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From:	European Commission
To:	Delegations

Subject:	Presentation from the Commission: DSA enforcement cooperation tools
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DSA enforcement cooperation tools

COM proposal – Recap

- DSC-COO responsible for enforcement for non-VLOPs
- COM direct intervention only for VLOPs,
 - where requested by DSC-COO or
 - in case DSC-COO misinterprets the DSA
- Voluntary and informal joint investigations
- In case of “deadlock”, direct enforcement for VLOPs only after failure or request of COO + infringement procedures
- No specific rules on exchange of information between COO and CODs
- Actions vis à vis specific items of illegal content: primary tool are orders in accordance with Article 8 (direct and no procedures)

Objectives of Presidency text

- Avoid enforcement deadlocks
 - Expanded toolbox for different scenarios to ensure effective EU level action
 - Supplementary direct enforcement possibility of COM for VLOPs
- Maintaining the country of origin (COO) principle
 - Primary enforcer is DSC in COO – must be adequately resourced
 - Cooperation and support of other regulatory actors (competent authorities in COD and COO , DSC-COD, Board, COM)
- Ensure consistent enforcement
 - Consistency of enforcement between MS and between VLOPs and non=VLOPs

Presidency compromise text – basic pillars

- “Home state control” principle fully respected: COO is the first door of call for enforcement
 - COO should have sufficient resources, proportionate to size and number of providers in its MS (Article 39)
- Expanded cooperation toolbox
 - Mutual assistance (Art44a) for COD to allow early oversight of VLOPs in specific circumstances
 - COO to launch mutual assistance (Art44a) or involve COD in joint investigation (Art46)
 - Joint investigation at request of Board or Commission (Art46 and Art46a)
- Reinforce role of COM and avoid deadlocks:
 - COM to assess legality AND effectiveness of COO decisions (in case of dispute)
 - COM “takes over” a VLOP case if COO does not follow COM serious doubts in cross-border dispute (Art45(7)) or recommendation to investigate Section 4 infringements
 - Specific VLOP-joint investigations can be mandated by COM (Art46a)
 - COM intervenes directly after request by Board in case of serious harm (Art46b)

Scenario 1: Time sensitive/serious EU-wide infringements – Examples of direct COM powers

NB: direct action against individual items of illegal content through **orders** (art 8)

- Lack of a functional N&A system of VLOPs in processing notices related to serious illegal content across EU



- Board, upon request of 3 MS, can ask COM to take over (Article 46b) and enforce directly

- Negative audit on risk mitigation measures by VLOP



- COM, on its own initiative or request of Board, asks COO to assess infringement within predefined timeline
- No assessment: COM can take over (Article 50)

Scenario 2: Examples of issues with country-specific features

- Risk of proliferation of fake news in VLOP social media in view of electoral period
 - COD to ask COO existing information about content moderation system of the social media to allow early monitoring (Art44b)
 - COD to request COO to investigate (Art45) within 1 month
 - COO to request COD to provide specific information (Art44b) or make a joint investigation (Art46), with COD able to request info/inspect information
- Platform (non-VLOPs) refuses to submit to OOC dispute resolution in a given Member State
 - DSC-COD to receive complaints from consumers
 - DSC-COD to
 - Transmit complaints...
 - ...and may also request COO to investigate (Art45)

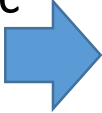
Scenario 3: Example of regional issue

3rd country platform
targeting EE, LV, LT
and violating Art 12
on T&C



- Legal Representative in EU (Country X) not in the Baltics
- EE, LV, LT DSCs ask Board to launch Joint Investigation (Article 46)
- Board asks DSC-Country X to launch joint investigation with EE, LV, LT, recommending screening of 3rd country language content by Baltic authorities
 - EE should be able to seize content stored by platform in EE servers or ask information directly to the platform
- Country X to propose measures on the basis of common findings (3+1 months)
- No action by Country X or Board disagrees → Board can refer issue to COM for dispute settlement (Art45(5))

Scenario 4: Example of a disagreement or inaction

- DE marketplace did not verify VAT number of AT traders in spite of public register accessible 
 - AT DSC to request COO to investigate (Art45) within 1 month
 - DE COO considered justified the lack of verification/did not take action
 - AT DSC may refer the matter to COM (assessment 2 months)
 - COM expresses serious doubts and asks to reassess the alleged infringement taking into account the large number of AT consumers affected by several rogue traders (Article 45(7))
- FI VLOP marketplace disregards OOC dispute settlement in several MS 
 - IT, ES and NL asks Board to recommend COM to launch JI. COM mandates it. Either:
 - FI proposes preliminary position on the basis of common FI, IT, ES and NL findings, concluding breach of DSA requirements -> enforces against VLOP
 - OR FI does not propose any preliminary position OR FI does not participate in the Joint Investigation OR COM disagrees with FI preliminary position
 - COM expresses its serious doubts and recommends measures to be taken (2 months) (Art 45(7))
 - If FI does not agree and/or does not take measures COM can take over and fine the VLOP (Art 51)

Scenario 5: Overwhelmed COO

- CY VLOP risk mitigation measures not sufficient to address complex cases of manipulation, but CY DSC unable to look



First option

- COM to launch Joint Investigation at the request of Board (upon request of NL, DE, FR)
- CY proposes preliminary position on the basis of common CY, DE, FR and NL findings/CY does not propose any preliminary position
- COM may issue serious doubts (Article 45(7)) and take over (Article 51)

Second option

- CY directly asks COM to take over (Article 46b)

- ES DSC unable to process complaints from IT DSC on lack of appropriate processing of notices to hosting provider with servers in IT



First option

- ES DSC to ask IT authorities to inspect the servers in IT (Article 44b)

Second option

- ES DSC to invite IT DSC to a joint investigation (Article 46)