



Position Paper on Digital Services Act

In light of the European Commission's intentions to propose a new Digital Services Act Package, the EEA is hereby providing key guiding principles on behalf of its membership.

As the EEA and on behalf of our membership, we welcome the intentions of the European Commission to propose a new Digital Services Act Package, especially as the Commission sees as its approach the need to adapt to the constantly evolving forms of, for example, communication, online purchasing and information access. Indeed, the framework for digital services has been unchanged since 2000 in light of the e-Commerce Directive. SMEs do not only use digital services but also are key players in the development of digital services. We therefore would like to provide the following key messages to be taken into consideration.

1. First and foremost, we believe that it is important to have a clear and concise regulatory framework which does not undermine technological development, and which does not unnecessarily burden SMEs, including disproportionate administrative burdens. The framework should especially guarantee an equal playing field for SMEs and strengthen the Internal Market to facilitate cross-border trade. Indeed, a framework which does not follow this approach risks creating a fragmented market which would distort competition.
2. SMEs greatly benefit from digital infrastructures, not least through intermediaries which proliferate information on SME capacities, through for example, advertisement, or by providing direct sales capacities. SMEs are also developers and hosts of intermediary services. Therefore, we hope that the new DSA will provide legal certainty for intermediaries as much as for those using the intermediaries. The lack of legal certainty creates distortions in the applicability of digital services and as such undermine trust and can cause unnecessary legal and operational costs. The lack of legal certainty here would create regulatory divergence, which in turn, as hinted above, would undermine the Internal Market.
3. Furthermore, it is important for the DSA to take into account the Zeitgeist of technological development and the usage thereof. Therefore, when looking at responsibility for illegal content, we call for vigilance when creating burdens for SMEs which act as intermediaries. It should also be noted that the definitions of illegal content vary from Member State to Member State.
4. We also argue for vigilance when looking at lawful-but-harmful content as also here the burdens on SMEs that are intermediaries could be disproportionate when required to control the content. Here we stress the need for a clear distinction between illegal and lawful-but-harmful content.
5. The creation of an ex-ante competition regulation should be approached with vigilance especially as it is important to not hinder technological development and innovative SMEs. There is a need for clear definitions, legal certainty and a consumer-focused approach.
6. Furthermore, gatekeeper designations should only be applied to specific activities in specific markets. An overly broad application could lead to excessive regulation and creation of a chilling effect on competition and innovation.

7. Also, regarding unfair commercial practices and online platforms, we believe that the Platform-2-Business Regulation has addressed some of the concerns raised by our Members. It also provides solutions *inter alia* to the problems of account suspensions or ranking of goods and services. Especially as the Regulation has only come into force on 12 July 2020, it would be prudent to first assess its impact before introducing new, potentially unnecessary, burdens.
8. The possibility of providing online advertisement has opened opportunities for SMEs, not only by decreasing advertisement costs in relation to consumer access compared to previous advertising channels, but also by further developing a level playing field in terms of consumer access. Keeping the focus on the consumer requires a balanced policy approach with the outlook of further strengthening the equal playing field for SMEs.