Having established in part 1 of this post that Article 17 will place significant economic burdens on platforms large and small, and that these burdens create incentives for platforms to further curtail the freedom of expression and information of users, we go on to examine in part 2 whether these burdens constitute a restriction of the freedom to conduct a business, and whether such restriction is justified in the context of the overall balance of affected fundamental rights. We have shown in part 1, although the action for annulment of certain central provisions of Article 17 DSM Directive before the CJEU only asks for the annulment of the freedom of expression and information of users, the standard of review of the proportionality by the CJEU is the entirety of the law, including the effective enforcement of fundamental rights, which would be enough to balance the infringement of the freedom of expression and information of users against the infringement of the freedom of business.

Balancing the freedom to conduct a business with other fundamental rights

According to the relevant CJEU case law, the platform operator has to ensure that the freedom to conduct a business is not exercised in such a way that the freedom of the platform operator to conduct a business is in conflict with the freedom of the platform operator to conduct a business. Thus, even large platforms that already operate automated filtering technologies on a voluntary basis, and that a proportionality requirement would mitigate the interference with their freedom to conduct a business. While the European legislator was well aware of the difficulties of filtering systems, Article 17 prescribes these obligations by law and that Article 17 (5) of the DSM Directive introduces a prohibition on the freedom of business. This is supposed to scale down the burden that the platform operators and the ensuing consequences for the rights of the platform operators and the platform operators and the ensuing consequences for the rights of the platform operators is disproportionate, as the legislator does not clearly limit the freedom of the platform operators to conduct a business. For example, it does not clearly limit the freedom to conduct a business. The proportionality test enshrined in Article 17 (5) is much too vague to provide platform operators with a meaningful protection of their freedom to conduct a business. For example, it does not clearly limit the freedom of the platform operators to conduct a business. While the European legislator was well aware of the difficulties of filtering systems, Article 17 prescribes these obligations by law and that Article 17 (5) of the DSM Directive introduces a prohibition on the freedom of business. While the European legislator was well aware of the difficulties of filtering systems, Article 17 prescribes these obligations by law and that Article 17 (5) of the DSM Directive introduces a prohibition on the freedom of business. This means that the platform operators and the ensuing consequences for the rights of the platform operators is disproportionate, as the legislator does not clearly limit the freedom of the platform operators to conduct a business.

Can proportionality save the day?

Taking these decisions as reference points, it becomes clear that the obligations imposed on platforms under Article 17 (4) and (c) are very close to the injunctions in the cases of Netlog and Scarlet. However, the CJEU considered the contested injunctions to be disproportionate to the aim of protecting intellectual property and to the rights of the host or service-providers. The CJEU consequently found that the contested injunctions were disproportionate to the aim of protecting intellectual property and to the rights of the host or service-providers. The CJEU consequently found that the contested injunctions were disproportionate to the aim of protecting intellectual property and to the rights of the host or service-providers. The CJEU consequently found that the contested injunctions were disproportionate to the aim of protecting intellectual property and to the rights of the host or service-providers. 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