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Submission to the European Commission's Consultation on the Digital Services Act package

Homo Digitalis is a Greek civil society organisation based in Athens that focuses on the promotion and protection of human rights in the digital age. Moreover, we serve as a member organisation at the European Digital Rights (EDRi) network.

We welcome the initiative of the European Commission's Directorate-General for Communications Networks, Content and Technology to open a public consultation on the Digital Services Act package , enabling in this way Homo Digitalis and other civil society organisations to provide their feedback and comments. In addition to our replies provided in the survey, with our submission, we would like to underline some key elements regarding the upcoming DSA package, **as well as to officially endorse the submission of the European Digital Rights (EDRi).**

Comments & Recommendations

To begin with, we would like to mention that we firmly believe that the European Union needs an updated, effective, and transparent regime in place in order to hold accountable the powerful platforms and their privacy intrusive business models. We are confident that the Directorate-General for Communications Networks, Content and Technology will present a proposal which will maintain the limited liability regime of platforms, while introducing at the same time innovative provisions that will accompany the existing legislation in enhancing transparency for digital services and respect for the fundamental rights and freedoms of the end-users.

Interoperability of platforms

Interoperability between digital services platforms will empower individuals to try new vendors and products, as well as to escape vendor lock-ins put in place by dominant players in this field. Moreover, it will boost competitiveness in the Digital Single Market by taking advantage of existing mechanisms in EU, such as the right to data portability provided in the EU data protection law. Finally, developing common

standards would be crucial to enhance interoperable systems. However, such standards should be privacy-oriented respecting the European rights and values, not allowing for exploitative use of personal data. Actions taken already at EU level in similar fields, [such as the field of e-health](#), could serve as a useful example regarding standards' development and use.

Supervision and Compliance

Homo Digitalis holds a flexible position regarding the model that the European Commission will put forward in the DSA's text for supervision bodies and compliance mechanisms. If an EU-central independent supervisory body will be suggested, such body must be equipped with enough financial and human resources to effectively control and enforce the obligations for gatekeepers and all other entities covered by the DSA. At the same time, it is crucial to underline the fact that national bodies maybe are more well-equipped to deal with challenges related to liability issues and/or content moderation in the digital services field. However, lessons learned from the GDPR model (national supervisory authorities) indicate that some of such national supervisory bodies are suffering from limited funds and low number of personnel. Thus, in order to reassure the same level of strength and responsiveness between the national supervisory bodies across EU, part of their funding should be provided by the European Commission's budget plan, and not be based solely on funding from national governments.

Limited liability regime

The current regime provided by the e-Commerce Directive offers the right approach, but improvements are needed. More precisely, there is the need for clear provisions regarding the notice and action regime and related remedial routes. We would like to endorse the EDRI's position on this matter. As EDRI rightly mentions the lack of clarity and precision of the current regime does not allow adequate protection of human rights and the rule of law, nor does it ensure legal certainty for intermediaries. In order for the EU to respect its current obligations with regard to its own Charter of Fundamental Rights and its upcoming obligations under the European Convention on Human Rights, EDRI underlines the need to revise the current intermediaries liability regime as follows:

- Where an intermediary is not hosting the content (acting as a mere conduit, an access provider or a search engine), it should have no liability for this content, nor should it have general monitoring obligations or obligations to employ proactive measures with regards to this content as an access provider.
- Where an intermediary act as a hosting provider, its liability with respect to the usergenerated content it hosts should be restricted to a lack of compliance with a court order to take down this content. This should not prevent hosting providers from removing content based on their terms and conditions.
- Intermediaries should have no legal obligation to monitor content.

Audit of content moderation software and use of algorithmic systems in general

Whatever supervisory/compliance model will be suggested by the European Commission, it is important to underline the fact that oversight bodies shall have the powers to audit and assess the functioning of algorithmic systems used by digital service providers offering their products and services to people located in the EU or have an establishment themselves in the EU.

Such obligation could complement the existing obligations arising from data protection law (accountability principle, impact assessment, prior consultation with supervisory authorities, etc) in an attempt to increase transparency. The auditing procedure itself could be strictly confidential in order to respect trade secrets or other conflicting commercial rights, but the results/outcome of such auditing procedures shall always be made publicly available. EDRI's member organization Panoptikon Foundation offers some interesting suggestions in a [recently published related paper](#) focusing on auditing mechanisms, and Homo Digitalis endorses these suggestions.

Of course, different approaches can be appropriate, based on the algorithmic system used. In order to further explore the related challenges that arise, Homo Digitalis suggest to the European Commission to organize related stakeholders' meetings focusing on the design of auditing procedures. Of course, the legal provisions which will be adopted should remain technologically neutral in order to be open to future developments in the field.
