

(English version)

**Question for written answer E-000257/25
to the Commission
Jadwiga Wiśniewska (ECR)
(21 January 2025)**

Subject: Incompatibility of amendments to the Polish Electronic Services Act with the Digital Services Act (DSA)

In amending Polish law in line with the DSA, the Ministry of Digitalisation is introducing amendments to the Polish Electronic Services Act.

The director of the Electronic Communications Office (UKE) is being given the power to block online content infringing, *inter alia*, personal rights or intellectual property rights. The decision will be immediately enforceable — i.e. the provider must remove the content without waiting for a court decision.

This may result in content critical of the government being censored, as the appointment of the director of the UKE is heavily influenced by whichever political force is dominant.

The powers to be conferred on the director of the UKE resemble preventive state censorship, which is prohibited under Article 54 of the Constitution (guaranteeing everyone the freedom to express their opinions and to obtain information), and they are incompatible with Article 11 of the Charter of Fundamental Rights of the EU, to which the regulation refers.

Could the Commission please answer the following questions:

1. Does the Commission not consider such a mechanism to be incompatible with the regulation's objectives of achieving more effective protection of fundamental rights, including guaranteeing freedom of expression and privacy, and greater transparency in content moderation decisions?
2. Is the broad scope of content that may be removed under the Polish law compatible with the definition of 'illegal content' under Article 3(h) of the regulation?
3. Does the Commission consider that the powers of the director of the UKE are safeguarded by the procedural guarantees under Article 9 of the regulation, which limit the risk of arbitrary use of powers by the national authority?

Submitted: 21.1.2025

**Answer given by Executive Vice-President Virkkunen on behalf of the European Commission
(10 April 2025)**

The Commission is committed to protecting freedom of expression as one of the fundamental rights both offline and online. The Digital Services Act (DSA) ⁽¹⁾ aims to provide a safe, predictable and trusted online environment that facilitates innovation and protects the fundamental rights enshrined in the Charter of Fundamental Rights of the European Union (the Charter ⁽²⁾), such as the freedom of expression.

The DSA does not regulate online content, nor does it define what constitutes illegal content ⁽³⁾. The DSA sets out rules and responsibilities for online intermediaries to tackle illegal content (as defined in national and EU law), while safeguarding freedom of expression and information. The enforcement of orders falls under the competence of the relevant national judicial or administrative authorities ⁽⁴⁾.

Nothing in the DSA can be read as permitting the arbitrary use of power. The risk of arbitrary use of powers is mitigated by minimum conditions ⁽⁵⁾ on issuing and processing of orders of national authorities.

These require the possibility of effective remedy and transparency, by informing users about content removal and reasons thereof, and applicable means of redress.

The Commission notes that decisions of the President of the Office of Electronic Communications are subject to such judicial control and that the DSA sets out clear independence criteria for the Digital Services Coordinators, who are to perform their tasks in an impartial, transparent and independent manner ⁽⁶⁾.

⁽¹⁾ Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act), OJ L 277, 27.10.2022, p. 1-102 <https://eur-lex.europa.eu/eli/reg/2022/2065/oj/eng>

⁽²⁾ Charter of Fundamental Rights of the European Union, OJ C 326, 26.10.2012, p. 391-407: https://eur-lex.europa.eu/eli/treaty/char_2012/oj/eng

⁽³⁾ Article 3(h) of Regulation (EU) 2022/2065.

⁽⁴⁾ Article 9 of Regulation (EU) 2022/2065.

⁽⁵⁾ *Idem*.

⁽⁶⁾ Article 50 of Regulation (EU) 2022/2065.

The Commission will remain vigilant concerning compliance with the above requirements for Digital Services Coordinators under the DSA.
