

## Digital Services Act

Parliament is due to vote during the October II plenary session on three reports from the Committees on Internal Market and Consumer Protection, Legal Affairs, and Civil Liberties, Justice and Home Affairs setting out the Parliament's initial position on the revision of the EU framework for online services ahead of the Commission's expected proposal of a Digital Services Act package.

### Background

Online platforms – such as search engines, social media and e-commerce platforms – are playing an increasingly important role in our social and economic life. However, the current EU rules for digital services have remained largely unchanged since the adoption of the [e-Commerce Directive](#) in 2000, while digital technologies and business models continue to evolve rapidly and new societal challenges (e.g. fake news) are emerging. The objective of the directive was to remove obstacles to cross-border online services, ensure the free movement of information society services between Member States and ensure legal certainty for business and consumers. To that end, the e-Commerce Directive stipulates common rules for the establishment of online service providers, the provision of e-commerce services, and the liability regime for online intermediaries in the EU. The directive includes an internal market clause whereby providers of online services are subject to the law of the Member State in which they have their registered headquarters (i.e. [country of origin principle](#)). The directive provides for common rules on transparency, online contracting and commercial communications (e.g. online advertisements and unsolicited commercial communications). The directive exempts online intermediaries from liability for the content they manage (i.e. safe harbour principle) if they fulfil certain conditions, and prohibits Member States from imposing general monitoring obligations on these intermediaries in respect of the information they send or store. However, numerous [studies](#) show there are large discrepancies in the way the e-Commerce Directive has been implemented throughout the EU, and national rules – especially with regard to the [liability regime](#) – remain very fragmented. Against this background, there have been [calls](#) to reform the rules applicable to digital services in the EU.

### European Commission

A reflection on the revision of the e-Commerce Directive has [started](#). Following Commission President Ursula von der Leyen's [commitment](#), the Commission announced the revision of the internal market rules for digital services in its 2019 communication, '[Shaping Europe's digital future](#)'. The forthcoming Digital Services Act package, which is due to be [released](#) in the fourth quarter of 2020, is expected to rest on two pillars. First, the Commission wants to increase and harmonise the responsibilities of online platforms and information service providers, and reinforce the oversight over platforms' content policies in the EU. Second, the Commission proposes to set ex-ante rules to ensure a level playing field in markets characterised by large platforms acting as gatekeepers. The Commission has run two public consultations, the first one to [assess](#) how to best deepen the internal market and clarify responsibilities in respect of digital services, and the second one to [assess](#) the need to create ex ante regulatory instruments to better control the large online platforms which now act as gatekeepers. In parallel, the Commission [consulted](#) on a possible new competition tool to address structural competition problems in the digital as well as in non-digital markets.

### European Parliament position and legislative initiative

The European Parliament has long [advocated](#) the revision of the EU digital rules applicable to digital platforms. Three new reports calling on the Commission to review existing laws applicable to online providers have been adopted by the IMCO, JURI and LIBE committees and are due to be voted in plenary in October. The three committees agree that the e-Commerce Directive's general principles (i.e. the country

of origin principle, the limited liability regime and a ban on general monitoring obligations) should be maintained.

### **Internal Market and Consumer Protection (IMCO) committee legislative-initiative report**

On 28 September, IMCO [adopted](#) a [legislative-initiative report](#) with recommendations to the European Commission ([Rule 47](#) of the Rules of Procedure) on improving the functioning of the single market. The report stresses inter alia that the scope of EU legislation should be broadened to reflect the emergence of new information society services (e.g. marketplaces) but measures should differentiate between whether digital services target consumers and the general public or business users. The rules should also be applicable providers established outside the EU that offer goods and services inside the EU. EU law should stipulate a notice-and-action mechanism to facilitate the removal and blocking of 'illegal content' as defined in EU or national law (however, not 'harmful content' such as hate speech). EU law should also address counterfeit and unsafe products and introduce a 'know your business customer' principle, which requires platforms to monitor and prohibit fraudulent companies from using their services to sell illegal and unsafe products and content. Furthermore, the Commission should consider regulating certain targeted advertising practices more strictly, and imposing transparency requirements on artificial intelligence-driven services, for instance using automated-decision-making processes and algorithms. In parallel, the Commission should identify systemic operators with a gatekeeper function and draw up a closed list of actions those companies would need to comply with and/or refrain from exercising.

### **Legal Affairs Committee (JURI) committee legislative-initiative report**

JURI [adopted](#) a [legislative-initiative report](#) on 1 October 2020, with recommendations to the Commission on commercial and civil law rules for commercial entities operating online. According to the report, EU law should apply different regulatory approaches to 'legal' and 'illegal' content. EU-wide standards should be defined on how hosting platforms should moderate content, and 'notice and action' procedures specified to better protect users' rights. Content takedown measures should only apply to 'illegal content' as defined in European or national legislation and not to 'harmful content' (e.g. fake news, disinformation) that is not illegal and is protected under freedom of speech rules. The Commission should assess options to regulate targeted advertising, impose on platforms content management and transparency obligations (e.g. with respect to algorithms) and give users more control over content curation, i.e. the selection, organisation, and presentation of online material. The Commission should also assess the need for regulating civil and commercial aspects of distributed ledger technologies and smart contracts (e.g. blockchain) and assess options for setting up a European entity to monitor implementation of the new rules and impose sanctions.

The IMCO and JURI [legislative-initiative](#) reports adopted pursuant to [Article 225 TFEU](#) include detailed proposals that aim to feed the forthcoming Commission's Digital Services Act package. This 'indirect' initiative right does not create an obligation on the Commission to propose the legislation requested. However, the Commission President Ursula von der Leyen has [pledged](#) to take into account the Parliament's views.

### **Civil Liberties, Justice and Home Affairs (LIBE) committee own-initiative report**

On 22 September 2020, LIBE adopted an own-initiative [report](#) on fundamental rights issues posed by online platforms. The report stresses that the current EU legal framework governing digital services should be updated with a view to addressing the challenges posed by new technologies and ensuring legal clarity and respect for fundamental rights. Content take-down measures should concern illegal content only (as defined in EU and national law), and appropriate procedural safeguards and transparency obligations laid down should be harmonised and include human oversight and effective judicial redress. Furthermore, cooperation between service providers and national supervisory authorities should be improved. An independent EU body should be created to sanction non-compliance with the applicable rules.

**Legislative initiative-reports** on improving the functioning of the Single Market and on commercial and civil law rules for commercial entities operating online: [2020/2018\(INL\)](#), [2020/2019\(INL\)](#); Committees responsible: IMCO, JURI; Rapporteurs: A. Agius Saliba (EPP, Malta), T. Wölken (S&D, Germany).

**Own-initiative report** on fundamental rights issues posed: [2020/2022\(INI\)](#); Committee responsible: LIBE; Rapporteur: K. Peeter (EPP, Belgium).

