

# 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  |
|---|---|
| <b>TRANSPARENCY REPORTING OBLIGATIONS</b> | 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.  |
| <b>STATEMENT OF REASON</b>                | 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.<br>THE EP ADDED A 24-HOUR MUST-CARRY OBLIGATION FOR VLOPS IN ARTICLE 17, CONFLICTING WITH DSA AND GLOBAL INTERNET SERVICE LEGISLATION. |
| <b>SYSTEMIC RISK MITIGATION</b>           | 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.  |
| <b>INTERNAL COMPLAINT-HANDLING SYSTEM</b> | 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.                            |
| <b>OUT-OF-COURT DISPUTE SETTLEMENTS</b>   | 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.   |
| <b>DEFINITION OF VLOP</b>                 | 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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