Digital services act

OVERVIEW

The rules governing the provision of digital services in the EU 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 are emerging, such as the spread of counterfeit goods, hate speech and disinformation online. Against this backdrop, the European Commission tabled a new legislative proposal on a digital services act in December 2020. The proposal aims at amending the e-Commerce Directive and sets out a horizontal framework for content moderation of the EU online space.

Interinstitutional negotiations between the Commission, the European Parliament and the Council seeking to reach an agreement on a compromise text started in January 2022. Controversial issues currently being discussed by the co-legislators include the scope of the new regulation, the enforcement mechanisms proposed, and to what extent targeted advertising and techniques to influence users' behaviour such as 'dark patterns' should be curbed.


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<th>Committee responsible:</th>
<th>Internal Market and Consumer Protection (IMCO)</th>
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<td>Rapporteur:</td>
<td>Christel Schaldemose (S&amp;D, Denmark)</td>
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<td>Shadow rapporteurs:</td>
<td>Arba Kokalari (EPP, Sweden)</td>
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<td>Dita Charanzová (Renew, Czechia)</td>
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2020/0361 (COD)

Ordinary legislative procedure (COD)
(Parliament and Council on equal footing – formerly 'co-decision')
Introduction

Whereas online platforms – such as search engines, social media and e-commerce platforms – are playing an increasingly important role in our social and economic life, the current EU rules on digital services date back two decades and have remained largely unchanged since the adoption of the e-Commerce Directive in 2000 (Directive 2000/31/EC). On 15 December 2020, the European Commission presented a digital services act package with two draft pieces of legislation, a digital services act (DSA) and a digital markets act (DMA), designed to create a fairer playing field and make online platforms more responsible for the content posted on them. The specific aim of the DSA is to promote a transparent and safe online environment, defining responsibilities and accountability for a range of digital service providers. The new rules, once adopted, will re-shape the rights and obligations of digital service providers, online users, customers and business users in the EU.

Existing situation

E-Commerce Directive

The e-Commerce Directive's overarching goal was to foster the development of electronic commerce in EU. To that end, the Union set up a common legal framework facilitating the free movement of information society services between Member States, legal certainty and consumer confidence in online commerce. The directive was designed to approximate national laws in various fields, including with regard to the establishment of service providers in the EU, rules applicable to commercial communications and electronic contracts (e.g. online advertising and unsolicited commercial communications) as well as the liability of online intermediaries.

The EU rules applicable to online actors currently rest on three key principles. First, the country of origin principle requires information society services to comply with the laws of the Member State in which they are legally established when operating across the EU; facilitating those companies’ access to the entire EU single market. Second, the limited liability regime exempts 'online intermediaries' from liability for the content they convey and host (i.e. safe harbour principle) if they fulfil certain conditions. Hosting companies must remove illegal content or activity when they have been informed of its presence on their services and cannot be held liable for illegal content or activity on their services unless they have 'actual knowledge' of the illegal content or activity (i.e. 'notice and action' mechanisms). Finally, 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.

Calls to revise the e-Commerce Directive

A number of studies and consultations conducted by the European Commission have demonstrated large variances in the way the e-Commerce Directive is implemented throughout the EU. Academics point to persisting legal uncertainty regarding the application of national norms and to conflicting court rulings and have called for clarification of the current rules on these grounds. Furthermore, the current EU rules on 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 have emerged. The question of how to tackle the increasing spread of illegal and harmful products (e.g. counterfeit goods) and content (e.g. hate speech, disinformation and misinformation) online has become central to the debate on online platform regulation in the EU. In this area, with the adoption of the Recommendation on measures to effectively tackle illegal content online, a memorandum of understanding on the sale of counterfeit goods on the internet (MoU) and the development of the EU code of practice on disinformation in 2018, the Commission initially encouraged platforms to self-regulate. However, the effectiveness of this approach has been questioned. The 2020 evaluation of the MoU showed that the sale of counterfeit and pirated goods remains problematic. The creation
of a harmonised framework for content management and curation in order to tackle the phenomenon of online disinformation and hate speech more effectively at EU level has also been recommended.

Parliament's starting position

The European Parliament has long advocated revision of the EU digital rules applicable to digital platforms and adopted three seminal resolutions on the DSA in October 2020. EU lawmakers approved an Internal Market and Consumer Protection (IMCO) Committee legislative initiative report calling on the Commission to carry out a comprehensive revision of the e-Commerce Directive. It includes various recommendations to improve consumer protection in the digital economy with respect to, for instance, targeted advertising practices. EU lawmakers also approved a Legal Affairs (JURI) Committee legislative-initiative report recommending that the Commission impose content management and transparency obligations on platforms (e.g. with respect to algorithms) and give users more control over content curation, i.e. the selection, organisation, and presentation of online material. Finally, Members approved a Legal Affairs (LIBE) Committee own-initiative report calling on the Commission to address the challenges posed by new technologies and ensure legal clarity and respect for fundamental rights. The three resolutions, however, coincided in that they recommended maintaining 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). Furthermore, a range of Parliament studies have emphasised the need to revise the e-Commerce Directive and suggest that taking common EU action to enhance consumer protection and common e-commerce rules as well as to create a EU framework for content management and curation would be beneficial for the internal market.

Council starting position

In its June 2020 conclusions on shaping Europe's digital future, the Council welcomed the forthcoming digital services act proposal and emphasised the need for clear and harmonised evidence-based rules on responsibilities and accountability for digital services that would guarantee internet intermediaries an appropriate level of legal certainty. Furthermore, in its conclusions of November 2020, the Council called on the European Commission to refine the responsibilities of online platforms in the DSA taking into account the possible impacts on the level playing field and the need to safeguard media pluralism. At Member State level, meanwhile, a broad consensus has emerged in recent years on the need to update and harmonise the EU rules applicable to online platforms. In December 2019, a number of Member States (Belgium, Czechia, Denmark, Ireland, Estonia, Luxembourg, the Netherlands, Poland, Finland and Sweden) called for the core principles of the e-Commerce Directive to be retained while modernising the EU framework in a targeted way to address the emergence of new types of online intermediaries.

Preparation of the proposal

The Commission ran a public consultation from June to September 2020 to assess how to best deepen the internal market and clarify responsibilities in respect of digital services; it garnered more than 200 replies. Together with a number of legal and economic studies, these replies fed into the European Commission's impact assessment. The impact assessment concluded that the core principles of the e-Commerce Directive remain very much valid today and have enabled the growth and accessibility of digital services across borders. However, the Commission also points out three main problems relating to the governance of digital services in the EU: the increasing exposure to illegal and harmful activities online, the lack of cooperation between national authorities, and the risks of legal fragmentation resulting from national initiatives that create new barriers in the internal market – especially for small and medium-sized enterprises (SMEs).

EPRS has published an initial appraisal of the Commission's impact assessment.
The changes the proposal would bring

Legal basis

The Commission put forward a proposal for a regulation on a single market for digital services (digital services act – DSA) on the basis of Article 114 TFEU to prevent divergences from hampering the free provision of cross-border digital services and to guarantee the uniform protection of rights and uniform obligations for business and consumers across the internal market.

Scope

The DSA proposal sets out a horizontal framework for transparency, accountability and regulatory oversight of the EU online space. The new legislation will not replace but complement the e-Commerce Directive and other pieces of legislation including the Platform-to-Business Regulation (which already imposes stringent transparency and fairness obligations on platforms) and the sector-specific rules on content moderation already in force in the EU to tackle, for instance, dissemination of terrorist content online, hate speech or copyright infringement.

The material scope of the DSA is broader than the existing e-Commerce Directive. The draft rules apply to online intermediary services and impose different sets of obligations for distinct categories of online intermediaries according to their role, size and impact in the online ecosystem (Article 2). Accordingly, the draft DSA differentiates rules on:

- intermediary services provided by network infrastructure providers, including ‘mere conduit services’ (e.g. internet access) and ‘catching services’ (e.g. automatic, intermediate and temporary storage of information);
- hosting services provided by providers storing and disseminating information to the public, such as cloud and webhosting services;
- online platform services by providers bringing together sellers and consumers, such as online marketplaces, app stores, collaborative economy platforms and social media platforms; and
- very large online platforms (or VLOP) services provided by platforms that have a particular impact on the economy and society and pose particular risks in the dissemination of illegal content and societal harms. Specific rules are set out for platforms that reach more than 45 million active recipients in the EU on a monthly basis. The methodology to designate VLOPs will be set out in a delegated act by the Commission and a list of VLOPs will be drawn up and revised regularly (Article 25).

Regarding territorial scope, all online intermediaries offering their services in the EU would have to comply with the new rules including those established outside the EU (Article 1).

Asymmetric obligations

The DSA proposal is a horizontal instrument putting in place a framework of layered responsibilities targeted at different types of intermediary services. The draft legislation therefore introduces a range of harmonised EU-wide asymmetric obligations crafted according to the size and impact of the digital services provided.

Obligations for all providers of intermediary services

The draft DSA stipulates basic obligations applicable to all providers of intermediary services falling within the scope of the DSA to ensure transparency and fundamental rights protection. This includes the obligation to set out all restrictions they may impose on the use of their services. In addition, they would be obliged to act responsibly in applying and enforcing those restrictions, including when using tools used for the purpose of content moderation, such as algorithmic
decision-making review (Article 12). All providers will also have to report on the removal and disabling of information considered illegal content or contrary to the providers' terms and conditions (Article 13). Finally, all intermediaries will have to establish a single point of contact to facilitate direct communication with Member States’ authorities and other competent authorities (Article 10) and those established outside the EU will have to designate a legal representative in the EU (Article 11).

### Obligations for online platforms and hosting service providers

For online platforms and hosting services, the Commission proposes detailed notice and action mechanisms and more adequate appeal mechanisms. This combination would facilitate the fight against illegal online content, while safeguarding user rights.

Both online platforms and hosting providers would be required to put in place notice and action mechanisms enabling third parties to notify the presence of alleged illegal content (Article 14) and to provide a statement of reasoning when they decide to remove or disable access to specific information (Article 15).

In addition, online platforms will have to comply with a new set of requirements to ensure trust in and safety of the products and services they provide. They will have to establish an easily accessible and user-friendly internal complaint-handling procedure for their users (Article 17) and will be obliged to engage with out-of-court dispute settlement bodies to resolve disputes with their users (Article 18). The proposal also introduces the concept of trusted flaggers – entities appointed by Member State authorities with particular expertise and competence in tackling illegal content. Online platforms would be under the obligation to process notices from those trusted flaggers as a priority (Article 19) and would have to inform competent enforcement authorities in the event that they became aware of any information giving rise to a suspicion of serious criminal offences involving a threat to people's life or safety (Article 21). Furthermore, the proposal introduces a 'know your business customer' principle, under which platforms would be required to obtain and verify identification information from traders prior to allowing them to use their services (Article 22).
Finally, in the field of **online advertising** the DSA proposes new rules to give users of online platforms meaningful information on the ads they see online, including information on why an individual has been targeted with a specific advertisement. To that end, online platforms displaying advertisements online would be subject to transparency obligations to ensure that individuals using their services knew the sources of the ads, why they had been targeted and could identify the ad 'in a clear and unambiguous manner and in real time' (Article 24). Those rules would be complementary to the initiatives envisaged by the **European democracy action plan**, in particular the strengthening of the code of practice on disinformation and legislation to ensure greater transparency in the area of sponsored content in a political context.  

**Obligations for very large online platforms (VLOPs)**

VLOPs will be subject to the full scope of the proposed regulation given the particular impact they have on the economy and society and their potential responsibility as regards the dissemination of illegal content and societal harms. In addition to all the obligations mentioned above, the draft DSA sets a higher standard of transparency and accountability for how the providers of such platforms moderate content, on advertising and on algorithmic processes (Articles 26-33).

VLOPs will be required to **assess the systemic risks** stemming from the functioning and use of their services at least once a year (Article 26). VLOPs will have to assess three categories of risk: (i) potential misuse by users of their services (e.g. dissemination of illegal content such as child sexual abuse material and the conduct of illegal activities such as counterfeit products); (ii) the impact of their services on fundamental rights (e.g. rights to privacy, freedom of expression) due, for instance, to the design of their algorithmic systems, and (iii) the intentional manipulation of their services, for instance through the creation of fake accounts, leading to widespread dissemination of information having a negative effect (e.g. on the protection of public health, electoral processes and public security). Following such analyses, VLOPs will be required to take appropriate **mitigating measures** (Article 27), such as adapting the design and functioning of their content moderation, algorithmic recommender systems and online interfaces so that they discourage and limit the dissemination of illegal content. They will also have to submit themselves to **external and independent audits** (Article 28). Furthermore, VLOPs will have to compile and make publicly available **detailed information on the advertising they display** by means of a repository (including those on whose behalf the advertisement is displayed and the total number of recipients), provide the digital services coordinator, the Commission and vetted researchers with **access to data necessary to monitor and assess compliance** (Article 31) and appoint **compliance officers** (Article 32). Against this backdrop, the DSA constitutes a step away from the self-regulation approach towards more cooperative, co-regulatory and regulatory mechanisms.

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In the **USA**, Section 230 of the Communications Decency Act shields online platforms from liability for user content and gives them leeway to moderate that content. So far, content moderation of large platforms remains in the remit of **self-regulation**. For instance, Facebook set up an **Oversight Board** in 2019 to hear appeals of content-moderation decisions. The Board has the **power** to task panels of independent experts with reviewing the blocking decisions taken by the company and can overrule content decisions taken by Facebook executives, although its independence has been **questioned**. However, the debate about making platforms more accountable is also raging in the US and a number of separate revision bills have recently been **introduced** to that end. While there is a lot of resistance to the imposition of more stringent rules, some academics are **calling** on US lawmakers to make the US approach to platform regulation more akin to the European approach. However, other policy-makers are warning about detrimental impacts on the industry. In this sense, US Commerce Secretary Gina Raimondo **raised** serious concerns that the DSA and DMA proposals could disproportionately affect US-based tech firms.

**Implementation, enforcement and oversight**

Member States will have to designate independent **digital services coordinators** (Article 38) who will be granted specific oversight powers (Article 41), will be entitled to receive complaints against providers of intermediary services (Article 43), will have to cooperate with digital services
Digital services act

coordinators of other Member States (Article 45) and will be able to take part in joint investigations (Article 46). Furthermore, a European board for digital services (EDPB) will be set up to ensure effective coordination and consistent application of the new legislation (Article 47).

However, very large online platforms (VLOPs) will be subject to enhanced supervision by the European Commission. The Commission will be able to intervene if the infringements persist (Article 51). It will be able to carry out investigations, including through requests for information (Article 52), interviews (Article 53) and on-site inspections (Article 54). It will be able to adopt interim measures (Article 55) and make binding commitments by very large online platforms (Article 56), and it will be able to monitor compliance (Article 57). In cases of non-compliance, the Commission will be able to adopt non-compliance decisions (Article 58), as well as fines (Article 59) and periodic penalty payments (Article 60) for breaches of the regulation and for the supply of incorrect, incomplete or misleading information in the context of the investigation.

Advisory committees

The European Economic and Social Committee (EESC) and of the Committee of Regions (CoR) adopted their opinions on the DSA respectively in April and in June 2021.

National parliaments

The deadline for the submission of reasoned opinions on the grounds of subsidiarity was 7 April 2021. The Austrian National Council, the Czech Chamber of Deputies, the Danish Parliament and the Italian Chamber of Deputies submitted reasoned opinions.¹¹

Stakeholder views¹²

Associations and organisations defending users and consumers

The European Consumer Organisation, BEUC, calls on lawmakers to define consumer protection as an explicit objective of the DSA and to fine-tune rules on enforcement and redress. BEUC also supports updating EU law to tackle unfair practices and ensure consumers are not harmed by misleading user interfaces and data personalisation techniques such as dark patterns. AlgorithmWatch and other civil society organisations recommend giving enforcement powers to an independent unit inside the European Commission to oversee VLOPs, preventing platforms from using manipulative design techniques, providing access to platforms’ data to vetted not-for-profit bodies, widening the risk assessment to cover all rights and social harms and empowering users to seek redress. European Digital Rights (EDRI) and a number of other civil society organisations are calling to phase out the pervasive online tracking business model and prohibit dark patterns that trick users into sharing personal data they would not otherwise want to. A number of associations for the protection of children call on the Council and Parliament to require that all providers of digital services falling in the scope of the DSA and likely to be accessed by children ensure a high level of privacy, safety and security by design for all under 18-year olds. Europe’s research library association (LIBER) asks for clarity on whether and how education and research sectors fall under the scope of the DSA.

Platforms and media industries

The Computer and Communications Industry Association, CCIA, which represents large companies such as Google, eBay, Twitter and Amazon, raises a series of objections to the current proposal. The CCIA warns that imposing an outright ban on targeted advertising would limit small businesses’ ability to develop new business and would offer European consumers less choice. The CCIA demands clarity on the safeguards and confidentiality rules applicable when the DSA requires platforms to provide data to ‘vetted researchers’ and ‘vetted not-profit bodies’. Furthermore, the platforms stress that if the DSA sets disproportionate liability and due diligence obligations, online
marketplaces may enable only established third-party sellers to offer products via their platforms, thereby jeopardising SMEs' activities. They also call for clarity as to how due diligence obligations and 'know-your-business-customer' principles work. While supporting the DSA proposal, Digitaleurope, representing the world's largest IT, telecoms and consumer electronics companies, believes that important definitions (e.g. a very large online platform) should not be left to delegated acts and recommends a 12- to 18-month transition period to leave sufficient time to build and implement new processes.

The media industry wants to introduce a media exemption that would exempt the sector from the new rules enshrined in the DSA, as they are already subject to editorial obligations. The European Federation of Journalists supports introducing a range of measures in the DSA to better protect online journalistic content from interference by online platforms. The European Regulators Group for Audiovisual Media Services (ERGA) and the national media regulators want to be associated to the adoption of guidelines clarifying the DSA's interplay with other legislative acts and to the assessment of systemic risks.

SMEs and start-ups

Associations representing SMEs and start-ups generally support the DSA, but would like the text to be modified to take into account their specific size and scale. Allied for Startups, welcomes the proposals but warns that regulating online platforms on the basis of a threshold may disincentivise the growth of start-ups in the EU – for instance by unnecessarily restricting targeted ads. The European Technology Alliance asks for an 18-month implementation timeframe to allow the tech sector to enforce the new obligations and to address 'dark patterns' (see box) in other EU pieces of legislation, such as the Unfair Commercial Practices Directive or the GDPR, after an evaluation of potential existing gaps in EU legislation.

Academic views

Algorithmic transparency, online advertising and dark patterns

The European Data Protection Supervisor (EDPS) welcomes the DSA proposal but recommends additional measures to protect individuals better when it comes to content moderation and online targeted advertising. Targeted advertising allows marketers using algorithms to present consumers with ads that reflect their online traits, interests, and shopping preferences. The EDPS stresses that profiling for the purpose of content moderation should be prohibited unless the online service provider can demonstrate that such measures are strictly necessary to address the systemic risks explicitly identified in the DSA. He also calls on EU legislators to consider a ban on online targeted advertising based on pervasive tracking and to restrict categories of data that can be processed to enable or facilitate targeted advertising.

A recent European Parliament study recommends amending the draft DSA text to, inter alia, inform consumers about being targeted and improve consent mechanisms, provide guidelines on 'dark patterns', ensure that minors are not subject to targeted advertising that exploits their vulnerabilities and improve consumers' access to redress.

Other academics advise that linkages between the DSA and existing consumer legislation should be taken into account during the trilogue negotiations, including for regulating influencers. However, a report by the Centre for data and innovation warns that a ban on targeted ads would reduce substantially spending on data-driven ads in the EU and adversely impact advertisers, app developers, media companies, content creators and consumers, by making online advertising less effective.
Dark patterns. ‘Dark patterns’ generally refer to techniques for designing websites and mobile application interfaces in order to influence users’ behaviour and decision-making. The implementation of ‘dark pattern’ techniques is of particular concern as they are often used to direct users towards outcomes that involve greater data collection and processing and alter consumers’ freedom of choice or manipulate their decisions. The European Data Protection Board published its Guidelines on dark patterns in social media platform interfaces in March 2022, providing recommendations and guidance for the design of the interfaces of social media platforms. Some experts warn that, while manipulation of consumers’ online choices using algorithms constitutes a significant risk, both ex-ante regulation and requirements for algorithmic transparency may be insufficient to tackle this phenomenon. They call for co-regulation and compliance schemes to be put in place.

Very large platforms: Risk assessment and general monitoring

Under the draft DSA, risk assessment (Article 26) is left largely to the companies and no oversight mechanism has been introduced to check the accuracy of very large platforms’ assessment. In this regard, the establishment of a mechanism to coordinate between competent authorities has been proposed to ensure a coherent oversight of the risk assessment. This approach is especially necessary when it comes to finding a suitable methodology to enable very large platforms to assess the dissemination of illegal content while respecting the prohibition on general monitoring of their users’ online content (enshrined in the e-Commerce Directive and confirmed by the case law of the Court of Justice of the European Union – CJEU). Common guidance would be useful in particular with regard to the use of automatic detection and filtering technologies to detect illegal and harmful content.

Obligations on online market places

Some commentators are critical of the draft DSA provisions on online market places and argue that the economic evidence does not support the magnitude of the counterfeit products problem as presented by the Commission and that the proposed measures would not therefore be proportionate to the existing problem.

Disinformation

The DSA will require large social media platforms to share with the research community data that relate to risks such as the dissemination of ‘illegal content’ and ‘intentional manipulation’ of online services. However, there is no provision specifying how this should be implemented in practice. In this respect, academics would like to see the DSA set up a permanent mechanism to facilitate collaborative research between industry and academia, as researchers need regular (not just one-off) access to data to collect and update quantitative data to facilitate hypothesis testing and the design of intervention strategies to fight disinformation. Disinformation researchers warn that introducing a media exemption would contribute to and increase the spread of disinformation.

Oversight and compliance

The oversight mechanisms and institutional organisation enshrined in the draft DSA have been questioned. There are question marks regarding: the composition and role of the proposed European board for digital services (EBDS), who should be designated digital services coordinator at national level and how they should function in relation to other national regulators, and how to ensure independent oversight and law enforcement on VLOPs. Lawmakers could also consider enabling regulators to conduct an ex-ante review/screening of the terms and conditions of very large platforms given their crucial role in shaping what is and is not allowed on the platform. Centralising enforcement at the EU level, as proposed by the Commission, could be useful for the largest cross-border platforms but will only be effective with the strong cooperation and support of national authorities.
Legislative process

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 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’ 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.

In Parliament, the DSA proposal was assigned to the Internal Market and Consumer Protection (IMCO) Committee (rapporteur: Christel Schaldemose, S&D, Denmark). The committee report was approved by Parliament in plenary on 20 January 2022 with 530 votes to 78, with 80 abstentions. While endorsing the Commission’s proposal, the Parliament wants a number of amendments to the Commission’s text. The key changes relate to:

- **Content moderation.** The Parliament imposes more stringent obligations on online platforms and includes stronger safeguards to ensure the removal of illegal content is not arbitrary or discriminatory. All platforms (and not just 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)). Also, all hosting service providers (and not just online platforms, as proposed by the Commission) would be under an obligation to promptly inform the law enforcement or judicial authorities of any serious criminal offence that involves an imminent threat to someone’s life or security (Article 15a). In addition, the Parliament’s text imposes additional obligations for platforms primarily used for the dissemination of user-generated pornographic content (Article 24(b)). However, Parliament also strengthens the ban against Member States imposing general monitoring obligations (e.g. it would not be possible to prevent intermediaries from offering end-to-end encrypted services).

- **Targeted advertising and dark patterns.** The Parliament’s position strengthens transparency and consent requirements for targeted advertising and adds new provisions to protect minors. Online platforms would have to provide information on profiling and inform the recipients of their services of how their data would be monetised. Furthermore, online platforms would be banned from using targeting or amplification techniques that process, reveal or infer the personal data of minors for the purpose of displaying advertisements (Article 24). In line with the Council position, providers of intermediary services would be prohibited from using the structure, function or operation of their online interface to influence users’ behaviour, i.e. ‘dark patterns’ (Article 13(a)).

- **Very large online platforms.** Parliament 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 with more choice on algorithm-based ranking (i.e. at least one recommender system not based on profiling), explain the ‘design, logic and the
functioning’ of algorithms if requested by the national regulator (Article 31) and inform users of deep fakes when they become aware of them (Article 30a). VLOPs would be required to grant access to their data not only to researchers but also to vetted not-for-profit organisations for the purpose of conducting research that contributes to the identification, mitigation and understanding of systemic risks (Article 31).

- **Online marketplaces.** The Parliament text lays down stricter conditions for online marketplaces to benefit from exemption from liability. For instance, it requires online marketplaces to take best-effort 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, Parliament wants to introduce 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 European Parliament resolution 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 Commission as advocated by the Council (Articles 42 to 45). The conditions for suspending permanently recipients of online services that frequently provide illegal content are streamlined (Article 20). The Parliament text also beefs up the provisions on redress mechanisms available to users for any damage resulting from the infringement by platforms of their due-diligence obligations.

- **Media exemption.** A proposal defended by the media sector to exempt the media from new content moderation rules was rejected in plenary. This was due to concerns about the negative consequences such a rule could have for the fight against disinformation. However, Members endorsed a change to the requirements on the terms and conditions, requiring platforms to consider the EU Charter of Fundamental Rights, including media freedom.

Interinstitutional negotiations between the Commission, the European Parliament and the Council started in January 2022. Controversial issues such as the scope of the new regulation, the enforcement mechanisms proposed and the extent to which targeted advertising and techniques to influence users' behaviour such as ‘dark patterns’ should be curbed are being discussed.

**EP SUPPORTING ANALYSIS**


**OTHER SOURCES**

*Single market for digital services (digital services act)*, European Parliament, Legislative Observatory (OEL).
ENDNOTES

1  The focus of this briefing is the digital services act. Please also see the EPRS briefing on the digital markets act.


7  In addition, the Commission consulted on adopting ex ante regulatory instruments for gatekeepers and a possible new competition tool to address structural competition problems in digital as well as non-digital markets.

8  For an overview, see the repository of rules for online content moderation in the EU provided by DOT Europe.

9  Micro- and small companies will have obligations proportionate to their ability and size while ensuring they remain accountable. As a result, if they are subject to the general obligations in terms of transparency and fundamental rights protection transparency, they will be exempt from the more stringent obligations on online platforms (Article 16).


11  Before initiating proceedings, the Commission must only consult the European Board for Digital Services (EBDS, Article 51).

12  This section aims to provide a flavour of the debate and is not intended to be an exhaustive account of all different views on the proposal. Additional information can be found in related publications listed under ‘EP supporting analysis’.

13  See study, Online advertising: the impact of targeted advertising on advertisers, market access and consumer choice, European Parliament, 2021.

14  See de Marcellis-Warin, and others, Artificial intelligence and consumer manipulations: from consumer’s counter algorithms to firm’s self-regulation tools, 2022.


20  See CERRE study, Improving EU Institutional Design to Better Supervise Digital Platforms, 2022. Clarifying the implementation of the DSA with regard to copyright-infringing content would be also be useful (See A. Peukert and others, European Copyright Society – Comment on Copyright and the Digital Services Act Proposal, 2022).

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