DSA Trilogues – Spotify Suggestions

At Spotify, we are fully committed to operating in a responsible and transparent manner and see the Digital Services Act (DSA) as a way to help us achieve this and to promote trust with our users. Illegal content online is a complex issue. Establishing a clear and harmonised set of rules for platforms across Europe is a welcome step forward.

We believe that the rules must be **clear, targeted and proportionate** to ensure that businesses can apply them in a reasonable and efficient way. This paper provides some suggestions in this regard for the Trilogues going forward.

Spotify's priorities for Trilogue negotiations:

1. Ensure that the rules on **recommender systems are clear and implementable**, by not requiring a detailed list of parameters to be published and by allowing some technical flexibility for services to apply the opt-out obligation (Art.24a & Art.29)
2. Ensure that the **rules on online advertising are proportionate,** by not introducing a general ban on targeted advertising and direct marketing to minors, or new consent requirements going beyond the GDPR (Art.24)
3. **Clarify the DSA's obligations apply only to UGC activities on hybrid platforms, which** host a mix of UGC and non-UGC (Rec.15)
4. Ensure **businesses have enough time to prepare to comply with the DSA**, **i.e. a minimum of 18 months**, in particular for complex obligations that require significant engineering investment, such as on recommender systems (Art.74)

In more detail:

1. Recommender systems (Art.24a Parliament, Art.29 Parliament & Council)

Today, finding the right information has become key for consumers who navigate platforms offering millions of pieces of content. Recommender systems allow Spotify users to navigate over 70 million music tracks and 3 million podcasts and are a key driver of discovery of local cultural content.

We fully agree that businesses should behave in a responsible way in how they use recommendation technologies. However, for the obligations concerning recommender systems to achieve their goals, they should (1) be clear and not deny users the very real benefits of personalised services, and (2) be practically implementable for the different platforms that will need to comply.

Transparency:

- **Art.24a.1 (Parliament)** - We support transparency for users regarding how content is recommended to them. However, the obligations should take into account the technical realities of the diverse systems to which they apply. We therefore call on the policymakers **not to include the detailed list of parameters introduced by the Parliament. Some**

elements in this list, such as the obligations to disclose the relative importance of the parameters or their individual or collective significance, may create implementation difficulties, if only because these parameters change constantly.

- **Art.24a.1 (Parliament)** - We support the Parliament's clarification that **transparency requirements do not prejudice rules on protection of trade secrets and IP rights.** This recognises the central importance of these systems to the success of streaming services and will provide legal certainty.

An opt-out from profiled recommendations:

- **Art.24a.3, Art. 29.1 (Parliament) -** The Parliament's text concerning an opt-out from profiled recommendations contains some repetition that could create confusion for implementation. Specifically, the obligation to provide *"an easily accessible functionality on their online interface allowing the recipient of the service to select and to modify at any time their preferred option for each of the recommender systems* that determines the relative order of information presented to them" **already appears in Art.24a.3 (applicable to all platforms) and should therefore be deleted from Art.29.1.**

- **Art.29(1) (Parliament & Council):** We support the Parliament's text requiring VLOPs to provide *"at least one* ***recommender system*** *which is not based on profiling"*, because it is more technically accurate and clear than the Council's text, which refers to one *"****option****…which is not based on profiling"*. We understand that "option" refers to the possibility for users to modify the main parameter of recommender systems. The *option* is not itself based on profiling.

- **Rec.62 (Council) - The last sentence of Rec. 62 of the Council's text, stating that platforms** ***"should also ensure that the recipients of the service enjoy alternative options for the main parameters, including options that are not based on profiling of the recipient"*** **should not be included in the DSA**. This is inconsistent with the spirit and text of Art. 29, which requires platforms to provide any options to modify the main parameters that they have made available, including at least one option not based on profiling.

2. Online advertising (Art.24 Parliament)

Consent & ensuring consistency with GDPR:

- **Art. 24.1a (Parliament)** - The new consent obligations for targeted advertising introduced by the Parliament (below) are ambiguous. For instance, it is not clear whether they constitute an opt-in to targeted ads, in which case they would go beyond GDPR. In addition, the Parliament has introduced a requirement that *"in the event that recipients refuse to consent, or have withdrawn consent, recipients shall be given other fair and reasonable options to access the online platform".* This could undermine the viability of free digital services which rely on advertising revenues to survive. The GDPR already establishes clear rules around consent for the use of personal data.

  We therefore recommend that the GDPR remain the benchmark and that these provisions should not be included in the DSA:

Parliament amendments:

> *24.1a. Online platforms shall ensure that recipients of services can easily make an informed choice on whether to consent, as defined in Article 4 (11) and Article 7 of Regulation (EU) 2016/679, in processing their personal data for the purposes of advertising by providing them with meaningful information, including information about how their data will be monetised. Online platforms shall ensure that refusing consent shall be no more difficult or time-consuming to the recipient than giving consent. In the event that recipients refuse to consent, or have withdrawn consent, recipients shall be given other fair and reasonable options to access the online platform.*
>
> *Rec.52 …In addition to these information obligations, online platforms should ensure that recipients of the service can refuse or withdraw their consent for targeted advertising purposes, in accordance with Regulation (EU) 2016/679 in a way that is not more difficult nor time-consuming than to give their consent…Refusing consent in processing personal data for the purposes of advertising should not result in access to the functionalities of the platform being disabled. Alternative access options should be fair and reasonable both for regular and for one time users, such as options based on tracking-free advertising.*

Behavioural advertising & direct marketing towards minors

- **Art. 24.1b (Parliament)** - We support the Parliament's proposed ban on using sensitive category data for targeting advertising to users of all ages. However, **the question of behavioural advertising to minors requires a more balanced approach** than what has been proposed by the Parliament. A broad ban on tailored advertising to minors could badly affect the development of free streaming services, which are very popular with young people of different ages. In practice, it may also oblige services seeking to comply to obtain additional information about their users' age, undermining privacy. Finally, prohibiting tailored advertising or direct marketing (Rec. 52, Parliament) to anyone under 18 seems to go well beyond the intended scope of the DSA and could unnecessarily restrict younger people from discovering and enjoying digital services.

We therefore recommend not to include the following provisions in the DSA:

Parliament amendments:

> *Art.24.1b. Targeting or amplification techniques that process, reveal or infer personal data of minors…for the purpose of displaying advertisements are prohibited.*
>
> *Rec.52…Online platforms should also not use personal data for commercial purposes related to direct marketing, profiling and behaviourally targeted advertising of minors. The online platform should not be obliged to maintain, acquire or process additional information in order to assess the age of the recipient of the service.*

3. Application of the DSA to hybrid platforms (Rec. 15)

- The legislation does not currently state clearly that when one platform offers different types of content (UGC and non-UGC, like licensed content), the obligations should only apply in relation to UGC. This is problematic, because the DSA's obligations applying to UGC activities should not prejudice the non-UGC activities of platforms that happen to offer different types of content on the same service.

  This could be addressed by introducing a simple clarification in Recital 15, as follows:

*Rec.15**:** Where some of the services offered by a provider are covered by this Regulation whilst others are not, or where the services offered by a provider are covered by different sections of this Regulation, the relevant provisions of this Regulation should apply only in respect of those services that fall within their scope.* ***The term "hosting service" should be understood to apply only to the activities that involve information provided by a recipient of that service. Similarly, only those activities would be relevant in determining whether the service constitutes a very large online platform.***

4. Implementation timeframe (Art.74)

- It is of paramount importance to provide adequate time to prepare for compliance with the DSA. The 6-month period proposed by the Parliament is not enough for Spotify and other medium-sized or smaller companies to make the complex adjustments and significant engineering and operational investments required by the DSA, especially for some obligations such as on recommender systems or advertising transparency.

  We urge the EU institutions to adopt a reasonable compliance deadline of 18 months as proposed by the Council.