

RIPE NCC Feedback on the Commission Adoption of the Digital Services Act

31/3/2021

As an organisation that has contributed to the technical operation and development of the Internet in Europe for nearly 30 years, the RIPE NCC appreciates the opportunity to give its feedback on the adoption of the European Commission's proposed Digital Services Act (DSA).

Overall, the RIPE NCC believes that the Commission's proposal is balanced and that it takes into consideration the need to protect the public core of the Internet and to establish proportionate thresholds for interfering with core functions, infrastructure and service providers, which was the paramount goal we put forward in our response¹ to the open consultation on the DSA last September.

We happily note that the DSA proposal preserves key principles of the E-Commerce Directive, including the limited liability regime for online intermediary service providers, a prohibition on general monitoring obligations, and the country of origin principle.

The proposal also addresses the concerns we raised in our previous response by placing an emphasis on targeting the service providers who are best able to satisfy notice and takedown obligations while minimising the potential for collateral damage to other services or operations.

As explained in our previous response, we felt that expanding the scope of the DSA to include harmful content, along with the inclusion of a voluntary own-initiative investigations clause, could easily have paved the way for intentional abuse by bad actors. We are therefore pleased to see that the proposal makes a distinction between "harmful" and "illegal" content, and stresses the importance of protecting fundamental rights online. Similarly, we are pleased that the proposal's inclusion of a voluntary own-initiative investigations clause stresses that content or access removal should be carried out with freedom of expression in mind, and that any notice and action requests must be "sufficiently precise and adequately substantiated" to allow the service provider to assess for themselves whether to take action against illegal content. We believe this will significantly mitigate the potential for abuse.

¹ <https://www.ripe.net/participate/internet-governance/multi-stakeholder-engagement/ripe-ncc-position-paper-on-digital-services-act.pdf>

In reading the Commission's proposal, the RIPE NCC has identified one aspect that could benefit from further clarification, which is the definition of online platforms as those that make information available to a "potentially unlimited number of persons". This would seem to include all manner of websites, blogs, online fora, etc. that allow for user-generated content (e.g. comments). It remains unclear to us, for example, whether an online forum with a defined, targeted audience would fall under scope. We also believe that more clarity is needed around the level of editorial responsibility that an online platform can have over content in terms of its obligations under the DSA. For example, if a forum allows users to post articles (and comments on those articles) and provides an editorial review of that content but does not check its accuracy, it is unclear whether that platform would be considered an online platform under the DSA's scope and whether the liability exemption would apply in these circumstances, given the limited nature of this level of editorial oversight. In that regard, further clarification around specific use cases would be helpful.

In conclusion, the RIPE NCC commends the European Commission in drafting a balanced proposal, including important provisions to protect the public core of the Internet and ensure that it can continue to operate, innovate, and serve the needs of European citizens. We urge the European Parliament and Council to maintain these safeguards as they develop their respective positions on the DSA.