



ERGA Subgroup 1

2023

**Consistent implementation and enforcement of the European
framework for audiovisual media services**

Deliverable 1

**The practical application and future of cross-border enforcement of
media law (Deliverable 1)**

1. Introduction

In recent years, the European legislative landscape regarding media and online platform regulation has seen a significant increase in scope and depth. Since the final adoption of the Directive (EU) 2018/1808, amending the Directive 2010/13/EU (Audiovisual Media Services Directive – AVMSD), the European Commission has presented at least two relevant initiatives, the Digital Services Act adopted in 2022 (DSA, Regulation 2022/2065), and the proposal for a European Media Freedom Act (EMFA, still in discussion by the co-legislators, see the Commission proposal). Both texts introduce cross-border procedures that can complement existing mechanisms in the AVMSD.

Ensuring the consistent implementation of the AVMSD has been at the core of ERGA's work during the last years. This year's Subgroup 1 took a step further and focused on the consolidation of ERGA's efforts for an enhanced and more effective cross-border enforcement of the European legal framework for audiovisual media services. Through analysing existing and new procedures and assessing their practical application, the purpose of this report is to present guidance for ERGA members, identify the needs for improvements of the legal framework and propose initial ideas for such possible improvements. Furthermore, the report considers possible exchanges/cooperation with regulatory bodies and networks from third countries.

The report is informed by work carried out by the subgroup throughout the year (e. g. analysis of legal texts, exchanges). In particular, practical evidence was gathered through in-depth interviews with 13 NRAs¹ on their experiences with cross-border procedures.

2. Analysis of the interplay between new and existing cross-border procedures

When analysing different legal procedures regarding cross-border cooperation, it is important to highlight that the AVMSD and the DSA do not cover exactly the same type of services, while, however, some similarities and overlaps may exist. This might lead to the coexistence of different cross-border procedures to tackle possible issues and infringements as regards the respect of these legislations, and of national laws, by the different services covered. Although the DSA does include new provisions for online intermediaries and new procedures for solving enforcement issues across borders as regards online services, it is without prejudice to the European legal framework for the media. Given that, the AVMSD, the DSA and, prospectively the EMFA will be applicable and enforceable alongside each other. This mapping is also accompanied by a case-study in the annex to better capture the coexisting cross border mechanisms.

2.1 Audiovisual Media Services Directive

2.1.1 General principles and scope

The AVMSD provides a comprehensive legal coordination framework. It governs EU-wide coordination of national legislation on all audiovisual media services and video sharing platforms (VSPs) and provides for cross-border procedures across Member States in the EU. It relies on the 'Country of Origin' (COO) Principle: an audiovisual media service or a VSP is subject to the rules and regulations of the country where the service provider is deemed established. Member States are responsible for enforcing the AVMSD within their territories, and the AVMSD promotes cooperation among Member States' regulatory authorities to ensure consistent application and interpretation of its provisions.

Main type of services covered by the Directive are a) television services, whether delivered through terrestrial, cable, satellite, or other means. This corresponds to linear channels with scheduled programming; b) On-demand audiovisual media services, also known as video-on-demand (VOD) services; c) VSPs, i.e. online platforms that provide programmes, user-generated videos, or both, to the general public.

¹ The interviews were conducted with experts working for the following NRAs: AGCOM (IT); ALIA (LU); Arcom (FR); CNMC (ES); CPTRA (EE); CSA (BE); CvdM (NL); KommAustria (RTR GmbH) (AT); LRTK (LT); MPRT (SE); NEPLP (LV); NMHH (HU); RRTV (CZ).

2.1.2 Key cooperation procedures

The procedures defined in the AVMSD aim to create a coordinated framework for audiovisual media services in the EU, balancing the free movement of audiovisual content across borders with the need to uphold important values such as cultural diversity, protection of minors, or consumer rights. It also lays down specific rules for VSPs. Communication and cooperation among Member States therefore play a crucial role in ensuring the effective application and enforcement of the Directive's provisions.

Member States can communicate via several procedures to facilitate the cross-border regulation of audiovisual media services and VSPs. Cooperation procedures between Member States can be grouped into three main categories:

(1) Formal procedures: Essential provisions of the AVMSD as regards cross-border procedures are laid out in Art. 3 and Art. 4, and ERGA has already provided an extensive mapping on such procedures. It should also be stressed that the revision of the AVMSD in 2018 aimed, inter alia, to improve the cross-border mechanisms.

In addition, the Commission is also playing an active role in case of disputes or disagreements between Member States regarding the interpretation or application of the AVMSD. For example, according to Art. 2(5c) if “the Member States concerned do not agree on which Member State has jurisdiction, they shall bring the matter to the Commission’s attention without undue delay.”

These articles also include derogation procedures that allow EU Member States to derogate from certain provisions of the Directive under specific circumstances.

(2) Multilateral cooperation, in particular via ERGA and the Contact Committee: Regulatory authorities from different Member States can coordinate their efforts to address common challenges. Since 2014, ERGA also plays a role in facilitating cooperation between the regulatory bodies in the field of audiovisual media services in the EU, as provided in Art. 30 of the AVMSD (since 2018), and in allowing for an exchange of experience and good practices.

In addition, the Contact Committee (Art. 29), composed of representatives of the competent authorities of the Member States and chaired by the Commission, also aims to facilitate the implementation of the Directive, in particular on any practical problems arising from its application including on cross-border cases.

(3) Strengthened bilateral cooperation: Member States have to designate an independent National Regulatory Authority (NRAs) responsible for the cooperation under the AVMSD. The NRAs should facilitate the bilateral cooperation and provide each other the information necessary to ensure the effective enforcement of AVMSD’s rules, when they receive complaints with regards to media services providers operating in their country.

In addition, a Memorandum of Understanding (MoU) was signed by the Members of ERGA in December 2020. As detailed in recital G, this MoU sets out a “framework for collaboration and information exchange between these NRAs as Participants to this MoU in order to resolve practical issues arising from the implementation of the Revised AVMSD in a consistent manner. Moreover, it lays down mechanisms to enable the exchange of information, experience, and best practice on the application of the regulatory framework for audiovisual media services and video-sharing platforms.” The MoU identifies two types of requests: Requests for Information & Requests for Mutual Assistance.

2.2 Digital Services Act

2.2.1 General principles and scope

The Digital Services Act (DSA) proposes a set of rules for online intermediaries and platforms to make them more accountable and, while duly safeguarding the freedom of expression online, to combat the distribution of illegal or harmful content online as well as the spread of illegal products, i.e., racist attacks, child pornography, disinformation, the sale of drugs or counterfeit goods.

It confirms some key principles in European media and digital law, in particular, it reaffirms the limited liability regime for hosting services, including online platforms which cannot be held automatically legally responsible

for illegal or harmful content uploaded by their users on their services. It also reinforces the key principle of the COO, by the introduction in each Member State of the Digital Services Coordinator (DSC) who will be responsible for all matters relating to application and enforcement of the Regulation. The DSA introduces some new asymmetric “due diligence obligations” for providers of intermediary services as well as comprehensive rules on the implementation and enforcement, in particular as regards the cooperation and coordination between competent authorities, as extensively mapped in the annex.

Due diligence obligations are asymmetric as the DSA introduces new definitions and classification of intermediaries. Therefore, from this very first analysis of the material scope of the DSA, it appears clearly that some services would be covered by both texts (DSA and AVMSD), in particular VSPs that are considered as online platforms, and some of them being even Very Large Online Platforms according to the DSA.

2.2.2 Main cross border procedures under the DSA

Enforcement of the DSA revolves around an ecosystem composed of the European Commission, DSCs and Competent Authorities of countries of establishment, as well as judicial and administrative authorities. The text describes extensively the existing cooperation mechanisms. For comparison purposes with the AVMSD, it was decided to focus in this section on some specific enforcement procedures (a more comprehensive mapping of all existing procedures can be found in the annex):

(1) Orders to act against illegal content (Art. 9) and to provide information (Art. 10): all providers of intermediary services are covered by these obligations: they shall inform the Authority (judicial or administrative) issuing the order of any effect given to the order without undue delay (art. 9) or of its receipt and of the effect given to the order (Art. 10). The Authority shall also transmit the order to the DSC of the Member State of the issuing authority, and all DSCs shall then be informed of it through the information sharing system (Art. 85).

(2) Cooperation between DSCs, competent authorities and the European Commission (art. 49, 51, 56, 57, 58, 59, 60): the supervision of the DSA rules is shared between the Commission, for designated VLOPSEs, and DSCs. The latter are also responsible for all smaller providers of intermediary services according to the Member State of establishment. The DSCs within each Member State are important regulatory hubs, ensuring coherence and digital competence. They will cooperate within an independent advisory group, the European Board for Digital Services (Art. 61), which can support with analysis, reports and recommendations the competent authorities and the DSCs, as well as support the coordination of joint investigations by the DSCs as specified in Art. 60.

(3) Enforcement of obligations on VLOPSEs: as specifically referred to in Art. 56 of the DSA, the principle of the country of origin is reaffirmed in the DSA and Member States in which the main establishment of the provider of intermediary services is located shall have exclusive power to enforce the regulation. However, the Commission has exclusive power to supervise and enforce the DSA for the specific obligations of VLOPSEs.

As provided in Art. 65, when a DSC has reason to suspect that a VLOPSE has systemically infringed a provision of the DSA, it may send to the Commission a request to assess the matter (see case study). Of course, this request shall be duly reasoned and contain some mandatory information.

2.3 European Media Freedom Act

The European Media Freedom Act (EMFA) is currently being discussed by the co-legislators. Therefore, this report is based on the original proposal. The proposal aims, among other things, at strengthening the cooperation between media regulators across the EU. To this end, it picks up the abstract approach as introduced through ERGA’s MoU, which set-out non-binding mechanisms for cross-border cooperation and proposes a legal framework for structured cooperation between NRAs. Art. 13 on structured cooperation introduces the principle and basic requirements for the procedures of requests for cooperation or mutual assistance between media regulators, whereas Art. 14 is focused on the cooperation related specifically to requests for enforcement of AVMSD-related obligations by VSPs. In both cases, EMFA foresees the involvement of the future European Board for Media Services (which will replace ERGA once EMFA enters into force) through a non-binding opinion on the matter, including recommended actions, if the requested and requesting authorities do not agree on the measures to be taken.

Moreover, the EMFA in article 16 introduces a new provision on the coordination of measures concerning media providers established outside the Union that target audiences in the Union, inter alia in view of the control that may be exercised by third countries over them.

3. Practical experiences of NRAs

3.1 Cross-border cooperation regarding audiovisual media services

Art. 3 (and 4) of the revised AVMSD include procedures that give authorities in the Member States possibilities to cooperate with each other in certain cross-border scenarios. The provisions, as outlined above, cover traditional linear audiovisual media services as well as non-linear audiovisual media services online (i. e. on-demand audiovisual media services).

As regards the **practical application of Art. 3 para. 2 and 3 AVMSD**, when dealing with audiovisual media services (i.e. on-demand services, linear broadcasting), ERGA members broadly report the technically smooth application of the respective procedures. In most cases, the cross-border case can be solved amicably via consultations between the NRA in the country of destination, the NRA in the COO and the media service provider concerned. Usually, providers abide by the measures requested by the authority in the country of destination before authorities make use of the possibility to restrict re-transmission under Art. 3 para. 2 AVMSD. The procedure to restrict re-transmission under Art. 3 para. 2 has only been completed once under the adapted procedure of the revised AVMSD.²

Nonetheless, some ERGA members report some shortcomings of the current AVMSD-framework, mainly related to the means of distribution covered by the provisions and the practical application of the jurisdiction criteria under Art. 2 AVMSD

(1) Some ERGA members reported **difficulties to take measures against the distribution of channels subject to national restrictions under Art. 3 via satellites to their territory**. The issues mainly arose in connection with third-country channels originating from outside the Union but distributed by using a satellite up-link or satellite capacities in another Member State. The derogation procedures under Art. 3 have shown practical limitations regarding such cases.

(2) Secondly, and closely interlinked, some ERGA members reported issues with the jurisdiction criteria as outlined in Art. 2 para. 4 AVMSD. More specifically, some of the interviewed NRAs reported dissatisfaction with the practical application of the technical jurisdiction criteria as laid out in Art. 2 para. 4 AVMSD. Concretely, the criterion creates a COO for service providers distributed in the Union by defining its country of jurisdiction as the Member State where the used satellite up-link is situated or the Member State the satellite capacity they are using is appertaining to. Firstly, regulatory action based on national law becomes very difficult against services originating from outside the Union, which are under the jurisdiction of another Member State based on Art. 2 para. 4. This is particularly true when considering the issue of addressing such cases in the derogation procedures under Art. 3 AVMSD as regards satellite distribution. Secondly, this puts a substantial burden on the NRAs in the Member States where satellite and uplink providers are established as these NRAs are competent for all services that fall under a Member States' jurisdiction based on technical criteria when such services are not established in the Union or in a ratifying country of the European Convention on Transfrontier Television. Furthermore, two interviewed NRAs reported difficulties to gather verified information about the services distributed to their territory via satellite, i. e. due to inaccurate or out-of-date available data in this fast-changing market. Issues may also arise concerning the assessment of the "editorial decisions"-criterion as laid out in Art. 2 para. 3 AVMSD.

² See [Commission Decision of 7.5.2021 on the compatibility of the measures adopted by Latvia pursuant to Article 3\(2\) of Directive 2010/13/EU](#) and [ERGA Opinion on decision No. 68/1-2 of the Latvian National Electronic Mass Media Council restricting the retransmission of the channel Rossija RTR in the territory of Latvia for 12 months](#).

Preliminary findings:

- Bilateral cooperation mechanisms are a highly effective tool mitigating cross-border harms and represent the usual way of working between NRAs. Derogations under Art. 3 are exceptional cases.
- The scope of the derogation procedure from Art. 3 AVMSD lacks some tailoring for modern means of distribution.
- The jurisdiction criteria in Art. 2 para. 4 AVMSD can be used by third-country broadcasters to benefit from the jurisdiction of a Member State once European satellite infrastructure is used for their distribution.

3.2 Cross-border enforcement online

Online, particularly when VSPs are concerned, cross-border scenarios occur frequently. Art. 3 and 4 of the revised AVMSD are not applicable to VSPs. Yet, whenever users of VSPs can be defined as providers of audiovisual media services, Art. 3 and 4 AVMSD are, in turn, applicable to the provider of the audiovisual media service using the VSP as a means of distribution. ERGA's MoU specifically foresees cooperation regarding AVMSD-provisions applicable to VSPs (i. e. Art. 28b). Additionally, authorities can regulate information society services under the cross-border regime as provided for by Art. 3 para. 4 E-Commerce Directive (ECD).

In practice, ERGA members report satisfaction with the MoU-procedures when regulating online-services, and, in particular, VSPs. Generally, the requesting and the receiving NRA agree on an approach to address the respective case. Some ERGA members, though, report significant difficulties when enforcing law online:

(1) requesting NRAs report a **lack of concrete enforcement action** from the requested authority after they have sent a MoU-request. Mainly, this was due to pending national transposition of the relevant AVMSD-provisions in the past and has improved as Member States have been completing the transposition of the Directive.

In some cases, and particularly regarding the application of Art. 28b AVMSD, there are still ongoing procedures to established new regulatory processes. Such processes i. e. include notification procedures for VSPs, sometimes resulting in disputes about the nature of certain platforms, or sub-legislative procedures like setting up regulatory codes or abstract criteria to be followed by VSPs under the regime of the national transposition of Art. 28b AVMSD.

(2) Due to ongoing establishment of new regulatory processes, cross-border enforcement of some AVMSD-provisions can be stuck in a dead-end situation: While a limited number of Member States cannot fully apply and enforce the AVMSD yet, other ERGA members who are already taking enforcement action, cannot fully apply the derogation criteria from the COO principle in the ECD. Moreover, national regulatory fines or sanctions cannot be enforced in other EU Member States due to the lack of a dedicated mechanism to enforce notices issued by media regulators. This results in a situation where the effective protection of users cannot be fully guaranteed, even when the applicable law is fully harmonised and/or the infringement concerned, by European law, allows measures to be taken by the NRA in the country of destination.

(3) The work of ERGA's Subgroup 1 in 2023 also highlighted that there are some discrepancies in the overall experience by NRAs when regulating the online world. Also, approaches may differ with regards to **national classification regimes** towards types of services as defined under AVMSD or the assessment of liability. Some ERGA members take an approach obliging platforms to take measures, i. e. against forbidden advertisement practices performed by users on a platform, other NRAs first hold the single content creator liable.

Yet, NRAs – both future DSCs and competent authorities – also point out that the full applicability of the DSA in 2024 will change how media law can be enforced, especially in cross-border scenarios. Finally, also Art. 14 of the EMFA on requests for enforcement of obligations by VSPs will help media regulators to solve cross-border scenarios concerning video-sharing platform providers.

- Preliminary findings:
- ➔ Cooperation procedures between ERGA members lead to satisfactory results.
 - ➔ Procedures may get stuck in a dead-end which can result in an enforcement gap. The AVMSD is not yet fully enforceable in all Member States.
 - ➔ NRAs apply different national liability regimes.

3.3 Informal cooperation hubs

ERGA members broadly make use of **informal cooperation**. Mostly, informal contacts are used to solve practical issues, for instance when seeking information or when looking for best practices. In some instances, NRAs also discuss concrete cross-border cases informally. Broadly, ERGA members reported the closest ties with other ERGA members in “regional hubs” amongst Europe. These hubs were mostly formed by NRAs from countries bordering each other and/or countries sharing a language typically spoken amongst its residents. Such regional ties are often characterised by semi-formalised regular meetings between smaller groups of regulators. In some cases, such cooperation includes authorities who are not ERGA members or have observer status within ERGA.

3.4 Global cooperation

When it comes to **cooperation with regulators from outside the EU who are not ERGA members**, NRAs are in frequent exchanges with other European NRAs. During interviews with ERGA members, it became apparent that there is a great demand for reaching out to fellow regulators from international partners, particularly in North America. Global online providers, including VSPs and online platforms, often originate from North America. Hence, a vivid exchange of best practices could help to understand different regulatory approaches or to align strategies when addressing issues relevant for global audiences. ERGA already took first steps in strengthening its members’ global networks, i. e. by signing a Memorandum of Cooperation with the Network of French-Speaking Media Regulatory Authorities (REFRAM) in 2022 or by engaging with global regulators in a workshop held on 13th December 2023.

- Preliminary findings:
- ➔ ERGA Members use various forms of informal cooperation.
 - ➔ Most engagement happens within regional hubs or between regions where the same language is spoken.
 - ➔ ERGA Members share a strong interest to engage more actively with global partners.

4. Short assessment of the MoU

The interviews as well as the data on MoU usage reveal that the MoU is used differently among ERGA members: there are different approaches to the MoU, different goals of its usage and different roles of NRAs. In general, the predominant use of the MoU are requests for information even though in 2023 the usage of requests for mutual assistance has increased significantly. It is however important to highlight that one can identify two different types of requests for information. The first type are requests for information that are sent to ERGA members to enable a best-practice exchange on a specific provision of the AVMSD. These requests usually include a questionnaire and are sent to multiple or even all ERGA members. Several interviewed NRAs report difficulties in replying to these questionnaires due to time constraints. The second type are requests for information where the requested authority is asked to provide information that the requesting authority needs for a specific enforcement action.

Requests for assistance have been used by 13 NRAs since the establishment of the MoU, about half of ERGA members with voting rights. Over the three years of the MoU’s existence, the number of active users among

the members constantly rose. NRAs use the MoU extensively to enforce the law across borders. The predominant regulatory topics in these cases are the protection of minors and the protection of users.

Both the interviews and the MoU usage data illustrate the divergence of NRA's activities in regulating (online) cross-border content dissemination and especially when it comes to VSPs. In 2023, the number of MoU requests more than doubled in comparison to 2022. Some NRAs take a rather passive role regarding the MoU while others are using it actively and are sending multiple MoU requests per year (both requests for information and requests for assistance). Furthermore, it is striking that while NRAs are mainly satisfied with the cooperation under the MoU, some notice a lack of enforcement (see Chapter 3.2).

Preliminary findings:

- ➔ Cooperation procedures between ERGA members under the MoU overall lead to satisfactory results.
- ➔ The MoU usage is constantly increasing. Both numbers, active members using MoU procedures and actual requests sent have increased over time.
- ➔ NRAs use MoU requests for different purposes. Especially general information requests or repeated requests may result in an increasing workload for NRAs.

5. Suggestions for improvement

When taking into account the abovementioned results of the work of ERGA's Subgroup 1 in 2023, it becomes apparent that there is a need for further improvements. Concretely, ERGA suggests the following approaches to improve cross-border enforcement:

5.1 Ensuring effective enforcement against third country broadcasters

When it comes to mechanisms to become more resilient against third-country providers aiming to disrupt democratic societies and presenting risks to public security, several changes to the legislative framework could be considered. The EMFA already proposes a mechanism for coordination among NRAs of measures concerning media service providers established outside the Union within the future European Board for Media Services and its effect will need to be monitored. Additionally, as the practical insights given by some ERGA members show, there are some **limitations to effective procedures deriving from the AVMSD framework** and particularly Art. 2 para. 4 and Art. 3 AVMSD to be addressed.

In this regard, the limitation of the safeguards granted by the COO principle only to media service providers with an actual relation to the single market – despite from the company distributing the service could be considered, in particular in relation to Art. 2 para. 4 AVMSD. The sole jurisdiction of the Member State from which the distribution by satellite is performed throughout the Union (e. g. technical uplink), unintendedly feigns a COO in the EU. In practice, the jurisdiction criteria in Art. 2 para. 4 AVMSD de facto leads to the same regulatory treatment as if the provider was established in the Union under the criteria under para. 3.

As a preliminary suggestion, it could therefore be considered to slightly adjust Art. 3 para. 1 in two ways:

1. The scope should be adapted to modern ways of distribution, including online distribution.
2. Secondly, a new provision that includes a possibility for authorities to take into account opinions by other regulators when such cases have an impact on the public security of several Member States is advisable. This impact could be proven by a certain number of authorities reporting the same violation of law to the authorities in the country of jurisdiction under the regime established by Art. 3 AVMSD. ERGA notes that such a procedure would be and essentially needs to be strictly in line with the conditions set to derogate from the COO principle whenever it applies under European or international law. ERGA further notes the need to align such procedure with the mechanism foreseen under Art. 16 of the forthcoming EMFA.

5.2 Providing regulators with the tools to effectively enforce law online

As outlined above, NRAs experience an enforcement gap when regulating certain online services. With the EMFA, a first step towards more effective cross-border cooperation mechanisms has been initiated. However, ERGA members also report that their difficulties mainly do not arise from insufficient cooperation but rather from practical limitations. ERGA accordingly proposes to consider a two-fold approach to address this enforcement gap:

1. To solve this issue, ERGA suggests to examine possibilities **to apply administrative notices regarding audiovisual matters in other Member States under the strict pre-condition that they are adopted in full compliance with the derogation mechanisms of the COO principle (i. e. deriving from the AVMSD or the ECD)**. Further, any solution considered must respect the competences of national regulators and be fully in line with national and European law. In this regard, examples from other areas of law could be taken into account, i. e. the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union³. In the near future, it will remain to be seen to what extent the DSA and Article 14 of the EMFA on requests for enforcement of obligations for VSPs will allow media regulators to solve cross-border enforcement issues.
2. Additionally, and to further protect the derogation procedures from the COO principle from misuse, ERGA suggests considering the benefits of **adapting the legislative framework for media**, namely the AVMSD, aiming to provide for a derogation mechanism for VSPs. This mechanism could be similar to the one provided in Art. 3 AVMSD. Such regime could allow ERGA Members to enforce provisional measures on the territory of the Member State concerned when no result could be achieved between the two authorities concerned. Such derogation procedure should strictly depend on the exemptions given in Art. 3 para. 2 AVMSD and be similarly scrutinized by an ad-hoc expert group of ERGA. With the proposed Art. 14 EMFA, the Commission introduced a mechanism for cooperation regarding the enforcement of obligations by VSPs. However, EMFA does not affect the derogation mechanism under Art. 3 para. 2 AVMSD. Hence, a mechanism like this could be envisioned in a future revision of the AVMSD and could reference the relevant EMFA provisions. The broad procedure in Art. 4 ECD could be fitted for VSPs and be transferred to AVMSD for the respective case-groups.

5.3 Improving cooperation between ERGA Members

Overall, ERGA Members are very satisfied with mutual cooperation procedures. Nonetheless, four areas for improvement and/or limitations to a working cooperation regime could be identified:

1. Member States have **implemented in different speeds and apply the AVMSD with some divergences according to their respective national transposition laws**. Although, the AVMSD is fully transposed in all except one Member States, the practical application is differently organized in the Member States. Especially when it comes to the approach taken to implement Art. 28b AVMSD, some Member States are still within the process to establish certain implementing provisions and procedures. Other NRAs are already actively applying and enforcing AVMSD. This creates a situation where cross-border cooperation, in some instances, can at this stage hardly provide for effective outcomes (i. e. obliging platforms to introduce effective age verification or content moderation practices) – even in the harmonized material provisions enshrined in AVMSD. ERGA therefore considers a continued and meaningful cross-border best practices exchange to be of value for ERGA Members. ERGA could develop minimum standards for measures under Art. 28b AVMSD, i. e. with regards to age verification mechanisms. Furthermore, **ERGA calls on all actors involved to work towards a swift and effective applicability and enforceability of AVMSD in all EU Member States** as foreseen under Art. 4 para. 6 AVMSD.

To guarantee an effective protection of users among the Union, ERGA Members may work together, including with the Commission, which is the guardian of the treaties when issues arise preventing the effective enforcement of the AVMSD.

³ See <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A42000A0712%2801%29>.

2. As outlined above, the DSA provides NRAs with additional mechanisms to enforce the law in cross-border cases. With the AVMSD being a *lex specialis* to the DSA the interplay of the procedures will need to be constantly assessed. ERGA stresses the importance to address the question how media law can effectively be enforced with the different procedures at the disposal of NRAs and to develop a common understanding in order to use the full potential of the interplay of DSA and AVMSD provisions. ERGA Subgroup 4 of 2024 will be very important in this regard.
3. Interviews with ERGA Members showed **differences in the liability regimes** and practices assessing liability between NRAs and in the national legal frameworks. In practice, this leads to different regulatory approaches between NRAs. ERGA's report on the implementation of AVMSD grants some insights on the assessment of liability when it comes to Vloggers⁴. From an enforcement perspective, such mutual best practice exchange is essential to enhance understanding between NRAs and to find effective solutions on a case-by-case basis.
4. Different purposes of forms of cooperation: As described above, **usage of the MoU differs greatly** among ERGA members. In order to reach a coherent usage of the MoU, the idea of an internal guidance on how and when to use the MoU was put forward. This will be particularly useful for NRAs who have not actively made use of the MoU so far and to avoid confusion among requested and requesting authority. A matrix providing such guidance has accordingly been developed on the basis of the MoU as well as insights on its practical application (see separate report on the implementation of the MoU). ERGA Members are advised to take this internal guidance into account when sending or replying to MoU requests.

5.4 Fostering global cooperation

NRAs face the challenge to regulate global media markets. Online distribution as well as, in a more limited scope, satellite distribution are global phenomena. Given the outcomes of the interviews with NRAs, ERGA advises to reach out to global regulators more actively. With the application of the DSA, this global perspective may become even more relevant for ERGA and its Members. Given that, ERGA should actively seek further cooperation and the exchange with other NRAs and regulatory networks. **Therefore, the ERGA Board assisted by the relevant Subgroups should strive to build exchanges with regulators from global partners, most relevantly, from North America.**

6. Conclusions

After assessing experiences made by NRAs when enforcing media law across borders, it can be concluded that, overall, bilateral cooperation mechanisms are, in most cases, an effective way of cross-border regulatory processes. It became apparent that ERGA members are generally satisfied with the cooperation procedures, both, under Art. 3 AVMSD and the mechanisms foreseen in ERGA's MoU. The constantly growing usage of these procedures hints towards the necessity of more effective cross-border cooperation mechanisms in media regulatory matters, especially online. Nevertheless, ERGA Members reported some challenges, including problems with an effective follow-up to the cooperation and diverging approaches towards the usage of the MoU.

Moreover, experiences by some NRAs showed that there is a remaining enforcement gap when it comes to the proper application of certain provisions of the AVMSD, notably Article 28b. The reasons for this gap seem to be in particular a lack of a European enforcement regime, the lack of procedures tailored to address modern phenomena and a persistent lack of enforceability of the revised AVMSD in a limited number of Member States, notably as there are still ongoing procedures to established new regulatory processes.

Thirdly, interviewed ERGA members have reported the desire to engage more closely with NRAs from third countries, notably from democratic partners.

ERGA proposes to address these challenges by suggesting a guidance for ERGA members helping to harmonize the usage of the MoU, adjusting the European legal framework for cross-border enforcement,

⁴ See ERGA report on learning from the practical experiences of NRAs in the regulation of vloggers (2023), <https://erga-online.eu/wp-content/uploads/2023/12/ERGA-SG1-Vloggers-report-2023-final-version-for-publication.pdf>.

particularly regarding the online distribution whilst ensuring an effective enforcement of the AVMSD in all Member States and engaging more actively with international partners.

In the next years, the European framework for media will evolve. With the full applicability of the DSA and the future EMFA, NRAs will be equipped with new regulatory tools. Whilst new procedures will be added, the existing framework will remain fully applicable. Exploring this situation further will be a crucial task for ERGA's work in 2024 and beyond.

Annex

1. Case study

Scenario:

- We are in June 2025, all texts are adopted and in application.
- A media regulator in country X suspects that an Online Platform/Video Sharing Platform (VSP) with more than 45 million monthly active users in the EU has systemically behaved in a way that the protection of minors that may visit this VSP is endangered.
- The VSP is deemed established in country Y, located in the EU.

Solution 1: Using AVMS Directive

Being a member of ERGA, the NRA of country X can therefore use the procedures detailed in the ERGA MoU.

1st step: Request for information (as described in 2.1.2 ERGA MoU)

The NRA of country X shall send a request of information that shall include:

- a. a clear description of the information being sought;
- b. a citation of the relevant Articles of the Revised AVMS Directive to which the request relates, where relevant;
- c. an outline of the Requesting NRA's Legitimate Interest in making the request; and
- d. an outline of the Requesting NRA's desired Outcomes from making the request.

The NRA of country Y shall comply with the request without undue delay.

2nd step: Request for mutual assistance (as described in 2.1.3 ERGA MoU)

If the request for information confirms the establishment of the VSP in the country Y, the NRA of the country X can send a Request for mutual assistance to ask the NRA to take action on the VSP. In the ideal case, the NRA from country Y can then take enforcement action.

Solution 2: Using DSA mechanisms

The VSP is designated as a VLDP under the DSA.

2.A. The media regulator is not the Digital Services Coordinator (DSC)

1st step: The media regulator needs **to inform its national DSC** that it has reason to suspect that the VLDP is repeatedly in violation of national or European law, in particular as regards protection of minors.

2. B. The media regulator is the DSC

(There is no need for the 1st step)

2nd step: The DSC needs to gather enough evidence to confirm that this VSP has “*systemically infringed any of the provisions (of the DSA) in a manner that seriously affects recipients of the service in its Member States*”.

3rd step: The DSC may send, via the Information Sharing System as provided in article 85 of the DSA, a request to the Commission to assess the matter. This request should at least indicate:

(a) the point of contact of the VSP;

(b) a description of the relevant facts, the provisions of this Regulation concerned and the reasons why the DSC that sent the request suspects that the VSP concerned infringed this Regulation, including a description of the facts that show that the suspected infringement is of a systemic nature;

(c) any other information that the DSC that sent the request considers relevant, including, where appropriate, information gathered on its own initiative.

4th step: The Commission may exercise its investigatory powers to investigate the compliance of the VSP with the DSA.

5th step: Where the Commission decides to initiate proceedings, it shall notify all DSCs and the Board through the information sharing system referred to in article 85, as well as the VSP.

Solution 3: EMFA will possibly bring new solutions

The proposed EMFA also foresees to strengthen some cooperation procedures between regulatory authorities to better address cross border cases. However, when writing this report, the final version of the text has not been adopted. In order to not to preempt how the mechanisms will look like in the adopted Regulation, it was decided not to include a description in this case study.

However, it could be stressed, for information purpose and without prejudice to a precise analysis, based on the final text, of the precise extent to which they could be applicable, that Article 13 (Structured cooperation) and 14 (Requests for enforcement of obligations by video-sharing platforms) of the legislative proposal entail to structure the cooperation between regulators, building on the approach and provisions in the ERGA MoU which will thus become institutionalized and binding. The cooperation between NRAs should be therefore facilitated and streamlined, and would go beyond a pure bilateral relation in case of disagreements, as the Board will have the possibility to issue an opinion on the matter.

Conclusion:

This short case study aims to demonstrate that different mechanisms may coexist at the same time. Because of overlapping in scope and the existence of regulatory actors that may be involved in both the DSA and AVMS Directive, media regulators, if they are facing a cross border issues, may activate multiple mechanisms in order to better address the issue. This conclusion is of course without prejudice of a more in-depth legal analysis of articulation between the *lex generalis* being the DSA, and its coexistence with *lex specialis* such as the AVMS Directive.

2. Mapping of existing cross border procedures in different EU legislations

AVMS Directive ([Directive 2018/1808](#))

Article 2 – Determination of competent jurisdiction

5a. Member States shall ensure that media service providers inform the competent national regulatory authorities or bodies about any changes that may affect the determination of jurisdiction in accordance with paragraphs 2, 3 and 4.

5b. Member States shall establish and maintain an up-to-date list of the media service providers under their jurisdiction and indicate on which of the criteria set out in paragraphs 2 to 5 their jurisdiction is based. Member States shall communicate that list, including any updates thereto, to the Commission.

Summary

- Having an updated list and communicating this list to the Commission for informing other Member States
- Commission responsible for the communication of this list and to have an updated version

5c. Where, in applying Article 3 or 4, the Member States concerned do not agree on which Member State has jurisdiction, they shall bring the matter to the Commission's attention without undue delay. The Commission may request the European Regulators Group for Audiovisual Media Services (ERGA) to provide an opinion on the matter in accordance with point (d) of Article 30b(3). ERGA shall provide such an opinion within 15 working days from the submission of the Commission's request. The Commission shall keep the Contact Committee established by Article 29 duly informed.

Summary

- If 2 Member States disagree on the competent jurisdiction, Commission is informed.
- ERGA can provide an opinion, if requested by the Commission
- Contact Committee is informed

Article 3 – Restrictions of broadcasting

2. A Member State may provisionally derogate from paragraph 1 of this Article where an audiovisual media service provided by a media service provider under the jurisdiction of another Member State manifestly, seriously and gravely infringes point (a) of Article 6(1) or Article 6a(1) or prejudices or presents a serious and grave risk of prejudice to public health. The derogation referred to in the first subparagraph shall be subject to the following conditions:

(a) during the previous 12 months, the media service provider has on at least two prior occasions already performed one or more instances of conduct described in the first subparagraph;

(b) the Member State concerned has notified the media service provider, the Member State having jurisdiction over that provider and the Commission in writing of the alleged infringements and of the proportionate measures it intends to take should any such infringement occur again;

(c) the Member State concerned has respected the right of defense of the media service provider and, in particular, has given that provider the opportunity to express its views on the alleged infringements; and

(d) consultations with the Member State having jurisdiction over the media service provider and the Commission have not resulted in an amicable settlement within one month of the Commission's receipt of the notification referred to in point (b).

Within three months of the receipt of the notification of the measures taken by the Member State concerned and after having requested ERGA to provide an opinion in accordance with point (d) of Article 30b(3), the Commission shall take a decision on whether those measures are compatible with Union law. The Commission shall keep the Contact Committee duly informed. Where the Commission decides that those measures are not compatible with Union law, it shall require the Member State concerned to put an end to the measures in question as a matter of urgency.

Summary

- MS needs to notify the Media Service Provider, the other Member State and the Commission
- Commission has 3 months to assess if these measures are compatible with EU law (and need to seek ERGA opinion)
- Contact Committee is informed

5. Member States may, in urgent cases, no later than one month after the alleged infringement, derogate from the conditions laid down in points (a) and (b) of paragraph 3. Where this is the case, the measures taken shall be notified in the shortest possible time to the Commission and to the Member State under whose jurisdiction the media service provider falls, indicating the reasons for which the Member State considers that there is urgency. The Commission shall examine the compatibility of the notified measures with Union law in the shortest possible time. Where it comes to the conclusion that the measures are incompatible with Union law, the Commission shall require the Member State in question to urgently put an end to those measures.

Summary

- In urgent cases, possibility for shorter time periods
- Decision to be notified to the COM and the other MS
- Commission shall then assess if compatible with EU law

6. If the Commission lacks information necessary to take a decision pursuant to paragraph 2 or 3, it shall, within one month of the receipt of the notification, request from the Member State concerned all information necessary to reach that decision. The time limit within which the Commission is to take the decision shall be suspended until that Member State has provided such necessary information. In any case, the suspension of the time limit shall not last longer than one month.

Summary:

- COM can ask additional information to the MS

7. Member States and the Commission shall regularly exchange experiences and best practices regarding the procedure set out in this Article in the framework of the Contact Committee and ERGA.

Summary

- ERGA & Contact Committee are places to exchange information on the best practices regarding the implementation of those provisions.

Article 4 – Stricter rules in one MS

2. Where a Member State:

(a) has exercised its freedom under paragraph 1 to adopt more detailed or stricter rules of general public interest; and

(b) assesses that a media service provider under the jurisdiction of another Member State provides an audiovisual media service which is wholly or mostly directed towards its territory, it may request the Member State having jurisdiction to address any problems identified in relation to this paragraph. Both Member States shall cooperate sincerely and swiftly with a view to achieving a mutually satisfactory solution.

Upon receiving a substantiated request under the first subparagraph, the Member State having jurisdiction shall request the media service provider to comply with the rules of general public interest in question. The Member State having jurisdiction shall regularly inform the requesting Member State of the steps taken to address the problems identified. Within two months of the receipt of the request, the Member State having jurisdiction shall inform the requesting Member State and the Commission of the results obtained and explain the reasons where a solution could not be found.

Either Member State may invite the Contact Committee to examine the case at any time.

Summary

If Member State has decided to take stricter measures and assesses that it is targeted by a Media Service Provider established in another Member State:

- Both Member States shall cooperate sincerely and swiftly
- Member State having jurisdiction shall inform the Media Service Provider
- It shall also inform other Member State and the Commission of the results

The Member State concerned may adopt appropriate measures against the media service provider concerned where:

(a) it assesses that the results achieved through the application of paragraph 2 are not satisfactory; and
(b) it has adduced evidence showing that the media service provider in question has established itself in the Member State having jurisdiction in order to circumvent the stricter rules, in the fields coordinated by this Directive, which would be applicable to it if it were established in the Member State concerned; such evidence shall allow for such circumvention to be reasonably established, without the need to prove the media service provider's intention to circumvent those stricter rules.

Such measures shall be objectively necessary, applied in a non-discriminatory manner and proportionate to the objectives which they pursue.

4. A Member State may take measures pursuant to paragraph 3 only where the following conditions are met:

(a) it has notified the Commission and the Member State in which the media service provider is established of its intention to take such measures while substantiating the grounds on which it bases its assessment;

(b) it has respected the rights of defence of the media service provider concerned and, in particular, has given that media service provider the opportunity to express its views on the alleged circumvention and the measures the notifying Member State intends to take; and

(c) the Commission has decided, after having requested ERGA to provide an opinion in accordance with point (d) of Article 30b(3), that the measures are compatible with Union law, in particular that assessments made by the Member State taking the measures under paragraphs 2 and 3 of this Article are correctly founded; the Commission shall keep the Contact Committee duly informed.

5. Within three months of the receipt of the notification provided for in point (a) of paragraph 4, the Commission shall take the decision on whether those measures are compatible with Union law. Where the Commission decides that those measures are not compatible with Union law, it shall require the Member State concerned to refrain from taking the intended measures. If the Commission lacks information necessary to take the decision pursuant to the first subparagraph, it shall, within one month of the receipt of the notification, request from the Member State concerned all information necessary to reach that decision. The time limit within which the Commission is to take the decision shall be suspended until that Member State has provided such necessary information. In any case, the suspension of the time limit shall not last longer than one month.

6. Member States shall, by appropriate means, ensure, within the framework of their national law, that media service providers under their jurisdiction effectively comply with this Directive.

Summary

If the Member State has decided to take stricter measures after having assessed that 1) the results achieved through the application of paragraph 2 are not satisfactory and 2) it has adduced evidence showing that the media service provider has established itself in the Member State having jurisdiction in order to circumvent the stricter rules:

- Other Member States and the Commission must be informed
- Commission has decided that it was compatible with EU law
- ERGA has provided an opinion

Article 7 – Accessibility for persons with disability

1. Member States shall ensure, without undue delay, that services provided by media service providers under their jurisdiction are made continuously and progressively more accessible to persons with disabilities through proportionate measures.

2. Member States shall ensure that media service providers report on a regular basis to the national regulatory authorities or bodies on the implementation of the measures referred to in paragraph 1. By 19 December 2022 and every three years thereafter, Member States shall report to the Commission on the implementation of paragraph 1.

Summary

- Member States shall ensure reporting to the Commission every 3 years

Article 14 – events of major importance

1. Each Member State may take measures in accordance with Union law to ensure that broadcasters under its jurisdiction do not broadcast on an exclusive basis events which are regarded by that Member State as being of major importance for society in such a way as to deprive a substantial proportion of the public in that Member State of the possibility of following such events by live coverage or deferred coverage on free television. If it does so, the Member State concerned shall draw up a list of designated events, national or non-national, which it considers to be of major importance for society. It shall do so in a clear and transparent manner in due time. In so doing the Member State concerned shall also determine whether these events should be available by whole or partial live coverage or, where necessary or appropriate for objective reasons in the public interest, whole or partial deferred coverage.

2. Member States shall immediately notify to the Commission any measures taken or to be taken pursuant

to paragraph 1. Within a period of 3 months from the notification, the Commission shall verify that such measures are compatible with Union law and communicate them to the other Member States. It shall seek the opinion of the contact committee established pursuant to Article 29. It shall forthwith publish the measures taken in the Official Journal of the European Union and at least once a year the consolidated list of the measures taken by Member States

Summary

- Member States to notify their list of events of major importance to Commission
- Commission to assess if measures are compatible with EU law
- Commission to communicate to other Member States
- Commission to seek opinion of the contact committee
- Commission to publish list of such measures

Article 16 – European works & independent production

3. Member States shall provide the Commission every 2 years, starting from 3 October 1991, with a report on the application of this Article and Article 17.

That report shall in particular include a statistical statement on the achievement of the proportion referred to in this Article and Article 17 for each of the television programmes falling within the jurisdiction of the Member State concerned, the reasons, in each case, for the failure to attain that proportion and the measures adopted or envisaged in order to achieve it.

The Commission shall inform the other Member States and the European Parliament of the reports, which shall be accompanied, where appropriate, by an opinion. The Commission shall ensure the application of this Article and Article 17 in accordance with the provisions of the Treaty on the Functioning of the European Union. The Commission may take account in its opinion, in particular, of progress achieved in relation to previous years, the share of first broadcast works in the programming, the particular circumstances of new television broadcasters and the specific situation of countries with a low audiovisual production capacity or restricted language area.

Summary

- Member States to provide the Commission every 2 years with a report
- Commission to inform other Member States and the European Parliament

Article 28a – VSPs and competent jurisdictions

6. Member States shall establish and maintain an up-to-date list of the video-sharing platform providers established or deemed to be established on their territory and indicate on which of the criteria set out in paragraphs 1 to 4 their jurisdiction is based. Member States shall communicate that list, including any updates thereto, to the Commission.

The Commission shall ensure that such lists are made available in a centralised database. In the event of inconsistencies between the lists, the Commission shall contact the Member States concerned in order to find a solution. The Commission shall ensure that the national regulatory authorities or bodies have access to that database. The Commission shall make information in the database publicly available.

Summary

- Member States to have an updated list of VSPs under their jurisdiction
- Member States to share it with the Commission
- Commission to ensure this list is updated and publicly available

7. Where, in applying this Article, the Member States concerned do not agree on which Member State has jurisdiction, they shall bring the matter to the Commission's attention without undue delay. The Commission may request ERGA to provide an opinion on the matter in accordance with point (d) of Article 30b(3). ERGA shall provide such an opinion within 15 working days from the submission of the Commission's request. The Commission shall keep the Contact Committee duly informed

Summary

If Member States disagree on who has jurisdiction:

- Shall bring the matter to the Commission's attention
- ERGA to provide an opinion
- Contact Committee shall be informed

Article 29 - Contact Committee

Summary

- Composed of representatives of the competent authorities of the MS

Article 30a – MS to provide information to each other and to the Commission

1. Member States shall ensure that national regulatory authorities or bodies take appropriate measures to provide each other and the Commission with the information necessary for the application of this Directive, in particular Articles 2, 3 and 4.

2. In the context of the information exchange under paragraph 1, when national regulatory authorities or bodies receive information from a media service provider under their jurisdiction that it will provide a service wholly or mostly directed at the audience of another Member State, the national regulatory authority or body in the Member State having jurisdiction shall inform the national regulatory authority or body of the targeted Member State

Summary:

- Good cooperation and exchange of information between regulatory authorities

Article 30b – Creation of ERGA

(b) to exchange experience and best practices on the application of the regulatory framework for audiovisual media services, including on accessibility and media literacy;

(c) to cooperate and provide its members with the information necessary for the application of this Directive, in particular as regards Articles 3, 4 and 7;

(d) to give opinions, when requested by the Commission, on the technical and factual aspects of the issues pursuant to Article 2(5c), Article 3(2) and (3), point (c) of Article 4(4) and Article 28a(7).

Article 9 – Orders to act against illegal content

1. Upon the receipt of an order to act against one or more specific items of illegal content, issued by the relevant national judicial or administrative authorities, on the basis of the applicable Union law or national law in compliance with Union law, providers of intermediary services shall inform the authority issuing the order, or any other authority specified in the order, of any effect given to the order without undue delay, specifying if and when effect was given to the order.
2. Member States shall ensure that when an order referred to in paragraph 1 is transmitted to the provider, it meets at least the following conditions:
 - (a) that order contains the following elements:
 - (i) a reference to the legal basis under Union or national law for the order;
 - (ii) a statement of reasons explaining why the information is illegal content, by reference to one or more specific provisions of Union law or national law in compliance with Union law;
 - (iii) information identifying the issuing authority;
 - (iv) clear information enabling the provider of intermediary services to identify and locate the illegal content concerned, such as one or more exact URL and, where necessary, additional information;
 - (v) information about redress mechanisms available to the provider of intermediary services and to the recipient of the service who provided the content;
 - (vi) where applicable, information about which authority is to receive the information about the effect given to the orders;
 - (b) the territorial scope of that order, on the basis of the applicable rules of Union and national law, including the Charter, and, where relevant, general principles of international law, is limited to what is strictly necessary to achieve its objective;
 - (c) that order is transmitted in one of the languages declared by the provider of intermediary services pursuant to Article 11(3) or in another official language of the Member States, agreed between the authority issuing the order and that provider, and is sent to the electronic point of contact designated by that provider, in accordance with Article 11; where the order is not drafted in the language declared by the provider of intermediary services or in another bilaterally agreed language, the order may be transmitted in the language of the authority issuing the order, provided that it is accompanied by a translation into such declared or bilaterally agreed language of at least the elements set out in points (a) and (b) of this paragraph.
3. The authority issuing the order or, where applicable, the authority specified therein, shall transmit it, along with any information received from the provider of intermediary services concerning the effect given to that order to the Digital Services Coordinator from the Member State of the issuing authority.
4. After receiving the order from the judicial or administrative authority, the Digital Services Coordinator of the Member State concerned shall, without undue delay, transmit a copy of the order referred to in paragraph 1 of this Article to all other Digital Services Coordinators through the system established in accordance with Article 85.
5. At the latest when effect is given to the order or, where applicable, at the time provided by the issuing authority in its order, providers of intermediary services shall inform the recipient of the service concerned of the order received and to the effect given to it. Such information provided to the recipient of the service shall include a statement of reasons, the possibilities for redress that exist, and a description of the territorial scope of the order, in accordance with paragraph 2.
6. The conditions and requirements laid down in this Article shall be without prejudice to national civil and criminal procedural law.

Summary

- Relevant national judicial or administrative authority can transmit orders to the provider of intermediary services. Such provider shall inform the authority of any effect given
- DSC of the issuing authority shall receive a copy of the order
- DSC of the issuing authority shall send a copy of this order to all other DSCs via the ISS (art. 85)

Article 10 – Orders to act against illegal content

1. Upon receipt of an order to provide specific information about one or more specific individual recipients of the service, issued by the relevant national judicial or administrative authorities on the basis of the applicable Union law or national law in compliance with Union law, providers of intermediary services shall,

without undue delay inform the authority issuing the order, or any other authority specified in the order, of its receipt and of the effect given to the order, specifying if and when effect was given to the order.

2. Member States shall ensure that when an order referred to in paragraph 1 is transmitted to the provider, it meets at least the following conditions:

(a) that order contains the following elements:

(i) a reference to the legal basis under Union or national law for the order;

(ii) information identifying the issuing authority;

(iii) clear information enabling the provider of intermediary services to identify the specific recipient or recipients on

whom information is sought, such as one or more account names or unique identifiers;

(iv) a statement of reasons explaining the objective for which the information is required and why the requirement to provide the information is necessary and proportionate to determine compliance by the recipients of the intermediary services with applicable Union law or national law in compliance with Union law, unless such a statement cannot be provided for reasons related to the prevention, investigation, detection and prosecution of criminal offences;

(v) information about redress mechanisms available to the provider and to the recipients of the service concerned;

(vi) where applicable, information about which authority is to receive the information about the effect given to the orders;

(b) that order only requires the provider to provide information already collected for the purposes of providing the service and which lies within its control;

(c) that order is transmitted in one of the languages declared by the provider of intermediary services pursuant to Article 11(3) or in another official language of the Member States, agreed between the authority issuing the order and the provider, and is sent to the electronic point of contact designated by that provider, in accordance with Article 11; where the order is not drafted in the language declared by the provider of intermediary services or in another bilaterally agreed language, the order may be transmitted in the language of the authority issuing the order, provided that it is accompanied by a translation into such declared or bilaterally agreed language of at least the elements set out in points (a) and (b) of this paragraph.

3. The authority issuing the order or, where applicable, the authority specified therein, shall transmit it, along with any information received from the provider of intermediary services concerning the effect given to that order to the Digital Services Coordinator from the Member State of the issuing authority

4. After receiving the order from the judicial or administrative authority, the Digital Services Coordinator of the Member State concerned shall, without undue delay, transmit a copy of the order referred to in paragraph 1 of this Article to all Digital Services Coordinators through the system established in accordance with Article 85.

5. At the latest when effect is given to the order, or, where applicable, at the time provided by the issuing authority in its order, providers of intermediary services shall inform the recipient of the service concerned of the order received and the effect given to it. Such information provided to the recipient of the service shall include a statement of reasons and the possibilities for redress that exist, in accordance with paragraph 2.

6. The conditions and requirements laid down in this Article shall be without prejudice to national civil and criminal procedural law.

Summary

- Relevant national judicial or administrative authority can ask information about one specific recipient of services to the provider. Such provider shall inform the authority of any effect given
- DSC of the issuing authority shall receive a copy of the order
- DSC of the issuing authority shall send a copy of this order to all other DSCs via the ISS (art. 85)

Article 11 – Points of contact for Member States’ authorities, the Commission and the Board

1. Providers of intermediary services shall designate a single point of contact to enable them to communicate directly, by electronic means, with Member States' authorities, the Commission and the Board referred to in Article 61 for the application of this Regulation.

2. Providers of intermediary services shall make public the information necessary to easily identify and communicate with their single points of contact. That information shall be easily accessible, and shall be kept up to date.

3. Providers of intermediary services shall specify in the information referred to in paragraph 2 the official language or languages of the Member States which, in addition to a language broadly understood by the largest possible number of Union citizens, can be used to communicate with their points of contact, and which shall include at least one of the official languages of the Member State in which the provider of intermediary services has its main establishment or where its legal representative resides or is established.

Summary

- Single point of contact for providers of intermediary services in the EU
- Providers needs to specify the language that can be used

Article 13 – Legal representatives

1. Providers of intermediary services which do not have an establishment in the Union but which offer services in the Union shall designate, in writing, a legal or natural person to act as their legal representative in one of the Member States where the provider offers its services.
2. Providers of intermediary services shall mandate their legal representatives for the purpose of being addressed in addition to or instead of such providers, by the Member States' competent authorities, the Commission and the Board, on all issues necessary for the receipt of, compliance with and enforcement of decisions issued in relation to this Regulation. Providers of intermediary services shall provide their legal representative with necessary powers and sufficient resources to guarantee their efficient and timely cooperation with the Member States' competent authorities, the Commission and the Board, and to comply with such decisions.
3. It shall be possible for the designated legal representative to be held liable for non-compliance with obligations under this Regulation, without prejudice to the liability and legal actions that could be initiated against the provider of intermediary services.
4. Providers of intermediary services shall notify the name, postal address, email address and telephone number of their legal representative to the Digital Services Coordinator in the Member State where that legal representative resides or is established. They shall ensure that that information is publicly available, easily accessible, accurate and kept up to date.
5. The designation of a legal representative within the Union pursuant to paragraph 1 shall not constitute an establishment in the Union.

Summary

- Providers shall have legal representatives in the EU
- Information shall be communicated to the DSC of establishment

Article 21 – Out of court dispute settlement

1. Recipients of the service, including individuals or entities that have submitted notices, addressed by the decisions referred to in Article 20(1) shall be entitled to select any out-of-court dispute settlement body that has been certified in accordance with paragraph 3 of this Article in order to resolve disputes relating to those decisions, including complaints that have not been resolved by means of the internal complaint-handling system referred to in that Article.

Providers of online platforms shall ensure that information about the possibility for recipients of the service to have access to an out-of-court dispute settlement, as referred to in the first subparagraph, is easily accessible on their online interface, clear and user-friendly.

The first subparagraph is without prejudice to the right of the recipient of the service concerned to initiate, at any stage, proceedings to contest those decisions by the providers of online platforms before a court in accordance with the applicable law.

2. Both parties shall engage, in good faith, with the selected certified out-of-court dispute settlement body with a view to resolving the dispute.

Providers of online platforms may refuse to engage with such out-of-court dispute settlement body if a dispute has already been resolved concerning the same information and the same grounds of alleged illegality or incompatibility of content.

The certified out-of-court dispute settlement body shall not have the power to impose a binding settlement of the dispute on the parties.

3. The Digital Services Coordinator of the Member State where the out-of-court dispute settlement body is established shall, for a maximum period of five years, which may be renewed, certify the body, at its request, where the body has demonstrated that it meets all of the following conditions:

(a) it is impartial and independent, including financially independent, of providers of online platforms and of recipients of the service provided by providers of online platforms, including of individuals or entities that have submitted notices;

(b) it has the necessary expertise in relation to the issues arising in one or more particular areas of illegal content, or in relation to the application and enforcement of terms and conditions of one or more types of online platform, allowing the body to contribute effectively to the settlement of a dispute;

(c) its members are remunerated in a way that is not linked to the outcome of the procedure;

(d) the out-of-court dispute settlement that it offers is easily accessible, through electronic communications technology and provides for the possibility to initiate the dispute settlement and to submit the requisite supporting documents online;

(e) it is capable of settling disputes in a swift, efficient and cost-effective manner and in at least one of the official languages of the institutions of the Union;

(f) the out-of-court dispute settlement that it offers takes place in accordance with clear and fair rules of procedure that are easily and publicly accessible, and that comply with applicable law, including this Article.

The Digital Services Coordinator shall, where applicable, specify in the certificate:

(a) the particular issues to which the body's expertise relates, as referred to in point (b) of the first subparagraph; and

(b) the official language or languages of the institutions of the Union in which the body is capable of settling disputes, as referred to in point (e) of the first subparagraph.

4. Certified out-of-court dispute settlement bodies shall report to the Digital Services Coordinator that certified them, on an annual basis, on their functioning, specifying at least the number of disputes they received, the information about the outcomes of those disputes, the average time taken to resolve them and any shortcomings or difficulties encountered.

They shall provide additional information at the request of that Digital Services Coordinator.

Digital Services Coordinators shall, every two years, draw up a report on the functioning of the out-of-court dispute settlement bodies that they certified. That report shall in particular:

(a) list the number of disputes that each certified out-of-court dispute settlement body has received annually;

(b) indicate the outcomes of the procedures brought before those bodies and the average time taken to resolve the disputes;

(c) identify and explain any systematic or sectoral shortcomings or difficulties encountered in relation to the functioning of those bodies;

(d) identify best practices concerning that functioning;

(e) make recommendations as to how to improve that functioning, where appropriate.

Certified out-of-court dispute settlement bodies shall make their decisions available to the parties within a reasonable period of time and no later than 90 calendar days after the receipt of the complaint. In the case of highly complex disputes, the certified out-of-court dispute settlement body may, at its own discretion, extend the 90 calendar day period for an additional period that shall not exceed 90 days, resulting in a maximum total duration of 180 days.

5. If the out-of-court dispute settlement body decides the dispute in favour of the recipient of the service, including the individual or entity that has submitted a notice, the provider of the online platform shall bear all the fees charged by the out-of-court dispute settlement body, and shall reimburse that recipient, including the individual or entity, for any other reasonable expenses that it has paid in relation to the dispute settlement. If the out-of-court dispute settlement body decides the dispute in favour of the provider of the online platform, the recipient of the service, including the individual or entity, shall not be required to reimburse any fees or other expenses that the provider of the online platform paid or is to pay in relation to the dispute settlement, unless the out-of-court dispute settlement body finds that that recipient manifestly acted in bad faith.

The fees charged by the out-of-court dispute settlement body to the providers of online platforms for the dispute settlement shall be reasonable and shall in any event not exceed the costs incurred by the body. For recipients of the service, the dispute settlement shall be available free of charge or at a nominal fee.

Certified out-of-court dispute settlement bodies shall make the fees, or the mechanisms used to determine the fees, known to the recipient of the service, including to the individuals or entities that have submitted a notice, and to the provider of the online platform concerned, before engaging in the dispute settlement.

6. Member States may establish out-of-court dispute settlement bodies for the purposes of paragraph 1 or support the activities of some or all out-of-court dispute settlement bodies that they have certified in accordance with paragraph 3.

Member States shall ensure that any of their activities undertaken under the first subparagraph do not affect the ability of their Digital Services Coordinators to certify the bodies concerned in accordance with paragraph 3.

7. A Digital Services Coordinator that has certified an out-of-court dispute settlement body shall revoke that certification if it determines, following an investigation either on its own initiative or on the basis of the information received by third parties, that the out-of-court dispute settlement body no longer meets the conditions set out in paragraph 3. Before revoking that certification, the Digital Services Coordinator shall afford that body an opportunity to react to the findings of its investigation and its intention to revoke the out-of-court dispute settlement body's certification.

8. Digital Services Coordinators shall notify to the Commission the out-of-court dispute settlement bodies that they have certified in accordance with paragraph 3, including where applicable the specifications referred to in the second subparagraph of that paragraph, as well as the out-of-court dispute settlement bodies the certification of which they have revoked. The Commission shall publish a list of those bodies, including those specifications, on a dedicated website that is easily accessible, and keep it up to date.

9. This Article is without prejudice to Directive 2013/11/EU and alternative dispute resolution procedures and entities for consumers established under that Directive.

Summary

- DSC shall certify out-of-court dispute settlement bodies that meet certain conditions
- Every 2 years, DSC shall draw a report on the functioning of the out of court dispute settlement body
- DSC shall notify the Commission of the out of court dispute settlement bodies they have certified
- Commission shall publish a list

Article 22 – Trusted flaggers

1. Providers of online platforms shall take the necessary technical and organisational measures to ensure that notices submitted by trusted flaggers, acting within their designated area of expertise, through the mechanisms referred to in Article 16, are given priority and are processed and decided upon without undue delay.

2. The status of 'trusted flagger' under this Regulation shall be awarded, upon application by any entity, by the Digital Services Coordinator of the Member State in which the applicant is established, to an applicant that has demonstrated that it meets all of the following conditions:

(a) it has particular expertise and competence for the purposes of detecting, identifying and notifying illegal content;

(b) it is independent from any provider of online platforms;

(c) it carries out its activities for the purposes of submitting notices diligently, accurately and objectively.

3. Trusted flaggers shall publish, at least once a year easily comprehensible and detailed reports on notices submitted in accordance with Article 16 during the relevant period. The report shall list at least the number of notices categorised by:

(a) the identity of the provider of hosting services,

(b) the type of allegedly illegal content notified,

(c) the action taken by the provider.

Those reports shall include an explanation of the procedures in place to ensure that the trusted flagger retains its independence. Trusted flaggers shall send those reports to the awarding Digital Services Coordinator, and shall make them publicly available. The information in those reports shall not contain personal data.

4. Digital Services Coordinators shall communicate to the Commission and the Board the names, addresses and email addresses of the entities to which they have awarded the status of the trusted flagger in accordance with paragraph 2 or whose trusted flagger status they have suspended in accordance with paragraph 6 or revoked in accordance with paragraph 7.

5. The Commission shall publish the information referred to in paragraph 4 in a publicly available database, in an easily accessible and machine-readable format, and shall keep the database up to date.

6. Where a provider of online platforms has information indicating that a trusted flagger has submitted a significant number of insufficiently precise, inaccurate or inadequately substantiated notices through the mechanisms referred to in Article 16, including information gathered in connection to the processing of complaints through the internal complaint-handling systems referred to in Article 20(4), it shall communicate that information to the Digital Services Coordinator that awarded the status of trusted flagger to the entity concerned, providing the necessary explanations and supporting documents. Upon receiving the information from the provider of online platforms, and if the Digital Services Coordinator considers that there are legitimate reasons to open an investigation, the status of trusted flagger shall be suspended during the period of the investigation. That investigation shall be carried out without undue delay.

7. The Digital Services Coordinator that awarded the status of trusted flagger to an entity shall revoke that status if it determines, following an investigation either on its own initiative or on the basis information received from third parties, including the information provided by a provider of online platforms pursuant to paragraph 6, that the entity no longer meets the conditions set out in paragraph 2. Before revoking that status, the Digital Services Coordinator shall afford the entity an opportunity to react to the findings of its investigation and its intention to revoke the entity's status as trusted flagger.

8. The Commission, after consulting the Board, shall, where necessary, issue guidelines to assist providers of online platforms and Digital Services Coordinators in the application of paragraphs 2, 6 and 7

Summary

- DSC shall award the status of trusted flaggers to bodies that have specific expertise and meet certain conditions
- DSC shall communicate to the Commission & the Board the names, addresses and contact information of these bodies
- Commission shall publish this information

Article 33 – VLOPSEs

1. This Section shall apply to online platforms and online search engines which have a number of average monthly active recipients of the service in the Union equal to or higher than 45 million, and which are designated as very large online platforms or very large online search engines pursuant to paragraph 4.

2. The Commission shall adopt delegated acts in accordance with Article 87 to adjust the number of average monthly active recipients of the service in the Union referred to in paragraph 1, where the Union's population increases or decreases at least by 5 % in relation to its population in 2020 or its population after adjustment by means of a delegated act in the year in which the latest delegated act was adopted. In such a case, it shall adjust the number so that it corresponds to 10 % of the Union's population in the year in which it adopts the delegated act, rounded up or down to allow the number to be expressed in millions.

3. The Commission may adopt delegated acts in accordance with Article 87, after consulting the Board, to supplement the provisions of this Regulation by laying down the methodology for calculating the number of average monthly active recipients of the service in the Union, for the purposes of paragraph 1 of this Article and Article 24(2), ensuring that the methodology takes account of market and technological developments.

4. The Commission shall, after having consulted the Member State of establishment or after taking into account the information provided by the Digital Services Coordinator of establishment pursuant to Article 24(4), adopt a decision designating as a very large online platform or a very large online search engine for the purposes of this Regulation the online platform or the online search engine which has a number of average monthly active recipients of the service equal to or higher than the number referred to in paragraph 1 of this Article. The Commission shall take its decision on the basis of data reported by the provider of the online platform or of the online search engine pursuant to Article 24(2), or information requested pursuant to Article 24(3) or any other information available to the Commission.

The failure by the provider of the online platform or of the online search engine to comply with Article 24(2) or to comply with the request by the Digital Services Coordinator of establishment or by the Commission pursuant to Article 24(3) shall not prevent the Commission from designating that provider as a provider of a very large online platform or of a very large online search engine pursuant to this paragraph. Where the Commission bases its decision on other information available to the Commission pursuant to the first subparagraph of this paragraph or on the basis of additional information requested pursuant to Article 24(3), the Commission shall give the provider of the online platform or of the online search engine concerned 10 working days in which to submit its views on the Commission's preliminary findings and on its intention to designate the online platform or the online search engine as a very large online platform or as a very large online search engine, respectively. The Commission shall take due account of the views submitted by the provider concerned.

The failure of the provider of the online platform or of the online search engine concerned to submit its views pursuant to the third subparagraph shall not prevent the Commission from designating that online platform or that online search engine as a very large online platform or as a very large online search engine, respectively, based on other information available to it.

The Commission shall terminate the designation if, during an uninterrupted period of one year, the online platform or the online search engine does not have a number of average monthly active recipients of the service equal to or higher than the number referred to in paragraph 1.

6. The Commission shall notify its decisions pursuant to paragraphs 4 and 5, without undue delay, to the provider of the online platform or of the online search engine concerned, to the Board and to the Digital Services Coordinator of establishment.

The Commission shall ensure that the list of designated very large online platforms and very large online search engines is published in the Official Journal of the European Union, and shall keep that list up to date. The obligations set out in this Section shall apply, or cease to apply, to the very large online platforms and very large online search engines concerned from four months after the notification to the provider concerned referred to in the first subparagraph

Summary

- Commission shall adopt a decision designating VLOPSEs, after taking into account information from the DSC of establishment
- Commission shall notify its decisions to the Board and the DSC of establishment

Article 35 – Mitigation of risks

1. Providers of very large online platforms and of very large online search engines shall put in place reasonable, proportionate and effective mitigation measures, tailored to the specific systemic risks identified pursuant to Article 34, with particular consideration to the impacts of such measures on fundamental rights. Such measures may include, where applicable:

- (a) adapting the design, features or functioning of their services, including their online interfaces;
- (b) adapting their terms and conditions and their enforcement;
- (c) adapting content moderation processes, including the speed and quality of processing notices related to specific types of illegal content and, where appropriate, the expeditious removal of, or the disabling of access to, the content notified, in particular in respect of illegal hate speech or cyber violence, as well as adapting any relevant decision-making processes and dedicated resources for content moderation;
- (d) testing and adapting their algorithmic systems, including their recommender systems;
- (e) adapting their advertising systems and adopting targeted measures aimed at limiting or adjusting the presentation of advertisements in association with the service they provide;
- (f) reinforcing the internal processes, resources, testing, documentation, or supervision of any of their activities in particular as regards detection of systemic risk;
- (g) initiating or adjusting cooperation with trusted flaggers in accordance with Article 22 and the implementation of the decisions of out-of-court dispute settlement bodies pursuant to Article 21;
- (h) initiating or adjusting cooperation with other providers of online platforms or of online search engines through the codes of conduct and the crisis protocols referred to in Articles 45 and 48 respectively;
- (i) taking awareness-raising measures and adapting their online interface in order to give recipients of the service more information;
- (j) taking targeted measures to protect the rights of the child, including age verification and parental control tools, tools aimed at helping minors signal abuse or obtain support, as appropriate;
- (k) ensuring that an item of information, whether it constitutes a generated or manipulated image, audio or video that appreciably resembles existing persons, objects, places or other entities or events and falsely appears to a person to be authentic or truthful is distinguishable through prominent markings when presented on their online interfaces, and, in addition, providing an easy to use functionality which enables recipients of the service to indicate such information.

2. The Board, in cooperation with the Commission, shall publish comprehensive reports, once a year. The reports shall include the following:

- (a) identification and assessment of the most prominent and recurrent systemic risks reported by providers of very large online platforms and of very large online search engines or identified through other information sources, in particular those provided in compliance with Articles 39, 40 and 42;
- (b) best practices for providers of very large online platforms and of very large online search engines to mitigate the systemic risks identified.

Those reports shall present systemic risks broken down by the Member States in which they occurred and in the Union as a whole, as applicable.

3. The Commission, in cooperation with the Digital Services Coordinators, may issue guidelines on the application of paragraph 1 in relation to specific risks, in particular to present best practices and recommend possible measures, having due regard to the possible consequences of the measures on fundamental rights enshrined in the Charter of all parties involved. When preparing those guidelines the Commission shall organise public consultations.

Summary

- Board, in cooperation with the Commission, shall publish comprehensive reports, once a year
- Commission, in cooperation with DSCs, may issue guidelines

Article 36 – Crisis response mechanism

1. Where a crisis occurs, the Commission, acting upon a recommendation of the Board may adopt a decision, requiring one or more providers of very large online platforms or of very large online search engines to take one or more of the following actions:

(a) assess whether, and if so to what extent and how, the functioning and use of their services significantly contribute to a serious threat as referred to in paragraph 2, or are likely to do so;

(b) identify and apply specific, effective and proportionate measures, such as any of those provided for in Article 35(1) or Article 48(2), to prevent, eliminate or limit any such contribution to the serious threat identified pursuant to point (a) of this paragraph;

(c) report to the Commission by a certain date or at regular intervals specified in the decision, on the assessments referred to in point (a), on the precise content, implementation and qualitative and quantitative impact of the specific measures taken pursuant to point (b) and on any other issue related to those assessments or those measures, as specified in the decision.

When identifying and applying measures pursuant to point (b) of this paragraph, the service provider or providers shall take due account of the gravity of the serious threat referred to in paragraph 2, of the urgency of the measures and of the actual or potential implications for the rights and legitimate interests of all parties concerned, including the possible failure of the measures to respect the fundamental rights enshrined in the Charter.

2. For the purpose of this Article, a crisis shall be deemed to have occurred where extraordinary circumstances lead to a serious threat to public security or public health in the Union or in significant parts of it.

3. When taking the decision referred to in paragraph 1, the Commission shall ensure that all of the following requirements are met:

(a) the actions required by the decision are strictly necessary, justified and proportionate, having regard in particular to the gravity of the serious threat referred to in paragraph 2, the urgency of the measures and the actual or potential implications for the rights and legitimate interests of all parties concerned, including the possible failure of the measures to respect the fundamental rights enshrined in the Charter;

(b) the decision specifies a reasonable period within which specific measures referred to in paragraph 1, point (b), are to be taken, having regard, in particular, to the urgency of those measures and the time needed to prepare and implement them;

(c) the actions required by the decision are limited to a period not exceeding three months.

4. After adopting the decision referred to in paragraph 1, the Commission shall, without undue delay, take the following steps:

(a) notify the decision to the provider or providers to which the decision is addressed

(b) make the decision publicly available; and

(c) inform the Board of the decision, invite it to submit its views thereon, and keep it informed of any subsequent developments relating to the decision.

5. The choice of specific measures to be taken pursuant to paragraph 1, point (b), and to paragraph 7, second subparagraph, shall remain with the provider or providers addressed by the Commission's decision.

6. The Commission may on its own initiative or at the request of the provider, engage in a dialogue with the provider to determine whether, in light of the provider's specific circumstances, the intended or implemented measures referred to in paragraph 1, point (b), are effective and proportionate in achieving the objectives pursued. In particular, the Commission shall ensure that the measures taken by the service provider under paragraph 1, point (b), meet the requirements referred to in paragraph 3, points (a) and (c).

7. The Commission shall monitor the application of the specific measures taken pursuant to the decision referred to in paragraph 1 of this Article on the basis of the reports referred to in point (c) of that paragraph and any other relevant information, including information it may request pursuant to Article 40 or 67, taking

into account the evolution of the crisis. The Commission shall report regularly to the Board on that monitoring, at least on a monthly basis.

Where the Commission considers that the intended or implemented specific measures pursuant to paragraph 1, point (b), are not effective or proportionate it may, after consulting the Board, adopt a decision requiring the provider to review the identification or application of those specific measures.

8. Where appropriate in view of the evolution of the crisis, the Commission, acting on the Board's recommendation, may amend the decision referred to in paragraph 1 or in paragraph 7, second subparagraph, by:

(a) revoking the decision and, where appropriate, requiring the very large online platform or very large online search engine to cease to apply the measures identified and implemented pursuant to paragraph 1, point (b), or paragraph 7, second subparagraph, in particular where the grounds for such measures do not exist anymore;

(b) extending the period referred to paragraph 3, point (c), by a period of no more than three months;

(c) taking account of experience gained in applying the measures, in particular the possible failure of the measures to respect the fundamental rights enshrined in the Charter.

9. The requirements of paragraphs 1 to 6 shall apply to the decision and to the amendment thereof referred to in this Article.

10. The Commission shall take utmost account of the recommendation of the Board issued pursuant to this Article.

11. The Commission shall report to the European Parliament and to the Council on a yearly basis following the adoption of decisions in accordance with this Article, and, in any event, three months after the end of the crisis, on the application of the specific measures taken pursuant to those decisions.

Summary

- Where a crisis occurs, the Commission, acting upon recommendation of the Board, may adopt a decision requiring providers to take actions
- Commission shall inform the Board and invite it to submit views

Article 40 – Data access and scrutiny

1. Providers of very large online platforms or of very large online search engines shall provide the Digital Services Coordinator of establishment or the Commission, at their reasoned request and within a reasonable period specified in that request, access to data that are necessary to monitor and assess compliance with this Regulation.

2. Digital Services Coordinators and the Commission shall use the data accessed pursuant to paragraph 1 only for the purpose of monitoring and assessing compliance with this Regulation and shall take due account of the rights and interests of the providers of very large online platforms or of very large online search engines and the recipients of the service concerned, including the protection of personal data, the protection of confidential information, in particular trade secrets, and maintaining the security of their service.

3. For the purposes of paragraph 1, providers of very large online platforms or of very large online search engines shall, at the request of either the Digital Service Coordinator of establishment or of the Commission, explain the design, the logic, the functioning and the testing of their algorithmic systems, including their recommender systems.

4. Upon a reasoned request from the Digital Services Coordinator of establishment, providers of very large online platforms or of very large online search engines shall, within a reasonable period, as specified in the request, provide access to data to vetted researchers who meet the requirements in paragraph 8 of this Article, for the sole purpose of conducting research that contributes to the detection, identification and understanding of systemic risks in the Union, as set out pursuant to Article 34(1), and to the assessment of the adequacy, efficiency and impacts of the risk mitigation measures pursuant to Article 35.

5. Within 15 days following receipt of a request as referred to in paragraph 4, providers of very large online platforms or of very large online search engines may request the Digital Services Coordinator of

establishment, to amend the request, where they consider that they are unable to give access to the data requested because one of following two reasons:

(a) they do not have access to the data;

(b) giving access to the data will lead to significant vulnerabilities in the security of their service or the protection of confidential information, in particular trade secrets.

6. Requests for amendment pursuant to paragraph 5 shall contain proposals for one or more alternative means through which access may be provided to the requested data or other data which are appropriate and sufficient for the purpose of the request.

The Digital Services Coordinator of establishment shall decide on the request for amendment within 15 days and communicate to the provider of the very large online platform or of the very large online search engine its decision and, where relevant, the amended request and the new period to comply with the request.

Providers of very large online platforms or of very large online search engines shall facilitate and provide access to data pursuant to paragraphs 1 and 4 through appropriate interfaces specified in the request, including online databases or application programming interfaces.

8. Upon a duly substantiated application from researchers, the Digital Services Coordinator of establishment shall grant such researchers the status of 'vetted researchers' for the specific research referred to in the application and issue a reasoned request for data access to a provider of very large online platform or of very large online search engine pursuant to paragraph 4, where the researchers demonstrate that they meet all of the following conditions:

(a) they are affiliated to a research organisation as defined in Article 2, point (1), of Directive (EU) 2019/790;

(b) they are independent from commercial interests;

(c) their application discloses the funding of the research;

(d) they are capable of fulfilling the specific data security and confidentiality requirements corresponding to each request and to protect personal data, and they describe in their request the appropriate technical and organisational measures that they have put in place to this end;

(e) their application demonstrates that their access to the data and the time frames requested are necessary for, and proportionate to, the purposes of their research, and that the expected results of that research will contribute to the purposes laid down in paragraph 4;

(f) the planned research activities will be carried out for the purposes laid down in paragraph 4;

(g) they have committed themselves to making their research results publicly available free of charge, within a reasonable period after the completion of the research, subject to the rights and interests of the recipients of the service concerned, in accordance with Regulation (EU) 2016/679.

Upon receipt of the application pursuant to this paragraph, the Digital Services Coordinator of establishment shall inform the Commission and the Board.

9. Researchers may also submit their application to the Digital Services Coordinator of the Member State of the research organisation to which they are affiliated. Upon receipt of the application pursuant to this paragraph the Digital Services Coordinator shall conduct an initial assessment as to whether the respective researchers meet all of the conditions set out in paragraph 8. The respective Digital Services Coordinator shall subsequently send the application, together with the supporting documents submitted by the respective researchers and the initial assessment, to the Digital Services Coordinator of establishment. The Digital Services Coordinator of establishment shall take a decision whether to award a researcher the status of 'vetted researcher' without undue delay.

While taking due account of the initial assessment provided, the final decision to award a researcher the status of 'vetted researcher' lies within the competence of Digital Services Coordinator of establishment, pursuant to paragraph 8.

10. The Digital Services Coordinator that awarded the status of vetted researcher and issued the reasoned request for data access to the providers of very large online platforms or of very large online search engines

in favour of a vetted researcher shall issue a decision terminating the access if it determines, following an investigation either on its own initiative or on the basis of information received from third parties, that the vetted researcher no longer meets the conditions set out in paragraph 8, and shall inform the provider of the very large online platform or of the very large online search engine concerned of the decision. Before terminating the access, the Digital Services Coordinator shall allow the vetted researcher to react to the findings of its investigation and to its intention to terminate the access.

11. Digital Services Coordinators of establishment shall communicate to the Board the names and contact information of the natural persons or entities to which they have awarded the status of 'vetted researcher' in accordance with paragraph 8, as well as the purpose of the research in respect of which the application was made or, where they have terminated the access to the data in accordance with paragraph 10, communicate that information to the Board

12. Providers of very large online platforms or of very large online search engines shall give access without undue delay to data, including, where technically possible, to real-time data, provided that the data is publicly accessible in their online interface by researchers, including those affiliated to not for profit bodies, organisations and associations, who comply with the conditions set out in paragraph 8, points (b), (c), (d) and (e), and who use the data solely for performing research that contributes to the detection, identification and understanding of systemic risks in the Union pursuant to Article 34(1).

13. The Commission shall, after consulting the Board, adopt delegated acts supplementing this Regulation by laying down the technical conditions under which providers of very large online platforms or of very large online search engines are to share data pursuant to paragraphs 1 and 4 and the purposes for which the data may be used. Those delegated acts shall lay down the specific conditions under which such sharing of data with researchers can take place in compliance with Regulation (EU) 2016/679, as well as relevant objective indicators, procedures and, where necessary, independent advisory mechanisms in support of sharing of data, taking into account the rights and interests of the providers of very large online platforms or of very large online search engines and the recipients of the service concerned, including the protection of confidential information, in particular trade secrets, and maintaining the security of their service.

Summary

- DSC of establishment shall grant the 'vetted researchers' status
- DSC of the research organization can conduct an initial assessment
- Following the initial assessment, it shall send the application to the DSC of establishment with supporting documents
- DSC of establishment shall communicate to the Board the names and contact information of the 'vetted researchers'

Article 49– Digital Services Coordinators

1. Member States shall designate one or more competent authorities to be responsible for the supervision of providers of intermediary services and enforcement of this Regulation ('competent authorities').

2. Member States shall designate one of the competent authorities as their Digital Services Coordinator. The Digital Services Coordinator shall be responsible for all matters relating to supervision and enforcement of this Regulation in that Member State, unless the Member State concerned has assigned certain specific tasks or sectors to other competent authorities. The Digital Services Coordinator shall in any event be responsible for ensuring coordination at national level in respect of those matters and for contributing to the effective and consistent supervision and enforcement of this Regulation throughout the Union.

For that purpose, Digital Services Coordinators shall cooperate with each other, other national competent authorities, the Board and the Commission, without prejudice to the possibility for Member States to provide for cooperation mechanisms and regular exchanges of views between the Digital Services Coordinator and other national authorities where relevant for the performance of their respective tasks.

Where a Member State designates one or more competent authorities in addition to the Digital Services Coordinator, it shall ensure that the respective tasks of those authorities and of the Digital Services Coordinator are clearly defined and that they cooperate closely and effectively when performing their tasks.

3. Member States shall designate the Digital Services Coordinators by 17 February 2024.

Member States shall make publicly available, and communicate to the Commission and the Board, the name of their competent authority designated as Digital Services Coordinator and information on how it can be contacted. The Member State concerned shall communicate to the Commission and the Board the name of the other competent authorities referred to in paragraph 2, as well as their respective tasks.

4. The provisions applicable to Digital Services Coordinators set out in Articles 50, 51 and 56 shall also apply to any other competent authorities that the Member States designate pursuant to paragraph 1 of this Article.

Summary

- Clear reference to collaboration between the different DSCs, as well as with other competent authorities, the Board, and the Commission (2)

Article 53 – Right to lodge a complaint

Recipients of the service and anybody, organisation or association mandated to exercise the rights conferred by this Regulation on their behalf shall have the right to lodge a complaint against providers of intermediary services alleging an infringement of this Regulation with the Digital Services Coordinator of the Member State where the recipient of the service is located or established. The Digital Services Coordinator shall assess the complaint and, where appropriate, transmit it to the Digital Services Coordinator of establishment, accompanied, where considered appropriate, by an opinion. Where the complaint falls under the responsibility of another competent authority in its Member State, the

Digital Services Coordinator receiving the complaint shall transmit it to that authority. During these proceedings, both parties shall have the right to be heard and receive appropriate information about the status of the complaint, in accordance with national law.

Summary

- Right to lodge a complaint against providers alleging an infringement of this regulation
- Where the complaint falls under the responsibility of another competent authority, the DSC shall transmit to the competent authority

Article 55 – Activity report

1. Digital Services Coordinators shall draw up annual reports on their activities under this Regulation, including the number of complaints received pursuant to Article 53 and an overview of their follow-up. The Digital Services Coordinators shall make the annual reports available to the public in a machine-readable format, subject to the applicable rules on the confidentiality of information pursuant to Article 84, and shall communicate them to the Commission and to the Board.

2. The annual report shall also include the following information:

(a) the number and subject matter of orders to act against illegal content and orders to provide information issued in accordance with Articles 9 and 10 by any national judicial or administrative authority of the Member State of the Digital Services Coordinator concerned;

(b) the effects given to those orders, as communicated to the Digital Services Coordinator pursuant to Articles 9 and 10.

3. Where a Member State has designated several competent authorities pursuant to Article 49, it shall ensure that the Digital Services Coordinator draws up a single report covering the activities of all competent authorities and that the Digital Services Coordinator receives all relevant information and support needed to that effect from the other competent authorities concerned.

Summary

- DSC to draw up annual report
- These reports to be made publicly available

Article 56 – Competences

The Member State in which the main establishment of the provider of intermediary services is located shall have exclusive powers to supervise and enforce this Regulation, except for the powers provided for in paragraphs 2, 3 and 4.

2. The Commission shall have exclusive powers to supervise and enforce Section 5 of Chapter III.

3. The Commission shall have powers to supervise and enforce this Regulation, other than those laid down in Section 5 of Chapter III thereof, against providers of very large online platforms and of very large online search engines.

4. Where the Commission has not initiated proceedings for the same infringement, the Member State in which the main establishment of the provider of very large online platform or of very large online search engine is located shall have powers to supervise and enforce the obligations under this Regulation, other than those laid down in Section 5 of Chapter III, with respect to those providers.

5. Member States and the Commission shall supervise and enforce the provisions of this Regulation in close cooperation.

6. Where a provider of intermediary services does not have an establishment in the Union, the Member State where its legal representative resides or is established or the Commission shall have powers, as applicable, in accordance with paragraphs 1 and 4 of this Article, to supervise and enforce the relevant obligations under this Regulation.

7. Where a provider of intermediary services fails to appoint a legal representative in accordance with Article 13, all Member States and, in case of a provider of a very large online platform or very large online search engine, the Commission shall have powers to supervise and enforce in accordance with this Article.

Where a Digital Services Coordinator intends to exercise its powers under this paragraph, it shall notify all other Digital Services Coordinators and the Commission, and ensure that the applicable safeguards afforded by the Charter are respected, in particular to avoid that the same conduct is sanctioned more than once for the infringement of the obligations laid down in this Regulation. Where the Commission intends to exercise its powers under this paragraph, it shall notify all other Digital Services Coordinators of that intention. Following the notification pursuant to this paragraph, other Member States shall not initiate proceedings for the same infringement as that referred to in the notification.

Summary

- Close cooperation between the Member States and Commission in supervising and enforcing the provisions of this regulation
- If providers fails to appoint a legal representatives, all MS shall have powers to supervise. If one MS intends to exercise this power, it shall inform all other DSCs and the Commission. Same if the Commission intends to exercise this power

Article 57 – Mutual Assistance

1. Digital Services Coordinators and the Commission shall cooperate closely and provide each other with mutual assistance in order to apply this Regulation in a consistent and efficient manner. Mutual assistance shall include, in particular, exchange of information in accordance with this Article and the duty of the Digital Services Coordinator of establishment to inform all Digital Services Coordinators of destination, the Board and the Commission about the opening of an investigation and the intention to take a final decision, including its assessment, in respect of a specific provider of intermediary services.

2. For the purpose of an investigation, the Digital Services Coordinator of establishment may request other Digital Services Coordinators to provide specific information in their possession as regards a specific provider of intermediary services or to exercise their investigative powers referred to in Article 51(1) with regard to specific information located in their Member State. Where appropriate, the Digital Services Coordinator receiving the request may involve other competent authorities or other public authorities of the Member State in question.

3. The Digital Services Coordinator receiving the request pursuant to paragraph 2 shall comply with such request and inform the Digital Services Coordinator of establishment about the action taken, without undue delay and no later than two months after its receipt, unless:

(a) the scope or the subject matter of the request is not sufficiently specified, justified or proportionate in view of the investigative purposes; or

(b) neither the requested Digital Service Coordinator nor other competent authority or other public authority of that Member State is in possession of the requested information nor can have access to it; or

(c) the request cannot be complied with without infringing Union or national law.

The Digital Services Coordinator receiving the request shall justify its refusal by submitting a reasoned reply, within the period set out in the first subparagraph.

Summary

- DSC & the Commission shall cooperate closely, and provide each other with mutual assistance, in particular exchange of information
- DSC of establishment shall inform all DSCs, the Board and the Commission about the opening of an investigation
- DSC of establishment may request other DSC to provide specific information for the purpose of an investigation
- DSC receiving request shall comply without undue delay
- Further details are specified in the article

Article 58 – Cross border cooperation

1. Unless the Commission has initiated an investigation for the same alleged infringement, where a Digital Services Coordinator of destination has reason to suspect that a provider of an intermediary service has infringed this Regulation in a manner negatively affecting the recipients of the service in the Member State of that Digital Services Coordinator, it may request the Digital Services Coordinator of establishment to assess the matter and to take the necessary investigatory and enforcement measures to ensure compliance with this Regulation.
2. Unless the Commission has initiated an investigation for the same alleged infringement, and at the request of at least three Digital Services Coordinators of destination that have reason to suspect that a specific provider of intermediary services infringed this Regulation in a manner negatively affecting recipients of the service in their Member States, the Board may request the Digital Services Coordinator of establishment to assess the matter and take the necessary investigatory and enforcement measures to ensure compliance with this Regulation.
3. A request pursuant to paragraph 1 or 2 shall be duly reasoned, and shall at least indicate:
 - (a) the point of contact of the provider of the intermediary services concerned as provided for in Article 11;
 - (b) a description of the relevant facts, the provisions of this Regulation concerned and the reasons why the Digital Services Coordinator that sent the request, or the Board, suspects that the provider infringed this Regulation, including the description of the negative effects of the alleged infringement;
 - (c) any other information that the Digital Services Coordinator that sent the request, or the Board, considers relevant, including, where appropriate, information gathered on its own initiative or suggestions for specific investigatory or enforcement measures to be taken, including interim measures.
4. The Digital Services Coordinator of establishment shall take utmost account of the request pursuant to paragraphs 1 or 2 of this Article. Where it considers that it has insufficient information to act upon the request and has reasons to consider that the Digital Services Coordinator that sent the request, or the Board, could provide additional information, the Digital Services Coordinator of establishment may either request such information in accordance with Article 57 or, alternatively, may launch a joint investigation pursuant to Article 60(1) involving at least the requesting Digital Services Coordinator. The period laid down in paragraph 5 of this Article shall be suspended until that additional information is provided or until the invitation to participate in the joint investigation is refused.
5. The Digital Services Coordinator of establishment shall, without undue delay and in any event not later than two months following receipt of the request pursuant to paragraph 1 or 2, communicate to the Digital Services Coordinator that sent the request, and the Board, the assessment of the suspected infringement and an explanation of any investigatory or enforcement measures taken or envisaged in relation thereto to ensure compliance with this Regulation

Summary

- DSC of destination may request DSC of establishment to take the necessary investigatory and enforcement measures if it has reason to suspect that a provider has infringed the regulation, unless the Commission has initiated an investigation
- If 3 DSCs of destination have reasons to suspect that a provider has infringed DSA, Board may request DSC of establishment to assess the matter and take the necessary measures
- All conditions are laid down in Article 58 (3) (4) and (5)

Article 59 – Referral to the Commission

1. *In the absence of a communication within the period laid down in Article 58(5), in the case of a disagreement of the Board with the assessment or the measures taken or envisaged pursuant to Article 58(5) or in the cases referred to in Article 60(3), the Board may refer the matter to the Commission, providing all relevant information. That information shall include at least the request or recommendation sent to the Digital Services Coordinator of establishment, the assessment by that Digital Services Coordinator, the reasons for the disagreement and any additional information supporting the referral.*

2. *The Commission shall assess the matter within two months following the referral of the matter pursuant to paragraph 1, after having consulted the Digital Services Coordinator of establishment.*

3. *Where, pursuant to paragraph 2 of this Article, the Commission considers that the assessment or the investigatory or enforcement measures taken or envisaged pursuant to Article 58(5) are insufficient to ensure effective enforcement or otherwise incompatible with this Regulation, it shall communicate its views to the Digital Services Coordinator of establishment and the Board and request the Digital Services Coordinator of establishment to review the matter.*

The Digital Services Coordinator of establishment shall take the necessary investigatory or enforcement measures to ensure compliance with this Regulation, taking utmost account of the views and request for review by the Commission. The Digital Services Coordinator of establishment shall inform the Commission, as well as the requesting Digital Services Coordinator or the Board that took action pursuant to Article 58(1) or (2), about the measures taken within two months from that request for review.

Summary

- The Board may refer the matter to the Commission if disagreement

Article 60 – Joint investigation

1. *The Digital Services Coordinator of establishment may launch and lead joint investigations with the participation of one or more other Digital Services Coordinators concerned:*

(a) at its own initiative, to investigate an alleged infringement of this Regulation by a given provider of intermediary services in several Member States; or

(b) upon recommendation of the Board, acting on the request of at least three Digital Services Coordinators alleging, based on a reasonable suspicion, an infringement by a given provider of intermediary services affecting recipients of the service in their Member States.

2. *Any Digital Services Coordinator that proves that it has a legitimate interest in participating in a joint investigation pursuant to paragraph 1 may request to do so. The joint investigation shall be concluded within three months from its launch, unless otherwise agreed amongst the participants.*

The Digital Services Coordinator of establishment shall communicate its preliminary position on the alleged infringement no later than one month after the end of the deadline referred to in the first subparagraph to all Digital Services Coordinators, the Commission and the Board. The preliminary position shall take into account the views of all other Digital Services Coordinators participating in the joint investigation. Where applicable, this preliminary position shall also set out the enforcement measures envisaged.

3. *The Board may refer the matter to the Commission pursuant to Article 59, where:*

(a) the Digital Services Coordinator of establishment failed to communicate its preliminary position within the deadline set out in paragraph 2;

(b) the Board substantially disagrees with the preliminary position communicated by the Digital Services Coordinator of establishment; or

(c) the Digital Services Coordinator of establishment failed to initiate the joint investigation promptly following the recommendation by the Board pursuant to paragraph 1, point (b).

4. *In carrying out the joint investigation, the participating Digital Services Coordinators shall cooperate in good faith, taking into account, where applicable, the indications of the Digital Services Coordinator of establishment and the Board's recommendation. The Digital Services Coordinators of destination*

participating in the joint investigation shall be entitled, at the request of or after having consulted the Digital Services Coordinator of establishment, to exercise their investigative powers referred to in Article 51(1) in respect of the providers of intermediary services concerned by the alleged infringement, with regard to information and premises located within their territory.

Summary

- DSC of establishment may launch & lead joint investigations, with other DSCs
- Other DSCs can request to join
- DSC shall communicate its positions to all other DSCs, the board and the Commission
- Board may refer the matter to the Commission if conditions in (3) are met
- DSC shall cooperate in good faith

Article 61 – European Board for Digital Services

- 1. An independent advisory group of Digital Services Coordinators on the supervision of providers of intermediary services named ‘European Board for Digital Services’ (the ‘Board’) is established.*
- 2. The Board shall advise the Digital Services Coordinators and the Commission in accordance with this Regulation to achieve the following objectives:*
 - (a) contributing to the consistent application of this Regulation and effective cooperation of the Digital Services Coordinators and the Commission with regard to matters covered by this Regulation;*
 - (b) coordinating and contributing to guidelines and analysis of the Commission and Digital Services Coordinators and other competent authorities on emerging issues across the internal market with regard to matters covered by this Regulation;*
 - (c) assisting the Digital Services Coordinators and the Commission in the supervision of very large online platforms*

Summary

- Board shall advise the Commission and the DSC of establishment to contribute to the consistent application of the DSA. It can coordinate and contribute to guidelines and analysis of the Commission and assist the DSC and Commission in the supervision of VLOPSEs.

Article 64 – Development of expertise and capacities

- 1. The Commission, in cooperation with the Digital Services Coordinators and the Board, shall develop Union expertise and capabilities, including, where appropriate, through the secondment of Member States’ personnel.*
- 2. In addition, the Commission, in cooperation with the Digital Services Coordinators and the Board, shall coordinate the assessment of systemic and emerging issues across the Union in relation to very large online platforms or very large online search engines with regard to matters covered by this Regulation.*
- 3. The Commission may ask the Digital Services Coordinators, the Board and other Union bodies, offices and agencies with relevant expertise to support the assessment of systemic and emerging issues across the Union under this Regulation.*
- 4. Member States shall cooperate with the Commission, in particular through their respective Digital Services Coordinators and other competent authorities, where applicable, including by making available their expertise and capabilities.*

Summary

- Commission, DSC, competent authorities shall collaborate with each others

Article 65 – Enforcement of obligations of providers

- 1. For the purposes of investigating compliance of providers of very large online platforms and of very large online search engines with the obligations laid down in this Regulation, the Commission may exercise the investigatory powers laid down in this Section even before initiating proceedings pursuant to Article 66(2). It may exercise those powers on its own initiative or following a request pursuant to paragraph 2 of this Article.*

2. Where a Digital Services Coordinator has reason to suspect that a provider of a very large online platform or of a very large online search engine has infringed the provisions of Section 5 of Chapter III or has systemically infringed any of the provisions of this Regulation in a manner that seriously affects recipients of the service in its Member State, it may send, through the information sharing system referred to in Article 85, a request to the Commission to assess the matter.

3. A request pursuant to paragraph 2 shall be duly reasoned and at least indicate:

(a) the point of contact of the provider of the very large online platform or of the very large online search engine concerned as provided for in Article 11;

(b) a description of the relevant facts, the provisions of this Regulation concerned and the reasons why the Digital Services Coordinator that sent the request suspects that the provider of the very large online platforms or of the very large online search engine concerned infringed this Regulation, including a description of the facts that show that the suspected infringement is of a systemic nature;

(c) any other information that the Digital Services Coordinator that sent the request considers relevant, including, where appropriate, information gathered on its own initiative.

Summary

- Where DSC has reason to suspect that a provider infringes the regulation, it may send to the Commission a request to assess the matter (via the ISS)
- Conditions are detailed in (3)

Article 66 – Initiation of proceedings & cooperation in investigation

1. The Commission may initiate proceedings in view of the possible adoption of decisions pursuant to Articles 73 and 74 in respect of the relevant conduct by the provider of the very large online platform or of the very large online search engine that the Commission suspect of having infringed any of the provisions of this Regulation.

2. Where the Commission decides to initiate proceedings pursuant to paragraph 1 of this Article, it shall notify all Digital Services Coordinators and the Board through the information sharing system referred to in Article 85, as well as the provider of the very large online platform or of the very large online search engine concerned.

The Digital Services Coordinators shall, without undue delay after being informed of initiation of the proceedings, transmit to the Commission any information they hold about the infringement at stake.

The initiation of proceedings pursuant to paragraph 1 of this Article by the Commission shall relieve the Digital Services Coordinator, or any competent authority where applicable, of its powers to supervise and enforce provided for in this Regulation pursuant to Article 56(4).

3. In the exercise of its powers of investigation under this Regulation the Commission may request the individual or joint support of any Digital Services Coordinators concerned by the suspected infringement, including the Digital Services Coordinator of establishment. The Digital Services Coordinators that have received such a request, and, where involved by the Digital Services Coordinator, any other competent authority, shall cooperate sincerely and in a timely manner with the Commission and shall be entitled to exercise their investigative powers referred to in Article 51(1) in respect of the provider of the very large online platform or of the very large online search engine at stake, with regard to information, persons and premises located within the territory of their Member State and in accordance with the request.

4. The Commission shall provide the Digital Services Coordinator of establishment and the Board with all relevant information about the exercise of the powers referred to in Articles 67 to 72 and its preliminary findings referred to in Article 79(1). The Board shall submit its views on those preliminary findings to the Commission within the period set pursuant to Article 79(2). The Commission shall take utmost account of any views of the Board in its decision.

Summary

- Where Commission decides to initiate proceedings, it shall notify all DSCs and the Board via the ISS
- DSCs shall transmit information they may have about the infringement
- Commission may request support from other DSCs, and DSCs shall cooperate sincerely
- Commission shall provide DSC of establishment and Board with all information about this exercise

Article 67 – Request for information

1. In order to carry out the tasks assigned to it under this Section, the Commission may, by simple request or by decision, require the provider of the very large online platform or of the very large online search engine concerned, as well as any other natural or legal person acting for purposes related to their trade, business, craft or profession that may be reasonably aware of information relating to the suspected infringement, including organisations performing the audits referred to in Article 37 and Article 75(2), to provide such information within a reasonable period.

2. When sending a simple request for information to the provider of the very large online platform or of the very large online search engine concerned or other person referred to in paragraph 1 of this Article, the Commission shall state the legal basis and the purpose of the request, specify what information is required and set the period within which the information is to be provided, and the fines provided for in Article 74 for supplying incorrect, incomplete or misleading information.

3. Where the Commission requires the provider of the very large online platform or of the very large online search engine concerned or other person referred to in paragraph 1 of this Article to supply information by decision, it shall state the legal basis and the purpose of the request, specify what information is required and set the period within which it is to be provided. It shall also indicate the fines provided for in Article 74 and indicate or impose the periodic penalty payments provided for in Article 76. It shall further indicate the right to have the decision reviewed by the Court of Justice of the European Union.

4. The providers of the very large online platform or of the very large online search engine concerned or other person referred to in paragraph 1 or their representatives and, in the case of legal persons, companies or firms, or where they have no legal personality, the persons authorised to represent them by law or by their constitution shall supply the information requested on behalf of the provider of the very large online platform or of the very large online search engine concerned or other person referred to in paragraph 1. Lawyers duly authorised to act may supply the information on behalf of their clients. The latter shall remain fully responsible if the information supplied is incomplete, incorrect or misleading.

5. At the request of the Commission, the Digital Services Coordinators and other competent authorities shall provide the Commission with all necessary information to carry out the tasks assigned to it under this Section.

6. The Commission shall, without undue delay after sending the simple request or the decision referred to in paragraph 1 of this Article, send a copy thereof to the Digital Services Coordinators, through the information sharing system referred to in Article 85.

Summary

- Commission may ask a provider (or other natural or legal person) to provide information
- Commission may also ask DSC or competent authorities
- Commission shall keep all the DSCs informed via the ISS

Article 68 – Power to take interviews

1. In order to carry out the tasks assigned to it under this Section, the Commission may interview any natural or legal person who consents to being interviewed for the purpose of collecting information, relating to the subject-matter of an investigation, in relation to the suspected infringement. The Commission shall be entitled to record such interview by appropriate technical means.

2. If the interview referred to in paragraph 1 is conducted on other premises than those of the Commission, the Commission shall inform the Digital Services Coordinator of the Member State in the territory of which the interview takes place. If so requested by that Digital Services Coordinator, its officials may assist the officials and other accompanying persons authorised by the Commission to conduct the interview.

Summary

- If interviews is conducted on other premises than those of the Commission, Commission shall inform the DSC of which the instruction takes place.

Article 69 – Power to conduct inspections

1. In order to carry out the tasks assigned to it under this Section, the Commission may conduct all necessary inspections at the premises of the provider of the very large online platform or of the very large online search engine concerned or of another person referred to in Article 67(1).

2. The officials and other accompanying persons authorised by the Commission to conduct an inspection shall be empowered to:

- (a) enter any premises, land and means of transport of the provider of the very large online platform or of the very large online search engine concerned or of the other person concerned;*
- (b) examine the books and other records related to the provision of the service concerned, irrespective of the medium on which they are stored;*
- (c) take or obtain in any form copies of or extracts from such books or other records;*
- (d) require the provider of the very large online platform or of the very large online search engine or the other person concerned to provide access to and explanations on its organisation, functioning, IT system, algorithms, data-handling and business practices and to record or document the explanations given;*
- (e) seal any premises used for purposes related to the trade, business, craft or profession of the provider of the very large online platform or of the very large online search engine or of the other person concerned, as well as books or other records, for the period and to the extent necessary for the inspection;*
- (f) ask any representative or member of staff of the provider of the very large online platform or of the very large online search engine or the other person concerned for explanations on facts or documents relating to the subject-matter and purpose of the inspection and to record the answers;*
- (g) address questions to any such representative or member of staff relating to the subject-matter and purpose of the inspection and to record the answers.*

3. Inspections may be carried out with the assistance of auditors or experts appointed by the Commission pursuant to Article 72(2), and of Digital Services Coordinator or other competent national authorities of the Member State in the territory of which the inspection is conducted.

4. Where the production of required books or other records related to the provision of the service concerned is incomplete or where the answers to questions asked under paragraph 2 of this Article are incorrect, incomplete or misleading, the officials and other accompanying persons authorised by the Commission to conduct an inspection shall exercise their powers upon production of a written authorisation specifying the subject matter and purpose of the inspection and the penalties provided for in Articles 74 and 76. In good time before the inspection, the Commission shall inform the Digital Services Coordinator of the Member State in the territory in which the inspection is to be conducted thereof.

5. During inspections, the officials and other accompanying persons authorised by the Commission, the auditors and experts appointed by the Commission, the Digital Services Coordinator or the other competent authorities of the Member State in the territory of which the inspection is conducted may require the provider of the very large online platform or of the very large online search engine or other person concerned to provide explanations on its organisation, functioning, IT system, algorithms, data-handling and business conducts, and may address questions to its key personnel.

6. The provider of the very large online platform or of the very large online search engine or other natural or legal person concerned shall be required to submit to an inspection ordered by decision of the Commission. The decision shall specify the subject matter and purpose of the inspection, set the date on which it is to begin and indicate the penalties provided for in Articles 74 and 76 and the right to have the decision reviewed by the Court of Justice of the European Union. The Commission shall consult the Digital Services Coordinator of the Member State on territory of which the inspection is to be conducted prior to taking that decision.

7. Officials of, and other persons authorised or appointed by, the Digital Services Coordinator of the Member State on the territory of which the inspection is to be conducted shall, at the request of that Digital Services Coordinator or of the Commission, actively assist the officials and other accompanying persons authorised by the Commission in relation to the inspection. To this end, they shall have the powers listed in paragraph 2.

8. Where the officials and other accompanying persons authorised by the Commission find that the provider of the very large online platform or of the very large online search engine or the other person concerned opposes an inspection ordered pursuant to this Article, the Member State in the territory of which the inspection is to be conducted shall, at the request of those officials or other accompanying persons and in accordance with the national law of the Member State, afford them necessary assistance, including, where appropriate under that national law, in the form of coercive measures taken by a competent law enforcement authority, so as to enable them to conduct the inspection.

9. If the assistance provided for in paragraph 8 requires authorisation from a national judicial authority in accordance with the national law of the Member State concerned, such authorisation shall be applied for by the Digital Services Coordinator of that Member State at the request of the officials and other accompanying persons authorised by the Commission. Such authorisation may also be applied for as a precautionary measure.

10. Where the authorisation referred to in paragraph 9 is applied for, the national judicial authority before which a case has been brought shall verify that the Commission decision ordering the inspection is authentic and that the coercive measures envisaged are neither arbitrary nor excessive having regard to the subject matter of the inspection. When conducting such verification, the national judicial authority may ask the Commission, directly or through the Digital Services Coordinators of the Member State concerned, for detailed explanations, in particular those concerning the grounds on which the Commission suspects an infringement of this Regulation, concerning the seriousness of the suspected infringement and concerning the nature of the involvement of the provider of the very large online platform or of the very large online search engine or of the other person concerned. However, the national judicial authority shall not call into question the necessity for the inspection nor demand information from the case file of the Commission. The lawfulness of the Commission decision shall be subject to review only by the Court of Justice of the European Union.

Summary

- Commission shall inform the DSC of which the instruction takes place.
- Officers from the DSCs (or other CAs) where the inspections take place can assist Commission

Article 75 – Enhanced supervision of remedies to address infringements of obligations

1. When adopting a decision pursuant to Article 73 in relation to an infringement by a provider of a very large online platform or of a very large online search engine of any of the provisions of Section 5 of Chapter III, the Commission shall make use of the enhanced supervision system laid down in this Article. When doing so, it shall take utmost account of any opinion of the Board pursuant to this Article.

2. In the decision referred to in Article 73, the Commission shall require the provider of a very large online platform or of a very large online search engine concerned to draw up and communicate, within a reasonable period specified in the decision, to the Digital Services Coordinators, the Commission and the Board an action plan setting out the necessary measures which are sufficient to terminate or remedy the infringement. Those measures shall include a commitment to perform an independent audit in accordance with Article 37(3) and (4) on the implementation of the other measures, and shall specify the identity of the auditors, as well as the methodology, timing and follow-up of the audit. The measures may also include, where appropriate, a commitment to participate in a relevant code of conduct, as provided for in Article 45.

3. Within one month following receipt of the action plan, the Board shall communicate its opinion on the action plan to the Commission. Within one month following receipt of that opinion, the Commission shall decide whether the measures set out in the action plan are sufficient to terminate or remedy the infringement, and shall set a reasonable period for its implementation. The possible commitment to adhere to relevant codes of conduct shall be taken into account in that decision. The Commission shall subsequently monitor the implementation of the action plan. To that end, the provider of a very large online platform or of a very large online search engine concerned shall communicate the audit report to the Commission without undue delay after it becomes available, and shall keep the Commission up to date on steps taken to implement the action plan. The Commission may, where necessary for such monitoring, require the provider of a very large online platform or of a very large online search engine concerned to provide additional information within a reasonable period set by the Commission.

The Commission shall keep the Board and the Digital Services Coordinators informed about the implementation of the action plan, and about its monitoring thereof.

4. The Commission may take necessary measures in accordance with this Regulation, in particular Article 76(1), point (e), and Article 82(1), where:

(a) the provider of the very large online platform or of the very large online search engine concerned fails to provide any action plan, the audit report, the necessary updates or any additional information required, within the applicable period;

(b) the Commission rejects the proposed action plan because it considers that the measures set out therein are insufficient to terminate or remedy the infringement; or

(c) the Commission considers, on the basis of the audit report, any updates or additional information provided or any

other relevant information available to it, that the implementation of the action plan is insufficient to terminate or remedy the infringement.

Summary

- If a decision in relation to an infringement has been taken against a VLOPSE, the VLOPSE shall communicate an action plan to Commission, DSC and Board.
- Board shall then communicate its opinion to Commission (within 1 month)
- COM shall keep DSC and Board informed

Article 85 – Information sharing system

1. The Commission shall establish and maintain a reliable and secure information sharing system supporting communications between Digital Services Coordinators, the Commission and the Board. Other competent authorities may be granted access to this system where necessary for them to carry out the tasks conferred to them in accordance with this Regulation.

2. The Digital Services Coordinators, the Commission and the Board shall use the information sharing system for all communications pursuant to this Regulation.

3. The Commission shall adopt implementing acts laying down the practical and operational arrangements for the functioning of the information sharing system and its interoperability with other relevant systems. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 88.

Summary

- Reliable and secure information sharing system (ISS) between DSCs, Commission and Board
- To be used for all communications pursuant to this regulation