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Skickat: den 21 september 2021 08:40
Till: Berfin Eken <berfin.eken@regeringskansliet.se>
Ämne: Fwd: DSA

Hej Berfin,

trevligt att e-träffas igen. Hoppas du mår bra. Fick veta att du ersatt Linn som har slutat - spännande. Du får säga till om det är något särskilt jag kan hjälpa dig med nu när du tagit över ansvaret. Går direkt in på detaljer nedan rörande slovenernas kompromisstext men om du vill kan vi ta ett möte och prata om vår mer övergripande syn och prioriteringar

Nedan har vi sammanfattat vilka positiva förändringar vi ser med den nya texten men också de områden som vi fortsatt finner utmannade för att nå målet om ett internet som både är ansvarsfullt och innovativt! Se nedan - låt mig veta om vi ska boka ett möte för att gå igenom de olika delarna mer i detalj. Har Linn delat material vi har skickat tidigare? Om inte säg till så skickar jag om det.

Hör av dig om du har några frågor!

Sara

We appreciate the opportunity to contribute to the discussions on the DSA, as we strongly support the Commission's goal of promoting a responsible internet. We welcome the Slovenian Presidency's efforts to further clarify some provisions, while keeping a balanced approach and building on the Commission's proposal and on the Portuguese Presidency compromise text. Among other things, we believe that the **following clarifications made by the Slovenian Presidency are positive:**

- **Recitals 22 and 28** - The clarification that "specific" monitoring for identical or equivalent content cannot require services to carry out an independent assessment of content. Similarly, the clarification that the fact that an operator automatically indexes content uploaded to its service, or has a search function, or recommends content on the basis of the profiles or preferences of users, are not sufficient grounds for the conclusion that that operator has 'specific' knowledge of illegal information. The new language is in line with recent jurisprudence by the Court of Justice of the EU, and the broader principle of no general monitoring obligations.

- **Article 18 -** The introduction of additional safeguards to the out-of-court dispute settlement mechanism, such as the requirement for bad faith actors to contribute to fees associated to use of the mechanism, the possibility for both parties to appeal decisions of out-of-court dispute settlement bodies before courts, and the right to refuse to participate in out-of-court dispute settlement where the "same content" has already been addressed or is under review by a different out-of-court dispute settlement body. We consider those safeguards to go the right direction in addressing some of the concerns the out-of-court dispute settlement mechanism, as proposed by the Commission, raises.
- **Recital 46 -** The clarification that industry associations representing members' interests (and not individual members) should apply for trusted flagger status, in order to limit the number of regulator-designated trusted flaggers. This will help ensure that priority treatment can indeed be awarded to trusted flagger notices as a practical matter, and also address concerns that individual companies could use their trusted flagger status to strike out against competitors.

At the same time, the compromise text includes some **amendments that raise concerns** which we kindly ask you to carefully examine:

- **Recital 42 and Articles 15, 17 and 18 - "Restrictions of visibility" as content moderation decisions to which statements of reasons, internal appeals and out-of-court dispute settlement obligations apply**: The new text takes an expansive view of the kinds of content moderation decisions that should be subject to transparency and user redress requirements. These are not limited to content removals and disabling of access, but also include "any restrictions" of visibility of content. While undoubtedly well-intentioned, this provision could lead to users being unnecessarily bombarded with an untold number of notifications, and to intermediary services being unable to manage the scale of transparency and user redress requirements in practice. For example, think of a scenario where the removal of invalid user reviews may lead to the lower ranking of a product or service in search results. Would a notification and redress rights be awarded not only to the person who wrote the review, but also to the trader or business owner whose product or service may be demoted due to the review being removed? The basic operation of many modern online services involves constant updating of content and features optimised for users -- which is part of services' fundamental freedom to conduct a business. We want the DSA to be able to succeed at scale and, to do so, would recommend removing 'restrictions of visibility' from the list of actions for which notification and user redress is widely available.
- **Recital 13 - Ancillary features of services**: The new text considers that, while comments in an online newspaper may be considered ancillary features, "*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.*" It is unclear why the text discriminates in this way between different intermediary services. In the same way that hosting of comments in an online newspaper may be an ancillary feature of the main service offered, comments in a social network may also be ancillary. Additionally, the proposed text causes legal uncertainty: if comments are a major feature of the main social network service offered, they should just not be considered ancillary. The determination of whether or not a service feature is ancillary should not favor certain intermediary services, but should be rather grounded in a fair examination of the specifics of that service. This flexible approach would be future-proof without undermining innovation.

- **Recitals 22a and 23 and Article 2(ia) - Online marketplaces**: The definition of “online marketplace” should be improved by clarifying that the contract between the trader and the consumer should be concluded on the online platform. This would ensure alignment with the approach under Article 4(5) of the recently adopted Omnibus Directive. Additionally, the condition that online marketplaces must not enable the transaction in a way that leads consumers to believe that the object of the transaction is provided by them or by a third party trader acting under their “authority or control”, is confusing and unnecessary. The Omnibus Directive already requests clear disclosure of (i) the trader (entity, address, email, telephone, status as consumer or trader), as well as (ii) how the consumer protection responsibilities are shared between the online marketplace and the trader. In any event, we would caution against including examples of situations where the third party trader may be deemed to act under the online marketplace’s “authority or control” (therefore causing the online marketplace to lose the benefit of the safe harbor). A flexible, case-by-case approach would be preferable. It would allow online marketplaces to innovate and compete on helpful features that both allow third party traders to get access to global markets, and consumers to benefit from more product choice and better security.

We would be happy to exchange further with you on these important issues through a virtual call or meeting. You will find attached our suggestions to help improve the text of articles 2, 9, 17, 18, 21 and recital 13, in line with the concerns outlined above.

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