

**Från:** "Gustaf Molander" <gustaf.molander@regeringskansliet.se>  
**Skickat:** den 23 mars 2022 15:32:22  
**Till:** "I Registrator" <i.registrator@regeringskansliet.se>  
**Ämne:** VB: Thank you  
**Bilagor:** Amendments - trialogue discussions DSA 2203.pdf  
**Categories:** SW

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**Från:** Sara Ovreby <[sovreby@google.com](mailto:sovreby@google.com)>  
**Skickat:** den 22 mars 2022 17:28  
**Till:** Gustaf Molander <[gustaf.molander@regeringskansliet.se](mailto:gustaf.molander@regeringskansliet.se)>  
**Kopia:** Mattias Karlson Jernbäcker <[mattias.karlson.jernbacker@gov.se](mailto:mattias.karlson.jernbacker@gov.se)>  
**Ämne:** Re: Thank you

Hej Gustaf och Mattias

hoppas allt är väl trots oron i världen.

Stort tack för allt ert hårda arbete med DSA vi har förstått att diskussionerna nu rör sig kring frågor rörande reklam, rekommendationssystem och ersättningar. Vi passar därför på att dela med oss av våra tankar rörande dessa artiklar inför kommande trialoger.

Utöver översikten nedan har jag även bifogat ett dokument där vi utifrån vårt perspektiv har försökt jämföra samman institutionernas positioner till konkreta ändringsförslag.

Hör av er om något är oklart eller ni har frågor om detta eller andra delar av DSA:n.

Bästa hälsningar,

Sara

#### **Online Advertising (Art. 24, Rec. 52 / New Art. 24(1) and Rec. 52(a) in the Parliament text)**

- **Ban on targeting minors:** We understand there is interest in discussing the Parliament's proposal for a ban on the collection of personal data for the purposes of delivering behaviorally-targeted advertising to minors. To the extent the Council agrees with the above, we would caution that the text should reflect the challenges presented by age verification, and attempts to ascertain the age of all users. ***Any obligations should only apply to 'known minors' in order to be proportionate and not lead to more user-data collection; the burden of proof should be reasonable, taking into account the need for data minimization and the current state of the art.*** It should be known that some degree of targeting is needed to ensure minors don't inadvertently see age-inappropriate ads.
- **Definitions:** It is also important that the DSA is more precise when it comes to definitions of 'targeted advertising'. The term "targeting" is used very commonly and broadly in the advertising industry: buying space on a billboard in Paris' Île de la Cité could be called "targeted advertising"; showing an ad in a particular local television market could be called "targeting". **We believe definitions should refer to "behaviorally-targeted advertising' or advertising that is personalized or selected "based on an individual's previously collected or historical data, including a user's activity, visits to sites or apps, or demographic information."** This clarifies that restrictions are aimed at behavioral advertising based on individual tracking, and

user profiling. It focuses on the use of historical data to create user profiles, which we understand as being policymakers' key concern. It allows for the use of basic information such as IP address, country or state targeting, or preferred language in ad selection, which are essential for a smooth online experience and aligned with user expectations.

- **Consent and sensitive categories of data:** When it comes to the Parliament's proposals around consent and a ban on sensitive categories of data, we believe these matters are best governed by GDPR and the enforcement by Data Protection Authorities (DPAs). Introducing new measures under DSA would not only lead to legal uncertainty but also a potential clash of regulatory powers between DPAs and the future DSA enforcers.
- **Transparency requirements:** We strongly support the focus on transparency obligations and believe the requirements should remain proportionate and flexible. Online platforms should be provided with adequate flexibility to report on their efforts, avoiding templates that do not accurately capture the user safety work done. When it comes to advertising transparency, we believe repository obligations should align with industry best standards and avoid the risk of disclosing advertisers' commercially sensitive data. If advertisers are forced to disclose detailed targeting criteria for all their campaigns, this could lead to opening up marketing and business strategies to their competitors.

### Dark patterns

- Aggressive commercial and consent practices including forced enrollment to a service, pre-selection practices through set ticks, click fatigue are already regulated through legal instruments. The DSA should not create legal uncertainty by creating overlapping and/or conflicting obligations.
- The Parliament approach offers no avenue to justify certain practices which may appear manipulative at first sight but have legitimate reasons to exist (e.g. urging a user to change a setting or configuration as a result of an emerging security risk).
- We consider the Council's general approach to be more appropriate as it maintains flexibility by providing targeted obligations on "compliance by design" for online marketplaces and an obligation to "not seek to subvert or impair the autonomy, decision-making, or choice of users through the design, structure, function or manner of operating of their online interface recommendations".
- With regards to the compromise proposals shared by the French Presidency, we would like to share the following feedback:
  - **Art 23a - Dark patterns:** We want users to be able to make free and informed choices, and the French Presidency proposal to address dark patterns in Art 23a represents a significant improvement from language proposed in the Parliament under Art 13a. To ensure consistency with EU consumer protection law, we suggest this small change: "...in a way that either purposefully or in effect deceives or manipulates **an average recipient** recipients of the service...."
  - **Art 23a - Protection of minors:** we believe the French Presidency proposal strikes the right balance. It helps to promote child safety on online platforms, while ensuring services have flexibility to adopt the most appropriate technology. Paragraph 2 provides an important safeguard against excessive data collection of users, including minors.

### Recommender systems (Art 29 in the Council text / 24a in the Parliament text )

- We are concerned by prescriptive proposals which would force platforms to make both the info on the main parameters for recommender systems and the functionality to opt-out from personalised recommendations directly accessible from the content itself. Not only could this interfere with user experience by overloading users with information, but, moreover, **flexibility should be allowed to accommodate service differences (e.g. opt-out controls could also be made available at account-level settings, while being clearly indicated and easily accessible).**

- Centralised controls for user preferences can often be a better way to enable choice, while also ensuring a good user experience.

### Right to compensation (Art 43a) - compromise text from the FR Presidency

- We caution against language that could create a misconception that the DSA introduces civil liability for intermediary service providers and that users may avail themselves of remedies for breach of due diligence obligations that are “owed” to them. Such an outcome could incentivise intermediary service providers to limit the content they permit on their services in order to limit their exposure to liability, with adverse consequences for freedom of expression.
- To the extent that this provision is included in the Digital Services Act, **we suggest to strike out reference to “any damage or loss suffered” by users. Damage or loss should result directly from the alleged breach.** There should also be a de minimis threshold for the harm the user allegedly suffers, prior to that user being able to make a claim for compensation.
- These safeguards are crucial to balance the ability of users to seek compensation for significant, direct harm they suffer with the ability of service providers to continue offering innovative and economically viable products in the EU. We also urge you to clarify that this provision is without prejudice not just to Article 5 of the DSA, but also to Articles 3 and 4.

### Search engines

- We support the EU Council's approach to search engines. We think it reflects the special nature of online search engines, especially compared to other digital services such as online platforms and hosting services. The Council's approach clarifies the liability rules for search engines in a way that reflects case law and the way search engines operate - very much like caching services. Finally, it introduces new additional due diligence obligations for search engines, which is in line with our commitment to provide more transparency. At the same time, the proposal recognises which obligations are technologically feasible for these services - and which are not.

On Mon, 28 Feb 2022 at 12:41, Gustaf Molander <[gustaf.molander@regeringskansliet.se](mailto:gustaf.molander@regeringskansliet.se)> wrote:

Thank you very much, Sara and Milan, for the possibility to meet last week and share thoughts on DSA.

And thank you for the attached document.

We will let you know if we have any follow-up questions!

Best regards,  
Gustaf

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**Från:** Sara Ovreby <[sovreby@google.com](mailto:sovreby@google.com)>

**Skickat:** den 28 februari 2022 08:41

**Till:** Berfin Eken <[berfin.eken@regeringskansliet.se](mailto:berfin.eken@regeringskansliet.se)>; Gustaf Molander <[gustaf.molander@regeringskansliet.se](mailto:gustaf.molander@regeringskansliet.se)>; Mattias Karlson Jernbäcker <[mattias.karlson.jernbacker@gov.se](mailto:mattias.karlson.jernbacker@gov.se)>

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**Ämne:** Thank you

Hej Berfin, Gustaf and Mattias,

thank you very much for taking the time to meet with us last week. Please find attached both our overall dialogue priorities and specific language on articles currently discussed. We also added papers on our concerns with regards to online marketplaces and risk assessment.

Take care!

Sara

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**Sara Övrebj**

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