

Access Now’s proposal for amendments to the **Internal Market and Consumer Protection Committee draft opinion on** the proposal for a regulation of the European Parliament and of the Council on a Single Market For **Digital Services (Digital Services Act) and amending Directive 2000/31/EC(COM(2020)0825 – C9-0418/2020 – 2020/0361(COD))**



June 2021

**Amendment 71**

**Article 5**

IMCO draft opinion	Access Now proposed amendments
<p>1a. Without prejudice to specific deadlines, set out in Union law or within administrative or legal orders, providers of hosting services shall, upon obtaining actual knowledge or awareness, remove or disable access to illegal content as soon as possible and in any event:</p> <p>(a) within 24 hours where the illegal content can seriously harm public policy, public security or public health or seriously harm consumers’ health or safety;</p> <p>(b) within seven days in all other cases where the illegal content does not seriously harm public policy, public security, public health or consumers’ health or safety;</p> <p>Where the provider of hosting services cannot comply with the obligation in paragraph 1a on grounds of force majeure or for objectively justifiable technical or operational reasons, it</p>	<p><b><i>delete</i></b></p>

<p>shall, without undue delay, inform the competent authority having issued an order pursuant to Article 8 or the recipient of the service having submitted a notice pursuant to Article 14, of those grounds.</p>	
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## Amendment 76

### Article 8 – paragraph 1

IMCO draft opinion	Access Now proposed amendments
<p>Providers of intermediary services shall, upon the receipt of an order to act against a specific item of illegal content, issued by the relevant national judicial or administrative authorities, on the basis of the applicable Union or national law, in conformity with Union law, inform the authority issuing the order of the effect given to the orders, <b>swiftly</b> and without undue delay, specifying the action taken and the moment when the action was taken.</p>	<p>Providers of intermediary services shall, upon the receipt of an order to act against a specific item of illegal content, issued by the relevant national judicial or administrative authorities, on the basis of the applicable Union or national law, in conformity with Union law, inform the authority issuing the order of the effect given to the orders, <del><b>swiftly and</b></del> without undue delay, specifying the action taken and the moment when the action was taken.</p>

## Amendment 93

### Article 14 (7) (new)

IMCO draft opinion	Access Now proposed amendments
	<p><b><i>7. In cases of manifestly illegal content irrespective of its context that may inflict a serious harm to public safety and physical integrity of individuals, law enforcement agencies or judicial authorities may submit an emergency notice to Providers of intermediary services. The emergency notice should have a direct suspensive effect that is imposed on a specific, notified piece of content and should be valid for a strictly defined period of time. The emergency notice has to be submitted to Providers of intermediary services and the independent judicial or administrative authority at the same time. During the</i></b></p>

	<p><i>suspension period, an independent judicial or administrative authority shall assess the illegality of notified content and with undue delay, inform law enforcement authorities as well as providers of intermediary services of its final decision.</i></p> <p><i>When an independent judicial or administrative authority does not confirm the manifest illegality of a notified content, the restoration of temporarily restricted content has to be secured with undue delay and the content provider has to be notified of the outcome, accompanied with adequate reasoning.</i></p>
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### Amendment 83

Article 12 – paragraph 1 a (new)

IMCO draft opinion	Access Now proposed amendments
<p>1a. In their terms and conditions, providers of intermediary services shall include information on any restrictions that they impose in relation to the use of their service in respect of information provided by the recipients of the service. Providers of intermediary services shall also include information on the right to terminate the use of the service by the recipient of the service in a directly accessible format. They shall also include information on any policies, procedures, measures and tools used for the purpose of content moderation, including algorithmic decision-making and human review.</p>	<p>1a. In their terms and conditions, providers of intermediary services shall include information on any restrictions that they impose in relation to the use of their service in respect of information provided by the recipients of the service. Providers of intermediary services shall also include information on the right to terminate the use of the service by the recipient of the service in a directly accessible format and provide users of the service with an avenue for remedy. <b><i>They shall also include information on any policies, procedures, measures and tools used for the purpose of content moderation, including algorithmic decision-making and human review. These tools must be compliant with the EU data protection acquis.</i></b></p>

### Amendment 92

Article 13 d (new)

IMCO draft opinion	Access Now proposed amendments
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Recipients' consent for advertising practices	Advertising practices
<p>1. Providers of intermediary services shall, by default, not make the recipients of their services subject to targeted, micro-targeted and behavioural advertisement unless the recipient of the service has expressed a freely given, specific, informed and unambiguous consent. Providers of intermediary services shall ensure that recipients of services can easily make an informed choice when expressing their consent by providing them with meaningful information, including information about the value of giving access to and about the use of their data.</p> <p>2. When asking for the consent of recipients of their services considered as vulnerable consumers, providers of intermediary services shall implement all the necessary measures to ensure that such consumers have received enough and relevant information before they give their consent.</p> <p>3. When processing data for targeted, micro-targeted and behavioural advertising, online intermediaries shall comply with relevant Union law and shall not engage in activities that can lead to pervasive tracking, such as disproportionate combination of data collected by platforms, or disproportionate processing of special categories of data that might be used to exploit vulnerabilities.</p> <p>4. Providers of intermediary services shall organise their online interface in such a way that</p>	<p>1. <del>Providers of intermediary services shall, by default, not make the recipients of their services subject to targeted, micro-targeted and behavioural advertisement unless the recipient of the service has expressed a freely given, specific, informed and unambiguous consent. Providers of intermediary services shall ensure that recipients of services can easily make an informed choice when expressing their consent by providing them with meaningful information, including information about the value of giving access to and about the use of their data.</del>  <b>The use of targeted, micro-targeted and behavioural advertisement shall be prohibited. Providers of intermediary services may use other forms of advertising that do not involve targeting, tracking and/or profiling of a user, a group of users, and/or look-alike users.</b></p> <p>2. <del>When asking for the consent of recipients of their services considered as vulnerable consumers, providers of intermediary services shall implement all the necessary measures to ensure that such consumers have received enough and relevant information before they give their consent.</del>  <b>Sponsoring of content and promotion of the provider's own content or services is considered advertising.</b></p> <p>3. <del>When processing data for targeted, micro-targeted and behavioural advertising, online intermediaries shall comply with relevant Union law and shall not engage in activities that can lead to pervasive tracking, such as disproportionate combination of data collected by platforms, or disproportionate processing of special categories of data that might be used to exploit vulnerabilities.</del>  <b>Providers of intermediary services shall not use user data obtained via products or services from an ancillary service or a service from another services belonging to the same business undertaking for advertising purposes.</b></p> <p>4. Providers of intermediary services shall organise their online interface in such a way</p>

recipients of services, in particular those considered as vulnerable consumers, can easily and efficiently access and modify advertising parameters. Providers of intermediary services shall monitor the use of advertising parameters by recipients of services on a regular basis and make best efforts to improve their awareness about the possibility to modify those parameters.	that recipients of services, in particular those considered as vulnerable consumers, can easily and efficiently access and modify advertising parameters. Providers of intermediary services shall monitor the use of advertising parameters by recipients of services on a regular basis and make best efforts to improve their awareness about the possibility to modify those parameters.
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**Amendment 130**  
**Article 24 a (new)**

IMCO draft opinion	Access Now proposed amendments
<p style="text-align: center;">Article 24a  Recommender systems</p> <p>1. Online platforms shall not make the recipients of their services subject to recommender system based on profiling, unless the recipient of the service has expressed a freely given, specific, informed and unambiguous consent. Online platforms shall ensure that the option that is not based on profiling is activated by default.</p>	<p>1. Online platforms shall not make the recipients of their services subject to recommender system based on profiling, <del>unless the recipient of the service has expressed a freely given, specific, informed and unambiguous consent.</del> Online platforms shall ensure that the option that is not based on profiling is activated by default. <b>Online platforms shall establish opt-in mechanisms to recommender systems by default as minimum safeguards of data protection by design and by default within the meaning Article 25 of Regulation (EU) 2016/679.</b></p> <p><b>Recipients of the service who decide to opt-in to recommender system shall be able to:</b></p> <ul style="list-style-type: none"> <li><b>(a) exclude certain content from their recommendations</b></li> <li><b>(b) exclude certain sources of content from their recommendations</b></li> <li><b>(c) Easily withdraw their choice to opt-in and no longer be a part of recommender system</b></li> <li><b>(d) ask for profiles to be deleted</b></li> <li><b>(e) access the service even when</b></li> </ul>

<p>3. The parameters referred to in paragraph 2 shall include, at a minimum:(a) the recommendation criteria used by the relevant system;(b) how these criteria are weighted against each other;(c) what goals the relevant system has been optimised for; and (d) if applicable, an explanation of the role that the behaviour of the recipients of the service plays in how the relevant system produces its outputs.3. Where several options are available pursuant to paragraph 1, very large online platforms shall provide an easily accessible function on their online interface allowing the recipient of the service to select and to modify at any time their preferred option for each of the recommender systems that determines the relative order of information presented to them.</p> <p>4. Online platforms shall inform their users about the identity of the person responsible for the recommender system.</p> <p>5. Online platforms shall ensure that the algorithm used by their recommender system is designed in such a way that it does not risk misleading or manipulating the recipients of the service when they use it.</p>	<p><b><i>refusing to use content recommendations, to ensure the opt-in is meaningful. Recipients of the service shall be able to do so in an easy and free manner, and at any time.</i></b></p> <p>3. The parameters referred to in paragraph 2 shall include, at a minimum:(a) the recommendation criteria used by the relevant system;(b) how these criteria are weighted against each other;(c) what goals the relevant system has been optimised for; and (d) if applicable, an explanation of the role that the behaviour of the recipients of the service plays in how the relevant system produces its outputs.3. Where several options are available pursuant to paragraph 1, very large online platforms shall provide an easily accessible function on their online interface allowing the recipient of the service to select and to modify at any time their preferred option for each of the recommender systems that determines the relative order of information presented to them.</p> <p>4. Online platforms shall inform Recipients of the service <del>their users</del> about the identity of the <del>person</del><b>entity</b> responsible for <b>optimising</b> the recommender system and the avenue for</p> <p>5. Online platforms shall ensure that the algorithm used by their recommender system is designed in such a way that it does not risk misleading or manipulating the recipients of the service when they use it.</p>
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## Amendment 141

### Article 33 a (new)

IMCO draft opinion	Access Now proposed amendments
<p>Article 33a Algorithm accountability</p>	

<p>1. When using automated decision-making, the very large online platform shall provide the Commission with the necessary information to perform an assessment of the algorithms used.</p> <p>2. When carrying out the assessment referred into paragraph 1, the Commission shall assess the following elements:</p> <p>(a) the compliance with corresponding Union requirements;</p> <p>(b) how the algorithm is used by the very large online platform and its impact on the provision of the service;</p> <p>(c) the impact on fundamental rights, including on consumer rights, as well as the social effect of the algorithms; and</p> <p>(d) whether the measures implemented by the very large online platform to ensure the resilience of the algorithm are appropriate with regard to the importance of the algorithm for the provision of the service and its impact on elements referred to in point (c).</p> <p>3. When performing their assessment, the Commission may seek advice from relevant national public authorities, researchers and non-governmental organisations.</p> <p>4. Following the assessment, referred to in paragraph 2, the Commission shall communicate its findings to the very large online platforms and allow them to provide additional explanation on the conclusion of the findings within a period of two weeks.</p> <p>5. Where the Commission finds that the algorithm used by the very large online platform does not comply with point (a), (c), or (d) of paragraph 2 of this Article, the Commission</p>	<p>1. When using <del>automated decision-making</del> <b>algorithmic decision making</b>, the very large online platform shall provide <b>an independent enforcement and monitoring unit</b> of the Commission with the necessary information to perform an <b>ex ante human rights impact</b> assessment of the algorithms <b>prior to their deployment at scale</b>.</p> <p>2. When carrying out the assessment referred into paragraph 1, <b>an independent enforcement and monitoring unit</b> the Commission shall assess the following elements:</p> <p>(a) the compliance with corresponding Union <b>law requirement</b>;</p> <p>(b) how the algorithms <del>is used</del> <b>are being deployed</b> by the very large online platform and its impact on the provision of the service;</p> <p>(c) the impact on fundamental rights, including <b>right to privacy, data protection, non-discrimination, freedom of expression and opinion</b>, consumer rights, as well as the social effect of the algorithms; and</p> <p>d) whether the measures implemented by the very large online platform to ensure the resilience of the algorithm are appropriate with regard to the importance of the algorithm for the provision of the service and its impact on elements referred to in point (c).</p> <p>3. When performing their assessment, the Commission <del>may</del> <b>shall</b> seek advice from relevant national public authorities, researchers and non-governmental organisations.</p> <p>4. Following the assessment, referred to in paragraph 2, the Commission shall communicate its findings to the very large online platforms and allow them to provide additional explanation on the conclusion of the findings within a period of two weeks.</p> <p>5. Where the Commission finds that the algorithm used by the very large online platform does not comply with point (a), (c), or (d) of</p>
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shall take appropriate measures laid down in this Regulation to stop the infringement.

paragraph 2 of this Article, the Commission shall take appropriate measures laid down in this Regulation to stop the infringement.