



Message 201

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Forwarding of the response of the Member State notifying a draft (Lithuania) to request for supplementary information (INFOSUP) of European Commission.

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2. Lithuania

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4. 2023/0759/LT - SERV20 - Electronic commerce

5.

6. Replies of the Republic of Lithuania to the European Commission's request for additional information regarding the notified draft Law – 2023/759/LT

The Republic of Lithuania (hereinafter referred to as 'Lithuania') responds to the European Commission's request for additional information concerning the notified Articles 2, 48 and 50 of Law No I-1418 on the provision of information to the public and the Law supplementing the Law with Article 521 (hereinafter referred to as 'the draft Law').

1. The main objective of the draft Law is to empower the authorities to instruct the provider of an online social networking service to remove data identifying the number of views, comments, shares, likes, followers and/or subscribers of illegal content artificially inflated by bot farms. Powers will be granted to the Office of the Inspector of Journalist Ethics (hereinafter referred to as 'the Authority') and to the Radio and Television Commission of Lithuania (hereinafter referred to as 'the Commission'), which will issue instructions on its own initiative or on the basis of a notice (complaint) received, identifying manipulation of accounts of social media platforms when bot farms are used to distribute illegal content. The Authority and the Commission will only issue instructions on the dissemination of illegal content as defined in Article 19(1)(1) of Law No I-1418 of the Republic of Lithuania on the provision of information to the public. The illegal content referred to in this paragraph includes war propaganda, incitement to war, called for coercion to violate the sovereignty of the Republic of Lithuania – to change its constitutional order, to encroach upon its independence or to violate the territorial integrity.

Article 3(h) of the Regulation: 'illegal content' means any information which, in itself or by reason of its connection with certain activities, including the sale of products or the provision of services, is incompatible with Union law or with the law of any Member State which is in conformity with Union law, whatever the purpose or nature of that law.'

In line with the definition of illegal content in Article 3(h) of the Regulation, and for reasons of legal clarity on the scope of illegal content at national level, the reference in Article 4 to bot farms to artificially increase the link between data and sensitive information referred to in Article 19(1)(1) of the Act aims to ensure that this falls within the concept of illegal content and within the scope of the Digital Services Act (DSA).

The new regulation will provide the tools for the Authority and the Commission to respond effectively to the mass distribution of illegal content by bot farms, where thousands of bot farms share illegal content at the same time in an automated way, and thus manipulate social networking platforms by using them to increase the visibility of illegal



content. Instructing competent authorities to remove illegal content is not a sufficient remedy, as bot farms generate and disseminate illegal content in an automated and massively automated way, thus manipulating accounts on social networking platforms, as bots significantly increase the visibility of the illegal content through their likes, comments, shares, etc. The draft Law would create a legal framework to eliminate bot farms and prevent the distribution of illegal content through them. Since in the context of the war in Ukraine Lithuania faces particularly large disinformation and illegal content campaigns aimed at influencing society and creating mistrust of the state, it is necessary to respond to them quickly and effectively, as illegal content disseminated on mass social media platforms poses a serious threat to Lithuania's national security, democratic processes and civic discourse. The draft Law will provide legal possibilities to better protect the Lithuanian information space, as well as the interests of the public and individual individuals.

Article 4(2) of the Treaty on European Union stipulates that the European Union shall respect essential State functions, including the safeguarding of the territorial integrity, public order and national security of the State. Each Member State remains solely responsible, in particular, for its national security. Subject to the provisions of Article 4(2) of the Treaty on European Union, a Member State may adopt legislation to safeguard public policy and national security. The distribution of illegal content by bot farms, including war propaganda, incitement to war, calls to violate the constitutional order and territorial integrity of Lithuania, falls within the scope of national security. While the DSA lays down common rules on the fight against illegal content, illegal content can and is defined differently in each Member State. The DSA does not define the concept of illegal content in different areas, but is governed by national and EU legislation in the Member States. The DSA does not introduce full harmonisation of illegal content and illegal activities on the internet, so Member States have the right to regulate the manipulation of social networking platform accounts by bot farms and the mass distribution of illegal content as illegal activities.

Articles 2 and 3 of the draft Law aim at empowering the Authority and the Commission to issue instructions to online platforms, which is not the case under the current national regulation. Currently, the Office and the Commission can only issue instructions to providers of electronic information hosting services. The Law of the Republic of Lithuania on Cybersecurity defines electronic information hosting services as services that include the provision of access to electronic information and electronic data creation and processing tools and/or storage of electronic information provided by the recipient of services and does not include online platforms. In this context, it was decided to specify in the draft Law that the Authority and the Commission shall implement the provisions of the DSA on illegal content by issuing instructions to online platforms. Otherwise, another law would have had to be amended, so in order to speed up the adoption of the draft Law and to avoid additional harmonisation, it was decided to refer to the DSA.

2. The instructions issued by the Council and the Commission will clearly identify illegal content prohibited by Article 19(1)(1) of Law No I-1418 of the Republic of Lithuania on the provision of information to the public and provide information about bot accounts and artificially increased reviews of illegal content, comments, content sharing, likes, followers and/or subscribers of these bot accounts. The mandatory instructions will provide precise information – specific accounts, URLs and additional data – to identify a social networking platform account as a bot distributing illegal content. Social media platforms will have to assess the guidance given by the Council and the Commission and decide on the response to the instruction. The Council's and the Commission's instructions are ad hoc, do not impose a general monitoring obligation on social media platforms to monitor the information they transmit or store, and do not oblige them to actively seek facts or circumstances that would indicate illegal activities. Social networking platforms will only assess and make decisions based on specific information that can easily identify illegal content, the bot farms that distribute it, and data on the artificially generated visibility of illegal content.

Draft Law No X-614 on Information Society Services, drafted by the Government of the Republic of Lithuania and submitted to the Seimas, which implements the DSA, provides that the requirements of Article 9 of the DSA apply to all institutions specified in the laws or other legal acts of the Republic of Lithuania regulating the restriction and control of illegal content. In this context, the Authority and the Commission will have to follow the ordering requirements set out in Article 9 of the DSA when issuing orders to providers of intermediary services to take action against illegal content.

The assessment and management of risks provided for in Articles 34 and 35 of the DSA establishes a self-regulatory mechanism, which is a lengthy process and does not ensure a rapid response to illegal content. The main objective of the draft Law is to have a tool by which institutions can quickly and effectively remove bot farms that distribute illegal content. While the DSA is focused on prevention, self-regulation, operating models and improvement of providers of online platforms and online search engines, the draft Law provides for an obligation to respond to the authorities' instructions regarding the manipulation of illegal content published by bot farms and therefore does not infringe the provisions of the DSA.



The draft Law does not impose any obligations on social networking platforms to put in place new mechanisms and tools to manage risks, nor does it impose any requirements to improve operations, algorithms or change internal processes. The draft Law does not empower the Authority and the Commission to request information on compliance with the provisions of the DSA, to conduct enquiries and inspections, to impose provisional measures and to approve commitments. The Authority and the Commission only have the power to issue instructions on the removal of bot farms to prevent the distribution of manipulatively enhanced illegal content, and therefore the draft Law does not conflict with Section 4 of Chapter IV of the DSA.

3. The draft Law empowers the Authority and the Commission to issue instructions to social media platforms which are obliged to react and take decisions on instructions issued by the Authority or the Commission. Given that social media platforms used by the majority of Lithuanian citizens are very large online platforms or are not established in Lithuania, the Authority and the Commission do not have the power to enforce orders and impose fines. In cases where very large online platforms or online platforms not established in Lithuania do not systematically react or follow instructions from the Authority and the Commission, the Communications Regulatory Authority, which will be designated as Digital Services Coordinator, will have the right to contact the European Commission or the Digital Services Coordinator of establishment in accordance with Article 58(1) of the DSA in accordance with Article 65(2) of the DSA and request an appropriate assessment of the matter.

There are no social media platforms established in Lithuania, the services provided by which would be used by a large part of the Lithuanian population and their activities would have a significant impact on national security, democratic processes and civic discourse. In the event of the emergence of such social media platforms established in Lithuania, they would be subject to legal liability under Law No XII-1869 on the Procedure for Approval, Entry into Force and Implementation of the Code of Administrative Offences of the Republic of Lithuania, which provides that the Office may impose fines pursuant to Article 589(16) or the Commission pursuant to Article 477(3) for failure to comply with the legitimate instructions of the Office or the Commission.

4. The draft Law provides that the Office or the Commission, if it detects the manipulation of accounts on social networking platforms using bot farms to distribute illegal content, will only issue instructions after taking into account the dangerous nature of the information, the seriousness of the threat to the public, the proportionality of the measures to be taken, and the rights set out in the Charter of Fundamental Rights of the European Union. These criteria are introduced to ensure that the Authority and the Commission will issue instructions only where illegal content disseminated by bot farms on a massive scale will endanger national security, constitutional order and democratic processes. The assessment of the information contained in the instructions will have to comply with the proportionality test and allow the social media platform to easily identify the illegality of the activity or information concerned without a thorough legal investigation. The Authority and the Commission will have to take into account the rights enshrined in the Charter of Fundamental Rights of the European Union, including freedom of expression, before issuing instructions. It is important to stress that the draft Law does not restrict freedom of expression or otherwise limit the right to freedom of opinion. The draft Law provides for a regulatory framework for the elimination of bot farms and the illegal content they disseminate, which excludes the content disseminated by bot farms from the right to freedom of expression and other rights enshrined in the Charter of Fundamental Rights of the European Union. A fake, manipulated account on a social networking platform, i.e. a bot, is not an authentic account owned by a natural or legal person. Because bot farm accounts cannot be equated with authentic and real person accounts, there is no risk that the draft Law will restrict freedom of expression and other rights enshrined in the Charter of Fundamental Rights of the European Union.

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