



COMECE Secretariat feedback on the European Commission's Digital Services Act package (DSA – DMA)

April 2021

Following the adoption of the European Commission's proposals for regulations on the [Digital Services Act](#) (DSA) and the [Digital Markets Act](#) (DMA) on 15 December 2020, COMECE Secretariat would like to submit its feedback to the European Commission.

COMECE Secretariat welcomes:

- 1. Protecting smaller actors such as SMEs to support fair competition and innovation:** A central challenge of the DSA/DMA is to preserve innovation and competition for a proper functioning EU internal digital market, while protecting smaller actors such as SMEs. We welcome that under the DMA, SMEs (including business users) will enjoy less entry and expansion barriers, helping them to develop on the EU internal market while being protected from some unfair practices. We appreciate that new rules will apply to large gatekeepers only, while SMEs will not have to comply with the list of obligations to allow them to grow bigger, thus supporting effectively competition.
- 2. Tackle illegal content with appropriate safeguards to make sure that content moderation practices are proportionate:** Proportional proactive measures for platforms are necessary when illegal content becomes systemic, where the illegal character of the content has already been established or where the type of content and its nature of illegality is such that contextualisation is not necessary.
- 3. Reducing fragmentation and increasing economies of scale in the EU digital markets:** At national level, Member States have started to implement national measures for a fair online environment. Yet, the different regulatory requirements across the EU have created fragmentation in the EU internal market, with new entry barriers. This puts at risk *“the scaling-up of start-ups and smaller businesses and their ability to compete in digital markets”*. Therefore, we welcome an EU-action through the DSA to harmonize practices, notably by reducing *“legal fragmentation and compliance costs, enhance legal certainty, ensure equal protection for citizens and a level playing field for businesses, strengthen the integrity of the single market, and enable effective supervision across borders.”*

4. **GDPR inspiration:** Bearing in mind the success of the GDPR, the Act seems to make an attempt at following a similar path. There are similarities concerning Compliance officers (Article 32, to be compared with the role of DPOs); Digital Service Coordinators (Article 38 and ff., to be compared with the role of DPAs); and the European Board Digital Service Providers (Article 47, to a certain extent similar to the EDPB). This may be the opportune way to address a delicate area like the one in question, although, as in the case of the GDPR, this will require a period of "cultural adaptation" for companies.
5. Positive, clear **attention for the position and vulnerability of children**, especially with regard to child sexual abuse (cf. Recitals 12, 46, 57, 68, 82; Article 26.1, point b).
6. The **statement of reasons required in case of removal** (Article 15) is essential. The reference in this provision to information on the **use of automated means** is also necessary and to be appreciated. Furthermore, Article 17 on complaint-handling systems positively refers to the fact that a decision cannot be taken solely on the basis of automated means. Human supervision is paramount. COMECE had already stressed in the past, in various contexts, that in such cases "*...human intervention - submitted to the principles and mechanisms of the rule of law and with assessing panels that reflect diversity - is necessary*"; and that "*...expecting the relevant assessments to be performed by a machine is deeply troubling*".
7. On liability ("Mere conduit", "Caching" and "Hosting") the **approach of the E-commerce directive is confirmed**. While this may prove disappointing for some actors, the approach is by now consolidated and the Regulation makes a useful effort to clarify and improve the legal context for the application of these rules.

COMECE Secretariat recommends:

1. **Reconcile digital progress with the care for our common home:** "*A technological and economic development which does not leave in its wake a better world and an integrally higher quality of life cannot be considered progress*", wrote Pope Francis¹. We call on the European Commission to address not only the costs of the DSA and DMA for businesses and Member States, but also to assess, evaluate and monitor the ecological impacts of using digital services and in particular to increase awareness among business users and consumers of the ecological costs associated with the participation in the digital economy to encourage more ethical and sustainable consumption patterns.
2. **Safeguard the dignity of platform workers:** The COVID-19 pandemic has accelerated the use of online platforms and digital services. Competition law should protect workers'

¹ Pope Francis, Encyclical letter *Laudato Si* (2015), #10

dignity. As the platform economy is developing, the European Commission should establish a stronger link between its upcoming initiative on improving the working conditions of platform workers (planned in 2021) and the DSA/DMA regulations to ensure greater policy coherence, strengthen platforms responsibilities, put an end to precarious work and ensure the security of all workers of the digital economy.

3. **Establishing clear procedures and procedural safeguards of transparency of algorithmic processes:** The transparency obligations of the DSA shall include the use and underlying source codes of algorithmic processes that handle the content. The compliance with these additional transparencies and explainability requirements shall fall under the competence of market surveillance authorities. Algorithmic processes can develop potentially negative human rights impact regarding the design, development and ongoing deployment of the system. It is necessary to evaluate continuously and to document the context, legal ground, purpose, accuracy, side effects and scale of the system's use.
4. The **architecture of the text** is excessively complex and should be **simplified**, as this may hinder an effective impact on the Member States' systems.
5. **Carefully assessing the appropriateness of the transparency burden** deriving from a number of provisions (e.g. Articles 13, 23, 28, 33, among others).
6. Introducing strong **safeguards with regard to trusted flaggers**. The recourse to trusted flaggers (Article 19) is controversial, although safeguards on appointment seem to provide a good basis for further reinforced safeguards. COMECE has repeatedly expressed caution on relying on civil society organisations as "trusted reporters", underlining that *this "...may lead to undue restrictions on freedom of expression and even to abuses or censorship and ultimately entails the privatisation of public responsibility"*.
7. Further **strengthening of provision concerning children**, with inclusion of additional, specific clauses concerning child protection in articles of the Regulation.
8. The **broad definition of "illegal contents"** (cf. Article 2, point g and Recital 12) should be maintained. The option is wise, as legislation and legal approaches vary from one Member State to another.
9. **Encouraging the useful complementary role for voluntary initiatives and codes of conduct** (cf. Articles 34, 35). The E-commerce directive was already considering the instrument, although with shorter references. The greater specification provided in the proposal is to be welcomed.

10. It is important to **prevent any negative impact of the Regulation** on the fundamental rights to **freedom of expression and information** (Article 11 CFR); to **freedom of thought, conscience and religion** (Article 10 CFR) - which entails the right "*...to manifest religion... in worship, teaching, practice and observance*"; to **protection of personal data** (Article 8 CFR); as well as on respect for cultural, **religious and linguistic diversity** (Article 22 CFR).
11. A **highly effective level of coordination** should be ensured with regard to the interplay of the Regulation **with the Audiovisual Media Services Directive and with the GDPR**. Effective guidance from the EU side will be paramount in this regard, as a potential for overlap and possible conflicts between these levels is present.
12. **Improving coordination between Member States** is much needed under the DSA to make sure that platforms react quickly enough against illegal content. We call on the EU institutions to strengthen cooperation and information sharing between national enforcement authorities, in respect of the GDPR, to ensure a proper enforcement of the regulation at EU-level by the digital platforms.
13. **Strengthen global convergence:** Regulating competition in digital markets is still relatively new. The EU acting together to harmonise its internal digital market rules marks already a positive sign of unity and reduces inequalities and fragmentation between Member States. In order to maintain a fair competition in our globalized economy, we call on EU leaders to develop partnerships to strengthen global convergence.
14. **Protection of non-commercial digital projects:** The DSA should not cause undesirable effects for non-commercial online platforms. Clarification is necessary that exceptions provided for small businesses also apply to non-corporations.

Sources:

- <https://ec.europa.eu/digital-single-market/en/news/proposal-regulation-european-parliament-and-council-single-market-digital-services-digital>
- https://ec.europa.eu/info/sites/info/files/proposal-regulation-single-market-digital-services-digital-services-act_en.pdf
- <https://www.euractiv.com/section/digital/news/digital-brief-powered-by-google-dsa-and-dma-member-states-respond/>