Compromise amendments

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on a Single Market For Digital Services (Digital Services Act) and amending Directive 2000/31/EC

2020/0361 (COD)

Rapporteur: Christel Schaldemose
CA 7 on Section 5

Compromise amendment replacing all relevant amendments, including AMs 1811, 1812, 1813, 1814, 1815, 1816, 1817, 1818, 1819, 1820, 1821, 142, 1822, JURI 307, 1823, 1824, 1825, 1826, 1827, 1828, 1829, 1830, ECON 196, 1831, 1832, 1833, 1834, 1836, 1835, 1837, 1838, JURI 308, 1839, 1840, 1841, 1842, FEMM 80, 1843, 1844, JURI 309, 1845, 1846, 1847, 1848, 1849, 1850, LIBE 214, ECON 197, CULT 179, TRAN 87, FEMM 81, JURI 310, 1851, 1852, 1853, 1854, 1855, 1856, 1857, 1858, 1859, LIBE 215, CULT 180, 143, FEMM 82, 1860, JURI 311, 1861, 1862, 1863, 1864, 1865, 1866, 1867, 1868, LIBE 216, CULT 181, 144, JURI 312, 1869, 1870, 1871, LIBE 217, CULT 182, JURI 313, 1873, 1874, 1875, 1876, 1872, 1877, 1878, 1879, JURI 314, 1880, 1881, 1882, 1883, 1884, LIBE 218, JURI 315, LIBE 219, TRAN 88, 1885, 1886, 1887, 1888, ECON 198, ITRE 201, JURI 316, 1889, 1890, LIBE 220, 1891, 1892, 1893, 1894, TRAN 89, FEMM 83, 1895, 1896, 1897, 1898, LIBE 221, ECON 199, TRAN 90, ITRE 202, 1899, LIBE 222, ECON 200, 1900, CULT 183, 2001, LIBE 223, JURI 317, FEMM 84, 1902, 1903, CULT 184, JURI 318, 2004, ECON 201, ECON 202, 1905 and LIBE 224

SECTION 5

OTHER PROVISIONS CONCERNING DUE DILIGENCE OBLIGATIONS

Article 34

Standards

1. The Commission shall support and promote the development and implementation of voluntary industry standards set by relevant European and international standardisation bodies, in accordance with Regulation (EU) No 1025/2012, at least for the following:

(a) electronic submission of notices under Article 14;

(aa) terms and conditions under Article 12, including as regards acceptance of and changes to those terms and conditions;

(ab) information on traceability of traders under Article 22;

(b) advertising practices under Article 24 and recommender systems under Article 24a;

(b) electronic submission of notices by trusted flaggers under Article 19, including through application programming interfaces;

(c) specific interfaces, including application programming interfaces, to facilitate compliance with the obligations set out in Articles 30 and 31;

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

(e) interoperability of the advertisement repositories referred to in Article 30(2),

(f) transmission of data between advertising intermediaries in support of transparency obligations pursuant to points (b) and (c) of Article 24;
(fa) transparency reporting obligations pursuant to Article 13;

(fb) technical specifications to ensure that intermediary services shall be made accessible for persons with disabilities in accordance with the accessibility requirements of Directive 2019/882.

1a. The Commission shall support and promote the development and implementation of voluntary standards set by the relevant European and international standardisation bodies aimed at the protection of minors.

2. The Commission shall support the update of the standards in the light of technological developments and the behaviour of the recipients of the services in question.

2a. The Commission shall be empowered to adopt implementing acts laying down common specifications for the items listed in points (a) to (fb) of paragraph 1 where the Commission has requested one or more European standardisation organisations to draft a harmonised standard and there has not been a publication of the reference to that standard in the Official Journal of the European Union within [24 months after the entry into force of this Regulation] or the request has not been accepted by any of the European standardisation organisations.

Article 35
Codes of conduct

1. The Commission and the Board shall encourage and facilitate the drawing up of voluntary 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 attention shall be given to avoiding negative effects on fair competition, data access and security, the general monitoring prohibition and the protection of privacy and personal data. The Commission and the Board shall also encourage and facilitate regular review and adaption of the Codes of conduct to ensure that they are fit for purpose.

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 relevant competent authorities, 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 specific objectives, define the nature of the public policy objective pursued and, where appropriate, the role of competent authorities, contain key performance indicators to measure the achievement of those objectives and take fully into account of the needs and interests of all interested parties, and in particular 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. Key performance indicators and reporting commitments shall take into account differences in size and capacity between different participants.

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

5. The Commission and 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. In case of systematic failure to comply with the Codes of Conduct, the Commission and the Board may take a decision to temporarily suspend or definitively exclude platforms that do not meet their commitments as signatories to the codes of conduct.

Article 36
Codes of conduct for online advertising

1. The Commission shall encourage and facilitate the drawing up of voluntary 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 for all actors in the online advertising eco-system, 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 privacy and 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;

   (ba) the different types of data that can be used.

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. The Commission shall evaluate the application of those codes three years after the application of this Regulation.

3a. The Commission shall encourage all the actors in the online advertising eco-system referred to in paragraph 1 to endorse and comply with the commitments stated in the codes of conduct.
Article 37
Crisis protocols

1. The Board may recommend the Commission to initiate the drawing up, in accordance with paragraphs 2, 3 and 4, of voluntary crisis protocols for addressing crisis situations strictly limited to extraordinary circumstances affecting public security or public health.

2. The Commission shall encourage and facilitate very large online platforms and, where appropriate, other online platforms, with the involvement of the Commission, to participate in the drawing up, testing and application of those crisis protocols, which include one or more of the following measures:
   (a) displaying prominent information on the crisis situation provided by Member States’ authorities or at Union level;
   (b) ensuring that the point of contact referred to in Article 10 is responsible for crisis management;
   (c) where applicable, adapt the resources dedicated to compliance with the obligations set out in Articles 14, 17, 19, 20 and 27 to the needs created by the crisis situation.

3. The Commission may involve, as appropriate, Member States’ authorities and Union bodies, offices and agencies in drawing up, testing and supervising the application of the crisis protocols. The Commission may, where necessary and appropriate, also involve civil society organisations or other relevant organisations in drawing up the crisis protocols.

4. The Commission shall aim to ensure that the crisis protocols set out clearly all of the following:
   (a) the specific parameters to determine what constitutes the specific extraordinary circumstance the crisis protocol seeks to address and the objectives it pursues;
   (b) the role of each participant and the measures they are to put in place in preparation and once the crisis protocol has been activated;
   (c) a clear procedure for determining when the crisis protocol is to be activated;
   (d) a clear procedure for determining the period during which the measures to be taken once the crisis protocol has been activated are to be taken, which is strictly limited to what is necessary for addressing the specific extraordinary circumstances concerned;
   (e) safeguards to address any negative effects on the exercise of the fundamental rights enshrined in the Charter, in particular the freedom of expression and information and the right to non-discrimination;
   (f) a process to publicly report on any measures taken, their duration and their outcomes, upon the termination of the crisis situation.
(fa) measures to ensure accessibility for persons with disabilities during implementation of crisis protocols, including by providing accessible description about these protocols.

5. If the Commission considers that a crisis protocol fails to effectively address the crisis situation, or to safeguard the exercise of fundamental rights as referred to in point (e) of paragraph 4, it may shall request the participants to revise the crisis protocol, including by taking additional measures.

CA G
Compromise amendment replacing all relevant amendments, including AMs 510, 511, 512, 513, ECON 41, CULT 47, 37, JURI 64, 514, 515, 516, 517, CULT 48, JURI 65, 518, 519, 520, 521, 522, LIBE 45, ECON 42, ITRE 57, CULT 49, JURI 66, 523, 524, 525, 526, 527, 528, LIBE 46, JURI 67, 529, ITRE 58, 530, 531, ECON 43, TRAN 24, 532, LIBE 47 and ECON 44

(66) To facilitate the effective and consistent application of the obligations in this Regulation that may require implementation through technological means, it is important to promote voluntary industry standards covering certain technical procedures, where the industry can help develop standardised means to comply with this Regulation, such as allowing the submission of notices, including through application programming interfaces, about the interoperability of advertisement repositories, or about terms and conditions. Such standards could in particular be useful for relatively small providers of intermediary services. The standards could distinguish between different types of illegal content or different types of intermediary services, as appropriate. In the absence of relevant standards agreed within [24 months after the entry into force of this Regulation], the Commission should be able to establish technical specifications by implementing acts until a voluntary standard is agreed.

(67) The Commission and the Board should encourage the drawing-up of codes of conduct as well as the compliance with the provisions of these codes to contribute to the application of this Regulation. The Commission and the Board should aim that the codes of conduct clearly define the nature of the public interest objectives being addressed, that they contain mechanisms for independent evaluation of the achievement of these objectives and that the role of competent authorities is clearly defined. 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.

(68) It is appropriate that this Regulation identify certain areas of consideration for such codes of conduct. In particular, risk mitigation measures concerning specific types of illegal content should be explored via self- and co-regulatory agreements. Another area for consideration is the possible negative impacts of systemic risks on society and democracy, such as disinformation, or manipulative and abusive activities. This includes coordinated operations aimed at amplifying information, including disinformation, such as the use of bots or fake accounts for the creation of fake
intentionally inaccurate 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.

(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. The Commission should also encourage the development of codes of conduct to facilitate compliance with obligations in areas, such as protection of minors or short-term rental. Other areas for consideration could be to promote diversity of information through support of high quality journalism and to foster credibility of information, whilst respecting confidentiality of journalistic sources. Moreover, it is important to ensure consistency with already existing enforcement mechanisms, such as those in the area of electronic communications or media and with independent regulatory structures in these fields as defined by Union and national law.

(70) The provision of online advertising generally involves several actors, including intermediary services that connect publishers of advertising with advertisers. Codes of conduct should support and complement the transparency obligations relating to advertisement for online platforms and very large online platforms set out in this Regulation in order to provide for flexible and effective mechanisms to facilitate and enhance the compliance with those obligations, notably as concerns the modalities of the transmission of the relevant information. The involvement of a wide range of stakeholders should ensure that those codes of conduct are widely supported, technically sound, effective and offer the highest levels of user-friendliness to ensure that the transparency obligations achieve their objectives. The effectiveness of the codes of conduct should be regularly assessed. Unlike legislation, codes of conduct are not subject to democratic scrutiny and their compliance with fundamental rights is not subject to judicial review. In order to enhance accountability, participation and transparency, procedural safeguards for drawing up codes of conduct are needed. Before initiating or facilitating the drawing-up or the revision of codes of conduct, the Commission may invite where appropriate, the Fundamental Rights Agency or the European Data Protection Supervisor to express their opinion.

(71) In case of extraordinary circumstances affecting public security or public health, the Commission may initiate the drawing up of voluntary 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.