

14/12/2021

**Informal consolidated text of the report on 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**

2020/0361 (COD)

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- (1) Information society services and especially intermediary services have become an important part of the Union's economy and daily life of Union citizens. Twenty years after the adoption of the existing legal framework applicable to such services laid down in Directive 2000/31/EC of the European Parliament and of the Council<sup>1</sup>, new and innovative business models and services, such as online social networks and marketplaces, have allowed business users and consumers to impart and access information and engage in transactions in novel *and innovative* ways, *transforming their communication, consumption and business habits*. A majority of Union citizens now uses those services on a daily basis. However, the digital transformation and increased use of those services has also resulted in new risks and challenges, ~~both~~ for individual users, *companies* and for society as a whole.
- (2) Member States are increasingly introducing, or are considering introducing, national laws on the matters covered by this Regulation, imposing, in particular, diligence requirements for providers of intermediary services, *and resulting in a fragmentation of the internal market*. Those diverging national laws negatively affect the internal market, which, pursuant to Article 26 of the Treaty, comprises an area without internal frontiers in which the free movement of goods and services and freedom of establishment are ensured, taking into account the inherently cross-border nature of the internet, which is generally used to provide those services. The conditions for the provision of intermediary services across the internal market should be harmonised, so as to provide businesses with access to new markets and opportunities to exploit the benefits of the internal market, while allowing consumers and other recipients of the services to have increased choice, *without lock-in effects, and reducing administrative burden for intermediary services, especially for micro, small and medium sized enterprises*.
- (3) Responsible and diligent behaviour by providers of intermediary services is essential for a safe, *accessible*, predictable and trusted online environment and for allowing Union citizens and other persons to exercise their fundamental rights *and freedoms* guaranteed in the Charter of Fundamental Rights of the European Union ('Charter'), in particular *the rights to privacy, to protection of personal data, respect for human dignity, private and family life*, the freedom of expression and information, *the freedom and the pluralism of the media*, and the freedom to conduct a business, *a high level of consumer protection, the equality between women and men* and the right to non-discrimination. *Children have particular rights enshrined in Article 24 of the Charter and in the United Nations Convention on the Rights of the Child (UNCRC). As such, the best interests of the child should be a primary consideration in all matters affecting them. The UNCRC General comment No. 25 on children's rights in relation to the digital environment formally sets out how these rights apply to the digital world.*
- (4) ~~Therefore,~~ In order to safeguard and improve the functioning of the internal market, a targeted set of uniform, effective and proportionate mandatory rules should be established at Union level. This Regulation provides the conditions for innovative digital services to emerge and to scale up in the internal market. The approximation of national regulatory measures at Union level concerning the requirements for providers of intermediary services is necessary in order to avoid and put an end to fragmentation of the internal market and to ensure legal certainty, thus reducing uncertainty for developers, *protecting consumers* and fostering interoperability. By using requirements that are technology neutral, innovation should not be hampered but instead be stimulated, *while respecting fundamental rights*.

- (4a) *Given the importance of digital services, it is essential that this Regulation ensures a regulatory framework which ensures full, equal and unrestricted access to intermediary services for all recipients of services, including persons with disabilities. Therefore, it is important that accessibility requirements for intermediary services, including their user interfaces, are consistent with existing Union law, such as the European Accessibility Act and the Web Accessibility Directive and that Union law is further developed, so that no one is left behind as result of digital innovation.*
- (5) This Regulation should apply to providers of certain information society services as defined in Directive (EU) 2015/1535 of the European Parliament and of the Council<sup>2</sup>, that is, any service normally provided for remuneration, at a distance, by electronic means and at the individual request of a recipient. Specifically, this Regulation should apply to providers of intermediary services, and in particular intermediary services consisting of services known as ‘mere conduit’, ‘caching’ and ‘hosting’ services, given that the exponential growth of the use made of those services, mainly for legitimate and socially beneficial purposes of all kinds, has also increased their role in the intermediation and spread of unlawful or otherwise harmful information and activities.
- (6) In practice, certain providers of intermediary services intermediate in relation to services that may or may not be provided by electronic means, such as remote information technology services, transport *of persons and goods*, accommodation or delivery services. This Regulation should apply only to intermediary services and not affect requirements set out in Union or national law relating to products or services intermediated through intermediary services, including in situations where the intermediary service constitutes an integral part of another service which is not an intermediary service as specified in the case law of the Court of Justice of the European Union.
- (7) In order to ensure the effectiveness of the rules laid down in this Regulation and a level playing field within the internal market, those rules should apply to providers of intermediary services irrespective of their place of establishment or residence, in so far as they provide services in the Union, as evidenced by a substantial connection to the Union.
- (8) Such a substantial connection to the Union should be considered to exist where the service provider has an establishment in the Union or, in its absence, on the basis of the ~~existence of a significant number of users in one or more Member States, or the targeting~~ *directing* of activities towards one or more Member States. The *directing* of activities towards one or more Member States can be determined on the basis of all relevant circumstances, including factors such as the use of a language or a currency generally used in that Member State, or the possibility of ordering products or services, or using a national top level domain. The *directing* of activities towards a Member State could also be derived from the availability of an application in the relevant national application store, from the provision of local advertising or advertising in the language used in that Member State, or from the handling of customer relations such as by providing customer service in the language generally used in that Member State. A substantial connection should also be assumed where a service provider directs its activities to one or more Member State as set out in Article 17(1)(c) of Regulation (EU) 1215/2012 of the European Parliament and of the Council<sup>3</sup>. On the other hand, mere technical accessibility of a website from the Union cannot, on that ground alone, be considered as establishing a substantial connection to the Union.
- (9) This Regulation should complement, yet not affect the application of rules resulting from other acts of Union law regulating certain aspects of the provision of intermediary

services, in particular Directive 2000/31/EC, with the exception of those changes introduced by this Regulation, Directive 2010/13/EU of the European Parliament and of the Council as amended,<sup>4</sup> and Regulation (EU) **2021/784** of the European Parliament and of the Council<sup>5</sup> – proposed Terrorist Content Online Regulation. Therefore, this Regulation leaves those other acts, which are to be considered *lex specialis* in relation to the generally applicable framework set out in this Regulation, unaffected. However, the rules of this Regulation *should* apply in respect of issues that are not or not fully addressed by those other acts as well as issues on which those other acts leave Member States the possibility of adopting certain measures. ***To assist Member States and service providers, the Commission should provide guidelines as to how to interpret the interaction and complementary nature between different Union legal acts and this Regulation and how to prevent any duplication of requirements on providers or potential conflicts in the interpretation of similar requirements. In particular, the guidelines should clarify any potential conflicts between the conditions and obligations laid down in legal acts, referred to in this Regulation, explaining which legal act should prevail.***

- (9a) ***In line with Article 167( 4) of the Treaty on the Functioning of the European Union, cultural aspects should be taken into account, in particular in order to respect and to promote the cultural and linguistic diversity. It is essential that this Regulation contributes to protect the freedom of expression and information, media freedom and to foster media pluralism as well as cultural and linguistic diversity.***
- (10) For reasons of clarity, it should also be specified that this Regulation is without prejudice to Regulation (EU) 2019/1148 of the European Parliament and of the Council<sup>6</sup> and Regulation (EU) 2019/1150 of the European Parliament and of the Council,<sup>7</sup> Directive 2002/58/EC of the European Parliament and of the Council<sup>8</sup> and Regulation [...] on temporary derogation from certain provisions of Directive 2002/58/EC<sup>9</sup>, ***Directive (EU) 2018/1972 of the European Parliament and of the Council***<sup>10</sup>, as well as Union law on consumer protection, in particular Directive 2005/29/EC of the European Parliament and of the Council<sup>11</sup>, Directive 2011/83/EU of the European Parliament and of the Council<sup>12</sup> and Directive 93/13/EEC of the European Parliament and of the Council<sup>13</sup>, as amended by Directive (EU) 2019/2161 of the European Parliament and of the Council<sup>14</sup>, ***Directive (EU) 2019/882 of the European Parliament and of the Council, Regulation (EU) 2019/1020, Directive 2001/95/EC, Directive 2013/11/EC of the European Parliament and of the Council, Regulation 2017/2394***<sup>15</sup>, and on the protection of personal data, in particular Regulation (EU) 2016/679 of the European Parliament and of the Council.<sup>16</sup> The protection of individuals with regard to the processing of personal data is solely governed by the rules of Union law on that subject, in particular Regulation (EU) 2016/679 and Directive 2002/58/EC. This Regulation is also without prejudice to the rules of Union ***or national*** law on working conditions.
- (11) It should be clarified that this Regulation is without prejudice to the rules of Union law on copyright and related rights, ***in particular Directive (EU) 2019/790 of the European Parliament and of the Council***, which establish specific rules and procedures that should remain unaffected.
- (12) In order to achieve the objective of ensuring a safe, ***accessible***, predictable and trusted online environment, for the purpose of this Regulation the concept of “illegal content” should ***underpin the general idea that what is illegal offline should also be illegal online. The*** concept of ***“illegal*** content” should be defined ***appropriately*** and ***should*** also cover information relating to illegal content, products, services and activities. In particular, that concept should be understood to

refer to information, irrespective of its form, that under the applicable *Union or national* law is either itself illegal, such as illegal hate speech, or terrorist content and unlawful discriminatory content, or that *is not in compliance with Union law since it refers* to activities that are illegal, such as the sharing of images depicting child sexual abuse, unlawful non-consensual sharing of private images, online stalking, the sale of non-compliant or counterfeit products, *illegal trading of animals, plants and substances*, the non-authorised use of copyright protected material or activities involving infringements of consumer protection law, *the provision of illegal services in particular in the area of accommodation services on short-term rental platforms non-compliant with Union or national law*. In this regard, it is immaterial whether the illegality of the information or activity results from Union law or from national law that is *in conformity* with Union law, *including the Charter* and what the precise nature or subject matter is of the law in question.

- (13) Considering the particular characteristics of the services concerned and the corresponding need to make the providers thereof subject to certain specific obligations, it is necessary to distinguish, within the broader category of providers of hosting services as defined in this Regulation, the subcategory of online platforms. Online platforms, such as social networks or online marketplaces, should be defined as providers of hosting services that not only store information provided by the recipients of the service at their request, but that also disseminate that information to the public, again at their request. However, in order to avoid imposing overly broad obligations, providers of hosting services should not be considered as online platforms where the dissemination to the public is merely a minor ~~and~~ *or a* purely ancillary feature of another *service or functionality of the principal* service and that feature *or functionality* cannot, for objective technical reasons, be used without that other, principal service, and the integration of that feature *or functionality* is not a means to circumvent the applicability of the rules of this Regulation applicable to online platforms. For example, the comments section in an online newspaper could constitute such a feature, where it is clear that it is ancillary to the main service represented by the publication of news under the editorial responsibility of the publisher. *For the purposes of this Regulation, cloud computing services should not be considered to be an online platform in cases where allowing the dissemination of specific content constitutes a minor or ancillary feature. Moreover, cloud computing services, when serving as infrastructure, for example, as the underlining infrastructural storage and computing services of an internet-based application or online platform, should not in itself be seen as disseminating to the public information stored or processed at the request of a recipient of an application or online platform which it hosts.*
- (14) The concept of ‘dissemination to the public’, as used in this Regulation, should entail the making available of information to a potentially unlimited number of persons, that is, making the information easily accessible to users in general without further action by the recipient of the service providing the information being required, irrespective of whether those persons actually access the information in question. *Accordingly, where access to information requires registration or admittance to a group of users, that information should be considered to have been disseminated to the public only where users seeking to access the information are automatically registered or admitted without a human decision on whom to grant access. Information exchanged using interpersonal communication services, as defined in Directive (EU) 2018/1972 of the European Parliament and of the Council,<sup>17</sup> such as emails or private messaging services, are not considered to have been disseminated to the public.* Information should be considered disseminated to the

public within the meaning of this Regulation only where that occurs upon the direct request by the recipient of the service that provided the information.

- (15) Where some of the services provided by a provider are covered by this Regulation whilst others are not, or where the services provided by a provider are covered by different sections of this Regulation, the relevant provisions of this Regulation should apply only in respect of those services that fall within their scope.
- (16) The legal certainty provided by the horizontal framework of conditional exemptions from liability for providers of intermediary services, laid down in Directive 2000/31/EC, has allowed many novel services to emerge and scale-up across the internal market. That framework should therefore be preserved. However, in view of the divergences when transposing and applying the relevant rules at national level, and for reasons of clarity, **consistency, predictability, accessibility** and coherence, that framework should be incorporated in this Regulation. It is also necessary to clarify certain elements of that framework, having regard to case law of the Court of Justice of the European Union, **as well as technological and market developments**.
- (17) The relevant rules of Chapter II should only establish when the provider of intermediary services concerned cannot be held liable in relation to illegal content provided by the recipients of the service. Those rules should not be understood to provide a positive basis for establishing when a provider can be held liable, which is for the applicable rules of Union or national law to determine. Furthermore, the exemptions from liability established in this Regulation should apply in respect of any type of liability as regards any type of illegal content, irrespective of the precise subject matter or nature of those laws.
- (18) The exemptions from liability established in this Regulation should not apply where, instead of confining itself to providing the services neutrally, by a merely technical and automatic processing of the information provided by the recipient of the service, the provider of intermediary services plays an active role of such a kind as to give it knowledge of, or control over, that information. **The mere ranking or displaying in an order, or the use of a recommender system should not, however, be deemed as having control over an information.** Those exemptions should accordingly not be available in respect of liability relating to information provided not by the recipient of the service but by the provider of intermediary service itself, including where the information has been developed under the editorial responsibility of that provider.
- (19) In view of the different nature of the activities of ‘mere conduit’, ‘caching’ and ‘hosting’ and the different position and abilities of the providers of the services in question, it is necessary to distinguish the rules applicable to those activities, in so far as under this Regulation they are subject to different requirements and conditions and their scope differs, as interpreted by the Court of Justice of the European Union.
- (20) **Where A a provider of intermediary services that deliberately collaborates with a recipient of the services in order to undertake illegal activities, ~~does not provide its~~ the service should be deemed not to have been provided** neutrally and **the provider** should therefore not be able to benefit from the exemptions from liability provided for in this Regulation.
- (21) A provider should be able to benefit from the exemptions from liability for ‘mere conduit’ and for ‘caching’ services when it is in no way involved **with-in the content of** the information transmitted. This requires, among other things, that the provider does not modify the information that it transmits. However, this requirement should not be understood to cover manipulations of a technical nature, which take place in the course of the transmission, as such manipulations do not alter the integrity of the information transmitted.

- (22) In order to benefit from the exemption from liability for hosting services, the provider should, *after having become aware of the illegal nature of the content and thus upon obtaining actual knowledge or awareness of illegal content*, act *expeditiously* to remove or to disable access to that content. The removal or disabling of access should be undertaken in the observance *of a high level of consumer protection and of the Charter of Fundamental Rights, including the principle of freedom of expression and the right to receive and impart information and ideas without interference by public authority*. The provider can obtain ~~such~~ actual knowledge or awareness *of the illegal nature of the content* through, in particular, its own-initiative investigations or notices submitted to it by individuals or entities in accordance with this Regulation in so far as those notices are sufficiently precise and adequately substantiated to allow a diligent ~~economic operator~~ *hosting service provider* to reasonably identify, assess and where appropriate act against the allegedly illegal content. *As long as providers act upon obtaining actual knowledge, they should benefit from the exemptions from liability referred to in this Regulation.*
- (23) In order to ensure the effective protection of consumers when engaging in intermediated commercial transactions online, certain providers of hosting services, namely, online platforms that allow consumers to conclude distance contracts with traders, should not be able to benefit from the exemption from liability for hosting service providers established in this Regulation, in so far as those online platforms present the relevant information relating to the transactions at issue in such a way that it leads consumers to believe that the information was provided by those online platforms themselves or by recipients of the service acting under their authority or control, and that those online platforms thus have knowledge of or control over the information, even if that may in reality not be the case. In that regard, it should be determined objectively, on the basis of all relevant circumstances, whether the presentation could lead to such a belief on the side of ~~an average and reasonably well-informed~~ a consumer. *Such a belief may arise, for example, where the online platform allowing distance contracts with traders fails to display clearly the identity of the trader pursuant to this Regulation, or is marketing the product or service in its own name rather than using the name of the trader who will supply it, or where the provider determines the final price of the goods or services offered by the trader.*
- (24) The exemptions from liability established in this Regulation should not affect the possibility of injunctions of different kinds against providers of intermediary services, even where they meet the conditions set out as part of those exemptions. Such injunctions could, in particular, consist of orders by courts or administrative authorities requiring the termination or prevention of any infringement, including the removal of illegal content specified in such orders, issued in compliance with Union law, or the disabling of access to it.
- (25) In order to create legal certainty and not to discourage activities aimed at detecting, identifying and acting against illegal content that providers of intermediary services may undertake on a voluntary basis, it should be clarified that the mere fact that providers undertake such activities does not lead to the unavailability of the exemptions from liability set out in this Regulation, *solely because they are carrying out voluntary own-initiative investigations*, provided those activities are carried out in good faith and in a diligent manner *and are accompanied with additional safeguards against over-removal of legal content. Providers of intermediary services should make best efforts to ensure that where automated tools are used for content moderation, the technology is sufficiently reliable to limit to the maximum extent possible the rate of errors where*

*information is wrongly considered as illegal content.* In addition, it is appropriate to clarify that the mere fact that those providers take measures, in good faith, to comply with the requirements of Union law, including those set out in this Regulation as regards the implementation of their terms and conditions, should not lead to the unavailability of those exemptions from liability. Therefore, any such activities and measures that a given provider may have taken should not be taken into account when determining whether the provider can rely on an exemption from liability, in particular as regards whether the provider provides its service neutrally and can therefore fall within the scope of the relevant provision, without this rule however implying that the provider can necessarily rely thereon.

- (26) Whilst the rules in Chapter II of this Regulation concentrate on the exemption from liability of providers of intermediary services, it is important to recall that, despite the generally important role played by those providers, the problem of illegal content and activities online should not be dealt with by solely focusing on their liability and responsibilities. Where possible, third parties affected by illegal content transmitted or stored online should attempt to resolve conflicts relating to such content without involving the providers of intermediary services in question. Recipients of the service should be held liable, where the applicable rules of Union and national law determining such liability so provide, for the illegal content that they provide and may disseminate through intermediary services. Where appropriate, other actors, such as group moderators in closed *and open* online environments, in particular in the case of large groups, should also help to avoid the spread of illegal content online, in accordance with the applicable law. Furthermore, where it is necessary to involve information society services providers, including providers of intermediary services, any requests or orders for such involvement should, as a general rule, be directed to the ~~actor~~ *specific provider* that has the technical and operational ability to act against specific items of illegal content, so as to prevent and minimise any possible negative effects for the availability and accessibility of information that is not illegal content. *Consequently providers should act where they are in the best place to do so.*
- (27) Since 2000, new technologies have emerged that improve the availability, efficiency, speed, reliability, capacity and security of systems for the transmission and storage of data online, leading to an increasingly complex online ecosystem. In this regard, it should be recalled that providers of services establishing and facilitating the underlying logical architecture and proper functioning of the internet, including technical auxiliary functions, can also benefit from the exemptions from liability set out in this Regulation, to the extent that their services qualify as ‘mere conduits’, ‘caching’ or hosting services. Such services include, as the case may be *and among others*, wireless local area networks, domain name system (DNS) services, top-level domain name registries, certificate authorities that issue digital certificates, *Virtual Private Networks, cloud infrastructure services*, or content delivery networks, that enable or improve the functions of other providers of intermediary services. Likewise, services used for communications purposes, and the technical means of their delivery, have also evolved considerably, giving rise to online services such as Voice over IP, messaging services and web-based e-mail services, where the communication is delivered via an internet access service. Those services, too, can benefit from the exemptions from liability, to the extent that they qualify as ‘mere conduit’, ‘caching’ or hosting service.
- (27a) *A single webpage or website may include elements that qualify differently between ‘mere conduit’, ‘caching’ or hosting services and the rules for exemptions from liability should apply to each accordingly. For example, a search engine could act solely as a ‘caching’ service as to information included in the results of an inquiry.*



*Elements displayed alongside those results, such as online advertisements, would however still qualify as a hosting service.*

- (28) Providers of intermediary services should not be subject to a monitoring obligation, *neither de jure, not de facto* with respect to obligations of a general nature. This does not concern *specific and properly identified* monitoring obligations in a specific case, *where set out in Union acts* and, in particular, does not affect orders by national authorities in accordance with national legislation *that implement Union legal acts*, in accordance with the conditions established in this Regulation *and other Union law considered as lex specialis*. Nothing in this Regulation should be construed as an imposition of a general monitoring obligation or active fact-finding obligation, or as a general obligation for providers to take proactive measures to relation to illegal content. *Equally, Member States should not prevent providers of intermediary services from providing end-to-end encrypted services. Applying effective end-to-end encryption to data is essential for trust in and security on the Internet, and effectively prevents unauthorised third party access. Furthermore, to ensure effective digital privacy, Member States should not impose a general obligation on providers of intermediary services to limit the anonymous use of their services.*
- (29) Depending on the legal system of each Member State and the field of law at issue, national judicial or administrative authorities may order providers of intermediary services to act against certain specific items of illegal content or to provide certain specific items of information. The national laws *in conformity with Union law, including the Charter* on the basis of which such orders are issued differ considerably and the orders are increasingly addressed in cross-border situations. In order to ensure that those orders can be complied with in an effective and efficient manner, so that the public authorities concerned can carry out their tasks and the providers are not subject to any disproportionate burdens, without unduly affecting the rights and legitimate interests of any third parties, it is necessary to set certain conditions that those orders should meet and certain complementary requirements relating to the *effective* processing of those orders.
- (30) Orders to act against illegal content or to provide information should be issued in compliance with Union law, *including the Charter and* in particular Regulation (EU) 2016/679 and the prohibition of general obligations to monitor information or to actively seek facts or circumstances indicating illegal activity laid down in this Regulation. The conditions and requirements laid down in this Regulation which apply to orders to act against illegal content are without prejudice to other Union acts providing for similar systems for acting against specific types of illegal content, such as Regulation (EU) **2021/784** on addressing the dissemination of terrorist content online, or Regulation (EU) 2017/2394 that confers specific powers to order the provision of information on Member State consumer law enforcement authorities, whilst the conditions and requirements that apply to orders to provide information are without prejudice to other Union acts providing for similar relevant rules for specific sectors. Those conditions and requirements should be without prejudice to retention and preservation rules under applicable national law, in conformity with Union law and confidentiality requests by law enforcement authorities related to the non-disclosure of information.
- (31) The territorial scope of such orders to act against illegal content should be clearly set out on the basis of the applicable Union or national law *in conformity with Union law, including Directive 2000/31/EC and the Charter*, enabling the issuance of the order and should not exceed what is strictly necessary to achieve its objectives. In that regard,

the national judicial or administrative authority issuing the order should balance the objective that the order seeks to achieve, in accordance with the legal basis enabling its issuance, with the rights and legitimate interests of all third parties that may be affected by the order, in particular their fundamental rights under the Charter. ~~In addition~~ **Exceptionally**, where the order referring to the specific information may have effects beyond the territory of the Member State of the authority concerned, the authority should assess whether the information at issue is likely to constitute illegal content in other Member States concerned and, where relevant, take account of the relevant rules of Union law or international law and the interests of international comity.

- (32) The orders to provide information regulated by this Regulation concern the production of specific information about individual recipients of the intermediary service concerned who are identified in those orders for the purposes of determining compliance by the recipients of the services with applicable Union or national rules. Therefore, orders about information on a group of recipients of the service who are not specifically identified, including orders to provide aggregate information required for statistical purposes or evidence-based policy-making, should remain unaffected by the rules of this Regulation on the provision of information. ***Member States should ensure full implementation of the Union legal framework on confidentiality of communications and online privacy, as well as on protection of natural persons with regard to the processing of personal data enshrined in Directive (EU) 2016/680. In particular, Member States should respect the rights of individuals and journalists and refrain from seeking information which could harm media freedom or freedom of expression.***
- (33) Orders to act against illegal content and to provide information are subject to the rules safeguarding the competence of the Member State where the service provider addressed is established and laying down possible derogations from that competence in certain cases, set out in Article 3 of Directive 2000/31/EC, only if the conditions of that Article are met. Given that the orders in question relate to specific items of illegal content and information, ***as defined in Union or national law in compliance with Union law***, respectively, where they are addressed to providers of intermediary services established in another Member State, they ~~do~~ ***should*** not in principle restrict those providers' freedom to provide their services across borders. ~~Therefore, the rules set out in Article 3 of Directive 2000/31/EC, including those regarding the need to justify measures derogating from the competence of the Member State where the service provider is established on certain specified grounds and regarding the notification of such measures, do not apply in respect of those orders.~~ ***The competent authority should transmit the orders to act against illegal content and to provide information directly to the relevant addressee by any electronic means capable of producing a written record under conditions that allow the service provider to establish authenticity, including the accuracy of the date and the time of sending and receipt of the order, such as by secured email and platforms or other secured channels, including those made available by the service provider, in line with the rules protecting personal data. This requirement should notably be met by the use of qualified electronic registered delivery services as provided for by Regulation (EU) 910/2014 of the European Parliament and of the Council. This Regulation should be without prejudice to the rules on the mutual recognition and enforcement of judgements, namely as regards the right to refuse recognition and enforcement of an order to act against illegal content, in particular where such an order is contrary to the public policy in the Member State where recognition or enforcement is sought.***

- (33a) *This Regulation should not prevent the relevant national judicial or administrative authorities on the basis of the applicable Union or national law, in conformity with Union law, to issue an order to restore content, where such content has been in compliance with the terms and conditions of the intermediary service provider, but has been erroneously considered as illegal by the service provider and has been removed.*
- (33b) *To ensure the effective implementation of this Regulation, orders to act against illegal content and to provide information should comply with Union law, including with the Charter. The Commission should provide an effective response to breaches of Union law through infringement proceedings.*
- (34) In order to achieve the objectives of this Regulation, and in particular to improve the functioning of the internal market and ensure a safe and transparent online environment, it is necessary to establish a clear, **effective, predictable** and balanced set of harmonised due diligence obligations for providers of intermediary services. Those obligations should aim in particular to guarantee different public policy objectives such as **a high level of consumer protection**, the safety and trust of the recipients of the service, including minors and vulnerable users, **the protection of** relevant fundamental rights enshrined in the Charter, the meaningful accountability of those providers and **the empowerment** of recipients and other affected parties, whilst facilitating the necessary oversight by competent authorities.
- (35) In that regard, it is important that the due diligence obligations are adapted to the type, nature **and size** of the intermediary service concerned. This Regulation therefore sets out basic obligations applicable to all providers of intermediary services, as well as additional obligations for providers of hosting services and, more specifically, online platforms and very large online platforms. To the extent that providers of intermediary services may fall within those different categories in view of the nature of their services and their size, they should comply with all of the corresponding obligations of this Regulation **in relation to those services**. Those harmonised due diligence obligations, which should be reasonable and non-arbitrary, are needed to achieve the identified public policy concerns, such as safeguarding the legitimate interests of the recipients of the service, addressing illegal practices and protecting fundamental rights online.
- (36) In order to facilitate smooth and efficient communications relating to matters covered by this Regulation, providers of intermediary services should be required to **designate** a single point of contact and to publish relevant **and up to date** information relating to their point of contact, including the languages to be used in such communications. **Such information should be notified to the Digital Service Coordinator in the Member State of establishment.** The point of contact can also be used by trusted flaggers and by professional entities which are under a specific relationship with the provider of intermediary services. **It should be possible that this contact point is the same contact point as required under other Union acts.** In contrast to the legal representative, the point of contact should serve operational purposes and should not necessarily have to have a physical location.
- (36a) *Providers of intermediary services should also be required to designate a single point of contact for recipients of services, which allows rapid, direct and efficient communication in particular by easily accessible means such as telephone number, email addresses, electronic contact forms, chatbots or instant messaging. It should be explicitly indicated when a user communicates with chatbots. To facilitate rapid, direct and efficient communication, recipients of services should not be faced with lengthy phone menus or hidden contact information. In particular, phone*

*menus should always include the option to speak to a human. Providers of intermediary services should allow recipients of services to choose means of direct and efficient communication which do not solely rely on automated tools. This requirement should not affect the internal organisation of providers of intermediary services, including the ability to use third-party services to provide this communication system, such as external service providers and call centres.*

- (37) Providers of intermediary services that are established in a third country that offer services in the Union should designate a sufficiently mandated legal representative in the Union and provide information relating to their legal representatives, so as to allow for the effective oversight and, where necessary, enforcement of this Regulation in relation to those providers. It should be possible for the legal representative to also function as point of contact, provided the relevant requirements of this Regulation are complied with. *It should be possible that a legal representative is mandated by more than one provider of intermediary services, in accordance with national law, provided that such providers qualify as micro, small or medium sized enterprises as defined in Recommendation 2003/361/EC.*
- (38) Whilst the freedom of contract of providers of intermediary services should in principle be respected, it is appropriate to set certain rules on the content, application and enforcement of the terms and conditions of those providers in the interests of *protecting fundamental rights, in particular freedom of expression and of information*, transparency, the protection of recipients of the service and the avoidance of *discriminatory, unfair or arbitrary outcomes. In particular, it is important to ensure that terms and conditions are drafted in a clear and unambiguous language in line with applicable Union and national law. The terms and conditions should include information on any policies, procedures, measures and tools used for the purpose of content moderation, including algorithmic decision-making, human review, as well as on the right to terminate the use of the service. Providers of intermediary services should also provide recipients of services with a concise and easily readable summary of the main elements of the terms and conditions, including the remedies available, using, where appropriate graphical elements, such as icons.*
- (39) To ensure an adequate level of transparency and accountability, providers of intermediary services should *draw up an annual report in a standardised and machine-readable format*, in accordance with the harmonised requirements contained in this Regulation, on the content moderation they engage in, including the measures taken as a result of the application and enforcement of their terms and conditions. However, so as to avoid disproportionate burdens, those transparency reporting obligations should not apply to providers that are micro-or small enterprises as defined in Commission Recommendation 2003/361/EC<sup>1</sup> *which do not also qualify as very large online platforms.*
- (39a) *Recipients of a service should be able to make a free, autonomous and informed decisions or choices when using a service and providers of intermediary services shall not use any means, including via its interface, to distort or impair that decision-making. In particular, recipients of the service should be empowered to make such decisions inter alia regarding the acceptance of and changes to terms and conditions, advertising practices, privacy and other settings, recommender systems when interacting with intermediary services. However, certain practices typically exploit cognitive biases and prompt recipients of the service to purchase goods and services that they do not want or to reveal personal information they would prefer not to disclose. Therefore, providers of intermediary services should be prohibited from deceiving or nudging recipients of the service and from distorting or impairing the*

*autonomy, decision-making, or choice of the recipients of the service via the structure, design or functionalities of an online interface or a part thereof ('dark patterns'). This should include, but should not be limited to, exploitative design choices to direct the recipient to actions that benefit the provider of intermediary services, but which may not be in the recipients' interests, presenting choices in a non-neutral manner, such as giving more visual prominence to a consent option, repetitively requesting or urging the recipient to make a decision such as making the procedure of cancelling a service significantly more cumbersome than signing up to it. However, rules preventing dark patterns should not be understood as preventing providers to interact directly with users and to offer new or additional services to them. In particular it should be possible to approach a user again in a reasonable time, even if the user had denied consent for specific data processing purposes, in accordance with Regulation (EU) 2016/679. The Commission should be empowered to adopt a delegated act to define practices that could be considered as dark patterns.*

- (40) 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 *easily accessible, comprehensive and* 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 *establish that the content in question is clearly illegal without additional legal or factual examination of the information indicated in the notice and* ~~decide whether or not it agrees with that assessment and wishes to remove or disable access to that content ('action').~~ *Such mechanism should include a clearly identifiable reporting mechanism, located close to the content in question allowing to notify quickly and easily items of information considered to be illegal content under Union or national law.* 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 *in order to ensure the effective operation of notice and action mechanisms. While individuals should always be able to submit notices anonymously, such notices should not give rise to actual knowledge, except in the case of information considered to involve one of the offences referred to in Directive 2011/93/EU.* 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.
- (40a) *Nevertheless, notices should be directed to the actor that has the technical and operational ability to act and the closest relationship to the recipient of the service that provided the information or content. Such hosting service providers should redirect such notices to the particular online platform and inform the Digital Services Coordinator.*
- (40b) *Moreover, hosting providers should seek to act only against the items of information notified. Where the removal or disabling of access to individual items of information is technically or operationally unachievable due to legal or technological reasons, such as encrypted file and data storage and sharing services, hosting providers should inform the recipient of the service of the notification and seek action.*
- (41) The rules on such notice and action mechanisms should be harmonised at Union level, so as to provide for the timely, diligent ~~and~~ objective, *non-arbitrary and non-discriminatory* processing of notices on the basis of rules that are uniform, transparent

and clear and that provide for robust safeguards to protect the right and legitimate interests of all affected parties, in particular their fundamental rights guaranteed by the Charter, irrespective of the Member State in which those parties are established or reside and of the field of law at issue. The fundamental rights include, as the case may be, the right to freedom of expression and information, the right to respect for private and family life, the right to protection of personal data, the right to non-discrimination and the right to an effective remedy of the recipients of the service; the freedom to conduct a business, including the freedom of contract, of service providers; as well as the right to human dignity, the rights of the child, the right to protection of property, including intellectual property, and the right to non-discrimination of parties affected by illegal content.

- (41a) ***Providers of hosting services should act upon notices without undue delay, taking into account the type of illegal content that is being notified and the urgency of taking action. The provider of hosting services should inform the individual or entity notifying the specific content of its decision without undue delay after taking a decision whether to act upon the notice or not.***
- (42) Where a hosting service provider decides to remove, ~~or~~ ***disable access to, demote or impose other measures with regard to*** information provided by a recipient of the service, for instance following receipt of a notice or acting on its own initiative, including through the use of automated means, ***that have been proven to be efficient, proportionate and accurate***, that provider should ***in a clear and user-friendly manner*** inform the recipient of its decision, the reasons for its decision and the available redress possibilities to contest the decision, in view of the negative consequences that such decisions may have for the recipient, including as regards the exercise of its fundamental right to freedom of expression. That obligation should apply irrespective of the reasons for the decision, in particular whether the action has been taken because the information notified is considered to be illegal content or incompatible with the applicable terms and conditions. Available recourses to challenge the decision of the hosting service provider should always include judicial redress. ***The obligation should however not apply in a number of situations, namely when the content is deceptive or part of high-volume of commercial content, or when it has been requested by a judicial or law enforcement authority to not inform the recipient due to an ongoing criminal investigation until the criminal investigation is closed. Where a provider of hosting service does not have the information necessary to inform the recipient by a durable medium, it should not be required to do so.***
- (42a) ~~An online platform~~ ***A provider of hosting services*** may in some instances become aware, such as through a notice by a notifying party or through its own voluntary measures, of information relating to certain activity of a recipient of the service, such as the provision of certain types of illegal content, that reasonably justify, having regard to all relevant circumstances of which the online platform is aware, the suspicion that the recipient may have committed, may be committing or is likely to commit a serious criminal offence involving ***an imminent*** threat to the life or safety of person, such as offences specified in Directive 2011/93/EU of the European Parliament and of the Council<sup>1</sup>. In such instances, the ***provider of hosting services*** should inform without delay the competent law enforcement authorities of such suspicion, providing, ***upon their request***, all relevant information available to it, including where relevant the content in question and an explanation of its suspicion ***and unless instructed otherwise, should remove or disable the content. The information notified by the hosting service provider should not be used for any purpose other than those directly related to the individual serious criminal offence notified.*** This Regulation does not provide the

legal basis for profiling of recipients of the services with a view to the possible identification of criminal offences by ~~online platforms~~ **provider of hosting services**. ~~Online platforms~~ **Providers of hosting services** should also respect other applicable rules of Union or national law for the protection of the rights and freedoms of individuals when informing law enforcement authorities. ***In order to facilitate the notification of suspicions of criminal offenses, Member States should notify to the Commission the list of the competent law enforcement or judicial authorities.***

- (43) To avoid disproportionate burdens, the additional obligations imposed on online platforms under this Regulation should not apply to micro or small enterprises as defined in Recommendation 2003/361/EC of the Commission,<sup>3</sup> unless their reach and impact is such that they meet the criteria to qualify as very large online platforms under this Regulation. The consolidation rules laid down in that Recommendation help ensure that any circumvention of those additional obligations is prevented. The exemption of micro- and small enterprises from those additional obligations should not be understood as affecting their ability to set up, on a voluntary basis, a system that complies with one or more of those obligations.
- (43a) ***Similarly, in order to ensure that the obligations are only applied to those providers of intermediary services where the benefit would outweigh the burden on the provider, the Commission should be empowered to issue a waiver to the requirements of Chapter III Section 3, in whole or in parts, to those providers of intermediary services that are non-for profit t, or are medium-sized enterprises, but do not present any systemic risk related to illegal content and have limited exposure to illegal content. The providers should present justified reasons for why they should be issued a waiver and send its application first to its Digital Services Coordinators of establishment for a preliminary assessment. The Commission should examine such an application taking into account a preliminary assessment carried out by the Digital Services Coordinators of establishment. The preliminary assessment should be sent together with the application to the Commission. The Commission should monitor the application of the waiver and have the right revoke a waiver at any time. The Commission should maintain a public list of all waiver issued and their conditions.***
- (44) Recipients of the service, should be able to easily and effectively contest certain decisions, of online platforms that negatively affect them. ***This should include decisions of online platforms allowing consumers to conclude distance contracts with traders to suspend the provisions of their services to traders.*** Therefore, online platforms should be required to provide for internal complaint-handling systems, which meet certain conditions aimed at ensuring that the systems are easily accessible and lead to swift, ***non-discriminatory, non-arbitrary*** and fair outcomes ***within ten working days starting on the date on which the online platform received the complaint.*** In addition, provision should be made for the possibility of ***entering, in good faith, an*** out-of-court dispute settlement of disputes, including those that could not be resolved in satisfactory manner through the internal complaint-handling systems, by certified bodies that have the requisite independence, means and expertise to carry out their activities in a fair, swift and cost-effective manner ***and within a reasonable period of time.*** The possibilities to contest decisions of online platforms thus created should complement, yet leave unaffected in all respects, the possibility to seek judicial redress in accordance with the laws of the Member State concerned.
- (45) For contractual consumer-to-business disputes over the purchase of goods or services, Directive 2013/11/EU of the European Parliament and of the Council<sup>4</sup> ensures that Union consumers and businesses in the Union have access to quality-certified alternative dispute resolution entities. In this regard, it should be clarified that the rules

of this Regulation on out-of-court dispute settlement are without prejudice to that Directive, including the right of consumers under that Directive to withdraw from the procedure at any stage if they are dissatisfied with the performance or the operation of the procedure.

- (46) Action against illegal content can be taken more quickly and reliably where online platforms take the necessary measures to ensure that notices submitted by trusted flaggers, ***acting within their designated area of expertise***, through the notice and action mechanisms required by this Regulation are treated with priority, ***and expeditiously, taking into account due process and*** without prejudice to the requirement to process and decide upon all notices submitted under those mechanisms in a ~~timely, diligent~~ an objective manner. Such trusted flagger status should only be awarded, ***for a period of two years***, to entities, and not individuals, that have demonstrated, among other things, that they have particular expertise and competence in tackling illegal content, that they represent collective interests and that they work in a diligent and objective manner ***and have transparent funding structure. The Digital Services Coordinator should be allowed to renew the status where the trusted flagger concerned continues to meet the requirements of this Regulation.*** Such entities can be public in nature, such as, for terrorist content, internet referral units of national law enforcement authorities or of the European Union Agency for Law Enforcement Cooperation ('Europol') or they can be non-governmental organisations, ***consumer organisations***, and semi-public bodies, such as the organisations part of the INHOPE network of hotlines for reporting child sexual abuse material and organisations committed to notifying illegal racist and xenophobic expressions online. ***Trusted flaggers should publish easily comprehensible and detailed reports on notices submitted in accordance with Article 14. Those reports should indicate information such as notices categorised by the entity of the provider of hosting services, the type of content notified, the legal provisions allegedly breached by the content in question, and the action taken by the provider. The reports should also include information about any potential conflict of interest and sources of funding as well as the procedure put in place by the trusted flagger to retain its independence.*** For intellectual property rights, organisations of industry and of right-holders could be awarded trusted flagger status, where they have demonstrated that they meet the applicable conditions ***and respect for exceptions and limitations to intellectual property rights***. The rules of this Regulation on trusted flaggers should not be understood to prevent online platforms from giving similar treatment to notices submitted by entities or individuals that have not been awarded trusted flagger status under this Regulation, from otherwise cooperating with other entities, in accordance with the applicable law, including this Regulation and Regulation (EU) 2016/794 of the European Parliament and of the Council.<sup>5</sup> ***In order to avoid abuses of the status of trusted flagger, it should be possible to suspend such status when a Digital Service Coordinator of establishment opened an investigation based on legitimate reasons. The suspension should not be longer than the time needed to conduct the investigation and should be maintained if the Digital Services Coordinator of establishment concluded that the entity in question could still be considered as a trusted flagger.***
- (46a) ***The strict application of universal design to all new technologies and services should ensure full, equal and unrestricted access for all potential consumers, including persons with disabilities, in a way that takes full account of their inherent dignity and diversity. It is essential to ensure that providers of online platforms, which offer services in the Union design and provide those services in accordance with the***



*accessibility requirements, set out in Directive (EU) 2019/882. In particular, providers of online platforms should ensure that information provided, forms provided and procedures that are in place are made available in a manner that they are easy to find, easy to understand, and accessible to persons with disabilities.*

- (47) The misuse of services of online platforms by frequently providing ~~manifestly~~ illegal content or by frequently submitting manifestly unfounded notices or complaints under the mechanisms and systems, respectively, established under this Regulation undermines trust and harms the rights and legitimate interests of the parties concerned. Therefore, there is a need to put in place appropriate, ~~and~~ proportionate *and effective* safeguards against such misuse. *The misuse of services of online platforms could be established with regard to frequently provided illegal content where it is evident that that content is illegal without conducting a detailed legal or factual analysis.* ~~Information should be considered to be manifestly illegal content and~~ ~~Notices or complaints should be considered manifestly unfounded where it is evident to a layperson, without any substantive analysis, that the content is illegal respectively that the notices or complaints are unfounded.~~ Under certain conditions, online platforms should *be entitled to temporarily or, in a limited number of situations, permanently* suspend their relevant activities in respect of the person engaged in abusive behaviour. This is without prejudice to the freedom by online platforms to determine their terms and conditions and establish stricter measures in the case of ~~manifestly~~ illegal content related to serious crimes. For reasons of transparency, this possibility should be set out, clearly and in sufficiently detail, in the terms and conditions of the online platforms. Redress should always be open to the decisions taken in this regard by online platforms and they should be subject to oversight by the competent Digital Services Coordinator. The rules of this Regulation on misuse should not prevent online platforms from taking other measures to address the provision of illegal content by recipients of their service or other misuse of their services, in accordance with the applicable Union and national law. Those rules are without prejudice to any possibility to hold the persons engaged in misuse liable, including for damages, provided for in Union or national law.
- (49) In order to contribute to a safe, trustworthy and transparent online environment for consumers, as well as for other interested parties such as competing traders and holders of intellectual property rights, and to deter traders from selling products or services in violation of the applicable rules, *online platforms that allow consumers to conclude distance contracts with traders should obtain additional information on the trader and the products and services they intend to offer on the platform. The online platform should therefore be required to obtain information on the name, telephone number and electronic mail of the economic operator and the type of product or service the trader intends to offer on the online platform. Prior to offering its services to the trader, the online platform operator should make best efforts to assess if the information provided by the trader is reliable. In addition, the platform should take adequate measures, such as where applicable, random checks, to identify and prevent illegal content from appearing on their interface. The fulfilment of the obligations on traceability of the traders, products and services should facilitate the compliance by platforms allowing consumers to conclude distance contracts with the obligation to inform consumers of the identity of their contracting party established under Directive 2011/83/EU of the European Parliament and of the Council, as well as the obligations established under Regulation (EU) No 1215/2012 as regards the Member State in which consumers can pursue their consumer rights.* ~~The trader should therefore be required to provide certain essential information to the online~~

~~platform, including for purposes of promoting messages on or offering products.~~ That requirement **to provide essential information** should also be applicable to traders that promote messages on products or services on behalf of brands, based on underlying agreements. Those online platforms should store all information in a secure manner for a reasonable period of time that does not exceed what is necessary **and no longer than six months after the end of a relationship with the trader**, so that it can be accessed, in accordance with the applicable law, including on the protection of personal data, by public authorities and private parties with a **direct** legitimate interest, including through the orders to provide information referred to in this Regulation.

- (50) To ensure an efficient and adequate application of that obligation, without imposing any disproportionate burdens, the online platforms covered should, **before allowing the display of the product or services on its online interface**, make reasonable efforts to **assess** the reliability of the information provided by the traders concerned, in particular by using freely available official online databases and online interfaces, such as national trade registers and the VAT Information Exchange System<sup>6</sup>, or by requesting the traders concerned to provide trustworthy supporting documents, such as copies of identity documents, certified bank statements, company certificates and trade register certificates. They may also use other sources, available for use at a distance, which offer a similar degree of reliability for the purpose of complying with this obligation. However, the online platforms covered should not be required to engage in excessive or costly online fact-finding exercises or to carry out verifications on the spot. Nor should such online platforms, which have made the ~~reasonable~~ **best** efforts required by this Regulation, be understood as guaranteeing the reliability of the information towards consumer or other interested parties. Such online platforms should also design and organise their online interface in a **user-friendly** way that enables traders to comply with their obligations under Union law, in particular the requirements set out in Articles 6 and 8 of Directive 2011/83/EU of the European Parliament and of the Council<sup>7</sup>, Article 7 of Directive 2005/29/EC of the European Parliament and of the Council<sup>8</sup> and Article 3 of Directive 98/6/EC of the European Parliament and of the Council<sup>9</sup>.
- (50a) **Online platforms that allow consumers to conclude distance contracts with traders should demonstrate their best efforts to prevent the dissemination by traders of illegal products and services, in compliance with the no general monitoring principle. Online platforms covered should inform recipients when the service or product they have acquired through their services are illegal.**
- (51) In view of the particular responsibilities and obligations of online platforms, they should be made subject to transparency reporting obligations, which apply in addition to the transparency reporting obligations applicable to all providers of intermediary services under this Regulation. For the purposes of determining whether online platforms may be very large online platforms that are subject to certain additional obligations under this Regulation, the transparency reporting obligations for online platforms should include certain obligations relating to the publication and communication of information on the average monthly active recipients of the service in the Union.
- (52) Online advertisement plays an important role in the online environment, including in relation to the provision of the services of online platforms. However, online advertisement can contribute to significant risks, ranging from advertisement that is itself illegal content, to contributing to financial incentives for the publication or amplification of illegal or otherwise harmful content and activities online, or the discriminatory display of advertising with an impact on the equal treatment and opportunities of citizens. **New advertising models have generated changes in the way information is presented and have created new personal data collection patterns and**

*business models that might affect privacy, personal autonomy, democracy, quality news reporting and facilitate manipulation and discrimination. Therefore, more transparency in online advertising markets and independent research needs to be carried out to assess the effectiveness of behavioural advertisements.* In addition to the requirements resulting from Article 6 of Directive 2000/31/EC, online platforms should therefore be required to ensure that the recipients of the service have certain individualised information necessary for them to understand when and on whose behalf the advertisement is displayed, *as well as the natural or legal person who finances the advertisement.* In addition, recipients of the service should have *easy access to* information on the main parameters used for determining that specific advertising is to be displayed to them, providing meaningful explanations of the logic used to that end, including when this is based on profiling. The requirements of this Regulation on the provision of information relating to advertisement is without prejudice to the application of the relevant provisions of Regulation (EU) 2016/679, in particular those regarding the right to object, automated individual decision-making, including profiling and specifically the need to obtain consent of the data subject prior to the processing of personal data for targeted advertising. Similarly, it is without prejudice to the provisions laid down in Directive 2002/58/EC in particular those regarding the storage of information in terminal equipment and the access to information stored therein. *In addition to these information obligations, online platforms should ensure that recipients of the service can refuse or withdraw their consent for targeted advertising purposes, in accordance with Regulation (EU) 2016/679 in a way that is not more difficult nor time-consuming than to give their consent. Online platforms should also not use personal data for commercial purposes related to direct marketing, profiling and behaviourally targeted advertising of minors. The online platform should not be obliged to maintain, acquire or process additional information in order to assess the age of the recipient of the service.*

- (52a) *A core part of an online platform's business is the manner in which information is prioritised and presented on its online interface to facilitate and optimise access to information for the recipients of the service. This is done, for example, by algorithmically suggesting, ranking and prioritising information, distinguishing through text or other visual representations, or otherwise curating information provided by recipients. Such recommender systems can have a significant impact on the ability of recipients to retrieve and interact with information online. They also play an important role in the amplification of certain messages, the viral dissemination of information and the stimulation of online behaviour. Consequently, online platforms should ensure that recipients can understand how recommender system impact the way information is displayed, and can influence how information is presented to them. They should clearly present the parameters for such recommender systems in an easily comprehensible manner to ensure that the recipients understand how information is prioritised for them.*
- (53) Given the importance of very large online platforms, due to their reach, in particular as expressed in number of recipients of the service, in facilitating public debate, economic transactions and the dissemination of information, opinions and ideas and in influencing how recipients obtain and communicate information online, it is necessary to impose specific obligations on those platforms, in addition to the obligations applicable to all online platforms. Those additional obligations on very large online platforms are necessary to address those public policy concerns, there being no *proportionate* alternative and less restrictive measures that would effectively achieve the same result.

- (54) Very large online platforms may cause societal risks, different in scope and impact from those caused by smaller platforms. Once the number of recipients of a platform reaches a significant share of the Union population, the systemic risks the platform poses have a disproportionately negative impact in the Union. Such significant reach should be considered to exist where the number of recipients exceeds an operational threshold set at 45 million, that is, a number equivalent to 10% of the Union population. The operational threshold should be kept up to date through amendments enacted by delegated acts, where necessary. Such very large online platforms should therefore bear the highest standard of due diligence obligations, proportionate to their societal impact and means. ***Accordingly, the number of average monthly recipients of the service should reflect the recipients actually reached by the service either by being exposed to content or by providing content disseminated on the platforms' interface in that period of time.***
- (55) In view of the network effects characterising the platform economy, the user base of an online platform may quickly expand and reach the dimension of a very large online platform, with the related impact on the internal market. This may be the case in the event of exponential growth experienced in short periods of time, or by a large global presence and turnover allowing the online platform to fully exploit network effects and economies of scale and of scope. A high annual turnover or market capitalisation can in particular be an indication of fast scalability in terms of user reach. In those cases, the Digital Services Coordinator should be able to request more frequent reporting from the platform on the user base to be able to timely identify the moment at which that platform should be designated as a very large online platform for the purposes of this Regulation.
- (56) Very large online platforms are used in a way that strongly influences safety online, the shaping of public opinion and discourse, as well as on online trade. The way they design their services is generally optimised to benefit their often advertising-driven business models and can cause societal concerns. In the absence of effective regulation and enforcement, they can set the rules of the game, without effectively identifying and mitigating the risks and the societal and economic harm they can cause. Under this Regulation, very large online platforms should therefore assess the systemic risks stemming from the functioning and use of their service, as well as by potential misuses by the recipients of the service, and take appropriate mitigating measures ***where mitigation is possible without adversely impacting fundamental rights.***
- (57) ***Four*** categories of systemic risks should be assessed in-depth. A first category concerns the risks associated with the misuse of their service through the dissemination ***and amplification*** of illegal content, such as the dissemination of child sexual abuse material or illegal hate speech, and the conduct of illegal activities, such as the sale of products or services prohibited by Union or national law, including ***dangerous and*** counterfeit products ***and illegally-traded animals***. For example, and without prejudice to the personal responsibility of the recipient of the service of very large online platforms for possible illegality of his or her activity under the applicable law, such dissemination or activities may constitute a significant systematic risk where access to such content may be amplified through accounts with a particularly wide reach. A second category concerns the ***actual and foreseeable*** impact of the service on the exercise of fundamental rights, as protected by the Charter of Fundamental Rights, including the freedom of expression and information, ***freedom of the press, human dignity***, the right to private life, ***the right to gender equality***, the right to non-discrimination and the rights of the child. Such risks may arise, for example, in relation to the design of the algorithmic systems used by the very large online platform

or the misuse of their service through the submission of abusive notices or other methods for silencing speech or hampering competition. A third category of risks concerns the intentional and, oftentimes, coordinated manipulation of the platform's service, with a foreseeable impact on ~~health~~, civic discourse, electoral processes, public security and protection of minors, having regard to the need to safeguard public order, protect privacy and fight fraudulent and deceptive commercial practices. Such risks may arise, for example, through the creation of fake accounts, the use of bots, and other automated or partially automated behaviours, which may lead to the rapid and widespread dissemination of information that is illegal content or incompatible with an online platform's terms and conditions. ***A fourth category of risks concerns any actual and foreseeable negative effects on the protection of public health, including behavioural addictions due to excessive use of a service or other serious negative effects to the person's physical, mental, social and financial well-being.***

- (58) Very large online platforms should deploy the necessary means to diligently mitigate the systemic risks identified in the risk assessment ***where mitigation is possible without adversely impacting fundamental rights***. Very large online platforms should under such mitigating measures consider, for example, enhancing or otherwise adapting the design and functioning of their content moderation, algorithmic recommender systems and online interfaces, so that they discourage and limit the dissemination of illegal content ***and of content that is incompatible with their terms and conditions. They should also consider mitigation measures in case of malfunctioning or intentional manipulation and exploitation of the service, or in case of risks inherent to the intended operation of the service, including the amplification of illegal content, of content that is in breach with their terms and conditions or any other content having negative effects***, by adapting their decision-making processes, or adapting their terms and conditions ***and content moderation policies and how those policies are enforced, while being fully transparent to the recipients of the service***. They may also include corrective measures, such as discontinuing advertising revenue for specific content, or other actions, such as improving the visibility of authoritative information sources. Very large online platforms may reinforce their internal processes or supervision of any of their activities, in particular as regards the detection of systemic risks. They may also initiate or increase cooperation with trusted flaggers, organise training sessions and exchanges with trusted flagger organisations, and cooperate with other service providers, including by initiating or joining existing codes of conduct or other self-regulatory measures. ***The decision as to the choice of measures should remain with the very large online platform***. Any measures adopted should respect the due diligence requirements of this Regulation and be effective and appropriate for mitigating the specific risks identified, in the interest of safeguarding public order, protecting privacy and fighting fraudulent and deceptive commercial practices, and should be proportionate in light of the very large online platform's economic capacity and the need to avoid unnecessary restrictions on the use of their service, taking due account of potential negative effects on the fundamental rights of the recipients of the service. ***The Commission should evaluate the implementation and effectiveness of the mitigating measures and issue recommendations when the measures implemented are deemed inappropriate or ineffective to address the systemic risk at stake.***

- (59) Very large online platforms should, where appropriate, conduct their risk assessments and design their risk mitigation measures with the involvement of representatives of the recipients of the service, ~~representatives of groups potentially impacted by their services~~, independent experts and civil society organisations.

- (60) Given the need to ensure verification by independent experts, very large online platforms should be accountable, through *external* independent auditing, for their compliance with the obligations laid down by this Regulation. ***In particular, audits should assess the clarity, coherence and predictable enforcement of terms of service, the completeness, methodology and consistency of the transparency reporting obligations, the accuracy, predictability and clarity of the provider's follow-up for recipients of the service and notice providers regarding notices of illegal content and terms of service violations, the accuracy of classification of removed information, the internal complaint handling mechanism, the interaction with trusted flaggers and assessment of their accuracy, the diligence with regard to the verification of the traceability of traders, the adequateness and correctness of the risk assessment, the adequateness and effectiveness of the risk mitigation measures taken*** and, where relevant, any complementary commitments undertaken pursuant to codes of conduct and crises protocols. They should give the *vetted* auditor access to all relevant data necessary to perform the audit properly. Auditors should also be able to make use of other sources of objective information, including studies by vetted researchers. *Vetted* auditors should guarantee the confidentiality, security and integrity of the information, such as trade secrets, that they obtain when performing their tasks and have the necessary expertise in the area of risk management and technical competence to audit algorithms. ***This guarantee should not be a means to circumvent the applicability of audit obligations in this Regulation applicable to very large online platforms.*** Auditors should be *legally and financially* independent and ***should not have conflict of interest involving the very large online platform concerned and other very large online platforms***, so as to be able to perform their tasks in an adequate and trustworthy manner. ***Additionally, vetted auditors and their employees should not have provided any service to the very large online platform audited for 12 months before the audit. They should also commit not to work for the very large online platform audited or a professional organisation or business association of which the platform is a member for 12 months after their position in the auditing organisation has ended.*** If their independence is not beyond doubt, they should resign or abstain from the audit engagement.
- (61) The audit report should be substantiated, so as to give a meaningful account of the activities undertaken and the conclusions reached. It should help inform, and where appropriate suggest improvements to the measures taken by the very large online platform to comply with their obligations under this Regulation. The report should be transmitted to the Digital Services Coordinator of establishment and the Board without delay, together with the risk assessment and the mitigation measures, as well as the platform's plans for addressing the audit's recommendations. ***Where applicable, the report should include a description of specific elements that could not be audited, and an explanation of why these could not be audited.*** The report should include an audit opinion based on the conclusions drawn from the audit evidence obtained. A positive opinion should be given where all evidence shows that the very large online platform complies with the obligations laid down by this Regulation or, where applicable, any commitments it has undertaken pursuant to a code of conduct or crisis protocol, in particular by identifying, evaluating and mitigating the systemic risks posed by its system and services. A positive opinion should be accompanied by comments where the auditor wishes to include remarks that do not have a substantial effect on the outcome of the audit. A negative opinion should be given where the auditor considers that the very large online platform does not comply with this Regulation or the commitments undertaken. ***Where the audit opinion could not reach a conclusion for***

*specific elements that fall within the scope of the audit, a statement of reasons for the failure to reach such a conclusion should be included in the audit opinion.*

- (62) A core part of a very large online platform's business is the manner in which information is prioritised and presented on its online interface to facilitate and optimise access to information for the recipients of the service. This is done, for example, by algorithmically suggesting, ranking and prioritising information, distinguishing through text or other visual representations, or otherwise curating information provided by recipients. Such recommender systems can have a significant impact on the ability of recipients to retrieve and interact with information online. *Often, they facilitate the search for relevant content for recipients of the service and contribute to an improved user experience.* They also play an important role in the amplification of certain messages, the viral dissemination of information and the stimulation of online behaviour. Consequently, *very large online platforms should let the recipients decide whether they want to be subject to recommender systems based on profiling and ensure that there is an option which is not based on profiling. In addition, very large online platforms should ensure that recipients are appropriately informed, on the use of recommender systems, and that recipients can influence the information presented to them through making active choices.* They should clearly present the main parameters for such recommender systems in an easily comprehensible *and user-friendly* manner to ensure that the recipients understand how information is prioritised for them, *the reason why, and how to modify the parameters used to curate the content presented for the recipients. Very large online platforms should implement appropriate technical and organisational measures for ensuring that recommender systems are designed in a consumer friendly manner and do not influence end users' behaviour through dark patterns.*
- (63) Advertising systems used by very large online platforms pose particular risks and require further public and regulatory supervision on account of their scale and ability to target and reach recipients of the service based on their behaviour within and outside that platform's online interface. Very large online platforms should ensure public access to repositories of advertisements displayed on their online interfaces to facilitate supervision and research into emerging risks brought about by the distribution of advertising online, for example in relation to illegal advertisements or manipulative techniques and disinformation with a real and foreseeable negative impact on public health, public security, civil discourse, political participation and equality. Repositories should include the content of advertisements, *including the name of the product, service or brand and the object of the advertisement*, and related data on the advertiser, *and, if different, the natural or legal person who paid for the advertisement*, and the delivery of the advertisement, in particular where targeted advertising is concerned. *In addition, very large online platforms should label any known deep fake videos, audio or other files.*
- (64) In order to appropriately supervise the compliance of very large online platforms with the obligations laid down by this Regulation, the Digital Services Coordinator of establishment or the Commission may require access to or reporting of specific data *and algorithms*. Such a requirement may include, for example, the data necessary to assess the risks and possible harms brought about by the platform's systems, data on the accuracy, functioning and testing of algorithmic systems for content moderation, recommender systems or advertising systems, or data on processes and outputs of content moderation or of internal complaint-handling systems within the meaning of this Regulation. Investigations by *vett ed* researchers, *vett ed not-for-profit bodies, organisations or associations*, on the evolution and severity of online systemic risks

are particularly important for bridging information asymmetries and establishing a resilient system of risk mitigation, informing online platforms, Digital Services Coordinators, other competent authorities, the Commission and the public. This Regulation therefore provides a framework for compelling access to data from very large online platforms to vetted researchers, *not-for-profit bodies, organisations or associations*. All requirements for access to data under that framework should be proportionate and appropriately protect the rights and legitimate interests, including *personal data*, trade secrets and other confidential information, of the platform and any other parties concerned, including the recipients of the service. *Vetted researchers, not-for-profit bodies, organisations or associations should guarantee the confidentiality, security and integrity of the information, such as trade secrets, that they obtain when performing their tasks.*

- (65) Given the complexity of the functioning of the systems deployed and the systemic risks they present to society, very large online platforms should appoint compliance officers, which should have the necessary qualifications to operationalise measures and monitor the compliance with this Regulation within the platform's organisation. Very large online platforms should ensure that the compliance officer is involved, properly and in a timely manner, in all issues which relate to this Regulation. In view of the additional risks relating to their activities and their additional obligations under this Regulation, the other transparency requirements set out in this Regulation should be complemented by additional transparency requirements applicable specifically to very large online platforms, notably to report on the risk assessments performed and subsequent measures adopted as provided by this Regulation.
- (66) To facilitate the effective and consistent application of the obligations in this Regulation that may require implementation through technological means, it is important to promote voluntary ~~industry~~ standards covering certain technical procedures, where the industry can help develop standardised means to comply with this Regulation, such as allowing the submission of notices, including through application programming interfaces, about the interoperability of advertisement repositories, *or about terms and conditions*. Such standards could in particular be useful for relatively small providers of intermediary services. The standards could distinguish between different types of illegal content or different types of intermediary services, as appropriate. *In the absence of relevant standards agreed within [24 months after the entry into force of this Regulation], the Commission should be able to establish technical specifications by implementing acts until a voluntary standard is agreed.*
- (67) The Commission and the Board should encourage the drawing-up of codes of conduct *as well as the compliance with the provisions of these codes* to contribute to the application of this Regulation. *The Commission and the Board should aim that the codes of conduct clearly define the nature of the public interest objectives being addressed, that they contain mechanisms for independent evaluation of the achievement of these objectives and that the role of competent authorities is clearly defined.* While the implementation of codes of conduct should be measurable and subject to public oversight, this should not impair the voluntary nature of such codes and the freedom of interested parties to decide whether to participate. In certain circumstances, it is important that very large online platforms cooperate in the drawing-up and adhere to specific codes of conduct. Nothing in this Regulation prevents other service providers from adhering to the same standards of due diligence, adopting best practices and benefitting from the guidance provided by the Commission and the Board, by participating in the same codes of conduct.



- (68) It is appropriate that this Regulation identify certain areas of consideration for such codes of conduct. In particular, risk mitigation measures concerning specific types of illegal content should be explored via self- and co-regulatory agreements. Another area for consideration is the possible negative impacts of systemic risks on society and democracy, such as disinformation, or manipulative and abusive activities. This includes coordinated operations aimed at amplifying information, including disinformation, such as the use of bots or fake accounts for the creation of ~~fake~~ **intentionally inaccurate** or misleading information, sometimes with a purpose of obtaining economic gain, which are particularly harmful for vulnerable recipients of the service, such as children. In relation to such areas, adherence to and compliance with a given code of conduct by a very large online platform may be considered as an appropriate risk mitigating measure.
- (69) The rules on codes of conduct under this Regulation could serve as a basis for already established self-regulatory efforts at Union level, including the Product Safety Pledge, the Memorandum of Understanding against counterfeit goods, the Code of Conduct against illegal hate speech as well as the Code of practice on disinformation. ***The Commission should also encourage the development of codes of conduct to facilitate compliance with obligations in areas, such as protection of minors or short-term rental. Other areas for consideration could be to promote diversity of information through support of high quality journalism and to foster credibility of information, whilst respecting confidentiality of journalistic sources. Moreover, it is important to ensure consistency with already existing enforcement mechanisms, such as those in the area of electronic communications or media and with independent regulatory structures in these fields as defined by Union and national law.***
- (70) The provision of online advertising generally involves several actors, including intermediary services that connect publishers of advertising with advertisers. Codes of conducts should support and complement the transparency obligations relating to advertisement for online platforms and very large online platforms set out in this Regulation in order to provide for flexible and effective mechanisms to facilitate and enhance the compliance with those obligations, notably as concerns the modalities of the transmission of the relevant information. The involvement of a wide range of stakeholders should ensure that those codes of conduct are widely supported, technically sound, effective and offer the highest levels of user-friendliness to ensure that the transparency obligations achieve their objectives. ***The effectiveness of the codes of conduct should be regularly assessed. Unlike legislation, codes of conduct are not subject to democratic scrutiny and their compliance with fundamental rights is not subject to judicial review. In order to enhance accountability, participation and transparency, procedural safeguards for drawing up codes of conduct are needed. Before initiating or facilitating the drawing-up or the revision of codes of conduct, the Commission may invite where appropriate, the Fundamental Rights Agency or the European Data Protection Supervisor to express their opinion.***
- (71) In case of extraordinary circumstances affecting public security or public health, the Commission may initiate the drawing up of **voluntary** crisis protocols to coordinate a rapid, collective and cross-border response in the online environment. Extraordinary circumstances may entail any unforeseeable event, such as earthquakes, hurricanes, pandemics and other serious cross-border threats to public health, war and acts of terrorism, where, for example, online platforms may be misused for the rapid spread of illegal content or disinformation or where the need arises for rapid dissemination of reliable information. In light of the important role of very large online platforms in disseminating information in our societies and across borders, such platforms should be

encouraged in drawing up and applying specific crisis protocols. Such crisis protocols should be activated only for a limited period of time and the measures adopted should also be limited to what is strictly necessary to address the extraordinary circumstance. Those measures should be consistent with this Regulation, and should not amount to a general obligation for the participating very large online platforms to monitor the information which they transmit or store, nor actively to seek facts or circumstances indicating illegal content.

- (72) ~~The task of ensuring~~ ***In order to ensure*** adequate oversight and enforcement of the obligations laid down in this Regulation should in principle be attributed to the Member States. To this end, they should ~~appoint~~ ***designate*** at least one authority with the task to apply and enforce this Regulation. Member States should however be able to entrust more than one competent authority, with specific supervisory or enforcement tasks and competences concerning the application of this Regulation, for example for specific sectors, such as electronic communications' regulators, media regulators or consumer protection authorities, reflecting their domestic constitutional, organisational and administrative structure.
- (73) Given the cross-border nature of the services at stake and the horizontal range of obligations introduced by this Regulation, the authority appointed with the task of supervising the application and, where necessary, enforcing this Regulation should be identified as a Digital Services Coordinator in each Member State. Where more than one competent authority is appointed to apply and enforce this Regulation, only one authority in that Member State should be ~~identified~~ ***designated*** as a Digital Services Coordinator. The Digital Services Coordinator should act as the single contact point with regard to all matters related to the application of this Regulation for the Commission, the Board, the Digital Services Coordinators of other Member States, as well as for other competent authorities of the Member State in question. In particular, where several competent authorities are entrusted with tasks under this Regulation in a given Member State, the Digital Services Coordinator should coordinate and cooperate with those authorities in accordance with the national law setting their respective tasks, and should ensure effective involvement of all relevant authorities in the supervision and enforcement at Union level.
- (74) The Digital Services Coordinator, as well as other competent authorities designated under this Regulation, play a crucial role in ensuring the effectiveness of the rights and obligations laid down in this Regulation and the achievement of its objectives. Accordingly, it is necessary to ensure that those authorities ***have the necessary financial and human resources to carry out their tasks under this Regulation. It is also necessary to ensure that those authorities*** act in complete independence from private and public bodies, without the obligation or possibility to seek or receive instructions, including from the government, and without prejudice to the specific duties to cooperate with other competent authorities, the Digital Services Coordinators, the Board and the Commission. On the other hand, the independence of these authorities should not mean that they cannot be subject, in accordance with national constitutions and without endangering the achievement of the objectives of this Regulation, to national control or monitoring mechanisms regarding their financial expenditure or to judicial review, or that they should not have the possibility to consult other national authorities, including law enforcement authorities or crisis management authorities, where appropriate.
- (75) Member States can designate an existing national authority with the function of the Digital Services Coordinator, or with specific tasks to ~~apply~~ ***supervise the application*** and enforce this Regulation, provided that any such appointed authority

complies with the requirements laid down in this Regulation, such as in relation to its independence. Moreover, Member States are in principle not precluded from merging functions within an existing authority, in accordance with Union law. The measures to that effect may include, inter alia, the preclusion to dismiss the President or a board member of a collegiate body of an existing authority before the expiry of their terms of office, on the sole ground that an institutional reform has taken place involving the merger of different functions within one authority, in the absence of any rules guaranteeing that such dismissals do not jeopardise the independence and impartiality of such members.

- (76) In the absence of a general requirement for providers of intermediary services to ensure a physical presence within the territory of one of the Member States, there is a need to ensure clarity under which Member State's jurisdiction those providers fall for the purposes of enforcing the rules laid down in ~~Chapters III and IV~~ **this Regulation** by the national competent authorities. A provider should be under the jurisdiction of the Member State where its main establishment is located, that is, where the provider has its head office or registered office within which the principal financial functions and operational control are exercised. In respect of providers that do not have an establishment in the Union but that offer services in the Union and therefore fall within the scope of this Regulation, the Member State where those providers appointed their legal representative should have jurisdiction, considering the function of legal representatives under this Regulation. In the interest of the effective application of this Regulation, all Member States should, however, have jurisdiction in respect of providers that failed to designate a legal representative, provided that the principle of *ne bis in idem* is respected. To that aim, each Member State that exercises jurisdiction in respect of such providers should, without undue delay, inform all other Member States of the measures they have taken in the exercise of that jurisdiction.
- (77) Member States should provide the Digital Services Coordinator, and any other competent authority designated under this Regulation, with sufficient powers and means to ensure effective investigation and enforcement. Digital Services Coordinators should in particular be able to ***adopt proportionate interim measures in case of risk of serious harm, as well as to*** search for and obtain information which is located in its territory, including in the context of joint investigations, with due regard to the fact that oversight and enforcement measures concerning a provider under the jurisdiction of another Member State should be adopted by the Digital Services Coordinator of that other Member State, where relevant in accordance with the procedures relating to cross-border cooperation.
- (78) Member States should set out in their national law, in accordance with Union law and in particular this Regulation and the Charter, the detailed conditions and limits for the exercise of the investigatory and enforcement powers of their Digital Services Coordinators, and other competent authorities where relevant, under this Regulation. ***In order to ensure consistent and uniform application of this Regulation, the Commission should adopt guidance on the rules and procedures related to the powers of Digital Services Coordinators.***
- (79) In the course of the exercise of those powers, the competent authorities should comply with the applicable national rules regarding procedures and matters such as the need for a prior judicial authorisation to enter certain premises and legal professional privilege. Those provisions should in particular ensure respect for the fundamental rights to an effective remedy and to a fair trial, including the rights of defence, and, the right to respect for private life. In this regard, the guarantees provided for in relation to the proceedings of the Commission pursuant to this Regulation could serve as an

appropriate point of reference. A prior, fair and impartial procedure should be guaranteed before taking any final decision, including the right to be heard of the persons concerned, and the right to have access to the file, while respecting confidentiality and professional and business secrecy, as well as the obligation to give meaningful reasons for the decisions. This should not preclude the taking of measures, however, in duly substantiated cases of urgency and subject to appropriate conditions and procedural arrangements. The exercise of powers should also be proportionate to, inter alia the nature and the overall actual or potential harm caused by the infringement or suspected infringement. The competent authorities should ~~in principle~~ take all relevant facts and circumstances of the case into account, including information gathered by competent authorities in other Member States.

- (80) Member States should ensure that violations of the obligations laid down in this Regulation can be sanctioned in a manner that is effective, proportionate and dissuasive, taking into account the nature, gravity, recurrence and duration of the violation, in view of the public interest pursued, the scope and kind of activities carried out, as well as the economic capacity of the infringer. In particular, penalties should take into account whether the provider of intermediary services concerned systematically or recurrently fails to comply with its obligations stemming from this Regulation, as well as, where relevant, *the number of recipients affected, the intentional or negligent character of the infringement and* whether the provider is active in several Member States. *The Commission should issue guidance to Member States concerning the criteria and conditions to impose proportionate penalties.*
- (81) In order to ensure effective enforcement of *the obligations, laid down in* this Regulation, individuals or representative organisations should be able to lodge any complaint related to compliance with this Regulation with the Digital Services Coordinator in the territory where they received the service, without prejudice to this Regulation's rules on jurisdiction. Complaints should provide a faithful overview of concerns related to a particular intermediary service provider's compliance and could also inform the Digital Services Coordinator of any more cross-cutting issues. The Digital Services Coordinator should involve other national competent authorities as well as the Digital Services Coordinator of another Member State, and in particular the one of the Member State where the provider of intermediary services concerned is established, if the issue requires cross-border cooperation. *The Digital Services Coordinator of establishment should assess the complaint in a timely manner and inform the Digital Services Coordinator of the Member State where the recipient resides or is established, on how the complaint has been handled.*
- (82) Member States should ensure that Digital Services Coordinators can take measures that are effective in addressing and proportionate to certain particularly serious and persistent infringements *of this Regulation*. Especially where those measures can affect the rights and interests of third parties, as may be the case in particular where the access to online interfaces is restricted, it is appropriate to require that the measures be ordered by a competent judicial authority at the Digital Service Coordinators' request and are subject to additional safeguards. In particular, third parties potentially affected should be afforded the opportunity to be heard and such orders should only be issued when powers to take such measures as provided by other acts of Union law or by national law, for instance to protect collective interests of consumers, to ensure the prompt removal of web pages containing or disseminating child pornography, or to disable access to services are being used by a third party to infringe an intellectual property right, are not reasonably available.

- (83) Such an order to restrict access should not go beyond what is necessary to achieve its objective. For that purpose, it should be temporary and be addressed in principle to a provider of intermediary services, such as the relevant hosting service provider, internet service provider or domain registry or registrar, which is in a reasonable position to achieve that objective without unduly restricting access to lawful information.
- (83a) ***Without prejudice to the provisions on the exemption from liability, provided for in this Regulation as regards the information transmitted or stored at the request of a recipient of the service, providers of intermediary services should be liable for the infringement of their obligations laid down in this Regulation. Recipients of the service and organisations representing them should be entitled to have access to proportionate and effective remedies. They should in particular have the right to seek, in accordance with national or Union law, compensation from those providers of intermediary services against any direct damage or loss suffered due to an infringement by providers of intermediary services of obligations established under this Regulation.***
- (84) The Digital Services Coordinator should regularly publish a report ***in a standardised and machine-readable format*** on the activities carried out under this Regulation. Given that the Digital Services Coordinator is also made aware of orders to take action against illegal content or to provide information regulated by this Regulation through the common information sharing system, ***based on the Internal Market Information system***, the Digital Services Coordinator should include in its annual report the number and categories of these orders addressed to providers of intermediary services issued by judicial and administrative authorities in its Member State.
- (85) Where a Digital Services Coordinator requests another Digital Services Coordinator to take action, the requesting Digital Services Coordinator, or the Board in case it issued a recommendation to assess issues involving more than three Member States, should be able to refer the matter to the Commission in case of any disagreement as to the assessments or the measures taken or proposed or a failure to adopt any measures. The Commission, on the basis of the information made available by the concerned authorities, should accordingly be able to request the competent Digital Services Coordinator to re-assess the matter and take the necessary measures to ensure compliance within a defined time period. This possibility is without prejudice to the Commission's general duty to oversee the application of, and where necessary enforce, Union law under the control of the Court of Justice of the European Union in accordance with the Treaties. A failure by the Digital Services Coordinator of establishment to take any measures pursuant to such a request may also lead to the Commission's intervention under Section 3 of Chapter IV of this Regulation, where the suspected infringer is a very large online platform.
- (86) In order to facilitate cross-border supervision and investigations involving several Member States, the Digital Services Coordinators should be able to participate, on a permanent or temporary basis, in joint oversight and investigation activities concerning matters covered by this Regulation ***on the basis of an agreement between the Member States concerned, and in the absence of agreement, under the authority of the Digital Services Coordinator of the Member State of establishment.*** Those activities may include other competent authorities and may cover a variety of issues, ranging from coordinated data gathering exercises to requests for information or inspections of premises, within the limits and scope of powers available to each participating authority. The Board may be requested to provide advice in relation to those activities, for example by proposing roadmaps and timelines for activities or proposing ad-hoc task-forces with participation of the authorities involved.

- (87) In view of the particular challenges that may emerge in relation to assessing and ensuring a very large online platform's compliance, for instance relating to the scale or complexity of a suspected infringement or the need for particular expertise or capabilities at Union level, Digital Services Coordinators should have the possibility to request, on a voluntary basis, the Commission to intervene and exercise its investigatory and enforcement powers under this Regulation.
- (88) In order to ensure a consistent application of this Regulation, it is necessary to set up an independent advisory group at Union level, which should support the Commission and help coordinate the actions of Digital Services Coordinators. That European Board for Digital Services should consist of the Digital Services Coordinators, without prejudice to the possibility for Digital Services Coordinators to invite in its meetings or appoint ad hoc delegates from other competent authorities entrusted with specific tasks under this Regulation, where that is required pursuant to their national allocation of tasks and competences. In case of multiple participants from one Member State, the voting right should remain limited to one representative per Member State. ***The rules of procedure of the Board should ensure respecting the confidentiality of the information.***
- (89) The Board should contribute to achieving a common Union perspective on the consistent application of this Regulation and to cooperation among competent authorities, including by advising the Commission and the Digital Services Coordinators about appropriate investigation and enforcement measures, in particular vis à vis very large online platforms. The Board should also contribute to the drafting of relevant templates and codes of conduct and analyse emerging general trends in the development of digital services in the Union.
- (90) For that purpose, the Board should be able to adopt opinions, requests and recommendations addressed to Digital Services Coordinators or other competent national authorities. While not legally binding, the decision to deviate therefrom should be properly explained and could be taken into account by the Commission in assessing the compliance of the Member State concerned with this Regulation. ***The Board should draw up an annual report regarding its activities.***
- (91) The Board should bring together the representatives of the Digital Services Coordinators and possible other competent authorities under the chairmanship of the Commission, with a view to ensuring an assessment of matters submitted to it in a fully European dimension. In view of possible cross-cutting elements that may be of relevance for other regulatory frameworks at Union level, the Board should be allowed to cooperate with other Union bodies, offices, agencies and advisory groups with responsibilities in fields such as equality, including equality between women and men, and non-discrimination, gender equality and non-discrimination, ***eradication of all forms of violence against women and girls and other forms of gender-based violence***, data protection, ***respect for intellectual property, competition***, electronic communications, audiovisual services, ***market surveillance***, detection and investigation of frauds against the EU budget as regards custom duties, or consumer protection, as necessary for the performance of its tasks.
- (92) The Commission, through the Chair, should participate in the Board without voting rights. Through the Chair, the Commission should ensure that the agenda of the meetings is set in accordance with the requests of the members of the Board as laid down in the rules of procedure and in compliance with the duties of the Board laid down in this Regulation.
- (93) In view of the need to ensure support for the Board's activities, the Board should be able to rely on the expertise and human resources of the Commission and of the competent

national authorities. The specific operational arrangements for the internal functioning of the Board should be further specified in the rules of procedure of the Board.

- (94) Given the importance of very large online platforms, in view of their reach and impact, their failure to comply with the specific obligations applicable to them may affect a substantial number of recipients of the services across different Member States and may cause large societal harms, while such failures may also be particularly complex to identify and address.
- (95) In order to address those public policy concerns it is therefore necessary to provide for a common system of enhanced supervision and enforcement at Union level. Once an infringement of one of the provisions that solely apply to very large online platforms has been identified, for instance pursuant to individual or joint investigations, auditing or complaints, the Digital Services Coordinator of establishment, upon its own initiative or upon the Board's advice, should monitor any subsequent measure taken by the very large online platform concerned as set out in its action plan. That Digital Services Coordinator should be able to ask, where appropriate, for an additional, specific audit to be carried out, on a voluntary basis, to establish whether those measures are sufficient to address the infringement. At the end of that procedure, it should inform the Board, the Commission and the platform concerned of its views on whether or not that platform addressed the infringement, specifying in particular the relevant conduct and its assessment of any measures taken. The Digital Services Coordinator should perform its role under this common system in a timely manner and taking utmost account of any opinions and other advice of the Board.
- (96) Where the infringement of the provision that solely applies to very large online platforms is not effectively addressed by that platform pursuant to the action plan, only the Commission ~~may~~ **should**, on its own initiative or upon advice of the Board, ~~decide to further investigate~~ **initiate further investigation on** the infringement concerned and the measures that the platform has subsequently taken, to the exclusion of the Digital Services Coordinator of establishment. After having conducted the necessary investigations, the Commission should be able to issue decisions finding an infringement and imposing sanctions in respect of very large online platforms where that is justified. It should also ~~have such a possibility to intervene~~ in cross-border situations where the Digital Services Coordinator of establishment did not take any measures despite the Commission's request, or in situations where the Digital Services Coordinator of establishment itself requested for the Commission to intervene, in respect of an infringement of any other provision of this Regulation committed by a very large online platform. ***The Commission should initiate proceedings in view of the possible adoption of decisions in respect of the relevant conduct by the very large online platform for example where that platform is suspected of having infringed this Regulation including where the platform has been found to not implement the operational recommendations from the independent audit that has been endorsed by Digital Services Coordinator of establishment and where the Digital Services Coordinator of establishment did not take any investigatory or enforcement measures.***
- (97) ~~The Commission should remain free to decide whether or not it wishes to intervene in any of the situations where it is empowered to do so under this Regulation.~~ Once the Commission initiated the proceedings, the Digital Services Coordinators of establishment concerned should be precluded from exercising their investigatory and enforcement powers in respect of the relevant conduct of the very large online platform concerned, so as to avoid duplication, inconsistencies and risks from the viewpoint of the principle of *ne bis in idem*. However, in the interest of effectiveness, those Digital

Services Coordinators should not be precluded from exercising their powers either to assist the Commission, at its request in the performance of its supervisory tasks, or in respect of other conduct, including conduct by the same very large online platform that is suspected to constitute a new infringement. Those Digital Services Coordinators, as well as the Board and other Digital Services Coordinators where relevant, should provide the Commission with all necessary information and assistance to allow it to perform its tasks effectively, whilst conversely the Commission should keep them informed on the exercise of its powers as appropriate. In that regard, the Commission should, where appropriate, take account of any relevant assessments carried out by the Board or by the Digital Services Coordinators concerned and of any relevant evidence and information gathered by them, without prejudice to the Commission's powers and responsibility to carry out additional investigations as necessary.

- (97a) ***The Commission should ensure that it is independent and impartial in its decision making in regards to both Digital Services Coordinators and providers of services under this Regulation.***
- (98) In view of both the particular challenges that may arise in seeking to ensure compliance by very large online platforms and the importance of doing so effectively, considering their size and impact and the harms that they may cause, the Commission should have strong investigative and enforcement powers to allow it to investigate, enforce and monitor certain of the rules laid down in this Regulation, in full respect of the principle of proportionality and the rights and interests of the affected parties.
- (99) In particular, the Commission, should have access to any relevant documents, data and information necessary to open and conduct investigations and to monitor the compliance with the relevant obligations laid down in this Regulation, irrespective of who possesses the documents, data or information in question, and regardless of their form or format, their storage medium, or the precise place where they are stored. The Commission should be able to directly require that the very large online platform concerned or relevant third parties, or ~~that~~ individuals, provide any relevant evidence, data and information. In addition, the Commission should be able to request any relevant information from any public authority, body or agency within the Member State, or from any natural person or legal person for the purpose of this Regulation. The Commission should be empowered to require access to, and explanations relating to, data-bases and algorithms of relevant persons, and to interview, with their consent, any persons who may be in possession of useful information and to record the statements made. The Commission should also be empowered to undertake such inspections as are necessary to enforce the relevant provisions of this Regulation. Those investigatory powers aim to complement the Commission's possibility to ask Digital Services Coordinators and other Member States' authorities for assistance, for instance by providing information or in the exercise of those powers.
- (100) Compliance with the relevant obligations imposed under this Regulation should be enforceable by means of fines and periodic penalty payments. To that end, appropriate levels of fines and periodic penalty payments should also be laid down for non-compliance with the obligations and breach of the procedural rules, subject to appropriate limitation periods. ***The Commission should in particular ensure that the penalties are effective, proportionate and dissuasive, taking into account the nature, gravity, recurrence and duration of the violation, in view of the public interest pursued, the scope and nature of activities carried out, the number of recipients affected, the intentional or negligent character of the infringement as well as the economic capacity of the infringer.***



- (101) The very large online platforms concerned and other persons subject to the exercise of the Commission's powers whose interests may be affected by a decision should be given the opportunity of submitting their observations beforehand, and the decisions taken should be widely publicised. While ensuring the rights of defence of the parties concerned, in particular, the right of access to the file, it is essential that confidential information be protected. Furthermore, while respecting the confidentiality of the information, the Commission should ensure that any information relied on for the purpose of its decision is disclosed to an extent that allows the addressee of the decision to understand the facts and considerations that lead up to the decision.
- (102) ***The Commission should carry out a general evaluation of this Regulation and report to the European Parliament, the Council and the European Economic and Social Committee. This report should address in particular the definition of very large online platforms and the number of average monthly active recipients of the service. This report should also address the implementation of codes of conduct, as well as the obligation to designate a representative, established in the Union and assess the effect of similar obligations imposed by third countries on European service providers operating abroad. In particular, the Commissions should assess any impact of the costs to European service providers of any similar requirements, including to designate a legal representative, introduced by third countries and any new barriers to non-Union market access after the adoption of this Regulation. The Commission should also assess the impact on the ability of European businesses and consumers to access and buy products and services from outside the Union.*** In the interest of effectiveness and efficiency, in addition to the general evaluation of the Regulation, to be performed within ~~five~~ **three** years of entry into force, after the initial start-up phase and on the basis of the first three years of application of this Regulation, the Commission should also perform an evaluation of the activities of the Board and on its structure.
- (103) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council<sup>2</sup>.
- (104) In order to fulfil the objectives of this Regulation, the power to adopt acts in accordance with Article 290 of the Treaty should be delegated to the Commission to supplement this Regulation. In particular, delegated acts should be adopted in respect of criteria for identification of very large online platforms and of technical specifications for access requests. It is of particular importance that the Commission carries out appropriate consultations and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.
- (105) This Regulation respects the fundamental rights recognised by the Charter and the fundamental rights constituting general principles of Union law. Accordingly, this Regulation should be interpreted and applied in accordance with those fundamental rights, including the freedom of expression and information, as well as the freedom and pluralism of the media. When exercising the powers set out in this Regulation, all public authorities involved should achieve, in situations where the relevant fundamental rights conflict, a fair balance between the rights concerned, in accordance with the principle of proportionality.

- (106) Since the objective of this Regulation, namely the proper functioning of the internal market and to ensure a safe, predictable and trusted online environment in which the fundamental rights enshrined in the Charter are duly protected, cannot be sufficiently achieved by the Member States because they cannot achieve the necessary harmonisation and cooperation by acting alone, but can rather, by reason of its territorial and personal scope, be better achieved at the Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective,

## Chapter I – General provisions

### Article 1

#### *Subject matter ~~and scope~~*

1. This Regulation lays down harmonised rules on the provision of intermediary services in the internal market. In particular, it establishes:
  - (a) a framework for the conditional exemption from liability of providers of intermediary services;
  - (b) rules on specific due diligence obligations tailored to certain specific categories of providers of intermediary services;
  - (ba) ~~rules on transparency, accountability and respect for fundamental rights as regards the design and implementation of voluntary, self- and co-regulatory measures.~~
  - (c) rules on the implementation and enforcement *of the requirements set out in* this Regulation, including as regards the cooperation of and coordination between the competent authorities.
2. The aims of this Regulation are to:
  - (a) contribute to the proper functioning of the internal market for intermediary services;
  - (b) set out ~~uniform~~ *harmonised* rules for a safe, *accessible*, predictable and trusted online environment, where fundamental rights enshrined in the Charter are effectively protected.
  - (ba) *promote a high level of consumer protection and contribute to increased consumer choice while facilitating innovation, support digital transition and encourage economic growth within the internal market.*

*Article 1a*  
*Scope*

1. *This Regulation shall apply to intermediary services provided to recipients of the service that have their place of establishment or residence in the Union, irrespective of the place of establishment of the providers of those services.*
2. *This Regulation shall not apply to any service that is not an intermediary service or to any requirements imposed in respect of such a service, irrespective of whether the service is provided through the use of an intermediary service.*
3. *This Regulation is without prejudice to the rules laid down by the following:*
  - (a) *Directive 2000/31/EC;*
  - (b) *Directive 2010/13/EC;*
  - (c) *Union law on copyright and related rights, in particular Directive (EU) 2019/790 on copyright and related rights in the Digital Single Market;*
  - (d) *Regulation (EU) ~~...~~/... 2021/784 on ~~preventing~~ addressing the dissemination of terrorist content online;*
  - (e) *Regulation (EU) ..../....on European Production and Preservation Orders for electronic evidence in criminal matters and Directive (EU) ..../....laying down harmonised rules on the appointment of legal representatives for the purpose of gathering evidence in criminal proceedings [e-evidence once adopted]*
  - (f) *Regulation (EU) 2019/1148;*
  - (g) *Regulation (EU) 2019/1150;*
  - (g) *Union law on consumer protection and product safety, including Regulation (EU) 2017/2394, Regulation (EU) 2019/1020 and Directive 2001/95/EC on general product safety;*
  - (h) *Union law on the protection of personal data, in particular Regulation (EU) 2016/679 and Directive 2002/58/EC.*
  - (j) *Directive (EU) 2019/882;*
  - (k) *Directive (EU) 2018/1972;*
  - (l) *Directive 2013/11/EU.*
4. *By [12 months after the entry into force of this Regulation] the Commission shall publish guidelines with regard to the relationship between this Regulation and the legal acts referred to in Article 1a (3).*

*Article 2*  
*Definitions*

For the purpose of this Regulation, the following definitions shall apply:

- (a) ‘information society services’ means services ~~within the meaning of as~~ **defined in** Article 1(1)(b) of Directive (EU) 2015/1535;
- (b) ‘recipient of the service’ means any natural or legal person who uses the relevant intermediary service ***in order to seek information or to make it accessible***;
- (c) ‘consumer’ means any natural person who is acting for purposes which are outside his or her trade, business, ***craft***, or profession;
- (d) ‘to offer services in the Union’ means enabling legal or natural persons in one or more Member States to use the services of a provider of information society services which has a substantial connection to the Union; ~~such a substantial connection is deemed to exist where the provider has an establishment in the Union; in the absence of such an establishment, the assessment of a substantial connection is based on specific factual criteria, such as:~~
  - ~~a significant number of users in one or more Member States; or~~
  - ~~the targeting of activities towards one or more Member States.~~
- (da) ‘***substantial connection to the Union***’ means the connection of a provider with one or more Member States resulting either from its establishment in the Union, or in the absence of such an establishment, from the fact that the provider directs its activities towards one or more Member States;
- (e) ‘trader’ means any natural person, or any legal person irrespective of whether privately or publicly owned, who is acting, including through any person acting in his or her name or on his or her behalf, for purposes ***directly*** relating to his or her trade, business, craft or profession;
- (f) ‘intermediary service’ means one of the following services:
  - a ‘mere conduit’ service that consists of the transmission in a communication network of information provided by a recipient of the service, or the provision of access to a communication network ***including technical auxiliary functional services***;
  - a ‘caching’ service that consists of the transmission in a communication network of information provided by a recipient of the service, involving the automatic, intermediate and temporary storage of that information, ***performed*** for the sole purpose of making more efficient the information's onward transmission to other recipients upon their request;
  - a ‘hosting’ service that consists of the storage of information provided by, and at the request of, a recipient of the service;
- (g) ‘illegal content’ means any information ***or activity, including the sale of products or provision of services*** which, ~~in itself or by its reference to an activity, including the sale of products or provision of services~~ is not in compliance with Union law or

the law of a Member State, irrespective of the precise subject matter or nature of that law;

- (h) ‘online platform’ means a provider of a hosting service which, at the request of a recipient of the service, stores and disseminates to the public information, unless that activity is a minor *or a* purely ancillary feature of another *service or functionality of the principal* service and, for objective and technical reasons, cannot be used without that other service, and the integration of the feature *or functionality* into the other service is not a means to circumvent the applicability of this Regulation.
- (i) ‘dissemination to the public’ means making information available, at the request of the recipient of the service who provided the information, to a potentially unlimited number of third parties;
- (j) ‘distance contract’ means a contract within the meaning of Article 2(7) of Directive 2011/83/EU;
- (k) ‘online interface’ means any software, including a website or a part thereof, and applications, including mobile applications *which enables the recipients of the service to access and interact with the relevant intermediary service*;
- (ka) ‘trusted flagger’ means an entity that has been awarded such status by a Digital Services Coordinator;*
- (l) ‘Digital Services Coordinator of establishment’ means the Digital Services Coordinator of the Member State where the provider of an intermediary service is established or its legal representative resides or is established;
- (m) ‘Digital Services Coordinator of destination’ means the Digital Services Coordinator of a Member State where the intermediary service is provided;
- (n) ‘advertisement’ means information designed *and disseminated* to promote the message of a legal or natural person, irrespective of whether to achieve commercial or non-commercial purposes, and displayed by an online platform on its online interface against remuneration specifically *in exchange* for promoting that ~~information~~ *message*;
- (na) ‘remuneration’ means economic compensation consisting of direct or indirect payment for the service provided, including where the intermediary service provider is not directly compensated by the recipient of the service or where the recipient of the service provides data to the service provider, except where such data is collected for the sole purpose of meeting legal requirements;*
- (o) ‘recommender system’ means a fully or partially automated system used by an online platform to suggest, *prioritise or curate* in its online interface specific information to recipients of the service, including as a result of a search initiated by the recipient or otherwise determining the relative order or prominence of information displayed;

- (p) ‘content moderation’ means the activities, *either automated or not automated*, undertaken by providers of intermediary services 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, *delisting, demonetisation* or removal thereof, or the recipients’ ability to provide that information, such as the termination or suspension of a recipient’s account;
- (q) ‘terms and conditions’ means all terms and conditions or specifications, *by the service provider* irrespective of their name or form, which govern the contractual relationship between the provider of intermediary services and the recipients of the services;
- (qa) ‘*persons with disabilities*’ means persons with disabilities within the meaning of Article 3(1) of Directive (EU) 2019/882;

## Chapter II – Liability of providers of intermediary services

### Article 3 ‘Mere conduit’

1. Where an information society service is provided that consists of the transmission in a communication network of information provided by a recipient of the service, or the provision of access to a communication network, the service provider shall not be liable for the information transmitted, on condition that the provider:
  - (a) does not initiate the transmission;
  - (b) does not select the receiver of the transmission; and
  - (c) does not select or modify the information contained in the transmission.
2. The acts of transmission and of provision of access referred to in paragraph 1 include the automatic, intermediate and transient storage of the information transmitted in so far as this takes place for the sole purpose of carrying out the transmission in the communication network, and provided that the information is not stored for any period longer than is reasonably necessary for the transmission.
3. This Article shall not affect the possibility for a ~~court~~ *judicial* or administrative authority, in accordance with Member States’ legal systems, of requiring the service provider to terminate or prevent an infringement.

### Article 4 ‘Caching’

1. Where an information society service is provided that consists of the transmission in a communication network of information provided by a recipient of the service, the service provider shall not be liable for the automatic, intermediate and temporary storage of that information, performed for the sole purpose of making more efficient *or secure* the

information's onward transmission to other recipients of the service upon their request, on condition *that the provider* :

- (a) ~~the provider~~ does not modify the information;
  - (b) ~~the provider~~ complies with conditions on access to the information;
  - (c) ~~the provider~~ complies with rules regarding the updating of the information, specified in a manner widely recognised and used by industry;
  - (d) ~~the provider~~ does not interfere with the lawful use of technology, widely recognised and used by industry, to obtain data on the use of the information; and
  - (e) ~~the provider~~ acts expeditiously to remove or to disable access to the information it has stored upon obtaining actual knowledge of the fact that the information at the initial source of the transmission has been removed from the network, or access to it has been disabled, or that a court or an administrative authority has ordered such removal or disablement.
2. This Article shall not affect the possibility for a ~~court~~ *judicial* or administrative authority, in accordance with Member States' legal systems, of requiring the service provider to terminate or prevent an infringement.

#### *Article 5* *Hosting*

1. Where an information society service is provided that consists of the storage of information provided by a recipient of the service the service provider shall not be liable for the information stored at the request of a recipient of the service on condition that the provider:
- (a) does not have actual knowledge of illegal activity or illegal content and, as regards claims for damages, is not aware of facts or circumstances from which the illegal activity or illegal content is apparent; or
  - (b) upon obtaining such knowledge or awareness, acts expeditiously to remove or to disable access to the illegal content.
2. Paragraph 1 shall not apply where the recipient of the service is acting under the authority or the control of the provider.
3. Paragraph 1 shall not apply with respect to liability under consumer protection law of online platforms allowing consumers to conclude distance contracts with traders, where such an online platform presents the specific item of information or otherwise enables the specific transaction at issue in a way that would lead ~~an average and reasonably well-informed~~ *a* consumer to believe that the information, or the product or service that is the object of the transaction, is provided either by the online platform itself or by a recipient of the service who is acting under its authority or control.

4. This Article shall not affect the possibility for a ~~court~~ **judicial** or administrative authority, in accordance with Member States' legal systems, of requiring the service provider to terminate or prevent an infringement.

#### Article 6

##### *Voluntary own-initiative investigations and legal compliance*

1. Providers of intermediary services shall not be deemed ineligible for the exemptions from liability referred to in Articles 3, 4, and 5 solely because they carry out voluntary own-initiative investigations or **take measures** ~~other activities~~ aimed at detecting, identifying and removing, or disabling of access to, illegal content or take the necessary measures to comply with the requirements of **national and** Union law, including **the Charter and the requirements** ~~those~~ set out in this Regulation.
  - 1a. *Providers of intermediary services shall ensure that voluntary own-initiative investigations carried out and measures taken pursuant to paragraph 1 shall be effective and specific. Such own initiative investigations and measures shall be accompanied by appropriate safeguards, such as human oversight, documentation, or any additional measure to ensure and demonstrate that those investigations and measures are accurate, non-discriminatory, proportionate, transparent and do not lead to over-removal of content. Providers of intermediary services shall make best efforts to ensure that where automated means are used, the technology is sufficiently reliable to limit to the maximum extent possible the rate of errors where information is wrongly considered as illegal content.*

#### Article 7

##### *No general monitoring or active fact-finding obligations*

1. No general obligation to monitor, **neither de jure, nor de facto, through automated or non-automated means**, the information which providers of intermediary services transmit or store, nor actively to seek facts or circumstances indicating illegal activity **or for monitoring the behaviour of natural persons** shall be imposed on those providers.
  - 1a. *Providers of intermediary services shall not be obliged to use automated tools for content moderation or for monitoring the behaviour of natural persons.*
  - 1b. *Member States shall not prevent providers of intermediary services from offering end-to-end encrypted services.*
  - 1c. *Member States shall not impose a general obligation on providers of intermediary services to limit the anonymous use of their services. Member States shall not oblige providers of intermediary services to generally and indiscriminately retain personal data of the recipients of their services. Any targeted retention of a specific recipient's data shall be ordered by a judicial authority in accordance with Union or national law.*



Article 8  
*Orders to act against illegal content*

1. Providers of intermediary services shall, upon the receipt *via a secure communications channel* of an order to act against ~~a one or more~~ specific items of illegal content, *received from and* 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, without undue delay, specifying the actions taken and the moment when the actions ~~was~~ *were* taken.
2. Member States shall ensure that the orders referred to in paragraph 1 meet the following conditions:
  - (a) the orders contains the following elements:
    - *a reference to the legal basis for the order;*
    - *a sufficiently detailed* statement of reasons explaining why the information is illegal content, by reference to the specific provision of Union or national law *in conformity with Union law;*
    - *identification of the issuing authority including the date, time stamp and electronic signature of the authority, that allows the recipient to authenticate the order and contact details of a person of contact within the said authority;*
    - *a clear indication of the exact electronic location of that information, such as the exact URL or URLs where appropriate or when the exact electronic location is not precisely identifiable;* one or more exact uniform resource locators and, where necessary, additional information enabling the identification of the illegal content concerned;
    - *easily understandable* information about redress *mechanisms* available to the provider of the service and to the recipient of the service who provided the content, *including the deadlines for appeal;*
    - *where necessary and proportionate, the decision not to disclose information about the removal of or disabling of access to the content for reasons of public security, such as the prevention, investigation, detection and prosecution of serious crime, not exceeding six weeks from that decision;*
  - (b) the territorial scope of the *order* on the basis of the applicable rules of Union and national law *in conformity with Union law*, including the Charter, and, where relevant, general principles of international law, does not exceed what is strictly necessary to achieve its objective; *the territorial scope of the order shall be limited to the territory of the Member State issuing the order unless the illegality of the content derives directly from Union law or the rights at stake require a wider territorial scope, in accordance with Union and international law;*

(c) the order is drafted in the language declared by the provider and is sent to the point of contact, appointed by the provider, in accordance with Article 10 *or in one of the official languages of the Member State that issues the order against the specific item of illegal content; in such case, the point of contact of the service provider may request the competent authority to provide translation into the language declared by the provider;*

(ca) *the order is in compliance with Article 3 of Directive 2000/31/EC;*

(cb) *where more than one provider of intermediary services is responsible for hosting the specific items of illegal content, the order is issued to the most appropriate provider that has the technical and operational ability to act against those specific items.*

2a. *The Commission shall adopt implementing acts in accordance with Article 70, after consulting the Board, laying down a specific template and form for the orders, referred to in paragraph 1.*

2b. *Providers of intermediary services who received an order shall have a right to an effective remedy. The Digital Services Coordinator of the Member State of establishment may choose to intervene on behalf of the provider in any redress, appeal or other legal processes in relation to the order.*

*The Digital Services Coordinator of the Member State of establishment may request the authority issuing the order to withdraw or repeal the order or adjust the territorial scope of the order to what is strictly necessary. Where such a request is refused, the Digital Services Coordinator of the Member State of establishment shall be entitled to seek the annulling, ceasing or adjustment of the effect of the order before the judicial authorities of the Member States issuing the order. Such proceedings shall be completed without undue delay.*

2c. *If the provider cannot comply with the removal order because it contains manifest errors or does not contain sufficient information for its execution, it shall, without undue delay, inform the judicial or administrative authority that issued the order asking for the necessary clarification.*

2d. *The authority issuing the order shall transmit that order and the information received from the provider of intermediary services as to the effect given to the order to the Digital Services Coordinator from the Member State of the issuing authority.*

3. The Digital Services Coordinator from the Member State of the judicial or administrative authority issuing the order shall, without undue delay, transmit a copy of the orders referred to in paragraph 1 to all other Digital Services Coordinators through the system established in accordance with Article 67.

4. The conditions and requirements laid down in this article shall be without prejudice to requirements under national criminal procedural law *and administrative procedural law* in conformity with Union law, *including the Charter. While acting in accordance with such laws, authorities shall not go beyond what is necessary in order to attain the objectives pursued.*

- 4a. *Member States shall ensure that the relevant authorities may, at the request of an applicant whose rights are infringed by illegal content, issue against the relevant provider of intermediary services an injunction order in accordance with this Article to remove or disable access to that content.*

*Article 9*  
*Orders to provide information*

1. Providers of intermediary services shall, upon receipt *via a secure communications channel* of an order to provide a specific item of information about one or more specific individual recipients of the service, *received from and* issued by the relevant national judicial or administrative authorities on the basis of the applicable Union or national law, in conformity with Union law, without undue delay the authority of issuing the order of its receipt and the effect given to the order.
2. Member States shall ensure that orders referred to in paragraph 1 meet the following conditions:
  - (a) the order contains the following elements:
    - *the identification details of the judicial or administrative authority issuing the order and authentication of the order by that authority, including the date, time stamp and electronic signature of the authority issuing the order to provide information;*
    - *a reference to the legal basis for the order;*
    - *a clear indication of the exact electronic location, an account name, or a unique identifier of the recipient on whom information is sought;*
    - *a sufficiently detailed 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 or national rules, unless such a statement cannot be provided for reasons related to the prevention, investigation, detection and prosecution of criminal offences;*
    - *where the information sought constitutes personal data within the meaning of Article 4, point (1), of Regulation (EU) 2016/679 or Article 3, point (1), of Directive (EU) 2016/680, a justification that the order is in accordance with applicable data protection law;*
    - *information about redress available to the provider and to the recipients of the service concerned including deadlines for appeal;*
    - *an indication on whether the provider should inform without undue delay the recipient of the service concerned, including information about the data being sought; where information is requested in the context of criminal proceedings, the request for that information shall be in compliance with Directive (EU) 2016/680, and the information to the recipient of the service concerned about that request may be delayed as long as necessary and proportionate to avoid obstructing the relevant criminal proceedings, taking into account the rights of the suspected and accused persons and without prejudice to defence rights and effective legal remedies. Such a request shall be duly justified, specify the duration of the obligation of confidentiality and shall be subject to periodic review.*

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

(c) the order is drafted in the language declared by the provider and is sent to the point of contact appointed by that provider, in accordance with Article 10 *or in one of the official languages of the Member State that issues the order against the item of illegal content; in such case, the point of contact may request the competent authority to provide translation into the language declared by the provider;*

**2a. *The Commission shall adopt implementing acts in accordance with Article 70, after consulting the Board, laying down specific template and form for the orders referred to in paragraph 1.***

**2b. *The provider of intermediary services who received an order shall have a right to an effective remedy. That right shall include the right to challenge the order before the judicial authorities of the Member State of the issuing competent authority, in particular where such an order is not in compliance with Article 3 of Directive 2000/31/EC. The Digital Services Coordinator of the Member State of establishment may choose to intervene on behalf of the provider in any redress, appeal or other legal proceedings in relation to the order.***

*The Digital Services Coordinator of the Member State of establishment may request the authority issuing the order to withdraw or repeal the order. Where such a request is refused, the Digital Services Coordinator of the Member State of establishment shall be entitled to seek the annulling, ceasing or adjustment of the effect of the order before the judicial of the Member States of the order. Such processing shall be completed without undue delay.*

**2c. *If the provider cannot comply with the order because it contains manifest errors or does not contain sufficient information to enable it to be executed, it shall, without undue delay, inform the judicial or administrative authority that issued that information order and request the necessary clarifications.***

**2d. *The authority issuing the order to provide a specific item of information shall transmit that order and the information received from the provider of intermediary services as to the effect given to the order to the Digital Services Coordinator from the Member State of the issuing authority.***

**3. The Digital Services Coordinator from the Member State of the national judicial or administrative authority issuing the order shall, without undue delay, transmit a copy of the order referred to in paragraph 1 to all Digital Services Coordinators through the system established in accordance with Article 67.**

**4. The conditions and requirements laid down in this article shall be without prejudice to requirements under national criminal procedural law *or administrative procedural law* in conformity with Union law.**

*Article 9a*  
*Effective remedies for recipients of the service*

1. *Recipients of the service whose content was removed according to Article 8 or whose information was sought according to Article 9 shall have the right to effective remedies against such orders, including, where applicable, restoration of content where such content has been in compliance with the terms and conditions, but has been erroneously considered as illegal by the service provider, without prejudice to remedies available under Directive (EU) 2016/680 and Regulation (EU) 2016/679.*
2. *Such right to an effective remedy shall be exercised before a judicial authority in the issuing Member State in accordance with national law and shall include the possibility to challenge the legality of the measure, including its necessity and proportionality.*
3. *Digital Services Coordinators shall develop national tools and guidance to recipients of the service as regards complaint and redress mechanisms applicable in their respective territory.*

### **Chapter III**

#### Due diligence obligations for a transparent, *accessible* and safe online environment

#### **SECTION 1**

#### **PROVISIONS APPLICABLE TO ALL PROVIDERS OF INTERMEDIARY SERVICES**

*Article 10*

*Points of contact for Member States' authorities, the Commission and the Board*

1. Providers of intermediary services shall *designate* a single point of contact *enabling them to communicate directly*, by electronic means, with Member States' authorities, the Commission and the Board referred to in Article 47 for the application of this Regulation.
2. Providers of intermediary services shall *communicate to the Member States' authorities, the Commission and the Board*, the information necessary to easily identify and communicate with their single points of contact, *including the name, the email address, the physical address and the telephone number, and shall ensure that the information is kept up to date.*
- 2a. *Providers of intermediary services may establish the same single point of contact for this Regulation and another single point of contact as required under other Union law. When doing so, the provider shall inform the Commission of this decision.*
3. Providers of intermediary services shall specify in the information referred to in paragraph 2, the official language or languages of the Union, which 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.

**Article 10a**  
***Points of contact for recipients of services***

1. ***Providers of intermediary services shall designate a single point of contact that enables recipients of services to communicate directly with them.***
2. ***In particular, providers of intermediary services shall enable recipients of services to communicate with them by providing rapid, direct and efficient means of communication such as telephone number, email addresses, electronic contact forms, chatbots or instant messaging as well as the physical address of the establishment of the provider of intermediary services, in a user-friendly, and easily accessible manner. Providers of intermediary services shall also enable recipients of services to choose the means of direct communication, which shall not solely rely on automated tools.***
3. ***Providers of intermediary services shall make all reasonable efforts to guarantee that sufficient human and financial resources are allocated to ensure that the communication, referred to in paragraph 1 is performed in a timely and efficient manner.***

**Article 11**  
***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 to be addressed in addition to or instead of the provider by the Member States' 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 the necessary powers and ***sufficient resources resource in order to guarantee their efficient and timely cooperation*** ~~coöperate~~ with the Member States' authorities, the Commission and the Board and comply with ***any of*** those decisions,
3. The designated legal representative can 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, the electronic mail address and telephone number of their legal representative to the Digital Service Coordinator in the Member State where that legal representative resides or is established They shall ensure that that information is ***kept*** up to date. ***The Digital Service Coordinator in the Member State where that legal representative resides or is***

*established shall, upon receiving that information, make reasonable efforts to assess its validity.*

5. The designation of a legal representative within the Union pursuant to paragraph 1 shall not amount to an establishment in the Union.
- 5a. *This Article shall be without prejudice to the fact that, in accordance with national law, a legal representative may be mandated by more than one provider of intermediary services, provided that such providers qualify as micro, small or medium sized enterprises as defined in Recommendation 2003/361/EC.*

## *Article 12*

### *Terms and conditions*

1. 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, in their~~ ***use fair, non-discriminatory and transparent*** terms and conditions. ~~That information shall include information on any policies, procedures, measures and tools used for the purpose of content moderation, including algorithmic decision-making and human review. It shall be set out~~ ***Providers of intermediary services shall draft those terms and conditions*** in clear, ***user friendly***, and unambiguous language and shall ***make them*** publicly available in an easily accessible ***and machine-readable*** format ***in the official languages of the Member State towards which the service is directed.***
- 1a. *In their terms and conditions, providers of intermediary services shall include information on any restrictions or modifications that they impose in relation to the use of their service in respect of content provided by the recipients of the service. Providers of intermediary services shall also include easily accessible information on the right of the recipients to terminate the use of their service. Providers of intermediary services shall also include information on any policies, procedures, measures and tools used by the provider of the intermediary service for the purpose of content moderation, including algorithmic decision-making and human review.*
- 1b. *Providers of intermediary services shall notify expeditiously the recipients of the service of any significant change to the terms and conditions and provide an explanation thereof.*
- 1c. *Where an intermediary service is primarily directed at minors or is pre-dominantly used by them, the provider shall explain conditions for and restrictions on the use of the service in a way that minors can understand.*
2. Providers of intermediary services shall act in a ***fair, transparent, coherent***, diligent, ***timely, non-arbitrary, non-discriminatory*** and proportionate manner in applying and enforcing the restrictions referred to in paragraph 1, with due regard to the rights and legitimate interests of all parties involved, including the applicable fundamental rights of the recipients of the service as enshrined in the Charter.
- 2a. *Providers of intermediary services shall provide recipients of services with a concise, easily accessible and in machine-readable format summary of the terms and*

*conditions, in clear, user-friendly and unambiguous language. That summary shall identify the main elements of the information requirements, including the possibility of easily opting-out from optional clauses and the remedies and redress mechanisms available.*

- 2b. Providers of intermediary services may use graphical elements such as icons or images to illustrate the main elements of the information requirements.*
- 2c. Very large online platforms as defined in Article 25 shall publish their terms and conditions in the official languages of all Member States in which they offer their services.*
- 2d. Providers of intermediary services shall not require recipients of the service other than traders to make their legal identity public in order to use the service.*

### *Article 13*

#### *Transparency reporting obligations for providers of intermediary services*

1. Providers of intermediary services shall publish ***in a standardised and machine-readable format and in an easily accessible manner***, at least once a year, clear, easily comprehensible and detailed reports on any content moderation they engaged in during the relevant period. Those reports shall include, in particular, information on the following, as applicable:
  - (a) the number of orders received from Member States' authorities, categorised by the type of illegal content concerned, including orders issued in accordance with Articles 8 and 9, and the average time needed ~~for taking the action specified in those orders~~ ***to inform the authority issuing the order of its receipt and the effect given to the order***;
  - (aa) ***where applicable, the complete number of content moderators allocated for each official language per Member State, and a qualitative description of whether and how automated tools for content moderation are used in each official language***;
  - (b) the number of notices submitted in accordance with Article 14, categorised by the type of alleged illegal content concerned, ***the number of notices submitted by trusted flaggers***, any action taken pursuant to the notices by differentiating whether the action was taken on the basis of the law or the terms and conditions of the provider, and the average ***and median*** time needed for taking the action; ***providers of intermediary services may add additional information as to the reasons for the average time for taking the action***;
  - (c) ***meaningful and comprehensible information about*** the content moderation engaged in at the providers' own initiative, including the ***use of automated tools***, ***the*** number and type of measures taken that affect the availability, visibility and accessibility of information provided by the recipients of the service and the recipients' ability to provide information, categorised by the type of reason and basis for taking those measures, ***as well as, where applicable measures taken to provide training and assistance to members of staff who are engaged in content moderation, and to ensure that non-infringing content is not affected***;



- (d) the number of complaints received through the internal complaint-handling system referred to in Article 17, the basis for those complaints, decisions taken in respect of those complaints, the average *and median* time needed for taking those decisions and the number of instances where those decisions were reversed.
- 1a. *The information provided shall be presented per Member State in which services are offered and in the Union as the whole.*
- 2. Paragraph 1 shall not apply to providers of intermediary services that qualify as micro or small enterprises within the meaning of the Annex to Recommendation 2003/361/EC, *which do not also qualify as very large online platforms.*

**Article 13a**  
**Online interface design and organisation**

- 1. *Providers of intermediary services shall not use the structure, function or manner of operation of their online interface, or any part thereof, to distort or impair recipients of services' ability to make a free, autonomous and informed decision or choice. In particular, providers of intermediary services shall refrain from:*
  - (a) *giving more visual prominence to any of the consent options when asking the recipient of the service for a decision;*
  - (b) *repeatedly requesting that a recipient of the service consents to data processing, where such consent has been refused, pursuant to Article 7(3) of Regulation (EU) 2016/679, regardless of the scope or purpose of such processing, especially by presenting a pop-up that interferes with user experience;*
  - (c) *urging a recipient of the service to change a setting or configuration of the service after the recipient has already made a choice;*
  - (d) *making the procedure of terminating a service significantly more cumbersome than signing up to it; or*
  - (e) *requesting consent where the recipient of the service exercises his or her right to object by automated means using technical specifications, in line with Article 21(5) of Regulation (EU) 2016/679.*

*This paragraph shall be without prejudice to Regulation (EU) 2016/679.*

- 2. *The Commission is empowered to adopt a delegated act to update the list of practices referred to in paragraph 1.*
- 3. *Where applicable, providers of intermediary services shall adapt their design features to ensure a high level of privacy, safety, and security by design for minors.*

## SECTION 2 ADDITIONAL PROVISIONS APPLICABLE TO PROVIDERS OF HOSTING SERVICES, INCLUDING ONLINE PLATFORMS

### Article 14

#### Notice and action mechanisms

1. Providers of hosting services 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, user-friendly, and allow for the submission of notices exclusively by electronic means.
2. The mechanisms referred to in paragraph 1 shall be such as to facilitate the submission of sufficiently precise and adequately substantiated notices, ~~on the basis of which a diligent economic operator can identify the illegality of the content in question.~~ To that end, the providers shall take the necessary measures to enable and facilitate the submission of *valid* notices containing all of the following elements:
  - (a) an explanation of the reasons why the individual or entity considers the information in question to be illegal content;  
  
*(aa) where possible, evidence that substantiates the claim;*
  - (b) where relevant, a clear indication of the *exact* electronic location of that information, ~~in particular~~ *for example*, the exact URL or URLs, or, where necessary, additional information enabling the identification of the illegal content *as applicable to the type of content and to the specific type of hosting service* ;
  - (c) the name and an electronic mail address of the individual or entity submitting the notice except in the case of information considered to involve one of the offences referred to in Articles 3 to 7 of Directive 2011/93/EU;
  - (d) a statement confirming the good faith belief of the individual or entity submitting the notice that the information and allegations contained therein are accurate and complete.
3. Notices that include the elements referred to in paragraph 2, *on the basis of which a diligent economic operator hosting service provider is able to establish the illegality of the content in question without conducting a legal or factual examination*, shall be considered to give rise to actual knowledge or awareness for the purposes of Article 5 in respect of the specific item of information concerned.
  - 3a. *Information that has been the subject of a notice shall remain accessible while the assessment of its legality is still pending, without prejudice to the right of providers of hosting services to apply their terms and conditions. Providers of hosting services shall not be held liable for failure to remove notified information, while the assessment of legality is still pending.*

4. Where the notice contains the name and an electronic mail address of the individual or entity that submitted it, the provider of hosting services shall, ***without undue delay***, ~~promptly~~ send a confirmation of receipt of the notice to that individual or entity.
5. The provider shall also, without undue delay, notify that individual or entity of its ~~decision~~ ***action*** in respect of the information to which the notice relates, providing information on the redress possibilities ~~in respect of that decision~~.
- 5a. ***The anonymity of individuals who submitted a notice shall be ensured towards the recipient of the service who provided the content, except in cases of alleged violations of personality rights or of intellectual property rights.***
6. Providers of hosting services shall process any notices that they receive under the mechanisms referred to in paragraph 1 and take their decisions in respect of the information to which the notices relate, in a timely, diligent, ***non-discriminatory*** and ***non-arbitrary*** ~~objective~~ manner. Where they use automated means for that processing or decision-making, they shall include information on such use in the notification referred to in paragraph 4. ***Where the provider has no technical, operational or contractual ability to act against specific items of illegal content, it may hand over a notice to the provider that has direct control of specific items of illegal content, while informing the notifying person or entity and the relevant Digital Services Coordinator.***

#### Article 15 Statement of reasons

1. Where a provider of hosting services decides to remove, disable access to, ***demote or to impose sanctions other measures with regard to*** specific items of information provided by the recipients of the service, irrespective of the means used for detecting, identifying or removing or disabling access to that information and of the reason for its decision, it shall inform the recipient, at the latest at the time of the removal or disabling of access, of the decision and provide a clear and specific statement of reasons for that decision.  
***This obligation shall not apply where the content is deceptive high-volume commercial content, or it has been requested by a judicial or law enforcement authority to not inform the recipient due to an ongoing criminal investigations until the criminal investigations is closed.***
2. The statement of reasons referred to in paragraph 1 shall at least contain the following information:
  - (a) whether the ***action*** entails either the removal, the disabling of access, ***the demotion of, or imposes other measures with regard to*** information and, where relevant, the territorial scope of the ***action and its duration, including, where an action was taken pursuant to Article 14, an explanation about why the action did not exceed what was strictly necessary to achieve its purpose;***
  - (b) the facts and circumstances relied on in taking the ***action***, including where relevant whether the ***action*** was taken pursuant to a notice submitted in accordance with

Article 14 *or based on voluntary own-initiative investigations or to an order issued in accordance with Article 8 and where appropriate, the identity of the notifier;*

- (c) where applicable, information on the use made of automated means in taking the ***action***, including where the ***action*** was taken in respect of content detected or identified using automated means;
  - (d) where the ***action*** concerns allegedly illegal content, a reference to the legal ground relied on and explanations as to why the information is considered to be illegal content on that ground
  - (e) where the ***action*** is based on the alleged incompatibility of the information with the terms and conditions of the provider, a reference to the contractual ground relied on and explanations as to why the information is considered to be incompatible with that ground;
  - (f) ***clear, user-friendly*** information on the redress possibilities available to the recipient of the service in respect of the ***action***, in particular, ***where applicable*** through internal complaint-handling mechanisms, out-of-court dispute settlement and judicial redress.
3. The information provided by the providers of hosting services in accordance with this Article shall be clear and easily comprehensible and as precise and specific as reasonably possible under the given circumstances. The information shall, in particular, be such as to reasonably allow the recipient of the service concerned to effectively exercise the redress possibilities referred to in point (f) of paragraph 2.
4. Providers of hosting services shall publish ***at least once a year*** the ~~decisions~~ ***actions*** and the statements of reasons, referred to in paragraph 1 in a publicly accessible ***machine-readable*** database managed ***and published*** by the Commission. That information shall not contain personal data.

#### ***Article 15a***

##### ***Notification of suspicions of criminal offences***

1. ***Where a provider of hosting services becomes aware of any information giving rise to a suspicion that a serious criminal offence involving an imminent threat to the life or safety of persons has taken place, is taking place or planned to take place, it shall promptly inform the law enforcement or judicial authorities of the Member State or Member States concerned of its suspicion and provide, upon their request, all the relevant information available.***
2. ***Where the provider of hosting services cannot identify with reasonable certainty the Member State concerned, it shall inform the law enforcement authorities of the Member State in which it is established or has its legal representative and may inform Europol.***

***For the purpose of this Article, the Member State concerned shall be the Member State where the offence is suspected to have taken place, to be taking place or to be planned***

*to take place, or the Member State where the suspected offender resides or is located, or the Member State where the victim of the suspected offence resides or is located. For the purpose of this Article, Member States shall notify to the Commission the list of its competent law enforcement or judicial authorities.*

- 2a. Unless instructed otherwise by the informed authority, the provider of hosting services shall remove or disable the content.*
- 2c. Information obtained by a law enforcement or judicial authority of a Member State in accordance with paragraph 1 shall not be used for any purpose other than those directly related to the individual serious criminal offence notified.*
- 2d. The Commission shall adopt an implementing act setting down a template for notifications under paragraph 1.*

### **SECTION 3 ADDITIONAL PROVISIONS APPLICABLE TO ONLINE PLATFORMS**

#### *Article 16*

#### *Exclusion for micro and small enterprises*

- 1. This Section shall not apply to online platforms that qualify as micro or small enterprises within the meaning of the Annex to Recommendation 2003/361/EC and which do not qualify as a very large online platforms as defined by Article 25 of this Regulation.*
- 2. Providers of intermediary services may submit an application accompanied by a justification for a waiver from the requirements of this section provided that they:*
  - (a) do not present significant systemic risks and have limited exposure to illegal content; and*
  - (b) qualify as non-for-profit or qualify as a medium enterprise within the meaning of the Annex to Recommendation 2003/361/EC.*
- 3. The application shall be submitted to the Digital Services Coordinator of establishment who shall conduct a preliminary assessment. The Digital Services Coordinator of establishment shall transmit to the Commission the application accompanied by its assessment and where applicable, a recommendation on the Commission's decision. The Commission shall examine such an application and, after consulting the Board, may issue a total or a partial waiver from the requirements of this Section.*
- 3a. Where the Commission grants such a waiver, it shall monitor the use of the waiver by the provider of intermediary services to ensure that the conditions for use of the waiver are respected.*
- 4. Upon the request of the Board, the Digital Services Coordinator of establishment or the provider, or on its own initiative, the Commission may review or revoke the waiver in whole or in parts.*

5. *The Commission shall maintain a list of all waivers issued and their conditions and shall make the list publicly available.*
6. *The Commission shall be empowered to adopt a delegated act in accordance with Article 69 as to the process and procedure for the implementation of the waiver system in relation with this Article.*

*Article 17*  
*Internal complaint-handling system*

1. Online platforms shall provide recipients of the service for a period of at least six months following the decision referred to in this paragraph, the access to an effective internal complaint-handling system, which enables the complaints to be lodged electronically and free of charge, against the following decisions taken by the online platform on the ground that the information provided by the recipients is illegal content or incompatible with its terms and conditions:
  - (a) decisions to remove, demote, or disable access to or impose other measures that restrict visibility, availability or accessibility of the information;
  - (b) decisions to suspend or terminate, or limit the provision of the service, in whole or in part, to the recipients;
  - (c) decisions to suspend or terminate the recipients' account;
  - (ca) decisions to restrict the ability to monetise content provided by the recipients.
- 1a. *The period of at least six months as set out in paragraph 1 shall be considered to start on the day on which the recipient of the service is informed about the decision in accordance with Article 15.*
2. Online platforms shall ensure that their internal complaint-handling systems are easy to access, user-friendly, ***including for persons with disabilities and minors, non-discriminatory*** and enable and facilitate the submission of sufficiently precise and adequately substantiated complaints. ***Online platforms shall set out the rules of procedure of their internal complaint handling system in their terms and conditions in a clear, user-friendly and easily accessible manner.***
3. Online platforms shall handle complaints submitted through their internal complaint-handling system in a timely, ***non-discriminatory***, diligent and ~~objective~~ ***non-arbitrary*** manner ***and within ten working days starting on the date on which the online platform received the complaint.*** Where a complaint contains sufficient grounds for the online platform to consider that the information to which the complaint relates is not illegal and is not incompatible with its terms and conditions, or contains information indicating that the complainant's conduct does not warrant the suspension or termination of the service or the account, it shall reverse its decision referred to in paragraph 1 without undue delay.
4. Online platforms shall inform complainants without undue delay of the decision they have taken in respect of the information to which the complaint relates and shall inform

complainants of the possibility of out-of-court dispute settlement provided for in Article 18 and other available redress possibilities.

5. Online platforms shall ensure *that recipients of the service are given the possibility, where necessary, to contact a human interlocutor at the time of the submission of the complaint and* that the decisions, referred to in paragraph 4, are not solely taken on the basis of automated means. *Online platform shall ensure that decisions are taken by qualified staff.*
- 5a. *Recipients of the service shall have the possibility to seek swift judicial redress in accordance with the laws of the Member States concerned.*

## Article 18

### Out-of-court dispute settlement

1. Recipients of the service addressed by the decisions referred to in Article 17(1), *taken by the online platform on the grounds that the information provided by the recipients is illegal content or incompatible with its terms and conditions*, shall be entitled to select any out-of-court dispute *settlement body* that has been certified in accordance with paragraph 2 in order to resolve disputes relating to those decisions, including complaints that could not be resolved by means of the internal complaint-handling system referred to in that Article.

The first subparagraph is without prejudice to the right of the recipient concerned to redress against the decision before a court in accordance with the applicable law.

- 1a. *Both parties shall engage, in good faith, with the independent, external certified body selected with a view to resolving the dispute and shall be bound by the decision taken by the body. The possibility to select any out-of-court dispute settlement body shall be easily accessible on the online interface of the online platform in a clear and user-friendly manner.*
2. The Digital Services Coordinator of the Member State where the out-of-court dispute settlement body is established shall, at the request of that body, certify the body *for a maximum of three years, which can be renewed*, where the body *and persons in charge of the out-of-court dispute settlement body* has demonstrated that it meets all of the following conditions:
  - (a) it is ~~impartial and~~ independent, *including financially independent, and impartial towards* ~~of online platforms, and recipients of the service provided by the online platforms~~ *and towards 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 platforms, allowing the body to contribute effectively to the settlement of a dispute;
  - (ba) *its members are remunerated in a way that is not linked to the outcome of the procedure*;

- (bc) *the natural persons in charge of dispute resolution commit not to work for the online platform or a professional organisation or business association of which the online platform is a member for a period of three years after their position in the body has ended, and have not worked for such an organisation for two years prior to taking up this role;*
- (c) *the dispute settlement is easily accessible, including for persons with disabilities, through electronic communication technology and provides for the possibility to submit a complaint and the requisite supporting documents online;*
- (d) *it is capable of settling dispute in a swift, efficient and cost-effective manner and in at least one official language of the Union;*
- (e) *the dispute settlement takes place in accordance with clear and fair rules of procedure which are clearly visible and easily and publicly accessible.*

The Digital Services Coordinator shall, where applicable, specify in the certificate the particular issues to which the body's expertise relates and the official language or languages of the Union in which the body is capable of settling disputes, as referred to in points (b) and (d) of the first subparagraph, respectively.

- 2a. *The Digital Services Coordinator shall reassess on a yearly basis whether the certified out-of-court dispute settlement body continues to fulfil the conditions, referred to in paragraph 2. If this is not the case, the Digital Services Coordinator shall revoke the status from the out-of-court dispute settlement body.*
- 2b. *The Digital Service Coordinator shall draw up a report every two years listing the number of complaints the out of court dispute settlement body has received annually, the outcomes of the decisions delivered, any systematic or sectoral problems identified, and the average time taken to resolve the disputes. The report shall in particular:*
  - (a) *identify best practices of the out-of-court dispute settlement bodies;*
  - (b) *report, where appropriate, on any shortcomings, supported by statistics, that hinder the functioning of the out-of-court dispute settlement bodies for both domestic and cross-border disputes;*
  - (c) *make recommendations on how to improve the effective and efficient functioning of the out-of-court dispute settlement bodies, where appropriate.*
- 2c. *Certified out-of-court dispute settlement bodies shall conclude dispute resolution proceedings within a reasonable period of time and no later than 90 calendar days after the date on which the certified body has received the complaint. The procedure shall be considered terminated on the date on which the certified body has made the decision of out-of-court dispute settlement procedure available.*
- 3. *If the body decides the dispute in favour of the recipient of the service, individuals or entities mandated under Article 68 that have submitted notices, the online platform shall reimburse the recipient for any fees and other reasonable expenses that the recipient or*



*individuals or entities that have submitted notices* have paid or *are* to pay in relation to the dispute settlement. If the body decides the dispute in favour of the online platform, *and the body does not find that the recipient acted in bad faith in the dispute*, the recipient *or the individuals or entities that have submitted notices* shall not be required to reimburse any fees or other expenses that the online platform paid or is to pay in relation to the dispute settlement.

The fees charged by the body for the dispute settlement shall be reasonable and shall in any event not exceed the costs thereof *for online platforms. Out-of-court dispute settlement procedures shall be free of charge or available at a nominal fee for the recipient of the service.*

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 services and the online platform concerned before engaging in the dispute settlement.

4. 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 2.

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 2.

5. Digital Services Coordinators shall notify to the Commission the out-of-court dispute settlement bodies that they have certified in accordance with paragraph 2, including where applicable the specifications referred to in the second subparagraph of that paragraph *as well as out-of-court dispute settlement bodies whose status has been revoked*. The Commission shall publish a list of those bodies, including those specifications, on a dedicated website, and keep it updated.
6. This Article is without prejudice to Directive 2013/11/EU and alternative dispute resolution procedures and entities for consumers established under that Directive.

#### *Article 19* *Trusted flaggers*

1. 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 14, are processed and decided upon with priority and *expeditiously, taking into account due process*.
- 1a. *Online platforms shall take the necessary technical and organisational measures to ensure that trusted flaggers can issue correction notices of incorrect removal, restriction or disabling access to content, or of suspensions or terminations of accounts, and that those notices to restore information are processed and decided upon with priority and without delay.*

2. The status of trusted flaggers 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, where the applicant has demonstrated to meet all of the following conditions:
  - (a) it has particular expertise and competence for the purposes of detecting, identifying and notifying illegal content;
  - (b) it represents collective interests and is independent from any online platform;
  - (c) it carries out its activities for the purposes of submitting notices in *an accurate and timely, diligent and objective manner*.
  - (ca) it has a transparent funding structure, including publishing the sources and amounts of all revenue annually;*
  - (cb) it publishes, at least once a year, clear, easily comprehensible, detailed and standardised reports on all notices submitted in accordance with Article 14 during the relevant period. The report shall list:*
    - notices categorised by the identity of the provider of hosting services;*
    - the type of content notified;*
    - the specific legal provisions allegedly breached by the content notified;*
    - the action taken by the provider;*
    - any potential conflicts of interest and sources of funding, and an explanation of the procedures in place to ensure that the trusted flagger retains its independence.*

*The reports referred to in point (cb) shall be sent to the Commission which shall make them publicly available.*
3. Digital Services Coordinators shall *award the trusted flagger status for a period of two years, upon which the status may be renewed where the trusted flagger concerned continues to meet the requirements of this Regulation. The Digital Services Coordinators shall* communicate to the Commission and the Board the names, addresses and electronic mail addresses of the entities to which they have awarded the status of the trusted flagger in accordance with paragraph 2 *or have been revoked in accordance with paragraph 6. The Digital Services Coordinator of the Member State of establishment of the platform shall engage in dialogue with platforms and stakeholders for maintaining the accuracy and efficacy of a trusted flagger system.*
4. The Commission shall publish the information referred to in paragraph 3 in a publicly available database *in an easily accessible and machine-readable format* and keep the database updated.
5. Where an online platform has information indicating that a trusted flagger submitted a significant number of insufficiently precise, *inaccurate* or inadequately substantiated notices through the mechanisms referred to in Article 14, including information gathered in connection to the processing of complaints through the internal complaint-handling systems referred to in Article 17(3), 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 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.*

6. 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 an online platform pursuant to paragraph 5, *carried out without undue delay*, 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.
7. The Commission, after consulting the Board, *shall* issue guidance to assist online platforms and Digital Services Coordinators in the application of paragraphs 2, 5 and 6.

#### **Article 19a** ***Accessibility requirements for online platforms***

1. *Providers of online platforms which offer services in the Union shall ensure that they design and provide services in accordance with the accessibility requirements set out in Section III, Section IV, Section VI, and Section VII of Annex I of Directive (EU) 2019/882.*
2. *Providers of online platforms shall prepare the necessary information in accordance with Annex V of Directive (EU) 2019/882 and shall explain how the services meet the applicable accessibility requirements. The information shall be made available to the public in an accessible manner for persons with disabilities. Providers of online platforms shall keep that information for as long as the service is in operation.*
3. *Providers of online platforms shall ensure that information, forms and measures provided pursuant to this Regulation are made available in a manner that they are easy to find, easy to understand, and accessible to persons with disabilities.*
4. *Providers of online platforms which offer services in the Union shall ensure that procedures are in place so that the provision of services remains in conformity with the applicable accessibility requirements. Changes in the characteristics of the provision of the service, changes in applicable accessibility requirements and changes in the harmonised standards or in technical specifications by reference to which a service is declared to meet the accessibility requirements shall be adequately taken into account by the provider of intermediary services.*
5. *In the case of non-conformity, providers of online platforms shall take the corrective measures necessary to bring the service into conformity with the applicable accessibility requirements.*

6. *Provider of online platforms shall, further to a reasoned request from a competent authority, provide it with all information necessary to demonstrate the conformity of the service with the applicable accessibility requirements. They shall cooperate with that authority, at the request of that authority, on any action taken to bring the service into compliance with those requirements.*
7. *Online platforms which are in conformity with harmonised standards or parts thereof derived from Directive (EU) 2019/882 the references of which have been published in the Official Journal of the European Union, shall be presumed to be in conformity with the accessibility requirements of this Regulation in so far as those standards or parts thereof cover those requirements.*
8. *Online platforms which are in conformity with the technical specifications or parts thereof adopted for the Directive (EU) 2019/882 shall be presumed to be in conformity with the accessibility requirements of this Regulation in so far as those technical specifications or parts thereof cover those requirements.*

## *Article 20*

### *Measures and protection against misuse*

1. *Online platforms shall **be entitled to** suspend, for a reasonable period of time and after having issued a prior warning, the provision of their services to recipients of the service that frequently provide manifestly illegal content, **for which the illegality can be established without conducting a legal or factual examination or for which they have received two or more orders to act regarding illegal content in the previous 12 months, unless those orders were later overturned.***
2. *Online platforms shall **be entitled to** suspend, for a reasonable period of time and after having issued a prior warning, the processing of notices and complaints submitted through the notice and action mechanisms and internal complaints-handling systems referred to in Articles 14 and 17, respectively, by individuals or entities or by complainants that frequently **repeatedly** submit notices or complaints that are manifestly unfounded.*
3. ***When deciding on the suspension, providers of online platforms** shall assess, on a case-by-case basis and in a timely, diligent and objective manner, whether a recipient, individual, entity or complainant engages in the misuse referred to in paragraphs 1 and 2, taking into account all relevant facts and circumstances apparent from the information available to the **provider of the** online platform. Those circumstances shall include at least the following:*
  - (a) *the absolute numbers of items of manifestly illegal content or manifestly unfounded notices or complaints, submitted in the past year;*
  - (b) *the relative proportion thereof in relation to the total number of items of information provided or notices submitted in the past year;*
  - (c) *the gravity of the misuses and its consequences;*

(d) *where identifiable* the intention of the recipient, individual, entity or complainant;

(da) *whether a notice was submitted by an individual user or by an entity or persons with specific expertise related to the content in question or following the use of an automated content recognition system.*

3a. *Suspensions referred to in paragraphs 1 and 2 may be declared permanent where:*

(a) *there are compelling reasons of law or public policy, including ongoing criminal investigations;*

(b) *the items removed were components of high-volume campaigns to deceive users or manipulate platform content moderation efforts;*

(c) *a trader has repeatedly offered goods and services that do not comply with Union or national law;*

(d) *the items removed were related to serious crimes.*

4. *Providers of online platforms shall set out, in a clear, user-friendly, and detailed manner with due regard to their obligations under Article 12(2) their policy in respect of the misuse referred to in paragraphs 1 and 2 in their terms and conditions, including ~~regards~~ examples of the facts and circumstances that they take into account when assessing whether certain behaviour constitutes misuse and the duration of the suspension.*

## *Article 22*

### *Traceability of traders*

1. Online platforms allowing consumers to conclude distance contracts with traders shall ensure that traders can only use *their* services to promote messages on or to offer products or services to consumers located in the Union if, prior to the use of *their* services *for those purposes, they have been provided with and checked* the following information:

- (a) the name, address, telephone number and electronic mail address of the trader;
- (b) a copy of the identification document of the trader or any other electronic identification as defined by Article 3 of Regulation (EU) No 910/2014 of the European Parliament and of the Council<sup>1</sup>;
- (c) the bank account details of the trader, where the trader is a natural person;
- (d) the name, address, telephone number and electronic mail address of the economic operator, within the meaning of Article 3(13) and Article 4 of Regulation (EU) 2019/1020 of the European Parliament and the Council<sup>2</sup> or any relevant act of Union law, *including in the area of product safety*;
- (e) where the trader is registered in a trade register or similar public register, the trade register in which the trader is registered and its registration number or equivalent means of identification in that register;
- (f) a self-certification by the trader committing to only offer products or services that comply with the applicable rules of Union law *and where applicable confirming*

- that all products have been checked against available databases, such as the Union Rapid Alert System for dangerous non-food products (RAPEX);*
- (fa) *the type of products or services the trader intends to offer on the online platform.*

2. The online platform *allowing consumers to conclude distance contracts with traders* shall, upon receiving that information *before allowing the display of the product or service on its online interface, and until the end of the contractual relationship, make best efforts to*, ~~make reasonable efforts~~ to assess whether the information referred to in points (a) *to (fa)* ~~(d) and (e)~~ of paragraph 1 is reliable *and complete. The online platform shall make best efforts to check the information provided by the trader* through the use of any freely accessible official online database or online interface made available by *an authorised administrator or* a Member States or the Union or through *direct* requests to the trader to provide supporting documents from reliable sources.

*No later than one year after the entry into force of this Regulation, the Commission shall publish the list of online databases and online interfaces mentioned in the paragraph above and keep it up-to-date. The obligations for online platforms referred to in paragraphs 1 and 2 shall apply with regard to new and existing traders.*

- 2a. The online platform *shall make best efforts to identify and prevent the dissemination, by traders using its service, of offers for products or services which do not comply with Union or national law through measures such as random checks on the products and services offered to consumers in addition to the obligations referred to in paragraph 1 and 2 of this Article.*
3. Where the online platform obtains *sufficient* indications *or has reasons to believe* that any item of information referred to in paragraph 1 obtained from the trader concerned is inaccurate or incomplete, that platform shall request the trader to correct the information in so far as necessary to ensure that all information is accurate and complete, without delay or within the time period set by Union and national law.

Where the trader fails to correct or complete that information, the online platform shall *swiftly* suspend the provision of its service to the trader *in relation to the offering of products or services to consumers located in the Union* until the request is *fully* complied with.

- 3a. *If an online platform rejects an application for services or suspends services to a trader, the trader shall have recourse to the mechanisms under Article 17 and Article 43 of this Regulation.*
- 3b. *Online platforms allowing consumers to conclude contracts with traders shall ensure that the identity, such as the trademark or logo, of the business user providing content, goods or services is clearly visible alongside the content, goods or services offered. For this purpose, the online platform shall establish a standardised interface for business users.*
- 3c. *Traders shall be solely liable for the accuracy of the information provided and shall inform without delay the online platform of any changes to the information provided.*

4. The online platform shall store the information obtained pursuant to paragraph 1 and 2 in a secure manner for the duration of their contractual relationship with the trader concerned. They shall subsequently delete the information ***no later than six months after the final conclusion of a distance contract.***
5. Without prejudice to paragraph 2, the platform shall only disclose the information to third parties where so required in accordance with the applicable law, including the orders referred to in Article 9 and any orders issued by Member States' competent authorities or the Commission for the performance of their tasks under this Regulation.
6. The online platform shall make the information referred to in points (a), (d), (e), ~~and (f)~~, ***and (fa)*** of paragraph 1 available ***easily accessible*** to the recipients of the service, in a clear, easily accessible and comprehensible manner ***in accordance with the accessibility requirements of Annex I to Directive (EU) 2019/882.***
7. The online platform shall design and organise its online interface in a way that enables traders to comply with their obligations regarding pre-contractual information and product safety information under applicable Union law.

#### ***Article 22a***

##### ***Obligation to inform consumers and authorities about illegal products and services***

1. ***Where an online platforms allowing consumers to conclude distance contracts with traders becomes aware, irrespective of the means used to, that a product or a service offered by a trader on the interface of that platform is illegal with regard to applicable requirements in Union or national law, it shall:***
  - (a) ***remove the illegal product or service from its interface expeditiously and, where appropriate, inform the relevant authorities, such as the market surveillance authority or the custom authority of the decision taken;***
  - (c) ***where the online platform has the contact details of the recipient of the services, inform those recipients of the service that had acquired such product or service about the illegality, the identity of the trader and options for seeking redress;***
  - (d) ***compile and make publicly available through application programming interfaces a repository containing information about illegal products and services removed from its platform in the past twelve months along with information about the concerned trader and options for seeking redress.***
2. ***Online platforms allowing consumers to conclude distance contracts with traders shall maintain an internal database of illegal products and services removed and/or recipients suspended pursuant to Article 20.***

*Article 23*  
*Transparency reporting obligations for providers of online platforms*

1. In addition to the information referred to in Article 13, online platforms shall include in the reports referred to in that Article information on the following:
  - (a) the number of disputes submitted to the out-of-court dispute settlement bodies referred to in Article 18, the outcomes of the dispute settlement and the average time needed for completing the dispute settlement procedures;
  - (b) *the number of complaints received through the internal complaint-handling system referred to in Article 17, the basis for those complaints, decisions taken in respect of those complaints, the average and median time needed for taking those decisions and the number of instances where those decisions were reversed;***
  - (c) the number of suspensions imposed pursuant to Article 20, distinguishing between suspensions enacted for the provision of manifestly illegal content, the submission of manifestly unfounded notices and the submission of manifestly unfounded complaints;
  - (d) any use made of automatic means for the purpose of content moderation, including a specification of the precise purposes, indicators of the accuracy of the automated means in fulfilling those purposes and any safeguards applied.
  - (da) *the number of advertisement that were removed, labelled or disabled by the online platform and justification of the decisions.***
2. Online platforms shall publish, at least once every ~~six~~ **twelve** months, information on the average monthly active recipients of the service in each Member State, calculated as an average over the period of the past six months, in accordance with the methodology laid down in the delegated acts adopted pursuant to Article 25(2).
- 2a. *Member States shall refrain from imposing additional transparency reporting obligations on the online platforms, other than specific requests in connection with the exercise of their supervisory powers.***
3. Online platforms shall communicate to the Digital Services Coordinator of establishment, upon its request, the information referred to in paragraph 2, updated to the moment of such request. That Digital Services Coordinator may require the online platform to provide additional information as regards the calculation referred to in that paragraph, including explanations and substantiation in respect of the data used. That information shall not include personal data.
4. The Commission ~~may~~ **shall** adopt implementing acts to ***establish a set of key performance indicators and*** lay down templates concerning the form, content and other details of reports pursuant to paragraph 1.



## Article 24

### *Online advertising transparency*

Online platforms that display advertising on their online interfaces shall ensure that the recipients of the service can identify, for each specific advertisement displayed to each individual recipient, in a clear, **concise**, and unambiguous manner and in real time:

- (a) that the information displayed **on the interface or parts thereof** is an **online** advertisement, **including through prominent and harmonised marking**;
  - (b) the natural or legal person on whose behalf the advertisement is displayed;
  - (ba) the natural or legal person who finances the advertisement where this person is different from the natural or legal person referred to in point (b);**
  - (c) **clear**, meaningful, **and uniform** information about the ~~main~~ parameters used to determine the recipient to whom the advertisement is displayed, **and where applicable about how to change those parameters.**
2. **Online platforms shall ensure that recipients of the service can easily make an informed choice when exercising their consent for processing their personal data in accordance with the Regulation 2016/679 for the purposes of targeted advertising by providing them with meaningful information, including information about how their data will be monetised. Online platforms shall ensure that refusing consent shall be no more difficult or time-consuming to the recipient than giving consent.**
3. **The personal data referred to in paragraph 2 shall not be used for commercial purposes related to direct marketing, profiling and behaviourally targeted advertising of minors.**

## Article 24a

### *Recommender system transparency*

1. **Online platforms shall** set out in their terms and conditions **and via a designated online resource that can be directly reached and easily found from the online platform's online interface when content is recommended**, in a clear, accessible and easily comprehensible manner the main parameters used in their recommender systems, as well as any options for the recipient of the service to modify or influence those main parameters that they have made available.
2. **The main parameters referred to in paragraph 1 shall include, at a minimum:**
- (a) the main criteria used by the relevant system which individually or collectively are most significant in determining recommendations;**
  - (b) the relative importance of those parameters;**
  - (c) what objectives 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.*

*The requirements set out in paragraph 2 shall be without prejudice to rules on protection of trade secrets and intellectual property rights.*

3. Where several options are available pursuant to paragraph 1, **online platforms** shall provide a **clear and** 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.

#### **Article 24b**

***Additional obligations for platforms primarily used for the dissemination of user-generated pornographic content***

***Where an online platform is primarily used for the dissemination of user generated pornographic content, the platform shall take the necessary technical and organisational measures to ensure***

***(a) that users who disseminate content have verified themselves through a double opt-in e-mail and cell phone registration;***

***(b) professional human content moderation, trained to identify image-based sexual abuse, including content having a high probability of being illegal;***

***(c) the accessibility of a qualified notification procedure in the form that additionally to the mechanism referred to in Article 14 individuals may notify the platform with the claim that image material depicting them or purporting to be depicting them is being disseminated without their consent and supply the platform with prima facie evidence of their physical identity; content notified through this procedure is to be suspended without undue delay.***

## **Chapter III**

### **Section 4**

**Additional obligations for very large online platforms to manage systemic risks**

#### **Article 25**

***Very large online platforms***

1. This Section shall apply to online platforms which:
  - (a) provide ***for at least four consecutive months*** their services to a number of average monthly active recipients of the service in the Union equal to or higher than 45 million, calculated in accordance with the methodology set out in the delegated acts referred to in paragraph 3. ***Such a methodology shall take into account, in particular:***
    - (i) ***the number of active recipients shall be based on each service individually;***
    - (ii) ***active recipients connected on multiple devices are counted only once;***

- (iii) *indirect use of service, via a third party or linking, shall not be counted;*
  - (iv) *where an online platform is hosted by another provider of intermediary services, that the active recipients are assigned solely to the online platform closest to the recipient;*
  - (v) *that automated interactions, accounts or data scans by a non-human (“bots”) are not included.*
2. The Commission shall adopt delegated acts in accordance with Article 69 to adjust the number of average monthly recipients of the service in the Union referred to in paragraph 1, where the Union’s population increases or decreases at least with 5 % in relation to its population in 2020 or, after adjustment by means of a delegated act, of its population in the year in which the latest delegated act was adopted. In that 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 shall adopt delegated acts in accordance with Article 69, after consulting the Board, to lay down a specific methodology for calculating the number of average monthly active recipients of the service in the Union, for the purposes of paragraph 1(a). The methodology shall specify, in particular, how to determine the Union’s population and criteria to determine the average monthly active recipients of the service in the Union, taking into account different accessibility features.
  4. The Digital Services Coordinator of establishment shall verify, at least every six months, whether the number of average monthly active recipients of the service in the Union of online platforms under their jurisdiction is equal to or higher than the number referred to in paragraph 1. On the basis of that verification, it shall adopt a decision designating the online platform as a very large online platform for the purposes of this Regulation, or terminating that designation, and communicate that decision, without undue delay, to the online platform concerned and to the Commission.

The Commission shall ensure that the list of designated very large online platforms is published in the Official Journal of the European Union and keep that list updated. The obligations of this Section shall apply, or cease to apply, to the very large online platforms concerned from four months after that publication.

#### *Article 26* *Risk assessment*

1. Very large online platforms shall *effectively and diligently* identify, analyse and assess, from the date of application referred to in the second subparagraph of Article 25(4), at least once a year thereafter, *and in any event before launching new services, the probability and severity of* any significant systemic risks stemming from, *the design, algorithmic systems, intrinsic characteristics,* functioning and use made of their services in the Union. *The risk assessment shall take into account risks per Member State in which services are offered and in the Union as a whole, in particular to a specific language or region.* This risk assessment shall be specific to their services and *activities, including technology design, business-model choices, and* shall include the following systemic risks:

- (a) the dissemination of illegal content through their services *or content that is in breach with their terms and conditions*;
  - (b) any *actual and foreseeable* negative effects for the exercise of the fundamental rights, *including for consumer protection*, ~~to~~ respect for *human dignity*, private and family life, *the protection of personal data and the* freedom of expression and information, *as well as to the freedom and the pluralism of the media*, the prohibition of discrimination, *the right to gender equality*, and the rights of the child, as enshrined in Articles 1, 7, 8, 11, 21, 23, 24 and 38 of the *Charter* respectively;
  - (c) *any malfunctioning or* intentional manipulation of their service, including by means of inauthentic use or automated exploitation of the service *or risks inherent to the intended operation of the service, including the amplification of illegal content, of content that is in breach with their terms and conditions or any other content* with an actual or foreseeable negative effect on the protection of minors *and of other vulnerable groups of recipients of the service*, on *democratic values, media freedom, freedom of expression and* civic discourse, or actual or foreseeable effects related to electoral processes and public security;
- (ca) *any actual and foreseeable negative effects on the protection of public health as well as behavioural addictions or other serious negative consequences to the person's physical, mental, social and financial well-being.*
2. When conducting risk assessments, very large online platforms shall take into account, in particular, *whether and* how their content moderation systems, *terms and conditions, community standards, algorithmic systems*, recommender systems and systems for selecting and displaying advertisement, *as well as the underlying data collection, processing and profiling*, influence any of the systemic risks referred to in paragraph 1, including the potentially rapid and wide dissemination of illegal content and of information that is incompatible with their terms and conditions.
- 2a. *When conducting risk assessments, very large online platforms shall consult, where appropriate, representatives of the recipients of the service, representatives of groups potentially impacted by their services, independent experts and civil society organisations. Their involvement shall be tailored to the specific systemic risks that the very large online platform aim to assess.*
- 2b. *The supporting documents of the risk assessment shall be communicated to the Digital Services Coordinator of establishment and to the Commission.*
- 2c. *The obligations referred to in paragraphs 1 and 2 shall by no means lead to a general monitoring obligation.*

*Article 27*  
*Mitigation of risks*

1. Very large online platforms shall put in place reasonable, ***transparent***, proportionate and effective mitigation measures, tailored to the specific systemic risks identified pursuant to Article 26. Such measures may include, where applicable:
  - (a) adapting content moderation, ***algorithmic systems***, or recommender systems ***and online interfaces***, their decision-making processes, ***the design***, the features or functioning of their services, ***their advertising model*** or their terms and conditions;
  - (aa) ***ensuring appropriate resources to deal with notices and internal complaints, including appropriate technical and operational measures or capacities;***
  - (b) targeted measures aimed at limiting the display of advertisements in association with the service they provide, ***or the alternative placement and display of public service advertisements or other related factual information;***
  - (ba) ***where relevant, targeted measures aimed at adapting online interfaces and features to protect minors;***
  - (c) reinforcing the internal processes, ***and resources, testing, documentation,*** or supervision of any of their activities in particular as regards detection of systemic risk;
  - (d) initiating or adjusting cooperation with trusted flaggers in accordance with Article 19;
  - (e) initiating or adjusting cooperation with other online platforms through the codes of conduct and the crisis protocols referred to in Article 35 and 37 respectively.
- 1b. Very large online platforms shall, where appropriate, design their risk mitigation measures with the involvement of representatives of the recipients of the service, independent experts and civil society organisations. Where no such involvement is foreseen, this shall be made clear in the transparency report referred to in Article 33.***
- 1c. Very large online platforms shall provide a detailed list of the risk mitigation measures taken and their justification to the independent auditors in order to prepare the audit report referred to in Article 28.***
- 1d. The Commission shall evaluate the implementation and effectiveness of mitigating measures undertaken by very large online platforms referred to in Article 27(1) and where necessary, may issue recommendations.***
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 very large online platforms or identified through other information sources, in particular those provided in compliance with Articles 30, 31 and 33;
- (b) best practices for very large online platforms to mitigate the systemic risks identified.

***The reports shall be presented per Member State in which the systemic risks occurred and in the Union as a whole. The reports shall be published in all the official languages of the Member States of the Union.***

- 3. The Commission, in cooperation with the Digital Services Coordinators, ***and following public consultation shall*** ~~may~~ issue general 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.~~
- 3a. The requirement to put in place mitigation measures shall not lead to a general monitoring obligation or active fact-finding obligations.***

#### ***Article 28 Independent audit***

- 1. Very large online platforms shall be subject, at their own expense and at least once a year, to ***independent*** audits to assess compliance with the following:
  - (a) the obligations set out in Chapter III.
  - (b) any commitments undertaken pursuant to the codes of conduct referred to in Articles 35 and 36 and the crisis protocols referred to in Article 37.
- 1a. Very large online platforms shall ensure auditors have access to all relevant data necessary to perform the audit properly.***
- 2. Audits performed pursuant to paragraph 1 shall be performed by organisations which ***having been recognised and vetted by the Commission and which:***
  - (a) are ***legally and financially*** independent from, ***and do not have conflicts of interest with*** the very large online platform concerned ***and other very large online platforms;***
  - (aa) ***auditors and their employees have not provided any other service to the very large online platform audited 12 months before the audit and commit not to work for the very large online platform audited or a professional organisation or business association of which the platform is a member for 12 months after their position in the auditing organisation has ended;***
  - (b) have proven expertise in the area of risk management, technical competence and capabilities;
  - (c) have proven objectivity and professional ethics, based in particular on adherence to codes of practice or appropriate standards.

3. The organisations that perform the audits shall establish an audit report for each audit *subject as referred to in paragraph 1*. The report shall be in writing and include at least the following:
  - (a) the name, address and the point of contact of the very large online platform subject to the audit and the period covered;
  - (b) the name and address of the organisation performing the audit;
  - (ba) a declaration of interests;*
  - (c) a description of the specific elements audited, and the methodology applied;
  - (d) a description of the main findings drawn from the audit *and a summary of the main findings*;
  - (da) a description of the third parties consulted as part of the audit;*
  - (e) an audit opinion on whether the very large online platform subject to the audit complied with the obligations and with the commitments referred to in paragraph 1, either positive, positive with comments or negative;
  - (f) where the audit opinion is not positive, operational recommendations on specific measures to achieve compliance;
  - (fa) a description of specific elements that could not be audited, and an explanation of why these could not be audited;*
  - (fb) where the audit opinion could not reach a conclusion for specific elements within the scope of the audit, a statement of reasons for the failure to reach such conclusion.*
4. Very large online platforms receiving an audit report that is not positive shall take due account of any operational recommendations addressed to them with a view to take the necessary measures to implement them. They shall, within one month from receiving those recommendations, adopt an audit implementation report setting out those measures. Where they do not implement the operational recommendations, they shall justify in the audit implementation report the reasons for not doing so and set out any alternative measures they may have taken to address any instances of non-compliance identified.
  - 4a. The Commission shall publish and regularly update a list of vetted organisations.*
  - 4b. Where a very large online platform receives a positive audit report, it shall be entitled to request from the Commission a seal of excellence.*

*Article 29*  
*Recommender systems*

1. ***In addition to the requirements set out in Article 24a***, very large online platforms that use recommender systems shall ~~set out in their terms and conditions, in a clear, accessible and easily comprehensible manner, the main parameters used in their recommender systems, as well as any options for the recipients of the service to modify or influence those main parameters that they may have made available, including~~ ***provide*** at least one ~~option~~ ***recommender system*** which is not based on profiling, within the meaning of Article 4 (4) of Regulation (EU) 2016/679, ***as well as an easily accessible functionality 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.***
- ~~2. Where several options are available pursuant to paragraph 1, very large online platforms shall provide an easily accessible functionality 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.~~

*Article 30*  
*Additional online advertising transparency*

1. Very large online platforms that display advertising on their online interfaces shall compile and make publicly available ***and searchable through easy to access, functionable and reliable tools*** through application programming interfaces a repository containing the information referred to in paragraph 2, until one year after the advertisement was displayed for the last time on their online interfaces. ***They shall ensure that multicriterion queries can be performed per advertiser and per all data points present in the advertisement, the target of the advertisement, and the audience the advertiser wishes to reach.*** They shall ensure that the repository does not contain any personal data of the recipients of the service to whom the advertisement was or could have been displayed ***and shall make reasonable efforts to ensure that the information is accurate and complete.***
2. The repository shall include at least all of the following information:
  - (a) the content of the advertisement, ***including the name of the product, service or brand and the object of the advertisement;***
  - (b) the natural or legal person on whose behalf the advertisement is displayed;  
***(ba) the natural or legal person who paid for the advertisement, where that person is different from the one referred to in point (b);***
  - (c) the period during which the advertisement was displayed;
  - (d) whether the advertisement was intended to be displayed specifically to one or more particular groups of recipients of the service and if so, the main parameters used for that purpose ***including any parameters used to exclude particular groups;***



*(da) where it is disclosed, a copy of the content of commercial communications published on the very large online platforms that are not marketed, sold or arranged by the very large online platform, which have through appropriate channels been declared as such to the very large online platform;*

*(e) the total number of recipients of the service reached and, where applicable, aggregate numbers for the group or groups of recipients to whom the advertisement was targeted specifically.*

*(ea) cases where the advertisement was removed on the basis of a notice submitted in accordance with Article 14 or an order issued pursuant to Article 8.*

**2b. The Board shall, after consulting vetted researchers, publish guidelines on the structure and organisation on repositories created pursuant to paragraph 1.**

### **Article 30a** **Deep fakes**

*Where a very large online platform becomes aware that a piece of content is a generated or manipulated image, audio or video content that appreciably resembles existing persons, objects, places or other entities or events and falsely appears to a person to be authentic or truthful (deep fakes), the provider shall label the content in a way that informs that the content is inauthentic and that is clearly visible for the recipient of the services.*

### **Article 31** **Data access and scrutiny**

1. Very large online platforms shall provide the Digital Services Coordinator of establishment or the Commission, upon their reasoned request and within a reasonable period, **and without delay** specified in the request, access to data that are necessary to monitor and assess compliance with this Regulation. That Digital Services Coordinator and the Commission shall only **request, access and** use that data for those purposes.
- 1a. The very large online platform shall be obliged to explain the design, logic and the functioning of the algorithms if requested by the Digital Service Coordinator of establishment.**
2. Upon a reasoned request from the Digital Services Coordinator of establishment or the Commission, very large online platforms shall, within a reasonable period, as specified in the request, provide access to data to vetted researchers, **vetted not-for-profit bodies, organisations or associations**, who meet the requirements in paragraphs 4 of this Article, for the sole purpose of conducting research that contributes to the identification, **mitigation** and understanding of systemic risks as set out in Article 26(1) **and Article 27(1).**
- 2a. Vetted researchers, vetted not-for-profit bodies, organisations and associations shall have access to aggregate numbers for the total views and view rate of content prior to a removal on the basis of orders issued in accordance with Article 8 or content**

*moderation engaged in at the provider's own initiative and under its terms and conditions.*

3. Very large online platforms shall provide access to data pursuant to paragraphs 1 and 2 through online databases or application programming interfaces, as appropriate, ***and with an easily accessible and user-friendly mechanism to search for multiple criteria.***
4. In order to be vetted ***by the Digital Services Coordinator of establishment or the Commission***, researchers, ***not-for-profit bodies, organisations or associations*** shall:
  - (a) be affiliated with academic institutions ***or civil society organisations representing the public interest and meeting the requirements under Article 68;***
  - (b) be independent from commercial interests, ***including from any very large online platform;***
  - (c) disclose the funding financing the research;
  - (d) ***be independent from any government, administrative or other state bodies, outside the academic institution of affiliation if public;***
  - (e) have proven records of expertise in the fields related to the risks investigated or related research methodologies; and
  - (f) ~~shall commit and be in a capacity to~~ preserve the specific data security and confidentiality requirements corresponding to each request.
- 4a. ***Where a very large online platform has grounds to believe that a researcher, a not-for-profit body, an organisation or association is acting outside the purpose of paragraph 2 or no longer respects the conditions of paragraph 4, it shall immediately inform the relevant authority, either the Digital Service Coordinator of establishment or the Commission, which shall decide without undue delay if access shall be withdrawn and when the access shall be restored and under what conditions.***
- 4b. ***Where the Digital Services Coordinator of establishment, or the Commission have grounds to believe that a researcher, a not-for-profit body, an organisation or association is acting outside the purpose of paragraph 2 or no longer respects the conditions of paragraph 4, it shall immediately inform the very large online platform. The very large online platform shall be entitled to withdraw access to data upon receiving the information. The Digital Services Coordinator of establishment, or the Commission shall decide if and when access shall be restored and under what conditions.***
5. The Commission shall, after consulting the Board, ***and no later than one year after entry into force of this legislation***, adopt delegated acts laying down the technical conditions under which very large online platforms are to share data pursuant to paragraphs 1 and 2 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 vetted researchers ***or not-for-profit bodies, organisations or associations*** can take place in compliance with

Regulation (EU) 2016/679, taking into account the rights and interests of the very large online platforms and the recipients of the service concerned, including the protection of confidential information, ~~in particular trade secrets~~, and maintaining the security of their service.

6. Within 15 days following receipt of a request as referred to in paragraph 1 and 2, a very large online platform may request the Digital Services Coordinator of establishment or the Commission, as applicable, to amend the request, where it considers that it is unable to give access to the data requested because one of following two reasons:

- (a) it does not have access to the data;

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

7. Requests for amendment pursuant to point (b) of paragraph 6 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 or the Commission shall decide upon the request for amendment within 15 days and communicate to the very large online platform its decision and, where relevant, the amended request and the new time period to comply with the request.

- 7a. ***Digital Service Coordinators and the Commission shall, once a year, report the following information:***

- (a) ***the number of requests made to them as referred to in paragraphs 1, 2 and 6;***

- (b) ***the number of such requests that have been declined or withdrawn by the Digital Service Coordinator or the Commission and the reasons for which they have been declined or withdrawn, including following a request to the Digital Service Coordinator or the Commission from a very large online platform to amend a request as referred to in paragraphs 1, 2 and 6;***

- 7b. ***Upon completion of their research, the vetted researchers that have been granted access to data shall publish their findings without disclosing confidential data and in compliance with Regulation (EU) 2016/679.***

#### *Article 32*

#### *Compliance officers*

1. Very large online platforms shall appoint one or more compliance officers responsible for monitoring their compliance with this Regulation.
2. Very large online platforms shall only designate ~~as compliance officers~~ persons who have the professional qualifications, knowledge, experience and ability necessary to fulfil the tasks referred to in paragraph 3 ***as compliance officers***. Compliance officers may

either be staff members of, or fulfil those tasks on the basis of a contract with, the very large online platform concerned.

3. Compliance officers shall have the following tasks:
  - (a) cooperating with the Digital Services Coordinator of establishment, ***the Board*** and the Commission for the purpose of this Regulation;
  - (b) organising and supervising the very large online platform's activities relating to the independent audit pursuant to Article 28;
  - (c) informing and advising the management and employees of the very large online platform about relevant obligations under this Regulation;
  - (d) monitoring the very large online platform's compliance with its obligations under this Regulation.
4. Very large online platforms shall take the necessary measures to ensure that the compliance officers can perform their tasks in an independent manner.
5. Very large online platforms shall communicate the name and contact details of the compliance officer to the Digital Services Coordinator of establishment and the Commission.
6. Very large online platforms shall support the compliance officer in the performance of his or her tasks and provide him or her with the resources necessary to adequately carry out those tasks. The compliance officer shall directly report to the highest management level of the platform.

### *Article 33*

#### *Transparency reporting obligations for very large online platforms*

1. Very large online platforms shall publish the reports referred to in Article 13 within six months from the date of application referred to in Article 25(4), and thereafter every six months ***in a standardised, machine-readable and easily accessible format***.
  - 1a. Such reports shall include content moderation information separated and presented for each Member State in which the services are offered and for the Union as a whole. The reports shall be published in at least one of the official languages of the Member States of the Union in which services are offered.***
2. In addition to the reports provided for in Article 13, very large online platforms shall make publicly available,, and transmit to the Digital Services Coordinator of establishment and the Commission, at least once a year and within 30 days following the adoption of the audit implementing report provided for in Article 28(4):
  - (a) a report setting out the results of the risk assessment pursuant to Article 26;
  - (b) the ~~related risk~~ ***risk specific*** mitigation measures identified and implemented pursuant to Article 27;

(c) the audit report provided for in Article 28(3);

(d) the audit implementation report provided for in Article 28(4).

***(da) where appropriate, information about the representatives of the recipients of the service, independent experts and civil society organisations, consulted for the risk assessment in Article 26.***

3. Where a very large online platform considers that the publication of information pursuant to paragraph 2 may result in the disclosure of confidential information of that platform or of the recipients of the service, may cause significant vulnerabilities for the security of its service, may undermine public security or may harm recipients, the platform may remove such information from the reports. In that case, that platform shall transmit the complete reports to the Digital Services Coordinator of establishment and the Commission, accompanied by a statement of the reasons for removing the information from the public reports, ***in compliance with Regulation (EU) 2016/679.***

## **SECTION 5**

### **OTHER PROVISIONS CONCERNING DUE DILIGENCE OBLIGATIONS**

#### *Article 34 Standards*

1. The Commission shall support and promote the development and implementation of voluntary ~~industry~~ standards set by relevant European and international standardisation bodies, ***in accordance with Regulation (EU) No 1025/2012***, at least for the following:
- (a) electronic submission of notices under Article 14;
  - (aa) terms and conditions under Article 12, including as regards acceptance of and changes to those terms and conditions;***
  - (ab) information on traceability of traders under Article 22;***
  - (b) advertising practices under Article 24 and recommender systems under Article 24a;***
  - (b) electronic submission of notices by trusted flaggers under Article 19, including through application programming interfaces;
  - (c) specific interfaces, including application programming interfaces, to facilitate compliance with the obligations set out in Articles 30 and 31;
  - (d) auditing of very large online platforms pursuant to Article 28;
  - (e) interoperability of the advertisement repositories referred to in Article 30(2),

- (f) transmission of data between advertising intermediaries in support of transparency obligations pursuant to points (b) and (c) of Article 24;

*(fa) transparency reporting obligations pursuant to Article 13;*

*(fb) technical specifications to ensure that intermediary services shall be made accessible for persons with disabilities in accordance with the accessibility requirements of Directive 2019/882.*

- 1a. The Commission shall support and promote the development and implementation of voluntary standards set by the relevant European and international standardisation bodies aimed at the protection of minors.*
2. The Commission shall support the update of the standards in the light of technological developments and the behaviour of the recipients of the services in question.
- 2a. The Commission shall be empowered to adopt implementing acts laying down common specifications for the items listed in points (a) to (fb) of paragraph 1 where the Commission has requested one or more European standardisation organisations to draft a harmonised standard and there has not been a publication of the reference to that standard in the Official Journal of the European Union within [24 months after the entry into force of this Regulation] or the request has not been accepted by any of the European standardisation organisations.*

Article 35  
Codes of conduct

1. The Commission and the Board shall encourage and facilitate the drawing up of **voluntary** codes of conduct at Union level to contribute to the proper application of this Regulation, taking into account in particular the specific challenges of tackling different types of illegal content and systemic risks, in accordance with Union law. ~~in~~ *Particular attention shall be given to avoiding negative effects on fair competition, data access and security, the general monitoring prohibition and the protection of privacy and personal data. The Commission and the Board shall also encourage and facilitate regular review and adaption of the Codes of conduct to ensure that they are fit for purpose.*
2. Where significant systemic risk within the meaning of Article 26(1) emerge and concern several very large online platforms, the Commission ~~may~~ *may invite request* the very large online platforms concerned, other very large online platforms, other online platforms and other providers of intermediary services, as appropriate, as well as **relevant competent authorities**, civil society organisations and other ~~interested parties~~ *relevant stakeholders*, to participate in the drawing up of codes of conduct, including by setting out commitments to take specific risk mitigation measures, as well as a regular reporting framework on any measures taken and their outcomes.
3. When giving effect to paragraphs 1 and 2, the Commission and the Board shall aim to ensure that the codes of conduct clearly set out their *specific* objectives, *define the nature of the public policy objective pursued and, where appropriate, the role*

*of competent authorities*, contain key performance indicators to measure the achievement of those objectives and take **fully into** account of the needs and interests of all interested parties, **and in particular** citizens, at Union level. The Commission and the Board shall also aim to ensure that participants report regularly to the Commission and their respective Digital Service Coordinators of establishment on any measures taken and their outcomes, as measured against the key performance indicators that they contain. **Key performance indicators and reporting commitments shall take into account differences in size and capacity between different participants.**

4. The Commission and the Board shall assess whether the codes of conduct meet the aims specified in paragraphs 1 and 3, and shall regularly monitor and evaluate the achievement of their objectives. They shall publish their conclusions **and request that the organisations involved amend their codes of conduct accordingly.**
5. The **Commission and the** Board shall regularly monitor and evaluate the achievement of the objectives of the codes of conduct, having regard to the key performance indicators that they may contain. **In case of systematic failure to comply with the Codes of Conduct, the Commission and the Board may take a decision to temporarily suspend or definitively exclude platforms that do not meet their commitments as signatories to the codes of conduct.**

#### Article 36

##### *Codes of conduct for online advertising*

1. The Commission shall encourage and facilitate the drawing up of **voluntary** codes of conduct at Union level between, online platforms and other relevant service providers, such as providers of online advertising intermediary services or organisations representing recipients of the service and civil society organisations or relevant authorities to contribute to further transparency **for all actors in the** online advertising **eco-system**, beyond the requirements of Articles 24 and 30.
2. The Commission shall aim to ensure that the codes of conduct pursue an effective transmission of information, in full respect for the rights and interests of all parties involved, and a competitive, transparent and fair environment in online advertising, in accordance with Union and national law, in particular on competition and the protection of **privacy and** personal data. The Commission shall aim to ensure that the codes of conduct address at least:
  - (a) the transmission of information held by providers of online advertising intermediaries to recipients of the service with regard to requirements set in points (b) and (c) of Article 24;
  - (b) the transmission of information held by providers of online advertising intermediaries to the repositories pursuant to Article 30;

**(ba) the different types of data that can be used.**
3. The Commission shall encourage the development of the codes of conduct within one year following the date of application of this Regulation and their application no later than six

months after that date. ***The Commission shall evaluate the application of those codes three years after the application of this Regulation.***

- 3a. The Commission shall encourage all the actors in the online advertising ecosystem referred to in paragraph 1 to endorse and comply with the commitments stated in the codes of conduct.***

*Article 37*  
*Crisis protocols*

1. The Board may recommend the Commission to initiate the drawing up, in accordance with paragraphs 2, 3 and 4, of **voluntary** crisis protocols for addressing crisis situations strictly limited to extraordinary circumstances affecting public security or public health.
2. The Commission shall encourage and facilitate very large online platforms and, where appropriate, other online platforms, with the involvement of the Commission, to participate in the drawing up, testing and application of those crisis protocols, which include one or more of the following measures:
  - (a) displaying prominent information on the crisis situation provided by Member States' authorities or at Union level;
  - (b) ensuring that the point of contact referred to in Article 10 is responsible for crisis management;
  - (c) where applicable, adapt the resources dedicated to compliance with the obligations set out in Articles 14, 17, 19, 20 and 27 to the needs created by the crisis situation.
3. The Commission may involve, as appropriate, Member States' authorities and Union bodies, offices and agencies in drawing up, testing and supervising the application of the crisis protocols. The Commission may, where necessary and appropriate, also involve civil society organisations or other relevant organisations in drawing up the crisis protocols.
4. The Commission shall aim to ensure that the crisis protocols set out clearly all of the following:
  - (a) the specific parameters to determine what constitutes the specific extraordinary circumstance the crisis protocol seeks to address and the objectives it pursues;
  - (b) the role of each participant and the measures they are to put in place in preparation and once the crisis protocol has been activated;
  - (c) a clear procedure for determining when the crisis protocol is to be activated;
  - (d) a clear procedure for determining the period during which the measures to be taken once the crisis protocol has been activated are to be taken, which is



strictly limited to what is necessary for addressing the specific extraordinary circumstances concerned;

- (e) safeguards to address any negative effects on the exercise of the fundamental rights enshrined in the Charter, in particular the freedom of expression and information and the right to non-discrimination;
- (f) a process to publicly report on any measures taken, their duration and their outcomes, upon the termination of the crisis situation.

*(fa) measures to ensure accessibility for persons with disabilities during implementation of crisis protocols, including by providing accessible description about these protocols.*

5. If the Commission considers that a crisis protocol fails to effectively address the crisis situation, or to safeguard the exercise of fundamental rights as referred to in point (e) of paragraph 4, it ~~may~~ **shall** request the participants to revise the crisis protocol, including by taking additional measures.

## **Chapter IV Implementation, cooperation, sanctions and enforcement**

### **SECTION 1 COMPETENT AUTHORITIES AND NATIONAL DIGITAL SERVICES COORDINATORS**

#### *Article 38*

#### *Competent authorities and Digital Services Coordinators*

1. Member States shall designate one or more competent authorities as responsible for the application 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 application 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 application 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 regular exchanges of views with other authorities where relevant for the performance of the tasks of those other authorities and of the Digital Services Coordinator.

Where a Member State designates more than one competent authority 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. The Member State concerned shall communicate the name of the other competent authorities as well as their respective tasks to the Commission and the Board.

3. Member States shall designate the Digital Services Coordinators within two months from the date of entry into force of this Regulation.  
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.
4. The requirements applicable to Digital Services Coordinators set out in Articles 39, 40 and 41 shall also apply to any other competent authorities that the Member States designate pursuant to paragraph 1.
- 4a. Member States shall ensure that the competent authorities, referred to in paragraph 1 and in particular their Digital Services Coordinators, have adequate technical financial and human resources to carry out their tasks under this Regulation.**

*Article 39*  
*Requirements for Digital Services Coordinators*

1. Member States shall ensure that their Digital Services Coordinators perform their tasks under this Regulation in an impartial, transparent and timely manner. ~~Member States shall ensure that their Digital Services Coordinators have adequate technical, financial and human resources to carry out their tasks.~~
2. When carrying out their tasks and exercising their powers in accordance with this Regulation, the Digital Services Coordinators shall act with complete independence. They shall remain free from any external influence, whether direct or indirect, and shall neither seek nor take instructions from any other public authority or any private party.
3. Paragraph 2 is without prejudice to the tasks of Digital Services Coordinators within the system of supervision and enforcement provided for in this Regulation and the cooperation with other competent authorities in accordance with Article 38(2). Paragraph 2 shall not prevent supervision of the authorities concerned in accordance with national constitutional law.

*Article 40*  
*Jurisdiction*

1. The Member State in which the main establishment of the provider of intermediary services is located shall have jurisdiction for the purposes of ~~Chapters III and IV~~ **the supervision and enforcement by the national competent authorities, in accordance with this Chapter, of the obligations imposed on intermediaries under** of this Regulation.

2. A provider of intermediary services which does not have an establishment in the Union but which offers services in the Union shall, for the purposes of *this Article* ~~Chapters III and IV~~, be deemed to be under the jurisdiction of the Member State where its legal representative resides or is established.
3. Where a provider of intermediary services fails to appoint a legal representative in accordance with Article 11, all Member States shall have jurisdiction for the purposes of *this Article* ~~Chapters III and IV~~. Where a Member State decides to exercise jurisdiction under this paragraph, it shall inform all other Member States and ensure that the principle of *ne bis in idem* is respected. 4. Paragraphs 1, 2 and 3 are without prejudice to the second subparagraph of Article 50(4) and the second subparagraph of Article 51(2) and the tasks and powers of the Commission under Section 3.

*Article 41*  
*Powers of Digital Services Coordinators*

1. Where needed for carrying out their tasks, Digital Services Coordinators shall have at least the following powers of investigation, in respect of conduct by providers of intermediary services under the jurisdiction of their Member State:
  - (a) the power to require those providers, as well as any other persons acting for purposes related to their trade, business, craft or profession that may reasonably be aware of information relating to a suspected infringement of this Regulation, including, organisations performing the audits referred to in Articles 28 and 50(3), to provide such information *without undue delay, or at the latest within three months* ~~a reasonable time period~~;
  - (b) the power to carry out on-site inspections of any premises that those providers or those persons use for purposes related to their trade, business, craft or profession, or to request other public authorities to do so, in order to examine, seize, take or obtain copies of information relating to a suspected infringement in any form, irrespective of the storage medium;
  - (c) the power to ask any member of staff or representative of those providers or those persons to give explanations in respect of any information relating to a suspected infringement and to record the answers.
2. Where needed for carrying out their tasks, Digital Services Coordinators shall have at least the following enforcement powers, in respect of providers of intermediary services under the jurisdiction of their Member State:
  - (a) the power to accept the commitments offered by those providers in relation to their compliance with this Regulation and to make those commitments binding;
  - (b) the power to order the cessation of infringements and, where appropriate, to impose remedies proportionate to the infringement and necessary to bring the infringement effectively to an end;

- (c) the power to impose fines in accordance with Article 42 for failure to comply with this Regulation, including with any of the orders issued pursuant to paragraph 1;
- (d) the power to impose a periodic penalty payment in accordance with Article 42 to ensure that an infringement is terminated in compliance with an order issued pursuant to point (b) of this paragraph or for failure to comply with any of the orders issued pursuant to paragraph 1;
- (e) the power to adopt *proportionate* interim measures *or to request the relevant judicial authority to do so*, to avoid the risk of serious harm.

As regards points (c) and (d) of the first subparagraph, Digital Services Coordinators shall also have the enforcement powers set out in those points in respect of the other persons referred to in paragraph 1 for failure to comply with any of the orders issued to them pursuant to that paragraph. They shall only exercise those enforcement powers after having provided those ~~other~~ ~~others~~ persons in good time with all relevant information relating to such orders, including the applicable time period, the fines or periodic payments that may be imposed for failure to comply and redress possibilities.

3. Where needed for carrying out their tasks, Digital Services Coordinators shall also have, in respect of providers of intermediary services under the jurisdiction of their Member State, where all other powers pursuant to this Article to bring about the cessation of an infringement have been exhausted, the infringement persists *or is continuously repeated* and causes serious harm which cannot be avoided through the exercise of other powers available under Union or national law, the power to take the following measures:
  - (a) require the management body of the providers, within a reasonable time period, *which shall in any case not exceed three months*, to examine the situation, adopt and submit an action plan setting out the necessary measures to terminate the infringement, ensure that the provider takes those measures, and report on the measures taken;
  - (b) where the Digital Services Coordinator considers that the provider has not ~~sufficiently~~ complied with the requirements of the first indent, that the infringement persists *or is continuously repeated* and causes serious harm, and that the infringement entails a serious criminal offence involving a threat to the life or safety of persons, request the competent judicial authority of that Member State to order the temporary restriction of access of recipients of the service concerned by the infringement or, only where that is not technically feasible, to the online interface of the provider of intermediary services on which the infringement takes place.

The Digital Services Coordinator shall, except where it acts upon the Commission's request referred to in Article 65, prior to submitting the request referred to in point (b) of the first subparagraph, invite interested parties to submit written observations within a time period that shall not be less than two weeks, describing the measures that it intends to request and identifying the intended addressee or addressees thereof. The provider, the intended addressee or addressees and any other third party demonstrating a legitimate interest shall be entitled to participate in the proceedings before the competent judicial authority. Any measure ordered shall be proportionate to the nature, gravity, recurrence

and duration of the infringement, without unduly restricting access to lawful information by recipients of the service concerned.

The restriction shall be for a period of four weeks, subject to the possibility for the competent judicial authority, in its order, to allow the Digital Services Coordinator to extend that period for further periods of the same lengths, subject to a maximum number of extensions set by that judicial authority. The Digital Services Coordinator shall only extend the period where it considers, having regard to the rights and interests of all parties affected by the restriction and all relevant circumstances, including any information that the provider, the addressee or addressees and any other third party that demonstrated a legitimate interest may provide to it, that both of the following conditions have been met:

- (a) the provider has failed to take the necessary measures to terminate the infringement;
- (b) the temporary restriction does not unduly restrict access to lawful information by recipients of the service, having regard to the number of recipients affected and whether any adequate and readily accessible alternatives exist.

Where the Digital Services Coordinator considers that those two conditions have been met but it cannot further extend the period pursuant to the third subparagraph, it shall submit a new request to the competent judicial authority, as referred to in point (b) of the first subparagraph.

- 4. The powers listed in paragraphs 1, 2 and 3 are without prejudice to Section 3.
  - 5. The measures taken by the Digital Services Coordinators in the exercise of their powers listed in paragraphs 1, 2 and 3 shall be effective, dissuasive and proportionate, having regard, in particular, to the nature, gravity, recurrence and duration of the infringement or suspected infringement to which those measures relate, as well as the economic, technical and operational capacity of the provider of the intermediary services concerned where relevant.
  - 6. Member States shall ensure that any exercise of the powers pursuant to paragraphs 1, 2 and 3 is subject to adequate safeguards laid down in the applicable national law in conformity with the Charter and with the general principles of Union law. In particular, those measures shall only be taken in accordance with the right to respect for private life and the rights of defence, including the rights to be heard and of access to the file, and subject to the right to an effective judicial remedy of all affected parties.
- 6a. *The Commission shall publish guidelines by [six months after the entry into force of this Regulation] on the powers of and procedures applicable to the Digital Services Coordinators.***

#### *Article 42* *Penalties*

- 1. Member States shall lay down the rules on penalties applicable to infringements of this Regulation by providers of intermediary services under their jurisdiction and shall take all the necessary measures to ensure that they are implemented in accordance with Article 41.

2. Penalties shall be effective, proportionate and dissuasive. Member States shall notify the Commission **and the Board** of those rules and of those measures and shall notify it, without delay, of any subsequent amendments affecting them.
3. Member States shall ensure that the maximum amount of penalties imposed for a failure to comply with the obligations laid down in this Regulation shall not exceed 6 % of the annual ~~worldwide income~~ or turnover of the provider of intermediary services concerned. Penalties for the supply of incorrect, incomplete or misleading information, failure to reply or rectify incorrect, incomplete or misleading information and to submit to an on-site inspection shall not exceed 1% of the annual ~~worldwide income~~ or turnover of the provider concerned.
4. Member States shall ensure that the maximum amount of a periodic penalty payment shall not exceed 5 % of the average daily **worldwide** turnover of the provider of intermediary services concerned in the preceding financial year per day, calculated from the date specified in the decision concerned.
- 4a. ***Member States shall ensure that administrative or judicial authorities issuing orders pursuant to Article 8 and 9 shall only issue penalties or fines in line with this Article.***

#### Article 43

##### *Right to lodge a complaint*

1. Recipients of the service, , 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 resides or is established. ***During these proceedings, both parties shall have the right to be heard and receive appropriate information about the status of the proceedings.*** The Digital Services Coordinator shall assess the complaint and, where appropriate, transmit it to the Digital Services Coordinator of establishment ***without undue delay.*** Where the complaint falls under the responsibility of another competent authority in its Member State, the Digital Service Coordinator receiving the complaint shall transmit it to that authority, ***without undue delay.***
- 1a. ***Upon receipt of the complaint, transmitted pursuant to paragraph 1, the Digital Services Coordinator of establishment shall assess the matter in a timely manner and shall inform within six months the Digital Services Coordinator of the Member State where the recipient resides or is established if it intends to proceed with an investigation. If it opens an investigation, it shall provide an update at least every three months. The Digital Services Coordinator of the Member State where the recipient resides or is established shall consequently inform the recipient.***

#### Article 43a

##### *Compensation*

1. ***Without prejudice to Article 5, recipients of the service shall have the right to seek, in accordance with relevant Union and national law compensation from providers of intermediary services, against any direct damage or loss suffered due to an***

***infringement by providers of intermediary services of obligations established under this Regulation.***

*Article 44*  
*Activity reports*

1. Digital Services Coordinators shall draw up an annual report on their activities under this Regulation. They shall make the annual reports ***in a standardised and machine-readable format*** available to the public, and shall communicate them to the Commission and to the Board.
2. The annual report shall include at least 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 8 and 9 by any national judicial or administrative authority of the Member State of the Digital Services Coordinator concerned, ***including information on the name of the issuing authority, the name of the provider and the type of action specified in the order, as well as a justification that the order complies with Article 3 of Directive 2000/31/EC;***
  - (b) the effects given to those orders, as communicated to the Digital Services Coordinator pursuant to Articles 8 and 9, ***the number of appeals made against those orders, as well as the outcome of the appeals.***
- 2a. ***The Commission shall make publicly available a biennial report analysing the annual reports, communicated pursuant to paragraph 1 and shall submit it to the European Parliament and to the Council.***
3. Where a Member State has designated several competent authorities pursuant to Article 38, 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.

*Article 45*  
*Cross-border cooperation among Digital Services Coordinators*

1. Where a Digital Services Coordinator has reasons to suspect that a provider of an intermediary service, not under the jurisdiction of the Member State concerned, infringed this Regulation, it shall 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.

Where the Board has reasons to suspect that a provider of intermediary services infringed this Regulation in a manner involving at least three Member States, it may ~~recommend~~ ***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.

2. A request ~~or recommendation~~ pursuant to paragraph 1 shall at least indicate:
  - (a) the point of contact of the provider of the intermediary services concerned as provided for in Article 10;
  - (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,
  - (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.
- 2a. ***A request pursuant to paragraph 1 shall be at the same time communicated to the Commission. Where the Commission believes that the request is not justified or where the Commission is currently taking action on the same matter, the Commission can ask for the request to be withdrawn.***
3. The Digital Services Coordinator of establishment shall take into utmost account the request ~~or recommendation~~ pursuant to paragraph 1. Where it considers that it has insufficient information to act upon the request ~~or recommendation~~ and has reasons to consider that the Digital Services Coordinator that sent the request, or the Board, could provide additional information, it may request such information. The time period laid down in paragraph 4 shall be suspended until that additional information is provided.
4. The Digital Services Coordinator of establishment shall, without undue delay and in any event not later than two months following receipt of the request ~~or recommendation~~, communicate to the Digital Services Coordinator that sent the request, or the Board, its assessment of the suspected infringement, or that of any other competent authority pursuant to national law where relevant, and an explanation of any investigatory or enforcement measures taken or envisaged in relation thereto to ensure compliance with this Regulation.
5. Where the Digital Services Coordinator that sent the request, or, where appropriate, the Board, did not receive a reply within the time period laid down in paragraph 4 or where it does not agree with the assessment of the Digital Services Coordinator of establishment, it 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, any additional information provided pursuant to paragraph 3 and the communication referred to in paragraph 4.
6. The Commission shall assess the matter within three months following the referral of the matter pursuant to paragraph 5, after having consulted the Digital Services Coordinator of establishment and, unless it referred the matter itself, the Board.
7. Where, pursuant to paragraph 6, the Commission concludes that the assessment or the investigatory or enforcement measures taken or envisaged pursuant to paragraph 4 are incompatible with this Regulation, it shall request the Digital Service Coordinator of establishment to further assess the matter and take the necessary investigatory or



enforcement measures to ensure compliance with this Regulation, and to inform it about those measures taken within two months from that request. ***This information shall be also transmitted to the Digital Services Coordinator or the Board that initiated the proceedings pursuant to paragraph 1.***

#### Article 46

##### *Joint investigations and requests for Commission intervention*

1. Digital Services Coordinators may participate in joint investigations, which may be coordinated with the support of the Board, with regard to matters covered by this Regulation, concerning providers of intermediary services operating in several Member States.
  - 1a. ***Where a Digital Services Coordinator of establishment has reasons to suspect that a provider of intermediary services has infringed this Regulation in a manner involving at least one other Member State, it may propose to the Digital Services Coordinator of destination concerned to launch a joint investigation. The joint investigation shall be based on an agreement between the Member States concerned.***
  - 1b. ***Upon request of the Digital Services Coordinator of destination who has reasons to suspect that a provider of intermediary services has infringed this Regulation in its Member State, the Board may recommend to the Digital Services Coordinator of establishment to launch a joint investigation with the Digital Services Coordinator of destination concerned. The joint investigation shall be based on an agreement between the Member States concerned.***  
***Where there is no agreement within 1 month, the joint investigation shall be under the supervision of the Digital Services Coordinator of establishment.***

Such joint investigations are without prejudice to the tasks and powers of the participating Digital **Services** Coordinators and the requirements applicable to the performance of those tasks and exercise of those powers provided in this Regulation. The participating Digital Services Coordinators shall make the results of the joint investigations available to other Digital Services Coordinators, the Commission and the Board through the system provided for in Article 67 for the fulfilment of their respective tasks under this Regulation.

2. Where a Digital Services Coordinator of establishment ~~has~~ **has** reasons to suspect that a very large online platform infringed this Regulation, ~~it~~ **it** may request the Commission to take the necessary investigatory and enforcement measures to ensure compliance with this Regulation in accordance with Section 3. Such a request shall contain all information listed in Article 45(2) and set out the reasons for requesting the Commission to intervene.

## SECTION 2

### EUROPEAN BOARD FOR DIGITAL SERVICES

#### *Article 47* *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~~ **providing** guidance and analysis ~~to~~ 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;
  - (ab) contributing to the effective application of Article 3 of Directive 2000/31/EC to prevent fragmentation of the digital single market;***
  - (c) assisting the Digital Services Coordinators and the Commission in the supervision of very large online platforms;
  - (ca) contribute to the effective cooperation with the competent authorities of third countries and with international organisations.***

#### *Article 48* *Structure of the Board*

1. The Board shall be composed of the Digital Services Coordinators, who shall be represented by high-level officials. Where provided for by national law, other competent authorities entrusted with specific operational responsibilities for the application and enforcement of this Regulation alongside the Digital Services Coordinator, ~~shall~~ **may** participate in the Board. Other national authorities may be invited to the meetings, where the issues discussed are of relevance for them. ***The meeting shall be deemed valid where at least two thirds of its members are present. 1a. The Board shall be chaired by the Commission. The Commission shall convene the meetings and prepare the agenda in accordance with the tasks of the Board pursuant to this Regulation and with its rules of procedure.***
2. Each Member State shall have one vote, ***to be cast by the Digital Services Coordinator.*** The Commission shall not have voting rights.

The Board shall adopt its acts by simple majority.

- ~~3. The Board shall be chaired by the Commission. The Commission shall convene the meetings and prepare the agenda in accordance the tasks of the Board pursuant to this Regulation and with its rules of procedure.~~
4. The Commission shall provide administrative and analytical support for the activities of the Board pursuant to this Regulation.
5. The Board may invite experts and observers to attend its meetings, and ~~may~~ **shall** cooperate with other Union bodies, offices, agencies and advisory groups, as well as external experts as appropriate. The Board shall make the results of this cooperation publicly available.
- 5a. The Board shall, where appropriate, consult interested parties and shall make the results of that consultation publicly available.**
6. The Board shall adopt its rules of procedure **by a two-thirds majority of its members**, following the consent of the Commission.

*Article 49*  
*Tasks of the Board*

1. Where necessary to meet the objectives set out in Article 47(2), the Board shall in particular:
  - (a) support the coordination of joint investigations;
  - (b) support the competent authorities in the analysis of reports and results of audits of very large online platforms to be transmitted pursuant to this Regulation;
  - (c) issue opinions, recommendations or advice to Digital Services Coordinators in accordance with this Regulation;
  - (cb) issue specific recommendations for the implementation of Article 13a;**
  - (d) advise the Commission to take the measures referred to in Article 51 and, ~~where requested by the Commission,~~ adopt opinions on draft Commission measures concerning very large online platforms in accordance with this Regulation;
  - (da) monitor the compliance with Article 3 of Directive 2000/31/EC of measures taken by a Member State restricting the freedom to provide services of intermediary service providers from another Member State and ensure that those measures are strictly necessary and do not restrict the application of this Regulation;**
  - (e) support and promote the development and implementation of European standards, guidelines, reports, templates and code of conducts **in close collaboration with relevant stakeholders** as provided for in this Regulation, **including by issuing opinions, recommendations or advice on matters related to Article 34**, as well as the identification of emerging issues, with regard to matters covered by this Regulation.

2. Digital Services Coordinators and other national competent authorities that do not follow the opinions, requests or recommendations addressed to them adopted by the Board shall provide the reasons for this choice ***and an explanation on the investigations, actions and the measures that they have implemented*** when reporting pursuant to this Regulation or when adopting their relevant decisions, as appropriate.

#### ***Article 49 Reports***

1. ***The Board shall draw up an annual report regarding its activities. The report shall be made public and be transmitted to the European Parliament, to the Council and to the Commission in all official languages of the Union.***
2. ***The annual report shall include, among other information, a review of the practical application of the opinions, guidelines, recommendations advice and any other measures taken under Article 49(1).***

### **SECTION 3 SUPERVISION, INVESTIGATION, ENFORCEMENT AND MONITORING IN RESPECT OF VERY LARGE ONLINE PLATFORMS**

#### ***Article 50 Enhanced supervision for very large online platforms***

1. Where the Digital Services Coordinator of establishment adopts a decision finding that a very large online platform has infringed any of the provisions of Section 4 of Chapter III, it shall make use of the enhanced supervision system laid down in this Article. It shall take utmost account of any opinion and recommendation of the Commission and the Board pursuant to this Article.  
The Commission acting on its own initiative, or the Board acting on its own initiative or upon request of at least three Digital Services Coordinators of destination, may, where it has reasons to suspect that a very large online platform infringed any of ~~these~~ ***the provisions of Section 4 of Chapter III***, recommend the Digital Services Coordinator of establishment to investigate the suspected infringement with a view to that Digital Services Coordinator adopting such a decision within a reasonable time period and ***no later than three months***.
2. When communicating the decision referred to in the first subparagraph of paragraph 1 to the very large online platform concerned, the Digital Services Coordinator of establishment shall request it to draw up and communicate to the Digital Services Coordinator of establishment, the Commission and the Board, within one month from that decision, an action plan, specifying how that platform intends to terminate or remedy the infringement. The measures set out in the action plan may ~~include~~ ***recommend***, where appropriate, participation in a code of conduct as provided for in Article 35.
3. Within one month following receipt of the action plan, the Board shall communicate its opinion on the action plan to the Digital Services Coordinator of establishment. Within

one month following receipt of that opinion, that Digital Services Coordinator shall decide whether the action plan is appropriate to terminate or remedy the infringement.

Where the Digital Services Coordinator of establishment has concerns on the ability of the measures to terminate or remedy the infringement, it may request the very large online platform concerned to subject itself to an additional, independent audit to assess the effectiveness of those measures in terminating or remedying the infringement. In that case, that platform shall send the audit report to that Digital Services Coordinator, the Commission and the Board within four months from the decision referred to in the first subparagraph. When requesting such an additional audit, the Digital Services Coordinator may specify a particular audit organisation that is to carry out the audit, at the expense of the platform concerned, selected on the basis of criteria set out in Article 28(2).

4. The Digital Services Coordinator of establishment shall communicate to the Commission, the Board and the very large online platform concerned its views as to whether the very large online platform has terminated or remedied the infringement and the reasons thereof. It shall do so within the following time periods, as applicable:
  - (a) within one month from the receipt of the audit report referred to in the second subparagraph of paragraph 3, where such an audit was performed;
  - (b) within three months from the decision on the action plan referred to in the first subparagraph of paragraph 3, where no such audit was performed;
  - (c) immediately upon the expiry of the time period set out in paragraph 2, where that platform failed to communicate the action plan within that time period.

Pursuant to that communication, the Digital Services Coordinator of establishment shall no longer be entitled to take any investigatory or enforcement measures in respect of the relevant conduct by the very large online platform concerned, without prejudice to Article 66 or any other measures that it may take at the request of the Commission.

#### *Article 51*

##### *~~Intervention by the Commission and~~ Opening of proceedings by the Commission*

1. The Commission, acting either upon the Board's recommendation or on its own initiative after consulting the Board, ~~may~~ **shall** initiate proceedings in view of the possible adoption of decisions pursuant to Articles 58 and 59 in respect of the relevant conduct by the very large online platform that:
  - (a) is suspected of having infringed any of the provisions of this Regulation and the Digital Services Coordinator of establishment did not take any investigatory or enforcement measures, pursuant to the request of the Commission referred to in Article 45(7), upon the expiry of the time period set in that request;
  - (b) is suspected of having infringed any of the provisions of this Regulation and the Digital Services Coordinator of establishment requested the Commission to intervene in accordance with Article 46(2), upon the reception of that request;

- (c) has been found to have infringed any of the provisions of Section 4 of Chapter III, upon the expiry of the relevant time period for the communication referred to in Article 50(4).
2. Where the Commission ~~decides to~~ **initiates** proceedings pursuant to paragraph 1, it shall notify all Digital Services Coordinators, the Board and the very large online platform concerned.
- As regards points (a) and (b) of paragraph 1, pursuant to that notification, the Digital Services Coordinator of establishment concerned shall no longer be entitled to take any investigatory or enforcement measures in respect of the relevant conduct by the very large online platform concerned, without prejudice to Article 66 or any other measures that it may take at the request of the Commission.
3. The Digital Services Coordinator referred to in Articles 45(7), 46(2) and 50(1), as applicable, shall, without undue delay upon being informed, transmit to the Commission:
- (a) any information that that Digital Services Coordinator exchanged relating to the infringement or the suspected infringement, as applicable, with the Board and with the very large online platform concerned;
  - (b) the case file of that Digital Services Coordinator relating to the infringement or the suspected infringement, as applicable;
  - (c) any other information in the possession of that Digital Services Coordinator that may be relevant to the proceedings initiated by the Commission.
4. The Board, and the Digital Services Coordinators making the request referred to in Article 45(1), shall, without undue delay upon being informed, transmit to the Commission any information in their possession that may be relevant to the proceedings initiated by the Commission.

*Article 52*  
*Requests for information*

1. In order to carry out the tasks assigned to it under this Section, the Commission may by ~~simple~~ **reasoned** request or by decision require the very large online platforms concerned, **their legal representatives** as well as any other persons acting for purposes related to their trade, business, craft or profession that may be reasonably be aware of information relating to the suspected infringement or the infringement, as applicable, including organisations performing the audits referred to in Articles 28 and 50(3), to provide such information within a reasonable time period
2. When sending a simple request for information to the very large online platform concerned or other person referred to in Article 52(1), the Commission shall state the legal basis and the purpose of the request, specify what information is required and set the time period within which the information is to be provided, and the penalties provided for in Article 59 for supplying incorrect or misleading information.

3. Where the Commission requires the very large online platform concerned or other person referred to in Article 52(1) 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 time period within which it is to be provided. It shall also indicate the penalties provided for in Article 59 and indicate or impose the periodic penalty payments provided for in Article 60. It shall further indicate the right to have the decision reviewed by the Court of Justice of the European Union.
- 3a. ***The purpose of the request shall include reasoning on why and how the information is necessary and proportionate to the objective pursued and cannot be received by other means.***
4. The owners of the very large online platform concerned or other person referred to in Article 52(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 very large online platform concerned or other person referred to in Article 52(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.

#### *Article 53*

##### *Power to take interviews and statements*

In order to carry out the tasks assigned to it under this Section, the Commission may interview any natural or legal person which consents to being interviewed for the purpose of collecting information, relating to the subject-matter of an investigation, in relation to the suspected infringement or infringement, as applicable.

#### *Article 54*

##### *Power to conduct on-site inspections*

1. In order to carry out the tasks assigned to it under this Section, the Commission may conduct on-site inspections at the premises of the very large online platform concerned or other person referred to in Article 52(1).
2. On-site inspections may also be carried out with the assistance of auditors or experts appointed by the Commission pursuant to Article 57(2).
3. During on-site inspections the Commission and auditors or experts appointed by it may require the very large online platform concerned or other person referred to in Article 52(1) to provide explanations on its organisation, functioning, IT system, algorithms, data-handling and business conducts. The Commission and auditors or experts appointed by it may address questions to key personnel of the very large online platform concerned or other person referred to in Article 52(1).

4. The very large online platform concerned or other person referred to in Article 52(1) is required to submit to an on-site inspection ordered by decision of the Commission. The decision shall specify the subject matter and purpose of the visit, set the date on which it is to begin and indicate the penalties provided for in Articles 59 and 60 and the right to have the decision reviewed by the Court of Justice of the European Union.

*Article 55*  
*Interim measures*

1. In the context of proceedings which may lead to the adoption of a decision of non-compliance pursuant to Article 58(1), where there is an urgency due to the risk of serious damage for the recipients of the service the Commission may, by decision, order ***proportionate*** interim measures ***in compliance with fundamental rights*** against the very large online platform concerned on the basis of a prima facie finding of an infringement.
2. A decision under paragraph 1 shall apply for a specified period of time and may be renewed in so far this is necessary and appropriate.

*Article 56*  
*Commitments*

1. If, during proceedings under this Section, the very large online platform concerned offers commitments to ensure compliance with the relevant provisions of this Regulation, the Commission may by decision make those commitments binding on the very large online platform concerned and declare that there are no further grounds for action.
2. The Commission ***shall***, ~~upon request or on its own initiative~~, reopen the proceedings:
  - (a) where there has been a material change in any of the facts on which the decision was based;
  - (b) where the very large online platform concerned acts contrary to its commitments; or
  - (c) where the decision was based on incomplete, incorrect or misleading information provided by the very large online platform concerned or other person referred to in Article 52(1).
3. Where the Commission considers that the commitments offered by the very large online platform concerned are unable to ensure effective compliance with the relevant provisions of this Regulation, it shall reject those commitments in a reasoned decision when concluding the proceedings.

*Article 57*  
*Monitoring actions*

1. For the purposes of carrying out the tasks assigned to it under this Section, the Commission may take the necessary actions to monitor the effective implementation and compliance with this Regulation by the very large online platform concerned. The Commission may also order that platform to provide explanations relating to its databases and algorithms.



2. The actions pursuant to paragraph 1 may include the appointment of independent external experts and auditors to assist the Commission in monitoring compliance with the relevant provisions of this Regulation and to provide specific expertise or knowledge to the Commission.

*Article 58*  
*Non-compliance*

1. The Commission shall adopt a non-compliance decision where it finds that the very large online platform concerned does not comply with one or more of the following:
  - (a) the relevant provisions of this Regulation;
  - (b) interim measures ordered pursuant to Article 55; **or**
  - (c) commitments made binding pursuant to Article 56,
2. Before adopting the decision pursuant to paragraph 1, the Commission shall communicate its preliminary findings to the very large online platform concerned. In the preliminary findings, the Commission shall explain the measures that it considers taking, or that it considers that the very large online platform concerned should take, in order to effectively address the preliminary findings.
3. In the decision adopted pursuant to paragraph 1 the Commission shall order the very large online platform concerned to take the necessary measures to ensure compliance with the decision pursuant to paragraph 1 ***within one month*** and to provide information on the measures that that platform intends to take to comply with the decision.
4. The very large online platform concerned shall provide the Commission with a description of the measures it has taken to ensure compliance with the decision pursuant to paragraph 1 upon their implementation.
5. Where the Commission finds that the conditions of paragraph 1 are not met, it shall close the investigation by a decision. ***The decision shall apply with immediate effect.***

*Article 59*  
*Fines*

1. In the decision pursuant to Article 58, the Commission may impose on the very large online platform concerned fines not exceeding **6%** of its total ***worldwide*** turnover in the preceding financial year where it finds that ***the*** platform, intentionally or negligently:
  - (a) infringes the relevant provisions of this Regulation;
  - (b) fails to comply with a decision ordering interim measures under Article 55; or
  - (c) fails to comply with a voluntary measure made binding by a decision pursuant to Articles 56.

2. The Commission may by decision *and in compliance with the proportionality principle* impose on the very large online platform concerned or other person referred to in Article 52(1) fines not exceeding 1% of the total **worldwide** turnover in the preceding financial year, where they intentionally or negligently:
  - (a) supply incorrect, incomplete or misleading information in response to a request pursuant to Article 52 or, when the information is requested by decision, fail to reply to the request within the set time period;
  - (b) fail to rectify within the time period set by the Commission, incorrect, incomplete or misleading information given by a member of staff, or fail or refuse to provide complete information;
  - (c) refuse to submit to an on-site inspection pursuant to Article 54.
3. Before adopting the decision pursuant to paragraph 2, the Commission shall communicate its preliminary findings to the very large online platform concerned or other person referred to in Article 52(1).
4. In fixing the amount of the fine, the Commission shall have regard to the nature, gravity, duration and recurrence of the infringement *any fines issued under Article 42 for the same infringement* and, for fines imposed pursuant to paragraph 2, the delay caused to the proceedings.

*Article 60*  
*Periodic penalty payments*

1. The Commission may, by decision, impose on the very large online platform concerned or other person referred to in Article 52(1), as applicable, periodic penalty payments not exceeding **5 %** of the average daily **worldwide** turnover in the preceding financial year per day, calculated from the date appointed by the decision, in order to compel them to:
  - (a) supply correct and complete information in response to a decision requiring information pursuant to Article 52;
  - (b) submit to an on-site inspection which it has ordered by decision pursuant to Article 54;
  - (c) comply with a decision ordering interim measures pursuant to Article 55(1);
  - (d) comply with commitments made legally binding by a decision pursuant to Article 56(1);
  - (e) comply with a decision pursuant to Article 58(1).
2. Where the very large online platform concerned or other person referred to in Article 52(1) has satisfied the obligation which the periodic penalty payment was intended to enforce, the Commission may fix the definitive amount of the periodic penalty payment at a figure lower than that which would arise under the original decision.

*Article 61*  
*Limitation period for the imposition of penalties*

1. The powers conferred on the Commission by Articles 59 and 60 shall be subject to a limitation period of five years.
2. Time shall begin to run on the day on which the infringement is committed. However, in the case of continuing or repeated infringements, time shall begin to run on the day on which the infringement ceases.
3. Any action taken by the Commission or by the Digital Services Coordinator for the purpose of the investigation or proceedings in respect of an infringement shall interrupt the limitation period for the imposition of fines or periodic penalty payments. Actions which interrupt the limitation period shall include, in particular, the following:
  - (a) requests for information by the Commission or by a Digital Services Coordinator;
  - (b) on-site inspection;
  - (c) the opening of a proceeding by the Commission pursuant to Article 51(2).
4. Each interruption shall start time running afresh. However, the limitation period for the imposition of fines or periodic penalty payments shall expire at the latest on the day on which a period equal to twice the limitation period has elapsed without the Commission having imposed a fine or a periodic penalty payment. That period shall be extended by the time during which the limitation period is suspended pursuant to paragraph 5.
5. The limitation period for the imposition of fines or periodic penalty payments shall be suspended for as long as the decision of the Commission is the subject of proceedings pending before the Court of Justice of the European Union.

*Article 62*  
*Limitation period for the enforcement of penalties*

1. The power of the Commission to enforce decisions taken pursuant to Articles 59 and 60 shall be subject to a limitation period of five years.
2. Time shall begin to run on the day on which the decision becomes final.
3. The limitation period for the enforcement of penalties shall be interrupted:
  - (a) by notification of a decision varying the original amount of the fine or periodic penalty payment or refusing an application for variation;
  - (b) by any action of the Commission, or of a Member State acting at the request of the Commission, designed to enforce payment of the fine or periodic penalty payment.
4. Each interruption shall start time running afresh.

5. The limitation period for the enforcement of penalties shall be suspended for so long as:
  - (a) time to pay is allowed;
  - (b) enforcement of payment is suspended pursuant to a decision of the Court of Justice of the European Union.

*Article 63*

*Right to be heard and access to the file*

1. Before adopting a decision pursuant to Articles 58(1), 59 or 60, the Commission shall give the very large online platform concerned or other person referred to in Article 52(1) the opportunity of being heard on:
  - (a) preliminary findings of the Commission, including any matter to which the Commission has taken objections; and
  - (b) measures that the Commission may intend to take in view of the preliminary findings referred to point (a).
2. The very large online platform concerned or other person referred to in Article 52(1) may submit their observations on the Commission's preliminary findings within a reasonable time period set by the Commission in its preliminary findings, which may not be less than 14 days.
3. The Commission shall base its decisions only on objections on which the parties concerned have been able to comment.
4. The rights of defence of the parties concerned shall be fully respected in the proceedings. They shall be entitled to have access to the Commission's file under the terms of a negotiated disclosure, subject to the legitimate interest of the very large online platform concerned or other person referred to in Article 52(1) in the protection of their business secrets. The right of access to the file shall not extend to confidential information and internal documents of the Commission or Member States' authorities. In particular, the right of access shall not extend to correspondence between the Commission and those authorities. Nothing in this paragraph shall prevent the Commission from disclosing and using information necessary to prove an infringement.
5. The information collected pursuant to Articles 52, 53 and 54 shall be used only for the purpose of this Regulation.
6. Without prejudice to the exchange and to the use of information referred to in Articles 51(3) and 52(5), the Commission, the Board, Member States' authorities and their respective officials, servants and other persons working under their supervision,; and any other natural or legal person involved, including auditors and experts appointed pursuant to Article 57(2) shall not disclose information acquired or exchanged by them pursuant to this Section and of the kind covered by the obligation of professional secrecy.

*Article 64*  
*Publication of decisions*

1. The Commission shall publish the decisions it adopts pursuant to Articles 55(1), 56(1), 58, 59 and 60. Such publication shall state the names of the parties and the main content of the decision, including any penalties imposed, ***along with, where possible and justified, non-confidential documents or other forms of information on which the decision is based.***
2. The publication shall have regard to the rights and legitimate interests of the very large online platform concerned, any other person referred to in Article 52(1) and any third parties in the protection of their confidential information.

*Article 65*  
*Requests for access restrictions and cooperation with national courts*

1. Where all powers pursuant to this Article to bring about the cessation of an infringement of this Regulation have been exhausted, the infringement persists and causes serious harm which cannot be avoided through the exercise of other powers available under Union or national law, the Commission may request the Digital Services Coordinator of establishment of the very large online platform concerned to act pursuant to Article 41(3).

Prior to making such request to the Digital Services Coordinator, the Commission shall invite interested parties to submit written observations within a time period that shall not be less than ***14 working days*** describing the measures it intends to request and identifying the intended addressee or addressees thereof.

2. Where the coherent application of this Regulation so requires, the Commission, acting on its own initiative, may submit written observations to the competent judicial authority referred to Article 41(3). With the permission of the judicial authority in question, it may also make oral observations.

For the purpose of the preparation of its observations only, the Commission may request that judicial authority to transmit or ensure the transmission to it of any documents necessary for the assessment of the case.

*Article 66*  
*Implementing acts relating to Commission intervention*

1. In relation to the Commission intervention covered by this Section, the Commission may adopt implementing acts concerning the practical arrangements for:

(a) the proceedings pursuant to Articles 54 and 57;

(b) the hearings provided for in Article 63;

(c) the negotiated disclosure of information provided for in Article 63;

***(ca) the development and implementation of standards provided for in Article 34.***

2. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 70. Before the adoption of any measures pursuant to paragraph 1, the Commission shall publish a draft thereof and invite all interested parties to submit their comments within the time period set out therein, which shall not be less than one month.

#### SECTION 4 COMMON PROVISIONS ON ENFORCEMENT

##### *Article 67*

##### *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.
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 70.

##### *Article 68*

##### *Representation*

Without prejudice to **Directive (EU) 2020/1818** of the European Parliament and of the Council<sup>1</sup>, recipients of intermediary services shall have the right to mandate a, ***or a*** body, organisation or association to exercise the rights referred to in Articles **8, 12, 13, 14, 15**, 17, 18, 19, **43 and 43a** on their behalf, provided the body, organisation or association meets all of the following conditions:

- (a) it operates on a not-for-profit basis;
- (b) it has been properly constituted in accordance with the law of a Member State;
- (c) its statutory objectives include a legitimate interest in ensuring that this Regulation is complied with.

## SECTION 5 DELEGATED ACTS

### *Article 69* *Exercise of the delegation*

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The delegation of power referred to in Articles **13a, 16**, 23, 25, and 31 shall be conferred on the Commission for **five years** ~~starting an indeterminate period of time~~ from [date of expected adoption of the Regulation]. ***The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.***
3. The delegation of power referred to in Articles **13a, 16**, 23, 25, 31 may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of power specified in that decision. It shall take effect the day following that of its publication in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
5. A delegated act adopted pursuant to Articles **13a, 16**, 23, 25, 31 shall enter into force only if no objection has been expressed by either the European Parliament or the Council within a period of **four** months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by three months at the initiative of the European Parliament or of the Council.

### *Article 70* *Committee*

1. The Commission shall be assisted by **a** Digital Services Committee. That Committee shall be a Committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this Article, Article 4 of Regulation (EU) No 182/2011 shall apply.

## Chapter V Final provisions

### Article 71

#### *Deletion of certain provisions of Directive 2000/31/EC*

1. Articles 12 to 15 of Directive 2000/31/EC shall be deleted.
2. References to Articles 12 to 15 of Directive 2000/31/EC shall be construed as references to Articles 3, 4, 5 and 7 of this Regulation, respectively.

### Article 72

#### *Amendments to Directive 2020/XX/EC on Representative Actions for the Protection of the Collective Interests of Consumers*

3. The following is added to Annex I:  
“(X) 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”

### Article 73

#### *Evaluation*

1. By ~~five~~ **three** years after the entry into force of this Regulation at the latest, and every ~~five~~ **three** years thereafter, the Commission shall evaluate this Regulation and report to the European Parliament, the Council and the European Economic and Social Committee. ***This report shall address in particular:***
  - (a) ***the application of Article 25, including with respect to the number of average monthly active recipients of the service;***
  - (b) ***the application of Article 11;***
  - (c) ***the application of Article 14, ~~including as regards illegal user-generated pornographic content;~~***
  - (d) ***the application of Articles 35 and 36.***
- 1a. ***Where appropriate, the report referred to in paragraph 1 shall be accompanied by a proposal for amendment of this Regulation.***
2. For the purpose of paragraph 1, Member States and the Board shall send information on the request of the Commission.
3. In carrying out the evaluations referred to in paragraph 1, the Commission shall take into account the positions and findings of the European Parliament, the Council, and other relevant bodies or sources, ***and pay specific attention to small and medium-sized enterprises and the position of new competitors.***
4. By three years from the date of application of this Regulation at the latest, the Commission, after consulting the Board, shall carry out an assessment of the functioning of the Board and shall report it to the European Parliament, the Council and the European



Economic and Social Committee, taking into account the first years of application of the Regulation. On the basis of the findings and taking into utmost account the opinion of the Board, that report shall, where appropriate, be accompanied by a proposal for amendment of this Regulation with regard to the structure of the Board.

*Article 74*

*Entry into force and application*

1. This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.
2. It shall apply from [date - ~~three~~ *six* months after its entry into force].

This Regulation shall be binding in its entirety and directly applicable in all Member States.