Digital Services Coordinators and the Commission in accordance with this Regulation to		

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achieve the following objectives:		
(a) Contributing to the consistent application of this Regulation and effective cooperation of the Digital Services Coordinators and the Commission with regard to matters covered by this Regulation;		
(b) coordinating and contributing to guidance and analysis of the Commission and Digital Services Coordinators and other competent authorities on emerging issues across the internal market with regard to matters covered by this Regulation;		
(c) assisting the Digital Services Coordinators and the Commission in the supervision of very large online platforms.		
<i>Article 48</i> <i>Structure of the Board</i>		
1. The Board shall be composed of the Digital Services Coordinators, who shall be represented by high-level officials. Where		

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<p>provided for by national law, other competent authorities entrusted with specific operational responsibilities for the application and enforcement of this Regulation alongside the Digital Services Coordinator shall participate in the Board. Other national authorities may be invited to the meetings, where the issues discussed are of relevance for them.</p>		
<p>2. Each Member State shall have one vote. The Commission shall not have voting rights.</p>		
<p>The Board shall adopt its acts by simple majority.</p>		
<p>3. The Board shall be chaired by the Commission. The Commission shall convene the meetings and prepare the agenda in accordance the tasks of the Board pursuant to this Regulation and with its rules of procedure.</p>		
<p>4. The Commission shall provide administrative and analytical support for the</p>		

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activities of the Board pursuant to this Regulation.		
5. The Board may invite experts and observers to attend its meetings, and may cooperate with other Union bodies, offices, agencies and advisory groups, as well as external experts as appropriate. The Board shall make the results of this cooperation publicly available.		
6. The Board shall adopt its rules of procedure, following the consent of the Commission.		
<i>Article 49 Tasks of the Board</i>		
1. Where necessary to meet the objectives set out in Article 47(2), the Board shall in particular:		
(a) support the coordination of joint investigations;		

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(b) support the competent authorities in the analysis of reports and results of audits of very large online platforms or of very large online search engines to be transmitted pursuant to this Regulation;		
(c) issue opinions, recommendations or advice to Digital Services Coordinators in accordance with this Regulation;		
(d) advise the Commission to take the measures referred to in Article 51 and, where requested by the Commission, adopt opinions on draft Commission measures concerning very large online platforms or very large online search engines in accordance with this Regulation;		
(e) support and promote the development and implementation of European standards, guidelines, reports, templates and code of conducts as provided for in this Regulation, as well as the identification of emerging issues, with regard to matters covered by this Regulation.		

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<p>2. Digital Services Coordinators and other national competent authorities that do not follow the opinions, requests or recommendations addressed to them adopted by the Board shall provide the reasons for this choice when reporting pursuant to this Regulation or when adopting their relevant decisions, as appropriate.</p>		
<p>SECTION 3 SUPERVISION, INVESTIGATION, ENFORCEMENT AND MONITORING IN RESPECT OF VERY LARGE ONLINE PLATFORMS <u>OR VERY LARGE ONLINE SEARCH ENGINES</u></p>		
<p><i>Article 50</i> <i>Enhanced supervision for very large online platforms <u>or very large online search engine for compliance with Section 4 of Chapter III</u></i></p>		
<p>1. Where the Digital Services Coordinator of establishment adopts a decision finding that a <u>provider of</u> very large online platform has infringed any of</p>		

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<p>the provisions of Section 4 of Chapter III, it shall make use of the enhanced supervision system laid down in this Article. It shall take utmost account of any opinion and recommendation of the Commission and the Board pursuant to this Article.</p>		
<p>The Commission acting on its own initiative, or <u>following a recommendation of</u> the Board acting on its own initiative or upon request of at least three Digital Services Coordinators of destination, may, where it has reasons to suspect that a <u>provider of a very large online platform or of a very large online search engine</u> infringed any of these <u>provisions of Section 4 of Chapter III</u>, recommend the Digital Services Coordinator of establishment to investigate the suspected infringement with a view to that Digital Services Coordinator adopting such a decision <u>pursuant to the second subparagraph</u> within a reasonable time period <u>within a time period predefined in the recommendation</u>. <u>Where the Digital Services Coordinator of establishment does not adopt a decision pursuant to the second subparagraph within the recommended time period, the Commission may initiate proceedings</u></p>		

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<p><u>pursuant to Article 51 with a view to establish the infringement and request the provider of a very large online platform or of a very large online search engine to draw up and communicate an action plan pursuant to paragraph 2 of this Article.</u></p>		
<p><u>Where the Digital Services Coordinator of establishment, upon its own initiative or following a recommendation of the Commission pursuant to the first subparagraph, adopts a decision finding that a provider of a very large online platform or of a very large online search engine has infringed any of the provisions of Section 4 of Chapter III, it shall make use of the enhanced supervision system laid down in this Article. It shall take utmost account of any opinion and recommendation of the Commission and the Board pursuant to this Article.</u></p>		
<p><u>Where other competent authorities in that Member State are empowered to establish the existence of an infringement and to ensure the enhanced supervision in respect of a given provider of a very large online platform or of a very large online</u></p>		

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<p><u>search engine, the Digital Services Coordinator of establishment shall involve them in accordance with the applicable national law.</u></p>		
<p>2. When communicating the decision referred to in the first subparagraph of paragraph 1 to the provider of the a very large online platform <u>or of a very large online search engine</u> concerned, the Digital Services Coordinator of establishment or, <u>where applicable, the Commission</u> shall request it the provider to draw up and communicate to the Digital Services Coordinator of establishment, the Commission and the Board, within one month from that decision, an action plan, specifying how that platform <u>provider</u> intends to terminate or remedy the infringement. <u>The measures set out in the action plan shall include a commitment to complete an independent audit on the effectiveness of the proposed measures within 2 months of the adoption of the decision pursuant to paragraph 3, with the identity of the proposed auditors and the methodology of the audit spelled out in the action plan.</u> The measures set out in the action plan may <u>also</u> include, where</p>		

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appropriate, participation in a code of conduct as provided for in Article 35.		
<p>3. Within one month following receipt of the action plan, the Board shall communicate its opinion on the action plan to the Digital Services Coordinator of establishment. Within one month following receipt of that opinion, that Digital Services Coordinator shall decide whether the action plan is appropriate to terminate or remedy the infringement. <u>The adherence to relevant codes of conduct shall be taken into account in this decision.</u></p>		
<p>Where the Digital Services Coordinator of establishment has concerns on the ability of the measures to terminate or remedy the infringement, it may request the very large online platform concerned to subject itself to an additional, independent audit to assess the effectiveness of those measures in terminating or remedying the infringement. In that case, that platform shall send the audit report to that Digital Services Coordinator, the Commission and the Board within four months from the decision referred to in the first subparagraph. When</p>		

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<p>requesting such an additional audit, the Digital Services Coordinator may specify a particular audit organisation that is to carry out the audit, at the expense of the platform concerned, selected on the basis of criteria set out in Article 28(2).</p>		
<p>4. The Digital Services Coordinator of establishment shall communicate to the Commission, the Board and the <u>provider of the very large online platform or of very large online search engine</u> concerned its views as to whether the <u>provider of very large online platform or of a very large online search engine</u> has terminated or remedied the infringement and the reasons thereof. It shall do so within the following time periods, as applicable:</p>		
<p>(a) within one month from the receipt of the audit report referred to in the second subparagraph of paragraph 3, where such an audit was performed;</p>		
<p><u>(a) at the same time as the decision adopted pursuant to paragraph 3, where it does not consider the action plan</u></p>		

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<u>appropriate to terminate or remedy the infringement;</u>		
(b) within three months from the decision on the action plan referred to in the first subparagraph of paragraph 3, <u>where the action plan was considered appropriate to terminate or remedy the infringement;</u> where no such audit was performed;		
(c) immediately upon the expiry of the time period set out in paragraph 2, where that platform provider failed to communicate the action plan within that time period.		
Pursuant to that communication, the Digital Services Coordinator of establishment shall no longer be entitled to take any investigatory or enforcement measures in respect of the relevant conduct by the very large online platform concerned, without prejudice to Article 66 or any other measures that it may take at the request of the Commission.		

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<p><i>Article 51</i> Intervention by the Commission and <u>Opening of proceedings by the Commission</u></p>		
<p>1. The Commission, acting either upon the Board’s recommendation or on its own initiative after consulting the Board, may initiate proceedings in view of the possible adoption of decisions pursuant to Articles 58 and 59 in respect of the relevant conduct by the provider of the very large online platform <u>or of the very large online search engine</u> that:</p>		
<p>(a) is suspected of having infringed any of the provisions of this Regulation and the Digital Services Coordinator of establishment did not take <u>the necessary</u>any investigatory or enforcement measures, pursuant to the request of the Commission referred to in Article 45(7), upon the expiry of the time period set in that request;</p>		
<p>(b) is suspected of having infringed any of the provisions of this Regulation and the Digital Services Coordinator of</p>		

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<p>establishment or the Board requested the Commission to intervene in accordance with Article 46b(2), upon the reception of that request;</p>		
<p><u>(ba) is suspected of having infringed any of the provisions of Section 4 of Chapter III of this Regulation and no decision has been adopted by the Digital Services Coordinator of establishment within the recommended deadline pursuant to the second subparagraph of Article 50(1);</u></p>		
<p>(c) has been found to have infringed any of the provisions of Section 4 of Chapter III, upon the expiry of the relevant time periods for the communication referred to in Article 50(4).</p>		
<p>2. Where the Commission decides to initiate proceedings pursuant to paragraph 1, it shall notify all Digital Services Coordinators, the Board and the <u>provider of the very large online platform or of a very large online search engine</u> concerned.</p>		

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<p>As regards points (a) and (b) of paragraph 1, Pursuant to that notification, the Digital Services Coordinator of establishment concerned shall no longer be entitled to take any investigatory or enforcement measures in respect of the relevant conduct by the provider of the very large online platform or of the very large online search engine concerned, without prejudice to Article 66 or any other measures that it may take at the request of the Commission. The Commission shall inform the Digital Services Coordinator of establishment of its intention to exercise the powers referred to in Articles 52 to 57 and of its preliminary findings pursuant to Article 63(1).</p>		
<p>3. The Digital Services Coordinator of establishment, referred to in Articles 45(7), 46(2) and 50(1), as applicable, shall, without undue delay upon being informed, transmit to the Commission:</p>		
<p>(a) any information that that Digital Services Coordinator, and any other</p>		

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<p>competent authority in that Member State where applicable, exchanged relating to the infringement or the suspected infringement, as applicable, with the Board and with the provider of the very large online platform or of the very large online search engine concerned;</p>		
<p>(b) the case file of that Digital Services Coordinator, and of any other competent authority in that Member State where applicable, relating to the infringement or the suspected infringement, as applicable;</p>		
<p>(c) any other information in the possession of that Digital Services Coordinator, and of any other competent authority in that Member State where applicable, that may be relevant to the proceedings initiated by the Commission.</p>		
<p>4. The Board, and the Digital Services Coordinators making the request referred to in Article 45(1) and 46(3), shall, without undue delay upon being informed, transmit to the Commission any information in their possession, or in the possession of any</p>		

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<u>other competent authority in that Member State</u> , that may be relevant to the proceedings initiated by the Commission.		
<i>Article 52 Requests for information</i>		
1. In order to carry out the tasks assigned to it under this Section, the Commission may by simple request or by decision require the <u>provider of the very large online platforms or of very large online search engine</u> concerned, as well as any other <u>natural or legal</u> persons acting for purposes related to their trade, business, craft or profession that may be reasonably be aware of information relating to the suspected infringement or the infringement, as applicable, including organisations performing the audits referred to in Articles 28 and 50(3), to provide such information within a reasonable time period.		
2. When sending a simple request for information to the <u>provider of the very large online platform or of very large online search engine</u> concerned or other		

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<p>person referred to in paragraph Article 52(1 of this Article), the Commission shall state the legal basis and the purpose of the request, specify what information is required and set the time period within which the information is to be provided, and the penalties finer provided for in Article 59 for supplying incorrect or misleading information.</p>		
<p>3. Where the Commission requires the provider of the very large online platform or of very large online search engine concerned or other person referred to in paragraph Article 52(1 of this Article) to supply information by decision, it shall state the legal basis and the purpose of the request, specify what information is required and set the time period within which it is to be provided. It shall also indicate the penalties finer provided for in Article 59 and indicate or impose the periodic penalty payments provided for in Article 60. It shall further indicate the right to have the decision reviewed by the Court of Justice of the European Union.</p>		
<p>4. The owners of the very large online</p>		

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<p>platform or of the very large online search engine concerned or other person referred to in Article 52(paragraph 1) or their representatives and, in the case of legal persons, companies or firms, or where they have no legal personality, the persons authorised to represent them by law or by their constitution shall supply the information requested on behalf of the provider of the very large online platform or of the very large online search engine concerned or other person referred to in Article 52(paragraph 1). Lawyers duly authorised to act may supply the information on behalf of their clients. The latter shall remain fully responsible if the information supplied is incomplete, incorrect or misleading.</p>		
<p>5. At the request of the Commission, the Digital Services Coordinators and other competent authorities shall provide the Commission with all necessary information to carry out the tasks assigned to it under this Section.</p>		

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Article 53 Power to take interviews and statements		
1. In order to carry out the tasks assigned to it under this Section, the Commission may interview any natural or legal person which consents to being interviewed for the purpose of collecting information, relating to the subject-matter of an investigation, in relation to the suspected infringement or infringement, as applicable. <u>The Commission shall be entitled to record such interview by any technical means.</u>		
2. <u>Where an interview pursuant to paragraph 1 is conducted on the premises of an undertaking, the Commission shall inform the Digital Services Coordinator in the territory of which the interview takes place. If so requested by the said Digital Services Coordinator, its officials may assist the officials and other accompanying persons authorised by the Commission to conduct the interview.</u>		

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Article 54 Power to conduct on-site inspections		
1. In order to carry out the tasks assigned to it under this Section, the Commission may conduct all necessary on-site inspections at the premises of the provider of the very large online platform or of the very large online search engine concerned or other person referred to in Article 52(1).		
1a. The officials and other accompanying persons authorised by the Commission to conduct an inspection are empowered:		
(a) to enter any premises, land and means of transport of undertakings and associations of undertakings;		
(b) to examine the books and other records related to the business, irrespective of the medium on which they are stored;		

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<u>(c) to take or obtain in any form copies of or extracts from such books or records;</u>		
<u>(d) to require the undertaking or association of undertakings to provide access to and explanations on its organisation, functioning, IT system, algorithms, data-handling and business practices and to record or document the explanations given;</u>		
<u>(e) to seal any business premises and books or records for the period and to the extent necessary for the inspection;</u>		
<u>(f) to ask any representative or member of staff of the undertaking or association of undertakings for explanations on facts or documents relating to the subject-matter and purpose of the inspection and to record the answers;</u>		

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<p><u>(g) to address questions to any representative or member of staff relating to the subject-matter and purpose of the inspection and to record the answers.</u></p>		
<p>2. On-site inspections may also be carried out with the assistance of auditors or experts appointed by the Commission pursuant to Article 57(2), <u>as well as with the competent national authorities of the Member State in whose the territory of which the inspection is to be conducted.</u></p>		
<p>3. During on-site inspections the Commission, and auditors and experts appointed by the Commission, it, as well as the competent national authorities of the Member State in whose the territory <u>of which</u> the inspection is to be conducted may require the provider of the very large online platform <u>or of the very large online search engine</u> concerned or other person referred to in Article 52(1) to provide explanations on its organisation, functioning, IT system, algorithms, data-handling and business conducts. The Commission and auditors or experts appointed by it may address questions to key personnel of the provider of</p>		

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the very large online platform or of the very large online search engine concerned or other person referred to in Article 52(1).		
4. The provider of the very large online platform or of the very large online search engine concerned or other natural or legal person referred to in Article 52(1) is required to submit to an on-site inspection ordered by decision of the Commission. The decision shall specify the subject matter and purpose of the visit, set the date on which it is to begin and indicate the penalties provided for in Articles 59 and 60 and the right to have the decision reviewed by the Court of Justice of the European Union. The Commission shall take such decisions after consulting the Digital Services Coordination of establishment in the territory of which the inspection is to be conducted.		
5. Officials of as well as those authorised or appointed by the Digital Services Coordinator in the territory of which the inspection is to be conducted shall, at the request of that authority or of the Commission, actively assist the		

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<u>officials and other accompanying persons authorised by the Commission. To this end, they shall enjoy the powers specified in paragraph 1a.</u>		
<u>6. Where the officials and other accompanying persons authorised by the Commission find that an undertaking opposes an inspection ordered pursuant to this Article, the Member State concerned shall afford them the necessary assistance, requesting where appropriate the assistance of the police or of an equivalent enforcement authority, so as to enable them to conduct their inspection.</u>		
<u>7. If the assistance provided for in paragraph 6 requires authorisation from a judicial authority according to national rules, such authorisation shall be applied for. Such authorisation may also be applied for as a precautionary measure.</u>		
<u>8. Where authorisation as referred to in paragraph 7 is applied for, the national judicial authority shall control that the Commission decision is authentic and that</u>		

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<p><u>the coercive measures envisaged are neither arbitrary nor excessive having regard to the subject matter of the inspection. In its control of the proportionality of the coercive measures, the national judicial authority may ask the Commission, directly or through the Digital Services Coordinators, for detailed explanations in particular on the grounds the Commission has for suspecting infringement of this Regulation, as well as on the seriousness of the suspected infringement and on the nature of the involvement of the undertaking concerned. However, the national judicial authority may not call into question the necessity for the inspection nor demand that it be provided with the information in the file of the Commission. The lawfulness of the Commission decision shall be subject to review only by the Court of Justice of the European Union</u></p>		
<p><i>Article 55</i> <i>Interim measures</i></p>		
<p>1. In the context of proceedings which may lead to the adoption of a decision of</p>		

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<p>non-compliance pursuant to Article 58(1), where there is an urgency due to the risk of serious damage for the recipients of the service, the Commission may, by decision, order interim measures against the provider of the very large online platform or of the very large online search engine concerned on the basis of a prima facie finding of an infringement.</p>		
<p>2. A decision under paragraph 1 shall apply for a specified period of time and may be renewed in so far this is necessary and appropriate.</p>		
<p><i>Article 56 Commitments</i></p>		
<p>1. If, during proceedings under this Section, the provider of the very large online platform or of the very large online search engine concerned offers commitments to ensure compliance with the relevant provisions of this Regulation, the Commission may by decision make those commitments binding on the provider of the very large online platform or of the very</p>		

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large online search engine concerned and declare that there are no further grounds for action.		
2. The Commission may, upon request or on its own initiative, reopen the proceedings:		
(a) where there has been a material change in any of the facts on which the decision was based;		
(b) where the provider of the very large online platform or of the very large online search engine concerned acts contrary to its commitments; or		
(c) where the decision was based on incomplete, incorrect or misleading information provided by the provider of the very large online platform or of the very large online search engine concerned or other person referred to in Article 52(1).		
3. Where the Commission considers		

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<p>that the commitments offered by the provider of the very large online platform or of the very large online search engine concerned are unable to ensure effective compliance with the relevant provisions of this Regulation, it shall reject those commitments in a reasoned decision when concluding the proceedings.</p>		
<p><i>Article 57</i> <i>Monitoring actions</i></p>		
<p>1. For the purposes of carrying out the tasks assigned to it under this Section, the Commission may take the necessary actions to monitor the effective implementation and compliance with this Regulation by the provider of the very large online platform or of the very large online search engine concerned. The Commission may also order that platform provider to provide access to, and explanations relating to, its databases and algorithms. These actions may include in particular the imposition of an obligation on the provider of the very large online platform or of the very large online search engine to retain all documents deemed to be relevant to assess</p>		

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<u>the provider's implementation of and compliance with these obligations and decisions.</u>		
2. The actions pursuant to paragraph 1 may include the appointment of independent external experts and auditors, including as well as from competent national authorities , to assist the Commission in monitoring compliance with the relevant provisions of this Regulation and to provide specific expertise or knowledge to the Commission.		
<i>Article 58 Non-compliance</i>		
1. The Commission shall adopt a non-compliance decision where it finds that the <u>provider of the very large online platform or of the very large online search engine</u> concerned does not comply with one or more of the following:		
(a) the relevant provisions of this Regulation;		

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(b) interim measures ordered pursuant to Article 55;		
(c) commitments made binding pursuant to Article 56;		
2. Before adopting the decision pursuant to paragraph 1, the Commission shall communicate its preliminary findings to the provider of the very large online platform or of the very large online search engine concerned. In the preliminary findings, the Commission shall explain the measures that it considers taking, or that it considers that the provider of the very large online platform or of the very large online search engine concerned should take, in order to effectively address the preliminary findings.		
3. In the decision adopted pursuant to paragraph 1 the Commission shall order the provider of the very large online platform or of the very large online search engine concerned to take the necessary measures to		

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ensure compliance with the decision pursuant to paragraph 1 within a reasonable time period and to provide information on the measures that that platform intends to take to comply with the decision.		
4. The provider of the very large online platform or of the very large online search engine concerned shall provide the Commission with a description of the measures it has taken to ensure compliance with the decision pursuant to paragraph 1 upon their implementation.		
5. Where the Commission finds that the conditions of paragraph 1 are not met, it shall close the investigation by a decision.		
<i>Article 59</i> <i>Fines</i>		
1. In the decision pursuant to Article 58, the Commission may impose on the provider of the very large online platform or of the very large online search engine concerned fines not exceeding 6% of its total		

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worldwide turnover in the preceding financial year where it finds that that platform provider , intentionally or negligently:		
(a) infringes the relevant provisions of this Regulation;		
(b) fails to comply with a decision ordering interim measures under Article 55; of		
(c) fails to comply with a voluntary measure commitment made binding by a decision pursuant to Articles 56 ;		
<u>(d) fails to comply with the measures adopted by the Commission pursuant to Article 57; or</u>		
<u>(e) fails to comply with the conditions for access to the Commission's file pursuant to Article 63(4).</u>		

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2. The Commission may by decision impose on the provider of the very large online platform or of the very large online search engine concerned or other natural or legal person referred to in Article 52(1) fines not exceeding 1 % of the total turnover in the preceding financial year, where they intentionally or negligently:		
(a) fail to supply information or supply incorrect, incomplete or misleading information in response to a request pursuant to Article 52; or,	(a) fail to supply information or supply incorrect, incomplete or misleading information in response to a request pursuant to Article 52; or,	We believe that requests for information should be voluntary and therefore non-compliance with these requests should not be sanctioned. Otherwise, what is the difference between a request and a decision. Would also like to point out that according to 52(2), the Commission only has the obligation to state the fines provided for in Art 59 for supplying incorrect or misleading information.
(aa) when the information is requested by decision, fail to reply to the request for information by decision within the set time period;		
(b) fail to rectify within the time period set by the Commission, incorrect,		

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

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<i>Article 60</i> <i>Periodic penalty payments</i>		
1. The Commission may, by decision, impose on the provider of the very large online platform or of the very large online search engine concerned or other person referred to in Article 52(1), as applicable, periodic penalty payments not exceeding 5 % of the average daily income or worldwide turnover in the preceding financial year per day, calculated from the date appointed by the decision, in order to compel them to:		
(a) supply correct and complete information in response to a decision requiring information pursuant to Article 52;		
(b) submit to an on-site inspection which it has ordered by decision pursuant to Article 54;		
(c) comply with a decision ordering interim measures pursuant to Article 55(1);		

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(d) comply with commitments made legally binding by a decision pursuant to Article 56(1);		
(e) comply with a decision pursuant to Article 58(1).		
2. Where the provider of the very large online platform or of the very large online search engine concerned or other person referred to in Article 52(1) has satisfied the obligation which the periodic penalty payment was intended to enforce, the Commission may fix the definitive amount of the periodic penalty payment at a figure lower than that which would arise under the original decision.		
<i>Article 61 Limitation period for the imposition of penalties</i>		
1. The powers conferred on the Commission by Articles 59 and 60 shall be		

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subject to a limitation period of five years.		
2. Time shall begin to run on the day on which the infringement is committed. However, in the case of continuing or repeated infringements, time shall begin to run on the day on which the infringement ceases.		
3. Any action taken by the Commission or by the Digital Services Coordinator for the purpose of the investigation or proceedings in respect of an infringement shall interrupt the limitation period for the imposition of fines or periodic penalty payments. Actions which interrupt the limitation period shall include, in particular, the following:		
(a) requests for information by the Commission or by a Digital Services Coordinator;		
(b) on-site inspection;		

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(c) the opening of a proceeding by the Commission pursuant to Article 51(2).		
4. Each interruption shall start time running afresh. However, the limitation period for the imposition of fines or periodic penalty payments shall expire at the latest on the day on which a period equal to twice the limitation period has elapsed without the Commission having imposed a fine or a periodic penalty payment. That period shall be extended by the time during which the limitation period is suspended pursuant to paragraph 5.		
5. The limitation period for the imposition of fines or periodic penalty payments shall be suspended for as long as the decision of the Commission is the subject of proceedings pending before the Court of Justice of the European Union.		

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<p><i>Article 62</i> <i>Limitation period for the enforcement of penalties</i></p>		
<p>1. The power of the Commission to enforce decisions taken pursuant to Articles 59 and 60 shall be subject to a limitation period of five years.</p>		
<p>2. Time shall begin to run on the day on which the decision becomes final.</p>		
<p>3. The limitation period for the enforcement of penalties shall be interrupted:</p>		
<p>(a) by notification of a decision varying the original amount of the fine or periodic penalty payment or refusing an application for variation;</p>		
<p>(b) by any action of the Commission, or of a Member State acting at the request of the Commission, designed to enforce payment of the fine or periodic penalty</p>		

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payment.		
4. Each interruption shall start time running afresh.		
5. The limitation period for the enforcement of penalties shall be suspended for so long as:		
(a) time to pay is allowed;		
(b) enforcement of payment is suspended pursuant to a decision of the Court of Justice of the European Union <u>or to a decision by the national court.</u>		
<i>Article 63</i> <i>Right to be heard and access to the file</i>		
1. Before adopting a decision pursuant to Articles 58(1), 59 or 60, the Commission shall give the <u>provider of the very large online platform or of the very large online search engine</u> concerned or other person		

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referred to in Article 52(1) the opportunity of being heard on:		
(a) preliminary findings of the Commission, including any matter to which the Commission has taken objections; and		
(b) measures that the Commission may intend to take in view of the preliminary findings referred to point (a).		
2. The provider of the very large online platform <u>or of the very large online search engine</u> concerned or other person referred to in Article 52(1) <u>and any natural or legal person who applies to be heard and shows a legitimate interest</u> may submit their observations on the Commission's preliminary findings within a reasonable time period set by the Commission in its preliminary findings, which may not be less than 14 days.		
3. The Commission shall base its decisions only on objections on which the parties concerned have been able to		

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comment.		
<p>4. The rights of defence of the parties concerned shall be fully respected in the proceedings. They shall be entitled to have access to the Commission's file under the terms of a negotiated disclosure, subject to the legitimate interest of the provider of the very large online platform <u>or of the very large online search engine</u> concerned or other person referred to in Article 52(1) in the protection of their business secrets. The Commission shall have the power to issue decisions setting out such terms of disclosure in case of disagreement between the parties. The right of access to the file of the Commission shall not extend to confidential information and internal documents of the Commission or Member States' authorities. In particular, the right of access shall not extend to correspondence between the Commission and those authorities. Nothing in this paragraph shall prevent the Commission from disclosing and using information necessary to prove an infringement.</p>		
5. The information collected pursuant		

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to Articles 52, 53 and 54 shall be used only for the purpose of this Regulation.		
<p>6. Without prejudice to the exchange and to the use of information referred to in Articles 51(3) and 52(5), the Commission, the Board, Member States' authorities and their respective officials, servants and other persons working under their supervision,; and any other natural or legal person involved, including auditors and experts appointed pursuant to Article 57(2) shall not disclose information acquired or exchanged by them pursuant to this Section and of the kind covered by the obligation of professional secrecy. <i>[moved to Article 66a]</i></p>		
<p><i>Article 64</i> <i>Publication of decisions</i></p>		
<p>1. The Commission shall publish the decisions it adopts pursuant to Articles 55(1), 56(1), 58, 59 and 60. Such publication shall state the names of the parties and the main content of the decision, including any penalties imposed.</p>		

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2. The publication shall have regard to the rights and legitimate interests of the provider of the very large online platform concerned, any other person referred to in Article 52(1) and any third parties in the protection of their confidential information.		
<u>Article 64a</u> <u>Review by the Court of Justice of the European Union</u>		
<u>In accordance with Article 261 of the Treaty on the Functioning of the European Union, the Court of Justice of the European Union has unlimited jurisdiction to review decisions by which the Commission has imposed fines or periodic penalty payments. It may cancel, reduce or increase the fine or periodic penalty payment imposed.</u>		

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<i>Article 65 Requests for access restrictions and cooperation with national courts</i>		
1. Where all powers pursuant to this Article to bring about the cessation of an infringement of this Regulation have been exhausted, the infringement persists and causes serious harm which cannot be avoided through the exercise of other powers available under Union or national law, the Commission may request the Digital Services Coordinator of establishment of the provider of the very large online platform or of the very large online search engine 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		

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<p>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.</p>		
<p>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.</p>		
<p><i>Article 66</i> <i>Implementing acts relating to Commission intervention</i></p>		
<p>1. In relation to the Commission intervention covered by this Section, the Commission may adopt implementing acts concerning the practical arrangements for:</p>		
<p>(ae) the proceedings pursuant to Articles 54 and 57;</p>		

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(ba) the hearings provided for in Article 63;		
(cb) the negotiated disclosure of information provided for in Article 63.		
2. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 70. Before the adoption of any measures pursuant to paragraph 1, the Commission shall publish a draft thereof and invite all interested parties to submit their comments within the time period set out therein, which shall not be less than one month.		
<u>Article 66a</u> <u>Professional secrecy [moved from Article 63(6)]</u>		
Without prejudice to the exchange and to the use of information referred to in <u>this Chapter</u> Articles 51(3) and 52(5), the Commission, the Board, Member States’		

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<p>competent authorities and their respective officials, servants and other persons working under their supervision, and any other natural or legal person involved, including auditors and experts appointed pursuant to Article 57(2), shall not disclose information acquired or exchanged by them pursuant to this Section Regulation and of the kind covered by the obligation of professional secrecy.</p>		
<p>SECTION 4 COMMON PROVISIONS ON ENFORCEMENT</p>		
<p><i>Article 67 Information sharing system</i></p>		
<p>1. The Commission shall establish and maintain a reliable and secure information sharing system supporting communications between Digital Services Coordinators, the Commission and the Board. Other competent authorities may be granted access to this system, where appropriate for the exercise of the tasks conferred to</p>		

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<u>them in accordance with this Regulation.</u>		
2. The Digital Services Coordinators, the Commission and the Board shall use the information sharing system for all communications pursuant to this Regulation.		
3. The Commission shall adopt implementing acts laying down the practical and operational arrangements for the functioning of the information sharing system and its interoperability with other relevant systems. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 70.		
<i>Article 68 Representation</i>		
Without prejudice to Directive 2020/ 1828XX /EU of the European Parliament and of the Council ⁹ , recipients of intermediary services shall have the right to mandate a body, organisation or association	(1) Without prejudice to <u>Member States' national civil law and</u> Directive <u>(EU)</u> 2020/ 1828XX /EU of the European Parliament and of the Council, recipients of intermediary services shall have the right to	It should be clear from the text of Article 68 that representation in Article 68 is an alternative possibility and that Article 68 does not preclude the application of national civil law. Therefore, there should be an

⁹——— [Reference]

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<p>to exercise the rights conferred by this Regulation referred to in Articles 17, 18 and 19 on their behalf, provided the body, organisation or association meets all of the following conditions:</p>	<p>mandate a body, organisation or association legal person to exercise the rights conferred by this Regulation on their behalf of recipients of intermediary services, provided the body, organisation or association legal person meets all of the following conditions:</p>	<p>addition in the text and in the corresponding Recital, stating that Article 68 is without prejudice to MS' civil law. Right now, we are reading art 68 in a way that representation only under this article or the representative actions' directive is allowed, but representation under national civil law is not allowed. The current text is not clear enough for us. It should be explained that DSA will provide an additional opportunity for representation and that service recipients will also be able to turn to the service provider or out-of-court dispute settler in person or using another representative in accordance with national civil law. The situation where service recipients would not be entitled to exercise their right to choose a representative in accordance with national civil law is in no way justified, effectively restricts access to judicial remedies and will be a constitutional problem. It is not clear what is meant by an <i>organisation</i> and an <i>association</i>. Given that the text would be directly applicable, we cannot accept this wording until it is clear what is meant by <i>organisation</i> and an <i>association</i>.</p>

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(a) it operates on a not-for-profit basis;		
(b) it has been properly constituted in accordance with the law of a Member State;	(b) it has been properly constituted in accordance with the law of a Member State;	
(c) its statutory objectives include a legitimate interest in ensuring that this Regulation is complied with.		
	(2) Notwithstanding paragraph 1, recipients of intermediary services shall have the right to authorize a public body, provided that there is a public body that has an authority to carry out such tasks.	
SECTION 5		
DELEGATED ACTS		
<i>Article 69</i>		
<i>Exercise of the delegation</i>		
1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.		

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<p>2. The delegation of power referred to in Articles 23, 25, and 31 shall be conferred on the Commission for an indeterminate period of time from [date of expected adoption of the Regulation].</p>		
<p>3. The delegation of power referred to in Articles 23, 25 and 31 may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of power specified in that decision. It shall take effect the day following that of its publication in the <i>Official Journal of the European Union</i> or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.</p>		
<p>4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.</p>		
<p>5. A delegated act adopted pursuant to Articles 23, 25 and 31 shall enter into force only if no objection has been expressed by either the European Parliament or the</p>		

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Council within a period of three months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by three months at the initiative of the European Parliament or of the Council.		
<i>Article 70 Committee</i>		
1. The Commission shall be assisted by the Digital Services Committee. That Committee shall be a Committee within the meaning of Regulation (EU) No 182/2011.		
2. Where reference is made to this Article, Article 4 of Regulation (EU) No 182/2011 shall apply.		

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Chapter V Final provisions		
<i>Article 71</i> <i>Deletion of certain provisions of Directive 2000/31/EC</i>		
1. Articles 12 to 15 of Directive 2000/31/EC shall be deleted.		
2. References to Articles 12 to 15 of Directive 2000/31/EC shall be construed as references to Articles 3, 4, 5 and 7 of this Regulation, respectively.		
<i>Article 72</i> <i>Amendments to Directive 2020/XX/EC on Representative Actions for the Protection of the Collective Interests of Consumers</i>		
3. The following is added to Annex I:		
“(X) Regulation of the European Parliament		

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and of the Council on a Single Market for Digital Services (Digital Services Act) and amending Directive 2000/31/EC”.		
<i>Article 73 Evaluation</i>		
1. By five years after the entry into force of this Regulation at the latest, and every five years thereafter, the Commission shall evaluate this Regulation, and in particular the scope of the obligations on small and micro enterprises, and report to the European Parliament, the Council and the European Economic and Social Committee. On the basis of the findings, that report shall, where appropriate, be accompanied by a proposal for amendment of this Regulation.		
2. For the purpose of paragraph 1, Member States and the Board shall send information on the request of the Commission.		
3. In carrying out the evaluations		

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referred to in paragraph 1, the Commission shall take into account the positions and findings of the European Parliament, the Council, and other relevant bodies or sources.		
<p>4. By three years from the date of application of this Regulation at the latest, the Commission, after consulting the Board, shall carry out an assessment of the functioning of the Board and shall report it to the European Parliament, the Council and the European Economic and Social Committee, taking into account the first years of application of the Regulation. On the basis of the findings and taking into utmost account the opinion of the Board, that report shall, where appropriate, be accompanied by a proposal for amendment of this Regulation with regard to the structure of the Board.</p>		
<p><i>Article 74</i> <i>Entry into force and application</i></p>		
<p>1. This Regulation shall enter into force on the twentieth day following that of its</p>		

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publication in the <i>Official Journal of the European Union</i> .		
2. It shall apply from [date - three twelve months after its entry into force].	2. It shall apply from [date - three twelve 18 months after its entry into force].	
This Regulation shall be binding in its entirety and directly applicable in all Member States.		
Done at Brussels,		
<i>For the European Parliament</i>		
The President The President		