

EBU AMENDMENTS TO THE DIGITAL SERVICES ACT PROPOSAL JUNE 2021

1. The DSA must not encroach on Member States' competence in cultural matters and it must not affect sector-specific EU law

Commission proposal	EBU amendment
Art. 1(5) – Subject matter and scope	Art. 1(5)
<p>5. This Regulation is without prejudice to the rules laid down by the following:</p> <ul style="list-style-type: none"> (a) Directive 2000/31/EC; (b) Directive 2010/13/EC; (c) Union law on copyright and related rights; (d) Regulation (EU) .../.... on preventing the dissemination of terrorist content online [TCO once adopted]; (e) Regulation (EU) .../.... on European Production and Preservation Orders for electronic evidence in criminal matters and Directive (EU) .../.... laying down harmonised rules on the appointment of legal representatives for the purpose of gathering evidence in criminal proceedings [e-evidence once adopted] (f) Regulation (EU) 2019/1148; (g) Regulation (EU) 2019/1150; (h) Union law on consumer protection and product safety, including Regulation (EU) 2017/2394; 	<p>5. This Regulation is without prejudice to shall not affect the rules laid down by the following:</p> <p>(...)</p>

<p>(i) Union law on the protection of personal data, in particular Regulation (EU) 2016/679 and Directive 2002/58/EC.</p>	
	<p>New Art. 1(6)</p>
	<p><i>This Regulation shall leave intact and shall in no way affect Member States' competence in relation to intermediary service providers to take measures that promote cultural and linguistic diversity and ensure the freedom and pluralism of the media.</i></p>
<p>Recital 9</p>	<p>Recital 9</p>
<p>This Regulation should complement, yet not affect the application of rules resulting from other acts of Union law regulating certain aspects of the provision of intermediary services, in particular Directive 2000/31/EC, with the exception of those changes introduced by this Regulation, Directive 2010/13/EU of the European Parliament and of the Council as amended, and Regulation (EU) .../.. of the European Parliament and of the Council – proposed Terrorist Content Online Regulation.</p> <p>Therefore, this Regulation leaves those other acts, which are to be considered <i>lex specialis</i> in relation to the generally applicable framework set out in this Regulation, unaffected.</p>	<p>This Regulation should complement, yet not affect the application of rules resulting from other acts of Union law regulating certain aspects of the provision of intermediary services, in particular Directive 2000/31/EC, with the exception of those changes introduced by this Regulation, Directive 2010/13/EU of the European Parliament and of the Council as amended, and Regulation (EU) .../.. of the European Parliament and of the Council – proposed Terrorist Content Online Regulation.</p> <p>Therefore, this Regulation leaves those other acts, which are to be considered <i>lex specialis</i> in relation to the generally applicable framework set out in this Regulation, unaffected.</p> <p><i>This Regulation should not affect Member States' freedom to regulate issues on which those other acts leave Member States the possibility of adopting certain measures at national level.</i></p>

<p>However, the rules of this Regulation apply in respect of issues that are not or not fully addressed by those other acts as well as issues on which those other acts leave Member States the possibility of adopting certain measures at national level.</p>	<p><i>In the event of a conflict between Directive 2010/13/EU as amended and this Regulation, Directive 2010/13/EU as well as the national measures taken in accordance with that Directive shall prevail.</i></p> <p><i>However, the rules of this Regulation apply in respect of issues that are not or not fully addressed by those other acts as well as issues on which those other acts leave Member States the possibility of adopting certain measures at national level.</i></p>
	<p>New Recital 9b</p>
	<p><i>Notwithstanding the EU's competence to take cultural aspects into account in its action under the Treaties, this Regulation should not affect Member States' competence in the cultural sphere nor should it prejudice national measures addressed to intermediary service providers in order to secure and promote the freedom of expression and information, the freedom and pluralism of the media as well as cultural diversity.</i></p>

Justification

The current wording proposed by the Commission could result in legal uncertainty as regards the relationship between the DSA and other sector-specific EU legal acts, as well as the relationship between the DSA and Member States' competence to regulate cultural issues.

To guard the EU's current achievements in diverse sectors, notably the media sector, and prevent them from being undermined, it is paramount to clarify that sector-specific Union law prevails over the horizontal rules contained in the DSA as the former best reflects the dual nature of the media, being cultural as well as economic goods.

According to EU Treaties cultural matters remain the prerogative of Member States. Similarly to what was done in the eCommerce Directive, it should be specified that the DSA does not affect Member States' competence to regulate issues related to cultural diversity and media pluralism and that Member States are free to adopt such measures, especially given that the DSA is a Regulation.

2. Platforms must not interfere with media service providers' editorial content

OPTION 1

Commission proposal	EBU amendment
	<p>New Art. 11a <i>No interference with editorial content of media service providers</i></p>
	<p><i>Providers of intermediary services shall not remove, disable access to or otherwise interfere with editorial content and services made available by a provider, who bears editorial responsibility and complies with regulation consistent with EU and national law.</i></p> <p><i>This Article shall not affect the possibility for an independent judicial or administrative authority of requiring the content provider to terminate or prevent an infringement of applicable Union or national law.</i></p>
	<p>Art. 12 new paragraph 2a</p>
	<p><i>2a. (new) Providers of intermediary services shall ensure that the requirements referred to in Article 11a are applied and enforced in their terms and conditions as well as other policies, procedures, measures and tools used for the purpose of content moderation.</i></p>

Art. 14 - Notice and action mechanisms	Art. 14 new paragraph 7
	<i>7. (new) This Article does not apply to editorial content and services made available by a provider, who bears editorial responsibility and complies with regulation consistent with EU and national law.</i>

OPTION 2

Commission proposal	EBU amendment
	Art. 12 new paragraph 3
	<p>3. (new) Providers of intermediary services shall not remove, disable access to or otherwise interfere with editorial content and services made available by a provider, who bears editorial responsibility and complies with regulation consistent with EU and national law.</p> <p><i>This Article shall not affect the possibility for an independent judicial or administrative authority of requiring the content provider to terminate or prevent an infringement of applicable Union or national law.</i></p>
Art. 14 - Notice and action mechanisms	Art. 14 new paragraph 7
	<p>7. (new) This Article does not apply to editorial content and services made available by a provider, who bears editorial responsibility and complies with regulation consistent with EU and national law.</p>

CONSEQUENTIAL AMENDMENTS

Note: Options 1 and 2 must be complemented by the following amendments:

	<p><i>Art. 1a (new) Contractual provisions/No circumvention of the DSA's rules</i></p>
	<p><i>1. Any contractual provisions between an intermediary service provider and a trader, business user, or a recipient of its service which are contrary to this Regulation shall be unenforceable.</i></p> <p><i>2. This Regulation shall apply irrespective of the law applicable to contracts concluded between providers of intermediary services and a recipient of the service, a consumer, a trader or business user.</i></p>

New Recital

In order to promote the freedom of expression and media pluralism online, the importance of editorial content and services must be recognised, requiring intermediary service providers to refrain from removing, suspending or disabling access to it. It follows that intermediary service providers should be exempt from liability for editorial content and services.

Providers of editorial content and services should be identified by the Member State in which the provider is established. These providers should be understood as performing an economic activity within the meaning of Articles 56 and 57 TFEU.

Intermediary service providers should put mechanisms in place to facilitate the practical application, for example, the flagging or watermarking of lawful editorial content and services by content providers.

Justification

Safeguarding editorial freedom and media independence is key to safeguard public trust. Allowing global online platforms to ban and/or remove editorial content and services solely on the basis that they clash with their unilaterally imposed corporate community standards creates a serious threat for editorial freedom and media pluralism. Unlike media providers, online platforms do not bear editorial responsibility for the content they make available. Yet, they perform actions on content that are editorial-like. The DSA must stop online platforms from playing the role of quasi-editors, a role that they are, in no way, apt to fulfil.

In turn, online platforms should be exempt from liability for editorial content and services from a provider who bears editorial responsibility and exercises editorial control over such content.

Providers of editorial content and services should be identified at the national level in accordance with national systems and approaches, for example, by competent sector-specific regulatory authorities and bodies which have a role in overseeing media providers.

3. Platforms must correctly display the identity and brand of business users

	New Article 13a
	<i>Providers of intermediary services shall ensure that the identity, such as the trademark/logo or other characteristic traits, of the business user providing the goods or services on the intermediary services is clearly visible alongside the goods or services offered.</i>

Justification

In order to enhance consumer protection, online safety and promote fairness among market participants, it is necessary that the DSA includes an obligation for intermediary service providers to clearly indicate the identity of the business user alongside the goods and services offered by the business user. This obligation is modelled on the Platform-to-Business Regulation and would be applicable to all intermediary service providers and not just online intermediation services (as per the P2B Regulation).

Ultimately, it would further reinforce the DSA's objectives of building a transparent and safe online environment, empowering consumers to easily identify the provider of goods or services (including in cases when goods or services are offered by the intermediary service provider) and ensuring that they have trust in the goods and services offered online.

4. Transparency rules for recommender systems must apply to all online platforms

Commission proposal	EBU amendment
Art. 29 (for very large platforms) - Recommender systems	New Art. 24a (for online platforms)
<p>1. Very large online platforms that use recommender systems shall set out in their terms and conditions, in a clear, accessible and easily comprehensible manner, the main parameters used in their recommender systems, as well as any options for the recipients of the service to modify or influence those main parameters that they may have made available, including at least one option which is not based on profiling, within the meaning of Article 4 (4) of Regulation (EU) 2016/679.</p> <p>2. Where several options are available pursuant to paragraph 1, very large online platforms shall provide an easily accessible functionality on their online interface allowing the recipient of the service to select and to modify at any time their preferred option for each of the recommender systems that determines the relative order of information presented to them.</p>	<p>1. Very large Online platforms that use recommender systems shall set out in their terms and conditions, in a clear, accessible and easily comprehensible manner, the main parameters used in their recommender systems, as well as any options for the recipients of the service to modify or influence those main parameters that they may have made available, including at least one option which is not based on profiling, within the meaning of Article 4 (4) of Regulation (EU) 2016/679.</p> <p>2. Where several options are available pursuant to paragraph 1, very large online platforms shall provide an easily accessible functionality on their online interface allowing the recipient of the service to select and to modify at any time their preferred option for each of the recommender systems that determines the relative order of information presented to them.</p>

Justification

Enhanced transparency rules for recommender systems should not be limited to very large platforms. Recommender systems are commonly used by all types of platforms to classify, rank, prioritize available information, thus influencing the relative order and visibility of content. Given the critical impact online platforms have on the display of content and services and ultimately on user behaviour, it is essential that they adhere to basic transparency requirements. This is all the more necessary where the recommender system pre-selects content upon a user's demand (for example through voice assistants), answering with a single search result to the user's query.

5. Media regulators must be meaningfully engaged in national oversight structures

Commission proposal	EBU amendment
Recital 73	
<p>(73) Given the cross-border nature of the services at stake and the horizontal range of obligations introduced by this Regulation, the authority appointed with the task of supervising the application and, where necessary, enforcing this Regulation should be identified as a Digital Services Coordinator in each Member State. Where more than one competent authority is appointed to apply and enforce this Regulation, only one authority in that Member State should be identified as a Digital Services Coordinator. The Digital Services Coordinator should act as the single contact point with regard to all matters related to the application of this Regulation for the Commission, the Board, the Digital Services Coordinators of other Member States, as well as for other competent authorities of the Member State in question. In particular, where several competent authorities are entrusted with tasks under this Regulation in a given Member State, the Digital Services Coordinator should coordinate and cooperate with those authorities in accordance with the national law setting their respective tasks, and should ensure effective involvement of all relevant authorities, notably in the supervision and enforcement at Union level.</p>	<p>(73) Given the cross-border nature of the services at stake and the horizontal range of obligations introduced by this Regulation, the authority appointed with the task of supervising the application and, where necessary, enforcing this Regulation should be identified as a Digital Services Coordinator in each Member State. Where more than one competent authority is appointed to apply and enforce this Regulation, only one authority in that Member State should be identified as a Digital Services Coordinator. The Digital Services Coordinator should act as the single contact point with regard to all matters related to the application of this Regulation for the Commission, the Board, the Digital Services Coordinators of other Member States, as well as for other competent authorities of the Member State in question. In particular, where several competent authorities are entrusted with tasks under this Regulation in a given Member State, the Digital Services Coordinator should coordinate and cooperate with those authorities in accordance with the national law setting their respective tasks, and should ensure regular reporting to and effective involvement of all relevant authorities, notably independent national regulatory authorities for the media, in the supervision and enforcement at Union level.</p>

Justification

In line with Member States' institutional autonomy, the DSA leaves it to Member States to designate the competent national authority(ies) that supervise and enforce the DSA at the national level. Where Member States choose to delegate this task to a different national authority, it should be ensured that regular exchanges take place with other authorities, in particular independent national regulatory authorities for the media which hold a great expertise in the regulation of certain online services. These should be duly informed, at regular intervals and engaged in any issues that relate to their mandate as defined by national law or that have any effect on the regulation of audio and audiovisual media services.

6. Traceability must be provided in relation to all business users

Commission proposal	EBU amendment
Art. 22 – Traceability of traders	Art. 22 – <i>Traceability of business users</i>
<p>1. Where an online platform allows consumers to conclude distance contracts with traders, it shall ensure that traders can only use its services to promote messages on or to offer products or services to consumers located in the Union if, prior to the use of its services, the online platform has obtained the following information:</p> <ul style="list-style-type: none"> (a) the name, address, telephone number and electronic mail address of the trader; (b) a copy of the identification document of the trader or any other electronic identification as defined by Article 3 of Regulation (EU) No 910/2014 of the European Parliament and of the Council; (c) the bank account details of the trader, where the trader is a natural person; (d) the name, address, telephone number and electronic mail address of the economic operator, within the meaning of Article 3(13) and Article 4 of Regulation (EU) 2019/1020 of the European Parliament and the Council or any relevant act of Union law; (e) where the trader is registered in a trade register or similar public register, the trade register in which the trader is registered and its registration number or equivalent means of identification in that register; 	<p>1. Where an online platform allows consumers to conclude distance contracts with traders, <i>or business users to offer their goods and services to consumers</i>, it shall ensure that traders <i>and business users</i> can only use its services to promote messages on or to offer products or services to consumers located in the Union if, prior to the use of its services, the online platform has obtained the following information <i>from the respective trader or business user</i>:</p> <ul style="list-style-type: none"> (a) the name, address, telephone number and electronic mail address <i>of the trader</i>; (b) a copy of the identification document <i>of the trader</i> or any other electronic identification as defined by Article 3 of Regulation (EU) No 910/2014 of the European Parliament and of the Council; (c) the bank account details <i>of the trader</i>, where the trader <i>or business user</i> is a natural person; (d) the name, address, telephone number and electronic mail address of the economic operator, within the meaning of Article 3(13) and Article 4 of Regulation (EU) 2019/1020 of the European Parliament and the Council or any relevant act of Union law; (e) where the trader <i>or business user</i> is registered in a trade register or similar public register, the trade register in which the trader <i>or business user</i> is registered and its registration number or equivalent means of identification in that register;

<p>(f) a self-certification by the trader committing to only offer products or services that comply with the applicable rules of Union law.</p> <p>2. The online platform shall, upon receiving that information, make reasonable efforts to assess whether the information referred to in points (a), (d) and (e) of paragraph 1 is reliable through the use of any freely accessible official online database or online interface made available by a Member States or the Union or through requests to the trader to provide supporting documents from reliable sources.</p> <p>3. Where the online platform obtains indications that any item of information referred to in paragraph 1 obtained from the trader concerned is inaccurate or incomplete, that platform shall request the trader to correct the information in so far as necessary to ensure that all information is accurate and complete, without delay or within the time period set by Union and national law. Where the trader fails to correct or complete that information, the online platform shall suspend the provision of its service to the trader until the request is complied with.</p> <p>4. The online platform shall store the information obtained pursuant to paragraph 1 and 2 in a secure manner for the duration of their contractual relationship with the trader concerned. They shall subsequently delete the information.</p> <p>5. Without prejudice to paragraph 2, the platform shall only disclose the information to third parties where so required in accordance with the applicable law, including the orders referred</p>	<p>(f) a self-certification by the trader or business user committing to only offer products or services that comply with the applicable rules of Union law.</p> <p>2. The online platform shall, upon receiving that information, make reasonable efforts to assess whether the information referred to in points (a), (d) and (e) of paragraph 1 is reliable through the use of any freely accessible official online database or online interface made available by a Member States or the Union or through requests to the trader or business user to provide supporting documents from reliable sources.</p> <p>3. Where the online platform obtains indications that any item of information referred to in paragraph 1 obtained from the trader or business user concerned is inaccurate or incomplete, that platform shall request the trader or business user to correct the information in so far as necessary to ensure that all information is accurate and complete, without delay or within the time period set by Union and national law. Where the trader or business user fails to correct or complete that information, the online platform shall suspend the provision of its service to the trader or business user until the request is complied with.</p> <p>4. The online platform shall store the information obtained pursuant to paragraph 1 and 2 in a secure manner for the duration of their contractual relationship with the trader or business user concerned. They shall subsequently delete the information.</p> <p>5. Without prejudice to paragraph 2, the platform shall only disclose the information to third parties where so required in accordance with the applicable law, including the orders</p>
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<p>to in Article 9 and any orders issued by Member States' competent authorities or the Commission for the performance of their tasks under this Regulation.</p> <p>6. The online platform shall make the information referred to in points (a), (d), (e) and (f) of paragraph 1 available to the recipients of the service, in a clear, easily accessible and comprehensible manner.</p> <p>7. The online platform shall design and organise its online interface in a way that enables traders to comply with their obligations regarding pre-contractual information and product safety information under applicable Union law.</p>	<p>referred to in Article 9 and any orders issued by Member States' competent authorities or the Commission for the performance of their tasks under this Regulation.</p> <p>6. The online platform shall make the information referred to in points (a), (d), (e) and (f) of paragraph 1 available to the recipients of the service, in a clear, easily accessible and comprehensible manner.</p> <p>7. The online platform shall design and organise its online interface in a way that enables traders or business user to comply with their obligations regarding pre-contractual information and product safety information under applicable Union law.</p>
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Justification

We believe that the traceability of traders is a necessary step towards enhancing consumer protection, the safety of online platforms and fighting pirated goods or services. We believe that, in order to be effective, the principle of identification should not be limited to traders and its application not be restricted to online marketplaces. Instead, traders as well as all other business users of all online platforms should be required to provide information about themselves.

Platform providers, law enforcement authorities and citizens can thus easily identify business users providing dubious and illegal goods, content, or services and communicate with them in a direct and effective manner. A broad obligation for online platforms to verify the identity of their business users will contribute to combatting fraudulent activities online, such as copyright infringements, the dissemination of illegal content and disinformation.