

Position of the Union of Entrepreneurs and Employers (ZPP) on the reintroduction of stay-down obligation in the Digital Services Act

The Union of Entrepreneurs and Employers (ZPP) expresses its concern about the return of the so-called "stay down" provision to DSA compromise text. *Stay down* obligation requires companies to ensure that illegal content does not reappear on the platform after its removal. The proposal does not define exactly how intermediary service providers would have to fulfil the above obligation. There are concerns that in practice it may lead to general internet monitoring and set a standard, which is technically impossible to attain.

The prohibition of general internet monitoring stems from the e-Commerce Directive, a 20 years-old predecessor of the Digital Services Act. The Directive urged intermediaries to step up their efforts to combat illegal or harmful content, and, at the same time, included the prohibition of general internet monitoring. Due to the risk of censorship and damaging influence on fundamental rights, this practice has been ruled out already in the early days of the internet. Later on, several court judgments confirmed that scanning content uploaded and circulated on the internet is illegal.

The European Parliament has already rejected the *stay down* provision during the DSA negotiations. Therefore, it is all the more surprising that this obligation is suddenly reintroduced in the latest compromise text, appearing after the conclusion of a political agreement by European negotiators. A group of organizations including CCIA, Act the App, Dot Europe, Developers Alliance, Allied for Start Ups, Eco De and EUROISPA has criticized changing the compromise text on the eleventh hours. "We urge the co-legislators to refrain from introducing a provision, that was already discussed at length and rejected in various staged of the co-legislative discussions and even during trilogue negotiations" – we read in the organizations' statement.

ZPP shared the aforementioned concerns. Ahead of the upcoming vote on the DSA scheduled for June 16, we call on the policymakers to stick to the results of previous rounds of negotiations. The introduction of the stay down obligation will not only be a form of overstepping negotiation mandate, but also will lead to clear negative effects for internet users. Finally, by demanding companies to ensure that deleted content does not reappear on the internet, the EU imposes on companies obligations that are impossible to fulfill.