

Facebook preliminary views and comments on the Digital Services Act

Introduction

Facebook welcomes the opportunity to share our very preliminary comments and observations on the Digital Services Act. We support the ambition of the Digital Services Act to strengthen the digital services market in the EU and provide clarity on the role and responsibilities of online platforms to make the Internet safe. We want a legal framework that allows us to tackle the problem of keeping the Internet safe and play our part in creating a healthier online environment.

The Internet landscape has changed significantly since the adoption of the eCommerce Directive, which established the limited liability regime for platforms under which many innovative services have flourished in Europe and elsewhere over the past 20 years. There is always room to adapt and modernise laws that were made two decades ago and the eCommerce Directive is no different. We are looking forward to engaging in the coming months with the EU institutions and supporting shaping of the Digital Services Act.

As Facebook, we seek a framework which allows actors in the online ecosystem to do more to remove illegal and harmful content and help foster the trust of European citizens in digital services. Online intermediaries, rights holders, users, governments and law enforcement all have a role to act responsibly and improve the safety and trust in the Internet economy. The Digital Services Act should aim to make the roles and responsibilities of different online actors clear, and incentivise platforms to tackle illegal and harmful content.

Liability regime

We do not want Facebook to be a platform for hate, abuse or exploitation, as we want to make sure that our users are safe and that they trust and enjoy our platform. We consider it our responsibility to take active steps to tackle abusive, harmful and illegal behaviour and content. Such steps take account of the need to act swiftly to remove bad content while also accounting for the need to balance rights, such as free expression and access to information, particularly where content is not manifestly unlawful.

Therefore, we welcome a strong endorsement in the DSA of **the core principles from the eCommerce Directive**. This includes country of origin principle and secondary liability for online platforms, based on the notice and takedown system. We agree that DSA needs to clearly distinguish between the liability and responsibility of online players. The law should continue to assign primary liability to users that put illegal or harmful content online and limit the liability of online service providers (whose services are in fact being abused in these situations). Liability should not attach for illegal content of which the platform is not made aware.

We strongly support that prohibition of general monitoring is maintained in the DSA. Member States may not impose a general obligation to systematically monitor information that intermediary service providers transmit or store or to actively look for actions indicating illegal activity. It would be impossible and undesirable to require that content be pre-screened before it is uploaded on the platform: such a requirement could lead to overblocking of perfectly lawful and legitimate speech, as there is no foolproof way to identify and screen for specific kinds of illegal content. It

would also arguably place an undue burden on smaller companies starting out, who may be wary of incurring legal liability and lack the resources to meet this obligation.

Voluntary measures

Many platforms, like us, already have voluntary measures in place to better protect users. However, any voluntary measure contains some inherent risks: too much control can compromise the neutral status of the platform and, as a payoff, deprive the platform of the intermediary liability protection. It is very important for the safety of our users that the European Commission recognised this challenge and introduced in the DSA a clear legal **incentive to undertake voluntary measures**, without losing their legal protection. This gives platforms legal certainty on their activity that goes beyond the notice and action.

It is vitally important for Facebook that users enjoy their experience and that they feel secure when they engage and share content online. Because certain illegal content is particularly problematic, we have increasingly invested in the deployment and development of technology, such as classifiers or matching technology, to help us catch and remove harmful content at scale. The approach taken by the DSA will help protect and encourage these efforts.

Harmful content

Any regulation should recognise the need to balance the removal of **harmful content** with the protection of freedom of expression and other fundamental rights. Harmful content is contextual, difficult to define, may be culturally subjective and is often legally ambiguous. Harmful content should therefore not form part of the liability regime. At the same time, it is desirable for society that online intermediaries have the capacity to moderate and enforce against lawful but potentially harmful content according to their clear policies. Not all content is suitable for all platforms and the communities they serve.

We therefore welcome that the Digital Services Act recognises that illegal content requires a different set of provisions than harmful but legal content. In this context, we welcome the important role that the European Commission assigns to **co-regulation, risk assessments and mitigation measures**. However, these provisions are very broad and can encompass many content areas and affect freedom of expression. Given the large fines for non compliance, there needs to be more clarity about what exactly triggers sanctions. Regulation should recognise that intermediaries face challenges when they do seek to remove harmful content pursuant to their policies.

Transparency

Transparency plays a pivotal role in any accountability model powered by regulation. We are of the view that companies should be held accountable for the effectiveness of their systems, rather than holding them liable for each individual piece of content. While one-off events or individual pieces of content will test the effectiveness of the system, one-off events should not be the focus when it comes to assessing compliance.

We welcome some aspects of the transparency reporting requirements. Among the transparency reports that Facebook publishes on a regular basis is the Community Standards Enforcement Report in relation to content we have enforced under our Community Standards, divided by category. We have recently invited requests for proposals to independently audit and verify these

numbers. We therefore understand the requirement for independent audits, which should enhance regulators ability to analyse platforms rather than require them to develop auditing skills. Having an independent body perform this function should increase cooperation between regulators, platforms, European institutions and others. The breadth of some of the auditing obligations under the DSA should be clarified/improved as these could become a barrier for growth in the sector.

As a large platform, we fully understand and accept our responsibility towards the users and the broader ecosystem. However, the overall compliance burden provided by the DSA under the transparency bucket for Very Large Platforms (VLOPS) is very significant. We need to make sure that these provisions actually address the problems at hand and incentivise more responsible behaviour from the platforms. There is a real risk that such a heavy burden would be a deterrent for the ecosystem: there is a real legal incentive for companies to remain under the threshold and not be subject to these provisions.

For many digital services, including Facebook, algorithms are core to the value of the service. Personalized algorithms are a core technology that helps Facebook to achieve its mission of giving people the power to build community and bring the world closer together. Our large team of researchers and engineers, based in Europe and globally, develops machine learning algorithms that rank feeds, ads and search results in Facebook and Instagram, and creates new text understanding algorithms that help to keep spam, misleading content, and other violations of our content policies at bay. This technology can make our existing products better while also enabling entirely new experiences, and it is absolutely instrumental in keeping people safe on our platforms. We believe that any restrictions on personalized algorithms need to be carefully considered as such restrictions would directly impact the quality of the service and negatively impact the user experience on the platform.

Additional points

There is some concern with the oversight and enforcement role granted to the European Commission in this space. The powers seem disproportionate and there is a lack of safeguards to better frame this power. We would therefore recommend more focus on the due process and other safeguards around competent authorities exercising their powers, and that this needs to be better reflected in the text.

There is also uncertainty around the composition of the Digital services coordinator /national competent authority and its powers, versus the European Commission's role and the role of the Board. More clarity in this space would be welcomed.

We also would encourage more proportionality in assessing the out-of-court settlement provisions. Should this requirement mean that ODR should be made available for every removal decision on any piece of content with no additional threshold, it might need to be reviewed and considered in light of proportionality principle.

Conclusion

We would encourage that the legislative process on the DSA reflects and takes into account existing legislative instruments, including the Audiovisual Media Services ("AVMS") Directive, with its approach to country of origin and to oversight and upcoming instruments, and the **European Democracy Action Plan ("EDAP")**, which tackles important questions around elections integrity.

It is important to ensure harmonisation amongst all of these, learning from the examples from the past and building towards the future of content regulation. Facebook hopes to further contribute to this important work in the next few months.