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NOTE

From:	PL Delegation
To:	Working Party on Competitiveness and Growth (Internal Market - Attachés) Working Party on Competitiveness and Growth (Internal Market)
Subject:	Digital Services Act: PL working paper - How to enforce consumer rights in DSA proposal

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How to enforce consumer rights in DSA proposal

PL working paper – August 31st 2021

The four following crucial changes should be made in DSA proposal to empower EU consumers and provide effective enforcement of DSA provisions.

I. Restoring lawful content – new provisions

In order to strengthen user rights, we propose an additional Article 8a, which deals with the restoration of the removed content:

New art. 8a Orders to restore lawful content

1. **Providers of intermediary services shall, upon the receipt of an order to restore a specific item or multiple items of removed content, issued by the relevant national judicial or administrative authorities, 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.**
2. **Member States shall ensure that the orders referred to in paragraph 1 meet the following conditions:**
 - a) **the orders contain the following elements:**
 - i. **a statement of reasons explaining that content in question is not contrary to the EU or national legal provisions;**
 - ii. **information enabling the provider of intermediary services to identify and locate the legal content concerned, such as one or more exact uniform resource locators (URL);**
 - iii. **information about redress available to the provider of the service who removed the content and to the recipient of the service who notified the content;**
 - b) **the territorial scope of the order, on the basis of the applicable rules of Union and national law, including the Charter, and, where relevant, general principles of international law, does not exceed what is strictly necessary to achieve its objective; and**
 - c) **the order is sent to the point of contact, appointed by the provider, in accordance with Article 10.**

Justification:

There should be a clear indication that the DSA duly balances the need for swift removal of illegal content from the Internet with the protection of the freedom of expression and freedom of speech for EU citizens. Currently, Article 8 only addresses removal of content through the use of an order to act against illegal content. However, **the DSA should also provide here for the possibility to issue an order with the opposite effect, i.e. order to restore access to content.**

II. Effective enforcement - clarifying jurisdiction provisions in relation to art. 8 and 9

New art 9bis

The Member State in which the competent authority issuing the order is situated has jurisdiction for the purposes art. 8, 8a and 9 of this regulation, as regards enforcement and sanctions, excluding online marketplaces as defined in art 2 lit (ia).

Justification:

We acknowledge that (as stated in DSA regulation) ‘*very large online platforms, which due to their reach have acquired a central, systemic role in facilitating the public debate and economic transactions*’. The DSA should provide clear provisions as to jurisdiction over these platforms so that any enforcement measures that we use are effective. **Against this context we think that the art. 8 and 9 are not sufficiently clear as to how their enforcement will look like.**

The country of origin principle brings undeniable profits in terms of ensuring growth opportunities for smaller providers of intermediary services within the EU, and therefore it should be kept in the DSA as a general rule. Nevertheless, in the very specific case of very large online platforms (VLOPs) and only when they provide online social networking services, there should be a possibility to derogate this principle in order to ensure effective enforcement by Member States. **In cases that involve a large group of recipients within a country where the service is provided, it is therefore crucial for a Member State to have the jurisdiction not only over the issuing of the orders but also in their effective enforcement.** We find the regulation should make it clear where exactly lies the responsibility to see the order enforced.

This provision will not include marketplaces. The derogation’s scope should be as limited as possible, and not go beyond what is really necessary to address content moderation challenges. It is the authorities of the issuing Member State that knows best local specificities and cultural context, which national laws have been breached and have specific knowledge of the individual case addressed.

III. Effective enforcement - legal representation

New art 25a with accompanying recital:

Regardless of their establishment in the Union, very large online platforms which offer online social networking services in the Union shall, at the request of the Digital Services Coordinator of the Member States where this provider offers its services, designate a legal representative as per art 11.

Accompanying recital:

It should be recognised that in today's digital economy, very large online platforms have an extremely significant impact on the rights of all internet users. This influence has reached an unprecedented scale, which justifies applying extraordinary supervisory measures to them. In order to ensure effective supervision of the providers of very large online platforms and the enforcement of the obligations imposed on them, they should be obliged to appoint a legal representative whenever requested to do so by the Member State in which they offer their services. This obligation will apply to both providers established in the EU and those that are not, and only when they provide online social networking services.

Justification:

Member States should be given the power to compel very large online platforms, especially those that provide social network services, to set up a representative on their territory so that. This representative would act as a link between the service provider and the users and authorities of the Member State concerned. The establishment of a representative in each Member State would significantly improve communication with the service provider. The absence of such a provision will make it significantly more difficult to supervise and enforce compliance with the obligations imposed on online platforms as laid down in art 8 and 9.

IV. Clear judicial jurisdiction - *New art. X* to chapter II section 2

Art. X

This regulation is without prejudice to the right of the recipient or the individual or entity concerned at any time of the proceeding to appeal against the decision before a court or specialized body of the country where the recipient is established, domiciled or has permanent residence, in accordance with the applicable law of that country.

Accompanying recital

Requiring users to pursue their rights before a court and in the law applicable to the place where service providers are established would materially limit the remedial instruments granted to users in this Regulation. Therefore, to protect the rights of users, a set of uniform, effective, proportionate and compulsory rules should be established at the EU level, with such rules being no less favourable to users than the current rules on judicial protection in cases where user personal rights are infringed by content published on websites. Consequently, since the current regulations indicate that the person who is deemed to be an injured party may bring an action for liability for all harm and damage suffered either before the courts of the Member State in which the registered office of the sender of such content is located, or before the courts of a Member State, in which the alleged victim has their centre of interests, it is justified to bring legal clarity and avoid different interpretations with regard to user rights under this Regulation. Such a solution allows the claimants to easily identify the court in which they may sue and the defendants to reasonably foresee before which court they may be sued.

Justification:

It is necessary to clarify that DSA provisions are without prejudice to the right of the recipient or the individual or entity concerned to appeal against the decision before a court or specialized body of the country where the recipient is established, domiciled or has permanent residence, in accordance with the applicable law of that country.