

Position Paper by Meta on a Digital Violence Prevention Act

The Facebook Germany GmbH ('Meta') thanks the Ministry of Justice for the opportunity to share our thoughts on the published position paper for a Digital Violence Prevention Act ('DVPA Position Paper').

1. General Observations: Prevention of Digital Violence, Country of Origin Principle and Primacy of DSA

Meta Platforms Ireland Limited provides services such as Facebook and Instagram in Germany. The prevention of hate speech and digital violence is a key priority for Meta in order to offer safe and trusted services where our users feel comfortable sharing and exploring. The overall focus of national and European legislation has been over the past years on obliging service providers to implement dedicated reporting systems for illegal content. But it is important to acknowledge that it is a state function of civil courts, to decide proceedings between private parties and to enforce their decisions as well as to prosecute illegal digital violence. Against this background and in order to tackle the societal challenge of digital violence, it is essential to have efficient and timely processes in place in order to address digital violence.

Over the past decade Meta has invested significantly in our capacity to handle court orders and has robust policies and procedures in place to respond to requests for user data. We have a dedicated, trained Law Enforcement Response Team (LERT) that reviews and evaluates every government request for user data individually, whether the request was submitted related to an emergency or through a legal process obtained by law enforcement or courts. This team ensures that all requests are consistent with applicable law and our policies, including Meta's Data Policy. We have experts in the German market who are in close contact with law enforcement, prosecutors and courts.

Concerning the proposed ideas impacting the procedural and technical cooperation of online service providers with German courts, Meta is happy to provide feedback, but can only speak as a company incorporated under the laws of the Republic of Ireland that has its principal place of business located in Dublin, Ireland. As it is well known, the Country of Origin Principle ('COO Principle') anchored in Article 3 of the Directive on electronic commerce ('eCommerce Directive') prohibits individual Member States from subjecting foreign service providers to additional obligations under their national law. It is an essential principle of the European Union that service providers established in an EU Member State do not have to comply with additional obligations beyond the requirements of the EU Member State in which they are established, which is Ireland for Meta Platforms Ireland Limited. It is a fundamental principle of EU law and a key element of the E-commerce directive which ensures online service providers can provide their services in the context of an internal market.

In addition, the Digital Services Act ('DSA'), which entered into force on 16 November 2022, has fully harmonized the regulations of online service providers. Meta supported the introduction of the DSA and harmonized rules in the European Union. With the DSA in force and soon

applicable to Very Large Online Platforms, it is important that this principle is respected also in practice. The DSA is the result of a long and detailed negotiation to ensure the right level of protection of the users, as well as an efficient tool to oversee the internal market, a key objective of this negotiation was also to avoid further fragmentation. Recital 9 explicitly sets out that the DSA *“fully harmonises the rules applicable to intermediary services in the internal market with the objective of ensuring a safe, predictable and trusted online environment, addressing the dissemination of illegal content online and the societal risks that the dissemination of disinformation or other content may generate, and within which fundamental rights enshrined in the Charter are effectively protected and innovation is facilitated. Accordingly, Member States should not adopt or maintain additional national requirements relating to the matters falling within the scope of this Regulation, unless explicitly provided for in this Regulation, since this would affect the direct and uniform application of the fully harmonised rules applicable to providers of intermediary services in accordance with the objectives of this Regulation.”* Consequently, now that the DSA is in force, it is important that it maintains its primacy over existing or new national laws. This is key to maintaining uniformity in the application of the DSA and preserving its key principles.

Hence, when considering a framework for addressing the points raised in the DVPA Position Paper, a key consideration is the EU regulatory framework such as the DSA and the country of origin principle.

Against this background, Meta is happy to provide feedback on the law in general and potential improvements to make such obligations more operational. (This is without prejudice to Meta's aforementioned position in relation to the Country of Origin Principle.)

2. On some key aspects of the DVPA Position Paper

2.1 Obligation to name an authorized recipient

The position paper keeps and widens the scope of the authorized recipient compared to other German legislation such as NetzDG. The authorized recipient shall also be responsible for receiving out-of-court letters such as user requests for deletion and others. This contradicts the processes that service providers have already established and is ultimately detrimental to users. Many service providers have established intuitive dedicated reporting channels through which users can report illegal content. These ensure timely processing of such content. The expansion of the functions of the authorized recipient makes user reporting to the detriment of the user, more complicated, more time-consuming and error prone due to media disruptions, if the request for deletion is not transmitted digitally.

The DSA has harmonized the regulations of online service providers and thus precludes national legislation in the harmonized field of law, i.e. regarding the requirement of an authorized recipient. Article 12 of the DSA requires the designation of a single point of contact to enable recipients of service, and, furthermore, Article 13 of the DSA also contains provisions of legal

representatives for providers of intermediary services if they do not have an establishment in EU Member States but offer services in the Union.

In addition, the service of judicial and extrajudicial documents in civil or commercial matters from one Member State to another is governed by the European Service Regulation which makes the authorized recipient - depending on the respective Member state legislation - an additional obligation for foreign service providers potentially violating the country of origin principle.

2.2 Account blocking ordered by a judge

First, many social media companies have policies that, especially in cases of repeat offenders, already result in temporary or permanent feature or account ban. Secondly, with a view to various obligations on online service providers set out in the DVPA Position Paper, we add that, in line with the general rule of law (*'Rechtsstaatsprinzip'*) private companies should not conduct procedural tasks which fall in the realm of generic powers of the state.

2.3 Definition of “Digital Violence”

“Digital Violence” is a new legal term open to interpretation. A too broad interpretation can lead to abuse and overburdening of the judicial system. The natural literal sense of the term "violence" argues in favor of not extending it to all absolute rights (including copyrights and the right to an established and practiced business).

We again thank the Federal Ministry of Justice for the opportunity to provide a position paper on the DVPA Position Paper and are looking forward to providing more substantial input once a draft law has been published.