

Truly illegal content online

Bringing rights-based solution to the EU
debate table



This workshop

- 1) Intro – 10 min
- 2) Group brainstorming – 45 min
- 3) General presentation and results-sharing – 30 min

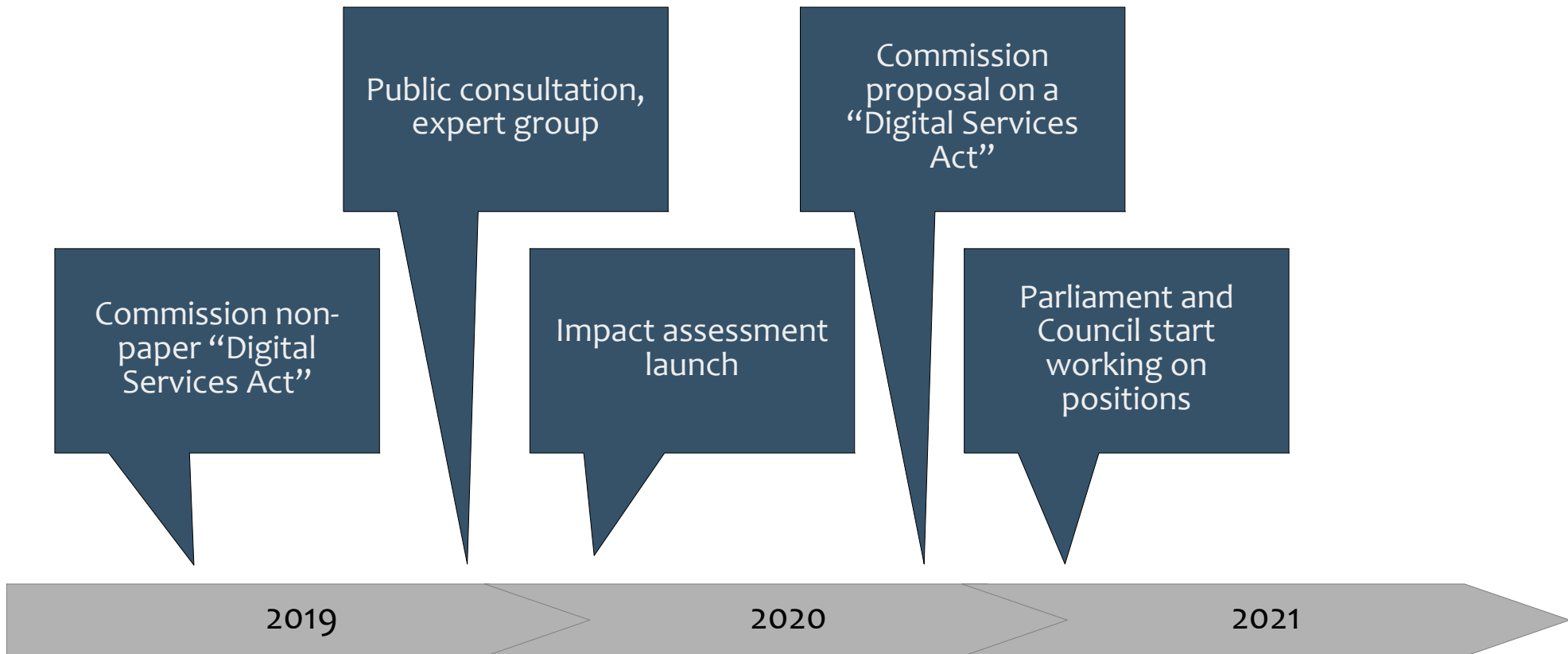
2000 E-Commerce Directive – Zzzzzzzillions of questions

- General monitoring prohibition (Art. 15)
- Intermediary liability rules (Art. 14)
 - Hosting service providers are generally not liable for the content they host
 - They become liable as soon as they get knowledge
- What is knowledge?
- Notice and action system?
- Duty of care?
- Illegal content + harmful content?

e-evidence

- Access by law enforcement authorities (LEA) to personal data for criminal investigations
- Data held by a company held outside the territory (e.g. Ireland)
- LEA in country A requesting directly ISPs to hand over data without consulting the judicial authority of the country B

Reform E-Commerce rules - Timeline



Real case example

Femmes Indignes
@TDBALB

Elles ont une machine a laver et un lave vaisselle, et elles trouvent encore le moyen de nous casser les co*illes ! Toutes des bitchies

Inscrit en juin 2013

Tweeter

Photos et vidéos

TDBA
TDBALB x

Coverage les Elites 1
Voici les Elites 1

Tweets **Tweets & réponses** **Médias**

Femmes Indignes @TDBALB · 27 juin 2013
Définition d'un pénis : appareil servant à mesurer la profondeur d'une cruche !
#TDBALB

Femmes Indignes @TDBALB · 25 juin 2013
"@EDorvillez: @TDBALB comme quoi... Il m'arrive de mentir !" En effet, elles ne méritent pas tant de considération . #TDBALB

Femmes Indignes @TDBALB · 25 juin 2013
"@EDorvillez: Toutes les femmes du monde sont belles !" #TDBALB

Femmes Indignes @TDBALB · 23 juin 2013

Facts

2016:	Creation of the group
January 2017:	56 000 members
November 2017:	the Feminist Collective against Rape issues a judicial complaint for “violation of individual privacy” and “jeopardisation of minors”
February 2018:	Complaint unreceivable because no victim complained
March 2018:	New complaint for incitement to violence and hatred
May 2018:	Investigation is launched
25 June:	French state secretary announces that Facebook agrees to surrender subscriber and traffic data (IP addresses) to French prosecutors when crimes are digital (“cybercrimes”).

Group 1

Granting that the content is considered public by French courts and therefore it is a case of “incitement to hatred or violence based on gender”, could Facebook be held liable for this type of content? If so, when or under which conditions?

Is the enforcement of terms and conditions (violations of terms on nudity and pornography) more/less efficient for this type of case ? Why?

Could a notice-and-action system have helped the case? Please imagine a scenario in which a person would have reported the content under this type of system (requirements and rights of the reporter, of the content provider, of Facebook, deadlines, etc.).

Should have Facebook reported this content to the French police?

What if the group had chosen Whatsapp (encrypted electronic communications) ?

Should Facebook be required to abide by different rules than other types of intermediaries (such as Whatsapp or Gandi) to tackle illegal content? (Moderation team, languages, user functionalities for reporting, limiting group size, avoiding re-creation of a new group, etc.)

Group 2

Lawyers of the French collective have complained that Facebook closed the group too soon, impairing the collection of evidence and identification of suspects. Should it be required that Facebook keep copies of the content and data about the content provider (name, email address, IP address?) as soon as the content is reported?

French police is complaining that Facebook refuses to hand over data about the users unless it is a clear case of terrorism and/or child abuse material. Should Facebook be required to hand-over data to LEA? Under which conditions?

Who should be prosecuted? The administrators of the group? The content providers (the persons who posted content)? The most active members? All the persons who commented the posts with injurious comments?

Should the intermediary (e.g. Facebook in this case but also other intermediaries) be required to put in place support for victims of online crimes to gather online evidence?

about:freedom

- Digital Services Act: The future of Internet in the next rules on Intermediary Liability
 - **Saturday 19:30 – 20:30**

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