

Commission Proposes New Regulations on Responsibilities of Digital Services



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News

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On 15 December 2020, the Commission tabled two important proposals that will establish horizontal, harmonised rules on governing digital services in the EU. They are part of the [European Digital Strategy, Shaping Europe's Digital Future](#); the package will complement the [European Democracy Action Plan](#) aiming at making European democracies more resilient (→ separate news item). The legislative initiative consists of:

- The proposal for a Regulation on a Single Market for Digital Services ([Digital Services Act](#)) and amending Directive 2000/31/EC (“[DSA](#)”);
- Proposal for a Regulation on contestable and fair markets in the digital sector ([Digital Markets Act](#) – “[DMA](#)”).

Both proposals pursue common objectives:

- Creating a safer digital space in which the fundamental rights of all users of digital services are protected;
- Establishing a level playing field to foster innovation, growth, and competitiveness, both in the European Single Market and globally.

The DSA will establish common rules for intermediary services. “Intermediary services” are defined and categorised as:

- “*mere conduit*” services which are involved in the transmission of information in a communication network provided by a recipient of the service, or in providing access to a communication network;
- “*caching services*” which – beyond mere conduit services – are involved in the automatic, intermediate and temporary storage of that information, for the sole purpose of making more efficient the information's onward transmission to other recipients upon their request;
- “*hosting services*” that consists of the storage of information provided by, and at the request of, a recipient of the service.

In other words, the new regulation is addressed to the large number of digital online services, ranging from simple websites to internet infrastructure services and online platforms. These may be, for example, online marketplaces, cloud service providers, messaging providers, social networks, content-sharing platforms, app stores as well as online travel and accommodation platforms. The DSA will set out rules on the obligations of intermediaries and the conditions for liability exemptions. Due diligence obligations are however asymmetric, taking account the different types of intermediaries, the nature of the services, and their size and their impact on society. Certain substantive obligations are limited only to very large online platforms which have a central role in facilitating the public debate and economic transactions. The DSA is to achieve a

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balance between upholding the benefits for citizens and innovation that digital services have created in Europe and increasing responsibility since they are prone to misuse. Digital services must in future take actions, in order to effectively fight trade in and exchange of illegal goods, services, and content online, curb manipulative algorithmic systems that amplify the spread of disinformation and other harms, and be more transparent as regards advertising. More concretely, the future Regulation will provide for the following:

- Rules for the removal of illegal goods, services or content online:
 - Citizens will be able to notify (“flag”) illegal content, including counterfeit and dangerous products in an easy way;
 - Platforms are obliged to closely cooperate with “trusted flaggers”, i.e. entities that have demonstrated particular expertise and competence in tackling illegal content online, such as associations supporting brand owners;
 - Member States can order any platform operating in the EU, irrespective of where they are established, to remove illegal content.
- Safeguards for users whose content has been erroneously deleted by platforms:
 - Redress rights are to ensure that neither under-removal nor over-removal of content on grounds of illegality happens;
 - Users and consumers will have the possibility to contest the removal decisions taken by the online platforms.
 - Users can complain directly, choose an out-of-court settlement or seek redress by courts.
- New obligations for very large platforms (i.e. reaching at least 45 million users in the EU representing 10% of the population): they must make risk-based assessments, in order to prevent abuse of their systems; assessments and measures will be subject to an independent audit;
- New powers to scrutinize how platforms work and how online risks evolve, *inter alia* by facilitating access by researchers to key platform data;
- New rules on traceability of business users in online market places, to help track down sellers of illegal goods or services;
- New enforcement mechanism, consisting of national and EU level cooperation:
 - An independent “Digital Service Coordinator” (DSC) in each EU Member State will be responsible for supervising the intermediary services established in the Member State and/or for coordinating with specialised sectoral authorities. The DSC can impose penalties (incl. fines) if services do not comply with the EU regulation.
 - The Commission is empowered to directly supervise very large platforms. It can impose fines of up to 6% of the global turnover of such service provider.
 - DSCs and the Commission will have the power to directly order immediate actions, if necessary, to address very serious harms;
 - Courts may – as a last resort – temporarily suspend “rogue services”, i.e. platforms that refuse compliance with important obligations, thereby endangering people’s life and safety.
- New cooperation mechanism that brings together DSCs in the “European Board for Digital Services”. The board is designed to give support by analyses, reports and recommendations and to coordinate joint investigations by DSCs.

It should be noted that the Digital Services Act will not replace or amend sector-specific legislation, such as those on copyrights in the digital single market, consumer protection rules, or the (proposed) regulation on preventing the dissemination of terrorist content online (→ [eucrim 2/2018, 97-98](#)). The DSA will set new horizontal rules covering all services and all types of illegal content, including goods or services. However, the DSA will not define what is illegal. This will remain subject to national and EU laws. The DSA rather harmonises due diligence obligations for online intermediaries.

It builds upon the [e-Commerce Directive](#) – the core legal EU framework setting the basic requirements for the functioning of the single market and the supervision of digital services. The DSA will react to the changes and challenges that have emerged since the past 20 years when the e-commerce Directive was established, particularly in relation to online intermediaries. The DSA also reacts to the meanwhile differentiated rules in the EU Member States that were meanwhile established for the protection of consumers against powerful online platforms or social media companies. This legal fragmentation affects both the ability of European service providers to scale in the single market, and on the protection and safety online of EU citizens.

The second piece of proposed legislation, **the Digital Markets Act (DMA)**, will flank the DSA. The DMA lays down rules on so-called “gatekeepers” in the digital sector. They are large companies that function as bottlenecks between business and consumers in the digital world due to their size that impacts the internal market, their ability to control an important digital gateway for business users and their (expected) entrenched and durable position. Gatekeepers could be search engines, social networking services, certain messaging services, operating systems and online intermediation services. The DMA will, *inter alia*:

- Oblige gatekeepers to take proactive action or refrain from behaviour, so that unfair practices are prevented, e.g. blocking users from un-installing any pre-installed software or apps;
- Empower the Commission to impose sanctions for non-compliance, which could include fines of up to 10% of the gatekeeper's worldwide turnover;
- Allow the Commission to carry out targeted market investigations to assess whether new gatekeeper practices and services need to be added to these rules.

The tabled legislative package was preceded by extensive public consultation. During the summer of 2020, the Commission [consulted](#) a wide range of stakeholders to seek their support whether specific issues may require an EU-level intervention in the context of the Digital Services Act and the [new competition tool](#). The open public consultations received more than 3000 replies from the whole spectrum of the digital economy and from all over the world ([à Commission's summary report](#)). The Commission provides comprehensive material on the legislative package [on its website](#), including the impact assessments of the two acts, FAQs, glossaries, and a [brochure](#) on how online platforms shape the EU citizens' life and businesses.

It is now up to the Council and European Parliament to discuss the proposal and to adopt the laws in the ordinary legislative procedure.

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