



2020/0361(COD)

19.05.2021

DRAFT OPINION

of the Committee on Civil Liberties, Justice and Home Affairs for the
Committee on the Internal Market and Consumer Protection

on the proposal for a regulation of the European Parliament and of the Council
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: Patrick Breyer

(*) Associated committees – Rule 57 of the Rules of Procedure

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SHORT JUSTIFICATION

Background

Information society services and especially intermediary services have become an essential part of the daily life of Union citizens and of the Union's economy. Twenty years after the adoption of the existing legal framework applicable to such services laid down in e-Commerce Directive 2000/31/EC, new and innovative business models and services, such as online social networks and marketplaces, have allowed business users and consumers to impart and access information and engage in transactions in novel ways. However, the digital transformation and increased use of those services has also resulted in new risks and challenges, both for individual users and for society as a whole.

Following three resolutions voted by Parliament, the Commission presented its proposal for a Digital Services Act in December 2020. The proposal aims to ensure harmonised conditions for digital cross-border services in the Union.

The Rapporteur's proposals

The amendments proposed in this draft opinion focus on better protecting fundamental rights and tackling illegal content in the digital age, in line with the competence of our committee. Most proposals implement reports and opinions that have already been supported in Committee or Plenary, as referenced in the justification provided.

Key proposals are:

- The Digital Services Act should provide for the right to use and pay for digital services anonymously wherever technically possible, in line with the principle of data minimisation and in order to prevent unauthorised disclosure, identity theft and other forms of abuse of personal data.
- The processing of personal data concerning the use of digital services is limited to what is strictly necessary to provide the service and to bill the users to take into account that the online activities of an individual allow for deep insights into their (past and future) behaviour and make it possible to manipulate them.
- Behavioural advertising should be phased out to protect users and ensure the existence of traditional media and should be replaced for example by contextual advertising.
- In the spirit of the case law on communications metadata, public authorities should be given access to records of personal online activity only to investigate suspects of serious crimes or prevent serious threats to public safety and with prior judicial authorisation.
- Illegal content should be removed where it is hosted, and mere conduit intermediaries should not be required to block access to content.
- To protect freedom of expression and media freedom, the decision on the legality of content should rest with the independent judiciary, not with administrative authorities.

- Automated tools for content moderation and content filters should not be mandatory and should not be used for *ex ante* control or without human review. Algorithms cannot reliably identify illegal content and currently routinely result in the suppression of legal content, including media content.
- Intermediaries should not be required to remove information that is legal in the Member State that they are established in (their country of origin). Cross-border orders are, however, acceptable where their effect is limited to the territory of the issuing Member State.
- Providers should not be compelled to sanction users for providing illegal content by "de-platforming" them since such an obligation would fail to ensure a decision by the judiciary and bypass the legally defined sanctions.
- A special regime should apply to tackling traders unlawfully promoting or offering products or services in the Union.
- Illegal content should additionally be tackled by giving public authorities the power to impose specific measures on platforms, rather than using "self-regulatory" and "co-regulatory" mechanisms that would escape democratic control and judicial scrutiny.
- The algorithm-driven spreading of problematic content should be contained by giving users control over the algorithms prioritising the information that is presented to them (recommender systems).
- In order to overcome the user lock-in effect of closed platforms and to ensure competition (including with respect to data protection and data security), users of very large platforms should be given the ability to interact with other platforms via open interfaces, and vice versa (interoperability).
- End-to-end encryption should not be restricted as it is essential for internet safety.

AMENDMENTS

The Committee on Civil Liberties, Justice and Home Affairs 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 3

Text proposed by the Commission

(3) Responsible and diligent behaviour by providers of intermediary services is essential for a safe, predictable and trusted online environment and for allowing Union citizens and other persons to exercise their fundamental rights guaranteed in the Charter of Fundamental Rights of the European Union ('Charter'), in particular the freedom of expression and information **and** the freedom to conduct a business, and the right to non-discrimination.

Amendment

(3) Responsible and diligent behaviour by providers of intermediary services is essential for a safe, predictable and trusted online environment and for allowing Union citizens and other persons to exercise their fundamental rights guaranteed in the Charter of Fundamental Rights of the European Union ('Charter'), in particular **the right to privacy, the right to protection of personal data, the right to** freedom of expression and information, the freedom to conduct a business, and the right to non-discrimination.

Or. en

Amendment 2

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" 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,

Amendment

(12) In order to achieve the objective of ensuring a safe, predictable and trusted online environment, for the purpose of this Regulation the concept of "illegal content" should be defined **appropriately** and also **cover** information relating to illegal content, products, services and activities **where such information is itself illegal**. In particular, that concept should be

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.

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 *refers in an illegal manner* 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

Justification

In order to protect freedom of expression it is necessary to clarify the notion of illegality "by ... reference to an activity, including the sale of products or provision of services" in Article 2 (g). Not any reference to illegal activity is unlawful (e.g. for the purpose of media coverage or academic discussion on the illegal sale of products) but only where legislation prohibits such reference (e.g. consumer or competition law outlawing the offering for sale of unsafe products).

Amendment 3

Proposal for a regulation

Recital 14

Text proposed by the Commission

(14) The concept of ‘dissemination to the public’, as used in this Regulation, should entail the making available of information to a potentially unlimited number of persons, that is, making the information easily accessible to users in general without further action by the recipient of the service providing the

Amendment

(14) The concept of ‘dissemination to the public’, as used in this Regulation, should entail the making available of information to a potentially unlimited number of persons, that is, making the information easily accessible to users in general without further action by the recipient of the service providing the

information being required, irrespective of whether those persons actually access the information in question. ***The mere possibility to create groups of users of a given service should not, in itself, be understood to mean that the information disseminated in that manner is not disseminated to the public. However, the concept should exclude dissemination of information within closed groups consisting of a finite number of pre-determined persons.*** Interpersonal communication services, as defined in Directive (EU) 2018/1972 of the European Parliament and of the Council,³⁹ such as emails or private messaging services, ***fall outside the scope of this Regulation.*** Information should be considered disseminated to the public within the meaning of this Regulation only where that occurs upon the direct request by the recipient of the service that provided the information.

³⁹ Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (Recast), OJ L 321, 17.12.2018, p. 36

information being required, irrespective of whether those persons actually access the information in question. ***Accordingly, where access to information requires registration or admittance to a group of users, that information should be considered to have been disseminated to the public only where users seeking to access the information are automatically registered or admitted without a human decision on whom to grant access.*** Interpersonal communication services, as defined in Directive (EU) 2018/1972 of the European Parliament and of the Council,³⁹ such as emails or private messaging services ***are not considered to have been disseminated to the public.*** Information should be considered disseminated to the public within the meaning of this Regulation only where that occurs upon the direct request by the recipient of the service that provided the information.

³⁹ Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (Recast), OJ L 321, 17.12.2018, p. 36

Or. en

Justification

The language on closed user groups needs aligning with the Regulation on Terrorist Content Online (recital 14) where the legislator decided on different language from the one originally proposed by the Commission. On the other hand, the language in that Regulation on communications services needs modifying in the present context. While the Regulation on Terrorist Content Online only applies to information that is disseminated to the public, this is not the case with the Digital Services Act. Interpersonal communication services such as Whatsapp are an area where the applicability of the liability exceptions becomes relevant. Recital 10 of the EECC acknowledges that certain services may fall both under the Electronic Communications Code (EECC) and be information society services. Thus, it is possible that certain services are regulated under the EECC and that liability exemptions apply under the DSA.

Amendment 4

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 the provider of intermediary services ***has*** knowledge of, or control over, 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. ***The exemptions from liability established by this Regulation should not depend on uncertain notions such as the ‘active’, ‘neutral’ or ‘passive’ role of providers.***

Or. en

Justification

According to LIBE opinion PE650.375v02, par. 25, the legal regime for digital providers liability should not depend on uncertain notions such as the ‘active’ or ‘passive’ role of providers. Case-law to this effect has resulted in legal uncertainty, including due to conflicting decisions by different levels of courts as to the ‘active’ or ‘passive’ role of the same type of service (see also Impact Assessment, p. 105). The safe harbour provisions shall apply where providers have neither knowledge nor control. No additional criteria shall be introduced in recitals or case-law.

Amendment 5

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***

Amendment

(22) In order to benefit from the exemption from liability for hosting services, the provider should, ***after***

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.

becoming aware of the unlawful nature of 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.

Or. en

Justification

In order to protect fundamental rights, "actual knowledge" needs to be defined in line with the relevant case-law as meaning knowledge about illegality of information and not just its existence (CJEU, Judgement of 23 March 2010, C-236/08 to C-238/08, Google France and Google v. Vuitton, ECLI:EU:C:2010:159, par. 109). This clarification avoids providers removing legal content in order to escape liability risks.

Amendment 6

Proposal for a regulation

Recital 25

Text proposed by the Commission

Amendment

(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

deleted

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.

Or. en

Justification

Justification: See justification given for deleting Article 6.

Amendment 7

Proposal for a regulation Recital 28 a (new)

Text proposed by the Commission

Amendment

(28a) Providers of intermediary services should not be obliged to use automated tools for content moderation because such tools are incapable of effectively understanding the subtlety of context and meaning in human communication, which is necessary to determine whether assessed content violates the law or terms of service. Human review of automated reports by service providers or their contractors does not fully solve this problem, especially if it is outsourced to staff of private enterprises who lack sufficient independence, qualification and accountability.

Amendment 8

Proposal for a regulation Recital 30 a (new)

Text proposed by the Commission

Amendment

(30 a) In order to avoid conflicting interpretations of what constitutes illegal content and to ensure the accessibility of information that is legal in the Member State in which the provider is established, orders to act against illegal content should in principle be issued by judicial authorities of the Member State in which the provider has its main establishment, or, if not established in the Union, its legal representative. The judicial authorities of other Member States should be able to issue orders the effect of which are limited to the territory of that Member State. A special regime should apply to acting against unlawful commercial offers of goods and services.

Amendment 9

Proposal for a regulation Recital 31

Text proposed by the Commission

Amendment

(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

(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.

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. ***Since intermediaries should not be required to remove information which is legal in their country of origin, Union authorities should be able to order the blocking of content legally published outside the Union only for the territory of the Union where Union law is infringed and for the territory of the issuing Member State where national law is infringed.***

Or. en

Amendment 10

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 information on a group of recipients of the service who are not specifically identified, including orders to provide aggregate

Amendment

(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 ***non-personal*** information on a group of recipients of the service who are not specifically identified, including orders to

information required for statistical purposes or evidence-based policy-making, should remain unaffected by the rules of this Regulation on the provision of information.

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.

Or. en

Amendment 11

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 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.

Amendment

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

Or. en

Amendment 12

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, 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.

Or. en

Amendment 13

Proposal for a regulation
Recital 46

Text proposed by the Commission

(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

Amendment

(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 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

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 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 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

Justification

When the Regulation on Terrorist Content Online was negotiated, it was agreed that the procedure of "referrals" should not be part of it. This should stand regarding the Digital Services Act.

Amendment 14**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 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

Amendment

(47) The misuse of services of online platforms 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. 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. 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

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.

measures to address 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 15

Proposal for a regulation Recital 48

Text proposed by the Commission

(48) An online platform may in some instances become aware, such as through a notice by a notifying party or through its own voluntary measures, of information relating to certain activity of a recipient of the service, such as the provision of certain types of illegal content, that reasonably justify, having regard to all relevant circumstances of which the online platform is aware, the suspicion that ***the recipient may have committed, may be committing or is likely to commit*** a serious criminal offence involving a threat to the life ***or safety*** of person, such as offences specified in Directive 2011/93/EU of the European Parliament and of the Council⁴⁴. In such instances, the online platform should inform without delay the competent law enforcement authorities of such suspicion, providing ***all relevant information available to it, including where relevant***

Amendment

(48) An online platform may in some instances become aware, such as through a notice by a notifying party or through its own voluntary measures, of information relating to certain activity of a recipient of the service, such as the provision of certain types of illegal content, that reasonably justify, having regard to all relevant circumstances of which the online platform is aware, the suspicion that a serious criminal offence involving a threat to the life of person ***is imminent***, such as offences specified in Directive 2011/93/EU of the European Parliament and of the Council⁴⁴. In such instances, the online platform should inform without delay the competent law enforcement authorities of such suspicion, providing ***the information that has given rise to*** its suspicion. This Regulation does not provide the legal basis for profiling of recipients of the services

the content in question and an explanation of its suspicion. This Regulation does not provide the legal basis for profiling of recipients of the services with a view to the possible identification of criminal offences by online platforms. Online platforms should also respect other applicable rules of Union or national law for the protection of the rights and freedoms of individuals when informing law enforcement authorities.

⁴⁴ Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA (OJ L 335, 17.12.2011, p. 1).

with a view to the possible identification of criminal offences by online platforms. Online platforms should also respect other applicable rules of Union or national law for the protection of the rights and freedoms of individuals when informing law enforcement authorities.

⁴⁴ Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA (OJ L 335, 17.12.2011, p. 1).

Or. en

Amendment 16

Proposal for a regulation Recital 53

Text proposed by the Commission

(53) Given the importance of very large online platforms, due to their reach, in particular as expressed in number of recipients of the service, in facilitating public debate, economic transactions and the dissemination of information, opinions and ideas and in influencing how recipients obtain and communicate information online, it is necessary to impose specific obligations on those platforms, in addition to the obligations applicable to all online platforms. Those additional obligations on very large online platforms are necessary to address ***those public policy concerns***, there being no alternative and less restrictive measures that would effectively achieve the same result.

Amendment

(53) Given the importance of very large online platforms, due to their reach, in particular as expressed in number of recipients of the service, in facilitating public debate, economic transactions and the dissemination of information, opinions and ideas and in influencing how recipients obtain and communicate information online, it is necessary to impose specific obligations on those platforms, in addition to the obligations applicable to all online platforms. Those additional obligations on very large online platforms are necessary to address ***illegal content***, there being no alternative and less restrictive measures that would effectively achieve the same result.

Amendment 17

Proposal for a regulation Recital 55 a (new)

Text proposed by the Commission

Amendment

(55a) Given the scale and speed necessary for effectively removing illegal content, proportionate specific measures are an essential element in tackling illegal content online. With a view to reducing the accessibility of illegal content on their services, very large online platforms should assess whether it is appropriate to take specific measures depending on the risks and level of exposure to illegal content. Consequently, very large online platforms should determine what appropriate, targeted, effective and proportionate specific measure should be put in place. Those specific measures may include regular reporting to the competent authorities, increase of human resources dealing with measures to protect the services against public dissemination of illegal content, and exchange of best practices.

Or. en

Amendment 18

Proposal for a regulation Recital 55 b (new)

Text proposed by the Commission

Amendment

(55b) When putting in place specific measures, very large online platforms should ensure that the users' right to freedom of expression, including freedom to receive and impart information and

ideas in an open and democratic society are preserved. In addition to any requirement laid down in the law, including the legislation on protection of personal data, very large online platforms should act with due diligence and implement safeguards to avoid any unintended and erroneous decision leading to removal of content that is not illegal.

Or. en

Amendment 19

Proposal for a regulation Recital 55 c (new)

Text proposed by the Commission

Amendment

(55c) In order to ensure that very large online platforms exposed to illegal content take appropriate measures to prevent the misuse of their services, the competent Digital Services Coordinator should request a platform having received a substantial number of final removal orders to report on the specific measures taken. The platform should report on the specific measures in place in order to allow the competent Digital Services Coordinator to decide whether the measures are necessary, effective and proportionate and whether appropriate safeguards are in place. In assessing the effectiveness, necessity and proportionality of the measures, the Digital Services Coordinator should take into account relevant parameters including the number of removal orders issued to the platform, its size and economic capacity and the impact of its service in disseminating illegal content (for example, taking into account the number of users in the Union), as well as the safeguards put in place to protect the users' right to freedom of expression,

including freedom to receive and impart information.

Or. en

Amendment 20

Proposal for a regulation Recital 56

Text proposed by the Commission

Amendment

(56) Very large online platforms are used in a way that strongly influences safety online, the shaping of public opinion and discourse, as well as on online trade. The way they design their services is generally optimised to benefit their often advertising-driven business models and can cause societal concerns. In the absence of effective regulation and enforcement, they can set 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 systemic 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.

deleted

Or. en

Amendment 21

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

deleted

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 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.

Amendment 22

Proposal for a regulation

Recital 58

Text proposed by the Commission

Amendment

(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 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* **deleted**

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 23

Proposal for a regulation

Recital 60

Text proposed by the Commission

Amendment

(60) *Given the need to ensure verification by independent experts, very large online platforms should be accountable, through independent auditing, for their compliance with the obligations laid down by this Regulation and, where relevant, any complementary commitments undertaken pursuant to codes of conduct and crises protocols. They should give the auditor access to all relevant data necessary to perform the audit properly. Auditors should also be able to make use of other sources of objective information, including studies by vetted researchers. Auditors should guarantee the confidentiality, security and integrity of the information, such as trade secrets, that they obtain when performing their tasks and have the necessary expertise in the area of risk management and technical competence to audit algorithms. Auditors should be independent, so as to be able to perform their tasks in an adequate and trustworthy manner. If their independence is not beyond doubt, they should resign or abstain from the audit engagement.*

deleted

Or. en

Amendment 24

Proposal for a regulation Recital 61

Text proposed by the Commission

Amendment

(61) The audit report should be substantiated, so as to give a meaningful account of the activities undertaken and the conclusions reached. It should help inform, and where appropriate suggest improvements to the measures taken by the very large online platform to comply with their obligations under this Regulation. The report should be transmitted to the Digital Services Coordinator of establishment and the Board without delay, together with the risk assessment and the mitigation measures, as well as the platform's plans for addressing the audit's recommendations. The report should include an audit opinion based on the conclusions drawn from the audit evidence obtained. A positive opinion should be given where all evidence shows that the very large online platform complies with the obligations laid down by this Regulation or, where applicable, any commitments it has undertaken pursuant to a code of conduct or crisis protocol, in particular by identifying, evaluating and mitigating the systemic risks posed by its system and services. A positive opinion should be accompanied by comments where the auditor wishes to include remarks that do not have a substantial effect on the outcome of the audit. A negative opinion should be given where the auditor considers that the very large online platform does not comply with this Regulation or the commitments undertaken.

deleted

Or. en

Amendment 25

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 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, ***and that those options are used by default.***

Or. en

Amendment 26

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 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.

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 **dissemination of illegal content using** 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.

Or. en

Amendment 27

Proposal for a regulation

Recital 67

Text proposed by the Commission

Amendment

(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 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.

deleted

Or. en

Amendment 28

Proposal for a regulation

Recital 68

Text proposed by the Commission

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 systemic risks on society and democracy, such as disinformation or manipulative and abusive activities. This includes coordinated operations aimed at

deleted

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.

Or. en

Amendment 29

Proposal for a regulation Recital 69

Text proposed by the Commission

Amendment

(69) *The rules on codes of conduct under this Regulation could serve as a basis for already established self-regulatory efforts at Union level, including the Product Safety Pledge, the Memorandum of Understanding against counterfeit goods, the Code of Conduct against illegal hate speech as well as the Code of practice on disinformation. In particular for the latter, the Commission will issue guidance for strengthening the Code of practice on disinformation as announced in the European Democracy Action Plan.*

deleted

Or. en

Amendment 30

Proposal for a regulation Recital 71

Text proposed by the Commission

Amendment

(71) In case of extraordinary circumstances affecting public security or public health, the Commission may initiate the drawing up of crisis protocols to coordinate a rapid, collective and cross-border response in the online environment. Extraordinary circumstances may entail any unforeseeable event, such as earthquakes, hurricanes, pandemics and other serious cross-border threats to public health, war and acts of terrorism, where, for example, online platforms may be misused for the rapid spread of illegal content or disinformation or where the need arises for rapid dissemination of reliable information. In light of the important role of very large online platforms in disseminating information in our societies and across borders, such platforms should be encouraged in drawing up and applying specific crisis protocols. Such crisis protocols should be activated only for a limited period of time and the measures adopted should also be limited to what is strictly necessary to address the extraordinary circumstance. Those measures should be consistent with this Regulation, and should not amount to a general obligation for the participating very large online platforms to monitor the information which they transmit or store, nor actively to seek facts or circumstances indicating illegal content.

deleted

Or. en

Amendment 31

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

Text proposed by the Commission

Amendment

5a. This Regulation shall not apply to questions relating to information society services covered by Regulation (EU) 2016/679 and Directive 2002/58/EC.

Or. en

Justification

The EDPS recommends to align the wording of the Proposal with the current wording of Article 1(5) b) of Directive 2000/31/EC and to clarify that the Proposal does not apply to questions relating to the liability of controllers and processors according to data protection law.

Amendment 32

Proposal for a regulation
Article 2 a (new)

Text proposed by the Commission

Amendment

Article 2a

Digital Privacy

- 1. Where technically possible, a provider of an information society service shall enable the use of and payment for that service without collecting personal data of the recipient.**
- 2. A provider of an information society service shall process personal data concerning the use of the service by a recipient only to the extent strictly necessary to enable the recipient to use the service or to charge the recipient for the use of the service. An operator of an online platform shall be allowed to process personal data concerning the use of the service by a recipient for the sole purpose of operating a recommender system if the recipient has given his or her explicit consent, as defined in Article**

**4(11) of Regulation (EU) 2016/679.
Member States shall not require a
provider of information society services to
retain personal data concerning the use of
the service by all recipients.**

**3. A provider of an information
society service shall have the right to
provide and support end-to-end
encryption services.**

Or. en

Justification

Paragraph 1: According to resolution 2020/2019(INL), par. 18, in line with the principle of data minimisation and in order to prevent unauthorised disclosure (such as a recent data breach affecting 500 million users), identity theft and other forms of abuse of personal data, the Digital Services Act should provide for the right to use and pay for digital services anonymously wherever technically possible (see also resolution 2020/2018(INL), par. 37, and LIBE opinion PE650.375v02, par. 3). This addresses, for example, the Facebook data breach which exposed unnecessarily collected private phone numbers, locations etc. of up to 500 mio. users to criminals. Paragraph 2: According to resolutions 2020/2022(INI), par. 9, and 2020/2019(INL), par. 26, the online activities of an individual allow for deep insights into their (past and future) behaviour and make it possible to manipulate them. Users shall therefore be given a right not to be subject to pervasive tracking when using digital services, except where strictly necessary to provide the service and to bill the users (JURI opinion PE652.326v02, par. 4). This excludes i.e. behavioral advertising, as requested by LIBE (opinion PE650.375v02, par. 8) and suggested by the EDPS. Merely requiring user consent for behavioral advertising would not effectively protect privacy and would fail to create a level playing field with traditional media some of which are existentially threatened due to the loss of advertising revenue to online services that offer targeted advertising. The sentence on data retention is based on 2020/2022(INI), paragraph 31. Paragraph 3: According to resolution 2020/2018(INL), par. 26, applying effective end-to-end encryption to data is essential for trust in and security on the Internet, and effectively prevents unauthorised third party access, including to personal data.

Amendment 33

Proposal for a regulation Article 3 – paragraph 3

Text proposed by the Commission

Amendment

**3. This Article shall not affect the
possibility for a court or administrative
authority, in accordance with Member
States' legal systems, of requiring the**

deleted

service provider to terminate or prevent an infringement.

Or. en

Justification

According to report 2020/2022(INI), par. 22, illegal content should be removed where it is hosted and mere conduit intermediaries should not be required to block access to content (likewise resolution 2020/2018(INL), par. 49). Access blocking can easily be circumvented (e.g. by changing DNS servers) and often results in overblocking and collateral suppression of legal speech hosted on the same website, by the same provider or via the same network (IP address).

Amendment 34

**Proposal for a regulation
Article 4 – paragraph 2**

Text proposed by the Commission

2. This Article shall not affect the possibility for a court **or administrative authority**, in accordance with Member States' legal systems, of requiring the service provider to terminate or prevent an infringement.

Amendment

2. This Article shall not affect the possibility for a court, in accordance with Member States' legal systems, of requiring the service provider to terminate or prevent an infringement.

Or. en

Justification

To safeguard freedom of expression, the final decision on the legality of content shall rest with the independent judiciary (resolution 2020/2019(INL), par. 5). Suppressing online speech interferes with fundamental rights and requires a balancing of interests which is typically entrusted to independent courts. Administrative authorities are controlled by the government whereas the judiciary is shielded against politically motivated interference. This corresponds to recommendations i.e. in the Joint Declaration on International Mechanisms for Promoting Freedom of Expression of the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression.

Amendment 35

**Proposal for a regulation
Article 5 – paragraph 4**

Text proposed by the Commission

Amendment

4. This Article shall not affect the possibility for a court ***or administrative authority***, in accordance with Member States' legal systems, of requiring the service provider to terminate or prevent an infringement.

4. This Article shall not affect the possibility for a court, in accordance with Member States' legal systems, of requiring the service provider to terminate or prevent an infringement.

Or. en

Justification

To safeguard freedom of expression, the final decision on the legality of content shall rest with the independent judiciary (resolution 2020/2019(INL), par. 5). Suppressing online speech interferes with fundamental rights and requires a balancing of interests which is typically entrusted to independent courts. Administrative authorities are controlled by the government whereas the judiciary is shielded against politically motivated interference. This corresponds to recommendations i.e. in the Joint Declaration on International Mechanisms for Promoting Freedom of Expression of the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression.

Amendment 36

Proposal for a regulation

Article 6

Text proposed by the Commission

Amendment

Article 6

deleted

Voluntary own-initiative investigations and legal compliance

Providers of intermediary services shall not be deemed ineligible for the exemptions from liability referred to in Articles 3, 4 and 5 solely because they carry out 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.

Justification

According to resolutions 2020/2018(INL), par. 56, and 2020/2019(INL), par. 5, the responsibility for enforcing the law must rest with public authorities. This protects freedom of expression for example due to the independence and training of public officials and their obligation to respect fundamental rights. Private providers and their contractors lack the independence, qualification and accountability of public officials and shall not be encouraged to take law enforcement in their own hands. The "good samaritan"-type provision is also unnecessary in Union law and without practical effect because nothing in Articles 3-5 states that providers are liable solely due to their own initiative. For instance, courts have not considered that the use of YouTube's Content ID led to YouTube playing an active role in the provision of its users' content. Where case-law on the 'active' or 'passive' role of providers has resulted in legal uncertainty, it did not relate to compliance measures and is better addressed by the amendment to recital 18 proposed above.

Amendment 37**Proposal for a regulation****Article 7 – title***Text proposed by the Commission*

No general monitoring or active fact-finding obligations

*Amendment*No general monitoring or active fact-finding ***or automated content moderation*** obligations

Or. en

Amendment 38**Proposal for a regulation****Article 7 – paragraph 1 a (new)***Text proposed by the Commission**Amendment****Providers of intermediary services shall not be obliged to use automated tools for content moderation.***

Or. en

Justification

According to resolutions 2020/2022(INI), par. 13, and 2020/2018(INL), par. 45, service

providers shall not be obliged to use automated tools in content moderation because automated content moderation tools are incapable of effectively understanding the subtlety of context and meaning in human communication, which is necessary to determine whether assessed content violates the law or terms of service. Human review of automated reports by service providers or their contractors does not fully solve this problem, especially if it is outsourced to private staff that lack sufficient independence, qualification and accountability (resolution 2020/2022(INI), par. 12). The responsibility for deciding on the legality of information shall rest with public authorities and not private entities. According to LIBE opinion PE650.375v02, par. 22, an explicit exclusion of such obligations is needed to clarify that nothing in the law shall be interpreted to require the use of such tools or to allow authorities to impose them. The provision is in line with Article 4 (8) of the recently adopted Regulation on Terrorist Content Online. According to Article 1 of the proposal this provision is without prejudice to Article 17 of the Copyright Directive which explicitly mandates the use of automated tools. The compliance of this obligation with fundamental rights is currently subject to judicial review.

Amendment 39

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

Amendment

1. Providers of intermediary services shall, upon the receipt **via a secure communications channel** of an order to act against a specific item of illegal content, issued by **a national judicial authority**, 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 **order**, without undue delay, specifying the action taken. **This rule shall apply mutatis mutandis in respect of competent administrative authorities ordering online platforms to act against traders unlawfully promoting or offering products or services in the Union.**

Or. en

Justification

To safeguard freedom of expression, the final decision on the legality of content shall rest with the independent judiciary (resolution 2020/2019(INL), par. 5). Suppressing online speech interferes with fundamental rights and requires a balancing of interests which is

typically entrusted to independent courts. Administrative authorities are controlled by the government whereas the judiciary is shielded against politically motivated interference. This corresponds to recommendations i.e. in the Joint Declaration on International Mechanisms for Promoting Freedom of Expression of the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression. Due to the reduced risk to freedom of expression in the case of commercial offers it would appear acceptable to allow for administrative orders to act against unlawful offers.

Amendment 40

Proposal for a regulation

Article 8 – paragraph 2 – point a – indent 3

Text proposed by the Commission

— information about redress available to the provider of the service and to the recipient of the service who provided the content;

Amendment

— information about redress ***mechanisms*** available to the provider of the service and to the recipient of the service who provided the content;

Or. en

Amendment 41

Proposal for a regulation

Article 8 – paragraph 2 – point b a (new)

Text proposed by the Commission

Amendment

(ba) the territorial scope of an order addressed to a provider that has its main establishment or, if the provider is not established in the Union, its legal representation in another Member State is limited to the territory of the Member State issuing the order;

Or. en

Justification

According to resolution 2020/2022(INI), par. 15, in order to protect freedom of speech, to avoid conflicts of laws, to avert unjustified and ineffective geoblocking and to aim for a harmonised digital single market, hosting service providers should not be required to remove

or disable access to information that is legal in the Member State that they are established in, or where their designated legal representative resides or is established ("what is legal offline is also legal online", see also resolution 2020/2018(INL), par. 55). In line with the 1st reading position on the Regulation on Terrorist Content Online, cross-border removal orders are acceptable where their effect is limited to the territory of the issuing Member State.

Amendment 42

Proposal for a regulation

Article 8 – paragraph 2 – point b b (new)

Text proposed by the Commission

Amendment

(bb) if addressed to a provider that has its main establishment outside the Union, the territorial scope of the order, where Union law is infringed, is limited to the territory of the Union or, where national law is infringed, to the territory of the Member State issuing the order;

Or. en

Justification

Resolution 2020/2022(INI), par. 15, maintains that hosting service providers shall not be required to remove or disable access to information that is legal in their country of origin (likewise resolution 2020/2018(INL), par. 55). This also means that EU authorities can order the blocking of content legally published outside the Union only with effect for its own territory (e.g. content legally published in the U.S.). This avoids that third countries will themselves start ordering EU providers to remove content legally published in the Union. This is in line with the Terrorist Content Online regulation requiring providers to "disable access to terrorist content in all Member States".

Amendment 43

Proposal for a regulation

Article 8 – paragraph 2 – subparagraph 1 (new)

Text proposed by the Commission

Amendment

Point (d) shall not apply where online platforms are ordered to act against traders, established in the same Member State as the issuing authority, that are unlawfully promoting or offering

Justification

Due to the limited effects on freedom of expression it is acceptable to allow for cross-border orders when it comes to commercial offers.

Amendment 44

**Proposal for a regulation
Article 8 – paragraph 3**

Text proposed by the Commission

3. The Digital Services Coordinator from the Member State of the ***judicial or administrative*** authority issuing the order shall, without undue delay, transmit a copy of the orders referred to in paragraph 1 to all other Digital Services Coordinators through the system established in accordance with Article 67.

Amendment

3. The Digital Services Coordinator from the Member State of the authority issuing the order shall, without undue delay, transmit a copy of the orders referred to in paragraph 1 to all other Digital Services Coordinators through the system established in accordance with Article 67.

Amendment 45

**Proposal for a regulation
Article 8 – paragraph 4 a (new)**

Text proposed by the Commission

Amendment

4a. The Commission shall adopt implementing acts pursuant to Article 291 of the Treaty on the Functioning of the European Union (TFEU), laying down a European technical standard for secure communication channels. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 70.

Amendment 46

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 **via a secure communications channel** of an order to provide a specific item of information about one or more specific individual recipients of the service, issued by **a** national judicial **authority** on the basis of the applicable Union or national law, in conformity with Union law, **for the purpose of preventing serious threats to public security** inform without undue delay the authority of issuing the order of the effect given to the order **via a secure communications channel**.

Or. en

Justification

According to resolution 2020/2018(INL), par. 25, resolution 2020/2019(INL), par. 19, and LIBE opinion PE650.375v02, par. 4, the online activities of individuals allow for deep insights into their personality, so that in the spirit of the case-law on communications metadata, public authorities shall be given access to a user's subscriber data and metadata only to investigate suspects of serious crimes with prior judicial authorisation. To explain: The fact that a person uses a certain digital service can be very revealing regarding their private life, religion, health or sexuality. The disclosure of such information can result in harassment or blackmailing. Also identifying an anonymous account can expose a whistleblower and result in serious harm. The access to information for criminal proceedings will soon be subject to the e-evidence regulation (proposed par. 4). In the spirit of the case-law on communications data, serious threats to public security could also justify accessing this sensitive information, but not less pressing purposes.

Amendment 47

Proposal for a regulation Article 9 – paragraph 2 – point -a (new)

Text proposed by the Commission

Amendment

(-a) the order is issued for the purpose of preventing serious threats to public security;

Or. en

Amendment 48

Proposal for a regulation

Article 9 – paragraph 2 – point -a a (new)

Text proposed by the Commission

Amendment

(-aa) the order seeks information on a suspect or suspects of a serious threat to public security;

Or. en

Amendment 49

Proposal for a regulation

Article 9 – paragraph 2 – point a – indent 1

Text proposed by the Commission

Amendment

— a statement of reasons explaining the objective for which the information is required and *why the requirement to provide the information is necessary and proportionate to determine compliance by the recipients of the intermediary services with applicable Union or national rules, unless such a statement cannot be provided for reasons related to the prevention, investigation, detection and prosecution of criminal offences;*

— a statement of reasons explaining the objective for which the information is required, *setting out why the measure is necessary and proportional, taking due account of the impact of the measure on the fundamental rights of the specific recipient of the service whose data is sought and the seriousness of the offence;*

Or. en

Amendment 50

Proposal for a regulation

Article 9 – paragraph 2 – point a – indent 1 a (new)

Text proposed by the Commission

Amendment

— *a unique identifier of the recipients on whom information is sought;*

Or. en

Amendment 51

Proposal for a regulation

Article 9 – paragraph 2 – point a – indent 2

Text proposed by the Commission

Amendment

— information about redress available to the provider and to the recipients of the service concerned;

— information about redress *mechanisms* available to the provider and to the recipients of the service concerned;

Or. en

Amendment 52

Proposal for a regulation

Article 9 – paragraph 2 – point b

Text proposed by the Commission

Amendment

(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;

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

Or. en

Amendment 53

Proposal for a regulation

Article 9 – paragraph 3

Text proposed by the Commission

3. The Digital Services Coordinator from the Member State of the national judicial *or administrative* authority issuing the order shall, without undue delay, transmit a copy of the order referred to in paragraph 1 to all Digital Services Coordinators through the system established in accordance with Article 67.

Amendment

3. The Digital Services Coordinator from the Member State of the national judicial authority issuing the order shall, without undue delay, transmit a copy of the order referred to in paragraph 1 to all Digital Services Coordinators through the system established in accordance with Article 67.

Or. en

Amendment 54

**Proposal for a regulation
Article 9 – paragraph 4**

Text proposed by the Commission

4. *The conditions and requirements laid down in this article shall be without prejudice to requirements under national criminal procedural law in conformity with Union law.*

Amendment

Where information is sought for the purpose of criminal proceedings, Regulation (EU) 2021/XXXX on access to electronic evidence shall apply.

Or. en

Amendment 55

**Proposal for a regulation
Article 9 – paragraph 4 a (new)**

Text proposed by the Commission

Amendment

4a. The provider shall inform, without undue delay, the recipient whose data is being sought. As long as this is necessary and proportionate and is in order to protect the fundamental rights of another person, the issuing judicial authority, taking due account of the impact of the measure on the fundamental rights of the person whose data is sought, may request the provider to delay informing the

recipient. Such a request shall be duly justified, specify the duration of the obligation of confidentiality and be subject to periodic review.

Or. en

Justification

To align with our position on the e-Evidence regulation, 2018/0108(COD)).

Amendment 56

**Proposal for a regulation
Article 9 – paragraph 4 b (new)**

Text proposed by the Commission

Amendment

4b. This Article shall apply, mutatis mutandis, in respect of competent administrative authorities ordering online platforms to provide the information listed in Article 22.

Or. en

Justification

When it comes to the effective investigation of commercial activities, it appears justified to apply lower safeguards.

Amendment 57

**Proposal for a regulation
Article 9 – paragraph 4 c (new)**

Text proposed by the Commission

Amendment

4c. Providers of intermediary services shall transfer personal data on recipients of their service requested by public authorities only where the conditions set out in this Article are met.

Or. en

Amendment 58

Proposal for a regulation Article 9 – paragraph 4 d (new)

Text proposed by the Commission

Amendment

4d. The Commission shall adopt implementing acts pursuant to Article 291 of the Treaty on the Functioning of the European Union (TFEU), establishing a common European information exchange system with secure channels for the handling of authorised cross-border communications, authentication and transmission of the orders referred to in paragraph 1 and, where applicable, of the requested data between the competent judicial authority and the provider. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 70.

Or. en

Justification

In line with our position on the e-Evidence proposal, 2018/0108(COD)).

Amendment 59

Proposal for a regulation Article 12 – paragraph 2

Text proposed by the Commission

Amendment

2. Providers of intermediary services shall act in a diligent, **objective** and proportionate manner in applying and enforcing the restrictions referred to in paragraph 1, with due regard to the rights and legitimate interests of all parties involved, including the applicable fundamental rights of the recipients of the service as enshrined in the Charter.

2. Providers of intermediary services shall act in a **fair, transparent, coherent, predictable, non-discriminatory**, diligent, **non-arbitrary** and proportionate manner in applying and enforcing the restrictions referred to in paragraph 1, with due regard to the rights and legitimate interests of all parties involved, including the applicable fundamental rights of the recipients of the

service as enshrined in the Charter.

Or. en

Justification

See report 2020/2022(INI), par. 32. The further requirements specify what is meant by "fair". The term "non-arbitrary" is defined in case-law.

Amendment 60

Proposal for a regulation

Article 12 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. The terms and conditions of providers of intermediary services may exclude legal information from those services or otherwise limit the access to legal information or the access and other rights of those exchanging it only where objectively justified and on clearly defined grounds.

Or. en

Justification

According to report 2020/2022(INI), par. 33-34, removals of content should be in line with human rights standards and the blocking of legal content on the basis of terms and conditions shall be limited to the absolute minimum. In order to give practical effect to the fundamental right to freedom of expression, providers shall not be allowed to arbitrarily suppress legal content or act against those sharing it (e.g. by "de-platforming" them). The free exchange of opinions and information is essential to our society. Acting against legal content can be justified where content is incompatible with the purpose of the service or where it has significant negative effects.

Amendment 61

Proposal for a regulation

Article 12 – paragraph 2 b (new)

Text proposed by the Commission

Amendment

2b. Terms and conditions of providers of intermediary services shall respect the essential principles of human rights as enshrined in the Charter and international law.

Or. en

Justification

According to resolution 2020/2019(INL), par. 34, compliance with fundamental rights standards of terms and conditions imposed by intermediaries on the users of their services shall be subject to judicial review; terms unduly restricting users' fundamental rights, such as the right to privacy and to freedom of expression, shall not be binding.

Amendment 62

Proposal for a regulation

Article 12 – paragraph 2 c (new)

Text proposed by the Commission

Amendment

2c. Terms that do not comply with this Article shall not be binding on recipients.

Or. en

Justification

In line with the unfair terms directive 93/13/EEC, prohibited terms shall not be binding on the other contracting party. This ensures that the judiciary will decide on interpretation and legality of terms in the context of contractual litigation. In line with the unfair terms directive 93/13/EEC, prohibited terms shall not be binding on the other contracting party. This ensures that the judiciary will decide on interpretation and compliance in the context of contractual litigation.

Amendment 63

Proposal for a regulation

Article 13 – paragraph 1 – point c

Text proposed by the Commission

Amendment

(c) the content moderation engaged in at the providers' own initiative, including the number and type of measures taken that

(c) the content moderation engaged in at the providers' own initiative, including the number and type of measures taken that

affect the availability, visibility and accessibility of information provided by the recipients of the service and the recipients' ability to provide information, categorised by the type of reason and basis for taking those measures;

affect the availability, visibility and accessibility of information provided by the recipients of the service and the recipients' ability to provide information, categorised by the type of reason and basis for taking those measures, ***as well as the measures taken to qualify content moderators and to ensure that non-infringing content is not affected;***

Or. en

Amendment 64

Proposal for a regulation

Article 14 – paragraph 2 – point c

Text proposed by the Commission

Amendment

(c) the name and an electronic mail address of the individual or entity submitting the notice, except in the case of information considered to involve one of the offences referred to in Articles 3 to 7 of Directive 2011/93/EU;

deleted

Or. en

Justification

To facilitate the reporting and removal of illegal content, notifiers shall not be required to disclose personal data. Anonymity enables, for example, notices by persons with inside knowledge who have negative consequences to fear if their identity is revealed. Mandatory identification would also be ineffective because there is no verification of identity information provided.

Amendment 65

Proposal for a regulation

Article 14 – paragraph 2 – point c a (new)

Text proposed by the Commission

Amendment

(ca) where an alleged infringement of an intellectual property right is notified,

evidence that the entity submitting the notice is the rights holder of the intellectual property right that is allegedly infringed or is authorised to act on behalf of the that rights holder ;

Or. en

Justification

In the case of IP rights, other persons than the rightholder and their representatives can usually not reliably know and notify that the person who provided the information is not the rightholder and does not hold a license.

Amendment 66

Proposal for a regulation

Article 14 – paragraph 2 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

The individual or entity may optionally provide his, her or its name and an electronic mail address, which shall not be disclosed to the content provider except in cases of alleged violations of intellectual property rights.

Or. en

Justification

In the case of IP rights the identity of the notifier shall exceptionally be disclosed to enable the publisher to verify if it is the rightholder or a representative (see (c) above).

Amendment 67

Proposal for a regulation

Article 14 – paragraph 3

Text proposed by the Commission

Amendment

3. Notices that include the elements referred to in paragraph 2 shall be considered to give rise to actual knowledge or awareness for the purposes *deleted*

**of Article 5 in respect of the specific item
of information concerned.**

Or. en

Justification

The deletion is to protect freedom of expression. A technical intermediary has actual knowledge of illegal content only if they are aware both of the content and its illegal nature. A complete notice triggers awareness of content once it is read (not instantly), but the provider will often not know whether the reported content is illegal or not. Parliament has stressed that it is for the judiciary to decide on the legality of content, not on private commercial entities (resolution 2020/2019(INL), par. 5). This is confirmed by CJEU case-law according to which precise and substantiated notices only represent a factor of which the court must take account when determining whether the provider was actually aware of facts or circumstances on the basis of which a diligent economic operator should have identified the illegality (Judgement of 12 July 2011, L'Oréal, C-324/09, ECLI:EU:C:2011:474, par. 122).

Amendment 68

**Proposal for a regulation
Article 14 – paragraph 4 a (new)**

Text proposed by the Commission

Amendment

4a. Upon receipt of the notice, the service provider shall notify the information provider using available contact details of the elements referred to in paragraph 2 and give them the opportunity to reply before taking a decision.

Or. en

Justification

Introducing a right to counter-notice corresponds to resolutions 2020/2022(INI), par. 29, and 2019/2020(INL), Annex, Article 10 (see also resolution 2020/2018(INL), par 53). It helps avoid the removal of legal content due to a lack of information.

Amendment 69

**Proposal for a regulation
Article 14 – paragraph 4 b (new)**

Text proposed by the Commission

Amendment

4b. Notified information shall remain accessible until a decision is taken in respect thereof.

Or. en

Justification

Corresponds to resolution 2020/2019(INL), Annex, Article 14. A "temporary" removal of content often has the same effects as a permanent removal, as content is often relevant only at the time when it is posted.

Amendment 70

Proposal for a regulation

Article 14 – paragraph 4 c (new)

Text proposed by the Commission

Amendment

4c. The provider shall ensure that decisions on notices are taken by qualified staff to whom adequate initial and ongoing training on the applicable legislation and international human rights standards as well as appropriate working conditions are to be provided, including, where necessary, the opportunity to seek professional support, qualified psychological assistance and qualified legal advice.

Or. en

Justification

This reflects Article 11 of the Annex to report 2020/2019(INL)). Automated tools are currently unable to differentiate illegal content from content that is legal in a given context and therefore, in the absence of human review, routinely result in overblocking legal content.

Amendment 71

Proposal for a regulation

Article 14 – paragraph 5

Text proposed by the Commission

5. The provider shall also, without undue delay, notify **that** individual or entity of its decision in respect of the information to which the notice relates, providing information on the redress possibilities in respect of that decision.

Amendment

5. The provider shall also, without undue delay, notify **the submitting individual or entity as well as the information provider** of its decision in respect of the information to which the notice relates, providing information on the redress possibilities in respect of that decision.

Or. en

Amendment 72

**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 **non-arbitrary** manner. Where they use automated means for that processing, they shall include information on such use in the notification referred to in paragraph 4.

Or. en

Justification

The notion "non-arbitrary" is defined in case-law. This reflects Article 11 of the Annex to report 2020/2019(INL)). Automated tools are currently unable to differentiate illegal content from content that is legal in a given context and therefore, in the absence of human review, routinely result in overblocking legal content.

Amendment 73

**Proposal for a regulation
Article 15 – paragraph 1**

Text proposed by the Commission

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, 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.

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 removing or disabling access to that information, it shall inform ***the recipient and, where the notifier provided contact details, the notifier***, 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.

Or. en

Amendment 74

**Proposal for a regulation
Article 15 – paragraph 2 – point c**

Text proposed by the Commission

Amendment

(c) where applicable, information on the ***use made of automated*** means in taking the decision, including where the decision was taken in respect of content detected or identified using automated means;

(c) where applicable, information on the means ***used*** in taking the decision, including where the decision was taken in respect of content detected or identified using automated means;

Or. en

Justification

The EDPS recommends to modify Article 15(2) of the Proposal to state unambiguously that information should in any event be provided on the automated means used for detection and identification of illegal content, regardless of whether the subsequent decision involved use of automated means or not.

Amendment 75

**Proposal for a regulation
Article 15 a (new)**

Article 15 a

Content moderation

1. Providers of hosting services shall not use ex ante control measures based on automated tools or upload-filtering of content for content moderation. Where providers of hosting services otherwise use automated tools for content moderation, they shall ensure that qualified staff decide on any action to be taken and that legal content which does not infringe the terms and conditions set out by the providers is not affected. The provider shall ensure that adequate initial and ongoing training on the applicable legislation and international human rights standards, as well as appropriate working conditions, are provided to staff, and that, where necessary, they are given the opportunity to seek professional support, qualified psychological assistance and qualified legal advice. This paragraph shall not apply to moderating information which has most likely been provided by automated tools.

2. Providers of hosting services shall act in a fair, transparent, coherent, predictable, non-discriminatory, diligent, non-arbitrary and proportionate manner when moderating content, with due regard to the rights and legitimate interests of all parties involved, including the fundamental rights of the recipients of the service as enshrined in the Charter.

Or. en

Justification

Paragraph 1: This reflects par. 12 of resolution 2020/2019(INL): "mechanisms voluntarily employed by platforms must not lead to ex-ante control measures based on automated tools or up-load-filtering of content". Automated tools are currently unable to differentiate illegal content from content that is legal in a given context and therefore routinely result in overblocking legal content. Human review of automated reports by service providers or their

contractors does fully not solve this problem, especially if it is outsourced to private staff that lack sufficient independence, qualification and accountability (resolution 2020/2022(INI), par. 12). Ex-ante control means that content is subject to monitoring algorithms even before it is published. To protect freedom of expression this form of prior censorship on the basis of error-prone algorithms shall be prohibited, in line with Article 28b (4) of the Audiovisual Media Services Directive 2018/1808/EU. According to Article 1 this provision is without prejudice to Article 17 of the Copyright Directive which is currently subject to judicial review. The provision does not apply to filtering automated content submissions such as spam. Where automated tools are otherwise used for content moderation (i.e. for flagging), the provider shall ensure that there is no automated decision-making and that non-infringing content is unaffected. Paragraph 2: See report 2020/2022(INI), par. 32. The further requirements specify what is meant by "fair". The EDPS recommends extending the requirement of Article 12(2) to all forms of content moderation, regardless of whether such moderation takes place pursuant to the terms and conditions of the provider or any other basis (EDPS opinion, par. 51).

Amendment 76

Proposal for a regulation

Article 17 – paragraph 1 – introductory part

Text proposed by the Commission

1. Online platforms shall provide recipients of the service, for a period of at least six months following the decision referred to in this paragraph, the access to an effective internal complaint-handling system, which enables the complaints to be lodged electronically and free of charge, against the following decisions taken by the online platform ***on the ground that the information provided by the recipients is illegal content or incompatible with its terms and conditions:***

Amendment

1. Online platforms shall provide recipients of the service ***and qualified entities as defined in Article 3, point (4) of Directive (EU) 2020/1828 of the European Parliament and of the Council***^{29a}, for a period of at least six months following the decision referred to in this paragraph, the access to an effective internal complaint-handling system, which enables the complaints to be lodged electronically and free of charge, against the following decisions taken by the online platform:

^{29a} ***Directive (EU) 2020/1828 of the European Parliament and of the Council of 25 November 2020 on representative actions for the protection of the collective interests of consumers and repealing Directive 2009/22/EC (OJ L 409, 4.12.2020, p. 1.***

Or. en

Justification

According to resolution 2020/2019(INL), par. 11, Parliament takes the view that in order to protect anonymous publications and the general interest, not only the user who upload-ed the content that is the subject of a dispute but also a third party, such as an ombudsperson, with a legitimate interest in acting should be able to challenge content moderation decisions. In many cases the accessibility of information is in the public interest, for example regarding information disclosed by whistleblowers. For various reasons the in-formation provider may not be able or willing to contest platform decisions (e.g. where they published the information anonymously or without providing contact details to be notified of removals). Entities that are qualified for collective action should also have the right to file complaints. The last part of the first sentence is deleted for the following reason: Where freedom of expression is restricted in the absence of infringing content (possibly without any reason), it shall be possible to file a complaint all the more.

Amendment 77

Proposal for a regulation

Article 17 – paragraph 1 – point a

Text proposed by the Commission

(a) decisions to remove **or** disable access to the information;

Amendment

(a) decisions to remove, disable **or restrict** access to the information;

Or. en

Justification

This is to cover practices of "shadow-banning" where specific information is excluded or restricted from recommender systems, effectively inhibiting other users from seeing it.

Amendment 78

Proposal for a regulation

Article 17 – paragraph 3

Text proposed by the Commission

3. Online platforms shall handle complaints submitted through their internal complaint-handling system in a timely, diligent and **objective** manner. Where a complaint contains sufficient grounds for the online platform to consider that the information to which the complaint relates

Amendment

3. Online platforms shall handle complaints submitted through their internal complaint-handling system in a timely, diligent and **non-arbitrary** manner. Where a complaint contains sufficient grounds for the online platform to consider that the information to which the complaint relates

is not illegal and is not incompatible with its terms and conditions, or contains information indicating that the complainant's conduct does not warrant the suspension or termination of the service or the account, it shall reverse its decision referred to in paragraph 1 without undue delay.

is not illegal and is not incompatible with its terms and conditions, or contains information indicating that the complainant's conduct does not warrant the suspension or termination of the service or the account, it shall reverse its decision referred to in paragraph 1 without undue delay.

Or. en

Amendment 79

Proposal for a regulation

Article 18 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Recipients of the service addressed by the decisions referred to in Article 17(1), shall be entitled to select any out-of-court dispute that has been certified in accordance with paragraph 2 in order to resolve disputes relating to those decisions, including complaints that could not be resolved by means of the internal complaint-handling system referred to in that Article. Online platforms shall engage, in good faith, with the body selected with a view to resolving the dispute and shall be bound by the decision taken by the body.

Amendment

Recipients of the service addressed by the decisions referred to in Article 17(1) **and qualified entities as defined in Article 3, point (4) of Directive (EU) 2020/1828**, shall be entitled to select any out-of-court dispute **settlement body** that has been certified in accordance with paragraph 2 in order to resolve disputes relating to those decisions, including complaints that could not be resolved by means of the internal complaint-handling system referred to in that Article. Online platforms shall engage, in good faith, with the body selected with a view to resolving the dispute and shall be bound by the decision taken by the body.

Or. en

Justification

As provided in resolution 2020/2019(INL), Annex, Article 16 (1). According to resolution 2020/2019(INL), par. 11, Parliament takes the view that in order to protect anonymous publications and the general interest, not only the user who upload-ed the content that is the subject of a dispute but also a third party, such as an ombudsperson, with a legitimate interest in acting should be able to challenge content moderation decisions. In many cases the accessibility of information is in the public interest, for example regarding information disclosed by whistleblowers. For various reasons the in-formation provider may not be able or willing to contest platform decisions (e.g. where they published the information anonymously or without providing contact details to be notified of removals). Entities that are

qualified for collective action should also have the right to file complaints.

Amendment 80

Proposal for a regulation

Article 18 – paragraph 2 – point a a (new)

Text proposed by the Commission

Amendment

(aa) it is composed of legal experts;

Or. en

Justification

As provided in resolution 2020/2019(INL), Annex, Article 15 (2).

Amendment 81

Proposal for a regulation

Article 19 – paragraph 5

Text proposed by the Commission

Amendment

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 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.

5. Where an online platform has information indicating that a trusted flagger submitted a significant number of insufficiently precise or inadequately substantiated notices **or notices regarding legal content** through the mechanisms referred to in Article 14, including information gathered in connection to the processing of complaints through the internal complaint-handling systems referred to in Article 17(3), it shall communicate that information to the Digital Services Coordinator that awarded the status of trusted flagger to the entity concerned, providing the necessary explanations and supporting documents.

Or. en

Justification

When it comes to addressing illegal content, giving trusted flaggers priority is justified only if

they flag illegal content. Where a trusted flagger systematically notifies legal content, they should lose their status even if the notices are formally correct.

Amendment 82

Proposal for a regulation Article 20 – paragraph 1

Text proposed by the Commission

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 manifestly illegal content. **deleted**

Or. en

Justification

According to resolution 2020/2022(INI), par. 11, the ultimate responsibility for enforcing the law and deciding on the legality of online activities shall rest with independent competent authorities. The consequences of providing illegal content, including sanctions, are regulated in criminal and civil law and typically determined by the judiciary. Compelling private providers to sanction users for posting "manifestly" illegal content by "de-platforming" them fails to ensure a decision by the judiciary, and would introduce a new type of sanction with vastly different severity depending on the user: De-platforming can existentially threaten prominent users that make a living on online platforms. In other cases it is ineffective because a user will simply create another account. All in all the sanctions foreseen in criminal and civil law and applied by the judiciary are much better suited to address illegal content than corporate "de-platforming". Proportionate sanctions shall be applied to violations of the law rather than mandatory exclusion of individuals from digital services (JURI opinion PE652.326v02, par. 12).

Amendment 83

Proposal for a regulation Article 20 – paragraph 3 – introductory part

Text proposed by the Commission

Amendment

3. Online platforms shall assess, on a case-by-case basis and in a timely, diligent and objective manner, whether a recipient, individual, entity or complainant engages

3. Online platforms shall assess, on a case-by-case basis and in a timely, diligent and objective manner, whether a recipient, individual, entity or complainant engages

in the misuse referred to in **paragraphs 1 and 2**, taking into account all relevant facts and circumstances apparent from the information available to the online platform. Those circumstances shall include at least the following:

in the misuse referred to in **paragraph 2**, taking into account all relevant facts and circumstances apparent from the information available to the online platform. Those circumstances shall include at least the following:

Or. en

Amendment 84

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

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 85

Proposal for a regulation Article 20 – paragraph 4

Text proposed by the Commission

4. Online platforms shall set out, in a clear and detailed manner, their policy in respect of the misuse referred to in **paragraphs 1 and 2** in their terms and conditions, including as regards the facts and circumstances that they take into account when assessing whether certain behaviour constitutes misuse and the duration of the suspension.

Amendment

4. Online platforms shall set out, in a clear and detailed manner, their policy in respect of the misuse referred to in **paragraph 2** in their terms and conditions, including as regards the facts and circumstances that they take into account when assessing whether certain behaviour constitutes misuse and the duration of the suspension.

Or. en

Amendment 86

Proposal for a regulation
Article 21 – paragraph 1

Text proposed by the Commission

1. Where an online platform becomes aware of any information giving rise to a suspicion that a serious criminal offence involving a threat to the life *or safety* of persons ***has taken place, is taking place or is likely to take place***, it shall promptly inform the law enforcement or judicial authorities of the Member State or Member States concerned of its suspicion and provide ***all relevant*** information ***available***.

Amendment

1. Where an online platform becomes aware of any information giving rise to a suspicion that a serious criminal offence involving a threat to the life of persons ***is imminent***, it shall promptly inform the law enforcement or judicial authorities of the Member State or Member States concerned of its suspicion and provide ***the*** information ***that gave rise to it***.

Or. en

Justification

In the interest of legal certainty the reporting obligation is aligned with the recently adopted Regulation on Terrorist Content Online (Article 14 (5)). An obligation to report threats that happened years ago does not appear justified. As recommended by the EDPS (opinion par. 61) it is clearly defined which information is to be communicated. It makes sense to keep the reporting requirements to a minimum to avoid delays as a result of complicated internal investigations. The competent authority is best placed to request specified additional information where needed.

Amendment 87

Proposal for a regulation
Article 21 – paragraph 2 – subparagraph 2

Text proposed by the Commission

For the purpose of this Article, the Member State concerned shall be the Member State where the offence is suspected to ***have taken place***, be taking place and likely to take place, or the Member State where the suspected offender resides or is located, or the Member State where the victim of the suspected offence resides or is located.

Amendment

For the purpose of this Article, the Member State concerned shall be the Member State where the offence is suspected to be taking place and likely to take place, or the Member State where the suspected offender resides or is located, or the Member State where the victim of the suspected offence resides or is located.

Or. en

Amendment 88

Proposal for a regulation

Article 22 – paragraph 1 – point b

Text proposed by the Commission

(b) a copy of the identification document of the trader or any other electronic identification as defined by Article 3 of Regulation (EU) No 910/2014 of the European Parliament and of the Council⁵⁰ ;

⁵⁰ Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC

Amendment

(b) a copy of the identification document of the trader ***on which the name, any information concerning the address contained in the document, the issuing authority and the date of validity is visible*** or any other electronic identification as defined by Article 3 of Regulation (EU) No 910/2014 of the European Parliament and of the Council⁵⁰ ;

⁵⁰ Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC

Or. en

Justification

In view of frequent data breaches and to prevent identity theft, it is not necessary to disclose information such as a photo, the date of birth or a signature. The online platform cannot use this information to verify the identity details the trader is obliged to provide.

Amendment 89

Proposal for a regulation

Article 22 – paragraph 4

Text proposed by the Commission

4. The online platform shall store the information obtained pursuant to paragraph 1 and 2 in a secure manner for the duration of their contractual relationship with the trader concerned. They shall subsequently delete the information.

PE692.898v02-00

Amendment

4. The online platform shall store the information obtained pursuant to paragraph 1 and 2 in a secure manner for the duration of their contractual relationship with the trader concerned. They shall subsequently delete the information. ***The information referred to in point (b) of paragraph 1 shall be deleted as soon as is has been***

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compared to the information referred to in point (a) of that paragraph.

Or. en

Justification

In view of frequent data breaches and in order to prevent identity theft, identity documents are not to be retained after they have been used to verify the information provided.

Amendment 90

**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 the submission of manifestly unfounded notices and the submission of manifestly unfounded complaints;

Or. en

Amendment 91

**Proposal for a regulation
Article 26**

Text proposed by the Commission

Article 26

Risk assessment

1. Very large online platforms shall identify, analyse and assess, from the date of application referred to in the second subparagraph of Article 25(4), at least once a year thereafter, any significant systemic risks stemming from the functioning and use made of their services in the Union. This risk assessment shall be specific to their

Amendment

deleted

services and shall include the following systemic risks:

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

(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;

(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.

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.

Or. en

Justification

The provision is deleted to protect freedom of expression. The Parliament's intention is for independent public authorities to be in charge of tackling illegal content, and for providers to use a notice and action procedure. Mandating large platforms to periodically conduct a risk assessment and to mitigate risks would run counter the very idea of the liability exceptions and responsibility of public authorities by creating the impression that technical intermediaries are responsible for the actions of their users and should privately take law enforcement into their own hands. Parliament has also stressed that the Digital Services Act should address illegal content only and not "harmful content" as targeting legal content could put the freedom of expression at serious risk (i.e. annex to resolution 2020/2019(INL) as well as LIBE opinion PE650.375v02, par. 15), whereas the proposed Article 26 would go far beyond illegal content where mere vaguely described allegedly "negative effects" are

concerned. The provisions on the "inauthentic use" of services run counter to the Parliament's intention of safeguarding the right to use digital services anonymously. In line with the Parliament's first reading position on Terrorist Content Online (resolution of 17 April 2019, 2018/0331(COD)) I propose to allow the competent Digital Services Coordinators to impose specific measures on very large platforms, subject to judicial review (Article 27).

Amendment 92

Proposal for a regulation Article 27 – title

Text proposed by the Commission

Amendment

Mitigation of risks

Specific measures

Or. en

Justification

In line with the Parliament's first reading position on Terrorist Content Online (resolution of 17 April 2019, 2018/0331(COD)) I propose to allow the competent Digital Services Coordinators to impose specific measures on very large platforms, subject to judicial review (Article 27). Imposing specific measures is more effective than self-auditing.

Amendment 93

Proposal for a regulation Article 27 – paragraph 1 – introductory part

Text proposed by the Commission

Amendment

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:

1. Very large online platforms **may** put in place reasonable, proportionate and effective **specific** measures to **address the dissemination of illegal content through their services**. Such measures may include, where applicable:

Or. en

Amendment 94

Proposal for a regulation Article 27 – paragraph 1 – point a (new)

Text proposed by the Commission

Amendment

(aa) appropriate technical and operational measures or capacities, such as appropriate staffing or technical means to expeditiously remove or disable access to illegal content which the platform is aware of;

Or. en

Amendment 95

Proposal for a regulation

Article 27 – paragraph 1 – point a b (new)

Text proposed by the Commission

Amendment

(ab) easily accessible and user-friendly mechanisms for users to report or flag allegedly illegal content, and mechanisms for user moderation;

Or. en

Amendment 96

Proposal for a regulation

Article 27 – paragraph 1 – point c

Text proposed by the Commission

Amendment

(c) reinforcing the internal processes or supervision of any of their activities *in particular as regards detection of systemic risk*;

(c) reinforcing the internal processes or supervision of any of their activities;

Or. en

Amendment 97

Proposal for a regulation

Article 27 – paragraph 1 – point d

Text proposed by the Commission

Amendment

(d) initiating or adjusting cooperation with trusted flaggers in accordance with Article 19; *deleted*

Or. en

Amendment 98

Proposal for a regulation

Article 27 – paragraph 1 – point e

Text proposed by the Commission

Amendment

(e) initiating or adjusting cooperation with other online platforms through the codes of conduct and the crisis protocols referred to in Article 35 and 37 respectively. *deleted*

Or. en

Amendment 99

Proposal for a regulation

Article 27 – paragraph 2

Text proposed by the Commission

Amendment

2. The Board, in cooperation with the Commission, shall publish comprehensive reports, once a year, which shall include the following: *deleted*

(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;

(b) best practices for very large online

platforms to mitigate the systemic risks identified.

Or. en

Amendment 100

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

Amendment

3. The Commission, in cooperation with the Digital Services Coordinators, may issue general **recommendations** on the application of paragraph 1, in particular to present best practices and **propose** possible measures, having due regard to the possible consequences of the measures on fundamental rights enshrined in the Charter of all parties involved. When preparing those **recommendations** the Commission shall organise public consultations.

Or. en

Amendment 101

Proposal for a regulation Article 27 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. After establishing that a very large online platform has received a substantial number of removal orders, the competent Digital Services Coordinator may oblige the platform to implement necessary, proportionate and effective additional specific measures. The competent Digital Services Coordinator shall not impose a general monitoring obligation or the use of automated tools. The request shall take into account, in particular, the technical

feasibility of the measures, the size and economic capacity of the platform and the effect of such measures on the fundamental rights of the users, in particular their right to freedom of expression, including freedom to receive and impart information and ideas in an open and democratic society. Such a request shall be sent by the Digital Services Coordinator of the Member State in which the platform has its main establishment or, if not established in the Union, its legal representative. The platform may, at any time, request that the competent Digital Services Coordinator review and, where appropriate, revoke a request.

Or. en

Amendment 102

Proposal for a regulation Article 28

Text proposed by the Commission

Amendment

Article 28

deleted

Independent audit

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:

(a) the obligations set out in Chapter III;

(b) any commitments undertaken pursuant to the codes of conduct referred to in Articles 35 and 36 and the crisis protocols referred to in Article 37.

2. Audits performed pursuant to paragraph 1 shall be performed by organisations which:

(a) are independent from the very large online platform concerned;

(b) have proven expertise in the area of risk management, technical competence and capabilities;

(c) have proven objectivity and professional ethics, based in particular on adherence to codes of practice or appropriate standards.

3. The organisations that perform the audits shall establish an audit report for each audit. The report shall be in writing and include at least the following:

(a) the name, address and the point of contact of the very large online platform subject to the audit and the period covered;

(b) the name and address of the organisation performing the audit;

(c) a description of the specific elements audited, and the methodology applied;

(d) a description of the main findings drawn from the audit;

(e) an audit opinion on whether the very large online platform subject to the audit complied with the obligations and with the commitments referred to in paragraph 1, either positive, positive with comments or negative;

(f) where the audit opinion is not positive, operational recommendations on specific measures to achieve compliance.

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 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

The provision is deleted to protect fundamental rights. Assigning compliance assessment to private entities chosen and paid by providers poses a risk to fundamental rights as only public authorities are bound by fundamental rights, sufficiently independent and their actions are subject to judicial review. Privatised auditing may result in pressure to take excessive "due diligence" measures. Likewise "soft law" instruments such as "codes of conduct" and "crisis protocols" pose a risk to fundamental rights because, unlike legislation, they are not subject to democratic scrutiny, they are not bound by fundamental rights and their compliance with fundamental rights is not subject to judicial review. They may, for example, also target legal content whereas Parliament has stressed that the Digital Services Act should address illegal content only and not "harmful content" as targeting legal content could put the freedom of expression at serious risk (i.e. resolution 2020/2019(INL), par. 28, as well as LIBE opinion PE650.375v02, par. 15).

Amendment 103

Proposal for a regulation Article 29 – paragraph 1

Text proposed by the Commission

1. Very large 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.

Amendment

1. Very large online platforms that use recommender systems shall set out in their terms and conditions, in a clear, accessible and easily comprehensible manner, ***meaningful information about the logic involved and*** 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. ***Basing recommender systems on profiling shall require the explicit consent of the recipient, as defined in Article 4, point (11), of Regulation (EU) 2016/679.***

Or. en

Amendment 104

Proposal for a regulation Article 29 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Very large online platforms that use recommender systems shall allow the recipient of the service to have information presented to them in chronological order only and alternatively, where technically possible, to use third-party recommender systems. Third-party recommender systems shall have access to the same information that is available to the recommender systems used by the platform. They shall process this information only to provide recommendations to the recipient.

Or. en

Justification

The algorithm-driven spreading and amplification of legal but potentially problematic content needs to be contained by giving users more control over content proposed to them. Users of very large platforms shall have a right to see their timeline and other content recommendations in chronological order only (resolutions 2020/2022(INI), par. 35, and 2020/2018(INL), recital X) and also be provided with an API that allows them to have content curated by software or services of their choice, where this is technically possible (resolution 2020/2019(INL), par. 28). The latter option ensures competition and user choice between recommender systems, allowing users to better protect themselves against information they do not wish to see. The DSA should promote the creation of an innovative and competitive EU market of recommender systems where different providers can compete on the merits of how useful their systems are to users rather than to the platforms.

Amendment 105

Proposal for a regulation Article 31 – paragraph 2

Text proposed by the Commission

Amendment

2. Upon a reasoned request from the Digital Services Coordinator of establishment or the Commission, very

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)*.

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 *in the public interest*.

Or. en

Justification

The EDPS recommends the co-legislature to consider ways to facilitate public interest research more generally (EDPS opinion, par. 83). In connection with excluding personal data for internal use (see below) this is acceptable.

Amendment 106

Proposal for a regulation Article 31 – paragraph 3

Text proposed by the Commission

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

Amendment

3. Very large online platforms shall provide access to data pursuant to paragraphs 1 and 2 through online databases or application programming interfaces, as appropriate. ***The data to which access is provided shall include personal data only where it is lawfully accessible to the public.***

Or. en

Justification

Enforcement and research purposes do not necessitate access to personal data which a user wants to be available to the platform only for internal purposes (e.g. personal phone number, personal web browsing profiles for recommender systems and other meta-data). Personal data lawfully accessible to the public includes public profile data.

Amendment 107

Proposal for a regulation

Article 31 – paragraph 7 a (new)

Text proposed by the Commission

Amendment

7a. Upon completion of their research, the vetted researchers that have been granted access to data shall publish their findings.

Or. en

Justification

Publication ensures that data is being accessed in the public interest.

Amendment 108

Proposal for a regulation

Article 32 – paragraph 3 – point b

Text proposed by the Commission

Amendment

(b) organising and supervising the very large online platform's activities relating to the independent audit pursuant to Article 28;

deleted

Or. en

Amendment 109

Proposal for a regulation

Article 33 – paragraph 2 – introductory part

Text proposed by the Commission

Amendment

2. In addition to the reports provided for in Article 13, very large online platforms shall make publicly available and transmit to the Digital Services Coordinator of establishment and the Commission, at least once a year **and within 30 days following the adoption of the audit implementing report provided for in Article 28(4):**

2. In addition to the reports provided for in Article 13, very large online platforms shall make publicly available and transmit to the Digital Services Coordinator of establishment and the Commission, at least once a year:

Amendment 110

Proposal for a regulation Article 33 – paragraph 2 – point a

Text proposed by the Commission

Amendment

(a) *a report setting out the results of the risk assessment pursuant to Article 26;* *deleted*

Or. en

Amendment 111

Proposal for a regulation Article 33 – paragraph 2 – point b

Text proposed by the Commission

Amendment

(b) the *related risk mitigation* measures *identified and* implemented pursuant to Article 27; (b) the *specific* measures implemented pursuant to Article 27;

Or. en

Amendment 112

Proposal for a regulation Article 33 – paragraph 2 – point c

Text proposed by the Commission

Amendment

(c) *the audit report provided for in Article 28(3);* *deleted*

Or. en

Amendment 113

Proposal for a regulation
Article 33 – paragraph 2 – point d

Text proposed by the Commission

Amendment

(d) the audit implementation report provided for in Article 28(4).

deleted

Or. en

Amendment 114

Proposal for a regulation
Article 33 a (new)

Text proposed by the Commission

Amendment

Article 33 a

Interoperability

1. By 31 December 2024 very large online platforms shall make the main functionalities of their services interoperable with other online platforms to enable cross-platform exchange of information. This obligation shall not limit, hinder or delay their ability to solve security issues. The cross-platform exchange of information shall require the informed consent of the recipients exchanging information. Online platforms shall not process information obtained for the purpose of cross-platform information exchange for other purposes. Very large online platforms shall publicly document all application programming interfaces they make available.

2. The Commission shall adopt implementing acts specifying the nature and scope of the obligations set out in paragraph 1. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 70.

Or. en

Justification

The EDPS recommends to consider introducing minimum interoperability requirements for very large online platforms (EDPS opinion, par. 84-85). The concentration of power with a few large social media platforms means users have limited choice, particularly on issues of privacy, accessibility, and free expression. Some very large online platforms have been criticised for years for privacy breaches and violations of data protection law, for security flaws, error-prone upload-filtering and consumer-hostile terms and conditions. Yet many users do not have a real choice to switch to privacy-friendly and secure alternative platforms because they are locked in to the dominant platforms to be able to receive essential messages related to their work, education etc. When new platforms become popular this only creates a new lock-in situation. In order to overcome the lock-in effect of closed platforms and to ensure competition (including on data protection and security) and consumer choice, users of very large platforms shall be given the ability to access cross-platform interaction via open interfaces (interconnectivity). Parliament has advocated ensuring appropriate levels of interoperability for systemic operators (resolution 2020/2018(INL), par. 81) and called for a requirement for platforms with significant market power to provide an application programming interface, through which third-party platforms and their users can interoperate with the main functionalities and users of the platform (Annex to resolution 2020/2019(INL)). Among the main functionalities can be the ability to request information from certain accounts (subscriptions), to share provided content and react to it. The interoperability obligation does not prevent platforms from offering additional and new functions to their users.

Amendment 115

Proposal for a regulation

Article 34 – paragraph 1 – point d

Text proposed by the Commission

Amendment

(d) auditing of very large online platforms pursuant to Article 28;

deleted

Or. en

Amendment 116

Proposal for a regulation

Article 35

Text proposed by the Commission

Amendment

Article 35

deleted

Codes of conduct

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.

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.

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 indicators that they contain.

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.

5. The Board shall regularly monitor and evaluate the achievement of the objectives of the codes of conduct, having regard to the key performance indicators that they may contain.

Or. en

Justification

"Soft law" instruments such as "codes of conduct" and "crisis protocols" pose a risk to fundamental rights because, unlike legislation, they are not subject to democratic scrutiny and their compliance with fundamental rights is not subject to judicial review. It should be the legislator who decides on the need to go beyond existing legal obligations. Besides there is no need to address voluntary instruments in legislation as there is nothing to prevent such initiatives.

Amendment 117

Proposal for a regulation

Article 36

Text proposed by the Commission

Amendment

Article 36

deleted

Codes of conduct for online advertising

1. The Commission shall encourage and facilitate the drawing up of codes of conduct at Union level between, online platforms and other relevant service providers, such as providers of online advertising intermediary services or organisations representing recipients of the service and civil society organisations or relevant authorities to contribute to further transparency in online advertising beyond the requirements of Articles 24 and 30.

2. The Commission shall aim to ensure that the codes of conduct pursue an effective transmission of information, in full respect for the rights and interests of all parties involved, and a competitive, transparent and fair environment in online advertising, in accordance with Union and national law, in particular on

competition and the protection of personal data. The Commission shall aim to ensure that the codes of conduct address at least:

(a) the transmission of information held by providers of online advertising intermediaries to recipients of the service with regard to requirements set in points (b) and (c) of Article 24;

(b) the transmission of information held by providers of online advertising intermediaries to the repositories pursuant to Article 30.

3. The Commission shall encourage the development of the codes of conduct within one year following the date of application of this Regulation and their application no later than six months after that date.

Or. en

Amendment 118

Proposal for a regulation Article 37

Text proposed by the Commission

Amendment

[...]

deleted

Or. en

Amendment 119

Proposal for a regulation Article 41 – paragraph 1 – point a

Text proposed by the Commission

Amendment

(a) the power to require those providers, as well as any other persons acting for purposes related to their trade, business, craft or profession that may reasonably be aware of information

(a) the power to require those providers, as well as any other persons acting for purposes related to their trade, business, craft or profession that may reasonably be aware of information

relating to a suspected infringement of this Regulation, including, organisations performing the audits referred to in **Articles 28 and 50(3)**, to provide such information within a reasonable time period;

relating to a suspected infringement of this Regulation, including, organisations performing the audits referred to in **Article 50(3)**, to provide such information within a reasonable time period, **with the exception of information covered by professional secrecy requirements**;

Or. en

Amendment 120

Proposal for a regulation

Article 44 – paragraph 2 – point a

Text proposed by the Commission

(a) the number and subject matter of orders to act against illegal content and orders to provide information issued in accordance with Articles 8 and 9 by any national judicial **or administrative** authority of the Member State of the Digital Services Coordinator concerned;

Amendment

(a) the number and subject matter of orders to act against illegal content and orders to provide information issued in accordance with Articles 8 and 9 by any national judicial authority of the Member State of the Digital Services Coordinator concerned;

Or. en

Amendment 121

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

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 may include, where appropriate, participation in a code of conduct as provided for in Article 35.***

remedy the infringement.

Or. en

Justification

Codes of conduct lack democratic scrutiny and are not subject to legal review as to their compliance with fundamental rights.

Amendment 122

Proposal for a regulation

Article 50 – paragraph 3 – subparagraph 2

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 may request the very large online platform concerned to subject itself to an 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 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. ***The audit organisation specified shall be independent from the very large online platform concerned, have proven expertise in the area of risk management, technical competence and capabilities, and have proven objectivity and professional ethics, based in particular on adherence to codes of practice or appropriate standards.***

Justification

Consequential change due to the proposed deletion of Article 28.

Amendment 123**Proposal for a regulation
Article 52 – paragraph 1***Text proposed by the Commission*

1. In order to carry out the tasks assigned to it under this Section, the Commission may by simple request or by decision require the very large online platforms concerned, as well as any other persons acting for purposes related to their trade, business, craft or profession that may be reasonably be aware of information relating to the suspected infringement or the infringement, as applicable, including organisations performing the audits referred to in Articles 28 and 50(3), to provide such information within a reasonable time period.

Amendment

1. In order to carry out the tasks assigned to it under this Section, the Commission may by simple request or by decision require the very large online platforms concerned, as well as any other persons acting for purposes related to their trade, business, craft or profession that may be reasonably be aware of information relating to the suspected infringement or the infringement, as applicable, including organisations performing the audits referred to in Articles 28 and 50(3), to provide such information within a reasonable time period, ***with the exception of information covered by professional secrecy requirements.***

Or. en

Amendment 124**Proposal for a regulation
Article 56 – paragraph 1***Text proposed by the Commission*

1. If, during proceedings under this Section, the very large online platform concerned offers commitments to ensure compliance with the relevant provisions of this Regulation, the Commission may by decision make those commitments binding on the very large online platform

Amendment

1. If, during proceedings under this Section, the very large online platform concerned offers ***lawful*** commitments to ensure compliance with the relevant provisions of this Regulation, the Commission may by decision make those commitments binding on the very large

concerned and declare that there are no further grounds for action.

online platform concerned and declare that there are no further grounds for action.

Or. en

Justification

To protect fundamental rights the Commission shall make only lawful commitments binding.

Amendment 125

Proposal for a regulation

Article 56 – paragraph 2 – point b

Text proposed by the Commission

(b) where the very large online platform concerned acts contrary to its commitments; or

Amendment

(b) where the very large online platform concerned acts contrary to its **lawful** commitments; or

Or. en