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DRAFT REPORT

with recommendations to the Commission on Digital Services Act: Improving
the functioning of the Single Market
(2020/2018(INL))

Committee on the Internal Market and Consumer Protection

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(Initiative – Rule 47 of the Rules of Procedure)

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MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

with recommendations to the Commission on a Digital Services Act: Improving the functioning of the Single Market (2020/2018(INL))

The European Parliament,

- having regard to Article 225 of the Treaty on the Functioning of the European Union,
 - having regard to its resolution of 21 September 2010 on completing the internal market for e-commerce¹,
 - having regard to the communication from the Commission of 19 February 2020, entitled “Shaping Europe's digital future” (COM (2020)0067),
 - having regard to the commitments made by commissioner-designate, Thierry Breton, before the European Parliament on 14 November 2019,
 - having regard to Rules 47 and 54 of its Rules of Procedure,
 - having regard to the opinions of the Committee on Transport and Tourism, Committee on Culture and Education, Committee on Legal Affairs and Committee on Civil Liberties, Justice and Home Affairs,
 - having regard to the report of the Committee on the Internal Market and Consumer Protection (A9-0000/2020),
- A. whereas e-commerce influences the everyday lives of people, businesses and consumers in the Union, and when operated in a fair and regulated level playing field, may contribute positively to unlocking the potential of the Digital Single Market, enhance consumer trust and provide newcomers, and in particular micro, small and medium enterprises, with new market opportunities for sustainable growth and jobs;
- B. whereas the Directive 2000/31/EC of the European Parliament and of the Council² (“the E-Commerce Directive”) has been one of the most successful pieces of Union legislation and has shaped the Digital Single Market as we know it today; whereas the E-Commerce Directive was adopted 20 years ago and no longer adequately reflects the rapid transformation and expansion of e-commerce in all its forms, with its multitude of different emerging services, providers and challenges;
- C. whereas, despite the clarifications made by the European Court of Justice, the need to go beyond the existing regulatory framework is clearly demonstrated by the fragmented approach of Member States to tackling illegal content online, by the lack of

¹ OJ C 50 E, 21.2.2012, p. 1.

² Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce') (OJ L 178, 17.7.2000, p. 1).

enforcement and cooperation between Member State, and by the inability of the existing legal framework to promote effective market entry and consumer welfare;

- D. whereas the social and economic challenges brought by the COVID-19 pandemic are showing the resilience of the e-commerce sector and its potential as a driver for relaunching the European economy; whereas, at the same time, the pandemic has also exposed serious shortcomings of the current regulatory framework which call for action at Union level to address the difficulties identified and to prevent them from happening in the future;
- E. whereas in its communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions of 19 February 2020 “Shaping Europe’s digital future”, the Commission committed itself to adopting, as part of the Digital Services Act package, new and revised rules for online platforms and information service provider; to reinforcing the oversight over platforms’ content policies in the EU; and, to looking into *ex ante* rules to ensure that large platforms with significant network effects, acting as gatekeepers, remain fair and contestable for innovators, businesses, and new market entrants;

General principles

1. Welcomes the Commission’s commitment to submit a proposal for a Digital Services Act package, and, on the basis of Article 225 of the Treaty on the Functioning of the European Union (TFEU), calls on the Commission to submit such a package on the basis of the relevant Articles of the Treaties, following the recommendations set out in the Annex hereto;
2. Recognises the importance of the legal framework set out by the E-Commerce Directive in the development of online services in the Union and in particular its internal market clause, through which home country control and the obligation on Member States to ensure the free movement of information society services have been established;
3. Considers that the main principles of the E-Commerce Directive, such as the internal market clause, freedom of establishment and the prohibition on imposing a general monitoring obligation should be maintained; underlines that the principle of “what is illegal offline is also illegal online”, as well as the principles of consumer protection and user safety, should also become guiding principles of the future regulatory framework;
4. Stresses that a future-proof, comprehensive EU-level framework and fair competition are crucial in order to promote the growth of European small-scale platforms, small and medium enterprises (SMEs) and start-ups, prevent market fragmentation and provide European businesses with a level playing field that enables them to better profit from the digital services market and be more competitive on the world stage;
5. Takes the view that a level playing field in the internal market between the platform economy and the "traditional" offline economy, based on the same rights and obligations for all interested parties - consumers and businesses - is needed; considers that social protection and social rights of workers, especially of platform or collaborative economy workers should be properly addressed in a specific instrument, accompanying the future regulatory framework;

6. Considers that the Digital Services Act should be based on public values of the Union protecting citizens' rights should aim to foster the creation of a rich and diverse online ecosystem with a wide range of online services, favourable digital environment and legal certainty to unlock the full potential of the Digital Single Market;
7. Considers that the Digital Services Act provides an opportunity for the Union to shape the central aspects of the digital economy not only at Union level but also be a standard-setter for the rest of the world;

Fundamental rights

8. Notes that information society services providers, and in particular online platforms and social networking sites - because of their wide-reaching ability to reach and influence broader audiences, behaviour, opinions, and practices - bear significant social responsibility in terms of protecting users and society at large and preventing their services from being exploited abusively.
9. Recalls that recent scandals regarding data harvesting and selling, Cambridge Analytica, fake news, political advertising and manipulation and a host of other online harms (from hate speech to the broadcast of terrorism) have shown the need to revisit the existing rules and reinforce fundamental rights;
10. Stresses that the Digital Services Act should achieve the right balance between the internal market freedoms and the fundamental rights and principles set out in the Charter of Fundamental Rights of the European Union;

Transparency and consumer protection

11. Notes that the COVID-19 pandemic has shown how vulnerable EU consumers are to misleading trading practices by dishonest traders selling fake or illegal products online that are not compliant with Union safety rules or imposing unjustified and abusive price increases or other unfair conditions on consumers;
12. Stresses that this problem is aggravated by the fact that often the identity of these companies cannot be established;
13. Considers that the current transparency and information requirements set out in the E-Commerce Directive on information society services providers and their business customers, and the minimum information requirements on commercial communications, should be substantially strengthened;
14. Calls on the Commission to require service providers to verify the information and identity of the business partners with whom they have a contractual commercial relationship, and to ensure that the information they provide is accurate and up-to-date;
15. Calls on the Commission to introduce enforceable obligations on internet service providers aimed at increasing transparency and information; considers that these obligations should be enforced by appropriate, effective and dissuasive penalties;
16. Stresses that existing obligations, set out in the E-Commerce Directive and the Directive

2005/29/EC of the European Parliament and of the Council ('Unfair Commercial Practices Directive')³ on transparency of commercial communications and digital advertising should be strengthened; points out that pressing consumer protection concerns about profiling, targeting and personalised pricing cannot be addressed by transparency obligations and left to consumer choice alone;

Artificial intelligence (AI)

17. Believes that while AI-driven services, currently governed by the E-commerce Directive, have enormous potential to deliver benefits to consumers and service providers, the new Digital Services Act should also address the challenges they present in terms of ensuring non-discrimination, transparency and explainability of algorithms, as well as liability; points out the need to monitor algorithms and to assess associated risks, to use high quality and unbiased datasets, as well as to help individuals acquire access to diverse content, opinions, high quality products and services;
18. Considers that consumers should be properly informed and their rights should be effectively guaranteed when they interact with automated decision-making systems and other innovative digital services or applications; believes that it should be possible for consumers to request checks and corrections of possible mistakes resulting from automated decisions, as well as to seek redress for any damage related to the use of automated decision-making systems;

Tackling Illegal Content Online

19. Stresses that the existence and spread of illegal content online is a severe threat that undermines citizens' trust and confidence in the digital environment, and which also harms the economic development of healthy platform ecosystems in the Digital Single Market and severely hampers the development of legitimate markets for digital services;
20. Notes that there is no 'one size fits all' solution to all types of illegal and harmful content and cases of misinformation online; believes, however, that a more aligned approach at Union level, taking into account the different types of content, will make the fight against illegal content more effective;
21. Considers that voluntary actions and self-regulation by online platforms across Europe have brought some benefits, but additional measures are needed in order to ensure the swift detection and removal of illegal content online;
22. Calls on the Commission to address the increasing differences and fragmentations of national rules in the Member States and to propose concrete legislative measures including a notice-and-action mechanism, that can empower users to notify online intermediaries of the existence of potentially illegal online content or behaviour; is of the opinion that such measures would guarantee a high level of users' and consumers'

³ Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council (OJ L 149, 11.6.2005, p. 22).

protection while promoting consumer trust in the online economy;

23. Stresses that maintaining safeguards from the legal liability regime for hosting intermediaries with regard to user-uploaded content and the general monitoring prohibition set out in Article 15 of the E-Commerce Directive are still relevant and need to be preserved;

Online marketplaces

24. Notes that while online platforms, such as online market places, have benefited both retailers and consumers by improving choice and lowering prices, at the same time, they have allowed sellers, in particular from third countries, to offer products which often do not comply with Union rules on product safety and do not sufficiently guarantee consumer rights;
25. Stresses that it is unacceptable that Union consumers are exposed to illegal and unsafe products, containing dangerous chemicals, as well as other safety hazards;
26. Calls on the Commission to remedy the current legal loophole which allows suppliers established outside the Union to sell products online to European consumers which do not comply with Union rules on safety and consumer protection, without being sanctioned or liable for their actions and leaving consumers with no legal means to enforce their rights or being compensated by any damages;

Ex ante regulation of systemic platforms

27. Notes that, today, some markets are characterised by large platforms with significant network effects which are able to act as *de facto* “online gatekeepers” of the digital economy;
28. Considers that by reducing barriers to market entry and by regulating large platforms, an internal market instrument imposing *ex-ante* regulatory remedies on these large platforms has the potential to open up markets to new entrants, including SMEs and start-ups, thereby promoting consumer choice and driving innovation beyond what can be achieved by competition law enforcement alone;

Supervision, cooperation and enforcement

29. Believes that, in view of the cross-border nature of digital services, effective supervision and cooperation between Member States is key to ensuring the proper enforcement of the Digital Services Act;
30. Considers that a central regulatory authority should be established which should be responsible for the oversight and compliance with the Digital Services Act and have supplementary powers to tackle cross-border issues; it should be entrusted with investigation and enforcement powers;
31. Takes the view that the central regulatory authority should prioritise cooperation between Member States to address complex cross-border issues by working in close cooperation with a network of independent National Enforcement Bodies (NEBs);

32. Calls on the Commission to strengthen and modernise the current provisions on out-of-court settlement and court actions to allow for an effective enforcement and consumer redress;

Final aspects

33. Instructs its President to forward this resolution and the accompanying detailed recommendations to the Commission, the Council, and to the parliaments and governments of the Member States.

ANNEX TO THE MOTION FOR A RESOLUTION: RECOMMENDATIONS AS TO THE CONTENT OF THE PROPOSAL REQUESTED

I. GENERAL PRINCIPLES

The Digital Services Act should contribute to the strengthening of the internal market by ensuring the free movement of digital services, while at the same time guaranteeing a high level of consumer protection, including the improvement of users' safety online;

The Digital Services Act should guarantee that online and offline economic activities are treated equally and on a level playing field which fully reflects the principle that “what is illegal offline is also illegal online”;

The Digital Services Act should provide consumers and economic operators, especially micro, small and medium-sized enterprises, with legal certainty and transparency;

The Digital Services Act should respect the broad framework of fundamental European rights of users and consumers, such as the protection of privacy, non-discrimination, dignity, fairness and free speech;

The Digital Services Act should build upon the rules currently applicable to online platforms, namely the E-Commerce Directive and the Platform to Business Regulation¹.

The Digital Single Act package should include:

- a comprehensive revision of the E-Commerce Directive consisting of:
 - a revised framework with clear due diligence transparency and information obligations;
 - clear and detailed procedures and measures related to the removal of illegal content online, including a harmonised legally-binding European notice-and action mechanism;
 - effective supervision, cooperation and sanctions;
- an internal market legal instrument imposing *ex-ante* obligations on large platforms with a gatekeeper role in the digital ecosystem, complemented by an effective institutional enforcement mechanism.

II. SCOPE

In the interest of legal certainty, the Digital Services Act should clarify which digital services fall within its scope. The new legal act should follow the horizontal nature of the E-Commerce Directive and apply not only to online platforms but to all digital services, which are not covered by specific legislation;

The territorial scope of the future Digital Services Act should be extended to cover also the activities of companies and service providers established in third countries, when they offer

¹ Regulation (EU) 2019/1150 of the European Parliament and of the Council of 20 June 2019 on promoting fairness and transparency for business users of online intermediation services (OJ L 186, 11.7.2019, p. 57).

services or goods to consumers or users in the Union;

The Digital Services Act should maintain the derogation set out in the Annex of the E-Commerce Directive and, in particular, the derogation of contractual obligations concerning consumer contracts;

The Digital Services Act should maintain the possibility for Member States to set a higher level of consumer protection and pursue legitimate public interest objectives in accordance with EU law;

The Digital Services Act should define in a coherent way how its provisions interact with other legal instruments, aiming at facilitating free movement of services, in order to clarify the legal regime applicable to professional and non-professional services in all sectors, including activities related to transport services and short-term rentals, where clarification is needed;

The Digital Services Act should also clarify in a coherent way how its provisions interact with recently adopted rules on geo-blocking, product safety, and consumer protection among others;

The Digital Services Act should apply without prejudice to the rules set out in other instruments, such as the General Data Protection Regulation² (“GDPR”), the Copyright Directive³ and the Audio Visual Media Services Directive⁴.

III. DEFINITIONS

In its definitions, the Digital Services Act should:

- clarify to what extent “new digital services”, such as social media networks, collaborative economy services, search engines, wifi hotspots, online advertising, cloud services, content delivery networks, and domain name services fall within the scope of the Digital Services Act;
- clarify the nature of the content hosting intermediaries (text, images, video, or audio content) on the one hand, and commercial online marketplaces (selling physical goods) on the other;

² Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

³ Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC (OJ L 130, 17.5.2019, p. 92).

⁴ Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) (OJ L 95, 15.4.2010, p. 1).

- clearly distinguish between commercial activities and content or transactions provided against remuneration, which also cover advertising and marketing practices on the one hand, and non-commercial activities and content on the other;
- clarify of what falls within the remit of the "illegal content" definition making it clear that a violation of EU rules on consumer protection, product safety or the offer or sale of food or tobacco products and counterfeit medicines, also falls within the definition of illegal content;
- define "systemic operator" by establishing a set of clear economic indicators that allow regulatory authorities to identify platforms with a "gatekeeper" role playing a systemic role in the online economy; such indicators could include considerations such as whether the undertaking is active to a significant extent on multi-sided markets, the size of its network (number of users), its financial strength, access to data, vertical integration, the importance of its activity for third parties' access to supply and markets, etc.

IV. DUE DILIGENCE OBLIGATIONS

The Digital Services Act should introduce clear due diligence transparency and information obligations; those obligations should not create any derogations or new exemptions to the current liability regime and the secondary liability set out under Articles 12, 13, and 14 of the E-Commerce Directive and should cover the aspects described below:

1. General information requirements

The revised provisions should strengthen the general information requirements with the following requirements:

- the information requirements in Article 5 of the E-Commerce Directive should be reinforced and the "Know Your Business Customer" principle should be introduced; services providers should verify the identity of their business partners, including their company registration number or any equivalent means of identification including, if necessary, the verified national identity of their ultimate beneficial owner; that information should be accurate and up-to-date, and service providers should not be allowed to provide their services when the identity of their business customer is false, misleading or otherwise invalid;
- that measure should apply only to business-to-business relationships and should be without prejudice to the rights of users under the GDPR, as well as the right to internet anonymity or being an unidentified user; the new general information requirements should review and further enhance Articles 5 and 10 of the E-Commerce Directive in order to align those measures with the information requirements established in recently adopted legislation, in particular the Unfair Contract Terms Directive⁵, the Consumer

⁵ Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts, most recently amended by Directive (EU) 2019/2161 of the European Parliament and of the Council of 27 November 2019 amending Council Directive 93/13/EEC and Directives 98/6/EC, 2005/29/EC and 2011/83/EU of the European Parliament and of the Council as regards the better enforcement and modernisation of Union consumer

Rights Directive and the Platform to Business Regulation.

2. Fair contract terms and general conditions

The Digital Services Act should require service providers to adopt fair and transparent contract terms and general conditions in compliance with at least the following requirements:

- to expressly set out in their contract terms and general conditions that service providers will not store illegal content;
- explicitly mentioning in the contract terms and general conditions what is to be understood as illegal content according to the Union or national law applicable to the service(s) being provided;
- to define clear, and unambiguous contract terms and general conditions in a plain and intelligible language;
- to ensure that the contract terms and general conditions comply with these and all information requirements established by Union law, including the Unfair Contract Terms Directive, the Consumer Rights Directive and the GDPR;
- to specify clearly and unambiguously in their contract terms and general conditions the exact parameters of their AI systems and how they can affect the choice or behaviour of their users and the reasons and importance of those parameters as opposed to other parameters.

3. Transparency requirements on commercial communications

- The revised provisions should strengthen the current transparency requirements regarding commercial communications by establishing the principles of transparency-by-design and transparency-by-default;
- Building upon Article 6 of the E-Commerce Directive, the new measures should establish a new framework for Platform to Consumer relations on transparency provisions regarding advertising, digital nudging and preferential treatment; paid advertisements or paid placement in a ranking of search results should be identified in a clear, concise, and intelligible manner;
- The transparency requirements should include the obligation to disclose who is paying for the advertising, including both direct and indirect payments or any other contributions received by service providers; those requirements should apply also to platforms, even if they are established in third countries; consumers and public authorities should be able to identify who should be held accountable in case of, for example, false or misleading advertisement;
- Article 7 of the E-Commerce Directive should be revised in order to protect consumers from unsolicited commercial communications online.

protection rules (OJ L 328, 18.12.2019, p. 7).

4. Artificial Intelligence and machine learning

The revised provisions should:

- establish comprehensive rules on non-discrimination, transparency, oversight and risk assessment of algorithms for AI-driven services in order to ensure a higher level of consumer protection;
- establish clear accountability, liability and redress mechanisms to deal with potential harms resulting from the use of AI applications and machine learning tools;
- establish the principle of safety and security by default;

5. Penalties

The compliance of the due diligence provisions should be reinforced with effective, proportionate and dissuasive penalties, including the imposition of fines.

V. MEASURES RELATED TO TACKLING ILLEGAL CONTENT ONLINE

The Digital Services Act should provide clarity and guidance regarding how online intermediaries should tackle illegal content online. The revised rules of the E-Commerce Directive should:

- clarify that any removal or disabling access to illegal content should not affect the fundamental rights and the legitimate interests of users and consumers;
- enhance the central role played by online intermediaries in facilitating the public debate and the free dissemination of facts, opinions, and ideas;
- preserve the underlying legal principle that online intermediaries should not be held directly liable for the acts of their users and that online intermediaries can continue moderating legal content under fair and transparent terms and conditions of service, provided that they are applicable in a non-discriminatory manner;
- introduce new transparency and independent oversight of the content moderation procedures and tools related to the removal of illegal content online; such systems and procedures should be available for auditing and testing by independent authorities.

1. A notice-and-action mechanism

The Digital Services Act should establish a harmonised and legally enforceable notice-and-action mechanism based on a set of clear processes and precise timeframes for each step of the notice-and-action procedure. That notice-and-action mechanism should:

- apply to illegal online content or behaviour;
- rank different types of providers, sectors and/or illegal content;
- create easily accessible, reliable and user-friendly procedures;
- allow users to easily notify by electronic means potentially illegal online content or behaviour to online intermediaries;
- clarify, in an intelligible way, existing concepts and processes such as “expeditious action”, “actual knowledge and awareness”, “targeted actions”, “notices' formats”, and “validity of notices”;

- guarantee that notices will not automatically trigger legal liability nor should they impose any removal requirement, for specific pieces of the content or for the legality assessment;
- specify the requirements necessary to ensure that notices are of a good quality, thereby enabling a swift removal of illegal content; such requirement should include the name and contact details of the notice provider, the link (URL) to the allegedly illegal content in question, the stated reason for the claim including an explanation of the reasons why the notice provider considers the content to be illegal, and if necessary, depending on the type of content, additional evidence for the claim;
- allow for the submission of anonymous complaints;
- consider, when a complaint is not anonymous, a declaration of good faith that the information provided is accurate;
- set up safeguards to prevent abusive behaviour by users who systematically and repeatedly and with *mala fide* submit wrongful or abusive notices;
- create an obligation for the online intermediaries to verify the notified content and reply to the notice provider and the content uploader with a reasoned decision;
- provide remedies to contest the decision via a counter-notice, including if the content has been removed via automated solutions, unless such a counter-notice would conflict with an ongoing investigation by law enforcement authorities.

2. Out-of-court dispute settlement related with the notice-and-action mechanisms

- The decision taken by the online intermediary on whether or not to act upon content flagged as illegal should contain a clear justification on the actions undertaken regarding that specific content. The notice provider, where identifiable, should receive a confirmation of receipt and a communication indicating the follow-up given to the notification.
- The providers of the content that is being flagged as illegal should be immediately informed of the notice and, that being the case, of the reasons and decisions taken to remove or disable access to the content; all parties should be duly informed of all existing available legal options and mechanisms to challenge this decision;
- All interested parties should have the right to contest the decision through a counter-notice and by having recourse to out-of-court dispute settlement mechanism; to this end, the rules of Article 17 of the E-Commerce Directive should be revised.
- If the redress and counter-notice have established that the notified activity or information is not illegal, the online intermediary should restore the content that was removed without undue delay or allow for the re-upload by the user, without prejudice to the platform's terms of service.
- The out-of-court dispute settlement mechanisms should in no way affect the rights of the parties involved to initiate legal proceedings.

3. Transparency of the notice-and-action mechanism

The notice-and-action mechanisms should be transparent and available to any interested party; to that end, online intermediaries should be obliged to publish annual reports with information on:

- the number of all notices received under the notice-and-action system and the types of content they relate to;

- the type of entities that issued the notices (private individuals, organisations, corporations, trusted flaggers, etc.) and the total number of their notices;
- information about the nature of content's illegality or type of infringement for which it was removed;
- the number of contested decisions received by online intermediaries and how they were handled;
- the description of the content moderation model applied by the hosting intermediary, as well as any algorithmic decision making which influences the content moderation process.

4. Safe harbour provisions in Article 12, 13 and 14 of the E-Commerce Directive

The Digital Services Act should protect and uphold the current limited exemptions from secondary liability for information society service providers (online intermediaries) provided for in Article 12, 13, and 14 of the current E-Commerce Directive.

5. Active and Passive hosts

The Digital Services Act should address the lack of legal certainty regarding the concept of active vs passive hosts. The revised measures should clarify if interventions by hosting providers having editorial functions and a certain “degree of control over the data,” through tagging, organising, promoting, optimising, presenting or otherwise curating specific content for profit-making purposes and which amounts to adoption of the third-party content as one’s own (as judged by average users or consumers) should lead to a loss of safe harbour provisions due to their active nature.

6. Ban on General Monitoring - Article 15 of the E-Commerce Directive

The Digital Services Act should maintain the ban on general monitoring obligation under Article 15 of the current E-Commerce Directive. Online intermediaries should not be subject to general monitoring obligations.

VI. ONLINE MARKET PLACES

The Digital Services Act should propose specific rules for online market places for the online sale of products and services to consumers.

Those new rules should:

- cover all entities that offer services and/or products to consumers in the Union, including if they are established outside the Union;
- distinguish online marketplaces from other types of service providers, including other ancillary intermediation activities within the same company activity; if one of the services provided by a company fulfils the criteria necessary to be considered as a marketplace, the rules should fully apply to that part of the business regardless of the internal organisation of that company;
- ensure that online marketplaces make it clear in which country the products or services are being provided, regardless whether they are provided by that marketplace, a third party or a seller established inside or outside the Union;

- ensure that online marketplaces remove any misleading information given by the supplier or by customers, including misleading guarantees and statements made by the supplier;
- once products have been identified as unsafe by the Union’s rapid alert systems or by consumer protection authorities, it should be compulsory to remove products from the marketplace within 24 hours;
- oblige online marketplaces to inform consumers of any safety issues and of any action required to ensure that recalls are carried out effectively;
- address the liability for the online marketplaces when platforms have predominant influence over suppliers and essential elements of the economic transactions such as payment means, prices, default terms conditions, or conduct aimed at facilitating the sale of goods to a consumer on the European market, and there is no manufacturer, importer, or distributor established in the Union that can be held liable;
- address the liability for online marketplaces if the online marketplace has not informed the consumer that a third party is the actual supplier of the goods or services, thus making the marketplace contractually liable vis-à-vis the consumer; liability should also be considered in case the marketplace provides misleading information, guarantees, or statements;
- explore expanding the commitment made by some e-commerce retailers and the Commission to remove dangerous products from sale more rapidly under the voluntary commitment scheme called “Product Safety Pledge” and indicate which of those commitments could become mandatory.

VII. EX-ANTE REGULATION OF SYSTEMIC PLATFORMS

The Digital Services Act should put forward a proposal to ensure that the systemic role of specific online platforms will not endanger the internal market by unfairly excluding innovative new entrants, including SMEs.

To that end, the Digital Services Act should, in particular:

- set up an *ex-ante* mechanism to prevent (instead of merely remedy) unfair market behaviour by “systemic platforms” in the digital world, building on the Platform to Business Regulation; such mechanism should allow regulatory authorities to impose remedies on these companies in order to address market failures, without the establishment of a breach of regulatory rules;
- empower regulatory authorities to issue orders prohibiting undertakings, which have been identified as “systemic platforms”, from the following practices, inter alia: discrimination in intermediary services; making the use of data for making market entry by third parties more difficult; and engaging in practices aimed at locking-in consumers; undertakings should be given the possibility to demonstrate that the behaviour in question is justified, yet they should bear the burden of proof for this;

- clarify that some regulatory remedies should be imposed on all "systemic platforms" without the need for a decision by a regulatory authority, such as prohibition for "systemic platforms" to engage in self-preferencing or in any practices aimed at making it more difficult for consumers to switch suppliers, or other forms of discrimination that exclude or disadvantage other businesses;
- empower regulatory authorities to adopt interim measures and to impose fines on "systemic platforms" that fail to respect the different regulatory obligations imposed on them;
- ensure that the rights, obligations and principles of the GDPR – including data minimisation, purpose limitation, data protection by design and by default, legal grounds for processing – must be observed;
- impose high levels of interoperability measures requiring "systemic platforms" to share appropriate tools, data, expertise, and resources deployed in order to limit the risks of users and consumers' lock-in and the artificially binding users to one systemic platform with no possibility or incentives for switching between digital platforms or internet ecosystems. As part of those measures, the Commission should explore different technologies and open standards and protocols, including the possibility of a mechanical interface (Application Programming Interface) that allows users of competing platforms to dock on to the systemic platform and exchange information with it.

VIII. SUPERVISION, COOPERATION AND ENFORCEMENT

The Digital Services Act should strengthen the internal market clause as the cornerstone of the Digital Single Market by complementing it with a new cooperation mechanism aimed at improving the cooperation and mutual assistance between Member States, in particular between the home country where the service provider is established and the host country where the provider is offering its services.

The supervision and enforcement the Digital Services Act should be improved by the creation of central regulatory authority who should be responsible for overseeing compliance with the DSA and improve external monitoring, verification of platform activities, and better enforcement.

The central regulatory authority should prioritise cooperation between the Member States to address complex cross-border issues; to that end, it should work together with the network of independent NEBs and have detailed and extensive enforcement powers to launch initiatives and investigations into cross-border systemic issues.

The central regulator should coordinate the work of the different authorities dealing with illegal content online, enforce compliance, fines, and be able to carry out auditing of intermediaries and platforms.

The central regulator should report to the Union institutions and maintain a 'Platform Scoreboard' with relevant information on the performance of online platforms.

The Digital Services Act should also introduce new enforcement elements into Article 16 of the E-Commerce Directive regarding self-regulation.

EXPLANATORY STATEMENT

It is important to recognise the essential role of the e-Commerce Directive in boosting e-commerce in Europe. Since its adoption in 2000, the Directive has become the cornerstone of the Digital Single Market, which, with the increasing digitization of the economy and the society, should now underpin the whole internal market project.

However, 20 years later, new economic opportunities and challenges have emerged. New rules related to the provision of Information Society Services have been adopted to address existing uncertainties and challenges. As well as many new digital services have evolved beyond the existing EU legal framework and despite attempts of the Court of Justice to fill in some of the present legal gaps.

In the context of the Commission's commitment to present a new Digital Services Act package, this report aims to provide indications for the IMCO Committee of the European Parliament on the reform of the e-Commerce Directive, and the specific recommendations on the critical elements of such reform and the possible scope and content of the future Digital Services Act announced by the Commission in its Digital Strategy Communication of February 2020.

The Rapporteur has endeavoured to consult stakeholders as widely and transparently as possible in order to ensure that the report tackles real problems and to limit unnecessary unintended consequences.

The Rapporteur recommends maintaining the founding principles of the E-Commerce, wherever there is insufficient evidence to justify changing it, such as the internal market clause and the exemption of liability for illegal online content in favour of some platforms and under some conditions.

However, given the increasing importance of online platforms and as a result from exchanges of views held with experts and stakeholders, the Rapporteur observes the need to ensure better consumer protection and to address the risks of fragmentation of the digital single market.

On the basis of the Rapporteur's assessment of the E-Commerce Directive, the Rapporteur proposes some improvements to the Directive and specific suggestions for the future provisions in the DSA. The recommendations are presented into a number of main building blocks.

General principles

The Rapporteur proposes to use an approach to build the DSA upon the rules currently applicable to digital services, namely the E-Commerce Directive and the Platform to Business Regulation.

He is also of the opinion that main principles of the E-Commerce Directive, such as the internal market clause, freedom of establishment and the prohibition to impose general monitoring obligation need to be complemented with the principles, of "what is illegal offline is also illegal online," as well as consumer protection and users' safety.

Scope

The Rapporteur proposes that the DSA should cover all digital services, and not only focus on online platforms. It should also cover companies which are not established in the EU, but provide their services to EU consumers.

Definitions

The definitions, which determine the scope of the ECD, proved to be **robust over time** and applicable to different digital business models. However, some clarity is needed when it comes to new digital services, and the Rapporteur proposes to clarify the existing definitions in the E-Commerce Directive and when needed, introduce new elements to fill in the existing gaps.

Due diligence obligations

The Rapporteur proposes that the Digital Services Act should introduce clear due diligence transparency and information obligations. The new elements should improve the general information requirements, introduce **fair contract terms and general conditions, and strengthen the transparency requirements on commercial communications**. Those measures should be reinforced with effective, proportionate, and dissuasive penalties.

Artificial intelligence

The Rapporteur considers that issues, related to AI-driven services, such as transparency, accountability, risk assessment and liability should be properly addressed in the DSA, in order to ensure a high level of consumer protection.

Tackling Illegal Content Online

The Rapporteur believes that the Digital Services Act should provide clarity and guidance regarding tackling illegal content online.

Given its success, the logic of the **liability safe harbours** for the digital platforms currently covered by the ECD (art 12-14: mere conduit, caching and hosting), as well as article 15, should be maintained. To improve the efficiency of the rules, a complete framework for a **notice-and-action process** with detailed provisions on the exchange of notifications and their evaluation should be included in the DSA.

The Rapporteur has supported this approach and developed detailed recommendations on the precise rights, obligations, processes, and time frames for each step of the notice-and-action procedure.

The Rapporteur further believes that a more aligned approach at European level, taking into account the different types of content, will make the fight against illegal content more effective and to this end he also suggest on the Commission to clarify the diverging application and criterion of the active and passive hosting providers.

Last but not least, the Rapporteur believes that fundamental rights should be protected more effectively by introducing several safeguards against frequent over-removal of legitimate content, such as transparency concerning content removals, their processing, mistakes, actors and notifications and introducing the possibility of adopting Out-of-court dispute settlement mechanism to help resolve complaints of affected users.

Online marketplaces

The Rapporteur believes that several improvements can be made to the DSA package regarding online market places, which can facilitate the sale and distribution of illegal and unsafe products that do not comply with EU rules on product safety and do not sufficiently guarantee consumer rights.

***Ex-ante* regulation of systemic platforms**

The Rapporteur considers that the Commission should put forward a proposal under the DSA package to ensure that the systemic role of specific online platforms will not endanger the internal market by unfairly excluding innovative market entrants, including SMEs. Large platforms with significant network effects that are able to act as *de facto* "online gatekeepers" should have special responsibilities.

Supervision and cooperation

The Rapporteur believes that given the cross-border nature of digital services, effective supervision and cooperation between the Member States is vital to ensure the proper enforcement of the new legal framework and, to this end, suggests the creation of a European body and a Network of Enforcement Bodies (NEB).

Such an approach requires, on the one hand, a harmonisation of the main rules aimed to protect users and, on the other hand, cooperation and mutual assistance between the competent authorities of the Member States in charge of enforcing the rules.