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**Civil Society Joint Statement
Committee on Internal Market and Consumer Protection (IMCO)
Draft Report on the Digital Services Act**

Brussels, June 30th 2021

We are a coalition of leading human rights organisations working on EU digital law and policy. We issue this paper in response to the draft Report on the Digital Services Act (DSA) of the Committee on Internal Market and Consumer Protection (IMCO), in advance of its deadline for tabling amendments to its draft Report.

The European Commission's Proposal

We welcome many positive provisions of the European Commission's DSA proposal that could significantly improve the transparency and accountability of internet intermediaries, and ensure a safer, more vibrant online civic space. For example, the increased focus on **fundamental rights** throughout the proposal is a welcome approach.

The Commission's proposal also maintains the cornerstones of rights protection from the E-commerce Directive, namely **conditional immunity from liability** for hosting providers and **the prohibition on general monitoring**. We additionally welcome the **wide-ranging transparency obligations** that the proposal introduces, including transparency reporting in relation to how user complaints are handled, increased transparency over recommender systems and algorithms, and obligations on intermediaries in relation to their terms of services and statements of reasons for decisions.

There are, however, a number of important improvements that need to be made to the Commission's proposal in order to ensure that fundamental rights and democratic principles are upheld.

Key Concerns with the Draft IMCO Report

We welcome that the draft IMCO report has taken some of these considerations on board, however we are concerned that overall the draft has not included adequate safeguards for fundamental rights.

Despite the language mentioned above in the European Commission's proposal prohibiting **general monitoring**, the IMCO draft report risks undermining this key rights-protecting principle. It does this through the introduction of an obligation to remove alleged illegal content from reappearing, plus the introduction of controversial 'notice-and-stay-down' provisions. Questions on the legality of speech are complex and often context-dependent, and stay-down filtering systems result in high-error rates and censorship of legal speech of users. We also know that automated filtering has a **discriminatory impact** on already at-risk or marginalised voices online.

A key public policy objective of the DSA overall is to ensure more accountability and transparency for how both private companies and government authorities handle online content. The draft IMCO report risks reducing **accountability and procedural safeguards** by mandating overly broad roles to private companies to assess, remove and make final decisions on our online speech. The idea introduced by the IMCO that politicians or other powerful and influential speakers should be granted judicial review, whilst the balancing of fundamental rights of regular users would be left in hands of private companies, often outside any public scrutiny, would undermine rule of law principles. Judicial review must always be available to all users equally.

It is particularly disappointing that the IMCO draft has drawn inspiration from Germany's Network Enforcement Act (NetzDG), given that this law has been broadly [criticised](#) by international and regional human rights bodies, as well as a broad coalition of civil society actors. The approach of compelling intermediaries to remove speech under strict timelines creates a high risk of unaccountable and **overly broad censorship of speech online**. The EU, as a global human rights actor, should also consider the risk of setting this dangerous precedent for other [governments worldwide](#) seeking to crackdown on dissenting voices, journalists and human rights defenders. The IMCO's draft also includes language on mandating intermediaries through their **recommender systems** to prioritise government information or other 'trustworthy sources' at the top of their searches. This creates a space for potential abuse of government power in our online information ecosystem, such as forced de-prioritisation of content shared by human rights activists or by historically marginalised groups.

The draft IMCO report's provisions to better empower users to have a choice in how their data is used are welcome, and we further suggest that the report more accurately incorporates the

opinion of the European Data Protection Supervisor that recommender systems should by default [not be based on profiling](#) within the meaning of Art. 4(4) of the GDPR, and that **advertising based on pervasive tracking** needs to be [phased out](#).

Due diligence obligations hold promise for very large online platforms to behave more responsibly. However the current proposals are vague and lack adequate human rights protections. Due diligence obligations should focus on and be limited to the human rights violations linked to companies' products and services. In no circumstances should they be used to surveil users or undermine end-to-end encryption.

The extension of personal liability to the "legal representatives" in the Commission's proposal is unnecessary and will further incentivise mass surveillance and policing of users. In addition, the idea of state-selected legally mandated '**trusted-flaggers**' including law enforcement authorities that can circumvent safeguards to remove speech could have a devastating impact on dissenting voices such as human rights defenders, political opposition and journalists. The replication of such an approach could have serious consequences, particularly in countries both inside the EU and beyond where human rights are at risk. The EU needs to consider its global leadership role on protecting human rights defenders, journalists and **civic space** as it drafts this new law.

To place a higher emphasis on the protection of fundamental rights of consumers and all users in the DSA by ensuring the following principles are upheld, we call on members of the IMCO Committee to:

1. Uphold the prohibition on general monitoring in practice
2. Protect the online expression of users
3. Combat discrimination against at-risk and marginalised communities online
4. Phase out advertising based on pervasive tracking
5. Focus on human rights due diligence obligations for companies' products and services
6. Consider the global impact on civic space

Signatories

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