ReedSmith

Litigation Lunchbreak - Compensation Claims under the Digital Services Act

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The Digital Services Act ("**DSA**") entered into force six months ago and many companies are still adapting to the obligations following from the DSA. There is a particular article which has not received much attention, although it is crucial for intermediary services to estimate their litigation risks under the DSA: Article 54 DSA contains a basis for claims regarding compensation due to violations of the DSA. Article 54 DSA may therefore become relevant in future mass litigation against intermediary services.

In this blog post, we provide a first overview on the conditions and challenges of pursuing claims under Article 54 of the DSA.

- **Who is entitled to damage compensation under Article 54 DSA?**

Article 54 of the DSA grants the right to claim compensation to 'recipients of the service', which are defined as any natural or legal person who uses the intermediary service.

Third parties whose rights or interests are harmed by the intermediary service or by a user, for example, through illegal or harmful content, are not entitled to claim compensation under Article 54 DSA, although they may have other legal remedies available.

- **What triggers claims under Article 54 DSA?**

A fundamental requirement for a compensation claim is the violation of an obligation under the DSA. This includes, in particular, the due diligence obligations. It also seems sensible to relate Article 54 DSA exclusively to user-related obligations. A violation could, for example, result from the failure to use clear, understandable, and user-friendly terms and conditions.

- **Compensation**

The user must prove that the violation caused the damage or loss suffered. This means that the user must show that the damage or loss would not have occurred if the intermediary service had complied with its obligations under the DSA. Also, the user must quantify the damage or loss suffered by the user. The specific type of these damages or losses will be further specified in the coming years. It remains particularly open whether non-material damages, such as emotional distress or harm to reputation, are also covered by Article 54 DSA.

Takeaway:

As it can be seen, claiming damages under the DSA is not a simple or straightforward process, and it may involve complex legal and factual issues. Moreover, there is no case law or guidance yet on how to interpret and apply Article 54 of the DSA. In particular, it remains to be seen how the right to compensation will be interpreted in the various member states in accordance with ‘Union and national law’. Certain uncertainties therefore remain for intermediary services. However, Article 54 of the DSA merely reflects what must always be considered: companies must continually review and adjust their processes to ensure DSA compliance.

In the coming months, we will examine in more detail some of the aspects and questions raised under Article 54 of the DSA, in particular whether similar waves of lawsuits as with Article 82 GDPR are to be expected or whether there will be any changes compared to German law.

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