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21.6.2021

DRAFT OPINION

of the Committee on Culture and Education

for the Committee on the Internal Market and Consumer Protection

on the 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
(COM(2020)0825 – C9-0418(2020) – 2020/0361(COD))

Rapporteur for opinion: Sabine Verheyen

PA_Legam

SHORT JUSTIFICATION

On 15 December 2020, the European Commission published its legislative proposal for a Digital Services Act (DSA), as a significant step forward in regulating online content at Union level, especially in guaranteeing online safety and the protection of fundamental rights in the digital environment.

The proposed Regulation aims to establish a more accountable online environment by imposing obligations on platforms to act against illegal content, whilst empowering platforms' users with enhanced transparency and traceability, and better reporting systems.

It sets, as a *lex generalis*, horizontal and harmonised standards for a wide range of online platforms. The proposal also aims to revise the liability regime of Directive 2000/13/EC (e-Commerce Directive), notably by replacing the « notice and take down » mechanisms by « notice and action » mechanisms. Such a regime, as well as the principle of « no general obligation on the providers to monitor », has been the basis of Directive (EU) 2018/1808 (AVMSD) in regulating Video Sharing Platforms (VSPs).

However, this all-encompassing approach could bring about unintended consequences and interfere with sector-specific legislation. In the media and audiovisual sectors, this leads to overlaps with legislation at national and Union level as well as to legal uncertainties and discrepancies, whilst at the same time restricting Member States when taking regulatory measures to address cultural issues in relation to intermediary online service providers.

Overall, the Rapporteur welcomes the proposal. However, whilst supporting its main objectives, the Rapporteur would like to stress that the Regulation should enable users to continue accessing content that reflects media pluralism, cultural and linguistic diversity, as well as reliable news and information, with due respect to fundamental freedoms such as the freedom of expression.

In this context, the Rapporteur suggests a series of amendments in order to clarify the proposed provisions and improve the objectives they aim to achieve.

More specifically, the main points of the draft opinion are to:

(i) Ensure legal consistency with the AVMSD:

As the Regulation amends certain provisions of the e-Commerce Directive and proposes a series of articles (from Article 14 of the proposal) that overlap or partially cover Article 28b of the AVMSD, it is crucial to ensure that such a revision does not affect the regulation of VSPs as laid down in the revised AVMSD. The Rapporteur therefore considers it crucial that the Directive remains the key legal instrument for harmonising standards for audiovisual content online at Union level, by clarifying that the Regulation does not affect existing or future sectorial measures nor those that aim to promote cultural diversity, media freedom and pluralism.

(ii) Harmonise the existing rules on the removal of illegal content:

The Rapporteur welcomes the fact that the general principles of the liability regime set up in the e-Commerce Directive have been maintained and supports the proposed ‘notice-and-action’ mechanisms as a fundamental requirement for all platforms providing services in the Digital Single Market.

In that regard, clear definitions and effective procedures are of utmost important. Moreover, in cases of illegal content, such as incitement to terrorism, hate speech, or child sexual abuse material as well as infringements of intellectual property rights, it is crucial to ensure that service providers take quick and effective measures within a short period of time, not only to remove illegal content from their services but also that such content remains inaccessible after being removed.

(iii) Editorial responsibility:

Media service providers are strictly regulated at both Union and national level, guided by professional editorial standards no matter how their content and services are consumed. It is thus essential to protect editorial independence in the media sector. In that context, the Rapporteur considers that commercial online platforms should not be allowed to exercise a supervisory function over legally distributed online content originating from service providers who exercise editorial responsibility and consistently adhere to Union and national law as well as journalistic and editorial principles. Media service providers should also remain solely responsible for the content and services they produce, as platforms cannot be held either responsible or liable for the content offered by media service providers on their platforms.

(iv) Enhance transparency

The Rapporteur considers that the Regulation should set high transparency standards on all online platforms regarding algorithmic decision-making processes and content recommendations. It is essential that users better understand how platforms’ recommender systems affect the visibility, accessibility and availability of content and services online, as algorithm-based content recommendations may have a serious impact on cultural diversity.

AMENDMENTS

The Committee on Culture and Education calls on the Committee on the Internal Market and Consumer Protection, as the committee responsible, to take into account the following amendments:

Amendment 1

Proposal for a regulation

Recital 9

Text proposed by the Commission

(9) This Regulation should **complement, yet** not affect the application of rules resulting from other acts of Union

Amendment

(9) This Regulation should not affect the application of rules resulting from other acts of Union law regulating certain

law regulating certain aspects of the provision of intermediary services, in particular Directive 2000/31/EC, with the exception of those changes introduced by this Regulation, Directive 2010/13/EU of the European Parliament and of the Council as amended,²⁸ and Regulation (EU) .../.. of the European Parliament and of the Council²⁹ – proposed Terrorist Content Online Regulation. Therefore, this Regulation leaves those other acts, which are to be considered *lex specialis* in relation to the generally applicable framework set out in this Regulation, unaffected. However, the rules of this Regulation apply in respect of issues that are not or not fully addressed by those other acts as well as *issues on which* those *other* acts leave Member States the possibility of adopting certain measures at national level.

aspects of the provision of intermediary services, in particular Directive 2000/31/EC, with the exception of those changes introduced by this Regulation, Directive 2010/13/EU of the European Parliament and of the Council as amended,²⁸ and Regulation (EU) .../.. of the European Parliament and of the Council²⁹ – proposed Terrorist Content Online Regulation. Therefore, this Regulation leaves those other acts, which are to be considered *lex specialis* in relation to the generally applicable framework set out in this Regulation, unaffected. However, the rules of this Regulation apply in respect of issues that are not or not fully addressed by those other acts *while fully respecting the Member States' competences to adopt and further develop laws, regulations and other measures in order to secure and promote the freedom of expression and information in the media, the freedom and the pluralism of the media as well as cultural and linguistic diversity. Where* those acts leave Member States the possibility of adopting certain measures at national level, *this possibility should remain unaffected by this Regulation, in particular their right to adopt stricter measures. In particular, in the event of a conflict with Directive 2010/13/EU as amended and this Regulation, the provisions of the Directive and their implementation by the Member States, given that, in their entirety, they aim at securing and fostering the fulfilment of various objectives underpinning the audiovisual policies of the Union and its Member States should prevail.*

²⁸ Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media

²⁸ Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media

Services Directive) (Text with EEA relevance), OJ L 95, 15.4.2010, p. 1 .

²⁹ Regulation (EU) .../.. of the European Parliament and of the Council – proposed Terrorist Content Online Regulation

Services Directive) (Text with EEA relevance), OJ L 95, 15.4.2010, p. 1 .

²⁹ Regulation (EU) .../.. of the European Parliament and of the Council – proposed Terrorist Content Online Regulation

Or. en

Amendment 2

Proposal for a regulation Recital 11

Text proposed by the Commission

(11) It should be clarified that this Regulation is without prejudice to the rules of Union law on copyright and related rights, which establish specific rules and procedures that should remain unaffected.

Amendment

(11) It should be clarified that this Regulation is without prejudice to the rules of Union law on copyright and related rights ***as implemented in national laws to ensure the highest level of protection of these rights***, which establish specific rules and procedures that should remain unaffected. ***No provision in this Regulation should lead to less favourable solutions to fight against infringement of online copyright and related rights that the one prevailing before its entry into force or after in the Union's and its Member States' positive law relating to the protection of literary and artistic property.***

Or. en

Amendment 3

Proposal for a regulation Recital 12

Text proposed by the Commission

(12) In order to achieve the objective of ensuring a safe, predictable and trusted online environment, for the purpose of this Regulation the concept of “illegal content”

Amendment

(12) ***Currently, the definitions of illegal content varies based on national law, and ambiguous definitions of this term in the Regulation would create an unpredictable***

should be defined broadly *and also covers* information relating to illegal content, products, services and activities. In particular, that concept should be understood to refer to information, irrespective of its form, that under the applicable law is either itself illegal, such as illegal hate speech or terrorist content and unlawful discriminatory content, or that relates to activities that are illegal, such as the sharing of images depicting child sexual abuse, unlawful non-consensual sharing of private images, online stalking, the sale of non-compliant or counterfeit products, the non-authorised use of copyright protected material or activities involving infringements of consumer protection law. In this regard, it is immaterial whether the illegality of the information or activity results from Union law or from national law that is consistent with Union law and what the precise nature or subject matter is of the law in question.

regulatory environment for all digital service providers in Europe. Without a clear definition, digital service providers and intermediaries will be held to opaque and unreasonable standards. Confusion about what constitutes illegal content could lead service providers and intermediaries to wrongfully restrict some types of content, which would harm fundamental rights such as the freedom of expression and opinion. It is therefore necessary to clearly define illegal content, as it will be subject to more stringent regulation than legal, but harmful content. In order to achieve *therefore* the objective of ensuring a safe, predictable and trusted online environment, for the purpose of this Regulation, the concept of “illegal content” should *underpin the general idea that what is illegal offline should also be illegal online. The concept should also* be defined broadly to cover information relating to illegal content, products, services and activities. In particular, that concept should be understood to refer to information, irrespective of its form, that under the applicable law is either itself illegal, such as illegal hate speech or terrorist content and unlawful discriminatory content, or that relates to activities that are illegal, such as the sharing of images depicting child sexual abuse, unlawful non-consensual sharing of private images, online stalking, the sale of non-compliant or counterfeit products, the non-authorised use of copyright protected material or activities involving infringements of consumer protection law. In this regard, it is immaterial whether the illegality of the information or activity results from Union law or from national law that is consistent with Union law and what the precise nature or subject matter is of the law in question.

Or. en

Amendment 4

Proposal for a regulation

Recital 13

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 5

Proposal for a regulation Recital 18

Text proposed by the Commission

(18) The exemptions from liability established in this Regulation should not apply where, instead of confining itself to providing the services neutrally, by a merely technical **and** automatic processing of the information provided by the recipient of the service, the provider of intermediary services plays an active role of such a kind as to give it knowledge of, or control over, that information. Those exemptions should accordingly not be available in respect of liability relating to information provided not by the recipient of the service but by the provider of intermediary service itself, including where the information has been developed under the editorial responsibility of that provider.

Amendment

(18) The exemptions from liability established in this Regulation should not apply where, instead of confining itself to providing the services neutrally, by a merely technical, automatic **and passive** processing of the information provided by the recipient of the service, the provider of intermediary services plays an active role of such a kind as to give it knowledge of, or control over, that information. Those exemptions should accordingly not be available in respect of liability relating to information provided not by the recipient of the service but by the provider of intermediary service itself, including **but not limited to, where the provider optimises or promotes the content or organises content or incites users to upload content, irrespective of whether the process is automated**, where the information has been developed under the editorial responsibility of that provider, **or where the provider optimises or promotes the content, beyond offering basic search and indexing functionalities that are absolutely necessary to navigate the content**.

Or. en

Justification

It is necessary to properly reflect the ECJ case-law, notably L'Oréal SA and Others v eBay International AG and Others (C-324/09) and Google France SARL and Google Inc. v Louis Vuitton Malletier SA (C-236/08), Google France SARL v Viaticum SA and Luteciel SARL (C-237/08) and Google France SARL v Centre national de recherche en relations humaines (CNRRH) SARL and Others (C-238/08). Focusing on editorial responsibility seems to narrow down how the concept of active/passive distinction is interpreted by the Court. The wording should remain futureproof and business model neutral.

Amendment 6

Proposal for a regulation Recital 18 a (new)

Text proposed by the Commission

Amendment

(18a) Directive 2000/31/EC states that the exemptions from liability cover only cases where the activity of the information society service provider is limited to the technical process of operating and giving access to a communication network over which information made available by third parties is transmitted or temporarily stored, for the sole purpose of making the transmission more efficient. This activity is of a mere technical, automatic and passive nature, which implies that the information society service provider has neither knowledge of, nor control over, the information which is transmitted or stored. This implies that all active services are excluded from the limited liability regime. In that context, those exemptions should also not be given to providers of hosting services, including both online platforms and very large online platforms that do not comply with the due diligence obligations of this Regulation.

Or. en

Amendment 7

Proposal for a regulation Recital 20

Text proposed by the Commission

Amendment

(20) A provider of intermediary services that ***deliberately collaborates*** with a recipient of the services in order to undertake illegal activities does not provide its service neutrally and should therefore

(20) A provider of intermediary services that ***engages*** with a recipient of the services in order to undertake illegal activities does not provide its service neutrally and should therefore not be able

not be able to benefit from the exemptions from liability provided for in this Regulation.

to benefit from the exemptions from liability provided for in this Regulation.

Or. en

Amendment 8

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, upon obtaining actual knowledge or awareness of illegal content, act expeditiously to remove or to disable access to that content ***and to all copies of that content, and ensure that it does not reappear, taking into account the potential harm the illegal content in question may create. In order to ensure harmonised implementation of illegal content removal throughout the Union, the provider should, within 24 hours, remove or disable access to all illegal content. In practice, the principle of 'notice and action' should be understood as 'notice and stay down'.*** The removal or disabling of access should be undertaken ***with due respect to fundamental freedoms, in particular the*** freedom of expression. The provider can obtain 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.

Or. en

Amendment 9

Proposal for a regulation Recital 23

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 10

Proposal for a regulation Recital 24

Text proposed by the Commission

(24) The exemptions from liability established in this Regulation should not

Amendment

(24) The exemptions from liability established in this Regulation should not

affect the possibility of injunctions of different kinds against providers of intermediary services, even where they meet the conditions set out as part of those exemptions. Such injunctions could, in particular, consist of orders by courts or administrative authorities requiring the termination or prevention of any infringement, including the removal of illegal content specified in such orders, issued in compliance with Union law, or the disabling of access to it.

affect the possibility of injunctions of different kinds against providers of intermediary services, even where they meet the conditions set out as part of those exemptions. Such injunctions could, in particular, consist of orders by courts or administrative authorities requiring the termination or prevention of any **present or future** infringement, including the removal of illegal content specified in such orders, issued in compliance with Union law, or the disabling of access to it.

Or. en

Amendment 11

Proposal for a regulation Recital 25

Text proposed by the Commission

(25) In order to create legal certainty and not to discourage activities **aimed at** detecting, identifying and acting against illegal content that providers of intermediary services may undertake on a voluntary basis, it should be clarified that the mere fact that providers undertake such activities does not lead to the unavailability of the exemptions from liability set out in this Regulation, provided those activities are carried out in good faith and in a diligent manner. In addition, it is appropriate to clarify that the mere fact that those providers take measures, in good faith, to comply with the requirements of Union law, including those set out in this Regulation as regards the implementation of their terms and conditions, should not lead to the unavailability of those exemptions from liability. Therefore, any such activities and measures that a given provider may have taken should not be taken into account when determining whether the provider can rely on an exemption from liability, in particular as

Amendment

(25) In order to create legal certainty and not to discourage activities **undertaken for the purpose of** detecting, identifying and acting against illegal content that providers of intermediary services may undertake on a voluntary basis, it should be clarified that the mere fact that providers undertake such activities does not lead to the unavailability of the exemptions from liability set out in this Regulation, provided those activities are carried out in good faith and in a diligent manner. In addition, it is appropriate to clarify that the mere fact that those providers take measures, in good faith, to comply with the requirements of Union law, including those set out in this Regulation as regards the implementation of their terms and conditions, should not lead to the unavailability of those exemptions from liability. Therefore, any such activities and measures that a given provider may have taken should not **be taken** into account when determining whether the provider can rely on an exemption from liability, in particular as

regards whether the provider provides its service neutrally and can therefore fall within the scope of the relevant provision, without this rule however implying that the provider can necessarily rely thereon.

regards whether the provider provides its service neutrally and can therefore fall within the scope of the relevant provision, without this rule however implying that the provider can necessarily rely thereon.

Or. en

Amendment 12

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 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

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

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.

Or. en

Justification

An essential feature of the intermediary liability regime set up by Directive 2000/31/EC is that right holders or other victims of illegal activities may seek injunctive relief against an intermediary service provider, which is often best-placed to terminate or prevent illegal activity on its service and the practical difficulties involved in pursuing the operators of services engaged in illegal activity, that often deliberately conceal their identities using the many tools – including intermediary services - available in the online environment.

Amendment 13

Proposal for a regulation

Recital 28

Text proposed by the Commission

(28) Providers of intermediary services should not be subject to a monitoring obligation with respect to obligations of a general nature. This does not concern monitoring obligations in a specific case and, in particular, does not affect orders by national authorities in accordance with national legislation, in accordance with the conditions established in this Regulation. Nothing in this Regulation should be construed as an imposition of a general monitoring obligation or active fact-finding obligation, or as a general obligation for providers to take proactive measures to relation to illegal content.

Amendment

(28) Providers of intermediary services should not be subject to a monitoring obligation with respect to obligations of a general nature. This does not concern monitoring obligations in a specific case and, in particular, does not affect orders by national authorities in accordance with national legislation, in accordance with the conditions established in this Regulation, ***concerning content which is identical to the content which was previously declared unlawful, or blocking access to that content, as well as to equivalent content which remains essentially unchanged compared with the content which gave rise to the finding of illegality.*** Nothing in this Regulation should be construed as an imposition of a general monitoring obligation or active fact-finding obligation, or as a general obligation for providers to take proactive measures to relation to illegal content.

Justification

*See Judgment of the Court (Third Chamber) of 3 October 2019 on the removal of comments by Facebook, which are proven to be identical to defamatory comments found to be illegal in *Eva Glawischnig-Piesczek v Facebook Ireland Limited (C-18/18)*. In its judgment, the Court states that EU law does not preclude a host provider from being ordered to remove identical and, in certain circumstances, equivalent comments previously declared to be illegal.*

Amendment 14

Proposal for a regulation

Recital 29

Text proposed by the Commission

(29) Depending on the legal system of each Member State and the field of law at issue, national judicial or administrative authorities may order providers of intermediary services to act against certain specific items of illegal content or to provide certain specific items of information. The national laws on the basis of which such orders are issued differ considerably and the orders are increasingly addressed in cross-border situations. In order to ensure that those orders can be complied with in an effective and efficient manner, so that the public authorities concerned can carry out their tasks and the providers are not subject to any disproportionate burdens, without unduly affecting the rights and legitimate interests of any third parties, it is necessary to set certain conditions that those orders should meet and certain complementary requirements relating to the processing of those orders.

Amendment

(29) Depending on the legal system of each Member State and the field of law at issue, national judicial or administrative authorities may order providers of intermediary services to act against certain specific items of illegal content or to provide certain specific items of information ***on a cross-border basis***. The national laws on the basis of which such orders are issued differ considerably and the orders are increasingly addressed in cross-border situations. In order to ensure that those orders can be complied with in an effective and efficient manner, so that the public authorities concerned can carry out their tasks and the providers are not subject to any disproportionate burdens, without unduly affecting the rights and legitimate interests of any third parties, it is necessary to set certain conditions that those orders should meet and certain complementary requirements relating to the processing of those orders.

Amendment 15

Proposal for a regulation Recital 30

Text proposed by the Commission

(30) Orders to act against illegal content or to provide information should be issued in compliance with Union law, in particular Regulation (EU) 2016/679 and the **prohibition of general obligations to monitor information or to actively seek facts or circumstances indicating illegal activity laid down in this Regulation**. The conditions and requirements laid down in this Regulation which apply to orders to act against illegal content are without prejudice to other Union acts providing for similar systems for acting against specific types of illegal content, such as Regulation (EU) .../.... [proposed Regulation addressing the dissemination of terrorist content online], or Regulation (EU) 2017/2394 that confers specific powers to order the provision of information on Member State consumer law enforcement authorities, whilst the conditions and requirements that apply to orders to provide information are without prejudice to other Union acts providing for similar relevant rules for specific sectors. Those conditions and requirements should be without prejudice to retention and preservation rules under applicable national law, in conformity with Union law and confidentiality requests by law enforcement authorities related to the non-disclosure of information.

Amendment

(30) Orders to act against illegal content or to provide information should be issued in compliance with Union law, in particular Regulation (EU) 2016/679 and the **principle of no general monitoring obligation**. The conditions and requirements laid down in this Regulation which apply to **cross-border** orders to act against illegal content are without prejudice to other Union acts providing for similar systems for acting against specific types of illegal content, such as Regulation (EU) .../.... [proposed Regulation addressing the dissemination of terrorist content online], or Regulation (EU) 2017/2394 that confers specific powers to order the provision of information on Member State consumer law enforcement authorities, whilst the conditions and requirements that apply to orders to provide information are without prejudice to other Union acts providing for similar relevant rules for specific sectors. Those conditions and requirements should be without prejudice to retention and preservation rules under applicable national law, **in conformity** with Union law and confidentiality requests by law enforcement authorities related to the non-disclosure of information.

Or. en

Amendment 16

Proposal for a regulation Recital 31

Text proposed by the Commission

(31) The territorial scope of such orders to act against illegal content should be clearly set out on the basis of the applicable Union or national law enabling the issuance of the order and should not exceed what is strictly necessary to achieve its objectives. In that regard, the national judicial or administrative authority issuing the order should balance the objective that the order seeks to achieve, in accordance with the legal basis enabling its issuance, with the rights and legitimate interests of all third parties that may be affected by the order, in particular their fundamental rights under the Charter. In addition, where the order referring to the specific information may have effects beyond the territory of the Member State of the authority concerned, the authority should assess whether the information at issue is likely to constitute illegal content in other Member States concerned and, where relevant, take account of the relevant rules of Union law or international law and the interests of international comity.

Amendment

(31) The territorial scope of such **cross-border** orders to act against illegal content should be clearly set out on the basis of the applicable Union or national law enabling the issuance of the order and should not exceed what is strictly necessary to achieve its objectives. In that regard, the national judicial or administrative authority issuing the order should balance the objective that the order seeks to achieve, in accordance with the legal basis enabling its issuance, with the rights and legitimate interests of all third parties that may be affected by the order, in particular their fundamental rights under the Charter. In addition, **because** where the order referring to the specific information may have effects beyond the territory of the Member State of the authority concerned, the authority should assess whether the information at issue is likely to constitute illegal content in other Member States concerned and, where relevant, take account of the relevant rules of Union law or international law and the interests of international comity.

Or. en

Amendment 17

Proposal for a regulation
Recital 32

Text proposed by the Commission

(32) The orders to provide information regulated by this Regulation concern the production of specific information about individual recipients of the intermediary service concerned who are identified in those orders for the purposes of determining compliance by the recipients of the services with applicable Union or national rules. Therefore, orders about

Amendment

(32) The orders to provide information **on a cross-border basis** regulated by this Regulation concern the production of specific information about individual recipients of the intermediary service concerned who are identified in those orders for the purposes of determining compliance by the recipients of the services with applicable Union or national

information on a group of recipients of the service who are not specifically identified, including orders to provide aggregate information required for statistical purposes or evidence-based policy-making, should remain unaffected by the rules of this Regulation on the provision of information.

rules. ***This information should include the relevant email addresses, telephone numbers, IP addresses and other contact details necessary to ensure such compliance.*** Therefore, orders about information on a group of recipients of the service who are not specifically identified, including orders to provide aggregate information required for statistical purposes or evidence-based policy-making, should remain unaffected by the rules of this Regulation on the provision of information. ***Taking into account the cross-border nature of unlawful activity online, it is also necessary that Member States introduce expedited procedures to enable the same category of intermediary services to be required to take the same measures in relation to the same illegal content or the infringing service, which has been the subject of an order in another Member State.***

Or. en

Amendment 18

Proposal for a regulation

Recital 33

Text proposed by the Commission

(33) Orders to act against illegal content and to provide information are subject to the rules safeguarding the competence of the Member State where the service provider addressed is established and laying down possible derogations from that competence in certain cases, set out in Article 3 of Directive 2000/31/EC, only if the conditions of that Article are met. Given that the orders in question relate to specific items of illegal content and information, respectively, where they are addressed to providers of intermediary services established in another Member State, they do not in principle restrict those

Amendment

(33) Orders to act against illegal content and to provide information ***on a cross-border basis*** are subject to the rules safeguarding the competence of the Member State where the service provider addressed is established and laying down possible derogations from that competence in certain cases, set out in Article 3 of Directive 2000/31/EC, only if the conditions of that Article are met. Given that the orders in question relate to specific items of illegal content and information, respectively, where they are addressed to providers of intermediary services established in another Member State, they

providers' freedom to provide their services across borders. Therefore, the rules set out in Article 3 of Directive 2000/31/EC, including those regarding the need to justify measures derogating from the competence of the Member State where the service provider is established on certain specified grounds and regarding the notification of such measures, do not apply in respect of those orders.

do not in principle restrict those providers' freedom to provide their services across borders. Therefore, the rules set out in Article 3 of Directive 2000/31/EC, including those regarding the need to justify measures derogating from the competence of the Member State where the service provider is established on certain specified grounds and regarding the notification of such measures, do not apply in respect of those orders.

Or. en

Amendment 19

Proposal for a regulation

Recital 38

Text proposed by the Commission

(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.

Amendment

(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. ***To this end, the terms and conditions of very large online platforms should not permit the uploading of content owned and editorially selected by a media service provider as defined in Article 1, paragraph 1 (a) in Directive 2010/13/EC which has been unduly obscured, obfuscated or otherwise disabled because of its alleged non-adherence to terms and conditions that go beyond the thresholds applied to legal and damaging requirements applicable in the relevant European and national regulations and jurisdictions.***

Or. en

Amendment 20

Proposal for a regulation Recital 38 a (new)

Text proposed by the Commission

Amendment

(38a) A presumption of legality should exist in relation to the content provided by media service providers who carry out their activities in respect of European values and fundamental rights. Given the structural differences in media markets, it should be up to the Member States to identify relevant media service providers on the basis of certain cumulative criteria. Media service providers should bear the editorial responsibility for the content they make available. They should also be subject to media specific regulation, including self-regulatory standards. In addition, compliance by media service providers with these rules and regulations should be overseen by independent regulatory authorities or bodies and finally, media service providers should have put in place complaints handling mechanisms to resolve content-related disputes. In any case, any provider of an audiovisual media service within the meaning of Article 1, paragraph 1a of Directive 2000/31/EC should be considered as a media service provider for the purposes of this Regulation.

Or. en

Justification

Safeguarding editorial freedom and media independence is key to safeguard public trust. Allowing online platforms to ban and remove content solely because it clashes with their unilaterally imposed community standards is a serious threat for editorial freedom and media pluralism. Unlike media service providers, online platforms do not bear editorial responsibility for the content they make available. Yet, they perform actions on content that are editorial-like. The DSA must prevent platforms from playing the role of editors, a role that they are, in no way, apt to fulfil.

Amendment 21

Proposal for a regulation Recital 38 b (new)

Text proposed by the Commission

Amendment

(38b) Providers of hosting services play a particularly important role in tackling illegal content online, as they store information provided by and at the request of the recipients of the service and typically give other recipients access thereto, sometimes on a large scale. It is important that all providers of hosting services, regardless of their size, put in place user-friendly notice and action mechanisms that facilitate the notification of specific items of information that the notifying party considers to be illegal content to the provider of hosting services concerned ('notice'), pursuant to which that provider can decide whether or not it agrees with that assessment and wishes to remove or disable access to that content ('action'). Provided the requirements on notices are met, it should be possible for individuals or entities to notify multiple specific items of allegedly illegal content through a single notice in order to ensure effective of operation of notice and action mechanisms. The obligation to put in place notice and action mechanisms should apply, for instance, to file storage and sharing services, web hosting services, advertising servers and paste bins, in as far as they qualify as providers of hosting services covered by this Regulation.

Or. en

Justification

Online platforms should be exempt from liability for content which has been provided by media service providers who bear editorial responsibility and exercise editorial control over such content. Media service providers should be identified at national level, by the competent

regulatory authorities and bodies, which have a role in overseeing media service providers. The Commission should subsequently publish the information provided by such authorities and make it publicly available.

Amendment 22

Proposal for a regulation

Recital 40

Text proposed by the Commission

(40) Providers of hosting services play a particularly important role in tackling illegal content online, as they store information provided by and at the request of the recipients of the service and typically give other recipients access thereto, sometimes on a large scale. It is important that all providers of hosting services, regardless of their size, put in place user-friendly notice and action mechanisms that facilitate the notification of specific items of information that the notifying party considers to be illegal content to the provider of hosting services concerned ('notice'), pursuant to which that provider can decide whether or not it agrees with that assessment and wishes to remove or disable access to that content ('action'). Provided the requirements on notices are met, it should be possible for individuals or entities to notify multiple specific items of allegedly illegal content through a single notice. The obligation to put in place notice and action mechanisms should apply, for instance, to file storage and sharing services, web hosting services, advertising servers and paste bins, in as far as they qualify as providers of hosting services covered by this Regulation.

Amendment

(40) Providers of hosting services play a particularly important role in tackling illegal content online, as they store information provided by and at the request of the recipients of the service and typically give other recipients access thereto, sometimes on a large scale. It is important that all providers of hosting services, regardless of their size, put in place user-friendly notice and action mechanisms that facilitate the notification of specific items of information that the notifying party considers to be illegal content to the provider of hosting services concerned ('notice'), pursuant to which that provider can decide whether or not it agrees with that assessment and wishes to remove or disable access to that content ('action'). Provided the requirements on notices are met, it should be possible for individuals or entities to notify multiple specific items of allegedly illegal content through a single notice ***in order to ensure the effective operation of notice and action mechanisms***. The obligation to put in place notice and action mechanisms should apply, for instance, to file storage and sharing services, web hosting services, advertising servers and paste bins, in as far as they qualify as providers of hosting services covered by this Regulation.

Or. en

Amendment 23

Proposal for a regulation Recital 42

Text proposed by the Commission

(42) Where a hosting service provider decides to remove or disable information provided by a recipient of the service, for instance following receipt of a notice or acting on its own initiative, including through the use of automated means, that provider should inform the recipient of its decision, the reasons for its decision and the available redress possibilities to contest the decision, in view of the negative consequences that such decisions may have for the recipient, including as regards the exercise of its fundamental right to freedom of expression. That obligation should apply irrespective of the reasons for the decision, in particular whether the action has been taken because the information notified is considered to be illegal content or incompatible with the applicable terms and conditions. Available recourses to challenge the decision of the hosting service provider should always include judicial redress.

Amendment

(42) Where a hosting service provider decides to remove or disable information provided by a recipient of the service, for instance following receipt of a notice or acting on its own initiative, including through the use of automated means, that ***provider should prevent the reappearance of the notified or equivalent illegal information. This should concern the content identical to the content previously notified as well as any similar content which remains essentially unchanged compared to the content which gave rise to the decision of removal or disabling access.*** The provider should inform the recipient of its decision, the reasons for its decision and the available redress possibilities to contest the decision, in view of the negative consequences that such decisions may have for the recipient, including as regards the exercise of its fundamental right to freedom of expression. That obligation should apply irrespective of the reasons for the decision, in particular whether the action has been taken because the information notified is considered to ***be illegal*** content or incompatible with the applicable terms and conditions. Available recourses to challenge the decision of the hosting service provider should always include judicial redress.

Or. en

Amendment 24

Proposal for a regulation Recital 46

(46) Action against illegal content can be taken more quickly and reliably where online platforms take the necessary measures to ensure that notices submitted by trusted flaggers through the notice and action mechanisms required by this Regulation are treated with priority, without prejudice to the requirement to process and decide upon all notices submitted under those mechanisms in a timely, diligent and objective manner. Such trusted flagger status should only be awarded to entities, **and not individuals**, that have demonstrated, among other things, that they have particular expertise and competence in tackling illegal content, **that they represent collective** interests and that they work in a diligent and objective manner. Such entities can be public in nature, such as, for terrorist content, internet referral units of national law enforcement authorities or of the European Union Agency for Law Enforcement Cooperation ('Europol') or they can be non-governmental organisations and semi-public bodies, such as the organisations part of the INHOPE network of hotlines for reporting child sexual abuse material and organisations committed to notifying illegal racist and xenophobic expressions online. For intellectual property rights, organisations of industry **and of right-holders** could be awarded trusted flagger status, where they have demonstrated that they meet the applicable conditions. The rules of this Regulation on trusted flaggers should not be understood to prevent online platforms from giving **similar** treatment to notices submitted by entities or individuals that have not been awarded trusted flagger status under this Regulation, from otherwise cooperating with other entities, in accordance with the applicable law, including this Regulation and Regulation (EU) 2016/794 of the European Parliament

(46) Action against illegal content can be taken more quickly and reliably where online platforms take the necessary measures to ensure that notices submitted by trusted flaggers through the notice and action mechanisms required by this Regulation are treated with priority, without prejudice to the requirement to process and decide upon all notices submitted under those mechanisms in a timely, diligent and objective manner. Such trusted flagger status should only be awarded to entities, that have demonstrated, among other things, that they have particular expertise and competence in tackling illegal content, **have significant legitimate interests and have demonstrated competence for the purposes of detecting, identifying and notifying illegal content**, and that they work in a diligent and objective manner. Such entities can be public in nature, such as, for terrorist content, internet referral units of national law enforcement authorities or of the European Union Agency for Law Enforcement Cooperation ('Europol') or they can be non-governmental organisations and semi-public bodies, such as the organisations part of the INHOPE network of hotlines for reporting child sexual abuse material and organisations committed to notifying illegal racist and xenophobic expressions online. For intellectual property rights, **right holders or** organisations of industry could be awarded trusted flagger status, where they have demonstrated that they meet the applicable conditions. The rules of this Regulation on trusted flaggers should not be understood to prevent online platforms from giving **identical** treatment to notices submitted by entities or individuals that have not been awarded trusted flagger status under this Regulation, from otherwise cooperating with other entities, in accordance with the applicable

and of the Council.⁴³

law, including this Regulation and Regulation (EU) 2016/794 of the European Parliament and of the Council.⁴³

⁴³ Regulation (EU) 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol) and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA, OJ L 135, 24.5.2016, p. 53

⁴³ Regulation (EU) 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol) and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA, OJ L 135, 24.5.2016, p. 53

Or. en

Amendment 25

Proposal for a regulation Recital 47

Text proposed by the Commission

(47) The misuse of services of online platforms by frequently providing **manifestly** illegal content or by frequently submitting manifestly unfounded notices or complaints under the mechanisms and systems, respectively, established under this Regulation undermines trust and harms the rights and legitimate interests of the parties concerned. Therefore, there is a need to put in place appropriate and proportionate safeguards against such misuse. Information should be considered to be manifestly illegal content and notices or complaints should be considered manifestly unfounded where it is evident to a layperson, without any substantive analysis, that the content is illegal respectively that the notices or complaints are unfounded. Under certain conditions, online platforms should temporarily suspend their relevant activities in respect of the person engaged in abusive behaviour. This is without prejudice to the

Amendment

(47) The misuse of services of online platforms by frequently providing **facilitating the dissemination of** illegal content or by frequently submitting manifestly unfounded notices or complaints under the mechanisms and systems, respectively, established under this Regulation undermines trust and harms the rights and legitimate interests of the parties concerned. Therefore, there is a need to put in place appropriate and proportionate safeguards against such misuse. Information should be considered to be manifestly illegal content and notices or complaints should be considered manifestly unfounded where it is evident to a layperson, without any substantive analysis, that the content is illegal respectively that the notices or complaints are unfounded. Under certain conditions, online platforms should temporarily suspend their relevant activities in respect of the person engaged in abusive

freedom by online platforms to determine their terms and conditions and establish stricter measures in the case of manifestly illegal content related to serious crimes. For reasons of transparency, this possibility should be set out, clearly and in sufficiently detail, in the terms and conditions of the online platforms. Redress should always be open to the decisions taken in this regard by online platforms and they should be subject to oversight by the competent Digital Services Coordinator. The rules of this Regulation on misuse should not prevent online platforms from taking other measures to address the provision of illegal content by recipients of their service or other misuse of their services, in accordance with the applicable Union and national law. Those rules are without prejudice to any possibility to hold the persons engaged in misuse liable, including for damages, provided for in Union or national law.

behaviour. This is without prejudice to the freedom by online platforms to determine their terms and conditions and establish stricter measures in the case of manifestly illegal content related to serious crimes. For reasons of transparency, this possibility should be set out, clearly and in sufficiently detail, in the terms and conditions of the online platforms. Redress should always be open to the decisions taken in this regard by online platforms and they should be subject to oversight by the competent Digital Services Coordinator. The rules of this Regulation on misuse should not prevent online platforms from taking other measures to address the provision of illegal content by recipients of their service or other misuse of their services, in accordance with the applicable Union and national law. Those rules are without prejudice to any possibility to hold the persons engaged in misuse liable, including for damages, provided for in Union or national law.

Or. en

Amendment 26

Proposal for a regulation Recital 48 a (new)

Text proposed by the Commission

Amendment

(48a) Online transparency requirements for commercial entities are vital for ensuring accountability, trust and access to effective redress. To this end, Article 5 of Directive 2000/31/EC establishes general information requirements for service providers to render to service recipients and competent authorities. In addition, Article 6 of Regulation (EU) 2016/67 allows for the processing and disclosure of all information on domain name holders from the WHOIS database for the performance of tasks carried out

in the public interest, and a number of Member States require their national country code top-level domain registries to make such information publicly accessible. However, the lack of effective enforcement of Article 5 and the often outdated and inaccurate information contained within the WHOIS database emphasise the need to put in place a clear obligation for providers of intermediary services to verify the identity of their business customers. The Know Your Business Customer provision should also prohibit providers of intermediary services from providing their services to unverified customers and oblige them to cease the provision of their services when the identification provided proves to be incomplete, inaccurate or fraudulent.

Or. en

Amendment 27

Proposal for a regulation

Recital 49

Text proposed by the Commission

(49) In order to contribute to a safe, trustworthy and transparent online environment for consumers, as well as for other interested parties such as competing traders and holders of intellectual property rights, and to deter **traders from** selling products **or** services in violation of the applicable rules, online **platforms allowing consumers to conclude distance contracts with traders** should ensure that **such traders** are traceable. The **trader** should therefore be required to provide certain essential information to the online platform, including for purposes of promoting messages on or offering products. That requirement should also be applicable to **traders** that promote messages on products or services on behalf

Amendment

(49) In order to contribute to a safe, trustworthy and transparent online environment for consumers **and other users**, as well as for other interested parties such as competing traders and holders of intellectual property rights, and to deter **the** selling **and dissemination of** products **and** services in violation of the applicable rules **all providers of intermediary services, including hosting providers, domain name registrars, providers of content delivery networks, proxy and reverse proxy providers, online marketplaces, online payment service providers and online advertising service providers** should ensure that **their business customers** are traceable. The **business customer** should therefore be required to provide certain

of brands, based on underlying agreements. **Those online platforms** should store all information in a secure manner for a reasonable period of time that does not exceed what is necessary, so that it can be accessed, in accordance with the applicable law, including on the protection of personal data, by public authorities and private parties with a legitimate interest, including through the orders to provide information referred to in this Regulation.

essential information to the online platform, including for purposes of promoting messages on or offering products. That requirement should also be applicable to **business customers** that promote messages on products or services on behalf of brands, based on underlying agreements. **Providers of intermediary services** should store all information in a secure manner for a reasonable period of time that does not exceed what is necessary, so that it can be accessed **and verified**, in accordance with the applicable law, including on the protection of personal data, by **the providers of intermediary services**, public authorities and private parties with a legitimate interest, including through the orders to provide information referred to in this Regulation.

Or. en

Amendment 28

Proposal for a regulation Recital 50

Text proposed by the Commission

(50) To ensure an efficient and adequate application of that obligation, without imposing any disproportionate burdens, the **online platforms** covered should make reasonable efforts to verify the reliability of the information provided by **the traders** concerned, in particular by using freely available official online databases and online interfaces, such as national trade registers and the VAT Information Exchange System⁴⁵, or by requesting **the traders** 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

Amendment

(50) To ensure an efficient and adequate application of that obligation, without imposing any disproportionate burdens, the **providers of intermediary services** covered should make reasonable efforts to verify the reliability of the information provided by **their business customers** concerned, in particular by using freely available official online databases and online interfaces, such as national trade registers and the VAT Information Exchange System, or by requesting **their business customers** 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

reliability for the purpose of complying with this obligation. However, the **online platforms** covered should not be required to engage in excessive or costly online fact-finding exercises or to carry out verifications on the spot. Nor should such **online platforms**, which have made the reasonable efforts required by this Regulation, be understood as guaranteeing the reliability of the information towards consumer or other interested parties. Such **online platforms** should also design and organise their online interface in a way that enables **traders** to comply with their obligations under Union law, in particular the requirements set out in Articles 6 and 8 of Directive 2011/83/EU of the European Parliament and of the Council⁴⁶, Article 7 of Directive 2005/29/EC of the European Parliament and of the Council⁴⁷ and Article 3 of Directive 98/6/EC of the European Parliament and of the Council⁴⁸.

45

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

⁴⁶ Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council

⁴⁷ Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC,

distance, which offer a similar degree of reliability for the purpose of complying with this obligation. However, the **providers of intermediary services** covered should not be required to engage in excessive or costly online fact-finding exercises or to carry out verifications on the spot. Nor should such **providers of intermediary services**, which have made the reasonable efforts required by this Regulation, be understood as guaranteeing the reliability **and accuracy** of the information towards consumer or other interested parties. Such **providers of intermediary services** should **update the information they hold on a risk-sensitive basis, and at least once a year and** also design and organise their online interface in a way that enables **their business customers** to comply with their obligations under Union law, in particular the requirements set out in Articles 6 and 8 of Directive 2011/83/EU of the European Parliament and of the Council⁴⁶, Article 7 of Directive 2005/29/EC of the European Parliament and of the Council⁴⁷ and Article 3 of Directive 98/6/EC of the European Parliament and of the Council⁴⁸.

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

⁴⁶ Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council

⁴⁷ Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC,

98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive')

⁴⁸ Directive 98/6/EC of the European Parliament and of the Council of 16 February 1998 on consumer protection in the indication of the prices of products offered to consumers

98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive')

⁴⁸ Directive 98/6/EC of the European Parliament and of the Council of 16 February 1998 on consumer protection in the indication of the prices of products offered to consumers

Or. en

Amendment 29

Proposal for a regulation

Recital 51

Text proposed by the Commission

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

Amendment

(51) *Very large online platforms are used in a way that strongly influences online safety, the shaping of public opinion and discourse, as well as on online trade. The way they design their services is generally optimised to their own benefit with their advertising-driven business models, which can cause societal concerns. In the absence of effective regulation and enforcement, they can set up the rules of the game, without effectively identifying and mitigating the risks and the societal and economic harm they can cause. Under this Regulation, very large online platforms should therefore assess the risks stemming from the functioning and use of their service, as well as by potential misuses by the recipients of the service, and take appropriate mitigating measures.*

Or. en

Amendment 30

Proposal for a regulation Recital 52 a (new)

Text proposed by the Commission

Amendment

(52a) Advertising provides great benefits by funding, in whole or in part, news and entertainment services, ensuring that European citizens can enjoy them for free or at a reduced rate. Without effective advertising, funding for all sorts of media would be greatly reduced. This would lead to more expensive TV-subscriptions, reduced newspapers and magazines' plurality and independence, and radio stations would lack the ability to provide news and entertainment throughout the day to the detriment of media pluralism and cultural diversity. Targeted advertising is a key source of growth for audiovisual media service providers, press publishers and radio stations. The use of data, in full compliance with the obligations set out in the Regulation(EU) 2016/679 and Directive 2002/58/EC, is an essential way to improve the effectiveness of advertising. It is therefore essential for this regulation to focus on delivering more advertising transparency while not negatively affecting the effectiveness of advertising for news and entertainment services.

Or. en

Amendment 31

Proposal for a regulation Recital 57

Text proposed by the Commission

Amendment

(57) Three categories of **systemic** risks should be assessed in-depth. A first category concerns the risks associated with

(57) Three categories of risks should be assessed in-depth. A first category concerns the risks associated with the

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

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

Additionally, given their significant and increasing impact on the shaping of opinion in Europe and on media plurality, very large online platforms should not take any editorial decision, notably by removing, suspending, disabling access to or interfering in general with pre-vetted content legally made available from the account of a media service provider as defined in Article 1, paragraph 1 (a) of Directive 2010/13/EC in order to preserve and uphold media and editorial freedom. The obligation of not interfering with curated content originating from a media service provider should have no effect on the measures very large online platforms take to disable the dissemination of illegally uploaded content.

Or. en

Amendment 32

Proposal for a regulation

Recital 57

Text proposed by the Commission

(57) Three categories of **systemic** risks should be assessed in-depth. A first category concerns the risks associated with the misuse of their service through the dissemination of illegal content, such as the dissemination of child sexual abuse material or illegal hate speech, and the conduct of illegal activities, such as the sale of products or services prohibited by Union or national law, including counterfeit products. For example, and without prejudice to the personal responsibility of the recipient of the service of very large online platforms for possible illegality of his or her activity under the applicable law, such dissemination or activities may constitute a significant systematic risk where access to such content may be amplified through accounts

Amendment

(57) Three categories of risks should be assessed in-depth. A first category concerns the risks associated with the misuse of their service through the dissemination of illegal content, such as the dissemination of child sexual abuse material or illegal hate speech, and the conduct of illegal activities, such as the sale of products, or services prohibited by Union or national law, including counterfeit products **or the illegal display of copyright protected content**. For example, and without prejudice to the personal responsibility of the recipient of the service of very large online platforms for possible illegality of his or her activity under the applicable law, such dissemination or activities may constitute a significant systematic risk where access to

with a particularly wide reach. A second category concerns the impact of the service on the exercise of fundamental rights, as protected by the Charter of Fundamental Rights, including the freedom of expression and information, the right to private life, the right to non-discrimination and the rights of the child. Such risks may arise, for example, in relation to the design of the algorithmic systems used by the very large online platform or the misuse of their service through the submission of abusive notices or other methods for silencing speech or hampering competition. A third category of risks concerns the intentional and, oftentimes, coordinated manipulation of the platform's service, with a foreseeable impact on health, civic discourse, electoral processes, public security and protection of minors, having regard to the need to safeguard public order, protect privacy and fight fraudulent and deceptive commercial practices. Such risks may arise, for example, through the creation of fake accounts, the use of bots, and other automated or partially automated behaviours, which may lead to the rapid and widespread dissemination of information that is illegal content or incompatible with an online platform's terms and conditions.

such content may be amplified through accounts with a particularly wide reach. A second category concerns the impact of the service on the exercise of fundamental rights, as protected by the Charter of Fundamental Rights, including the freedom of expression and information, the right to private life, the right to non-discrimination and the rights of the child. Such risks may arise, for example, in relation to the design of the algorithmic systems used by the very large online platform or the misuse of their service through the submission of abusive notices or other methods for silencing speech or hampering competition. A third category of risks concerns the intentional and, oftentimes, coordinated manipulation of the platform's service, with a foreseeable impact on health, civic discourse, electoral processes, public security and protection of minors, having regard to the need to safeguard public order, protect privacy and fight fraudulent and deceptive commercial practices. Such risks may arise, for example, through the creation of fake accounts, the use of bots, and other automated or partially automated behaviours, which may lead to the rapid and widespread dissemination of information that is illegal content or incompatible with an online platform's terms and conditions.

Or. en

Amendment 33

Proposal for a regulation

Recital 58

Text proposed by the Commission

(58) Very large online platforms should deploy the necessary means to diligently mitigate the **systemic** risks identified in the risk assessment. Very large online platforms should under such mitigating

Amendment

(58) Very large online platforms should deploy the necessary means to diligently mitigate the risks identified in the risk assessment. Very large online platforms **should** under such mitigating measures

measures *consider, for example, enhancing* or otherwise *adapting* the design and functioning of their content moderation, algorithmic recommender systems and online interfaces, so that they *discourage and* limit the dissemination of illegal content, adapting their decision-making processes, or adapting their terms and conditions. They may also include corrective measures, such as discontinuing advertising revenue for specific content, or other actions, such as improving the visibility of authoritative information sources. Very large online platforms may reinforce their internal processes or supervision of any of their activities, in particular as regards the detection of systemic risks. They *may* also initiate or increase cooperation with trusted flaggers, organise training sessions and exchanges with trusted flagger organisations, and cooperate with other service providers, including by initiating or joining existing codes of conduct or other self-regulatory measures. Any measures adopted should respect the due diligence requirements of this Regulation and be effective and appropriate for mitigating the specific risks identified, in the interest of safeguarding public order, protecting privacy and fighting fraudulent and deceptive commercial practices, and should be proportionate in light of the very large online platform's economic capacity and the need to avoid unnecessary restrictions on the use of their service, taking due account of potential negative effects on the fundamental rights of the recipients of the service.

enhance or otherwise *adapt* the design and functioning of their content moderation, algorithmic recommender systems and online interfaces, so that they limit the dissemination of illegal content, *for instance by building in systems to amplify or demote content identified as harmful, introducing artificial delays to limit virality*, adapting their decision-making processes, or adapting their terms and conditions. They may also include corrective measures, such as discontinuing advertising revenue for specific content, or other actions, such as improving the visibility of authoritative information sources *such as content under a media provider's editorial control and subject to specific standards, media regulation and independent oversight*. Very large online platforms may reinforce their internal processes or supervision of any of their activities, in particular as regards the detection of systemic risks. They *should* also initiate or increase cooperation with trusted flaggers, organise training sessions and exchanges with trusted flagger organisations, and cooperate with other service providers, including by initiating or joining existing codes of conduct or other self-regulatory measures. Any measures adopted should respect the due diligence requirements of this Regulation and be effective and appropriate for mitigating the specific risks identified, in the interest of safeguarding public order, protecting privacy and fighting fraudulent and deceptive commercial practices, and should be proportionate in light of the very large online platform's economic capacity and the need to avoid unnecessary restrictions on the use of their service, taking due account of *potential negative* effects on the fundamental rights of the recipients of the service.

Or. en

Amendment 34

Proposal for a regulation

Recital 62

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 35

Proposal for a regulation

Recital 63

Text proposed by the Commission

(63) Advertising systems used by **very large** online platforms pose particular risks and require further public and regulatory supervision on account of their scale and ability to target and reach recipients of the service based on their behaviour within and outside that platform's online interface. **Very large** online platforms should ensure public access to repositories of advertisements displayed on their online interfaces to facilitate supervision and research into emerging risks brought about by the distribution of advertising online, for example in relation to illegal advertisements or manipulative techniques and disinformation with a real and foreseeable negative impact on public health, public security, civil discourse, political participation and equality. Repositories should include the content of advertisements and related data on the advertiser and the delivery of the advertisement, in particular where targeted advertising is concerned.

Amendment

(63) Advertising systems used by online platforms pose particular risks and require further public and regulatory supervision on account of their scale and ability to target and reach recipients of the service based on their behaviour within and outside that platform's online interface. Online platforms should ensure public access to repositories of advertisements displayed on their online interfaces to facilitate supervision and research into emerging risks brought about by the distribution of advertising online, for example in relation to illegal advertisements or manipulative techniques and disinformation with a real and foreseeable negative impact on public health, public security, civil discourse, political participation and equality. Repositories should include the content of advertisements and related data on the advertiser and the delivery of the advertisement, in particular where targeted advertising is concerned.

Or. en

Amendment 36

Proposal for a regulation
Recital 64

Text proposed by the Commission

(64) In order to appropriately supervise the compliance of very large online platforms with the obligations laid down by this Regulation, the Digital Services Coordinator of establishment or the Commission may require access to or reporting of specific data. Such a requirement may include, for example, the data necessary to assess the risks and possible harms brought about by the

Amendment

(64) In order to appropriately supervise the compliance of very large online platforms with the obligations laid down by this Regulation, the Digital Services Coordinator of establishment or the Commission may require access to or reporting of specific data. Such a requirement may include, for example, the data necessary to assess the risks and possible harms brought about by the

platform's systems, data on the accuracy, functioning and testing of algorithmic systems for content moderation, recommender systems or advertising systems, or data on processes and outputs of content moderation or of internal complaint-handling systems within the meaning of this Regulation. ***Investigations by researchers on the evolution and severity of online systemic risks are particularly important for bridging information asymmetries and establishing a resilient system of risk mitigation, informing online platforms, Digital Services Coordinators, other competent authorities, the Commission and the public.*** This Regulation therefore provides a framework for compelling access to data from very large online platforms to vetted researchers. All requirements for access to data under ***that framework*** should be proportionate and appropriately protect the rights and legitimate interests, including trade secrets and other confidential information, of the platform and any other parties concerned, including the recipients of the service.

platform's systems, data on the accuracy, functioning and testing of algorithmic systems for content moderation, recommender systems or advertising systems, ***corresponding underlying source codes***, or data on processes and outputs of content moderation or of internal complaint-handling systems within the meaning of this Regulation. This Regulation therefore provides ***on the one hand a framework for compelling access to data from very large online platforms to the Digital Services Coordinator or the Commission, and on the other hand***, a framework for compelling access to data from very large online platforms to vetted researchers. All requirements for access to data under ***those frameworks*** should be proportionate and appropriately protect the rights and legitimate interests, including trade secrets and other confidential information, of the platform and any other parties concerned, including the recipients of the service.

Or. en

Amendment 37

Proposal for a regulation Recital 64 a (new)

Text proposed by the Commission

Amendment

(64a) Moderation and recommendation algorithms used by very large online platforms pose high risks and require closer and further regulatory supervision, because of the presence of algorithmic biases, which often leads to a massive dissemination of illegal content or threats to fundamental rights including freedom of expression. Taking into account the permanent evolution of these algorithms

and the immediate risks they could generate when deployed, very large online platforms should ensure full and real-time disclosure of moderation and recommendation algorithms to the Digital Services Coordinator or the Commission. This disclosure should include all the data regarding the creation and the setting of these algorithms, such as corresponding datasets. To facilitate the supervision of the Digital Services Coordinator or the Commission, this Regulation provides a framework of obligations for very large online platforms, including explainability of algorithms, accountability and close cooperation with the Digital Services Coordinator or the Commission. Should an algorithmic bias be detected, very large online platforms should correct it expeditiously, following requirements from the Digital Services Coordinator or the Commission.

Or. en

Amendment 38

Proposal for a regulation Recital 67

Text proposed by the Commission

(67) The Commission and the Board should *encourage* the drawing-up of codes of conduct to contribute to the application of this Regulation. *While* the implementation of codes of conduct should be measurable and subject to public oversight, *this should not impair the voluntary nature of such codes and the freedom of interested parties to decide whether to participate*. In certain circumstances, it is important that very large online platforms cooperate in the drawing-up and adhere to specific codes of conduct. Nothing in this Regulation prevents other service providers from

Amendment

(67) The Commission and the Board should *be empowered to request and coordinate* the drawing-up of codes of conduct to contribute to the application of this Regulation. The implementation of codes of conduct should be measurable and subject to public oversight. . In certain circumstances, it is important that very large online platforms cooperate in the drawing-up and adhere to specific codes of conduct. Nothing in this Regulation prevents other service providers from adhering to the same standards of due diligence, adopting best practices and benefitting from the guidance provided by

adhering to the same standards of due diligence, adopting best practices and benefitting from the guidance provided by the Commission and the Board, by participating in the same codes of conduct.

the Commission and the Board, by participating in the same codes of conduct.

Or. en

Amendment 39

Proposal for a regulation Recital 68

Text proposed by the Commission

(68) It is appropriate that this Regulation identify certain areas of consideration for such codes of conduct. In particular, risk mitigation measures concerning specific types of illegal content should be explored via self- and co-regulatory agreements. Another area for consideration is the possible negative impacts of *systemic* risks on society *and democracy, such as disinformation or manipulative and abusive activities. This includes* coordinated operations aimed at amplifying information, *including disinformation, such as* the use of bots *or* fake accounts for the creation of fake or misleading information, sometimes with a purpose of obtaining economic gain, which are particularly harmful for vulnerable recipients of the service, such as children. In relation to such areas, adherence to and compliance with a given code of conduct by a very large online platform may be considered as an appropriate risk mitigating measure. The refusal *without proper explanations* by an online platform of the Commission's invitation to participate in the application of such a code of conduct *could* be taken into account, *where relevant*, when determining whether the online platform has infringed the obligations laid down by this Regulation.

Amendment

(68) It is appropriate that this Regulation identify certain areas of consideration for such codes of conduct. In particular, risk mitigation measures concerning specific types of illegal content should be explored via self- and co-regulatory agreements. Another area for consideration is the possible negative impacts of risks on society *operations aimed at amplifying* coordinated operations aimed at amplifying information, *for instance through* the use of bots, fake accounts *and proxy services* for the creation *and spread* of fake or misleading information, sometimes with a purpose of obtaining economic gain, which are particularly harmful for vulnerable recipients of the service, such as children. In relation to such areas, adherence to and compliance with a given code of conduct by a very large online platform may be considered as an appropriate risk mitigating measure. The refusal by an online platform of the Commission's invitation to participate in the application of such a code of conduct *must* be taken into account, when determining whether the online platform has infringed the obligations laid down by this Regulation. *When codes of conducts are used as a risk mitigating measure, they should be made binding by the Digital Services*

Amendment 40

Proposal for a regulation

Recital 81

Text proposed by the Commission

(81) In order to ensure effective enforcement of this Regulation, individuals or representative organisations should be able to lodge any complaint related to compliance with this Regulation with the Digital Services Coordinator in the territory where they received the service, without prejudice to this Regulation's rules on jurisdiction. Complaints should provide a faithful overview of concerns related to a particular intermediary service provider's compliance and could also inform the Digital Services Coordinator of any more cross-cutting issues. The Digital Services Coordinator should involve other national competent authorities as well as the Digital Services Coordinator of another Member State, and in particular the one of the Member State where the provider of intermediary services concerned is established, if the issue requires cross-border cooperation.

Amendment

(81) In order to ensure effective enforcement of this Regulation, individuals or representative organisations **and parties with a legitimate interest** should be able to lodge any complaint related to compliance with this Regulation with the Digital Services Coordinator in the territory where they received the service, without prejudice to this Regulation's rules on jurisdiction. Complaints should provide a faithful overview of concerns related to a particular intermediary service provider's compliance and could also inform the Digital Services Coordinator of any more cross-cutting issues. The Digital Services Coordinator should involve other national competent authorities as well as the Digital Services Coordinator of another Member State, and in particular the one of the Member State where the provider of intermediary services concerned is established, if the issue requires cross-border cooperation.

Amendment 41

Proposal for a regulation

Recital 98 a (new)

Text proposed by the Commission

Amendment

(98a) In order to ensure the effective enforcement of this Regulation, the

Commission should intervene where a common pattern of non-compliance with orders issued by national judicial or administrative authorities is identified by at least three Digital Services Coordinators or by the Board vis-à-vis the same online platform, irrespective of its size. A common pattern of non-compliance may be established, among others, in light of a manifest disregard or unjustified delays in executing mandatory orders issued by national judicial or administrative authorities concerning illegal content or requests of information, in accordance with Articles 8 and 9 of this Regulation.

Or. en

Amendment 42

Proposal for a regulation

Article 1 – paragraph 5 – introductory part

Text proposed by the Commission

5. This Regulation *is without prejudice to* the rules laid down by the following:

Amendment

5. This Regulation *shall not affect* the rules laid down by the following:

Or. en

Amendment 43

Proposal for a regulation

Article 1 – paragraph 5 – point c

Text proposed by the Commission

(c) Union law on copyright and related rights;

Amendment

(c) Union law on copyright and related rights, *as implemented in national laws to ensure the highest level of protection of these rights;*

Or. en

Amendment 44

Proposal for a regulation Article 1 – paragraph 5 a (new)

Text proposed by the Commission

Amendment

5a. Member States may adopt legislation addressed to providers of intermediary service derogating from this Regulation if this is deemed necessary to ensure, protect and or promote cultural diversity and plurality of the media. Any such legislation adding obligation and or creating exemptions or derogations from this regulation shall be compatible with Union law.

Or. en

Justification

It important to clearly distinguish between illegal content and harmful, but legal, content for which additional obligations might be necessary as well as exceptions and derogations in view of media freedom. Member States regulations are set up within the framework of media pluralism. This ensures that only the gaps in this Regulation as described in this paragraph can be filled, without calling into question the harmonisation which it brings by.

Amendment 45

Proposal for a regulation Article 1 – paragraph 5 b (new)

Text proposed by the Commission

Amendment

5b. Any contractual provisions between an intermediary service provider and a trader, business user, or a recipient of its service which are contrary to this Regulation shall be unenforceable. This Regulation shall apply irrespective of the law applicable to contracts concluded between providers of intermediary services and a recipient of the service, a consumer, a trader or business user.

Amendment 46

Proposal for a regulation

Article 2 – paragraph 1 – point a a (new)

Text proposed by the Commission

Amendment

(aa) 'media service provider' means the natural or legal person who has editorial responsibility for the choice of the audiovisual content of the audiovisual media service and determines the manner in which it is organised;

Or. en

Amendment 47

Proposal for a regulation

Article 2 – paragraph 1 – point e a (new)

Text proposed by the Commission

Amendment

(ea) 'business customer' means:
-legal entities, except any entity which qualifies as a large undertaking as defined in Article 3(4) of Directive 2013/34 of the European Parliament and the Council;
-any natural person that purchases a type or amount of service indicative of, or otherwise indicates, the intent to operate a business online, or contracts for the purchase of more than €10.000 of services provided by the intermediary service provider in a one-year period;

Or. en

Amendment 48

Proposal for a regulation

Article 2 – paragraph 1 – point f – indent 3

Text proposed by the Commission

— a ‘hosting’ service that consists of the storage of information provided by, and at the request of, a recipient of the service;

Amendment

— -a ‘hosting’ service that consists of the **storage or the allowance of** storage of information provided by, and at the request of, a recipient of the service;

Or. en

Amendment 49

Proposal for a regulation

Article 2 – paragraph 1 – point g

Text proposed by the Commission

(g) ‘illegal content’ means any information,, which, in itself or by its reference to an activity, including the sale of products or provision of services is not in compliance with Union law or the law of a Member State, irrespective of the precise subject matter or nature of that law;

Amendment

(g) ‘illegal content’ means any **made available** information which, in itself or by its reference to an activity, including the sale of products or provision of services. is not in compliance with Union law or the law of a Member State, irrespective of the precise subject matter or nature of that law;

Or. en

Justification

It is necessary to clearly define illegal content, as it will be subject to more stringent regulation than legal but harmful content. Without a clear definition, digital service providers and intermediaries will be held to opaque and unreasonable standards. Confusion about what constitutes illegal content could lead service providers and intermediaries to wrongfully crack down on some types of content, which would harm fundamental rights such as freedom of expression and opinion.

Amendment 50

Proposal for a regulation

Article 5 – paragraph 1 – introductory part

Text proposed by the Commission

1. Where an information society service is provided that consists of the storage of information provided by a recipient of the service the service provider shall not be liable for the information stored at the request of a recipient of the service on condition that the provider:

Amendment

1. Where an information society service is provided that consists of the storage of information ***or the allowance of storage*** provided by a recipient of the service the service provider shall not be liable for the information stored at the request of a recipient of the service on condition that the provider:

Or. en

Amendment 51

**Proposal for a regulation
Article 5 – paragraph 1 – point b**

Text proposed by the Commission

(b) upon obtaining such knowledge or awareness, acts expeditiously to remove or to disable access to the illegal content.

Amendment

(b) upon obtaining such knowledge or awareness, acts expeditiously to remove or to disable access to the illegal content.
Where illegal content pertains to the broadcast of a live sports or entertainment event, acts immediately or as fast as possible, and in any event no later than within 30 minutes.

Or. en

Justification

Most of the economic value of a live sport broadcast or live entertainment event lies in the live dimension and most of that value is lost when the event ends. In order to make the current system work for live content, the notion of 'expeditious' has to be clarified. The EP Resolution of 19 May 2021 on challenges of sports events organisers in the digital environment asks for such clarification so that 'expeditiously' means immediately or as fast as possible and in any event no later than within 30 minutes of the receipt of the notification from right holders or from a certified trusted flagger.

Amendment 52

Proposal for a regulation

Article 5 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. Providers of hosting services including online platforms shall not be exempt from liability as referred to in Article 5, if they do not comply with the due diligence obligations set up in Chapter III.

Or. en

Amendment 53

Proposal for a regulation

Article 5 – paragraph 1 b (new)

Text proposed by the Commission

Amendment

1b. Without prejudice to specific deadlines set out in Union law or within administrative or legal orders, providers of hosting services shall, upon obtaining actual knowledge or awareness, remove or disable access to illegal content as soon as possible and in any event within 24 hours. Where the provider of hosting services cannot comply with this obligation on grounds of force majeure or for objectively justifiable technical or operational reasons, it shall, without undue delay, inform the competent authority having issued an order pursuant to Article 8 or the recipient of the service having submitted a notice pursuant to Article 14, of those grounds.

Or. en

Justification

The Regulation should establish a framework for notice and take down with a clearly defined procedure, safeguards and timeline for acting on notifications on illegal content and ensure

uniform procedures in all Member States. See Recital 22.

Amendment 54

Proposal for a regulation

Article 5 – paragraph 3

Text proposed by the Commission

3. Paragraph 1 shall not apply with respect to liability ***under consumer protection law of online platforms allowing consumers to conclude distance contracts with traders, where such an online platform presents the*** specific item of information or otherwise enables ***the*** specific transaction at issue in ***a way*** that would lead an average and reasonably well-informed ***consumer*** to believe that the information, or the product or service that is the object of the transaction, is provided either by the ***online platform*** itself or by a recipient of the service who is acting under its authority or control.

Amendment

3. Paragraph 1 shall not apply with respect to liability, ***where hosting services including*** online platforms ***present a*** specific item of information or otherwise enables ***a*** specific transaction at issue in ***away*** that would lead an average and reasonably well-informed ***recipient*** to believe that the information, or the product or service that is the object of the transaction, is provided either by the ***hosting service provider*** itself or by a recipient of the service who is acting under its authority or control. ***This is notably the case where online platforms present the information in a way that is not neutral as it specifically relates to the profile of one's recipient of the service in order to maximise profit and attention of the recipient of the service. Such practices are understood as online platforms organising or promoting the information, products or services in such a way that the platform decides, based on human intervention or algorithms, which and how information, products or services is accessed or found:***

(i) Paragraph 1 shall not apply for hosting services editorially controlled advertisement content as defined in Article 2(n).

(ii) Providers of intermediary services shall not be exempt from liability referred to in Articles 3, 4 and 5, when their main purpose is to engage in or facilitate illegal activities.

Or. en

Amendment 55

Proposal for a regulation Article 6 – paragraph 1

Text proposed by the Commission

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

Amendment

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

Or. en

Justification

It should be clarified that such activities should be undertaken only for those purposes. This is important to avoid activities that also or primarily have other purposes, such as harvesting data for targeted advertising, from automatically being disregarded from an assessment of whether the service provider has knowledge or is aware of illegal content available on its service.

Amendment 56

Proposal for a regulation Article 8 – paragraph 1

Text proposed by the Commission

1. Providers of intermediary services shall, upon the receipt of an order to act against *a specific item of* illegal content, issued by the relevant national judicial or administrative authorities, on the basis of the applicable Union or national law, in conformity with Union *law*, inform the authority issuing the order of the effect given to the orders, without undue delay,

Amendment

1. Providers of intermediary services shall, upon the receipt of an order to act against illegal content, issued by the relevant national judicial or administrative authorities, on the basis of the applicable Union or national law, in conformity with Union *and national law*, *take measures to comply with the order and* inform the authority issuing the order *of its receipt*

specifying the action taken and the moment when the action was taken.

and of the effect given to the orders, without undue delay, specifying the action taken and the moment when the action was taken. ***Under the condition that necessary safeguards are provided, such orders could, in particular, consist of catalogue-wide and dynamic injunctions by courts or administrative authorities requiring the termination or prevention of any infringement.***

Or. en

Justification

It should be clear that such an order can be granted not only against specific detected infringements but also against other instances of the same or similar content, and to require the intermediary to prevent future infringements or reappearances of the content. It also needs to be clarified that in case of non-compliance with the orders, legal consequences can be initiated by the competent authorities.

Amendment 57

Proposal for a regulation

Article 8 – paragraph 2 – point a – indent 2

Text proposed by the Commission

— ***one or more exact uniform resource locators and, where necessary,*** additional information enabling the identification of the illegal content concerned;

Amendment

— additional information enabling the identification of the illegal content concerned;

Or. en

Amendment 58

Proposal for a regulation

Article 8 – paragraph 2 – point c

Text proposed by the Commission

(c) the order ***is drafted in the language declared by the provider and*** is sent to the

Amendment

(c) the order is sent to the point of contact, appointed by the provider, in

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

accordance with Article 10.

Or. en

Amendment 59

Proposal for a regulation Article 9 – paragraph 1

Text proposed by the Commission

1. Providers of intermediary services shall, upon receipt of an order to provide ***a specific item of*** information about one or more specific individual recipients of the service, issued by the relevant national judicial or administrative authorities on the basis of the applicable Union or national law, in conformity with Union law, inform without undue delay the authority of issuing the order of its receipt and the effect given to the order.

Amendment

1. Providers of intermediary services shall, upon receipt of an order to provide information about one or more specific individual recipients of the service, issued by the relevant national judicial or administrative authorities on the basis of the applicable Union or national law, in conformity with Union law, inform without undue delay the authority of issuing the order of its receipt and the effect given to the order.

Or. en

Amendment 60

Proposal for a regulation Article 9 – paragraph 2 – point b

Text proposed by the Commission

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

Amendment

(b) the order only requires the provider to provide information ***enabling the identification of recipients of*** the service and which lies within its control;

Or. en

Amendment 61

Proposal for a regulation Article 9 – paragraph 2 – point c

Text proposed by the Commission

(c) the order ***is drafted in the language declared by the provider and*** is sent to the point of contact appointed by that provider, in accordance with Article 10;

Amendment

(c) the order is sent to the point of contact appointed by that provider, in accordance with Article 10;

Or. en

Amendment 62

Proposal for a regulation Article 11 – paragraph 1

Text proposed by the Commission

1. Providers of intermediary services which do not have an establishment in the Union but which offer services in the Union shall designate, in writing, a legal or natural person as their legal representative in one of the Member States where the provider offers its services.

Amendment

1. Providers of intermediary services which do not have an establishment in the Union but which offer services in the Union shall designate, in writing, a legal or natural person as their legal representative ***at least*** in one of the Member States where the provider offers its services. ***The right of Member States to require very large online platforms to designate a legal representative in their countries remain unaffected.***

Or. en

Amendment 63

Proposal for a regulation Article 12 – paragraph -1 (new)

Text proposed by the Commission

Amendment

-1. Providers of intermediary services shall ensure that their terms and conditions as well as other policies,

procedures, measures and tools used for the purpose of content moderation are applied and enforced in such a way as to prohibit any removal, suspension, disabling access to or otherwise interference with editorial content and services of a media service provider or its account. This Article shall not affect the possibility for an independent judicial or administrative authority of requiring the media service provider to terminate or prevent an infringement of applicable Union or national law.

Or. en

Amendment 64

Proposal for a regulation Article 12 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. Very large online platforms shall ensure that their terms and conditions as well as other policies, procedures, measures and tools used for the purpose of content moderation are applied and enforced in accordance with Article 26. paragraph 2.

Or. en

Amendment 65

Proposal for a regulation Article 12 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. The status of media service providers under this Regulation shall be awarded, upon application by any entities, by the competent sector-specific regulatory authorities and bodies at

national and Union level, in which the applicant is established, where the applicant has demonstrated to meet all of the following conditions:

(i) it has editorial responsibility over the content;

(ii) it is subject to

- specific regulation;

- independent oversight;

- complaints mechanisms.

Or. en

Amendment 66

Proposal for a regulation

Article 12 – paragraph 2 b (new)

Text proposed by the Commission

Amendment

2b. *The competent sector-specific regulatory authorities and bodies shall inform the national Digital Services Coordinator, who shall communicate to the Commission and the Board the names, addresses and electronic mail addresses of the entities to which they have awarded the status of media service provider in accordance with paragraph 2a.*

Or. en

Amendment 67

Proposal for a regulation

Article 12 – paragraph 2 c (new)

Text proposed by the Commission

Amendment

2c. *The Commission shall publish the information referred to in paragraph 2b in a publicly available database and keep the database updated.*

Amendment 68

Proposal for a regulation
Article 12 a (new)

Text proposed by the Commission

Amendment

Article 12a

Traceability of business customers

1. A provider of intermediary services shall ensure that business customers can only use its services to promote messages on or to offer products or services to consumers located in the Union if, prior to the use of its services, the provider of intermediary services has obtained the following information:

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

(b) a copy of the identification document of the business customer 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 customer, where the business customer is a natural person;

(d) the name, address, telephone number and electronic mail address of the economic operator, within the meaning of Article 3, paragraph 13 and Article 4 of Regulation (EU) 2019/1020 of the European Parliament and the Council or any relevant act of Union law;

(e) where the business customer is registered in a corporate or trade register or similar public register, the register in which the business customer is registered and its registration number or equivalent means of identification in that register;

(f) a self-certification by the business customer committing to only offer products or services that comply with the applicable rules of Union law.

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

3. The provider of intermediary services shall also verify that any person purporting to act on behalf of the business customer is so authorised and identify and verify the identity of that person.

4. Where the provider of intermediary services obtains indications, including through a notification by law enforcement agencies or other individuals with a legitimate interest, that any item of information referred to in paragraph 1 obtained from the business customer concerned is inaccurate, misleading, or incomplete, or otherwise invalid, that provider of an intermediary service shall request the business customer 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 customer fails to correct or complete that information, the provider of intermediary services shall suspend the provision of its service to the business customer until the request is complied with.

5. The provider of intermediary services shall store the information obtained pursuant to paragraph 1 and 2 in a secure manner for a period of five years following the termination of their

contractual relationship with the business customer concerned. They shall subsequently delete the information.

6. Providers of intermediary services shall apply the identification and verification measures not only to new business customers but they shall also update the information they hold on existing business customers on a risk-sensitive basis, and at least once a year, or when the relevant circumstances of a business customer change.

7. Without prejudice to paragraph 2, the provider of intermediary services shall disclose the information to third parties where so required in accordance with the applicable law, including the orders referred to in Article 9 and any orders issued by Member States' competent authorities or the Commission for the performance of their tasks under this Regulation, as well as pursuant to proceedings initiated under other relevant provisions of Union or national law.

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

9. The provider of intermediary services shall design and organise its online interface in a way that enables business customers to comply with their obligations regarding pre-contractual information and product safety information under applicable Union law.

10. The Digital Services Coordinator of establishment shall determine dissuasive financial penalties for non-compliance with any provision of this Article.

Or. en

Amendment 69

Proposal for a regulation Article 14 – paragraph 2 – point b

Text proposed by the Commission

(b) ***a clear indication of the electronic location of that information, in particular the exact URL or URLs, and, where necessary, additional information enabling the identification of the illegal content;***

Amendment

(b) ***sufficiently precise and adequately substantiated information to allow a diligent economic operator to reasonably identify the illegal content;***

Or. en

Justification

The requirements under the 'notice and action' mechanism should be practical and not overly burdensome. The information provided for a notice should be the information necessary for an online platform to act. In that respect, the requirement of an exact URL as clear indication of the electronic location of the content is too restrictive and does not take into account other means besides the “exact” URL to specifically address the recurrence of identical or equivalent content.

Amendment 70

Proposal for a regulation Article 14 – paragraph 6

Text proposed by the Commission

6. Providers of hosting services shall process any notices that they receive under the mechanisms referred to in paragraph 1, and take their decisions in respect of the information to which the notices relate, in a timely, diligent and objective manner. Where they use automated means for that processing or decision-making, they shall include information on such use in the notification referred to in paragraph 4.

Amendment

6. Providers of hosting services shall process any notices that they receive under the mechanisms referred to in paragraph 1, and take their decisions in respect of the information to which the notices relate, in a timely, diligent and objective manner ***and always in compliance with the obligation under Article 5(1)(b) to act expeditiously to remove or disable access to the illegal content. When a decision has been taken to remove or disable information, the providers of hosting services shall take all necessary measures to prevent the same or equivalent illegal material from***

reappearing on their service. Where they use automated means for that processing or decision-making, they shall include information on such use in the notification referred to in paragraph 4.

Or. en

Justification

The mere removal of specific infringing content is no longer sufficient to prevent the availability of illegal content. Upon obtaining knowledge of illegal content or activity or awareness of facts or circumstances from which the illegal activity or illegal content is apparent, hosting services providers must expeditiously remove or disable access to all instances of the same illegal content and ensure that such content stays down. This is necessary to strike the balance between the need to stop illegal activities online and the need of commercial certainty for intermediaries.

Amendment 71

Proposal for a regulation

Article 14 – paragraph 6 a (new)

Text proposed by the Commission

Amendment

6a. This Article does not apply to the editorial content and services provided by a media service provider identified in accordance with Article 12, paragraph 3.

Or. en

Amendment 72

Proposal for a regulation

Article 14 – paragraph 6 b (new)

Text proposed by the Commission

Amendment

6b. When the provider of hosting services decides to remove or disable information provided by the recipient of the service, the provider shall also prevent the reappearance of that information. This decision shall also extend to specific

information that are identical to the notified information or to equivalent information which remains essentially unchanged to the information previously notified and removed or to which access was disabled.

Or. en

Amendment 73

Proposal for a regulation Article 15 – paragraph 1

Text proposed by the Commission

1. Where a provider of hosting services decides to remove or disable access to specific items of information provided by the recipients of the service, irrespective of the means used for detecting, identifying or removing or disabling access to that information and of the reason for its decision, it shall inform the recipient, **at the latest at the time of** the removal or disabling of access, of the decision and provide a clear and specific statement of reasons for that decision.

Amendment

1. Where a provider of hosting services decides to remove or disable access to specific items of information provided by the recipients of the service, irrespective of the means used for detecting, identifying or removing or disabling access to that information and of the reason for its decision, it shall inform the recipient, **immediately after** the removal or disabling of access, of the decision and provide a clear and specific statement of reasons for that decision.

Or. en

Amendment 74

Proposal for a regulation Article 19 – paragraph 5

Text proposed by the Commission

5. Where an online platform has information indicating that a trusted flagger submitted a significant number of **insufficiently precise or inadequately substantiated** notices through the mechanisms referred to in Article 14, including information gathered in

Amendment

5. Where an **online platform** has information indicating that a trusted flagger submitted a significant number of **wrongful** notices through the mechanisms referred to in Article 14, including information gathered in connection to the processing of complaints through the

connection to the processing of complaints through the internal complaint-handling systems referred to in Article 17(3), it shall communicate that information to the Digital Services Coordinator that awarded the status of trusted flagger to the entity concerned, providing the necessary explanations and supporting documents.

internal complaint-handling systems referred to in Article 17(3), it shall communicate that information to the Digital Services Coordinator that awarded the status of trusted flagger to the entity concerned, providing the necessary explanations and supporting documents.

Or. en

Amendment 75

Proposal for a regulation Article 20 – paragraph 1

Text proposed by the Commission

1. Online platforms shall suspend, for a reasonable period of time and after having issued a prior warning, the provision of their services to recipients of the service that frequently provide **manifestly** illegal content.

Amendment

1. Online platforms shall suspend, for a reasonable period of time and after having issued a prior warning, the provision of their services to recipients of the service that frequently provide **or facilitate the dissemination of** illegal content. ***In cases of repeated suspension, providers of hosting services shall terminate the provision of their services and introduce mechanisms that prevent the re-registration of recipients of service that frequently provide or facilitate the dissemination of illegal content. They also shall terminate after having issued a prior warning, the processing of notices and complaints submitted through the notice and action mechanisms and internal complaints-handling systems referred to in Articles 14 and 17, respectively, by individuals or entities or by complainants that frequently submit notices or complaints that are manifestly unfounded.***

Or. en

Amendment 76

Proposal for a regulation Article 20 – paragraph 2

Text proposed by the Commission

Amendment

2. ***Online platforms shall suspend, for a reasonable period of time and after having issued a prior warning, the processing of notices and complaints submitted through the notice and action mechanisms and internal complaints-handling systems referred to in Articles 14 and 17, respectively, by individuals or entities or by complainants that frequently submit notices or complaints that are manifestly unfounded.*** ***deleted***

Or. en

Amendment 77

Proposal for a regulation Article 20 – paragraph 3 – point a

Text proposed by the Commission

Amendment

(a) the absolute numbers of items of ***manifestly*** illegal content or ***manifestly*** unfounded notices or complaints, submitted in the past year; (a) the absolute numbers of items of illegal content or unfounded notices or complaints, submitted in the past year;

Or. en

Justification

Enhanced transparency rules for recommender systems should not be limited to very large platforms. Recommender systems are commonly used by all types of platforms to classify, rank, prioritise available information, thus influencing the relative order and visibility of content. Given the critical impact online platforms have on the display of content and services and ultimately on user behaviour, it is essential that they adhere to basic transparency requirements.

Amendment 78

Proposal for a regulation

Article 23 – paragraph 1 – point b

Text proposed by the Commission

(b) the number of suspensions imposed pursuant to Article 20, distinguishing between suspensions enacted for the provision of **manifestly** illegal content, the submission of manifestly unfounded notices and the submission of manifestly unfounded complaints;

Amendment

(b) the number of suspensions imposed pursuant to Article 20, distinguishing between suspensions enacted for the provision of illegal content, the submission of manifestly unfounded notices and the submission of manifestly unfounded complaints;

Or. en

Amendment 79

Proposal for a regulation

Article 24 – paragraph -1 (new)

Text proposed by the Commission

Amendment

Online platforms that use recommender systems shall set out in their terms and conditions, in a clear, accessible and easily comprehensible manner, the main parameters used in their recommender systems, as well as any options for the recipients of the service to modify or influence those main parameters that they may have made available, including at least one option which is not based on profiling, within the meaning of Article 4 (4) of Regulation (EU) 2016/679.

Or. en

Amendment 80

Proposal for a regulation

Article 24 – paragraph -1 a (new)

Text proposed by the Commission

Amendment

Where several options are available pursuant to paragraph 1, very large online platforms shall provide an easily accessible functionality on their online interface allowing the recipient of the service to select and to modify at any time their preferred option for each of the recommender systems that determines the relative order of information presented to them.

Or. en

Amendment 81

Proposal for a regulation

Article 24 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

With regard to requirements set out in points (b) and (c), providers of online advertising intermediaries must ensure the transmission of information held by them to recipients of the service.

Or. en

Amendment 82

Proposal for a regulation

Article 26 – paragraph 1 – point a

Text proposed by the Commission

Amendment

(a) the dissemination of illegal content through their services;

(a) the dissemination ***and amplification*** of illegal content through their services;

Or. en

Amendment 83

Proposal for a regulation Article 26 – paragraph 1 – point b

Text proposed by the Commission

(b) any negative effects for the exercise of the fundamental rights to respect for private and family life, freedom of expression and information, the prohibition of discrimination and the rights of the child, as enshrined in Articles 7, 11, 21 and 24 of the Charter respectively;

Amendment

(b) any negative effects for the exercise of the fundamental rights to respect for **human dignity**, private and family life, freedom of expression and information, **right to property**, the prohibition of discrimination and the rights of the child, as enshrined in Articles 1, 7, 11, 17, 21 and 24 of the Charter respectively, **as well as any negative effects on freedom and pluralism of the media**;

Or. en

Amendment 84

Proposal for a regulation Article 26 – paragraph 1 – point c

Text proposed by the Commission

(c) **intentional manipulation of their service, including by means of inauthentic use or automated exploitation of the service, with an actual or foreseeable negative effect on** the protection of public health, minors, civic discourse, or actual or foreseeable effects related to electoral processes and public security.

Amendment

(c) **any negative effects to** the protection of public health, minors, civic discourse, or actual or foreseeable effects related to electoral processes and public security.

Or. en

Amendment 85

Proposal for a regulation Article 26 – paragraph 2

Text proposed by the Commission

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

Amendment

2. When conducting risk assessments, very large online platforms shall take into account, in particular, how their content moderation systems, recommender systems and systems for selecting and displaying advertisement influence any of the risks referred to in paragraph 1, including the potentially rapid and wide dissemination of illegal content and of information that is incompatible with their terms and conditions. ***Very large online platforms shall ensure that their terms and conditions as well as other policies, procedures, measures and tools used for the purpose of content moderation are applied and enforced in such a way as to prohibit any removal, suspension, disabling access to or otherwise interference with content and services from the account of a recognised media service provider as defined in Article 1, paragraph 1 (a) of the Directive (EU)2018/1808.***

Or. en

Amendment 86

Proposal for a regulation

Article 27 – paragraph 1 – introductory part

Text proposed by the Commission

1. Very large online platforms shall put in place reasonable, proportionate and effective mitigation measures, tailored to the specific **systemic** risks identified pursuant to Article 26. Such measures may include, where applicable:

Amendment

1. Very large online platforms shall put in place reasonable, proportionate and effective mitigation measures, tailored to the specific risks identified pursuant to Article 26. Such measures may include, where applicable:

Or. en

Amendment 87

Proposal for a regulation

Article 27 – paragraph 2 – point a

Text proposed by the Commission

(a) identification and assessment of the most prominent and recurrent **systemic** risks reported by very large online platforms or identified through other information sources, in particular those provided in compliance with Article 31 and 33;

Amendment

(a) identification and assessment of the most prominent and recurrent risks reported by very large online platforms or identified through other information sources, in particular those provided in compliance with Article 31 and 33;

Or. en

Amendment 88

Proposal for a regulation

Article 27 – paragraph 2 – point b

Text proposed by the Commission

(b) best practices for very large online platforms to mitigate the **systemic** risks identified.

Amendment

(b) best practices for very large online platforms to mitigate the risks identified.

Or. en

Amendment 89

Proposal for a regulation

Article 27 – paragraph 3

Text proposed by the Commission

3. The Commission, in cooperation with the Digital Services Coordinators, **may** issue **general** guidelines on the application of paragraph 1 in relation to specific risks, in particular to present best practices and recommend possible measures, having due regard to the possible consequences of the measures on

Amendment

3. The Commission, in cooperation with the Digital Services Coordinators, **shall** issue guidelines on the application of paragraph 1 in relation to specific risks, in particular to present best practices and recommend possible measures, having due regard to the possible consequences of the measures on fundamental rights enshrined

fundamental rights enshrined in the Charter of all parties involved. When preparing those guidelines the Commission shall organise public consultations.

in the Charter of all parties involved. When preparing those guidelines the Commission shall organise public consultations.

Or. en

Amendment 90

Proposal for a regulation

Article 28 – paragraph 1 – introductory part

Text proposed by the Commission

1. Very large online platforms shall be subject, at their own expense and at least **once** a year, to audits to assess compliance with the following:

Amendment

1. Very large online platforms shall be subject, at their own expense and at least **twice** a year, to audits to assess compliance with the following:

Or. en

Justification

Aligning the frequency of audits with the VLOPs reporting obligations in Article 33 would be more consistent and help to further increase transparency.

Amendment 91

Proposal for a regulation

Article 28 – paragraph 4

Text proposed by the Commission

4. Very large online platforms receiving an audit report that is not positive shall take due account of any operational recommendations addressed to them with a view to take the necessary measures to implement them. They shall, within one month from receiving those recommendations, adopt an audit implementation report setting out those measures. ***Where they do not implement the operational recommendations, they shall justify in the audit implementation***

Amendment

4. Very large online platforms receiving an audit report that is not positive shall take due account of any operational recommendations addressed to them with a view to take the necessary measures to implement them. They shall, within one month from receiving those recommendations, adopt an audit implementation report setting out those measures.

report the reasons for not doing so and set out any alternative measures they may have taken to address any instances of non-compliance identified.

Or. en

Justification

Auditors are independent and their recommendations should be implemented without any possibility to oppose.

Amendment 92

**Proposal for a regulation
Article 29 – paragraph 1 a (new)**

Text proposed by the Commission

Amendment

1a. The parameters used in recommender systems shall always be set up in such a way that it reduces any potential bias and that they are non-discriminatory.

Or. en

Amendment 93

**Proposal for a regulation
Article 31 – paragraph 1**

Text proposed by the Commission

Amendment

1. Very large online platforms shall provide the Digital Services Coordinator of establishment or the Commission, upon their reasoned request and ***within a reasonable period, specified in the request***, access to data that are necessary to monitor and assess compliance with this Regulation. That Digital Services Coordinator and the Commission shall only use that data for those purposes.

1. Very large online platforms shall provide the Digital Services Coordinator of establishment or the Commission, upon their reasoned request and ***without undue delay, full access to all available and relevant*** data that are necessary to monitor and assess compliance with this Regulation. That Digital Services Coordinator and the Commission shall only use that data for those purposes.

Amendment 94**Proposal for a regulation
Article 31 – paragraph 2***Text proposed by the Commission*

2. Upon *a reasoned* request from the Digital Services Coordinator *of establishment* or the Commission, very large online platforms shall, *within a reasonable period, as specified in the request, provide access to data to vetted researchers who meet the requirements in paragraphs 4 of this Article, for the sole purpose of conducting research that contributes to the identification and understanding of systemic risks as set out in Article 26(1).*

Amendment

2. *With regard to moderation and recommender systems, very large online platforms shall provide the Digital Services Coordinator and/or the Commission upon request access to algorithms and associated data that allow the detection of possible biases which could lead to the dissemination of illegal content or threats to fundamental rights including freedom of expression. When disclosing these data, very large online platforms shall have a duty of explainability and ensure close cooperation with the Digital Services Coordinator or the Commission to make moderation and recommender systems fully understandable. When a bias is detected, very large online platforms should correct it expeditiously following requirements from the Digital Services Coordinator or the Commission. Very large online platforms shall be able to demonstrate their compliance at every step of the process pursuant to this Article.*

Or. en

Amendment 95**Proposal for a regulation
Article 31 – paragraph 4***Text proposed by the Commission*

4. *In order to be vetted, researchers*

*Amendment**deleted*

shall be affiliated with academic institutions, be independent from commercial interests, have proven records of expertise in the fields related to the risks investigated or related research methodologies, and shall commit and be in a capacity to preserve the specific data security and confidentiality requirements corresponding to each request.

Or. en

Amendment 96

Proposal for a regulation Article 31 – paragraph 5

Text proposed by the Commission

5. The Commission shall, after consulting the Board, adopt delegated acts laying down the technical conditions under which very large online platforms are to share data pursuant to paragraphs 1 and **2** *and* the purposes for which the data may be used. Those delegated acts shall lay down the specific conditions under which such sharing of data with *vetted researchers* can take place in compliance with Regulation (EU) 2016/679, taking into account the rights and interests of the very large online platforms and the recipients of the service concerned, including the protection of confidential information, in particular trade secrets, and maintaining the security of their service.

Amendment

5. The Commission shall, after consulting the Board, adopt delegated acts laying down the technical conditions under which very large online platforms are to share data pursuant to paragraphs 1 and the purposes for which the data may be used. Those delegated acts shall lay down the specific conditions under which such sharing of data with *the Digital Services Coordinator or the Commission* can take place in compliance with Regulation (EU) 2016/679, taking into account the rights and interests of the very large online platforms and the recipients of the service concerned, including the protection of confidential information, in particular trade secrets, and maintaining the security of their service.

Or. en

Amendment 97

Proposal for a regulation Article 31 – paragraph 6

Text proposed by the Commission

Amendment

6. Within 15 days following receipt of a request as referred to in paragraph 1 and 2, a very large online platform may request the Digital Services Coordinator of establishment or the Commission, as applicable, to amend the request, where it considers that it is unable to give access to the data requested because one of following two reasons:

(a) it does not have access to the data;

(b) giving access to the data will lead to significant vulnerabilities for the security of its service or the protection of confidential information, in particular trade secrets.

deleted

Or. en

Amendment 98

Proposal for a regulation Article 31 – paragraph 6 – point a

Text proposed by the Commission

Amendment

(a) it does not have access to the data;

deleted

Or. en

Amendment 99

Proposal for a regulation Article 31 – paragraph 6 – point b

Text proposed by the Commission

Amendment

(b) giving access to the data will lead to significant vulnerabilities for the security of its service or the protection of confidential information, in particular trade secrets.

deleted

Amendment 100

Proposal for a regulation Article 31 – paragraph 7

Text proposed by the Commission

Amendment

7. Requests for amendment pursuant to point (b) of paragraph 6 shall contain proposals for one or more alternative means through which access may be provided to the requested data or other data which are appropriate and sufficient for the purpose of the request.

deleted

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

Amendment 101

Proposal for a regulation Article 31 a (new)

Text proposed by the Commission

Amendment

Article 31a

1. Upon request from the Digital Services Coordinator of establishment or the Commission, very large online platforms shall, within a reasonable period, as specified in the request, provide access to data to vetted researchers who meet the requirements in paragraphs 4 of this Article, for the sole purpose of conducting research that contributes to the identification and understanding of

systemic risks as set out in Article 26(1).

2. Very large online platforms shall provide access to data pursuant to paragraphs 1 and 2 through online databases or application programming interfaces, as appropriate.

3. In order to be vetted, researchers shall be affiliated with academic institutions, be independent from commercial interests, have proven records of expertise in the fields related to the risks investigated or related research methodologies, and shall commit and be in a capacity to preserve the specific data security and confidentiality requirements corresponding to each request.

4. The Commission shall, after consulting the Board, adopt delegated acts laying down the technical conditions under which very large online platforms are to share data pursuant to paragraphs 1 and 2 and the purposes for which the data may be used. Those delegated acts shall lay down the specific conditions under which such sharing of data with vetted researchers can take place in compliance with Regulation(EU) 2016/679, taking into account the rights and interests of the very large online platforms and the recipients of the service concerned, including the protection of confidential information, in particular trade secrets, and maintaining the security of their service.

5. Within 15 days following receipt of a request as referred to in paragraph 1 and 2, a very large online platform may request the Digital Services Coordinator of establishment or the Commission, as applicable, to amend the request, where it considers that it is unable to give access to the data requested by vetted researchers because one of following two reasons:

- (a) it does not have access to the data;*
- (b) giving access to the data will lead to significant vulnerabilities for the*

security of its service or the protection of confidential information, in particular trade secrets.

6. Requests for amendment pursuant to point (b) of paragraph 5 shall contain proposals for one or more alternative means through which access may be provided to the requested data or other data which are appropriate and sufficient for the purpose of the request.

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

Or. en

Amendment 102

Proposal for a regulation Article 35 – paragraph 1

Text proposed by the Commission

1. The Commission and the Board shall ***encourage and facilitate*** the drawing up of codes of conduct at Union level to contribute to the proper application of this Regulation, taking into account in particular the specific challenges of tackling different types of illegal content and systemic risks, in accordance with Union law, in particular on competition and the protection of personal data.

Amendment

1. The Commission and the Board shall ***request and coordinate*** the drawing up of codes of conduct at Union level to contribute to the proper application of this Regulation, taking into account in particular the specific challenges of tackling different types of illegal content and systemic risks, in accordance with Union law, in particular on competition and the protection of personal data.

Or. en

Amendment 103

Proposal for a regulation Article 35 – paragraph 2

Text proposed by the Commission

2. Where **significant systemic** risk within the meaning of Article 26(1) emerge and concern several very large online platforms, the Commission **may** invite the very large online platforms concerned, other very large online platforms, other online platforms and other providers of intermediary services, as appropriate, as well as civil society organisations and other interested parties, to participate in the drawing up of codes of conduct, including by setting out commitments to take specific risk mitigation measures, as well as a regular reporting framework on any measures taken and their outcomes.

Amendment

2. Where risk within the meaning of Article 26(1) emerge and concern several very large online platforms, the Commission **shall** invite the very large online platforms concerned, other very large online platforms, other online platforms and other providers of intermediary services, as appropriate, as well as civil society organisations and other interested parties, to participate in the drawing up of codes of conduct, including by setting out commitments to take specific risk mitigation measures, as well as a regular reporting framework on any measures taken and their outcomes.

Or. en

Amendment 104

Proposal for a regulation Article 35 – paragraph 3

Text proposed by the Commission

3. When giving effect to paragraphs 1 and 2, the Commission and the Board shall aim to ensure that the codes of conduct clearly set out their objectives, contain key performance indicators to measure the achievement of those objectives and take due account of the needs and interests of all interested parties, including citizens, at **Union level**. The Commission and the Board shall also aim to ensure that participants report regularly to the Commission and their respective Digital Service Coordinators of establishment on any measures taken and their outcomes, as measured against the key performance

Amendment

3. When giving effect to paragraphs 1 and 2, the Commission and the Board shall aim to ensure that the codes of conduct clearly set out their objectives, contain **verifiable** key performance indicators to measure the achievement of those objectives, **have an independent monitoring and audit systems in place** and take due account of the needs and interests of all interested parties, including citizens, at **Unionlevel**. The Commission and the Board shall also aim to ensure that participants report regularly **and in good faith** to the Commission and their respective Digital Service Coordinators of

indicators that they contain.

establishment on any measures taken and their outcomes, as measured against the key performance indicators that they contain.

Or. en

Amendment 105

Proposal for a regulation Article 35 – paragraph 4

Text proposed by the Commission

4. The Commission and the Board shall assess whether the codes of conduct meet the aims specified in paragraphs 1 and 3, and shall regularly monitor and evaluate the achievement of their objectives. They shall publish their conclusions.

Amendment

4. The Commission and the Board shall assess whether the codes of conduct meet the aims specified in paragraphs 1 and 3, and shall regularly monitor and evaluate the achievement of their objectives. They shall publish their conclusions ***and request that the organisations involved amend their codes of conducts accordingly.***

Or. en

Amendment 106

Proposal for a regulation Article 39 – paragraph 1

Text proposed by the Commission

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

Amendment

1. Member States shall ensure that their Digital Services Coordinators perform their tasks under this Regulation in an impartial, transparent and timely manner. Member States shall ensure that their Digital Services Coordinators have adequate technical, financial and human resources to carry out their tasks. ***Member States shall ensure that their Digital Services Coordinators are legally distinct from the government and functionally independent of their respective***

governments and of any other public or private body.

Or. en

Amendment 107

Proposal for a regulation Article 39 – paragraph 2

Text proposed by the Commission

2. When carrying out their tasks and exercising their powers in accordance with this Regulation, the Digital Services Coordinators shall act with complete independence. They shall remain free from any external influence, whether direct or indirect, and shall neither seek nor take instructions from any *other* public authority or any private party.

Amendment

2. When carrying out their tasks and exercising their powers in accordance with this Regulation, the Digital Services Coordinators shall act with complete independence. They shall remain free from any external influence, whether direct or indirect, and shall neither seek nor take instructions from any public authority or any private party.

Or. en

Amendment 108

Proposal for a regulation Article 41 – paragraph 2 – point e a (new)

Text proposed by the Commission

Amendment

(ea) the power to identify the media service provider pursuant to Article 12 paragraph 3.

Or. en

Amendment 109

Proposal for a regulation Article 43 – paragraph 1

Text proposed by the Commission

Recipients of the service shall have the right to lodge a complaint against providers of intermediary services alleging an infringement of this Regulation with the Digital Services Coordinator of the Member State where the recipient resides or is established. The Digital Services Coordinator shall assess the complaint and, where appropriate, transmit it to the Digital Services Coordinator of establishment. Where the complaint falls under the responsibility of another competent authority in its Member State, the Digital Service Coordinator receiving the complaint shall transmit it to that authority.

Amendment

Recipients of the service ***and parties with a legitimate interest*** shall have the right to lodge a complaint against providers of intermediary services alleging an infringement of this Regulation with the Digital Services Coordinator of the Member State where the recipient resides or is established. The Digital Services Coordinator shall assess the complaint and, where appropriate, transmit it to the Digital Services Coordinator of establishment. Where the complaint falls under the responsibility of another competent authority in its Member State, the Digital Service Coordinator receiving the complaint shall transmit it to that authority.

Or. en

Amendment 110

Proposal for a regulation

Article 45 – paragraph 7 a (new)

Text proposed by the Commission

Amendment

7a. Member States shall introduce expedited procedures under which an order granted by a court or competent administrative authority in another Member State against a provider of intermediary services whose services are used to disseminate illegal content, can be used as a basis for court or administrative order in the Member State against similar providers of intermediary services whose service are used to disseminate the same illegal content. National Digital Services Coordinators shall make public decisions by judicial or administrative authorities provided to them by other Digital Services Coordinators under Article 8 of this Regulation.

Justification

National Courts or competent administrative authorities should accept as prima facie evidence decisions from other Member States which establish that it is lawful and proportionate to order providers of intermediary services to disable access from recipient of their services to websites that disseminate illegal goods, digital content, or services. Following receipt of copies of such orders from other Member States, Digital Services Coordinators should provide assistance in such processes.

Amendment 111**Proposal for a regulation****Article 46 – paragraph 2 a (new)***Text proposed by the Commission**Amendment*

2a. Where at least three Digital Services Coordinators or the Board identify a common pattern of non-compliance with orders issued under Articles 8 and 9 vis-à-vis the same provider, they may request the Commission to initiate proceedings in view of the possible adoption of decisions pursuant to Articles 58 and 59 of this Regulation, irrespective of the size of the online platform. Such a request shall contain information listed in Article 45(2)(a) and (c) and all relevant information related to orders adopted under Articles 8 or 9 and to non-compliance with them.

Amendment 112**Proposal for a regulation****Article 50 – paragraph 1 – subparagraph 1***Text proposed by the Commission**Amendment*

The Commission acting on its own initiative, or the Board acting on its own

The Commission acting on its own initiative, or the Board acting on its own

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

initiative or upon request of at least three Digital Services Coordinators of destination, may, where it has reasons to suspect that a very large online platform infringed any of those provisions, recommend the Digital Services Coordinator of establishment to investigate the suspected infringement with a view to that Digital Services Coordinator adopting such a decision *without undue delay*.

Or. en

Amendment 113

Proposal for a regulation Article 50 – paragraph 2

Text proposed by the Commission

2. When communicating the decision referred to in the first subparagraph of paragraph 1 to the very large online platform concerned, the Digital Services Coordinator of establishment shall request it to draw up and communicate to the Digital Services Coordinator of establishment, the Commission and the Board, within one month from that decision, an action plan, specifying how that platform intends to terminate or remedy the infringement. The measures set out in the action plan *may* include, where appropriate, participation in a code of conduct as provided for in Article 35.

Amendment

2. When communicating the decision referred to in the first subparagraph of paragraph 1 to the very large online platform concerned, the Digital Services Coordinator of establishment shall request it to draw up and communicate to the Digital Services Coordinator of establishment, the Commission and the Board, within one month from that decision, an action plan, specifying how that platform intends to terminate or remedy the infringement. The measures set out in the action plan *shall* include, where appropriate, participation in a code of conduct as provided for in Article 35.

Or. en

Amendment 114

Proposal for a regulation Article 50 – paragraph 3 – subparagraph 1

Text proposed by the Commission

Where the Digital Services Coordinator of establishment has concerns on the ability of the measures to terminate or remedy the infringement, it **may** request the very large online platform concerned to subject itself to an additional, independent audit to assess the effectiveness of those measures in terminating or remedying the infringement. In that case, that platform shall send the audit report to that Digital Services Coordinator, the Commission and the Board within **four** months from the decision referred to in the first subparagraph. When requesting such an additional audit, the Digital Services Coordinator may specify a particular audit organisation that is to carry out the audit, at the expense of the platform concerned, selected on the basis of criteria set out in Article 28(2).

Amendment

Where the Digital Services Coordinator of establishment has concerns on the ability of the measures to terminate or remedy the infringement, it **shall** 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 **two** months from the decision referred to in the first subparagraph. When requesting such an additional audit, the Digital Services Coordinator may specify a particular audit organisation that is to carry out the audit, at the expense of the platform concerned, selected on the basis of criteria set out in Article 28(2).

Or. en