



Digital Services Act

Philippe Defraigne - 3 December 2024

CRC Mongolia



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1. Introduction

REGULATIONS

REGULATION (EU) 2022/2065 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 19 October 2022

on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act)

(Text with EEA relevance)

To contribute to the proper functioning of the **internal market** by setting harmonised rules for **intermediary services** for a **safe online environment**, in which **fundamental rights** are effectively protected. In particular:

- Rules for the conditional **exemption from liability**
- Specific **due-diligence obligations** tailored to certain specific categories
- Rules on the implementation and **enforcement**

DSA addresses three problems of the cyberspace

1. Hate speech, cyberbullying...
2. Disinformation
(i.e. protecting democracy)
3. Intellectual Property.

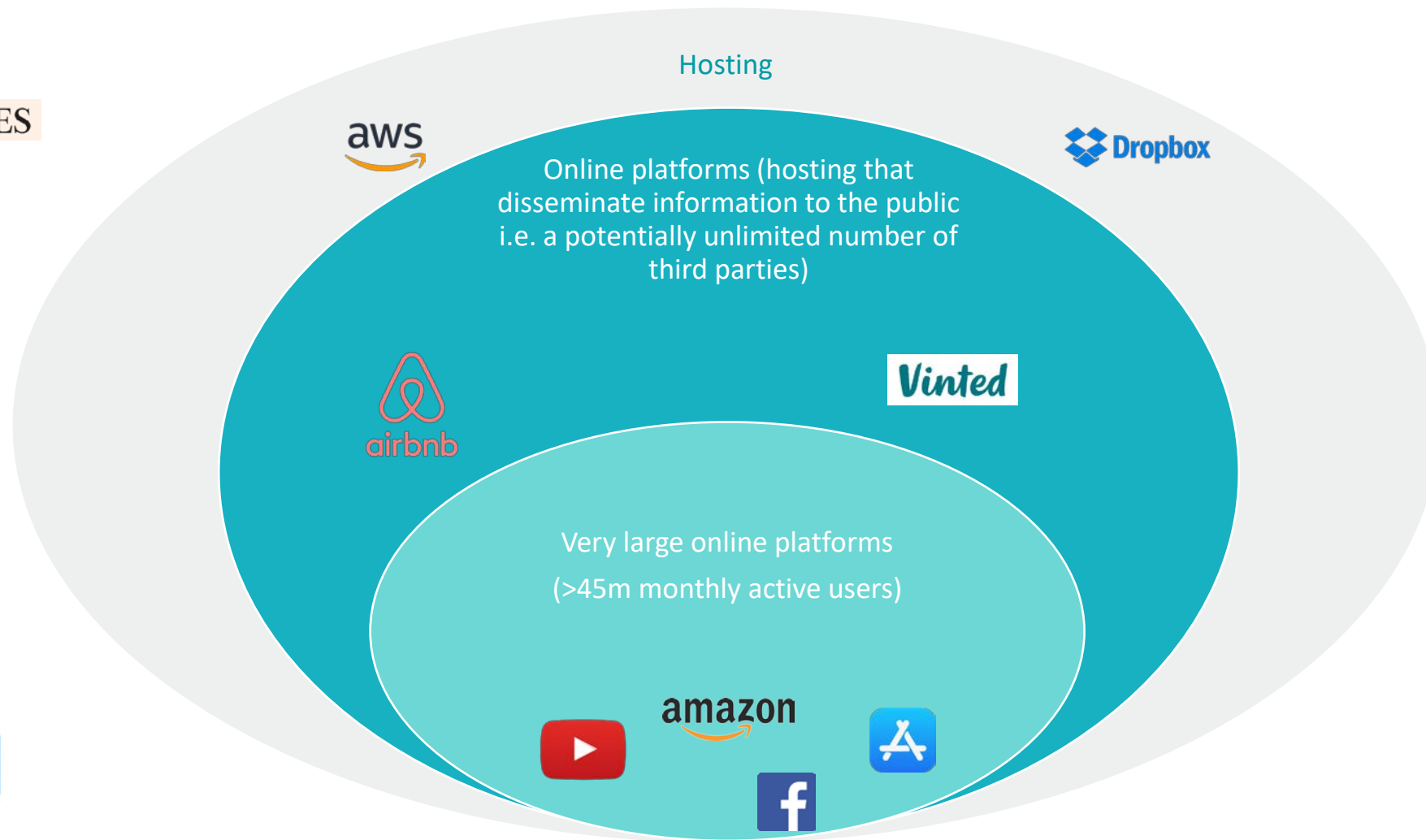


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2. Scope

Focus on hosting services: storing of information at the request of third parties

FINANCIAL TIMES



DECATHLON

Designations of VLOPs (23) and VLOSEs (2)

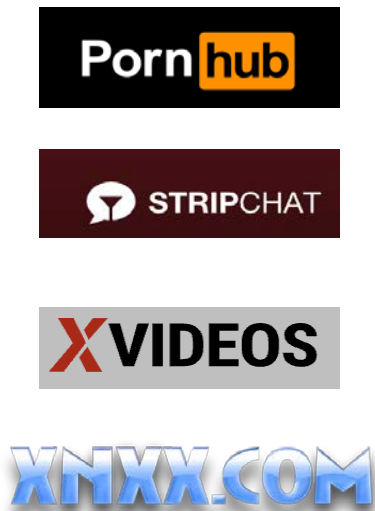
Social media



Marketplaces



Adult content platforms



Web mapping



App stores

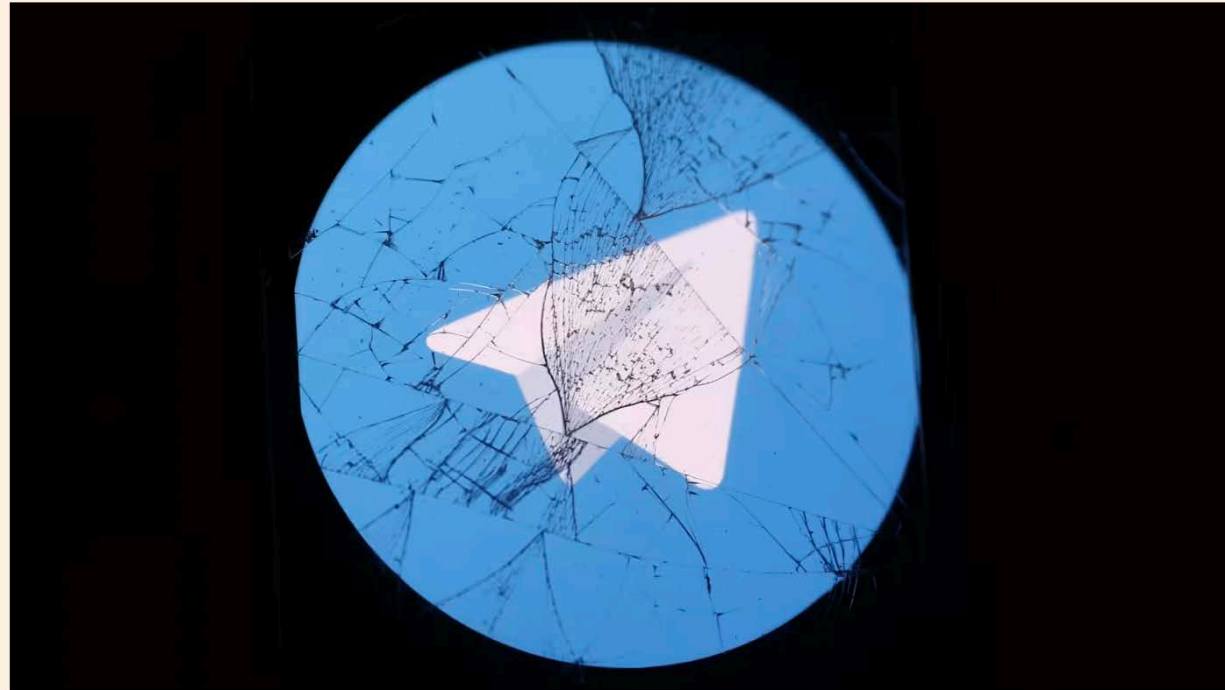


Search engines



EU investigating Telegram over user numbers

Brussels probing possible failure by messaging platform to provide accurate data under new regulations



Telegram said in February it had 41mn users in the EU © Jakub Porzycki/NurPhoto via Reuters

Henry Foy, Alice Hancock and **Paola Tamma** in Brussels and **Adrienne Klasa** in Paris

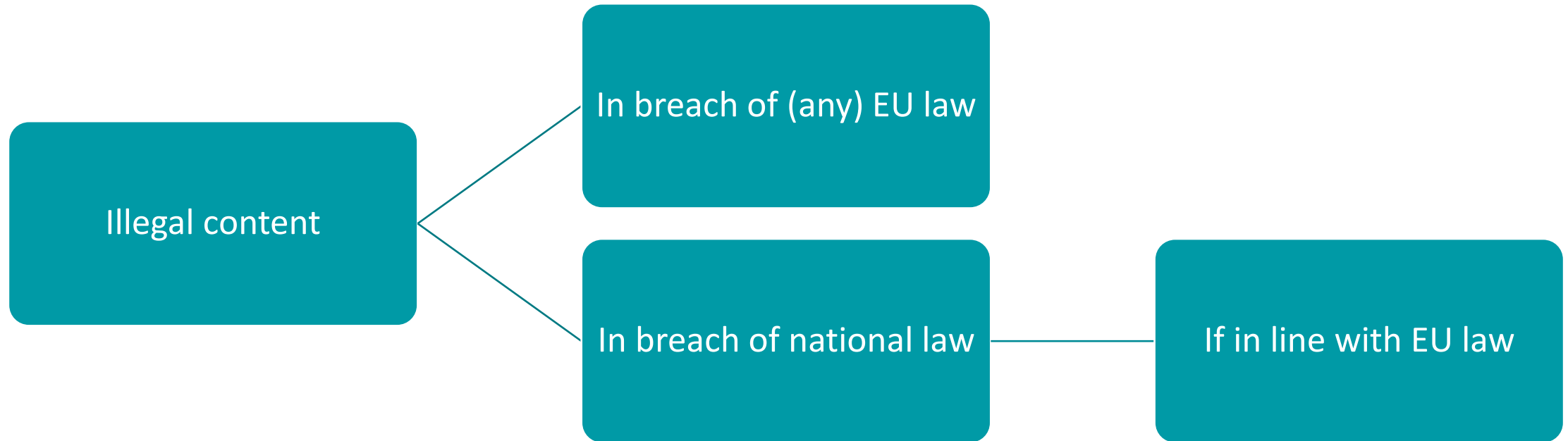
AUGUST 28 2024

193



Brussels is investigating whether Telegram breached EU digital rules by failing to provide accurate user numbers, as officials push to bring the controversial messaging app under stricter supervision.

DSA deals with illegal content (incl. products and activities)



“What is illegal offline, should be illegal online”



© Doug Seeburg - The Sun



© Instagram/Courtney Barnes



© Reuters

Harmful content?

Not explicitly
covered

Protection of
minors

T&Cs

Risk management
for VLOPs and
VLOSEs

DSA applies irrespective place of establishment

Non-EU
established
providers covered

- So long as services are offered to recipients that are established/reside in the EU

Substantial
connection with
EU needed

To be assessed based on **specific factual criteria** such as:

- Where number of recipients of the service in one or more Member State is significant
- Targeting of activities towards one or more member states (e.g. language, currency, local advertising...)
- Need to appoint a legal representative



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3. Tailored due diligence obligations

INAPPROPRIATE PRACTICES



Transparency of content moderation



Protect users against misleading practices and inappropriate profiling of their data for advertising and recommendation purposes



Additional obligations on advertising and recommender systems

ILLEGAL CONTENT



Deal with illegal items and safeguards for users against unjustified actions



Strengthened notice and counter-notice procedure



Additional obligations to fight the dissemination of illegal products



Additional measures to deal with societal harms

- Transparent and fair application of T&C
- Annual reports



INTERMEDIARIES

- Flagging system
- Statement of reasons

- Reporting serious crimes to law enforcement



HOSTING PROVIDERS

- Give priority to trusted flaggers
- Suspension of misusers

- Internal complaint handling system

- Engage in good faith with out-of-court redress bodies



ONLINE PLATFORMS

- Trace identity of traders
- Design the interface to enable them to comply with law

- Randomly check products
- Inform consumers who bought illegal products



MARKETPLACES

- Risk assessment and mitigation measures
- Crisis response mechanism



Facilitate oversight

- Auditing
- Compliance officer
- Access to data



European Commission

VERY LARGE PLATFORMS & VERY LARGE SEARCH ENGINES

Dealing with illegal content: notice-and-action procedure

- ✓ System where **users or entities** can flag a specific item, they consider illegal
 - Easy-to-access and use
 - Facilitate **precise and substantiated** notices (list of elements)
- ✓ **Process** notices (also automatically)
- ✓ Decide in a “**timely**, diligent, objective” manner
- ✓ Promptly inform the flagger

*Accurate notices give rise to actual knowledge when **no detailed legal examination is needed***

Hosting service providers

- ✓ When notices are from **trusted flaggers**, process **immediately and with priority**
- ✓ Temporarily **suspend** flaggers that **misuse** the system

MSEs 

Online platforms

Focus on trusted flaggers (article 22, Benchmark)

- ✓ Public or private **entities** that are designated by the relevant **DSC** upon proving they meet certain criteria
- ✓ Trusted flaggers must **report** annually to the DSC on activities and procedures to remain independent
- ✓ Online platforms must inform the DSC they have received a **significant number of unfounded notices** and (where relevant) the DSC **suspends** the flagger and starts an investigation
- ✓ The DSC must **revoke** the status (under certain conditions) if its investigations show criteria are no longer met
- ✓ EC to issue **guidance** and keep a database (upon information provided by DSCs)



- Particular **expertise**
- **Independence** from any platform
- Aim to submit notices that are **diligent**, accurate and objective



Save the
Children



ifpi

representing the
recording industry
worldwide



INTERNATIONAL

Take further actions when getting aware of more serious infringements by their users

- ✓ When **aware** of information triggering **suspicion** of a **crime threatening to life or safety** must **immediately** notify **relevant** enforcement or judicial authorities and provide any **available information**

Hosting service providers

- ✓ **Suspend** for a **reasonable period of time** users that **frequently** provide **manifestly** illegal content

- T&C to detail suspension policies
- After a case-by-case assessment that considers listed elements
- Upon a prior and detailed warning

MSEs 

Online platforms

VLOPs and VLOSEs must assess systemic risks which include dissemination of illegal content and other harms (article 34)

Internal assessment of the risks stemming from the design/functioning (incl. systems) or use

Risk assessment must include 4 categories of systemic risks:

- ✓ Dissemination of **illegal** content
- ✓ Harms to the exercise of **fundamental rights** (human dignity, personal data, rights of the child, freedom of expression and information, media freedom & pluralism, protection of consumers..)
- ✓ Harms to civic discourse, **electoral** processes and public security
- ✓ Harms to gender violence, protection of **public health, minors, person's physical, mental and social well-being**

- **Annually** and before deploying a new feature with critical impact
- Diligent, specific and **proportionate**
- “Actual and foreseeable negative impact”
- If and how risks are influenced by **systems**, intentional manipulation, regional/linguistic aspects
- Not just an internal exercise

VLOPs and VLOSEs must take appropriate measures to mitigate identified risks (article 35)

Provider to choose the appropriate mitigation measures, provided they are:

- effective and **tailored** to the identified risk
- reasonable, **proportionate** and consider fundamental rights

List of possible mitigation measures

Adapt design, functioning, features, interface

Reinforcing processes, resources, supervision

Adapt T&Cs and their enforcement

Adapt recommender and advertising systems

Improving content moderation system

Cooperation with trusted flaggers/other providers

Targeted measures to protect minors, e.g. age verification..

Marking of deep fakes

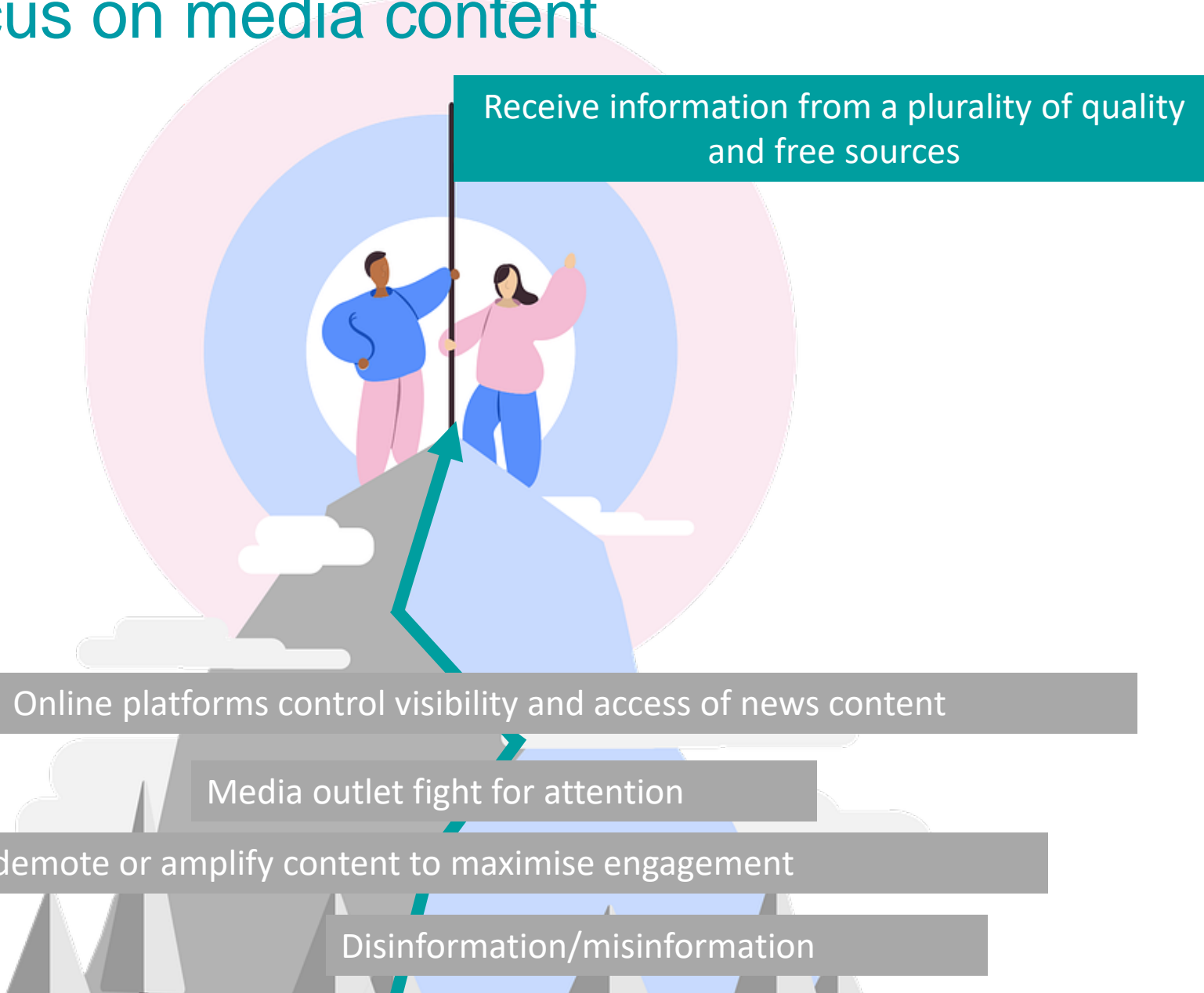
Awareness raising

❖ Commission can issue guidance and in certain instances can **engage** with the provider

Formal proceedings opened

- X (18 December 2023, [press release](#)) concerning in particular risk management to counter the spread of illegal content
- TikTok (19 February 2024, [press release](#)) concerning inter alia the risk management of addictive design – rabbit hole effect - and dissemination of harmful content
- Meta (Instagram and Facebook) (30 April 2024, [press release](#)) concerning inter alia risk management in relation to integrity of elections, civic discourse, fundamental rights...

Focus on media content



Receive information from a plurality of quality and free sources

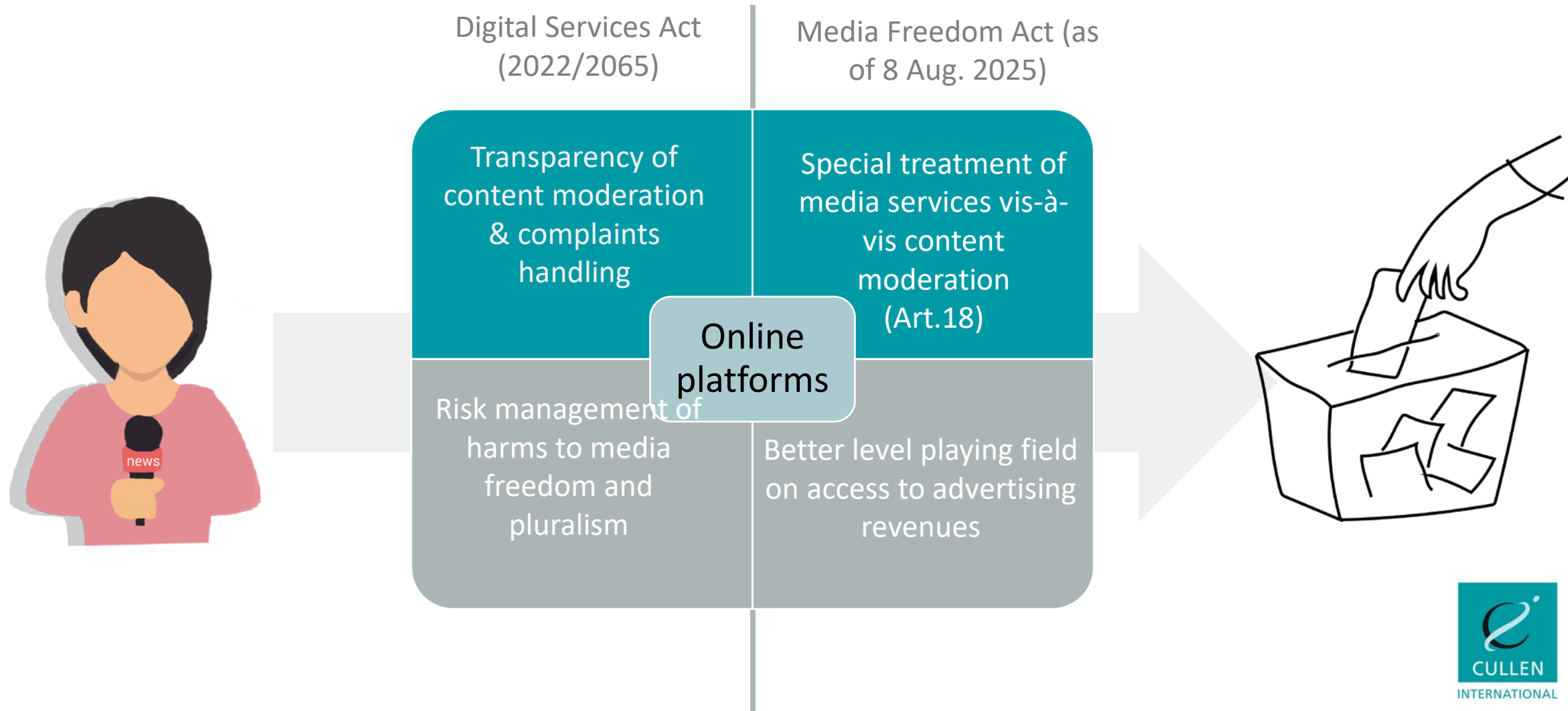
Online platforms control visibility and access of news content

Media outlet fight for attention

Algorithms demote or amplify content to maximise engagement

Disinformation/misinformation

Some of these issues are already addressed by the Digital Services Act



Focus on protection of minors

- If **mainly directed at or used by** minors, must have **terms & conditions** that are easily understandable for minors

All intermediaires

- Ban on presenting **advertising** to minors based on profiling
- If **accessible to minors**, appropriate measures to ensure a **high level** of safety, security and privacy (Commission will issue guidance in 2025, [consultation](#) runs until end Sept)

MSEs 

Online platforms

- Conduct an annual assessment of **risks for minors and for rights of the child** and (if risks are identified) take mitigation measures

MSEs 

VLOPS

Formal requests for information sent to:

- YouTube (9 November 2023, [press release](#))
- Meta (Instagram) (10 November 2023, [press release](#))
- Meta (Facebook) (10 November 2023, [press release](#))
- Snapchat (10 November 2023, [press release](#))
- Meta and Instagram in particular (1 December 2023, [press release](#))
- TikTok (17 April 2024, [press release](#))
- Pornhub, Stripchat, Xvideos (13 June 2024, [press release](#))

Formal proceedings opened against:

- TikTok (19 February 2024, [press release](#))
- TikTok (Lite) (22 April 2024), [press release](#))

Commission closes proceedings and accepts commitments by TikTok to:

Withdraw its Lite Rewards programme from the EU (05 August 2024, [press release](#), commitments published)

Recommender systems

'recommender system' means a fully or partially automated system used by an online platform to suggest in its online interface specific information to recipients of the service or prioritise that information, including as a result of a search initiated by the recipient of the service or otherwise determining the relative order or prominence of information displayed;

- T&C to specify main parameters used and any options to modify them,
- Where options to modify are available, make available a functionality on website

Online platforms

- Make at least one option available to users which is not based on profiling
- Risk assessments, must take into account design of recommender systems
- Risk mitigation measures, may involve testing and adapting recommender systems
- Commission and DSC of establishment can ask them to explain the design, logic, functioning and testing of their recommender systems (and other algorithms)

VLOPS

Formal requests for information sent to:

- Google Play and Apple app store (14 December 2023, [press release](#))
- Instagram (1 March 2024, [press release](#))
- LinkedIn (14 March 2024, [press release](#))
- Temu and Shein (28 June 2024, [press release](#))
- Amazon (15 November 2023, [press release](#), 5 July 2024, [press release](#))

Formal proceedings opened against:

- TikTok (19 February 2024, [press release](#))
- TikTok (Lite) (22 April 2024), [press release](#))

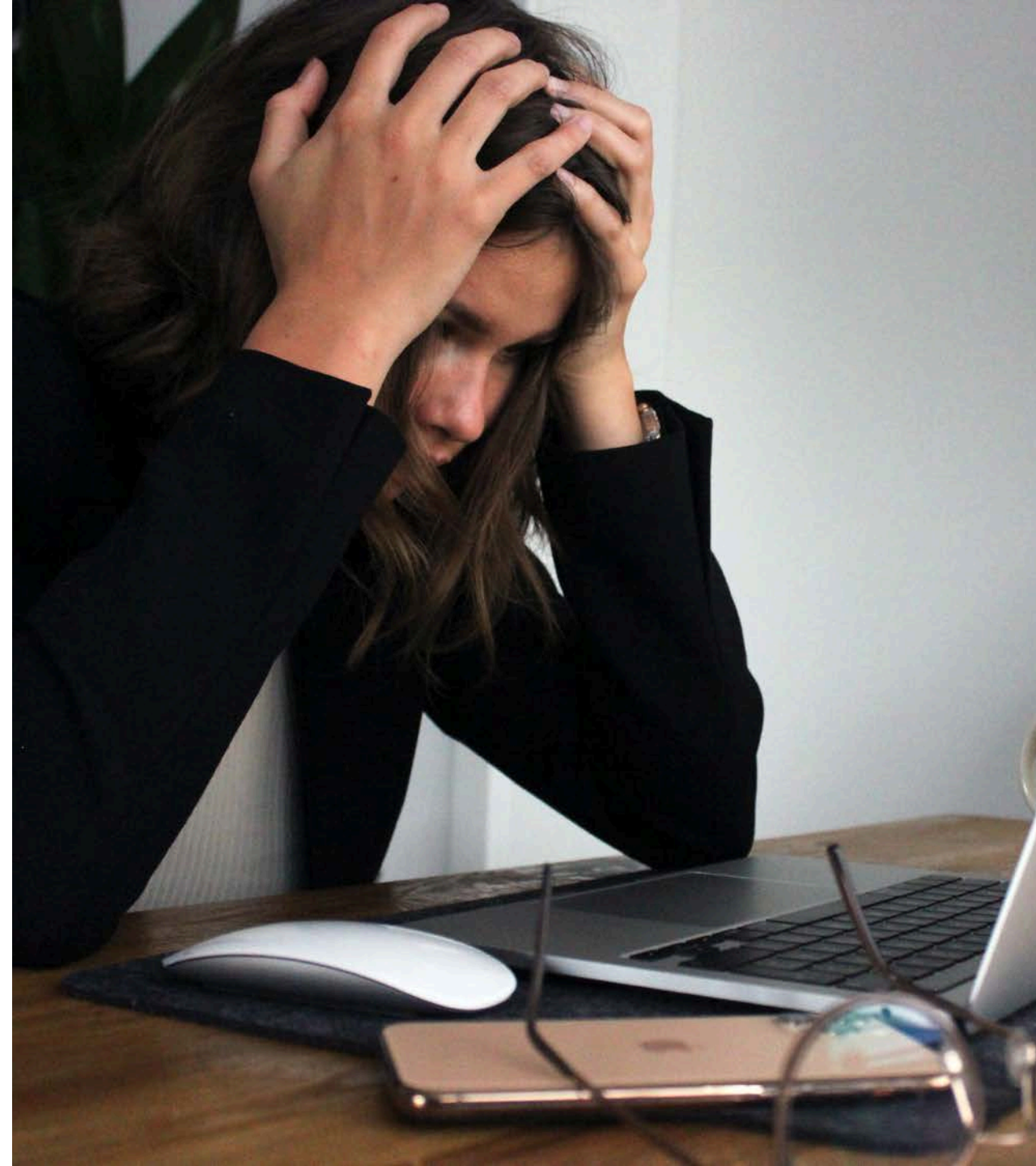


Online platforms prohibited to engage in dark patterns (art. 25)

- Cannot design, organise, operate their online interfaces so as to deceive/manipulate recipients' ability to make informed decisions
- Commission can issue guidelines

Formal requests for information sent to:

- Temu and Shein (28 June 2024, [press release](#))



Online advertising

Online platforms

- Cannot target ads based on minors' personal data or on sensitive data (such as sexual orientation, sensitive data or ethnicity)
- Prominently display:
 - That is an ad.
 - Person on whose behalf ad is presented & who has paid for it
 - If targeted ad, main parameters used (& how to change parameters)
- Provide functionality for users to declare if ad is uploaded

VLOPS & VLOSES

- Publish repository with aggregated data on advertising presented on their websites
 - 2. The repository shall include at least all of the following information:
 - (a) the content of the advertisement, including the name of the product, service or brand and the subject matter of the advertisement;
 - (b) the natural or legal person on whose behalf the advertisement is presented;
 - (c) the natural or legal person who paid for the advertisement, if that person is different from the person referred to in point (b);
 - (d) the period during which the advertisement was presented;
 - (e) whether the advertisement was intended to be presented specifically to one or more particular groups of recipients of the service and if so, the main parameters used for that purpose including where applicable the main parameters used to exclude one or more of such particular groups;
 - (f) the commercial communications published on the very large online platforms and identified pursuant to Article 26(2);
 - (g) the total number of recipients of the service reached and, where applicable, aggregate numbers broken down by Member State for the group or groups of recipients that the advertisement specifically targeted.
- Risk assessments to take into account systems for selecting and presenting advertisements
- Risk mitigation measures may include adapting their advertising systems



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4. Oversight

European Board for Digital Services EBDS

European
Commission

VLOPS and
VLOSES

MS

MS

MS

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Telecom NRA

Media NRA

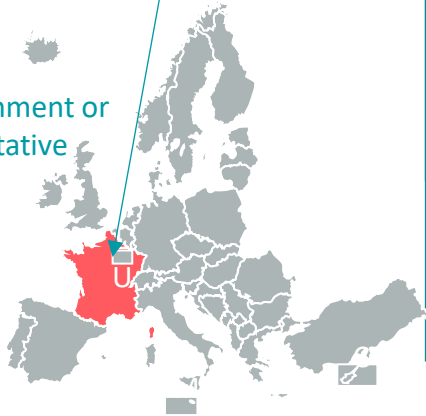
Other competent
authorities

Telecom NRA

Media NRA

Other competent
authorities

MS of main establishment or
of legal representative





Thank you!