

The Digital Services Act

Updating Europe's e-commerce rules

Background

- The e-Commerce (2000) establishes harmonised rules on issues such as:
 - Transparency and information requirements for online service providers;
 - Commercial communications;
 - Electronic contracts and limitations of liability of intermediary service providers.
- The Digital Single Market Strategy (2015)
 - Objective to remove barriers to the free movement of persons, services and capital, and to ensure fair competition, a high level of consumer and personal data protection, irrespective of their nationality or place of residence.
 - Key initiatives: GDPR, copyright directive, AVMS, geoblocking, P2B
 - But... no revision of the e-commerce directive
 - However: growing focus on online platforms and illegal content online towards the end of the mandate

The Digital Services Act

- Priority of the von der Leyen Commission to modernise the current legal framework for digital services, focusing on two main pillars
- Lead: Commissioners Vestager and Breton
- Timing: legislative proposal by Q1 2021
- Public consultation launched on June 3rd (deadline to contribute: 8 September)
- The Consultation is divided in two parts:
 - The **evaluation of the E-commerce Directive and liability rules for digital services**
 - The **possible introduction of an ex-ante regulatory instrument** to control the practices of dominant platforms with significant network effects acting as “gatekeepers”

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- In parallel, the **European Parliament** is currently drafting three own initiative reports on the DSA in the following committees:
- IMCO (Internal Market and Consumers)
 - Main report, leading on the country of origin principle and liability exemption
 - Compromise amendments to be finalised end August/early September
- JURI committee (Legal Affairs)
 - Focus on commercial and civil law rules for commercial entities operating online
- LIBE committee (Civil Liberties, Justice and Home Affairs)
 - Focus on fundamental rights issues posed by the DSA.
- Timing of the reports: objective is to adopt the report at committee level in September and in plenary in October, in order to feed into the Commission's work

Key issues

What will be the key issues discussed in the DSA? (focus on IP)

- 1) **Scope:** clarification that the DSA applies to all actors targeting European consumers
- 2) **Approach:** horizontal approach or differentiation between different types of illegal content (physical goods vs digital content, harmful vs illegal)
- 3) **KYBC:** reinforcement of identification requirements for business sellers. Key question will be whether and how to add an obligation for online platforms to verify the details of their sellers
- 4) **Creation of an independent body:** what role (transparency, enforcement, both)? Financed by whom?
- 5) **Harmonisation of notice and takedown procedures:** key issues for RHs are inclusion of staydown, « trusted flaggers », repeat infringers policy
- 6) **« Duty of care » vs « Good Samaritan »:** strong debate on the role and efficiency of proactive measures
- 7) **Clarification of active vs passive:** part of the broader need to clarify what type of obligations apply to whom
- 8) Definition of special rules for **large platforms who have a gatekeeper role** online