

EuroISPA monthly report

April 2021

In April 2021, EU institutions made significant progress on many policy dossiers of relevance to EuroISPA. When it comes to intermediary liability, the Portuguese Presidency is preparing its Progress Report on the DSA, summarising successes and future challenges in the Council's negotiations on the text. On the side of the Parliament, it finally solved its conflict of competences between various Committees, which was blocking internal progress on the DSA. Beyond the DSA, April was also marked by the European Parliament's adoption of the Regulation on Preventing the dissemination of terrorist content online. As regards cybersecurity, the Rapporteur Bart Groothuis published his draft report on the file, which will now be amended by the other political groups. After several months of negotiations, the institutions also reached a provisional political agreement on the temporary derogation to the ePrivacy Directive – going forward, however, the European Commission is expected to publish a Regulation on the detection, removal and reporting of child sexual abuse online, and establishing the EU centre in June 2021.

Intermediary Liability

Portuguese Presidency prepares Progress Report on the DSA

In April, Secretariat was able to see a Progress Report on the DSA being prepared by the rotating Portuguese Presidency of the Council, outlining the main successes achieved during the past months, and highlighting future challenges to be tackled by the next Presidency.

Concerning the issue of enforcement and enforceability, the Presidency notes in the document that while Member States favour preserving the country of origin principle, they also called for a greater involvement of the country of destination and for better cross-border cooperation amongst the Digital Services Coordinators. When it comes to the topic of content moderation, Member States overall supported the notice and action and redress mechanisms of the proposal, as well as the approach to VLOPs; some called for clarification on the options for national authorities to issue stay down orders. Concerning the scope, there were several questions regarding the interplay with existing EU law – furthermore, some Member States called for better definitions of micro/ small companies (not just based on size and turnover) and for a risk-based approach to further protect such businesses. Portugal noted also that many other points will need further discussion, such as the Article on voluntary actions against illegal content, the issue of trusted flaggers, as well as the protection of trade secrets.

In terms of next steps, the document is set to be adopted at the Competitiveness Council on 27 May.

Actions

- EuroISPA will host further [“DSA in Focus”](#) series of webinars

- *Malcolm Hutto, Chair of the Intermediary Liability Committee, met with the Greek and Slovak attachés. Further meetings are scheduled with the Danish and the Spanish attachés.*
- *EuroISPA shared its [position](#) on the DSA with the Italian Ministry for Technological Innovation and Digital Transition*

DSA: Parliament finally solves conflict of competences

After many months of internal fights on the division of competences on the DSA between European Parliament's Committees, the European Parliament's leadership has finally found a political solution. As expected, the IMCO Committee (Internal Market and Consumers) will remain the main committee responsible. The LIBE (Civil Liberties, Justice and Home Affairs), JURI (Legal Affairs) and ITRE (Industry, Research, Energy) Committees will be "associated", with shared competences over the entire proposal and with additional elements for cooperation. The CULT (Culture) and TRAN (Transport and Tourism) Committees will contribute with opinions under Rule 56.

DSA: Presentation of two studies of the Dutch Permanent Representation to which EuroISPA contributed

On 21 April, the Dutch Permanent Representation to the EU hosted the event "The Digital Services Act: redefining hosting services and content moderation responsibilities". The event featured presentations of two studies on the DSA commissioned by the Dutch government, dealing respectively with the [definition of hosting services](#) and with [the revision of the European framework for the liability and responsibilities of hosting service providers](#). The first study suggests distinguishing between "classical hosting" (e.g. web hosting, cloud hosting, services of data) and hosting "plus", which would include services indexing and referring, aggregating content, connecting people around networked interactions and publishing content. The second study calls for a revision of the E-Commerce Directive to harmonise liability, and to clarify and harmonise several ambiguous terms. It also calls for a duty of care for hosting service providers.

Terrorist Content Online Regulation Adopted in the European Parliament

On April 28, the Plenary of the European Parliament [adopted](#) in second reading the [Regulation on Preventing the dissemination of terrorist content online](#). The LIBE Committee (Civil Liberties, Justice and Home Affairs) had previously endorsed it by 52 votes for and 14 against (as expected, mostly from Greens/EFA and the LEFT). The regulation, which will be shortly be published in the EU Official Journal, will enter into force on the twentieth day following publication in the Official Journal. It will start applying 12 months after its entry into force.

Action:

- EuroISPA reacted to the adoption through this [press release](#).

Cybersecurity

ITRE Committee publishes its draft report on NISD2

On 3 May, the European Parliament's ITRE Committee (Industry, Research, Energy) published the [Draft Report](#) on the NIS2, led by MEP Bart Groothuis (Renew, Netherlands).

The Rapporteur narrows the scope of mandatory reporting to incident and makes the reporting on 'threats' and 'near misses' voluntary. He also extends the deadlines for first reporting to 72 hours and changes the report to be delivered after one month to be a 'comprehensive' (but not the 'final') report. The Rapporteur seems believe that the 'GDPR-liability fears' are a hindrance to cybersecurity, and therefore proposes Amendments that aim to facilitate compliance with the Regulation. Finally, the Draft Report removes the possibility for Member States to issue fines to entities without going through previous steps (e.g. warnings, orders to cease non-compliance, etc.) and deletes the provisions regarding personal responsibility at managerial level. He also changes the wording on the sanctions so that they only take into account actual damages and losses, but not 'potential' ones.

The consideration of the Draft Report is expected for 26 May 2021, and the deadline for amendments is on 2 June 2021. The adoption at the ITRE Committee might take place on 14 October.

Action:

- *EuroISPA submitted its position on the European Commission's proposal and held a meeting with the Parliament's rapporteur on the file, MEP Bart Groothuis, on 16 April.*

EuroISPA shares feedback on the Second Additional Protocol to the Budapest Convention

In the context of the Council of Europe's Public Consultation with civil society, data protection authorities and industry on the 2nd Additional Protocol to the Budapest Convention on Cybercrime, EuroISPA shared its feedback, which you can find at this [page](#).

Safer Internet

Provisional agreement on the e-Privacy temporary Directive derogation to combat CSAM

On 29 April, at the 5th trilogue (inter-institutional meeting of the co-legislators), negotiators reached a provisional political agreement on the [temporary derogation to the ePrivacy Directive](#). The deal arrives after several months of difficult negotiations around a proposal that was put forward by the Commission in September 2020. The European Parliament and the Council have yet to confirm the agreement reached. Once done, the interim derogation will apply for a period of three years since its entry into force or until the new Regulation on the detection, removal and reporting of child sexual abuse online, and establishing the EU centre is adopted. As a reminder, the Commission's proposal for a permanent Regulation is expected to be published in June 2021.

Action:

- *EuroISPA submitted its contribution to the Commission's public consultation on the upcoming legislation on combating child sexual abuse on 15 April.*

Innovation and Growth**Draft legislative own-initiative report on tackling digital piracy of live sport events and protecting organisers**

On Tuesday 13 April, the Legal Affairs Committee of the European Parliament (JURI) adopted a [draft legislative own-initiative report](#) setting out recommendations to address the illegal transmission of sport events and the protection of intellectual property rights of their organisers. The report was led by MEP Angel Dzhambazki (ECR, BG). Several MEPs submitted [amendments](#) and the European Parliament published a [press release](#). The report is expected to be adopted by the Plenary session on 17 May 2021.

The report highlights the need of improving the existing framework on enforcement of intellectual property rights for live sport events to reflect the specific nature of live broadcasts. The Rapporteur stated that the liability for illegal broadcasting of sports events rests with the providers of streams and platforms and platforms. MEPs call for harmonisation of existing rules on notice and take down procedures in the context of the Digital Services Act. Online intermediaries would have to remove or disable illegal broadcasts immediately, or as fast as possible and in any event no later than within 30 minutes of the receipt of the notification from right holders or a certified trusted flagger.

Data Protection**ePrivacy next trilogue**

According to Brussels-based media, the first round of interinstitutional negotiations should take place on 20 May.