



DSA REPORT CARD

FILE NAME: CSAM 2022/0155 (COD) AND THE DIGITAL SERVICES ACT

NOTE: *The CSAM proposal undermines the DSA on several topics such as the ban on general monitoring.*

SUBJECT	SCORE
BAN ON GENERAL MONITORING	
COUNTRY OF ORIGIN PRINCIPLE	
INTERMEDIARY LIABILITY REGIME	
GOOD SAMARITAN PRINCIPLE	
TRANSPARENCY REPORTING OBLIGATIONS	
NOTICE AND ACTION MECHANISM, STATEMENT OF REASON	
INTERNAL COMPLAINT HANDLING	
ONLINE SAFETY OF MINORS	
RISK ASSESSMENT & RISK MITIGATION	
RIGHT TO LODGE A COMPLAINT	

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SUBJECT

MOTIVATION










BAN ON GENERAL MONITORING	A DETECTION ORDER (ARTICLE 7) IMPLIES AN OBLIGATION TO IMPLEMENT A TECHNOLOGY THAT SYSTEMATICALLY ANALYSES ALL CONTENT ON A SERVICE. AS SUCH, THEY RISK BEING IN CONFLICT WITH THE LONG-STANDING PROHIBITION OF GENERAL MONITORING OBLIGATION, ENSHRINED IN DSA ARTICLE 8, ESPECIALLY WHEN IT COMES TO DETECTING UNKNOWN CSA AND SOLICITATION ON A SERVICE.
INTERNAL COMPLAINT HANDLING	ARTICLE 10(4(D)) IS MODELLED ON DSA ARTICLE 20 BUT THERE ARE NO QUALITY REQUIREMENTS FOR CSA COMPLAINTS CONTRARY TO DSA COMPLAINTS, WHICH SHALL BE “SUFFICIENTLY PRECISE AND ADEQUATELY SUBSTANTIATED”.
ONLINE SAFETY OF MINORS	CSA PROPOSAL ARTICLE 7 RISKS BEING IN BREACH OF DSA ARTICLE 28(1) WHICH REQUIRES PROVIDERS OF ONLINE PLATFORMS (WHICH ARE A CATEGORY OF HOSTING SERVICE PROVIDERS) TO ENSURE A HIGH-LEVEL OF PRIVACY OF MINORS ON THEIR SERVICE.

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DSA REPORT CARD

FILE NAME: EMFA 2022/0277 (COD) AND THE DIGITAL SERVICES ACT

NOTE: *The EMFA undermines the DSA framework by creating a competing legal framework which opens the possibility for bad actors to benefit from content moderation exemptions*

SUBJECT	SCORE
BAN ON GENERAL MONITORING	
COUNTRY OF ORIGIN PRINCIPLE	
INTERMEDIARY LIABILITY REGIME	
TRANSPARENCY REPORTING OBLIGATIONS	
STATEMENT OF REASON	
SYSTEMIC RISK MITIGATION	
INTERNAL COMPLAINT HANDLING	
OUT-OF-COURT DISPUTE SETTLEMENTS	
DEFINITION OF VLOP	

LET THE DSA UNFOLD!

SUBJECT	MOTIVATION
TRANSPARENCY REPORTING OBLIGATIONS	ARTICLE 24(5) DSA AND THE SUBSEQUENT DATABASE THAT WILL RESULT FROM THE PROVISION ALREADY COVER THE ASPECT OF ARTICLE 17(5) (NUMBER OF INSTANCES WHERE THEY IMPOSED ANY RESTRICTION OR SUSPENSION; THE GROUNDS FOR IMPOSING SUCH RESTRICTIONS). THIS DUPLICATION IS UNNECESSARY.
STATEMENT OF REASON	DSA ARTICLE 17 MANDATES A STATEMENT OF REASONS FOR RESTRICTION OF CONTENT. EMFA REQUIRES A STATEMENT TO BE PROVIDED PRIOR TO REMOVAL, PROVIDING AN UNJUSTIFIED ADVANTAGE TO THE CONTENT OF MSPS. THE EP ADDED A 24-HOUR MUST-CARRY OBLIGATION FOR VLOPS IN ARTICLE 17, CONFLICTING WITH DSA AND GLOBAL INTERNET SERVICE LEGISLATION.
SYSTEMIC RISK MITIGATION	THE REFERENCE TO ARTICLE 34 DSA MUST BE KEPT IN THE EMFA AS VLOPS SHOULD BE COMPLIANT WITH THEIR OBLIGATION OF RISK MITIGATION UNDER THE DSA. WHILE THE PROPOSAL IS IN LINE WITH THE DSA ON THIS ASPECT, THE IMCO OPINION DELETED THE REFERENCE TO DSA ARTICLE 26 IN THE RECITALS.
INTERNAL COMPLAINT-HANDLING SYSTEM	EMFA ARTICLE 17 IGNORES DSA'S ARTICLE 20 AND FOCUSES SOLELY ON THE PRIOR STATEMENT OF REASONS OR ON THE MSPS' OWN CONSIDERATIONS. CONTRARY TO THE DSA, MSPS DO NOT HAVE TO DEMONSTRATE WHY THEY CHALLENGE A CONTENT MODERATION DECISION OR WHY THEY WISH TO ENGAGE IN AN "EFFECTIVE DIALOGUE" WITH THE VLOP.
OUT-OF-COURT DISPUTE SETTLEMENTS	DSA ARTICLE 21 IS NOT CONSIDERED IN THE REDRESS MECHANISM FOR MSPS CREATED BY THE EMFA, WHEREAS DSA ARTICLE 21 PROVIDES AN ADDITIONAL AVENUE FOR USERS, INCLUDING MSPS, TO CHALLENGE CONTENT MODERATION DECISIONS BY VLOPS.
DEFINITION OF VLOP	EMFA ARTICLE 17 APPLIES TO VLOP PROVIDERS, AS DEFINED BY DSA ARTICLE 33. HOWEVER, NOT ALL VLOP PROVIDE ACCESS TO MEDIA CONTENT OR SERVICES. A MORE PRECISE DEFINITION OF THE PROVIDERS IN THE SCOPE OF THE EMFA IS THEREFORE NEEDED TO AVOID CAPTURING SERVICE PROVIDERS WHICH DO NOT MANAGE ACCESS TO MEDIA CONTENT.

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DSA REPORT CARD

FILE NAME: AI ACT 2021/0106(COD) AND THE DIGITAL SERVICES ACT

NOTE: *Current positions on the proposed AI Act risk severely undermining and contrasting with the DSA on several aspects such as on systemic risk mitigation and recommender systems*

SUBJECT	SCORE
BAN ON GENERAL MONITORING	✓
COUNTRY OF ORIGIN PRINCIPLE	✓
INTERMEDIARY LIABILITY REGIME	✓
TRANSPARENCY REPORTING OBLIGATIONS	✗
ADVERTISING, NOTICE AND ACTION MECHANISM, STATEMENT OF REASONS	✓
RECOMMENDER SYSTEMS	✗
SYSTEMIC RISK MITIGATION	✗
INTERNAL COMPLAINT-HANDLING SYSTEM	!
OUT-OF-COURT DISPUTE SETTLEMENT	✓
DEFINITION OF VLOP	✓

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SUBJECT

MOTIVATION









TRANSPARENCY REPORTING OBLIGATION	THE INCLUSION OF RECOMMENDER SYSTEMS (AS PER BELOW) WOULD SUBJECT PROVIDERS OF ONLINE PLATFORMS TO OVERLAPPING TRANSPARENCY REPORTING OBLIGATIONS IN THE TWO PIECES OF LEGISLATION
RECOMMENDER SYSTEMS	BRINGING VLOP RECOMMENDER SYSTEMS INTO ANNEX III WOULD CREATE STRONG OVERLAP WITH RELEVANT EXISTING PROVISIONS UNDER THE DSA, INCLUDING THOSE ON MANDATED RISK ASSESSMENTS, RISKS FOR FUNDAMENTAL RIGHTS, TRANSPARENCY INFORMATION, USER INFORMATION ON TRAINING DATA AND TRANSPARENCY PROVISIONS ON CONTENT MODERATION.
SYSTEMIC RISK MITIGATION MEASURES	THE INCLUSION OF RECOMMENDER SYSTEMS (AS PER ABOVE) WOULD SUBJECT PROVIDERS OF ONLINE PLATFORMS TO OVERLAPPING TRANSPARENCY REPORTING OBLIGATIONS IN THE TWO PIECES OF LEGISLATION
INTERNAL COMPLAINT HANDLING	THE EP POSITION (NEW ARTICLE 84 A) OBLIGES DEPLOYERS TO PROVIDE FOR AN INTERNAL COMPLAINT-HANDLING SYSTEM

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DSA REPORT CARD

FILE NAME: POLADS 2021/0381 (COD) AND THE DIGITAL SERVICES ACT

NOTE: *The Political Advertising proposal is unnecessarily duplicating key features of the DSA*

SUBJECT	SCORE
BAN ON GENERAL MONITORING	
COUNTRY OF ORIGIN PRINCIPLE	
INTERMEDIARY LIABILITY REGIME	
ADVERTISING	
NOTICE AND ACTION MECHANISM	
AD REPOSITORY	
RIGHT TO LODGE A COMPLAINT	
DEFINITION OF VLOP	

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MOTIVATION










ADVERTISING	TRANSPARENCY AND LABELLING RULES IN THE POLITICAL ADVERTISING AGREEMENT PARTIALLY ALIGN WITH DSA ARTICLE 26 FOR ONLINE PLATFORMS. THE BAN ON TARGETED ADS IS COVERED IN DSA ARTICLE 26(3) AND ELABORATED IN EP ARTICLE 12. DSA ARTICLE 28(2) SHOULD TAKE PRECEDENCE.
NOTICE AND ACTION MECHANISMS	IN THE AGREEMENT ON POLITICAL ADVERTISING, USER NOTICES SHALL BE DEALT WITHIN 48 HOURS (RECITALS 45C AND ARTICLE 9 (3A AND 3B)), UNLIKE THE DSA PROVISIONS.
AD REPOSITORY	DSA ARTICLE 39 REQUIRES AN AD REPOSITORY. COUNCIL'S ARTICLE 7(6) ALIGNS WITH DSA, BUT EP'S ARTICLE 7(B) ADDS AN UNNECESSARY POLITICAL AD REPOSITORY. EP'S ARTICLE 7B(3) GOES BEYOND DSA IN PERSONAL DATA DISCLOSURE AFTER AD REMOVAL.

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DSA REPORT CARD

FILE NAME: PLD 2022/0302(COD) AND THE DIGITAL SERVICES ACT

NOTE: *Positions on the Product Liability Directive proposal are currently aligned with the DSA and do not pose any substantial risks to the regime.*

SUBJECT	SCORE
BAN ON GENERAL MONITORING	
COUNTRY OF ORIGIN PRINCIPLE	
INTERMEDIARY LIABILITY REGIME	
TRANSPARENCY REPORTING OBLIGATIONS	
ADVERTISING, NOTICE AND ACTION MECHANISM, STATEMENT OF REASONS	
RECOMMENDER SYSTEMS	
SYSTEMIC RISK MITIGATION	
INTERNAL COMPLAINT-HANDLING SYSTEM	
OUT-OF-COURT DISPUTE SETTLEMENT	
DEFINITION OF VLOP	