

What is illegal offline should be illegal online: Council agrees position on the Digital Services Act

The Council agreed its position ('general approach') on the proposal for a **Digital Services Act (DSA)**. The main aim of the proposed DSA is to keep users **safe from illegal goods, content or services**, and to protect their **fundamental rights online**. It also modernises part of the e-commerce directive from 2000.

The Digital Services Act is a big and necessary step forward in the creation of a safer online environment. It provides solutions for the safety of our citizens in the 21st century, for our businesses and for our democracies. The proposal boosts trust in the digital space and allows for fully using the potential of the online platform economy in a safe way.

Mark Boris Andrižanič, Slovenian Minister for Digital Transformation

The rules set out under the DSA are designed to **expand and clarify a common set of responsibilities** for online businesses providing services in the EU from anywhere in the world. The proposal follows the principle that **what is illegal offline should also be illegal online**. It defines clear responsibilities and accountability for providers of intermediary services, such as social media and online marketplaces.

The rules proposed by the DSA are designed asymmetrically, which means that larger intermediary services with significant societal impact would be subject to stricter rules. Once adopted, the DSA will provide a **modern, future-proof governance framework** and set out **clear due-diligence obligations** for online intermediary services.

The main changes to the Commission proposal are the following:

- The text clarifies and enhances provisions on the scope of the DSA
- The Council's text explicitly includes online search engines
- The Council's text provides for enhanced protection of minors online
- The Council's text adds obligations for online marketplaces and search engines, as well as stricter rules for very large online platforms (VLOPs)
- The Council's text extends the obligation to notify the suspicion of serious criminal offences to all hosting services, not only to online platforms
- To monitor compliance with the obligations of the DSA, the text includes more detailed provisions on the 'compliance function' that VLOPs or very large online search engines (VLOSEs) have to establish
- The text allows national authorities to issue orders regarding illegal content online directly to service providers and imposes an obligation on service providers to keep national authorities informed of their actions (the feedback obligation)
- Regarding effective enforcement, the Council's text preserves the country-of-origin principle and at the same time confers exclusive enforcement powers to the European Commission, allowing it to deal with systemic infringements committed by VLOPs or VLOSEs

Background

To tackle emerging digital challenges such as the spread of counterfeit goods, hate speech, cyber threats, disinformation, limited competition and the foreclosure of digital markets, the European Commission tabled a digital services package in December 2020. It presented a legislative proposal on the Digital Services Act (DSA) and a Digital Markets Act (DMA).

On 27 May 2021, at the Competitiveness Council, ministers held an exchange of views providing guidance for the continuation of the negotiations.

Next steps

The general approach reached today completes the negotiating position agreed by the Council and provides the Council

Presidency with a mandate for further discussions with the European Parliament, which are **scheduled for 2022**.

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