



Tom Voegelé

Tom är ICC:s *Head of EU Affairs*, som regelbundet rapporterar om ICC:s arbete och utvecklingen på relevanta policyområden inom EU.

[Kontakta Tom](#)

Dear Colleagues,

Having covered the release of the first key policy documents of the EU digital portfolio by the European Commission (EC) and then the subsequent impact of the COVID-19 crisis in the last two Brussels Briefings on EU Digital Policy, this third installment will cover events from the other side of the Parc Léopold, i.e. the European Parliament (EP).

A focus of this briefing will be on the next major EU digital policy initiative, the Digital Services Act (DSA) - and with it the long awaited update of the EU's eCommerce Directive - and here specifically the contents and language relating to issues around piracy and counterfeiting. Recent documents from the EP on these issues include the following:

[Draft Report with recommendations to the Commission on Digital Services Act: Improving the functioning of the Single Market \(2020/2018\(INL\)\)](#), Committee on the Internal Market and Consumer Protection (IMCO), Rapporteur: Alex Agius Saliba

- Should apply to all types of digital services and also cover online actors based outside the EU; the term “illegal content” should be clarified in the text and also apply to violations of product safety and “counterfeit medicines”
- Should introduce general information and transparency obligations for online intermediaries, reinforced by penalties; this would oblige intermediaries to verify the identity of their business partners
- Harmonised EU-level “notice-and-action” mechanism obliging online intermediaries to verify notified content; the mechanism should not affect intermediaries’ limited liability regime and the ban on general monitoring obligations
- Platforms must be transparent on the issue of third party-based sellers, including the issue of fake products from non-EU countries, and products notified as unsafe should be withdrawn from online platforms within 24 hours
- Should clarify if interventions by hosting providers having editorial functions and a certain “degree of control over the data”, i.e. adoption of the third-party content as one’s own should lead to a loss of safe harbour provisions

Draft Report on addressing product safety in the single market (2019/2190(INI)), Committee on the Internal Market and Consumer Protection (IMCO), Rapporteur: Marion Walsmann

- Does not explicitly mention counterfeiting, but addresses unsafe products as a whole
- Calls on EC to make online marketplaces “accept greater responsibility” through DSA and upcoming revision of the General Product Safety Directive (2001/95/EC)

Draft Report with recommendations to the Commission on a Digital Services Act: adapting commercial and civil law rules for commercial entities operating online (2020/2019(INL)), Committee on Legal Affairs (JURI), Rapporteur: Tiemo Wölken

- Proposal on contractual rights for content management with principles for management and moderation of content by platforms, incl. standardised procedures for notice & action, and establishing an independent dispute settlement procedure
- Platforms hosting content generated by third parties should regularly submit reports on transparency of T&Cs, incl. takedown notices (number, processing speed, number of appeals, algorithms or employees working on content moderation)
- Establishing a European Agency responsible for monitoring and enforcing platform compliance with the DSA through regular audits of algorithms used, and having the authority to impose fines for non-compliance
- Limit targeted advertising and set stricter conditions, including through limiting the data collected by platforms and providing users the possibility to consent to or opt out from sponsored content
- Address the practices of certain large platforms to use user data to strengthen their dominant market position, calling on EC to define “fair” contractual conditions allowing for data sharing between all market players an online questionnaire, to be split into a number of modules, covering separate policy areas - with some of them more developed than others.

Study requested by the IMCO Committee “The e-commerce Directive as the cornerstone of the Internal Market - Assessment and options for reform”

- Examines how the 2000 e-commerce has played a key role in the development of online platforms in Europe and makes several suggestions for the DSA:
 1. Prescribe strong, swift and scalable remedies against over removal of legitimate content, including through external ADR to incentivise better internal quality review
 2. Sets concrete incentives for high quality notification and review process by means of elaborate rules developed through technical standardisation in different areas
 3. Clarifies the passivity criterion by linking it to editorial choices and thereby avoiding discouragement of voluntary preventive measures

4. Includes a set of new safe harbours, at least for hyperlinks, search engines and domain name authorities
5. Creates EU wide legal basis for targeted measures to the risks posed by the hosting providers if evidence suggests a failure the notice and takedown process

And to round up this EU digital policy update, some additional related items:

- D9+ speaks out: The EU's Digital 9+1 coalition, including Belgium, Czech Republic, Denmark, Estonia, Finland, Ireland, Luxembourg, Netherlands, Poland and Sweden, have released a document calling for the DSA package to abide by some of the central principles of the eCommerce directive, including the country of origin principle, the limited liability exemption, and the ban on a general monitoring obligation
- New EC study on study on gatekeeping power of digital platforms: The EC is set to contract a study on the gatekeeping, or market-dominating, power of digital platforms in a bid to gather evidence which could feed into the DSA. A call for tenders (upper limit of €600,000), states that the report should include "robust data and insights as regards issues linked with significant network effects [and] gatekeeping power"

The public consultation for the DSA is expected to be launched by the EC soon, with a likely publication of the final policy by then end of 2020 or the beginning of 2021. Whilst the timings are still somewhat in flux, with work on the COVID-19 response and the economic recovery taking precedence in these uncertain times, the ambition by both the EC and the EP to move ahead with their digital ambitions is clear. We will continue to monitor all developments in the EU digital policy portfolio and report back to you - so, stay tuned!