Digital Services Act

Nordvision’s position

Nordvision adopted a position paper on the Digital Services Act in April 2020 (in your file). Some of their key points are: (1) editorial independence is crucial to ensure trust; (2) attribution, prominence and data are means to emphasise freedom of expression, pluralism and trust; (3) media freedom, pluralism and safety of journalists underpin European democracy.

The relationship between media/audiovisual players and online platforms is two-fold: on one hand, they can be in competition when being perceived as similar services by audiences and users; on the other hand, media and audiovisual players make use of the online platforms’ services to disseminate content and reach wider audiences.

Nordvision is in favour of imposing clearer and stricter responsibilities on online services regarding illegal and harmful content being intermediated on their services, mirroring the rules applying to traditional TV and on-demand services under the revised Audiovisual Media Services Directive (AVMSD).

However, they also stress that provisions on platforms’ liability should not lead to platforms exercising editorial control over content made available by independent public service media (i.e. take-down or modification). The Digital Services Act should establish safeguards, which prevent platforms from applying additional or secondary control over such content. Defining content of societal general interest and enforcement should be within the competence of EU Members States. Sector-specific regulation should also prevail over the horizontal Digital Services Act.

Nordvision further emphasise that clear attribution is important for the audience’s ability to identify trustworthy sources. They underlined the need to ensure easier findability of trusted content and the importance of granting public service broadcasters easier access to non-personal data held by online platforms as a means to foster innovation.

Online platforms should be subject to closer public oversight and more effective enforcement mechanisms to ensure compliance with relevant EU law.

The Commission’s position

The Commission is currently undertaking the preparatory work towards the Digital Services Act. The above considerations are being examined in this context.

The Commission is aware that the media and audiovisual industries have a particular situation when it comes to the relationship with online platforms. The role of media industry, and particular public broadcasters, when it comes to creators and disseminators of authoritative content of general interest is being carefully considered in the context of the Digital Services Act on-going work.

The Commission has no intention of reviewing the sectorial legislation adopted during the last mandate with the Digital Services Act (i.e. the AVMSD and Copyright Directive) but will build on those to create a horizontal legal framework applicable to digital services, and in particular online platforms.

In parallel, we also envisage strengthening cooperation between media regulators within their European group – ERGA – to ensure effective implementation of AVMSD provisions on video-sharing platforms, especially in cases affecting several Member States.
Main messages

[Content of the main messages section]

Topics for discussion
Defensives

*Will the new Digital Services Act maintain the country of origin principle of the E-Commerce Directive?*

- By subjecting players to only one set of national rules, the country of origin principle of the E-Commerce Directive has helped digital businesses operate, scale up, and compete in the EU. At the same time, the cross-border nature of these services brings new challenges to the practical application of the country of origin principle. Member States are increasingly looking into regulating online platforms available in their territories.

- In this mandate, the Commission has retained the country of origin principle as the cornerstone of many of its initiatives. This is the case, for instance, for the new rules on video-sharing platforms under the revised Audiovisual Media Services Directive.

- Our services are carrying out an in depth assessment of the current state of play to ensure that any new regulation based on the country of origin principle remains effective in practice. In particular, the Digital Services Act will aim at providing an appropriate and effective system of cooperation among national regulatory authorities of the relevant Member States when enforcing the rules.
Will platforms take more responsibility for the content they host? How will this be enforced?

- Our current thinking is to provide for a harmonised set of rules, codifying notice and action measures, as well as responsibilities for making sure legal content is not removed and redress is available to all users. This will provide legal certainty, while incentivising platforms to act against illegal content they might host.

- It is key to strengthen the enforcement mechanism: for this to remain effective, the home state control needs to be reinforced with a smooth cooperation mechanism across national authorities so that all issues are resolved consistently across the single market, in the fastest way possible and with the smallest legal complexity and burden on online services and authorities.

The real problems are with the Googles and Facebooks of the online world, not with the small services. Will the Digital Services Act not favour, yet again, the large ones?

- The large platforms are – we may like it or not – public squares for imparting and receiving information. This is indeed where the major impacts emerge, both when illegal content is disseminated and when legal speech is blocked. There are specific issues of scale here, which need to be carefully addressed.

- We cannot have the same expectations from all players; this would be disproportionate and prohibitive to any European player trying to scale up in the Single Market. Action is needed in particular where most impactful. At the same time, large platforms need to step up and assume their obligations and they should be subject to specific rules. Proportionality of expectations and clarity of rules for each type of player will be key.

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