The European Parliament and EU member states reach an agreement on the DSA

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Following the Commission's proposal of 15 December 2020 (see IRIS 2021-2:13), the journey towards the adoption of the DSA has taken another step forward: on 23 April 2022, the trilogues came to an end with the reach of a political agreement between representatives of the Parliament, the Council and the Commission.

uUp until now, the online sphere was regulated through a set of measures contained in the e-commerce directive and by a range of targeted and sector specific initiatives, among which the Copyright Directive, the Audiovisual Media Services Directive and the regulation on addressing the dissemination of terrorist content online. This way of operating however left important legal gaps,updated and upgraded rules more in line with today's online services were therefore sought.

The DSA and the DMA (Digital Markets Act) - which was agreed on last March (see article on this newsletter) - hence form a comprehensive package, harmonizing the rules across the single market. The new set of rules is directed towards a wide range of intermediaries: from hosting services to online platforms to very large online platforms and very large online search engines (including a.o. social media, online marketplaces, and cloud computing services).

The negotiations between the institutions started on 22 April 2022 and went on until early in the morning. All three co-legislators had at heart to find a way of better and more effectively protecting users online, with measures to empower them as well as oversight mechanisms and deterrent actions. The Commission should indeed have the possibility to impose dissuasive sanctions on very large online platforms. These penalties are expected to go up to 6% of the global turnover or to take the form of a ban on operating in the single market if repeated serious breaches are identified.

Strengthening the accountability of online intermediaries, especially regarding illegal and harmful content, goods and services is therefore one of the cornerstones of the DSA. The regulation indeed incorporates the existing e-commerce rules on liability exemptions and builds upon them to make the digital sphere a safer and more reliable place with transparency measures, traceability

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of business users in online marketplaces and access to key data. And the idea is the following: the bigger the platform, the greater the responsibility, which requires consideration of the role, the size, and the impact of the platform.

As Ursula von der Leyen declared, the “agreement on the Digital Services Act is historic, both in terms of speed and of substance”. Rights and responsibilities have been rebalanced to ensure that people’s fundamental rights are adequately protected, both online and offline, and that a level playing field is found for online innovation and competition.

Before being directly applicable in all member states, the agreement must still be formally approved by the Parliament and the Council. The regulation will apply fifteen months after entry into force, or from 1 January 2024, whichever is later. However, the measures applicable to very large online platforms and very large online search engines will apply sooner, i.e., four months after their designation.

Proposal for a Regulation of the European Parliament and the Council on a Single Market For Digital Services (Digital Services Act) and amending Directive 2000/31/EC.

https://eur-lex.europa.eu/legal-content/en/TXT/?uri=COM%3A2020%3A825%3AFIN

Digital Services Act: Commission welcomes political agreement on rules ensuring a safe and accountable online environment, Press release of the European Commission.

https://ec.europa.eu/commission/presscorner/detail/en/IP_22_2545

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