Digital Services Act: Improving the functioning of the Single Market

2020/2018(INL) - 20/10/2020 - Text adopted by Parliament, single reading

The European Parliament adopted a resolution with 571 votes to 26, with 94 abstentions, with recommendations to the Commission on the Digital Services Act: Improving the functioning of the Single Market.

Parliament welcomed the Commission's commitment to propose legislation on digital services consisting of a proposal amending the E-Commerce directive and a proposal establishing ex ante rules on systemic operators with a gatekeeper role.

General principles

Parliament recommended that the proposed package:

- contributes to strengthening the internal market by ensuring the free movement of digital services and freedom of establishment, while guaranteeing a high level of consumer protection, including the improvement of users' online rights, trust and safety online;

- ensures that online and offline economic activities are treated equally that they are on a level playing field, which fully reflects the principle according to which ‘what is illegal offline is also illegal online’;

- ensures legal certainty and transparency for consumers and economic operators, in particular SMEs;

- respects the broad framework of fundamental rights and freedoms of users and consumers, such as the protection of privacy and personal data, non-discrimination, dignity, freedom of expression and the right to an effective judicial remedy.

Future legislation on digital services should also cover the activities of companies, service providers and information society services established in third countries, where their activities are related to the offer of services or goods to consumers or users in the European Union.

The revised legislation should be based on the following elements:

Clear obligations regarding transparency and information

The COVID-19 pandemic has shown how vulnerable EU consumers are to misleading trading practices by dishonest traders selling illegal products online that are not compliant with Union safety rules and other unfair conditions on consumers. In order to strengthen consumer protection, Parliament proposed, *inter alia*, to:

- introduce the ‘know your business customer’ principle for business users, which would require platforms to monitor fraudulent businesses and prevent them from using their services to sell their illegal and dangerous products and content;

- establish minimum standards for service providers to adopt fair, accessible, non-discriminatory and transparent contractual terms and conditions;

- establish a new framework for the relationship between platforms and consumers regarding transparency with regard to online advertising, digital nudging, micro targeting, advertising recommendation systems and preferential treatment;

- guarantee the right of consumers: (i) to be informed when a service uses artificial intelligence (AI); automated decision-making or machine learning tools, or automated content recognition tools; (ii) not to be subject to a decision based exclusively on automated processing and; (iii) to have the possibility to refuse, limit or personalise the use of any AI-enabled personalisation features, in view of ranking of services;

- ensure risk assessment of algorithms by competent authorities, as well as human control of decision-making, in order to ensure a higher level of consumer protection, while guaranteeing respect for user privacy and trade secrets.

Parliament also called for specific new rules for online markets concerning the online sale, promotion or provision of products and services to consumers.

Tackling illegal content online

The revised legislation should: (i) provide guidance on how online intermediaries should tackle illegal content online; (ii) establish a legally binding harmonised notification and action procedure based on a clear set of procedures, and set out a clear timetable for each step of the procedure.

This notification and action procedure should enable users to easily notify online intermediaries, by electronic means, of potentially illegal online content or conduct. The procedures should be transparent and publicly accessible. The legal liability regime should concern only illegal content only as defined in Union or national law.

Ex-ante regulation of systemic operators

The digital services act should present a proposal for a new, separate instrument to ensure that the systemic role of specific online platforms will not undermine the internal market by unfairly excluding innovative new entrants, including SMEs, entrepreneurs and start-ups, thereby reducing consumer choice.

To this end, the legislation should set up an ex-ante mechanism to avoid (rather than merely remedy) market failures caused by digital ‘systemic operators’. This mechanism should allow regulators to impose remedies on systemic operators to address market failures without infringing competition rules.

Fundamental rights and freedoms

Parliament emphasised the protection and promotion of freedom of expression, as well as the importance of diversity of opinion, information, press, media and artistic and cultural expressions. It stressed that the fundamental rights of consumers and users, including those of minors, should be protected in the context of online advertising, as well as against behavioural manipulation and discriminatory practices. It also stressed the importance of end-to-end encryption of data, which is both essential to ensure trust in and security on the Internet and effective in preventing unauthorised access by third parties.

Lastly, legislation should provide for effective supervision, cooperation and proportionate, effective and dissuasive penalties, including fines.