

Parliament's negotiating position on the digital services act

In December 2020, the European Commission published a proposal for a digital services act (DSA) designed to define clear responsibilities and accountability for digital service providers and promote a transparent and safer online environment. New rules are proposed to address emerging societal challenges such as the spread of counterfeit goods, hate speech and disinformation online. The new rules, once adopted, will re-shape the rights and obligations of digital service providers, online users, customers and traders in the EU. Parliament is preparing to debate and vote on the report of the Internal Market and Consumer Protection Committee (IMCO) during its January plenary session. This would then set Parliament's position for trilogue negotiations with the Council on the proposal.

European Commission proposal

In 2000, the EU adopted the [e-Commerce Directive](#) in order to build a common legal framework facilitating the free movement of information society services between Member States and strengthen EU consumers' trust in online commerce. The [rules](#) governing the provision of digital services in the EU have remained largely unchanged since then and are still based on three key principles. First, providers of online services are subject to the law of the Member State in which they are established (i.e. **country of origin principle**). Second, online intermediaries are exempt from liability for the content they convey and host, if they fulfil certain conditions (i.e. **safe harbour principle**). Third, the e-Commerce Directive prohibits Member States from imposing on online intermediaries a **general obligation to monitor information** that they transmit or store, in order to protect their users' fundamental rights.

However, in the last 20 years, online platforms have become major players in the '[attention economy](#)', as they match users with the most relevant information for them and often attempt to monetise the process by means of advertising or transactions. Furthermore, new societal challenges have arisen, such as the spread of counterfeit goods, hate speech and [disinformation](#) online. Against this backdrop, in December 2020 the Commission put forward a proposal for a [digital services act](#) setting out new horizontal rules, following the principle that what is illegal offline should also be illegal online.

In practice, the draft regulation has been designed to improve consumer protection and set up a balanced responsibility regime for online platforms. It lays down an **asymmetric set of rules for distinct categories of online services providers** (i.e. providers of 'intermediary services', of 'hosting services', of 'online platform services' and of 'very large online platform (VLOP) services') offering their services in the EU. They will be subject to more or less stringent obligations regarding online content moderation, online advertising and the design and use of algorithms. VLOPs need a higher degree of oversight and transparency given the impact they have on the economy and society. They will be required, not least, to assess the systemic risks stemming from the functioning and use of their services at least once a year and take risk mitigation measures to deal with harmful content and disinformation more effectively.

Council position

The Council [agreed](#) its position ('general approach') on the proposal for a digital services act in November 2021. The main changes to the Commission proposal are:

- The scope of the DSA is broadened to include '**online search engines**'.
- The Council text includes provisions to **protect minors online** and subject providers of intermediary services to additional obligations in this respect (e.g. explain the conditions and restrictions for the use of the service in a way that minors can understand).
- The Council text lays down **stricter rules for VLOPs and for very large search engines**. It strengthens the obligations for online marketplaces, which must, for instance, design their online

interfaces without **'dark patterns'** (i.e. not use manipulative techniques to persuade customers to engage in unwanted behaviour) and ensure that traders provide complete information.

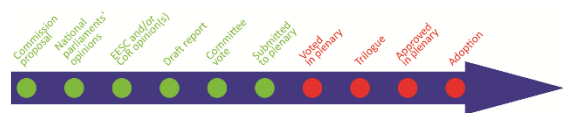
- In addition, the Council wants to confer some **exclusive enforcement powers** to the European Commission, notably to oversee providers' obligations to manage systemic risks.

European Parliament position

The DSA proposal was assigned to the IMCO committee (rapporteur: Christel Schaldemose, S&D, Denmark). The committee [adopted](#) its report on 14 December 2021 with 36 votes in favour, 7 against and 2 abstentions. While endorsing the Commission's proposal to update the EU regulatory framework and clarify responsibilities and accountability for digital service providers, the report proposes a number of [amendments](#) that, if adopted in plenary, will become the Parliament position. The key changes relate to:

- **Content moderation.** The IMCO report imposes more stringent obligations on online platforms and includes stronger safeguards to ensure the removal of illegal content is not arbitrary or discriminatory. In line with the Council position, providers of intermediary services would be prohibited from using manipulative techniques to influence users' behaviour, i.e. 'dark patterns' (Articles 12(2)(c) and (15)(b)). Furthermore, all platforms (and not only VLOPs as proposed by the Commission) using 'recommender systems' to choose what information to promote will have to make sure that online platforms are transparent about the way these algorithms work and are accountable for the decisions they make (Article 24(a)). In addition, the IMCO text imposes new obligations with regard to user-generated pornographic content (Article 24(b)).
- **Targeted advertising.** The IMCO report strengthens transparency and consent requirements for targeted advertising and adds new provisions to protect minors. Online platforms would have to inform the recipients of their services of how their data would be monetised. Furthermore, online platforms would be prohibited from using personal data for commercial purposes for direct marketing, profiling and behaviourally targeted advertising directed at minors (Article 24).
- **Very large online platforms.** The IMCO report imposes additional obligations on VLOPs. They would have to assess a category of risks relating to public health in the context of their annual risk assessment (Article 26). VLOPs would also have to provide their users more choice on algorithm-based ranking (i.e. at least one recommender system not based on profiling) and to explain the 'design, logic and the functioning' of algorithms if requested by the national regulator (Article 31).
- **Online marketplaces.** The IMCO report lays down stricter conditions for online marketplaces to benefit from exemption from liability. For instance, it requires online marketplaces to take measures to prevent the display of illegal products (e.g. random checks), remove them expeditiously and inform consumers who have bought them (Article 22 to 22(f)).
- **Waivers for SMEs and start-ups.** To ensure that the DSA regulation does not generate extra red tape for smaller companies, the IMCO report introduces a waiver for not-for-profit (e.g. Wikipedia) and small and medium-sized online platforms that do not pose a systemic risk relating to illegal content. The Commission would be empowered to waive, when justified, the obligations under the DSA (Article 16).
- **Enforcement and redress mechanisms.** The IMCO report clarifies the role of digital services coordinators in Member States and their cooperation with the Commission, but does not propose to give any exclusive enforcement powers to the European Commission as advocated by the Council. The report beefs up the provisions on redress mechanisms available to users.
- **Other issues** that may be raised in plenary include the [proposal](#) defended by the media sector (but [opposed](#) by other stakeholders) to prevent platforms from removing content produced under media-based editorial control and the need for additional consumer [safeguards](#).

First-reading report: [2020/0361\(COD\)](#); Committee responsible: IMCO; Rapporteur: Christel Schaldemose (S&D, Denmark). For further information see our 'EU legislation in progress' [briefing](#).



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