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We tried to provide a quick structural overview on the legal proposal of the Digital Services act, taking into account that we had to simplify in order to make the proposal more understandable – further analysis of the Digital Services Act and the Digital Market Act will follow on our website: fairdigitaleurope.eu – we share our knowledge and notify you about updates via our newsletter service (subscribe [here](#)).

Digital Services Act

Structural Overview

Chapter I – General provisions

Scope (Art 1): Providers of intermediary services (IM) – providing (Art 2):

- 1) Mere conduit (transmission in a communication network)
- 2) Caching (mere conduit + storage)
- 3) Hosting (Storage of information provided by and at the request of a recipient of the service)

Chapter II – Liability of providers of intermediary services (IM)

Liability of IM	No Liability of IM
<p>A) Providers of IM are ordered to act against illegal content (Art 8) upon the receipt of and order of [...] relevant national judicial or administrative authorities; these orders have to contain certain elements and inform the Digital Service Coordinator (DSC) who has to inform all the other DSCs</p>	<p>1. Mere conduit (Art 3): IM does not initiate the transmission; does not select the receiver of the transmission; does not select or modify the information contained in the transmission</p>

<p>B) Providers of IM are ordered to provide information (Art 9) upon the receipt of and order of [...] relevant national judicial or administrative authorities; these information about one or more specific individual recipients of the service and inform the Digital Service Coordinator (DSC) who has to inform all the other DSCs</p>	<p>2. Caching (Art 4): IM does not modify information, the provider complies with conditions on access to the information, provider complies with rules regarding the updating of the information, does not interfere with the lawful use of technology</p>
	<p>3. Hosting (Art 5): IM does not have knowledge of illegal activity or illegal content or acts expeditiously to remove or disable access to the illegal content.</p>
	<p>4. Art 6 und 7 – no liability of IM if IM does own-initiative investigations are done and no general monitoring</p>

Chapter III – Due diligence of intermediary providers

<p>Section 1 – All providers of IM</p>	<p>Section 2 – Additional provisions applicable to hosting services, including online platforms</p>	<p>Section 3 – applicable to online platforms (micro and small enterprises are excluded)¹</p>	<p>Section 4 – additional obligation for very large online platforms (monthly active recipients equal or higher than 45 mio)</p>	<p>Section 5 – other provisions concerning due diligence obligations like</p>
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<p>(Art 10) establish a single point of contact</p>	<p>(Art 14) notice and action mechanism 1. Mechanisms allowing individuals or entities to notify about specific</p>	<p>(Art 17) Internal complaint-handling system has to be established to deal with a) Decisions to remove or disable access, to suspend or</p>	<p>(Art 25) to manage systemic risks;</p>	<p>(Art 34) Standards set by standardisation bodies, supported by EC</p>
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¹ Within the SME category, micro and small enterprises are defined as enterprises which employ fewer than 50 persons and whose annual turnover and/or annual balance sheet total does not exceed EUR 10 million

	<p>items or information</p> <p>2. The mechanisms shall be sufficiently, precise and adequately</p>	<p>terminate the provisions of the service and decisions to suspend or terminate the recipients' account.</p>		
<p>(Art 11) define a legal representative, if the intermediary service has no establishment in the Union</p>	<p>(Art 15) statement of reason</p> <p>If the notice and action mechanism enters force (Art 14) the hosting service/online platform has to inform the parties concerned about the action taken</p>	<p>(Art 18) out-of-court dispute settlement</p> <p>An out-of-court dispute settlement body can be established on MS level to sort out conflicts together with the DSC.</p>	<p>(Art 26) Risk assessment of systemic risks including dissemination of illegal content, any negative effects for the exercise of fundamental rights or intentional manipulation of their services.</p> <p>(Art 27) they have to mitigate these risks (from Art 26) and undergo</p>	<p>(Art 35) a code of conduct,</p>
<p>(Art 12) inform about restrictions (e.g. diligence, objective, terms etc.)</p>		<p>(Art 20) Intermediaries have to establish measures and protection against misuse.</p>	<p>(Art 28) an independent audit establish a</p>	<p>(Art 36) an even stronger code of conduct for online advertising and</p>
<p>(Art 13) do a yearly reporting about content moderation (micro and small enterprises are excluded)²</p>		<p>(Art 19) trusted flaggers can be found who have priority possibilities to be heard by DSC and Intermediaries, they have to fulfil certain quality</p>	<p>(Art 29) recommender system and have stronger rules on</p>	<p>(Art 37) a crisis protocol</p>

² Within the SME category, micro and small enterprises are defined as enterprises which employ fewer than 50 persons and whose annual turnover and/or annual balance sheet total does not exceed EUR 10 million

		criteria to become a trusted flagger		
		(Art 21) Notification of suspicious or criminal offences – intermediaries have to inform the law enforcement or judicial authorities of the MS concerned and provide all necessary information.	(Art 30) additional online advertising transparency and	
		(Art 22) Traders have to be traceable (Art 23) Transparency on reporting (Art 24) Transparency of advertising	(Art 31) the possibility to provide data access and and	
			(Art 32) establish a compliance officer and (Art 33) meet transparency reporting obligations	

Chapter IV – Implementation, cooperation, sanctions and enforcement

Section 1 – competent authorities and national digital services coordinators	Section 2 – European Board for Digital Services	Section 3 – supervision, investigation, enforcement and monitoring in respect of very large online platforms	Section 4 – Common provisions on Enforcement and Section 5 –Delegated Acts
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<p>(Art 38) MS shall designate one or more competent authorities responsible for the enforcement of this regulation and designate a digital services coordinator (out of one of this competent authorities). The DSC shall cooperate with each other, other national competent authorities, the Board and the Commission to provide for regular exchanges of views. The requirement for a DSC should also apply to any other competent authority. Art 38 defines these requirements.</p>	<p>(Art 47) The EC establishes a new body – the European Board for Digital Services which is an independent advisory group of Digital Services Coordinators on the supervision of provisions of intermediary services. The Board is advising the DSCs and the EC and its main goals are: a) contributing to the consistent application of this Regulation, Coordinating and contributing to guidance and analysis, assisting the DSC and EC in supervision of very large online platforms. (Art 48) explains the structure of the Board and (Art 49) the tasks of the board.</p>	<p>(Art 50) the EC can act on its own initiative, the Board on its own initiative or by initiative of three DSC. Within the 1st month: The very large platforms are informed about the investigation and the DSC concerned has to request a plan from the platform in one month how that platform intends to terminate or remedy the infringement. Within the 2nd month: Now the Board has communication within one month to release an option about the plan of the platform. Within the 3rd month: the national DSC has to decide if the action plan is appropriate or not. If the platform is not sending an action plan or the plan is not appropriate the DSC communications to the EC and the Board. The DSC can also ask for an independent audit within the two months of the implementation of the action plan or a part of it. If the DSC decides to go for an audit the DSC has one month of time after presentation of the audit to communicate to the EC if their infringement is terminated or remedied and the reasons thereof.</p>	<p>(Art 67) The Commission establish and maintain an information sharing system and</p>
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<p>Art 40 (1): MS where the main establishment of the provider of intermediary services is located shall have jurisdiction for the purpose of this regulation – but: Art 3 clarifies that Art 40 (1) is without prejudice to Art 51 (3) and the tasks and powers of the EC under Section III (DSC informs the EC about out of court settlements in MS)</p>		<p>(Art 51) The EC can intervene upon the Board’s recommendation or on its own initiative after consulting the board if (Art 51 (1)): (2) infringement of the provisions of Section 4 in Chapter III (3) suspicion of having infringed any of the provisions of this Regulation and DSC did not act or not inform; (4) by request of the DSC; (5) EC gets active itself in this case the DSC is not investigating any more but all the documentation goes to the EC and inform EC about their position (7-11)</p>	<p>(Art 68) the intermediary service shall have the right to mandate a representative</p>
<p>(Art 41) The powers of the DSC are the power to require intermediaries about suspected infringement of this Regulation, to carry out one-side inspections or request other public bodies to do so.</p>		<p>Powers of Commission (Art 52) Request information (Art 53) has the power to do interviews, (Art 54) the power to conduct on-site inspections, (Art 55) formulate interim measures, (Art 56) demand commitments, (Art 57) monitor actions, (Art 58) adopts non-compliance measures</p>	<p>Delegated acts (Art 69) defines the field of potential delegated acts on Articles 23, 25 and 31</p>
<p>Formulate penalties (Art 42) up to 6% of annual income or 5% of the daily turnover. The DSC has a right to lodge a complaint (Art 43) against an intermediary, deliver activity reports</p>		<p>Penalties on very large online platforms (Art 59) may impose a fine of up to 6% of annual turnover</p>	

(Art 44) and boost cross boarder cooperation (Art 45)		(Art 60) may establish periodic penalty payments up to 5% of the daily turnover	
		<p>Limitation of Penalties (Art 61) limit the period of imposition of penalties, (Art 62) limit the period for the enforcement of penalties</p>	
		<p>The powers of the very large platforms in the case of an investigation of the very large platforms (Art 63) Right to be heard and access to the file</p>	
		<p>Publicity of the decision (Art 64) The decision of the EC has to be published</p>	
		<p>Legal steps if there is no cessation on the case If all the measures from Art 52 to 62 do not lead to the cessation of the case the EC may submit written observations to the competent judicial authority of the DSC (Art 65) of establishment and ask the DSC to act pursuant to Art 41 (2) lit f.</p>	

		The commission can also propose implementing acts concerning practical arrangements (Art 66).	
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Chapter V – Final provisions

Explains the context to the e-commerce directive (Art 71) and the directive on representative actions for the protection of collective interests of consumers (Art 72). Art 73 defines a five years evaluation of this regulation and after three years the functioning of the established system (Board, DSC etc.) will be evaluated. This regulation shall enter into force 20 days after publication in the official Journal.

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