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ALEX AGIUS SALIBA

PROGRESSIVE ALLIANCE OF SOCIALISTS
AND DEMOCRATS IN THE EUROPEAN PARLIAMENT.

QUESTIONS TO ALEX AGIUS SALIBA

Twenty years after the e-commerce directive, the European Commission disclosed mid-December, two major legislative proposals to regulate the digital economy in the Single Market. To discuss these reforms, Confrontations Europe met with the Maltese MEP Alex Agius Saliba (S&D), who just passed a report on the digital services act (DSA).

You have been working on the DSA as a rapporteur, a legislation which is highly expected as the former one - on e-commerce - has been adopted twenty years ago. For you, what are the main priorities on the digital issues for the single market?

The digital transformation has profoundly changed the functioning of the global economy and society. Unfortunately, the existing legal framework was lagging and needed an update in several areas. The Digital Services Act and the Digital Markets Act are the first comprehensive upgrade of the current legal framework introduced 20 years ago.

Those two pieces of legislation must create a new legal framework regulating digital services, including online platforms and marketplaces, by creating a digital environment built on trust, choice, and a high level of protection for all consumers, citizens, and SMEs. The DSA and DMA should protect and safeguard citizens' and consumers' rights and guarantee a better and safer digital environment with real, tangible rules in a virtual world with no borders.

Therefore, it is fundamental that the key priorities from the European Parliaments' reports on the DSA also features prominently in the Commissions' proposals. For example, the principle of "what is illegal offline is also illegal online," together with consumer protection and user safety principles, should feature more prominently in the text. Companies established outside the EU, targeting the European markets, consumers, and citizens, should comply with DSA and DMA.

Online harmful business models, manipulation, and discriminatory practices designed to maximise user attention dedicated to the platform based on illegal or sensationalist content need to be adequately addressed. To this end, certain specific measures, such as KYBC and stricter standards on harmful advertising practices, digital nudging, micro-targeting, recommended systems for advertisement, and preferential treatment, will be necessary to reduce the number of illegitimate traders and illegal activates online.

How do you react to the Commissioners' presentation on the digital legislation mid-December?

I welcome the Commission proposals on both DSA and DMA. It is a long-overdue reform of 20-year-old rules, which are no longer fit for purpose. There is no doubt that both those proposals will be a game-changer for Europe and the world's digital future. Online platforms have be-

come indispensable in our lives. However, they have acquired unprecedented powers by becoming rule setters in their rights, creating a digital environment suited to their vested interests. Big digital companies have used their powers to surveillance users, decide what we can say and read, and see and buy online. Consumers have been exposed to online scams or faulty products with no legal protection online whatsoever. I am glad that the Commission looked into those problems and have tried to come up with some solutions to address the excising legal gaps so that people can finally take back control of the digital world.

According to you, does the legislation answer the actual issues and meet your expectations? Ex ante regulations, Know your business customer...

The Commission has taken many of the recommendations we have proposed and adopted in the Parliament's reports. For example, they are introducing the principle of what is illegal offline should also be illegal online, know your business customer, extraterritoriality of the scope, transparency measures, including on online advertising and on the algorithms used to recommend content to users, and provisions that will affect online market places and consumer protection. The Commission has also introduced ex-ante rules to tackle the current imbalances with large online platforms like Google, Amazon,

and Facebook. And if those big platforms break the rules, then the Commission will impose fines and structural remedies. Both proposals are a significant step on the road to having a fairer digital single market, making it easier for smaller companies to scale up. However, some of the proposed measures fall behind the European Parliament's ambitious reports. For me, the benchmark in the coming months will be the Parliament's position adopted in our DSA Reports. There needs to be further work to strengthen and clarify some of the provisions on notice and actions, consumer protection, know your business customer, enforcement.

The guiding principle of the DSA/DMA which has been summarized by Commissioner Breton as "what is illegal offline should be illegal online". How come the EU tackles such a fundamental issue so late?

The e-Commerce Directive has been one of the cornerstones of the internet for a long time. But twenty years ago, when it was adopted, the digital economy was very different from nowadays. Platforms like Google, Amazon, or Booking were in their infancy. Many other intermediaries did not even exist. For example, Facebook and Shopify, AliExpress, Instagram, Wish, and many more were launched after the Ecommerce Directive. Over the past 20 years, the business models of digital companies have changed. Market power dynamics have also changed. Consumers are now facing multiple issues stemming from the way some digital platforms operate. Furthermore, the European digital market landscape has experienced datafication, a multiplication of platforms; a proliferation of the collaborative economy; and diversification of service providers in terms of functions, vertical integration, and size. The platform economy has largely evolved, and legislators need to catch up and ensure that fundamental principles from the offline world, such as the principle of "what is illegal offline should be illegal online," are also applied to the digital economy.

How will it be possible to frame the legal responsibilities of the digital platforms? Could we imagine in the near future, public trials against global digital actors?

For me, one of the critical areas to look at is enforcement. We have rules now, but abuses are still possible because a proper enforcement mechanism is missing. The European Parliament has proposed different options, including a European Agency. The Commission has proposed a complex enforcement mechanism, inspired pretty much by the GDPR model. The Commission will now step in and ask the establishment's country to ensure compliance with the Digital Services Act and related substantive requirements under national or Union law. The new rules will provide enhanced supervision and enforcement with the Commission's active participation for the very large online platforms. The Commission will also be able to initiate proceedings against very large online platforms. Such measures should ensure speedy intervention in EU-wide cases where very large online platforms raise systemic risks and provide the level of assistance required to deal with the complex technical and societal issues posed by the most prominent online platforms. Suppose we do this enforcement right and ensure that we provide real powers at the European level, in that case, I think it is possible to imagine trials against global digital actors in the future.

How can the EU address illegal/hate content online? What kind of binding mechanism is to be settled?

The Commission's new DSA proposal will introduce a horizontal framework for dealing with different types of illegal content, products, services, and intermediary services activities. The proposal does not define what illegal content is since the nature of illegal content, products, or services results from Union or national law. Instead, it decided what to do with unlawful content and how best to address it and deals with it. Some sector-specific instruments are currently dealing with different types of illegal content such as copyright, terrorist contentment, and child sexual abuse. Still, they do not cover all the regulatory gaps and do not provide fully-fledged rules for illegal content. That is why the proposed new measures must complement existing sector-specific legislation without affecting their application. The Digital Services Act should provide clarity and guidance regarding how

online intermediaries should tackle illegal content online and the steps they need to take to address the problem while defending and protecting users' fundamental rights. These new rules should empower users in understanding and making informed decisions on the internet. For example, a harmonised notice and action procedure will enable users to quickly and effectively report illegal content.

Some of the main « gatekeepers » have already counterattacked. Google, for instance, has published an internal document entitled « Push back Thierry Breton ». How could the EU react to platforms lobbying?

Some platforms, such as Google, were already criticized during the copyright reform and sparked heavy criticism for their lobby tactics and strategies. In my opinion, some of those big companies have gone too far, and it would be outrageous if, once again, they will use similar methods to lobby for their vested interests and confuse the market. People's interests should become first and definitely before the big tech giants. For that, we need clear and transparent rules when it comes to lobbying, especially when it comes to future discussions in the DSA and DMA.

Do you foresee some tensions between Member States on these legislations? And within the European Parliament? Could these divisions benefit the platforms?

The complexity and details of what is covered in both DSA and DMA are awe-inspiring. There is no doubt that when adopted, DSA and DMA will have a massive impact on the digital world in Europe and worldwide. However, the devil is in the details, and there are a lot of details. Both DSA and DMA are complex legislation covering a wide range of measures and areas, including national competences and enforcement mechanisms. There will be divisive points, and I am sure that the negotiating team will not have an easy task. I hope despite any future tensions, the focus will remain clear towards a goal to finally have clear and binding rules to tackle the imbalance of the digital market. ●