

Digital Services and the Digital Services Act - Where Are We Now?

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The Digital Service Act (DSA) is part of a proposed EU package which aims to overhaul the digital services market.

The DSA package covers both digital services and competition law. Here, we focus on the former, with a **brief summary of where things stand** on the digital services aspect of the DSA, and a **commentary on increasing platforms' monitoring and take down responsibilities**. We also cover **the impact of Brexit**. Although the EU legislation won't be in force until after Brexit, even the UK could expect an expansion of platform providers' obligations following the DSA.

1. Where things stand & what the European Commission is trying to do:

- **Who?** It's aimed largely at online platforms - and particularly those larger platforms that could be considered 'gatekeepers'; however, its broad scope means all platforms, digital services providers and rights-holders should be aware of the DSA's potential impact.
- **What?** The DSA is intended to expand and harmonise digital service providers' responsibilities and to improve the supervision of digital services across the EU. It will also review how the earlier E-Commerce Directive has worked in practice, and analyse the importance of data in the digital economy.
- **When?** The Commission plans to adopt a proposal for the DSA by the end of 2020. The public consultation period ended on 8th September, and the Commission will now be evaluating the responses in order to formulate a legislative proposal by the end of the year.
- **Specifics?**
 - The DSA aims to do this by strengthening online platform providers' obligations to remove illegal content and tackle disinformation (and other illegal and unfair practices), and to clarify the providers' liability for third party content they host.
 - Options suggested by the Commission include increasing digital service providers' risk assessment and reporting obligations, increasing regulation, and requiring the introduction of notice and take-down mechanisms.

2. Commentary:

- **It looks likely that online platforms will have more onerous monitoring and take down responsibilities** - and increased liability - for third party content (among other things).
- **This is generally good news for consumers**, who will be better protected from illegal content and activities, and benefit from more oversight and accountability from the larger platforms.
- **This is also positive news for rights-holders**, as it will help to prevent some of the damage caused by illegal sharing of their content.
- **However, the picture is more grey for platforms, who would face the burden of applying the additional obligations.** Currently, platforms which merely host content are able to remain relatively passive: they only have an obligation to remove illegal content once they become aware of it. The DSA could require platforms to actively monitor for illegal content and activity - and act immediately on it. Such active monitoring would put a cost and time burden on platforms, not least because of the potential liabilities they could face for failure to find and remove illegal content.
- **Ultimately a balance needs to be found.** Whilst consumers and rights-holders need to be better protected from illegal content and activities, it is unfair - and commercially untenable - to expect platforms to pick up all of the slack. In the long-run, placing onerous responsibilities on platform providers could negatively impact consumers; a large proportion of platforms' funds - which may otherwise have been used to improve consumer services and choice - will instead need to be ploughed into policing third parties' content and activities. We can only hope that the Commission will take a balanced view when reviewing consultation responses from both sides of the table.

3. What's the impact of Brexit?

The UK's transition period expires at the end of this year. As the DSA is unlikely to be passed before then, the UK will not strictly be required to follow it - and therefore there may be a rift between EU and UK platforms. However, ultimately, some degree of harmonisation with the EU law will be needed, given the European (or even global) nature of many platforms. In

responding to the consultation, even the UK Competition and Markets Authority, whilst welcoming cohesive reform, recognised the need for balancing legal protection against platforms providers' responsibilities. We can therefore see the UK implementing similar, but potentially less onerous, obligations post-Brexit: we'll be watching this space.

If you have any specific queries or wish to discuss anything covered in this update, please contact Isabella McMeechan, Associate at DAC Beachcroft.

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