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Sekretarz Stanu ds. Cyfryzacji


Pełnomocnik Rządu ds. Cyberbezpieczeństwa

Kancelaria Prezesa Rady Ministrów

Szanowny Panie Ministrze,

W nawiązaniu do publikacji drugiego kompromisowego tekstu projektu Aktu o usługach cyfrowych (DSA), przygotowanego przez Prezydencję słoweńską, Konfederacja Lewiatan, w załączeniu, przesyła uwagi do treści rozdziału pierwszego i drugiego projektu Aktu.

Z poważaniem,



Maciej Witucki
Prezydent Konfederacji Lewiatan

Do wiadomości:

Pani Justyna Romanowska - Kierownik referatu cyfryzacji, attaché ds. cyfrowych, Stałe Przedstawicielstwo RP przy Unii Europejskiej

Pan Michał Pukaluk - Dyrektor Departamentu Polityki Cyfrowej, Kancelaria Prezesa Rady Ministrów

Załącznik: Stanowisko Konfederacji Lewiatan do treści drugiego kompromisowego tekstu projektu Aktu o usługach cyfrowych (DSA) w wersji przygotowanej przez Prezydencję Słoweńską - rozdział pierwszy i drugi

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Stanowisko Konfederacji Lewiatan do treści drugiego kompromisowego tekstu projektu Aktu o usługach cyfrowych (DSA) w wersji przygotowanej przez Prezydencję Słoweńską - rozdział pierwszy i drugi

In connection to the recently published DSA compromise text, we are pleased with some of the changes proposed there. We welcome the fact that the compromise proposal on the DSA includes, among other things, a more precise definition of advertising, emphasises the need to maintain general monitoring and defines when a platform starts to play an active role in content processing.

However, there are a number of issues that we are concerned about. Below please find our comments on the proposed text. Changes proposed to the text of the proposal are in red.

DSA – text proposed by the Slovenian Presidency	Comments by the Polish Confederation Lewiatan
<p>Recital 2</p> <p>“Both business users, consumers and other users can be “recipients of the service” for the purpose of this Regulation”</p>	<p>We support this clarification</p>
<p>Recital 22a</p> <p>The exemption of liability should not apply where the recipient of the service is acting under the authority or the control of the provider of a hosting service (...)</p>	<p>We support this change.</p>
<p>Recital 23 - special liability regime for online marketplaces</p> <p>(23) In order to ensure the effective protection of consumers when engaging in intermediated commercial transactions online, certain providers of hosting services, namely, online platforms that allow consumers to conclude distance contracts with traders marketpaces, should not be able to benefit from the exemption from liability for hosting service providers established in this Regulation, insofar as those online platforms marketplaces present the relevant information</p>	<p>Justification for proposed changes in the recital (changes in red):</p> <p>In general we do not see any reason to differentiate online marketplaces liability from the one of other intermediaries in a horizontal legal proposal. This goes against creating a level-playing field. It is crucial in our view to support platforms, including online marketplaces, in taking a responsible approach and putting safeguards in place in a manner that does not threaten the</p>

<p>relating to the transactions at issue in such a way that it leads consumers to believe that the information was provided by those online platforms marketplaces themselves or by recipients of the service acting under their authority or control, and that those online platforms marketplaces thus have knowledge of or control over the information, even if that may in reality not be the case. This is the case where the online marketplace fails to display clearly the identity of the trader following this Regulation. In that regard, it should be determined objectively, on the basis of all relevant circumstances, whether the presentation could lead to such a belief on the side of an average consumer who is reasonably well informed and reasonably observant and circumspect and reasonably well-informed consumer. In particular, it is relevant whether the online marketplace withholds such identity or contact details until after the conclusion of the trader-consumer contract, or is marketing the product or service in its own name rather than using the name of the trader who will supply it.</p>	<p>existing liability exemption. In our opinion practices including withholding certain contact details (phone number) until after the transaction are important transaction safeguards. We are also convinced that marketing products in the marketplace name rather than the name of the concrete trader is a practice allowing to shift the marketing campaign burdens from the trader to the platform.</p> <p>The part:</p> <p>In particular, it is relevant whether the online marketplace withholds such identity or contact details until after the conclusion of the trader-consumer contract, or is marketing the product or service in its own name rather than using the name of the trader who will supply it.</p> <p>requires further discussion. We would like to point out that marketing products in the marketplace name rather than the name of the concrete trader is a practice allowing to shift the marketing campaign burdens from the trader to the platform, which may be a desirable practice for some traders.</p>
<p>Recital 31 (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 particular in a cross-border context, the effect of the order should be limited to the territory of the issuing Member State, unless the illegality of the</p>	<p>We support all the changes proposed to the recital as they allow flexibility and take into consideration the fact that what is illegal in one member state may not be illegal in another one.</p> <p>However That latter part, namely:</p> <p>‘or the issuing authority considers that the rights at stake require a wider territorial scope (...)’</p> <p>should be opposed. It is too vague and will lead to fragmentation between the Member States. To achieve clarity, the scope of an order should not depend on a case-by-case analysis.</p>

<p>content derives directly from the Union law or the issuing authority considers that the rights at stake require a wider territorial scope (...)</p> <p>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 in particular in a cross border context and, where relevant, take account of the relevant rules of Union law or international law and the interests of international comity.</p>	
<p>Recital 54</p> <p>Very large online platforms may cause societal risks, different in scope and impact from those caused by smaller platforms. Providers of such very large online platforms should therefore bear the highest standard of due diligence obligations, proportionate to their societal impact and means. Once the number of recipients of a platform reaches a significant share of the Union population, the systemic risks the platform poses may have a disproportionately negative impact in the Union. Such significant reach should be considered to exist where the number of recipients exceeds an operational threshold set at 45 million, that is, a number equivalent to 10 % of the Union population. Accordingly, the number of average monthly active recipients of the service should reflect the recipients actually reached by the service either by being exposed to content, by purchasing a product or service or by providing content disseminated on the platforms' interface in that period of time. The operational threshold and methodology to determine the active recipients of an online platform should be kept up to date through amendments enacted by delegated acts, where necessary, and reflect the nature of the</p>	<p>We propose some changes to the recital (in red)</p> <p>Justification for changes:</p> <p>we support the attempt to precise “average monthly user” term necessary to designate very large online platforms in the draft regulation, however we are of the opinion that the current proposal does not reflect online marketplaces specificity. Therefore we suggest adding “by purchasing a product or a service” to make the definition complete. We are of the opinion that online marketplace intermediary function is being realised only when the transaction has been concluded.</p>

<p>service and the way recipients of the service interact with it. Such very large online platforms should therefore bear the highest standard of due diligence obligations, proportionate to their societal impact and means.</p>	
<p>Article 2 (f)</p> <ul style="list-style-type: none"> - ‘online search engine’ service that allows users to input queries in order to perform searches of, in principle, all websites, or all websites in a particular language, on the basis of a query on any subject in the for of a keyword, voice request, phrase or other input (...) 	<p>The Slovenian Presidency emphasizes that the topic of the search engine will be discussed in future. With that in mind, we want to point out that a search engine should not be considered as hosting. Search engines return results from third parties and do not respond or create content. Therefore, DSA obligations should not be extended to this type of service.</p>
<p>Article 2 (g)</p> <p>‘illegal content’ means any information, which, in itself or by its reference to an activity, including the sale of products of provision of services is not in compliance with Union law or the law of the Member State which is in compliance with the Union law (...)</p>	<p>We support this change.</p>
<p>Art. 2 (h)</p>	<p>According to the Slovenian Presidency “the hosting of comments in a social network should be considered an online platform service, where it is clear that it is a major feature of the service offered, even if ancillary.”</p> <p>With respect to this, we point out that some of the user comments under live videos on online platforms are so-called live reactions. For this reason, it is not possible to monitor every such transmission and verify the current reactions of the users.</p> <p>Moreover, most of the comments have a different function than the main services of the platforms; there is no possibility to search for comments or their recommendations.</p>

	<p>In addition, it is usually the creators themselves who have control over the comments on their videos. They can freely disable comments on individual videos or approve the comments that appear under their videos themselves.</p> <p>Therefore, we urge policymakers to limit the DSA to core services and not to extend these obligations towards ancillary services.</p>
<p>Art. 2 (n)</p> <p>advertisement definition (n) ‘advertisement’ means information designed to promote the message of a legal or natural person, irrespective of whether to achieve commercial or non-commercial purposes, and displayed or served presented by an online platform on its online interface against remuneration specifically for promoting that information;</p>	<p>We are afraid that the current definition of online advertising would bring all marketplace listings in scope, which is not in line with the DSA’s objectives and is not proportionate. Any services or goods displayed on a marketplace could be defined as online advertising. We encourage the Council to narrow down/precise the scope of advertisement definition. It can be done by precising “specifically for promoting that information” in the respective recital.</p>