

Digital Services Act

Safe harbours, due diligence and online ads

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Structure of the Presentation

1. Safe Harbours
2. Recommendations: Search engines
3. Recommendations: Other services
4. Online Advertising
5. Recommendations: Transparency & Influencers
6. Recommendations: Spending data & Subsidisation

1. Safe Harbours

Basic design of Articles 3-7:

- Offers continuity and simplicity

But:

- There are some gaps
- Lack of clarity position of certain services
- Resulting ambiguity scope due diligence obligations!

2. Recommendations: Search engines

Search Engines and other information location tools:

- Currently no harmonised EU level safe harbour in ECD
- DSA continues this situation
- Legal uncertainty extends to due diligence obligations

Recommendations:

- Option 1 (simple fix): declare due diligence obligations applicable to these types of services
- Option 2 (more robust): design a search engine specific safe harbor in addition to Article 3-5 DSA

3. Recommendations: Other Services (1/2)

Services that support functioning of Web and Internet

- DSA dodges their classification (recital 27)

Infrastructural cloud services (hosting of applications)

- Status under 'online platform' definition is unclear
- Due diligence obligations written for active moderating
- How to count recipients of the service (for VLOPs)?
- Which side of the platform for multi-sided platform markets?

3. Recommendations: Other Services 2/2

Interpersonal communication services

- Excluded from the scope of the DSA (recital 17)
- Sensible choice, but complex boundary due to blurring private & public
- Strips these services from EU level safe harbour
- Recommendation: do not exclude if actively moderating

Overall recommendation: provide more clarity!

4. Online ads

New provisions on transparency and accountability

- Article 24, and Article 30, Article 26 DSA

Liability and responsibility online ads

- Safe harbours apply to sponsored communications
- Recommendation: reconsider for sponsored messages that have significant reach

5. Recommendations: Transparency & Influencers

Transparency

- High expectations of user-facing transparency
- Evidence suggests no significant benefits for users

Transparency and accountability gap

- Influencer marketing
- Spillover effects regulation sponsored communications

Recommendation: regulate advertising tracking & targeting

- Limitations on targeting practices (e.g. highly granular or sensitive data)
- Robust opt-out for personalised advertising in relation to online platforms

6. Recommendations: Spending data & Subsidisation

Public ad repositories for VLOPs

- Lack spending data requirements (crucial for research)

Support needed to turn transparency into accountability

- Host of transparency measures across DSA assumes meaningful use will be made of all this data
- We will see no meaningful accountability without significant support for research, journalism and civil society in this space

Thank you for your attention!

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For updated analysis: see DSA Observatory
<https://dsa-observatory.eu/>