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Pan
Marek Zagórski
Sekretarz Stanu
Pełnomocnik Rządu ds. Cyberbezpieczeństwa
Kancelaria Prezesa Rady Ministrów

Szanowny Panie Ministrze,

w nawiązaniu do zaproszenia Kancelarii Prezesa Rady Ministrów do zgłaszania uwag do rozdziału 3 wraz z towarzyszącymi motywami projektu unijnego rozporządzenia Akt o usługach cyfrowych (*Digital Services Act)* (dokument COM(2020) 825), Konfederacja Lewiatan, w załączeniu, przedstawia uwagi do projektu.

Z poważaniem,

Maciej Witucki
Prezydent Konfederacji Lewiatan

Do wiadomości:
Pan Michał Pukaluk - Dyrektor Departamentu Polityki Cyfrowej, Kancelaria Prezesa Rady Ministrów

W załączniku:
Uwagi Konfederacji Lewiatan do rozdziału 3 projektu Aktu o usługach cyfrowych.

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Article 10 Points of contact (recital 36)
We support an obligation to establish a single point of contact allowing for direct communication, by electronic means with public authorities by all providers of intermediary services. This obligation has been already functioning in the frames of voluntary cooperation mechanisms like Memorandum of Understanding on Counterfeit Goods or Product Safety Pledge and has proven to be an effective tool to streamline and ease direct contact between providers and public administration. It is important that recital 36 precises that *the point of contact should serve operational purposes and should not necessarily have to have a physical location .*

Adding to the obligation of the providers of intermediary services to notify the data regarding the single point of contact to the Digital Services Coordinators, and the Coordinator's obligations to verify such data, ensures that only factually existing entities are appointed to perform this function and that the possibility of communication through such single point of contact is real.

Article 10
Points of contact

1. Providers of intermediary services shall establish a single point of contact allowing for direct communication, 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 make public the information necessary to easily identify and communicate with their single points of contact, **and ensure that that information is up to date. Providers of intermediary services shall notify that information, including the name, address, the electronic mail address and telephone number, of their single point of contact, to the Digital Service Coordinator in the Member State where they are established. The Digital Services Coordinator shall verify the above mentioned information.**
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.

However, the term 'single point of contact' requires further clarification. Does the legislator intend it to be one single email address or are intermediaries allowed to designate separate electronic intake channels for different types of requests to allow for a maximum effective handling of such

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correspondence? (e.g. takedown and information orders from authorities going to different teams than a contact by a trusted flagger, by a DSC or by COM).

Article 11 Legal representative (recital 37)
We welcome the fact that the DSA is applicable to intermediary service providers regardless of where they are established. We strongly support an obligation to designate legal representatives in one of Member States where the provider offers its services for providers of intermediary services which do not have an establishment in the Union but which offer services in the Union. This article is an important step in the EU efforts to restore level-playing-field for all tech players on the EU digital single market. We hope that the concept of legal representation for providers who are not established in the EU will allow to effectively control such players and enforce EU rules if need be. It is crucial to ensure that all third-country players will become responsive to the EU and Member States public authorities contacts.

In order to make enforceable the obligations of the providers of intermediary services which do not have an establishment in the Union but which offer services in the Union to comply with in Article 11 paragraphs 1, 2, and 3, and by this to make the Regulation enforceable against such providers, it is necessary to grant the Digital Services Coordinators powers to request the competent judicial authority to impose effective measures against such providers in case they persistently fail to designate their legal representative, or to mandate the legal representatives in necessary powers required under art. 11 paragraph 2, or to notify the data regarding the legal representative to the Digital Services Coordinator. Otherwise, the enforcement of the compliance by such providers with the Regulation, where the legal cooperation between the Member States' or Unions' authorities with the authorities of the countries of origin of such providers is not established, could turn out to be impossible.

Adding to Article 11 paragraph 4 the obligation of the Digital Services Coordinators to verify the data of the legal representatives ensures that only factually existing entities are designated to perform this function in order to be held liable, if necessary, for the compliance with the Regulation by the providers of intermediary services which do not have an establishment in the Union but which offer services in the Union.

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 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

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representative with the necessary powers and resource to cooperate with the Member States' authorities, the Commission and the Board and comply with 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 **valid identification data, including** the name, 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 up to date. **The Digital Services Coordinator shall verify the above mentioned data.**

5. The designation of a legal representative within the Union pursuant to paragraph 1 shall not amount to an establishment in the Union.

Specific questions referring to Art. 11:

Art. 11(1)/Art. 2(d): Does the intermediary itself have to monitor the "significant number of users" threshold under **Art. 2(d)**? Or will it be requested by the authorities to designate a legal representative (corresponding to the process by which VLOPs are notified of that status, **Art 25(4)**)?

Art. 11(1): Is there a grace period within which the legal representative must be appointed? What is the process if numbers later fall below the threshold? Can the legal representative be "undesignated"? Can the legal representative be changed within one MS or even between MSs?

Art. 11(3): Does paragraph 3 mean that the legal representative would be (co-)liable for the full amount of the fine that would be levelled against the intermediary for non-compliance?

Art. 11(5): Does the legal representative have legal relevance only for the scope of the DSA, and is it ensured that there is no unintended repercussions under other legal context, beyond the clarification under Art 11(5) that the legal representative is no "establishment" (e.g. a local presence for taxation purposes)?

Article 12 Terms and conditions (recital 38)

We understand the reasons why it is necessary to set certain rules on the terms and conditions, including information on any policies, procedures, measures and tools used for the purpose of content moderation, including algorithmic decision-making and human review to avoid unfair or arbitrary outcomes. Nevertheless, it is essential to ensure a certain level of flexibility for providers of intermediary services in determining the best way to present this information in an efficient and user friendly way.

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A specific question referring to Art.12:

Art. 12(1) / Recital 38: What is the rationale behind including information on content moderation in the terms and conditions over displaying them separately, considering that terms and conditions can impact contractual liability, as is also acknowledged in Recital 38? This could result in – presumably unintended – claims for breach of contract under national civil law against the intermediary in the event of non-compliance with content moderation processes, in addition to the system of sanctions established under the DSA.

Article 13 Transparency reporting obligations for providers of intermediary services (recital 39)
We support transparency requirements that will help increase users' trust in online platforms and encourage the emergence of more 'human-centric' digital services. Transparency should be meaningful in that it should deliver useful information to the right audience. That is why we are not convinced if an obligation to publish a report on content moderation once a year is the best way to achieve the above-mentioned goals. Another reporting obligation creates extra administrative burden for providers of intermediary services who are already subject to many reporting obligations (it is important to ensure consistency between reporting obligations from different legislations, like from article 11 of P2B regulation - information on internal complaint-handling system) and can lead to other unintended consequences such as jeopardizing the security work undertaken by many online players. We therefore encourage a review of the proposed requirements to ensure they are effective and proportionate to the level of risks that may arise from the different types of platforms and technical limitations.

A specific question referring to Art. 13:

Art. 13(1)(d): What's meant by "the number of instances where those decisions were reversed"? **Art. 17** deals with complaints against content moderation decisions, so decisions on those complaints would not typically be reversed again.

Article 14 Notice and action mechanisms (recitals 40 and 41)
On the measures regulating notice and action, we believe that notifications must be clear and contain complete information to result in actual knowledge, allow for rapid response from the platforms and take into consideration the specificity of each sector.

The notice enabling the platform to identify the illegal content should be appropriate to the type of content and include technology factors. It should also be applicable to the type of intermediary that is supposed to remove the content. **The technical means of identifying illegal content and its location should be futureproof, bearing in mind possible new developments and innovations in this field. A "one size fits all approach" is not recommended, as it will not enable effective removal of illegal content.** Providing the specific URL should be treated as one of the means, but not an obligatory means, of indicating the electronic location or correct identification of the content. The text proposed by the Commission may practically be interpreted as imposing an obligation to indicate the exact URL of each

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illegal content item in the case of court orders (art.8) and notice mechanisms (art.14). However in cases where a host provider catalogues illegal content, it should be possible to provide the URL to the folder, instead of indicating hundreds of URLs (links) in this folder. In case a website hosts only illegal content, it should be possible to indicate just its domain address (i.e. main URL), without the need to select and indicate hundreds of links for each item of illegal content. This problem has already been identified in the US Copyright Office report of May 2020, Section 512 of Title 17 - regarding the Digital Millennium Copyright Act[1] where the report conclusions state: "The Office concludes that Congress may wish to consider whether the "information reasonably sufficient . . . to locate" provision is appropriately interpreted as requiring that a rightsholder must submit a unique, file-specific URL for every instance of infringing material on an OSP's service."

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 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;

   (b) a clear indication of the electronic location of that information~~, in particular the exact URL or URLs,~~ and, where necessary **and applicable**, additional information enabling the identification of the illegal content **which shall be appropriate to the type of content and to the specific type of intermediary**;

   (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.

[1] https://www.copyright.gov/policy/section512/section-512-full-report.pdf

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Specific questions referring to Art. 14:

Must a hosting provider process a notice that has been filed through a channel other than those dedicated by the provider for filing notices, and could such a notice trigger actual knowledge, and hence liability under **Art. 5(1)**? Or can it be ignored (as under **§ 512 (c) (2) DMCA**)?

What was the rationale behind lifting the standing to sue requirement for filing of notices, especially where IP rights and product safety are concerned? How will hosting services be safe-guarded under the DSA against the high volume of unfounded notices that is to be expected if anyone can allege illegality of any type of content?

Art. 14(2): Must a hosting provider process a notice that falls short of the requirements of Art 14(2), or can such a notice be ignored? Does a hosting provider have a "duty to coach", as under the DMCA, if the minimum requirements **under Art 14(2)** are met but it is not yet possible from the information given pursuant to **14(2)(a)** to assess the illegality of the content?

Art. 14(3)/(6): Where a hosting provider takes a diligent decision on a notice, could it still be liable if a court should later come to a different conclusion on the (il)legality of the content?

Art. 14(6): What is the purpose of the obligation to inform the notice submitter about the use of automated means for the processing or decision-making on the notice?

Recital 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 user-friendly notice and action mechanisms that facilitate the notification of specific items of information that the notifying party considers to be illegal content to the provider of hosting services concerned ('notice'), pursuant to which that provider can decide whether or not it agrees with that assessment and wishes to remove or disable access to that content ('action'). Provided the requirements on notices are met, it should be possible for individuals or entities to notify multiple specific items of allegedly illegal content through a single notice. **The electronic location of the information may be included in the notice, for example, by URL or URLs of a single file, product, piece of information, or specific item of illegal content, URL or URLs of a website catalogue or internet domain in cases where such catalogues or domains contain only content being subject of a notice, or of a website catalogue or internet domain together with the exact indication of the content concerned in cases where such catalogues or domains contain the notified content and other content, or by other content location or identification means or technologies available in relation to the specific type of illegal content, for example digital fingerprinting or watermarking solutions, and to the specific type of intermediary; and where necessary and applicable, additional information enabling the identification of the illegal content. The means of indicating the electronic location of illegal content should be appropriate to the type of content in question.** The obligation to put in place

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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.

Article 15 Statement of reasons (recital 42)
We understand that the service provider should inform the recipient of its decision to remove or disable access to specific items of information, the reasons for its decision and the available redress possibilities to contest the decision. However we are of the opinion that obligatory elements of the statement of reasons are too detailed, burdensome and difficult to automatise. Moreover some of them, like an obligation to reveal that specific listing was detected by automated means (paragraph c) may seriously threaten the security of detection systems (reverse engineering). We are also surprised with a proposal to publish the decisions and the statements of reasons in a publicly accessible database managed by the European Commission. Taking into account that such decisions are being issued massively and in different languages, we do not see how this information is of a value for the European Commission. We are also afraid that this obligation creates an extra administrative burden, especially for smaller players.

Specific questions referring to Art. 15:

Art 15(1): Will there be any exceptions from the notification requirement where this would/could interfere with criminal prosecution of the uploader (especially for CSAM, terrorist content and other clear-cut cases)? Will this provision also apply to content that is ancillary?

Art. 15 (2): Given that algorithmic support is a necessity for efficient and consistent handling of large volumes of standard and clear-cut notices, what is the rationale behind having to disclose the use of automated means, given the risk that this would lead to a biased perception of a "two-class" system of decision-making?

Art 15 (3): Does the limitation to "reasonably possible" allow an intermediary to refuse detailed information when such information could be used by the recipient of service to circumvent detection methods?

Art 15(4): What is the systemic benefit/justification for obliging hosting providers, at great administrative and technical effort and expense, to maintain an NTD database with this amount of detail? Who is expected to benefit from such a database? How will COM ensure that no personal data is published in that database? As the statement of reason needs to identify the removed content, how can such a statement be anonymized to the extent that the uploader of that content cannot be identified?

Taking into account the fact that a considerable number of concerns referring to Art. 15(4) appears, we suggest to remove the wording:

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~~4. Providers of hosting services shall publish the decisions and the statements of reasons, referred to in paragraph 1 in a publicly accessible database managed by the Commission. That information shall not contain personal data.~~

Article 17 Internal complaint-handling system (recital 44)
We are concerned with an obligation to provide access to an internal complaint-handling system for a period of at least six months following the decision to remove content or to suspend an account or service. It is possible that the platform will be obliged by other legal provisions to remove data before the six months period. Such provision will prolong data retention period and raises questions on consistency with other legal provisions (GDPR and P2B).

Specific questions referring to Art. 17:

Art. 17(1): Given the additional administrative and financial burdens of complaint handling, would online platforms be required to allow complaints:

- even in cases of manifestly illegal content (e.g. CSAM or terrorist content, or content which had already been held illegal by a court or administrative authority); and
- even for ancillary content (such as product reviews posted by users on a marketplace)?

Art 17(5): What is the rationale behind forbidding fully automated decision-making in all instances? In particular, how are the corresponding operational and financial burdens justified for decisions in favour of the complainant?

Article 18 Out-of-court dispute settlement (recital 45)
We are afraid that provision on financial consequences for platforms in case of loss and no financial reimbursement on condition that a decision in favour (para 3) is not in line with similar provisions in other legal instruments in force (P2B).

Specific questions referring to Art. 18:

Art. 18(1): What is the rationale behind introducing out of court dispute settlement in addition to the internal complaint mechanism and judicial redress?

In case the disputed content moderation decision was taken based on an authority's order or a notice, will the authority or notice submitter be a party to the dispute resolution process, and/or can the OP refuse to engage in dispute resolution in such a case?

Can the OP seek judicial redress against the decision of the dispute settlement body in all circumstances?

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Does the wording "including complaints that could not be resolved by means of the internal complaint handling system" mean that recipients of service can seek out of court dispute resolution without giving the OP a chance to resolve the dispute first?

What is the relationship to the mediation regime under **Art 12, 13 P2B Regulation 2019/1150**?

Is the recipient of service also obliged to engage in good faith, and are there cases (as outlined in the **P2B Regulation 2019/1150**) where the OP can always refuse to engage with a specific recipient?

Can the OP refuse to engage with a dispute resolution body, e.g. where that body does not operate in one of the languages designated by the OP as per **Art. 10**?

Art 18(3): Why does the complainant not have to reimburse the reasonable expenses of the OP if the complaint is unsuccessful – is there an assumption that the OP is always the financially stronger party (which is not the case)? How does the DSA disincentivize frivolous complaints?

Article 19 Trusted flaggers (recital 46)

We support priority treatment for notices coming from trusted flaggers. Nevertheless, we are afraid that the certification process can be lengthy. Moreover, we regret that the certification process is not inclusive and allows online platforms to interact only ex-post, when *a trusted flagger submitted a significant number of insufficiently precise or inadequately substantiated notices.*

Specific questions referring to Art. 19:

Art. 19(1): Can OPs actually "trust" notices filed by trusted flaggers in the sense that they:
- can always process such notices with full automation;
- cannot be held liable if such a notice is incorrect? If not, can OPs seek redress against the trusted flagger?

Do OPs need to give trusted flagger notices priority even over notices that concern more severe violations of the law, e.g. content that indicates a threat to the life and safety of persons? Do trusted flagger notices enjoy priority over authority orders?

Art. 19(2): Is trusted flagger status awarded for any type of notice, or limited to an entity's area of expertise? Why does the DSA not provide for participation by OPs in the vetting process for trusted flaggers, given that they already have gained deep insights into which notifiers have proven reliable?

Art. 19(3): Is publication in the database as per **Art. 19(3)** a condition for requesting treatment as per **Art. 19(1)** from an OP?

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Art. 19(5)-(7): What is the process of the review procedure under **Art. 19(5)-(7)**? In particular, is there a specific time period (a) for the DSC to review and confirm or rescind the trusted flagger status, and (b) the Commission to publish any rescindment? Must OPs continue to treat notices from trusted flaggers with priority pursuant to **Art 19(1)** while the review process is pending?

Article 20 Measures and protection against misuse (recital 47)
We would like to point out that a new obligation to issue a prior warning before the decision to suspend services can provoke difficulties, especially when there is a need to block services immediately in case of sudden appearance of massive quantities of illegal content.

Specific questions referring to Art. 20:

Art. 20(1): Does this provision prevent online platforms from (a) suspending users for other types of violations, as per the OP's T&C, and/or (b) permanently suspending users, and/or (c) suspending users after a first, particularly serious, violation (e.g. CSAM or terrorist content)? If so, why?

What was the rationale behind introducing a mere temporary suspension, rather than lifting a suspension only on the condition that the uploader/notifier takes active steps to improve its track-record?

Article 22 Traceability of traders
The DSA should take into consideration rules that are already in place - specific due diligence obligations, such as VAT collection rules, transparency requirements under the Platform-to-Business Regulation and the know-your-business-customer requirement under anti-money laundering rules.

Specific questions referring to Art. 22:

Art. 22(1)(c): Why is the online platform obliged to collect the trader's bank account details if there's no obligation to verify those? Is it sufficient in this context for the online platform to rely on a payment service provider?

Art. 22(1)(d): What does the reference to **Art 3 of Regulation 2019/1020** mean? Does that only provide the definition of an EO, or does it also limit the scope of the obligation to CE marked products (which are the subject-matter of that Regulation)?

Since the economic operator is typically different for every single product a trader sells, how are online platforms supposed to obtain and verify information on the economic operator within the initial pre-vetting process envisaged under **Art. 22**?

Does the vetting obligation for EO information get triggered every time a trader uploads a new product offer?

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Can the online platform use the EO information obtained from one trader (or the manufacturer) for a product, when another trader wants to offer the same product, or does the marketplace have to collect and verify the EO information every time anew?

Why is an online platform obliged to publish EO information but traders in general are not (i.e. can list products on their own website without displaying this information)?
Art. 22(1)(f), 22(6): What benefit/practical effect does the self-certification have over a trader's contractual commitment to only offer compliant products? What exactly does the trader have to certify, and what benefit does publishing this certification to buyers (**Art. 22(6)**) have if every trader has to have such a certification?

Art. 22(2): What are "reasonable efforts" under **Art. 22(2)**? Do they involve cross-checking every single piece of information, or do randomized checks suffice? This especially applies to the information on EOs, given that the online platform has no direct relationship with the EOs and therefore no means of verifying their contact details.

Art. 22(3): Are online platforms restricted in any way by **Art. 22** in their discretion to immediately suspend a trader for having provided false information? Do they have to suspend a trader for incorrect EO information on just some of its products?

Article 23 Transparency reporting obligations for providers of online platforms – specific questions
Art. 23(1): Why do the reporting obligations encompass so much more detail than those that have just been held appropriate and put in place under **Art. 11(4) of the P2B Regulation 2019/1150**?

Art. 23(1)(c): Are trade secrets exempt from the reporting **under Art. 23(1)(c)?** Why is no exemption for confidential information made here, as it is under **Art. 33(3)**?

Art. 23(3): What is the purpose of providing an even more frequent access right by the DSC under **Art. 23 (3)**?

What is the envisaged benefit to obtaining information about who commissioned an ad, which for the majority of ads is self-evident from their commercial nature? It seems these obligations are targeted at politically motivated ads, so why is the obligation all-encompassing?

Article 24 Online advertising transparency
We recognise the European Commission's interest in ensuring a sufficient level of transparency in digital advertising. We recognise the specific requirements of Art. 24 DSA builds on the existing requirements of Art. 6 ECD. Currently, all commercial communications – including advertising – must be clearly identifiable as such, along with the natural or legal person on whose behalf the commercial communication is made. However, new provisions are designed in a more prescriptive way and can result in a significant operational change for the digital advertising system. It can provoke questions on

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consistency with the GDPR provisions on personalisation and eventually can lead to the disclosure of business-critical intelligence and trade secrets and risk stifling innovation in the sector.

Articles 25 - 33 additional obligation for VLOPs
We agree that VLOPs may need to dedicate more efforts in providing a secure and trustworthy environment to its users and business partners. We call for clarification upon which stakeholders would fall under the VLOP category set out in the DSA, in particular whether the definition of "users" should consider the "Registered Users", "Logged-in Users" or "Buyers".

Specific questions referring to Art. 25:

Art. 25(1): Why does the DSA envisage particularly strict rules solely based on quantitative factors, and not on quality of service? How does it address the reality that particularly extremist content is typically disseminated through smaller OPs? How does it address the reality that B2B intermediaries may have a more significant impact on the distribution of counterfeit and non-compliant products in the Union than downstream B2C marketplaces?

How is it justified to apply business size as a decisive factor for additional legal obligations in regulatory areas outside of competition law?

Art 25(4): Will the DSC also notify the VLOP that it has ceased to qualify as a VLOP? Why is an OP still treated as a VLOP for 4 months after the publication of the removal of VLOP status, rather than that status change applying immediately upon publication?

Article 26 Risk assessment – specific questions
Art. 26(1): Considering that the systemic risks as defined in **Art. 26(1)** are predominantly aimed at social networks, what is the rationale behind applying them to VLOPs across the board, and without requiring any specific indications that the VLOP in question actually does pose a systemic risk to fundamental freedoms?

Article 28 Independent audit – specific questions
Art. 28(2): Given the massive scope of VLOP obligations and the short audit period, how is it ensured that there are sufficiently qualified auditors available?

Art. 28(4): How does the DSA ensure that VLOPs cannot be held liable for delays caused by the auditors? Based on which concrete market experience is 1 month considered an appropriate processing time, given the extent of the envisaged auditing requirements and hence, the potentially resulting scope of findings?

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Article 29 Recommender systems – a specific question
Art. 29(1) / (2): Why are the obligations envisaged under **Art. 29** considered necessary and appropriate given the existing coverage of the **General Data Protection Regulation 2016/679**, the **e-Privacy Directive 2002/58/EC**, and the upcoming **e-Privacy Regulation 2017/0003**?

Article 31 Data access and scrutiny – specific questions
Art. 31(2): How will the risk of data breaches and other privacy concerns be addressed throughout this process? Does the burden of liability for data breaches lie on the vetted researches, presumably resulting in a natural selection process whereby only very few large research organisations could afford the necessary setup?

Will it be ensured that VLOPs are free from liability for any data breaches occurring once the VLOP has submitted the data as requested?

Could vetted researchers also be trusted flaggers?

Does "data" include information on the content moderation processes, such as algorithms?

Can a VLOP challenge a designation as a vetted researcher, e.g. on the ground of substantiated concerns about that researcher's ability to preserve specific data security requirements?
Does the requirement to give a researcher access through an API mean that researchers could request permanent "live" access to certain data?

Article 32 Compliance officers – a specific question
Art. 32(1): What is the purpose of obligating a VLOP to designate a compliance officer, in addition to the point of contact under **Art 10**? What is the liability of that compliance officer?

Article 33 Transparency reporting obligations for very large online platforms – a specific question
Art. 33(2): Why is the VLOP required to publish the information as per **Art 33 (2**), seeing that the Board is going to publish an aggregated report on systemic risks as per **Art. 27(2)?**

Article 34 Standards – a specific question
Art 34(1)(f): What are "advertising intermediaries" as per Art 34(1)(f) – intermediaries which publish advertising content on their platforms, or intermediaries solely engaged in advertising?

Article 36 Codes of conduct for online advertising – a specific question
Art. 36(1): What are "advertising intermediaries" as per **Art. 34(1)(f)** and **Art. 36(1)?** – intermediaries which publish advertising content on their platforms, or intermediaries solely engaged in advertising?

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Article 37 Crisis protocols
We believe that the role of a civil society organisation or other relevant organisations in drawing up the crisis protocols should be only auxiliary.

A specific question referring to Art. 37:

Art. 37(1): What type of crisis situations is this aimed at? Can you give any real life examples for such crises concerning an online marketplace?

Article 41 Powers of Digital Services Coordinators
The proposed amendment to Article 41 paragraph 3 letter (b) above aims to flag the problem of the potential lack of enforceability of the Regulation towards the non-EU providers and presents the proposition of the solution of this problem. The non-UE providers that engage in or facilitate illegal activities and address their services to the European Union could in fact benefit from the failure to designate the legal representative. In such situation the enforcement of the Regulation against them would be more complex and extended in time, if possible at all in practice in some cases.

The solution of the possibility to block the services is already known in European Union law. Article 9 paragraph 4 letter g) of *Regulation 2017/2394 of the European Parliament and of the Council of 12 December 2017 on cooperation between national authorities responsible for the enforcement of consumer protection laws* empowers the competent authorities with, among other means, the possibility block the services or access to them in order to stop infringements. Polish law also provides for the possibility to block the services, which possibility relates to the services infringing the Polish gambling law (Art. 15f of the Polish act dated 19.11.2009 (as amended)).

Article 41

Powers of Digital Services Coordinators

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 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, 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 and causes

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serious harm, and that the infringement entails**:** **(i)** a serious criminal offence involving a threat to the life or safety of persons, or **(ii) the failure of the providers of intermediary services which do not have an establishment in the Union but which offer services in the Union to comply with obligations indicated in Article 11 paragraphs 1, 2 or 3,** 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.

(…)

Konfederacja Lewiatan, KL/132/95/ED/2021

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