Amendment 509

Report A9-0356/2021
Christel Schaldemose

Proposal for a regulation
Recital 22

Text proposed by the Commission

(22) In order to benefit from the exemption from liability for hosting services, the provider should, upon obtaining actual knowledge or awareness of illegal content, act expeditiously to remove or to disable access to that content. The removal or disabling of access should be undertaken in the observance of the principle of freedom of expression. The provider can obtain such actual knowledge or awareness through, in particular, its own-initiative investigations or notices submitted to it by individuals or entities in accordance with this Regulation in so far as those notices are sufficiently precise and adequately substantiated to allow a diligent economic operator to reasonably identify, assess and where appropriate act against the allegedly illegal content.

Amendment

(22) In order to benefit from the exemption from liability for hosting services, the provider should, after having become aware of the illegal nature of the content and thus obtaining actual knowledge or awareness, act expeditiously to remove or to disable access to that content. Expeditiously means ‘as fast as possible’ for all content and ‘immediately’ during live broadcasts and for content that has particular time-sensitivity. The removal or disabling of access should be undertaken in the observance of a high level of consumer protection and of the Charter of Fundamental Rights, including the principle of freedom of expression and the right to receive and impart information and ideas without interference by public authority. The provider can obtain actual knowledge or awareness of the illegal nature of the content through, in particular, its own-initiative investigations or notices
submitted to it by individuals or entities in accordance with this Regulation in so far as those notices are sufficiently precise and adequately substantiated to allow a diligent hosting service provider to reasonably identify, assess and where appropriate act against the allegedly illegal content. As long as providers act upon obtaining actual knowledge, they should benefit from the exemptions from liability referred to in this Regulation.

Justification

In order for the DSA to be meaningful when it comes to the removal or disabling of access to illegal content by online services, the DSA should ensure that the expeditious removal or disabling access to all content is done as fast as possible and immediately during the live broadcast and for content with particular time-sensitivity, considering in these cases that most of the economic value lies in the live broadcast.
Amendment 510

Report A9-0356/2021
Christel Schaldemose

Proposal for a regulation
Recital 26

Text proposed by the Commission

(26) Whilst the rules in Chapter II of this Regulation concentrate on the exemption from liability of providers of intermediary services, it is important to recall that, despite the generally important role played by those providers, the problem of illegal content and activities online should not be dealt with by solely focusing on their liability and responsibilities. Where possible, third parties affected by illegal content transmitted or stored online should attempt to resolve conflicts relating to such content without involving the providers of intermediary services in question. Recipients of the service should be held liable, where the applicable rules of Union and national law determining such liability so provide, for the illegal content that they provide and may disseminate through intermediary services. Where

Amendment

(26) Whilst the rules in Chapter II of this Regulation concentrate on the exemption from liability of providers of intermediary services, it is important to recall that, despite the generally important role played by those providers, the problem of illegal content and activities online should not be dealt with by solely focusing on their liability and responsibilities. Recipients of the service should be held liable, where the applicable rules of Union and national law determining such liability so provide, for the illegal content that they provide and may disseminate through intermediary services. Where appropriate, other actors, such as group moderators in closed online environments, in particular in the case of large groups, should also help to avoid the spread of illegal content online, in accordance with the applicable law.
appropriate, other actors, such as group moderators in closed online environments, in particular in the case of large groups, should also help to avoid the spread of illegal content online, in accordance with the applicable law. Furthermore, where it is necessary to involve information society services providers, including providers of intermediary services, any requests or orders for such involvement should, as a general rule, be directed to the actor that has the technical and operational ability to act against specific items of illegal content, so as to prevent and minimise any possible negative effects for the availability and accessibility of information that is not illegal content.

Furthermore, where it is necessary to involve information society services providers, including providers of intermediary services, any requests or orders for such involvement should, as a general rule, be directed to the actor that has the technical and operational ability to act against specific items of illegal content, so as to prevent and minimise any possible negative effects for the availability and accessibility of information that is not illegal content.

**Justification**

*Such an approach would create a system where parties would be forced to target end users and where intermediaries would be given the opportunity to escape any obligation to operate diligently and expeditiously to remove illegal content online, arguing for example that they have no technical, operational or contractual ability to take action against illegal content/activity*. Such a system would simply create less not more accountability of platforms and would negate the whole purpose of the DSA.
(38) Whilst the freedom of contract of providers of intermediary services should in principle be respected, it is appropriate to set certain rules on the content, application and enforcement of the terms and conditions of those providers in the interests of transparency, the protection of recipients of the service and the avoidance of unfair or arbitrary outcomes.

(38) Whilst the freedom of contract of providers of intermediary services should in principle be respected, it is appropriate to set certain rules on the content, application and enforcement of the terms and conditions of those providers in the interests of protecting fundamental rights, in particular freedom of expression and of information, transparency, the protection of recipients of the service, including their legitimate interests, and the avoidance of discriminatory, unfair or arbitrary outcomes. This implies that intermediary service providers should pay utmost regard to relevant rules applicable to the media and put in place specific procedures, ensuring that the media are promptly informed and have the possibility to challenge any content moderation measure before its implementation. Terms and conditions
should not restrict freedom and pluralism of the media as enshrined in Article 11 of the Charter. In particular, it is equally important to ensure that terms and conditions are drafted in a clear and unambiguous language in line with applicable Union and national law. The terms and conditions should include information on any policies, procedures, measures and tools used for the purpose of content moderation, including algorithmic decision-making, human review, as well as on the right to terminate the use of the service. Providers of intermediary services should also provide recipients of services with a concise and easily readable summary of the main elements of the terms and conditions, including the remedies available, using, where appropriate graphical elements, such as icons.

Or. en

Justification

In line with the changes made in Article 12.1
Amendment 512

Report
A9-0356/2021
Christel Schaldemose

Proposal for a regulation
Recital 39 a (new)

Text proposed by the Commission

Amendment

(39 a) To ensure an efficient and adequate application of the obligation on traceability of business users, without imposing any disproportionate burdens, the intermediary service providers covered should carry out due diligence checks prior to the use of their service to verify the reliability of the information provided by the business user concerned, in particular by using freely accessible official online databases or online interfaces, such as national trade registers or by requesting the business user concerned to provide trustworthy supporting documents, such as copies of identity documents, certified bank statements, company certificates and trade register certificates. They may also use other sources, available for use at a distance, which offer a similar degree of
reliability for the purpose of complying with this obligation.

Or. en

Justification

This article was proposed in the draft report in IMCO. In line with the changes made in Article 13a
Amendment 513

Report A9-0356/2021
Christel Schaldemose

Proposal for a regulation
Article 12 – paragraph 1

Text proposed by the Commission

1. Providers of intermediary services shall include information on any restrictions that they impose in relation to the use of their service in respect of information provided by the recipients of the service, in their terms and conditions. That information shall include information on any policies, procedures, measures and tools used for the purpose of content moderation, including algorithmic decision-making and human review. It shall be set out in clear and unambiguous language and shall be publicly available in an easily accessible format.

Amendment

1. Providers of intermediary services shall use fair, non-discriminatory and transparent terms and conditions. Providers of intermediary services shall draft those terms and conditions in clear, plain user friendly, and unambiguous language and shall make them publicly available in an easily accessible and machine-readable format in the languages of the Member State towards which the service is directed. In their terms and conditions, providers of intermediary services shall respect the freedom of expression, freedom and pluralism of the media, and other fundamental rights and freedoms, as enshrined in the Charter as well as the rules applicable to the media in the Union.
Article 12 should explicitly recognize that the restrictions provided in terms and conditions are drawn up, applied and enforced in compliance with rules applicable to the media, including content standards that serve to protect, for example, minors as well as, more broadly, the freedom of expression and information and the freedom of the media (Article 11 of the Charter). The impact of intermediaries’ T&Cs and decisions taken in relation to lawful media content (e.g. content removal/suspension, suspension of business accounts, re-labelling content suitable for certain age groups, shadow banning, etc) is a very concrete issue, experienced by a variety of media on a variety of platform services regardless of size. The unilateral and unpredictable nature of such decisions represents a hurdle on citizens’ access to information and on media freedom.
Amendment 514

Report A9-0356/2021
Christel Schaldemose
Single Market For Digital Services (Digital Services Act) and amending Directive 2000/31/EC

Proposal for a regulation
Article 13 a (new)

Text proposed by the Commission

Amendment

Article 13 a

Traceability of business users

1. A provider of intermediary services shall ensure that business users can only use its services if the provider of intermediary service has obtained the following information:

(a) the name, address, telephone number and electronic mail address of the business user;

(b) a copy of the identification document of the business user or any other electronic identification as defined by Article 3 of Regulation (EU) No 910/2014 of the European Parliament and of the Council; 

(c) the bank account details of the business user, where the business user is
a natural person;
(d) where the business user is registered in a trade register or similar public register, the trade register in which the business user is registered, and its registration number or equivalent means of identification in that register;

2. The provider of intermediary services shall, upon receiving that information and until the end of the contractual relationship, make reasonable efforts to assess whether the information referred to in points (a) and (d) of paragraph 1 is reliable and up-to-date through the use of any freely accessible official online database or online interface made available by a Member States or the Union or through requests to the business user to provide supporting documents from reliable sources.

3. Where the provider of intermediary services obtains indications that any item of information referred to in paragraph 1 obtained from the business users concerned is inaccurate or incomplete, that provider of intermediary services shall request the business user to correct the information in so far as necessary to ensure that all information is accurate and complete, without delay or within the time period set by Union and national law. Where the business user fails to correct or complete that information, the provider of intermediary services shall suspend the provision of its service to the business user until the request is complied with.

4. The providers of intermediary services shall store the information obtained pursuant to paragraph 1 and 2 in a secure manner for the duration of their contractual relationship with the business user concerned. They shall subsequently delete the information.

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

6. The providers of intermediary services shall make the information referred to in points (a) and (d) of paragraph 1 available to the recipients of the service, in a clear, easily accessible and comprehensible manner.

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Or. en

Justification

This article was proposed in the draft report in IMCO. In order to be effective, the principle of identification should not be limited to online marketplaces. Instead all information society services, which are being used to provide illegal content, for example, domain name registries, CDN service providers, ad networks, should be obliged to take reasonable steps to stop, limit and prevent illegal activity. Without a verified identity, consumers will be deprived of effective redress mechanisms.