

Proposal for amendments to the Committee on Legal Affairs on the proposal for a regulation of the European Parliament and of the Council on a Single Market For **Digital Services Act** and amending Directive 2000/31/EC(COM(2020)0825 – C9-0418/2020 – 2020/0361(COD))



July 2021

**Amendment 10**

**Recital 40**

JURI draft opinion	Access Now proposed amendments
<p>Providers of hosting services play a particularly important role in tackling illegal content online, as they store information provided by and at the request of the recipients of the service and typically give other recipients access thereto, sometimes on a large scale. It is important that all providers of hosting services, regardless of their size, put in place user-friendly notice and action mechanisms that facilitate the notification of specific items of information that the notifying party considers to be illegal content to the provider of hosting services concerned ('notice'), pursuant to which that provider can decide, <b>based on its own assessment</b>, whether or not it agrees with that assessment and wishes to remove or disable access to that content ('action'). Provided the requirements on notices are met, it should be possible for individuals or entities to notify multiple specific items of allegedly illegal content through a single notice.</p>	<p>Providers of hosting services play a particularly important role in tackling illegal content online, as they store information provided by and at the request of the recipients of the service and typically give other recipients access thereto, sometimes on a large scale. It is important that all providers of hosting services, regardless of their size, put in place user-friendly notice and action mechanisms that facilitate the notification of specific items of information that the notifying party considers to be illegal content to the provider of hosting services concerned ('notice'), pursuant to which that provider can decide, <del>based on its own assessment</del> <b>based on its own assessment on guidance provided by independent judicial or administrative authorities</b>, whether or not it agrees with that assessment and wishes to remove or disable access to that content ('action'). Provided the requirements on notices are met, it should be possible for individuals or entities to notify multiple specific items of allegedly illegal content through a single notice.</p>

<p><i>It may also be possible for online platforms to prevent a content that has already been identified as illegal and that has been removed on the basis of a prior notice, from reappearing.</i></p> <p>The obligation to put in place notice and action mechanisms should apply, for instance, to file storage and sharing services, web hosting services, advertising servers and paste bins, in as far as they qualify as providers of hosting services covered by this Regulation.</p>	<p><i>It may also be possible for online platforms to prevent a manifestly illegal content that has already been identified as illegal by an independent judicial or administrative authority and that has been removed on the basis of a prior judicial order, from reappearing.</i></p> <p>The obligation to put in place notice and action mechanisms should apply, for instance, to file storage and sharing services, web hosting services, advertising servers and paste bins, in as far as they qualify as providers of hosting services covered by this Regulation.</p>
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## Amendment 25

### Article 2 – paragraph 1 – point p

JURI draft opinion	Access Now proposed amendments
<p>(p) ‘content moderation’ means the activities undertaken by providers of intermediary services, regardless of whether they are automated or processed by a person, which are aimed at detecting, identifying and addressing illegal content or information incompatible with their terms and conditions, provided by recipients of the service, including measures taken that affect the availability, visibility and accessibility of that illegal content or that information, such as demotion, disabling of access to, or removal thereof, or the recipients’ ability to provide that information, such as the termination or suspension of a recipient’s account;</p>	<p>(p) ‘content moderation’ means the activities undertaken by providers of intermediary services, <del>regardless of whether they are</del> <b>automated decision making or processed by a person</b>, which are aimed at detecting, identifying and addressing illegal content or information incompatible with their terms and conditions, provided by recipients of the service, including measures taken that affect the availability, visibility and accessibility of that illegal content or that information, such as demotion, disabling of access to, or removal thereof, or the recipients’ ability to provide that information, such as the termination or suspension of a recipient’s account;</p>

## Amendment 26

### Article 5 – paragraph 1 – point b

JURI draft opinion	Access Now proposed amendments
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<p>(b) upon obtaining such knowledge or awareness, expeditiously and permanently removes or disables access to the illegal content;expeditiously means immediately or as fast as possible and in any event no later than within 30 minutes where the illegal content pertains to the broadcast of a live sports or entertainment event.</p>	<p>(b) upon obtaining such knowledge or awareness <b>about existence of manifestly illegal content on its service</b>, expeditiously <b>and permanently</b> removes or disables access to the illegal such a content;<del>expeditiously means immediately or as fast as possible and in any event no later than within 30 minutes where the illegal content pertains to the broadcast of a live sports or entertainment event.</del></p>
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## Amendment 28

### Article 5 – paragraph 3 a (new)

JURI draft opinion	Access Now proposed amendments
<p>3a. Paragraph 1 shall not apply where the provider of intermediary services plays an active role by, for instance, providing assistance in optimising, classifying, organising, referencing or promoting the content or it has any control over the content, including by the use of automated means, such as algorithms.</p>	<p><b>delete</b></p>

## Amendment 29

### Article 6 – paragraph 1

JURI draft opinion	Access Now proposed amendments
<p>1. Providers of intermediary services shall be deemed ineligible for the exemptions from liability referred to in Articles 3, 4 and 5 when they engage in or facilitate illegal activities or when they do not comply with the due diligence obligations laid down in this Regulation.</p>	<p>1. Providers of intermediary services shall be deemed ineligible for the exemptions from liability referred to in Articles 3, 4 and 5 when they engage in <b>or facilitate</b> illegal activities or <del>when they do not comply with the due diligence obligations laid down in this Regulation.</del></p>

## Amendment 38

### Article 12 – paragraph 1

JURI draft opinion	Access Now proposed amendments
<p>1. Providers of intermediary services shall</p>	<p>1. Providers of intermediary services shall</p>

<p>ensure that their terms and conditions prohibit the recipients of their services from providing information that is not in compliance with Union law or the law of the Member State where such information is made available.</p>	<p>ensure that their terms and conditions are <b>written in unambiguous and comprehensible language. The terms and conditions of providers of intermediary services may exclude the hosting of lawful information from those services or otherwise limit the access to information that is lawful or suspend or terminate the provision of the service to recipients for providing lawful information only where the information is incompatible with the declared purpose of the service.</b> prohibit the recipients of their services from providing information that is not in compliance with Union law or the law of the Member State where such information is made available.</p>
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## Amendment 41

### Chapter III – Section 2 – title

JURI draft opinion	Access Now proposed amendments
<p>Additional provisions applicable to providers of hosting services, including online platforms, and to providers of live streaming platform services and of private messaging services.</p>	<p>Additional provisions applicable to providers of hosting services, including online platforms, and to providers of live streaming platform services <b>and of private messaging services.</b></p>

## Amendment 42

### Article 14 – paragraph 1

JURI draft opinion	Access Now proposed amendments
<p>Private messaging services and providers of hosting services, including online platforms, shall put mechanisms in place to allow any individual or entity to notify them of the presence on their service of specific items of information that the individual or entity considers to be illegal content. Those mechanisms shall be easy to access, clearly visible, low-threshold, user-friendly and located close to the content in question allowing for the submission of notices exclusively by electronic means.</p>	<p><del>Private messaging services and</del> providers of hosting services, including online platforms, shall put mechanisms in place to allow any individual or entity to notify them of the presence on their service of specific items of information that the individual or entity considers to be illegal content. Those mechanisms shall be easy to access, clearly visible, low-threshold, user-friendly and located close to the content in question allowing for the submission of notices exclusively by electronic</p>

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### Amendment 44

#### Article 14 – paragraph 6

JURI draft opinion	Access Now proposed amendments
6. Providers of hosting services, including online platforms, and of private messaging services, without prejudice to Article 5(1), point (b), shall process any notices that they receive under the mechanisms referred to in paragraph 1 of this Article, and remove or disable access to the illegal content without undue delay and within seven days of the receipt of the notification at the latest.	6. Providers of hosting services, including online platforms, <del>and of private messaging services</del> , without prejudice to Article 5(1), point (b), shall process any notices that they receive under the mechanisms referred to in paragraph 1 of this Article, and remove or disable access to the illegal content without undue delay <del>and within seven days of the receipt of the notification at the latest</del> .

### Amendment 46

#### Article 14 – paragraph 6 b (new)

JURI draft opinion	Access Now proposed amendments
6b. Providers of hosting services may put in place all reasonable measures to permanently block, disable or remove all illegal content or illegal activity which is identical or equivalent to the content previously taken down as a result of a valid notice and action procedure which has not given rise to a successful appeal.	<del>delete</del>

### Amendment 59

#### Article 19

JURI draft opinion	Access Now proposed amendments
1. Online platforms shall take the necessary technical and organisational measures to ensure that notices submitted by trusted flaggers through the mechanisms referred to in Article 14, are processed and decided immediately, without prejudice to the implementation of a complaint and redress mechanism.	1. Online platforms shall take the necessary technical and organisational measures to ensure that notices submitted by trusted flaggers through the mechanisms referred to in Article 14, are processed and decided <del>immediately</del> <b>without undue delay</b> and without prejudice to the implementation of a complaint and redress mechanism.

2a. The conditions set in paragraph 2 shall allow trusted flaggers' notifications to be sufficient for immediate removal or disabling of the content notified by them.

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