Digital Services Act

2020/0361(COD) - 05/07/2022 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 539 votes to 54 with 30 abstentions a legislative resolution on the proposal for a regulation of the European Parliament and of the Council on a single market for digital services (Digital Services Legislation) and amending Directive 2000/31/EC.

The European Parliament's position adopted at first reading under the ordinary legislative procedure amends the Commission's proposal as follows:

Purpose and scope

The objective of the Regulation is to contribute to the smooth functioning of the internal market for intermediary services by establishing **harmonised rules for a safe, predictable and trustworthy online environment** that facilitates innovation, in which the fundamental rights enshrined in the Charter, in particular the principle of consumer protection, are effectively protected.

The draft legislation on digital services **clearly defines the responsibilities and obligations of intermediary service providers**, in particular online platforms, such as social media and marketplaces. It will apply to intermediary services provided to service recipients whose place of establishment or residence is in the EU, irrespective of the place of establishment of the service providers.

The obligations introduced are **proportionate to the nature of the services concerned and tailored to the number of users**, which means that very large online platforms and very large online search engines (with more than 45 million active users per month in the EU) will be subject to more stringent requirements. Micro and small businesses will be exempted from certain obligations under the legislation.

Measures and protection against misuse

The legislation on digital services combines the concept of 'illegal content' with the general idea that 'what is illegal offline should also be illegal online'. The measures include clearly defined procedures for removing illegal products, services and content online.

The provider must, as soon as it has actual knowledge or is informed of illegal activity or content, **act swiftly to remove or disable access to such content** while respecting the fundamental rights of the recipients of the service, including the right to freedom of expression and information.

All hosting service providers will put in place easily accessible and user-friendly notification and action mechanisms which allow easy notification to the hosting service provider concerned of specific items of information which the notifying party considers to be illegal content.

Following this notification, the provider can decide whether or not it agrees with this assessment and whether or not it wishes to remove or disable access to the content.

The hosting service provider will inform the person or entity that notified the specific content without undue delay after having taken a decision on the follow-up to the notification.

Traceability of traders

Online platforms allowing consumers to conclude distance contracts with traders will ensure that traders can only use their services to promote messages on or to offer products or services to consumers located in the Union if, prior to the use of their services for those purposes, have obtained the following information, where applicable: (i) the name, address, telephone number and electronic mail address of the trader; (ii) a copy of the trader's identification document; (iii) the payment account details of the trader; (iv) the trade register in which the trader is registered and its registration number or equivalent means of identification in that register; (v) a self-certification by the trader.

Prior to allowing the trader concerned to use its services, the provider of the online platform will, make best efforts to assess whether the information is reliable and complete. Where the professionals concerned do not provide this information within 12 months, the providers will suspend the services provided to these professionals until the information in question is obtained.

Right to information

Where a provider of an online platform, allowing consumers to conclude distance contracts with traders becomes aware irrespective of the means used, of an **illegal product or service offered by a trader to consumers located in the Union** through the use of its services, it will, insofar as it has their contact details, inform the consumers that purchased the product or service using its service during the last six months from the moment that the provider became aware, about the illegality, the identity of the trader and any relevant means of redress.

Advertising on online platforms

Providers of online platforms that present advertising on their online interfaces will ensure that service recipients can identify, for each specific advertisement presented to each individual recipient, in a **clear, concise, unambiguous manner and in real-time manner**:

- that the information presented is an advertisement, including through prominent markings;

- identify the natural or legal person on whose behalf the advertisement is presented and identify the natural or legal person who paid for the advertisement;

- obtain relevant information concerning the main parameters used to determine the recipient to whom the advertisement is presented and, where appropriate, how these parameters can be changed. The information should be directly and easily accessible from the advertisement.

Providers of online platforms will not present advertising to recipients of services based on **profiling** using special categories of sensitive data.

Dark patterns

For online platforms and interfaces covered by the digital services act, the co-legislators have agreed to prohibit misleading interfaces known as 'dark patterns' and practices aimed at misleading users.

Recommender system transparency

Providers of online platforms that use recommender systems will set out in their terms and conditions, in plain and intelligible language, the main parameters used in their recommender systems, as well as any options for the recipients of the service to modify or influence those **main parameters**.

Transparency requirements for the parameters of recommender systems have been introduced in order to improve information for users and any choices they make. Very large online platforms and search engines will have to offer users a system for recommending content that is **not based on their profiling**.

Crisis mechanism

In the context of the Russian aggression in Ukraine and the particular impact on the manipulation of online information, a new article has been added to the text introducing a crisis response mechanism.

This mechanism will be activated by the Commission on the recommendation of the board of national Digital Services Coordinators. It will make it possible to analyse the impact of the activities of very large online platforms and search engines on the crisis in question and decide on proportionate and effective measures to be put in place for the respect of fundamental rights.

Protection of minors online

Providers of online platforms accessible to minors will have to put in place measures to ensure a high level of protection of the privacy, safety and security of minors with regard to their service. **They should not present advertisements that rely on profiling** using personal data about the recipient of the service when they know with reasonable certainty that the recipient of the service is a minor.

Systemic risks presented by very large platforms

Very large online platforms and search engines, which present the highest risk, will have to comply with stricter obligations, enforced by the Commission. These include **preventing systemic risks** (such as the dissemination of illegal content, adverse effects on fundamental rights, on electoral processes and on gender-based violence or mental health) and being subject to independent audits.

Governance

To ensure effective and uniform implementation of the obligations under the digital services act, the Commission will have **exclusive powers to monitor** very large online platforms and search engines for compliance with their obligations. They will be supervised at European level in cooperation with the Member States. This new supervisory mechanism maintains the country of origin principle, which will continue to apply to other actors and requirements covered by digital services act.