

Searching for a horizontal liability regime

Copyright in the Digital Single Market

Brussels

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Outgoing Commission: problem-driven approach on online platforms



ONLINE PLATFORMS



New framework on online platforms

Revise the 2000 E-Commerce Directive

Address specific problems through targeted instruments or enhanced voluntary efforts

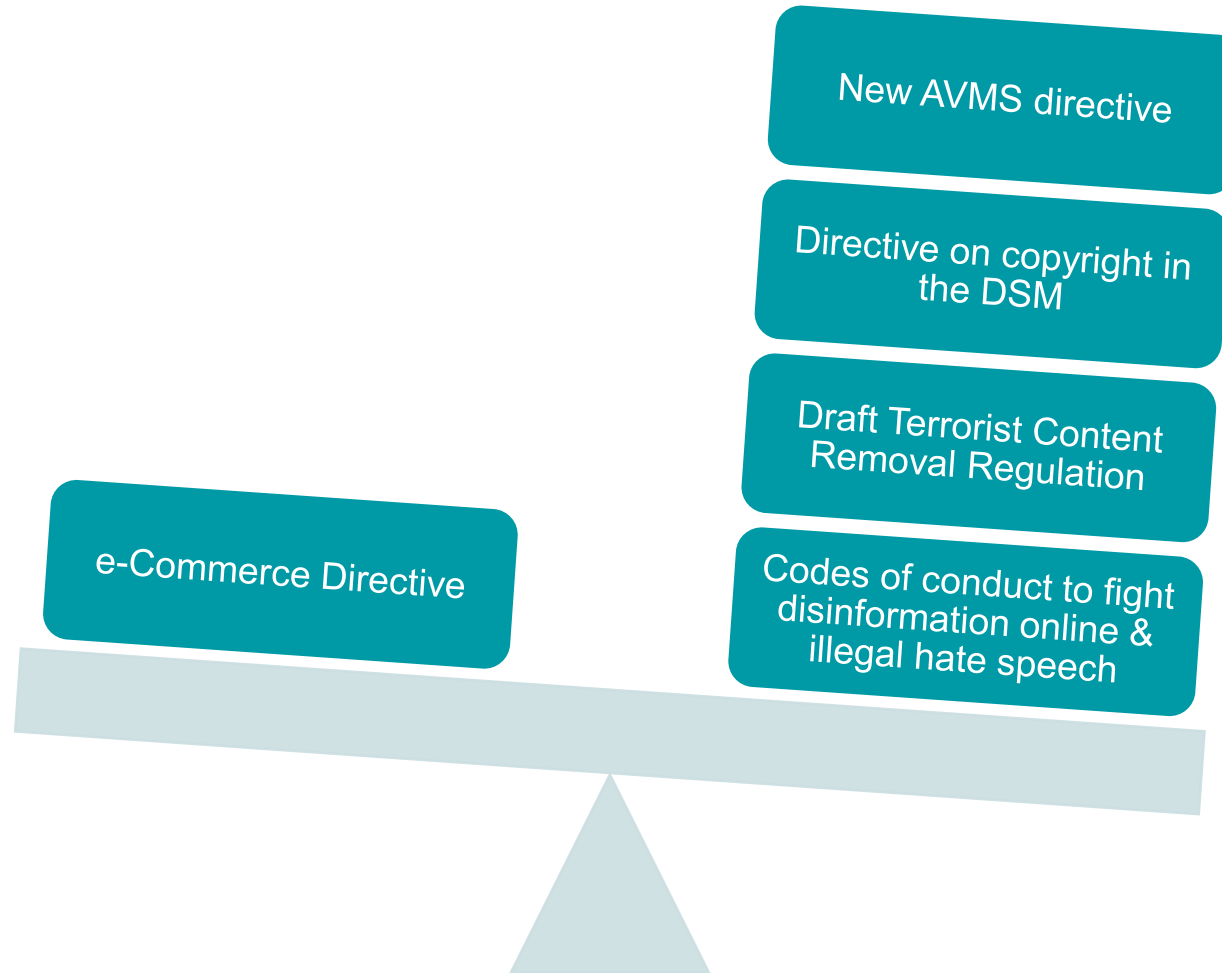
Level playing field

Trust and transparency

Harmful and illegal content online

General

Specific



Different objectives, different types of content, different service providers/services

Copyright Directive (art.17)



- Close the value gap

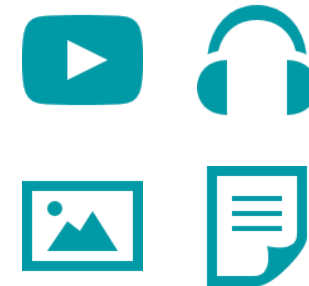
- Online CSSP

AVMS Directive (art.28a,b)



- Protect minors from harmful content
- Protect the general public from incitement to violence/hatred and from content that constitutes a criminal offence according the EU legislation (incl. provocation to commit a terrorist offence)
- Respect basic rules on advertising
- Video Sharing Platform Providers

Terrorist content proposal



- Protect users from terrorist content

- Hosting Service Providers

Different responsibilities

Copyright Directive (art.17)

They communicate works to the public, therefore:

- Must make best efforts to get copyright clearance
- If not, and if rightsholders identify works in advance, prevent availability of works on platform (i.e. filter)
- If notice, must take down work and prevent future uploads (i.e. filter)

If not: liability for copyright infringement

AVMS Directive (art.28a,b)

Must take 'appropriate measures' such as:

- Operate rating and age verification systems
- Put in place parental control systems
- Operate reporting/flagging systems
- Adapt T&C and apply them

Comply with qualitative rules on advertising for own advertising

Terrorist content proposal

Duty of care

- Take down terrorist content within 1 hour of receiving removal order
- Assess as a matter of priority referral orders
- Take proactive measures to prevent re-upload and to detect and remove new terrorist content (if already exposed)
- Adapt T&C and apply them
- Publish annual transparency reports

Different impact on current liability regime

Copyright Directive (art.17)

Introduces a **sui generis liability regime**

(Art 14. 1 no longer applies)

Leaves the rest of Ecom Directive intact)

AVMS Directive (art.28a,b)

Measures relate to the organisation of content and not to content as such

Art 12-15 not affected

Cannot lead to ex ante control measures or upload filtering of content which do not comply with art 15

Terrorist content proposal

National authorities can impose proactive measures including automated tools on platforms exposed to terrorist content

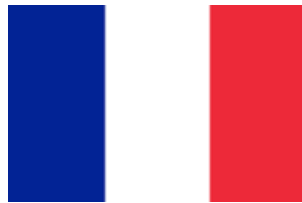
Duty of care

A recital clarifies that imposition of additional proactive measures should not "*in principle*" lead to the imposition of a general obligation to monitor content (art. 15) but derogation possible if necessary for overriding public security reasons

+ national initiatives on platforms



Online harms



'Avia' draft law



Network Enforcement Law



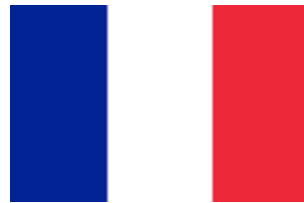
Online safety
draft law

Compatible with Ecom Directive?

- Some apply to non-national EU based providers (contrary to art 3 of Ecom Directive?)
- Some impose rapid (& non substantiated) take down/stay down (contrary to art 14 and 15?)



Online harms



'Avia' draft law



Network Enforcement Law



Online safety draft law



New Digital Services Act

- We don't know much
- **Revision of Ecom Directive**
- Safe harbour to be maintained
- More cooperation between Member States
- Commission consultation end Feb/Start March 2020
- Proposal Q4/2020



Many questions to address

- Sustainability of legislative instruments that only address certain types of content (cf. AVMS), problems and services
- Tiered rules according to size of platform ? (significant market status, 'risk approach')
- What future for country of origin principle and derogations?
- What roles for regulators ?
- What role for co-regulation/self-regulation ?
- How to safeguard fundamental rights ?



Thank you!

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