



European Tech Alliance

Reaction to the European Commission's Digital Services Act proposal

February 2021

Foreword

The EUTA welcomes the Digital Services Act (DSA) as an important opportunity to address illegal content online, but also to clarify and harmonise certain aspects of EU law regarding digital services. We are committed to fulfilling our obligations and are keen to engage with EU stakeholders to foster a safer and more secure online environment, while ensuring the new legal framework is manageable for tech scale-ups and enables innovation.

The EUTA strongly supports the European Commission's decision to uphold the benefits of the regime established by the e-Commerce Directive, notably the Country of Origin principle, the prohibition of a general monitoring obligation and the principle of limited liability. We also welcome the efforts to differentiate between service providers, introducing online platforms as a type of hosting provider and differentiating between obligations of Very Large Online Platforms (VLOPs).

We welcome the fact that the proposal will apply to all intermediaries providing services to service recipients in the Union and the concept of legal representation for providers who are not established in the European Union.

However, we would welcome additional refinements on a series of aspects that will be critical for the functioning and growth of digital services across Europe and the development of a safe and trusted digital environment, including:

- A coherent categorisation of illegal content and proportionate obligations based on their risk profile.
- Meaningful obligations proportionate to risks and platforms' capacities.
- Clear definition of what constitutes a very large online platform (VLOP), especially the notion of "users" or "service recipient".
- Effective harmonisation of enforcement procedures among EU member states towards all players active on the EU market.

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“General Observations”

Scope

The DSA could benefit from more clearly acknowledging differences in types of illegal content and their risk profile. The DSA’s horizontal approach to illegal content risks creating additional burden and red tape where the risks are extremely minimal.

The EUTA believes that different types of content raise very different challenges, which may require specific solutions. Tackling user-generated hate speech requires a different approach to, for instance, removing illegal goods from online marketplaces (e.g. counterfeit products), illegal private accommodation listings and food delivery platforms.

Obligations and liability

The EUTA is pleased to see that the DSA encourages businesses to take proactive measures to address illegal content in a manner that does not threaten liability exemptions. This provision creates a suitable safeguard enabling online platforms to take more voluntary measures.

However, the link between passive role and liability exemption should be further clarified in order to give companies legal certainty. As hosting has considerably evolved over the last years, providers may play a role going beyond purely technical processing, but nevertheless not giving them knowledge or control over the information, and therefore not depriving them of the liability exemptions.

Regarding due diligence obligations, the EUTA welcomes the intention of the DSA to clarify and harmonise expectations on how platforms should address illegal content. **However, we would stress the need for a more risk-based approach to the obligations to ensure proportionality.** In our view, the due diligence obligations as proposed need to be examined and potentially refined to ensure they are:

- clear and effective to solve evidenced problems;
- manageable for middle-sized companies and start-ups; and
- consider not only the service type and user numbers, but also other determinants of risk, such as content type or service functionality.

On the measures regulating notice and action, the EUTA believes that notifications must be clear and contain complete information to result in actual knowledge, allow for rapid response from the platforms and take into consideration the specificity of each sector.



Definition of Very Large Online Platform (VLOP)

The EUTA agrees that VLOPs may need to dedicate more efforts in providing a secure and trustworthy environment to its users and business partners. We call for clarification upon which stakeholders would fall under the VLOP category set out in the DSA, in particular whether the definition of “users” should consider the “Registered Users”, “Logged-in Users” or “Buyers”.

At the same time, size alone is not a true indicator of a service’s risk of exposure to illegal content. We encourage the EU institutions to take a more nuanced and multifaceted approach to risk assessments underpinning heavier obligations.

Transparency Requirements

The EUTA supports transparency requirements that will help increase users’ trust in online platforms and encourage the emergence of more ‘human-centric’ digital services. Transparency should be meaningful in that it should deliver useful information to the right audience. It is also important that the transparency requirements do not lead to unintended consequences such as jeopardizing the security work undertaken by many online marketplaces. We therefore encourage a review of the proposed requirements to ensure they are effective and proportionate to the level of risks that may arise from the different types of platforms and technical limitations.

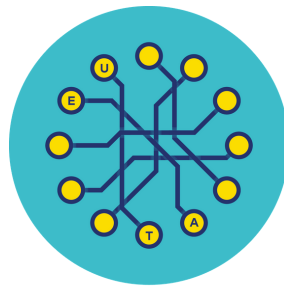
Enforcement

The EUTA welcomes the fact that the DSA is applicable to intermediary service providers regardless of where they are established. We hope that the concept of legal representation for providers who are not established in the EU will allow to effectively control such players and enforce EU rules if need be. The European market, with its 450 million consumers, is and should be open to all businesses regardless of origin, but equal rules should apply to all players with a level playing field.

Sector-specific legislation and effective self-regulatory measures, including sector specific codes of conduct, could serve as a point of reference for how to deal with illegal content in a more targeted manner.

Legal certainty - DSA's interaction with EU and national laws

The DSA will need to ensure coherence and clarity with the existing EU legal framework. This will avoid an overlapping of similar obligations which would increase administrative burdens that only the largest players will be able to comply with. In our view, the DSA should take into consideration rules that already place specific due diligence obligations on various online players, such as VAT collection rules, transparency requirements under the Platform-to-Business Regulation and the know-your-business-customer requirement under anti-money laundering rules.



European Tech Alliance

The European Tech Alliance (EUTA) brings together and gives a voice to the major European digital champions, scaleups and leading startups. We believe that Europe is good at tech and our sector is driving jobs and growth across the continent. With an overarching goal of fostering innovation in Europe, EUTA members are keen to provide expert insights to the EU institutions and promote EU competitiveness in the global tech space.

This paper aims to share our members' expertise and inform the debate. It is not directly attributable to any individual member and we invite you to contact our members, should you like to better understand their specific situation.

