



Council of the
European Union

Brussels, 24 November 2021
(OR. en, de, pl, fr)

Interinstitutional File:
2020/0361(COD)

13203/21
ADD 1 REV 2

COMPET 737
MI 772
JAI 1126
TELECOM 388
CT 132
PI 100
AUDIO 98
CONSOM 231
CODEC 1367
JUSTCIV 165

NOTE

From:	General Secretariat of the Council
To:	Council
No. prev. doc.:	13203/21 ADD1 REV1
No. Cion doc.:	14124/20 + COR1 + ADD1
Subject:	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on a Single Market For Digital Services (Digital Services Act) and amending Directive 2000/31/EC - General approach - Statements

STATEMENT BY DENMARK

Regulation of the European Parliament and of the Council on a Single Market For Digital Services (Digital Services Act) and amending Directive 2000/31/EC

Denmark supports the Presidency's compromise text in order to reach the General Approach at the COMPET Council on 25 November 2021.

In general, Denmark supports the overall aim of updating the horizontal rules that define the responsibilities and obligations of providers of digital services, and online platforms in particular.

However, Denmark strongly regrets that the regulation does not set obligations on an importer's responsibilities. It is a problem that there is no one in the Union to be held responsible in cases where online marketplaces make it possible for traders to sell their products and services from third countries directly to European consumers. There are several cases where European consumers end up with dangerous and illegal products and suffer from the system, that we have today. Thus, the liability exemption maintains a loophole of import of goods not complying with EU legislation and is detrimental for not only consumer protection, but also for competitiveness of European businesses. In this regard, Denmark had strived for a more ambitious regulation by ensuring that there is always a part in the EU to be held accountable for products entering the European Market - whether the products are sold offline or online.

We hope that our request on importers responsibilities will be taken in due and serious account in the course of the next phase of the negotiations.

Although, it does not change Denmark's position on this matter, Denmark welcomes the steps taken in Section 3A obliging online market places to live up to further requirements in order to ensure consumer protection and safe products being sold to European consumers.

STATEMENT BY GERMANY

Regulation on a single market for digital services (Digital Services Act) and amending Directive 2000/31/EC

General approach

Statement for the minutes by the caretaker Government of the Federal Republic of Germany - English-language version -

Germany supports the text submitted by the Presidency with a view to agreeing on a general approach at the meeting of the Competitiveness Council on 25 November 2021. In particular, we welcome the strengthening of the European Commission's competences with regard to the designation, supervision and governance of very large online platforms and very large online search engines. This will ensure effective enforcement of the provisions of the Digital Services Act (DSA). At the same time, however, we would underline the need for further improvements in view of the upcoming negotiations with the European Parliament to ensure that the DSA becomes even more effective.

For Germany, it is crucial that the current high domestic standard of protection in Germany based on international requirements (UN Convention on the Rights of the Child and General comment No. 25 of the UN Committee on the Rights of the Child on children's rights in relation to the digital environment) be maintained in respect of the protection of minors in the media. This must in any case be ensured by the arrangements provided for under the DSA, for instance through relevant derogation possibilities for higher standards.

Germany welcomes the fact that the DSA creates a uniform legal framework for combating illegal content online. However, we would like the provisions on deletion obligations and the corresponding deadlines to be made more ambitious and legally binding for very large online platforms. In addition, the obligations of providers of hosting services to notify law enforcement and judicial authorities pursuant to Article 15a should be specified in more detail. Member States should have the option of designating which individual criminal offences are to be notified within their respective territory. With regard to very large online platforms, Member States should have the option of extending the notification obligations under their national legislation to criminal offences that endanger the democratic polity or have a persistent negative impact on the exercise of freedom of expression, insofar as such extensions are in line with the fundamental values of the European Union. In addition, we would be strongly in favour of enlarging the scope of Article 15 in order to introduce a storage obligation for deleted illegal content.

The upcoming negotiations with the European Parliament should be used to strengthen national authorities' enforcement capabilities and consumer protection, including through the introduction of proactive due diligence obligations for providers of online marketplaces. Only in this way can supervisory authorities effectively curb the colossal illegal trade in goods and animals. We would also suggest prohibiting the anonymous advertisement of animals on online marketplaces, including by private operators. The upcoming negotiations with the European Parliament offer the European Union an opportunity to anchor the objectives of the European Green Deal in the DSA. Very large online platforms should thus take account of environmental concerns in their risk assessments, and online marketplaces should provide more information on sustainable consumption.

As very large online platforms have, moreover, increasingly become forums for public debate and indispensable distribution channels for media service providers, greater consideration should be given to the freedom and pluralism of the media as enshrined in the Charter. In order to achieve this, procedural rules should be established that prohibit large online platforms from removing or otherwise interfering with content or services made available by a media service provider on the basis of alleged violations of the platform's terms and conditions without prior consultation with the media service provider. In addition, it is necessary to emphasise in Article 12 or in another suitable provision that the wording and application of a platform's terms and conditions should give appropriate consideration to the freedom and pluralism of the media. The platforms should agree on a code of conduct which gives substance to those requirements. We are also concerned about the functionality of the DSA's governance structure, which is essential for its success. Further efforts should be made to exploit synergies with existing institutions (such as the European Regulators Group for Audiovisual Media Services (ERGA)) and opportunities for their involvement. In that context, it is also important to us that existing and proven cooperation mechanisms, such as those referred to in the Memorandum of Understanding concluded by the members of ERGA, be maintained. Moreover, in this entire system, it is important to ensure that Member States' competences in this field are preserved.

Finally, we consider that non-profit-making educational and research repositories should not fall within the definition of 'online platforms' because such repositories do not pose the risks that the DSA is intended to address.

In view of the upcoming negotiations with the European Parliament, we trust that these aspects will be given due and serious consideration and included in the discussions.

STATEMENT BY POLAND

Statement by Poland on the DSA

Poland supports the Presidency's compromise text on the Regulation on a single market for digital services (the Digital Services Act) and amending Directive 2000/31/EC (DSA) in order to reach a general approach at the COMPET Council meeting on 25 November 2021.

However, we strongly emphasise the need for improvements so that the draft DSA Regulation fully empowers EU consumers and to ensure effective enforcement of DSA provisions.

There should be a clear indication that the DSA properly balances the need for swift removal of illegal content from the internet with protecting freedom of expression and information. The DSA should include clear provisions on jurisdiction over these platforms so that any enforcement measures we use are effective and sufficient.

A DSA enforcement mechanism based on the country of origin principle, which is a fundamental principle of the internal market with undeniable benefits in terms of growth opportunities for smaller providers of intermediary services in the EU, should take into account the appropriate involvement of the Member State in which the recipients of the service are located. The Digital Services Coordinator of destination can provide invaluable knowledge of the national law and local context of the Member State concerned.

Furthermore, very large online platforms and very large search engines should be adequately represented within the EU and establish appropriate two-way communication channels, in particular with the competent authorities from all Member States. The DSA should lay down an obligation for service providers to acknowledge receipt of correspondence via the contact point.

Lastly, the text of the DSA should contain provisions clarifying that the DSA is without prejudice to the right of recipients or the individuals or entities concerned to appeal against the decision before a court or administrative authority of the country in which they are established or have their domicile or permanent residence, in accordance with the applicable law in that state.

We are confident that the abovementioned constructive and rational improvements will be helpful in reaching a satisfactory compromise in the upcoming interinstitutional negotiations.

JOINT STATEMENT BY ITALY AND SPAIN

JOINT STATEMENT ON THE DIGITAL SERVICES ACT (DSA)

Italy and Spain support the Presidency's compromise text, in order to reach the General Approach at the COMPET Council on 25 November 2021.

However, we strongly underline the need for improvements, in order for the DSA not to be watered down in the course of negotiations during the further procedure.

For instance, we believe that traceability obligations, as provided for online marketplaces at Article 24a, shall be enlarged, in order to ensure that what is illegal offline should also be illegal online.

Indeed, these obligations are necessary to intercept fraudulent businesses and stop illegal content and products to be circulated through different digital services and a plurality of intermediary service providers, thus contributing to create a safe, transparent and trustworthy digital environment.

Therefore, we support the enlargement of the scope of Article 24a to hosting providers, web hosting, Content Delivery Networks, DNS registries and registrars, payment and advertising services.

We are confident that such request will be taken in due and serious account in the course of future negotiations.

STATEMENT BY HUNGARY

Statement by Hungary on the proposal for a Regulation of the European Parliament and of the Council on a Single Market For Digital Services (Digital Services Act) and amending Directive 2000/31/EC

Hungary attaches great importance to the protection of freedom of expression and freedom of speech of EU citizens, including the media freedom and pluralism. Therefore, we are committed to ensure an even more effective enforcement of the Digital Services Act Regulation.

In order to have necessary safeguards against the removal of legal content, national authorities should have the means to order platforms to restore legal content which has been removed. The platforms must provide users with effective redress opportunities when they decide to remove users' content or profile. In this regards it is of utmost importance for us that the DSA is without prejudice to the right of the users to initiate proceedings against the decision of an online platform before a court of the country where they are established, in accordance with the national law of that country.

The country of origin principle is an essential basic rule in the Single Market, which provides profits in terms of ensuring predictable regulatory environment for smaller European providers of intermediary services. However, it does not bring such benefits at the level of EU citizens. There are asymmetries in terms of rights between the providers of online platforms and their users, as well as with regard to public authorities, which are missing the necessary tools to fully protect users from the abusive practices. This problem is aggravated by the fact, that there is an increasing number of services and platforms – without legal establishment in the EU – targeting the citizens of Member States.

While we keep the country of origin principle at EU level as a general rule, we must not forget to protect the legitimate interests of our consumers.

To empower EU consumers and provide effective enforcement of DSA provisions, it is worth considering the possibility to involve regulators of countries of destination more actively in the supervision of very large online platforms and very large online search engines. We consider that in many cases in order to properly understand and handle the cases of content moderation practices, deep understanding of specificities of national law and socio-cultural context is needed.

Hungary therefore calls for a more ambitious approach to guarantee the highest level of protection of consumers' rights. Meeting these objectives requires solutions adapted to this rapidly changing platform economy ecosystem and this implies a thorough evaluation of our core principles.

STATEMENT BY FINLAND

Regulation of the European Parliament and of the Council on a Single Market for Digital Services (Digital Services Act) and amending Directive 2000/31/EC

To reach the General Approach at the COMPET Council on 25 November 2021, Finland supports the Presidency's compromise text.

While Finland supports the Presidency's compromise, with regard to the proposed provisions on sanctions, it is important during the trilogies to ensure flexibility in the text so that the Member States can set maximum fines in their national legislation in relation to different obligations of the DSA.

Furthermore, Member States should have appropriate national leeway whether to introduce administrative fines for public authorities in specific cases where public authorities may be given a statutory obligation to provide, nationally and on a non-profit basis, a service that can be defined as an intermediary service.

STATEMENT BY LUXEMBOURG

Statement by Luxembourg on the Digital Services Act and the Digital Markets Act

The DSA and DMA proposals aim to create a fully operational internal market for both professional users and consumers by establishing a harmonised legal framework to make the online environment safer and to ensure fair competition across the Union.

Luxembourg strongly supports the objective of introducing a clear and coherent framework to address the current legal fragmentation which is the result of diverging national legislation in the areas covered by the DSA and the DMA. Luxembourg can therefore support the compromise package negotiated by the Council and proposed by the Slovenian Presidency, which contains all the elements necessary to reach a quality agreement with the European Parliament.

As the negotiations proceed, Luxembourg will pay close attention to ensuring that the benefits of maximum harmonisation, accompanied, as appropriate, by mutual recognition, are maintained or even strengthened in the texts and that no new derogations, ‘‘gold-plating’’ options, or any other flexibility for national legislators or the national authorities are introduced. We will also insist on maintaining the level of ambition of the European Commission’s proposals as far as the conditions for a safe online environment and fair and competitive access to the market are concerned.

The Digital Services Act

To develop a high level of online security we must take a European approach. Luxembourg is committed to the principles established by the e-Commerce Directive, in particular the principle of the country of origin. This principle is essential to the good functioning of the internal market which guarantees that businesses do not have to adapt to fit 27 different national legislations. This would be an impossible task for small businesses and a major deterrent with regard to cross-border sales. The general approach proposed by the Slovenian Presidency respects this approach and must be maintained.

Along the same lines, in terms of *enforcement*, Luxembourg insists on coherence and uniformity in the application of the rules in order to ensure legal certainty for all stakeholders. Harmonisation is essential, not only for the substantive rules themselves but also as regards the interpretation and application thereof. Digital services are cross-border by nature. It would therefore be counterproductive if 27 authorities were responsible for applying the DSA rules simultaneously in any given case. Luxembourg is pleased that in general the country in which the intermediary is established remains responsible for the *enforcement* of the harmonised rules of the DSA, in particular thanks to closer cooperation with the other Member States and the Commission – apart from when it comes to the very big players.

Indeed, due to their pan-European nature, Luxembourg welcomes the exclusive powers given to the European Commission with regard to cross-border systemic issues in connection with very large online platforms (VLOPs), as proposed in the Slovenian Presidency's compromise text. This solution is in keeping with the idea of uniform application in the same way as the *enforcement* mechanism based on the country of establishment is. This system also reflects the approach taken in the DMA where the Commission has exclusive executive powers against the big digital gatekeepers.

Lastly, Luxembourg strongly supports the horizontal nature of the DSA, which applies to all types of intermediary as well as all types of illicit content, unless there are more specific rules at EU level. We caution against the temptation to overload the DSA by trying to resolve all the problems linked to digital services since there are already many sectorial initiatives that are either in place or being developed¹. The DSA does not exist in a legal vacuum and many European laws, some of which have been adopted recently, also apply to online intermediaries. Luxembourg will continue to argue in favour of resisting the temptation to import issues from other policy areas into the DSA in order to keep the practical rules and to maximise the chances of its being adopted swiftly by the co-legislators.

¹ The Regulation on terrorist content online, the Directive on copyright, the Audiovisual Media Services Directive, and the proposal for a Regulation on general product safety – to cite but a few.

The Digital Markets Act

Luxembourg fully supports the objectives of the DMA which aim to create a level playing field by banning unfair behaviour by the dominant digital platforms. Small and medium platforms should be able to compete with the big gatekeepers in order to offer their services on a cross-border basis and to benefit fully from the internal market. European consumers will be the winners, with a selection of offers with better conditions.

The general approach proposed by the Slovenian Presidency keeps these objectives and respects the objective of harmonisation, in particular by clarifying and limiting Member States' discretion to legislate at national level. Only a common European approach can tackle the powers of gatekeepers across the single market. Luxembourg will pay close attention to ensuring that these objectives are not diluted, in particular the horizontal provisions which clarify that the DMA has primacy over national law (see Article 1(5)).
