

DSA trilogues: Do EU policy-makers bear legal coherence in mind?

By EPPP – European Public Policy Partnership

With another DSA trilogue scheduled on 22 April, numerous issues still continue to be unresolved. One group of problems that have to be addressed concern consistency with other EU legislation. In EPPP, we have identified following outstanding questions:

- 1) DSA is weaning away off the very recently approved Terrorist Content Online Regulation. Requiring online platforms to proactively notify suspicions of criminal offences to state authorities and provide law enforcement bodies with user data jeopardizes user privacy. Moreover, if such obligations extend to all hosting services and not only online platforms, private files of users could be extensively scanned. This situation should be avoided and such notifications required by platforms only in cases of serious criminal offence including an imminent threat to life. Not only would such clarification protect user rights and privacy, it would also follow the principles in the abovementioned EU Terrorist Content Online Regulation, thus ensuring legal consistency.
- 2) Current discussions seem to throw out the prohibition of general monitoring principle out of the window in spite of the declared respect for this historical pillar of EU online regulation. One of the examples is the proposed requirement to conduct random checks on products on the online marketplaces. Not only are there no instructions on the periodicity of these controls but there is also no guidance whether all individual products should be checked. Furthermore, is it up to platform to decide which product is illegal and should not this be determined by a judicial authority? What if product is legal in one state and illegal in another? As you can see, there are number of problematic legal issues. It might therefore be wise for EU policy-makers to adopt a more lenient approach – requiring online marketplaces to make “best efforts“ to collect product information from the traders or alert consumers about illegal products only when a judicial authority took a stance on the issue.
- 3) There are indications that GDPR is suddenly not good enough. For instance, whereas Member States wanted to make tech companies abide by GDPR when using sensitive data about religion, political opinions or racial origin for targeted ads, key lawmaker from the European Parliament Christel Schaldemose is seeking outright ban on the use of such data for targeted advertising purposes. Current proposals, while having good intentions, actually risk eliminating the personalization that is needed to better protect minors.

This is just the tip of the iceberg. EPPP hopes that all these legislative pitfalls will be properly addressed in the future trilogues. In the meantime, if you are interested to dive deeper in this topic, we can recommend a very recent commentary by Dr. Joan Barata from Stanford University:

<https://dsa-observatory.eu/2022/04/11/digital-services-act-and-the-protection-of-fundamental-freedoms-recommendations-for-the-trilogue-process/>

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