



2020/0361(COD)

28.7.2021

OPINION

of the Committee on Civil Liberties, Justice and Home Affairs

for the Committee on the Internal Market and Consumer Protection

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
(COM(2020)0825 – C9-0418/2020 – 2020/0361(COD))

Rapporteur for opinion: Patrick Breyer

(*) Associated committees – Rule 57 of the Rules of Procedure

SHORT JUSTIFICATION

Background

Following three resolutions voted by Parliament, the Commission presented its proposal for a Digital Services Act in December 2020. The proposal aims to ensure harmonised conditions for digital cross-border services to develop in the EU.

The LIBE Opinion

The Opinion focuses on better protecting fundamental rights and addressing illegal content in the digital age, in line with the competence of the LIBE committee. Most amendments implement reports and opinions on the Digital Services Act that have already been supported in Committee or Plenary. Key proposals are:

1. The Digital Services Act should provide for the **right to use and pay for digital services anonymously** wherever reasonably feasible, in line with the principle of data minimisation and in order to prevent unauthorised disclosure, identity theft and other forms of abuse of personal data.
2. **End-to-end encryption** should not be restricted as it is essential for Internet safety.
3. **Behavioural and personalised targeting** for non-commercial and political advertising should be phased out to protect users and ensure the existence of traditional media, and be replaced by contextual advertising. The same should apply to **targeting people based on sensitive data, or to targeting minors**. Behavioural and personalised targeting for commercial advertising should only be possible where users have freely opted in, **without exposure to “dark” patterns or the risk of being excluded from services**, and without being fatigued by consent banners if they have already **made a clear choice in their browser/device settings**.
4. In the spirit of the case law on communications metadata, public authorities shall be given **access to records of personal online activity** only to investigate suspects of serious crimes or prevent serious threats to public safety with prior judicial authorisation.
5. **Mere conduit intermediaries** should not be required to block access to content. Illegal content should be removed where it is hosted.
6. To protect freedom of expression and media freedom, **the decision on the legality of content shall rest with the independent judiciary**, not with administrative authorities.
7. Intermediaries should not be required to remove information that is legal in the Member State that they are established in (their country of origin). The effect of **cross-border removal orders** should be limited to the territory of the issuing Member State.
8. A special regime should apply to addressing traders **unlawfully promoting or**

offering products or services in the Union.

9. Online platforms' **terms and conditions** shall respect fundamental rights and permit interferences with the free exchange of lawful information only where it is incompatible with the declared purpose of the service.
10. Adverse decisions by online platforms should be subject to **judicial redress**.
11. Where allegedly illegal content is **notified**, qualified staff should take a decision after hearing the publisher.
12. **Complaints procedures** should be available also to notifiers, such as victims of crime, whose notification has not been acted upon.
13. **Automated tools for content moderation and content filters** should not be mandatory. They should only exceptionally be used by online platforms for ex-ante control to temporarily block manifestly illegal and context-insensitive content, subject to human review of every automated decision. Algorithms cannot reliably identify illegal content and routinely result in the suppression of legal content, including journalistic content.
14. Providers should not be **obliged to sanction** users for providing illegal content by temporarily "de-platforming" them, since such an obligation would fail to ensure a decision by the judiciary and bypass the legally defined sanctions.
15. The algorithm-driven **spreading of problematic content** should be contained by giving users control over the algorithms prioritising the information that is presented to them (recommender systems).
16. "Co-regulatory" instruments ("soft law") such as **codes of conduct and crisis protocols** should be subject to a special procedure to safeguard transparency, participation, democratic oversight and fundamental rights.