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DRAFT REPORT

on the Digital Services Act and fundamental rights issues posed
(2020/2022(INI))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Kris Peeters

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MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

on the Digital Services Act and fundamental rights issues posed (2020/2022(INI))

The European Parliament,

- having regard to the Treaty on European Union (TEU), in particular Article 2 thereof,
- having regard to the Treaty on the Functioning of the European Union (TFEU), in particular Article 16 and Article 114 thereof,
- having regard to the Charter of Fundamental Rights of the European Union, in particular Article 6, Article 7, Article 8, Article 11, Article 13, Article 22 and Article 24 thereof,
- having regard to Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce')¹,
- having regard to Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC ('General Data Protection Regulation')²,
- having regard to Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector ('Directive on privacy and electronic communications')³,
- having regard to 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/JHA⁴,
- having regard to the judgment of the Court of Justice of 3 October 2019 in case C-18/18⁵,
- having regard to Rule 54 of its Rules of Procedure,
- having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs and the opinions of the Committee on the Internal Market and Consumer Protection and the Committee on Culture and Education (A9-0000/2020),

A. whereas the types of digital services and the roles of digital service providers have

¹ OJ L 178, 17.7.2000, p.1.

² OJ L 119 4.5.2016, p. 1.

³ OJ L 201, 31.7.2002, p. 37.

⁴ OJ L 335. 17.12.2011, p.1.

⁵ Judgment of the Court of Justice of 3^oOctober 2019, *Eva Glawischnig-Piesczek v Facebook Ireland Limited*, C-18/18, ECLI:EU:C:2019:821.

drastically changed since the adoption of the Directive on e-commerce 20 years ago;

- B. whereas the data protection rules applicable to all providers offering digital services in the EU's territory were recently updated and harmonised across the EU with the General Data Protection Regulation;
 - C. whereas the amount of user-generated content, including harmful and illegal content, shared via cloud services or online platforms has increased exponentially;
 - D. whereas a small number of mostly non-European service providers have significant market power and exert influence on the rights and freedoms of individuals, our societies and democracies;
 - E. whereas the political approach to tackle harmful and illegal content online in the EU has mainly focused on voluntary cooperation thus far, but a growing number of Member States are adopting national legislation to address illegal content;
 - F. whereas some forms of harmful content may be legal, yet detrimental to society or democracy, with examples such as opaque political advertising and disinformation on COVID-19 causes and remedies;
 - G. whereas a pure self-regulatory approach of platforms does not provide adequate transparency to public authorities, civil society and users on how platforms address illegal and harmful content; whereas such an approach does not guarantee compliance with fundamental rights;
 - H. whereas regulatory oversight and supervision of platforms lacks horizontal coordination between the different oversight bodies across the EU;
 - I. whereas the absence of uniform and transparent rules for procedural safeguards across the EU is a key obstacle for persons affected by illegal content online and content providers seeking to exercise their rights;
 - J. whereas the lack of robust public data on the prevalence and removal of illegal and harmful content online creates a deficit of accountability;
 - K. whereas child sexual exploitation online is shaped by technological developments; whereas the vast amount of child sexual abuse material circulating online poses serious challenges for detection, investigation and, most of all, victim identification efforts;
 - L. whereas according to the Court of Justice of the European Union (CJEU), jurisprudence host providers may have recourse to automated search tools and technologies to assess if content is equivalent to content previously declared unlawful, and should thus be removed following an order from a Member State;
1. Stresses that illegal content online should be tackled with the same rigour as illegal content offline;
 2. Believes in the clear economic benefits of a functioning digital single market for the EU

and its Member States; stresses the important obligation to ensure a fair digital ecosystem in which fundamental rights and data protection are respected; calls for a minimum level of intervention based on the principles of necessity and proportionality;

3. Deems it necessary that illegal content is removed swiftly and consistently in order to address crimes and fundamental rights violations; considers that voluntary codes of conduct only partially address the issue;
4. Recalls that illegal content online should not only be removed by online platforms, but should be followed up by law enforcement and the judiciary; finds, in this regard, that a key issue in some Member States is not that they have unresolved cases but rather unopened ones; calls for barriers to filing complaints with competent authorities to be removed; is convinced that, given the borderless nature of the internet and the fast dissemination of illegal content online, cooperation between service providers and national competent authorities should be improved;
5. Acknowledges the fact that, while the illegal nature of certain types of content can be easily established, the decision is more difficult for other types of content as it requires contextualisation; warns that some automated tools are not sophisticated enough to take contextualisation into account, which could lead to unnecessary restrictions being placed on the freedom of expression;
6. Underlines that a specific piece of information may be deemed illegal in one Member State but is covered by the right to freedom of expression in another;
7. Strongly believes that the current EU legal framework governing digital services should be updated with a view to addressing the challenges posed by new technologies and ensuring legal clarity and respect for fundamental rights; considers that the reform should build on the solid foundation of and full compliance with existing EU law, especially the General Data Protection Regulation and the Directive on privacy and electronic communications;
8. Deems it indispensable to have the widest-possible harmonisation of rules on liability exemptions and content moderation at EU level to guarantee the respect of fundamental rights and the freedoms of users across the EU; expresses its concern that recent national laws to tackle hate speech and disinformation lead to a fragmentation of rules;
9. Calls, to this end, for legislative proposals that keep the digital single market open and competitive by requiring digital service providers to apply effective, coherent, transparent and fair procedures and procedural safeguards to remove illegal content in line with European values; firmly believes that this should be harmonised within the digital single market;
10. Believes, in this regard, that online platforms that are actively hosting or moderating content should bear more, yet proportionate, responsibility for the infrastructure they provide and the content on it; emphasises that this should be achieved without resorting to general monitoring requirements;
11. Highlights that this should include rules on the notice-and-action mechanisms and requirements for platforms to take proactive measures that are proportionate to their

scale of reach and operational capacities in order to address the appearance of illegal content on their services; supports a balanced duty-of-care approach and a clear chain of responsibility to avoid unnecessary regulatory burdens for the platforms and unnecessary and disproportionate restrictions on fundamental rights, including the freedom of expression;

12. Stresses the need for appropriate safeguards and due process obligations, including human oversight and verification, in addition to counter notice procedures, to ensure that removal or blocking decisions are accurate, well-founded and respect fundamental rights; recalls that the possibility of judicial redress should be made available to satisfy the right to effective remedy;
13. Supports limited liability for content and the country of origin principle, but considers improved coordination for removal requests between national competent authorities to be essential; emphasises that such orders should be subject to legal safeguards in order to prevent abuse and ensure full respect of fundamental rights; stresses that sanctions should apply to those service providers that fail to comply with legitimate orders;
14. Believes that terms of services of digital service providers should be clear, transparent and fair; deplores the fact that some terms of services from content platforms do not allow law enforcement to use non-personal accounts, which poses a threat both to possible investigations and to personal safety;
15. Underlines that certain types of legal, yet harmful, content should also be addressed to ensure a fair digital ecosystem; expects guidelines to include increased transparency rules on content moderation or political advertising policy to ensure that removals and the blocking of harmful content are limited to the absolute necessary;
16. Deems that accountability- and evidence-based policy making requires robust data on the prevalence and removal of illegal content online;
17. Calls, in this regard, for a regular public reporting obligation for platforms, proportionate to their scale of reach and operational capacities;
18. Calls, moreover, for a regular public reporting obligation for national authorities;
19. Expresses its concern regarding the fragmentation of public oversight and supervision of platforms and the frequent lack of financial and human resources for the oversight bodies needed to properly fulfil their tasks; calls for increased cooperation with regard to regulatory oversight of digital services;
20. Supports the creation of an independent EU body to exercise effective oversight of compliance with the applicable rules; believes that it should enforce procedural safeguards and transparency and provide quick and reliable guidance on contexts in which legal content is to be considered harmful;
21. Considers that the transparency reports drawn up by platforms and national competent authorities should be made available to this EU body, which should be tasked with drawing up yearly reports that provide a structured analysis of illegal content removal and blocking at EU level;

22. Stresses that this EU body should not take on the role of content moderator, but that it should analyse, upon complaint or on its own initiative, whether and how digital service providers amplify illegal content; calls for this regulator to have the power to impose proportionate fines or other corrective actions when platforms do not provide sufficient information on their procedures or algorithms in a timely manner;
23. Underlines the importance of empowering users to enforce their own fundamental rights online, including by means of easily accessible complaint procedures, legal remedies, educational measures and awareness-raising on data protection issues;
24. Instructs its President to forward this resolution to the Council and the Commission.

EXPLANATORY STATEMENT

The impact of digital services on our daily lives and the amount of user-generated content have increased drastically since the adoption of the e-Commerce Directive 20 years ago. Although the measure has been a foundation for the growth of digital services across the Union, today's prevalence of illegal content online and the lack of meaningful transparency in how digital service providers deal with it, show that a reform is needed.

The path of voluntary cooperation and self-regulation has been explored with some success, but has proven to be insufficient on its own, as illustrated by the growing number of Member States adopting national legislation to address illegal content on grounds that the existing framework insufficiently deals with societal concerns.

The Rapporteur therefore welcomes the Commission's commitment to present a new Digital Services Act (DSA). This report aims to provide input on the elements which should be included in the DSA from a fundamental rights and data protection perspective.

In this regard, the Rapporteur finds that respect for fundamental rights and data protection obliges us to address illegal content online with the same rigor as offline content, without disproportionate restrictions on the freedom of expression. This right to freedom of expression may cover specific content in one Member State but not in another and in many cases requires nuanced contextualisation. This responsibility inevitably entails interpretation of the law that should not be delegated to private companies. Underlining that it is not feasible for public authorities to discuss every individual piece of content, a meaningful co-regulatory approach will have to be found.

The Rapporteur believes that the DSA should build on and fully respect existing Union legislation, including the GDPR and e-Privacy Directive. As far as the current rules laid down in the e-Commerce Directive are concerned, the Rapporteur recommends keeping the prohibition of a general monitoring obligation, limited liability for content and the internal market clause in order to avoid over-compliance and unnecessary regulatory burdens. To address illegal content more effectively, legal obligations for digital service providers should be introduced on meaningful transparency, harmonised procedures and procedural safeguards, accountability for content moderation, as well as proactive measures to address the appearance of illegal content on their services. An independent Union body should be created to exercise oversight on procedural efforts of digital service providers, analyse whether they or the algorithms they use amplify illegal content, impose proportionate penalties when necessary and provide a structured analysis of illegal content removal at Union level.

Illegal content should not only be taken down but followed up by law enforcement and the judiciary. The Rapporteur calls, in this regard, for improved cooperation between digital service providers and competent authorities across the Union.