



Computer & Communications
Industry Association
Tech Advocacy Since 1972



Brussels, 8 July 2021

We, the undersigned, are writing to you in the context of the discussions in the Council on the Digital Services Act (DSA). Our associations represent the whole breadth of the Internet industry, from its technical infrastructure to online platforms, and from startups and SMEs to major global companies.

We support an ambitious DSA and its objectives to protect consumers and their fundamental rights online, while favouring innovation, growth, and competitiveness. However, we have noticed with serious concern that several Member States have questioned some of the key principles of the E-Commerce Directive which constitute the cornerstone of our digital economy, and which have stood the test of time.

As Slovenia takes the helm of the EU Council Presidency, we urge Member States to consider the following recommendations:

The DSA should clearly distinguish between illegal content and harmful but legal content: While the former is precisely defined by law and via the democratic process, the latter lacks such qualities. Failure to clearly separate the approach for these two kinds of content would pose serious problems regarding the preservation of freedom of speech of users, and overall legal certainty for businesses, including the questions of liability.

Preserving the limited liability regime: The E-Commerce Directive's limited exemptions from secondary liability for intermediary services allowed the Internet to grow into the dynamic environment which we know today. We encourage Member States to preserve such a paradigm, and avoid approaches establishing primary liability or tying liability to the respect of specific obligations. Instead, we support the development of clear rules carrying proportionate and appropriate sanctions for non-compliance.

Upholding the prohibition of general monitoring obligations: Several Member States put forward proposals which would create notice-and-stay-down obligations. Such measures would de facto force intermediaries to perform general monitoring. This in turn risks infringing fundamental rights of EU users, as it could lead to overblocking of legitimate content, and would be unduly onerous for many European innovative businesses.

Maintaining the country of origin principle (CoO): We urge Member States to create a system which preserves the E-Commerce Directive's CoO principle. Undermining it could potentially fragment the implementation of the DSA, leading to incoherent enforcement, and, ultimately, to an environment which is not conducive to innovation.

Limiting web blocking obligations: Removal of illegal content at source should always be the preferred and prioritised solution. Only in the case that there is no action by the recipient of the service or platform, as ultima ratio, the authorities should request an access provider to intervene. Such injunctions should only be mandated by a court or a public authority, in full respect of fundamental rights' safeguards, accompanied by cost reimbursement for the affected Internet intermediaries.

Signatories:

ACT | The App Association

Allied for Startups

CCIA – Computer and Communications Industry Association

DOT Europe

EuroISPA – European Internet Services Providers Association

Tech UK