Civil Society Letter Urges Commission to Withdraw Proposal Giving Frontex Powers under the DSA

To:
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Executive Vice President for Tech Sovereignty, Security and Democracy, European Commission

Magnus Brunner
Commissioner for Internal Affairs and Migration, European Commission

We, the undersigned 28 civil society organisations, hereby put on record our strong objection to the draft proposal on the European Border and Coast Guard, specifically to proposed powers of the Online monitoring and Response Centre as it relates to the Digital Services Act (DSA).

Human rights experts have voiced serious concerns about the overarching proposal to reinforce the powers of Frontex, in light of the well-documented fundamental rights violations that the agency has persistently failed to address. Here, we raise our deep concerns specifically about endowing Frontex with powers under the DSA. Such powers are not provided for within the law, and directly undermine its safeguards to prevent overreach of government agencies.

Power to Issue Orders

The draft published by the Commission proposes that Frontex will be provided with the power to request national authorities to issue orders for the removal of content or for information on individual users of a service 'where appropriate'. Under DSA Article 9 and 10, only national authorities designated by member states can issue these orders; **there is no mechanism for another authority to prompt national authorities to issue such orders**.

As numerous EU experts have noted, such expansions of power beyond DSA authorisation disrupt the balance of Commission and Member State power and can threaten foundational principles of legality, conferral, and institutional balance. These are basic rule of law safeguards that cannot be supplanted by this proposal. In addition, national authorities are subject to transparency and compliance obligations which are essential to ensure that users of a service who are directly impacted by these orders have a means of redress. These proposed new powers would raise questions about the effectiveness of these procedural safeguards and how national authorities will independently conduct their assessments and comply with fundamental rights, including with necessity and proportionality principles.

Trusted Flagger Status

These overreach concerns are compounded by the proposal that Frontex be designated as a Trusted Flagger. The proposal is objectionable and would undermine the careful balance proposed by the Commission and endorsed by the co-legislator.

Firstly, **no Trusted Flagger has the power to request a national authority to issue a removal order.** Frontex would thus assume powers neither authorised nor foreseen in the DSA. Secondly, though the DSA contemplates Trusted Flagger status for certain entities such as law enforcement internet referral units, the European Commission has emphasised the importance of distinguishing between authorities empowered to issue orders and entities designated as trusted flaggers. Frontex's power to request such orders gives it an outsized influence and will further fragment accountability between Frontex and national authorities.

The commingled role proposed for Frontex will logically and inevitably result in its notices to platforms being treated as proxy takedown orders; a point already stressed by the European Commission in paragraph 31 of the Draft Guidelines on Trusted Flaggers. In it, the Commission even provides a poor practice example directly analogous to the proposal. It describes a trusted flagger that is an autonomous department within a public authority without the power to issue orders, notices from which are nonetheless interpreted by platform providers as orders — thereby "undermining the clear separation foreseen in the Regulation". It is wholly unacceptable to designate Frontex with these powers under the DSA. This not only undermines the safeguards foreseen in the law, it provides a mechanism of enforcement overreach on a Union-wide scale.

Social Media Monitoring

The draft proposal also emphasises that in order to fulfil these potential new powers, Frontex will, in addition "*monitor publicly accessible social media content, detect developments relevant for external border management, and support action against illegal online content linked to border-security risks*." The proposal lists several types of content that the Centre will be tasked with monitoring, which are currently ill-defined, broad categories that in some cases encompasses legal content. The risk of Frontex utilising its powers as both a Trusted Flagger and authority that can demand removal orders, to surveil user-generated speech and over-flag content under the guise of 'border-security risks' is clear. This will likely result in platforms over-censoring content and chilling the speech of already marginalised groups, particularly those from migrant or asylum-seeking communities.

The DSA is intended to bring greater accountability for online platforms and protect users' fundamental rights. It is also designed to prevent overreach of governments and their agencies, whether national or EU level. There is no means to reconcile this proposal with the design of the DSA, fundamental principles of EU law or respect for fundamental rights.

We strongly urge the European Commission to retract this proposal. It undermines the existing enforcement structure of the DSA, threatens the fundamental rights of citizens and non-citizens alike, and is a clear example of overreach that does not align with international human rights standards.

Signatories

1. Access Now
2. AlgorithmWatch
3. Alternatif Bilisim
4. ARTICLE 19
5. Balkan Free Media Initiative
6. Centre for Democracy & Technology Europe
7. Chaos Computer Club (CCC)
8. D64 - Center for Digital Progress
9. Digitale Gesellschaft
10. Digitalcourage
11. Electronic Frontier Foundation
12. European Digital Rights (EDRi)
13. Féministes contre le cyberharcèlement
14. HateAid
15. Hermes Center
16. Homo Digitalis
17. ILGA-Europe
18. IT-Pol Denmark
19. La Quadrature du Net
20. Osservatorio Nessuno
21. Panoptykon Foundation
22. People vs Big Tech
23. Politiscope
24. Privacy Network
25. SOS Racisme - Touche pas à mon pote
26. Statewatch
27. VoxPublic
28. Zašto ne