

Leaked document: EU Commission mulls new law to regulate online platforms

The Digital Services Act could replace the decades-old framework of the e-Commerce Directive, a note by the European Commission suggests. The document outlines a complete overhaul of the rules governing the net.

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New laws for the net: The European Commission mulls proposals for a Digital Services Act

— Gemeinfrei-ähnlich freigegeben durch unsplash.com Sara Kurfeß

The EU Commission is considering the creation of a new authority for the regulation of online services. This is part of a possible legislative proposal by the Commission to regulate platform companies such as Google, Facebook and Amazon. Under the proposed scheme, the e-Commerce Directive is to be replaced by a new law, the Digital Services Act, according to a leaked Commission note. ([Click here for full document.](#))

The new Act is supposed to create European rules against online hate speech and disinformation. It also means to address issues such as political advertising online and fairness in e-Commerce. It would affect „all digital services and in particular online platforms“, according to the paper. The note mentions social networks, cloud services, services such as Uber and Airbnb as well as internet service providers.

The paper was written by officials in the Commission's [Directorate-General Connect](#). It is part of a discussion process towards a more detailed proposal to be brought forward by the next Commission. As the [news site Contexte reports](#), several versions of the paper have been circulating earlier. PoliticoPro reported on it as well.

The European Commission declined to provide an explanation on how far debates on the Digital Services Act have progressed. „The Commission never comments on leaked documents“, said a spokesperson to netzpolitik.org.

Illegal content, ads and interoperability

The seven-page note gives only a rough outline of the Digital Services Act. It mentions the need for harmonised guidelines on how platforms should moderate speech and handle illegal content across the EU, stating that the Commission's [recommendations for tackling illegal content](#) should become mandatory.

In a bid to reign in data protection violations and Cambridge-Analytica-style voter manipulation, the note says „specific obligations should be examined for cross-border online advertising services, including for rules around political advertising“. Without mentioning the dominant companies Google and Facebook by name, the note says „entry barriers for competitors and alternatives“ should be lowered.

The note lists different options for monitoring compliance with the rules. The Digital Services Act could create a new „central regulator“, but there could also be a decentralised system or „an extension of powers of existing regulatory authorities“.

The paper also suggests that platforms could be obliged to open their services to other providers. This should apply wherever such „interoperability makes sense, is technically feasible, and can increase consumer choice without hindering the ability of (in particular, smaller) companies to grow“.

Liability regime change

However, at the core of the note is the Commission's wish for companies to take more responsibility for content on their platform. As one way to achieve this, the paper suggests changing liability rules.

Currently, under article 14 of the current e-Commerce Directive, providers are only liable for illegal content uploaded by users, such as copyright infringements, if they do not remove it after being requested to do so.

This could change. The note proposes to distinguish between providers and, in some cases, to prescribe „proactive measures“ to avoid direct liability. Such measures could include upload filters, as required by the recently adopted EU copyright reform.

A new take on e-Commerce

The paper suggest a full-scale update of the [e-Commerce Directive](#) adopted in 2000. Inspired by similar laws in the USA, it regulates online services. In two articles - 14 and 15 - it lays the foundation for the largely user-generated internet we know today.

The law in Europe and the US exempts platform operators from liability for illegal content on their service, at least as long as they can claim not to be aware of it.

Services such as Facebook, Flickr or Youtube would probably be unthinkable otherwise. According to Youtube, the world's largest video platform, its users upload more than 500 hours of material every minute.

If providers first had to review the legality of every piece of content that users upload to their platform, these services could only be operated with immense human effort.

While large platforms already police their content with the help of automated filtering, even high-end software such as Youtube's ContentID system is error-prone. Platform firms therefore employ thousands of human moderators to deal with tricky removal decisions around the globe.

Currently, EU law states that companies should not be obliged to screen user uploads, as this might undermine fundamental rights. The e-Commerce Directive, flanked by rulings of the European Court of Justice, prohibits member states from imposing a „general monitoring obligation“ on online providers of

uploaded content.

These principles have come under heavy attack in recent years. In the note on the Digital Services Act, the Commission proposes to lift legal protections on providers in some cases.

„While the prohibition of general monitoring obligations should be maintained as another foundational cornerstone of Internet regulation, specific provisions governing algorithms for automated filtering technologies – where these are used – should be considered, to provide the necessary transparency and accountability of automated content moderation systems“, the note states.

Following the path of copyright reform

The EU already has taken measures to expand platform liability. The copyright reform adopted in April states in Article 17 that „every effort must be made to ensure professional diligence in accordance with high industry standards“ to prevent the upload of copyrighted content. This is understood to imply automated filtering.

The proposed Terrorist Content Regulation aims to curb the spread of suspected terrorist content online by mandating „proactive measures“. Providers should actively look for relevant content and ideally prevent its publication in advance – a task that nudges providers towards filtering.

With its proposals the Commission takes its cue from national measures against hate speech and disinformation. However, both Germany’s Network Enforcement Act (NetzDG) and [a French law against disinformation](#) were criticised as potential curbs on free speech.

The note acknowledges that such measures lack safeguards for freedom of expression. The Commission also complains that initiatives by member states contribute to legal fragmentation and hinder innovation. „Even if consumer rules, data protection rules, as well as contract rules, have converged across the EU, in today’s regulatory environment, only the big platform companies can grow and survive.“

The paper on the Digital Services Act is part of a larger framework on digital issues. DG Connect outlined possible regulatory action in several policy fields, including Artificial Intelligence and cybersecurity in a non-paper [recently published by Politico](#).

A new College of Commissioners is due to take office in Brussels this autumn. The Digital Services Act is likely to be one of the first things on its agenda.

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