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ETNO comments to the European Commission's Draft Implementing Regulation laying down templates concerning the transparency reporting obligations of providers of intermediary services and of providers of online platforms under Regulation (EU) 2022/2065 of the European Parliament and of the Council

ETNO welcomes this opportunity to provide comments to the European Commission's draft Implementing Regulation laying down templates concerning the transparency reporting obligations of providers of intermediary services and of providers of online platforms under the 'Digital Services Act' (DSA).

In general, ETNO believes that the number of variables included in the annex I template **should be strictly limited to the DSA obligations pursuant to articles 15(1), 24(1) and 42(2)** in order to reduce to the administrative burden for providers. Obligations extend to ETNO members, who do not have neither ability nor the legal right to see the content of communications and therefore to moderate content for the vast majority of the services they provide. Many ETNO members also already publish transparency reports on relevant efforts (e.g. blocking of websites done on the basis of EU and national laws). Detailed regulation of how companies should report implies changes in systems and processes, without tangible benefits in terms of transparency.

More precisely, in the category of illegal content, we note that the European Commission requires providers to report on 15 categories and over 70 subcategories of types of illegal contents. ETNO thinks that the **granularity and complexity of the reporting required on 15 categories is considerable**, not to mention the 70 subcategories.
It should also be considered that the information is requested on a monthly basis, one year after the completion of the required action, with a level of detail that reaches the accounting of the seconds that have passed since an order was received until it is implemented into the system. ETNO believes that the reporting of information **should be limited to illegal content and not to all types of harmful content**, as this carry a subjective component (even illegal content is not homogeneously considered in Europe). The DSA includes provisions for carrying out own content control initiatives. We consider that this type of initiatives' implementation may be affected by the high degree of reporting required, producing just the opposite effect than the one expected.
The adoption of this complex and burdensome reporting process contradicts the 'Better Regulation' and other European policies proposing to streamline the administrative obligations for digital services. In addition, it is contrary to the proportionality principle considering that the proposed reporting is applicable to the lowest risk services such as intermediary services i.e. ISP and hosting services. We suggest that **more simplified reporting requirements for intermediary services and hosting services that cannot moderate content are put in place**.

From our point of view, this type of information on illegal content only makes sense, when there is content moderation by the provider in a hosting or online platform scenario. ETNO members cannot (and are not allowed to) see the content of users' communication and thus cannot moderate the content. We only receive and process orders from Courts and other judicial or administrative authorities and therefore, **can only provide data on the type of order and the timeframe in which we followed the order as we are not informed about the type of illegal content it is related to and even if it is illegal content**.

In addition, we **recommend that no collection of data should take place before there are clear instructions from the final implementing act**. ETNO members who issue transparency reports on an annual basis do so often in parallel with their annual and sustainability reports, allowing external assurance of the information. Besides, this level of disaggregation and request for information exceeds the competence and purpose of the teams dedicated to the preparation of these transparency reports. This leads to the implementation of a legal obligation that requires the implementation of technological developments, which entail new technical, personnel and economic burdens and which exceed the purpose of the obligation of transparency due to the level of detail required.
We thus **suggest that the reporting under the Implementing Act provides for at least three months after the conclusion of the reporting period for companies to publish their reports**. This would allow retaining external assurance practices, where these are in place.

Additionally, there should be a **transition period in the application of the implementing act** - companies cannot provide data that they previously had no obligation to retain.
The DSA obligations that will come into force on February 17th 2024 and the details are not yet available, as they are subject to consultation. The aforementioned Better Regulation Principles should be followed, since the burden it imposes on providers is disproportionate.

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