



DIGITAL SERVICES ACT: the Single Market Pillar

1. Context

In her Presidential candidacy [speech](#) (page 13) Ursula von der Leyen announced the Commission should propose a new Digital Services Act (DSA). The DSA initiative still lacks clarity on its form and contents, however provisional exchanges on DSA include the idea of revision of the [e-Commerce Directive](#) as the basis. Yet following a public consultation on the regulatory environment for platforms, online intermediaries, data and cloud computing and the collaborative economy, in 2016 the Commission acknowledged it was fit for purpose and did not revise the directive. There is wide acknowledgement that the currently applicable e-Commerce Directive has been key in flourishment of e-commerce in the EU over the last 20 years. However, fast evolution of the online economy has changed its landscape and broadened the impacts on business and society at large.

This is why over the last legislature some specific online intermediary issues were tackled through targeted legislative action in other areas, such as AVMS directive, Copyright Directive, Platform-to-Business Regulation, Market Surveillance Regulation, Geo-blocking Regulation, New Deal for Consumers, the proposal for a Regulation on Preventing the Dissemination of Terrorist Content Online, as well as the Recommendation on Measures to Effectively Tackle Illegal Content Online. This massive body of recent law should be taken into consideration before taking next initiatives.

The new Commission President underlined that the DSA *“will upgrade our liability and safety rules for digital platforms, services and products, and complete our Digital Single Market.”*

2. Principles for a possible update of e-Commerce Directive

Based on the Commission President’s statement, the DSA might encompass two pillars:

1. Purely commercial (trading information society services without barriers) – **Single Market pillar**;
2. Broader societal interests (redefining liability aspects, tackling hate speech, misleading information, terrorist content etc.) – **content pillar**.



This paper focuses on the Single Market pillar as the first step and suggests our approach to a possible revision of the e-Commerce Directive. BusinessEurope will supplement this paper to include the other pillar or any additional issues in the coming months.

1. The DSA initiative should address the Single Market and the content pillars separately.
2. The same legal instrument cannot address such a broad range of issues mentioned above as “one-size fits all” in an effective manner. Differences between B2B and B2C platforms should be recognized and their specificities need a very targeted approach so that the framework supports innovation. The legal base question would also arise and freedom to provide cross-border information society services might become hostage to the issues bordering criminal law of Member States, should the same legal instrument address wider issues under the content pillar.
3. Country-of-origin principle of the e-Commerce Directive should not be opened for any re-think as this is one of the cornerstones of the Single Market. Key Single Market provisions of the directive should be preserved (see chapter 3 of this position paper).
4. Single Market legislation (including the e-Commerce Directive) should consistently reflect the market integration ambition. Any possible initiatives should fully respect the four Single Market and data movement freedoms. In order to foster the free flow of data, entry barriers for services should be removed. Users should be empowered when accessing digital services through encouragement to adopt the codes of conduct for switching providers and porting data between different services. Should the e-Commerce Directive be reviewed, assessment of remaining barriers and improving the Single Market have to remain its key objectives without the addition of new ones.
5. BusinessEurope supports further opening and integration of the services markets. Where full harmonisation is not necessary, the mutual recognition principle should be respected and solutions for its practical enforcement found, including in the area of services.
6. The new framework should apply to 3rd-country-established information society service providers operating in the EU and mandate them to have a “digital representative” to aid market surveillance authorities in the EU in their enforcement of Single Market rules.



3. Key Single Market provisions in e-Commerce Directive

BusinessEurope considers the following e-Commerce Directive provisions as key to the barrier-free trade in information society services in the Single Market:

- **Article 1 (1)** establishing the objective of the Directive: it is crucial that it remains focused on proper functioning of the internal market by ensuring the free movement of information society services.
- **Article 1 (3)** establishing the relationship of the e-Commerce Directive with other Community law applicable to information society services: it is key to draw a clear line between different legal instruments regulating information society services in order to have a clear, targeted and Single Market-friendly framework. Distinction between the “Single Market pillar” and “content pillar” needs to be preserved.
- **Article 3 (2)** establishing one of the cornerstones of the Directive – country-of-origin principle: the latter provision should not be opened for any re-think as this is one of the cornerstones of the Single Market. Its application and enforcement should be strengthened.
- **Article 3 (6)** on compatibility checks of the notified measures with Community law: it is also crucial that sufficient powers of the Commission to assess the notified rules of Member States are ensured.
- **Article 4** prohibiting prior authorisations or any other requirements having equivalent effect: one of the most important principles guaranteeing deeper integration of the market should be preserved.
- **Article 9** on validity of contracts concluded by electronic means: it is essential to preserve the provisions that guarantee electronic contract validity across the EU and are the safeguard against obstacles for the use of electronic contracts and their legal effectiveness.
- Information requirements spelled out under **Articles 5, 6 and 10** should remain limited to what is necessary and proportionate in attainment of the Directive’s objectives.