Digital Services Act: adapting commercial and civil law rules for commercial entities operating online

2020/2019(INL) - 20/10/2020 - Text adopted by Parliament, single reading

The European Parliament adopted by 637 votes to 26, with 28 abstentions, a resolution with recommendations to the Commission on a Digital Services Act: adapting commercial and civil law rules for commercial entities operating online.

Parliament called on the Commission to present without delay a package of legislative proposals constituting a digital services act with an adequate material, personal and territorial scope, defining the key concepts and including the recommendations made in its resolution.

Digital services act

The new digital services act should include a Regulation establishing contractual rights for content management, setting transparent, fair, binding and uniform standards and procedures for content moderation, and ensuring independent and affordable access to judicial redress.

The requested proposal for a Regulation should apply to platforms that host and manage content accessible to the public on websites or through applications within the Union, irrespective of their place of establishment or registration or their principal place of business.

Content moderation principles

Parliament stressed the need to better protect consumers by providing reliable and transparent information on examples of malpractice, such as misleading claims and scams. It considered that the that the use of targeted advertising must be regulated more strictly in favour of less intrusive forms of advertising that do not require any tracking of user interaction with content and that being shown behavioural advertising should be conditional on users' freely given, specific, informed and unambiguous consent.

Furthermore, the proposed Regulation should prohibit content moderation practices which are discriminatory, in particular against the most vulnerable persons, and should respect at all times the fundamental rights and freedoms of users, in particular freedom of expression.

Content hosting platforms should:

- be accountable for ensuring that their content management practices are fair, transparent and proportionate;

- provide users with sufficient information on their content curation profiles and the individual criteria according to which content hosting platforms curate content for them, including information as to whether algorithms are used and their objectives;

- provide users with an appropriate degree of influence over the curation of content made visible to them, including the choice of opting out of content curation altogether.

Transparency obligations

The proposed Regulation should oblige digital service providers to take the necessary measures to allow the disclosure of the funding of any interest groups with which the users of the providers' digital services are associated, thus enabling the person who is legally responsible to be identified.

Commercial digital service providers who are established outside the Union should designate a legal representative for the purposes of user interests within the Union and make the contact information of that representative visible and accessible on their online platforms.

Notice procedures

Content hosting platforms should include in their terms and conditions clear, accessible, intelligible and unambiguous information regarding notice procedures.

Upon a notice being issued, and before any decision on the content has been made, the uploader of the content in question should receive the reason for the notice. All parties concerned should be informed of the decision resulting from a notification. Content hosting platforms should act expeditiously to make unavailable or remove content which is manifestly illegal.

Independent dispute settlement

Parliament recommended that Member States should provide independent dispute settlement bodies for the purpose of providing quick and efficient extra-judicial recourse when decisions on content moderation are appealed against.

In order to protect anonymous publications and the general interest, not only the user who uploaded the content that is the subject of a dispute but also a third party, such as an ombudsperson,

with a legitimate interest in acting should be able to challenge content moderation decisions. Users should have the right to take legal action at a later stage.

Reports

Members proposed that the platforms should: (i) submit detailed transparency reports to the European entity on a regular basis, based on a consistent methodology and assessed in the light of performance indicators, including on their content policies and (ii) publish these reports and their content management policies in an accessible manner in a publicly accessible database.

Smart contracts and blockchains

The Commission is called on to assess the development and use of distributed ledger technologies, including blockchain and, in particular, of smart contracts, provide guidance to ensure legal certainty for business and consumers, in particular regarding questions of legality, enforcement of smart contracts in cross border situations, and notarisation requirements where applicable, and make proposals for the appropriate legal framework.