

Snap position on the DSA

Snap applauds the DSA's intention, the desire to maintain the country of origin principle, the clarification of the liability regime for digital service providers and the enhancement of notions of responsibility and transparency based on risk assessment and user empowerment. While Snap is overall supportive of the DSA proposals, we are however concerned that they may not, in their current state, fully achieve the ambitious objectives envisaged by the EU Commission. Snap would therefore like to provide the key areas of concern from our perspective.

1/ The importance of strong internal market provisions

The DSA complements the country of origin principle by allowing in certain cases cross border injunctions and requirements for one regulator to act at the behest of another. Snap applauds the Commission's objective to facilitate exchanges among national regulators. However, this should not compromise the consistency or integrity of the country of origin principle. It is important to ensure that **strong internal market provisions** are the basis of the instrument (country of origin) and any derogations are kept to a bare minimum and unavoidable in nature. There must also be strong sunset clauses to remove current and pending national legislation in areas like content regulation.

→ Snap recommends establishing an explicit mechanism for determining and then maintaining jurisdiction under a **strengthened country of origin principle**. It is important to **avoid duplication amongst national regulators, as well as the need to avoid forum shopping**.

→ Snap recommends a **strong sunset clause** to remove current and pending national legislation and regulation in areas within the coordinated field of the DSA. This will avoid potential duplication and/or contradiction of legal regimes.

2/ Improving the definition for “very large platform” with a qualitative approach The logic behind a single threshold of 45 million users (10% of the EU population) seems arbitrary and disconnected from both a platform's ecosystem and its way of working. **Such a low threshold** is easily met by a large number of medium sized platforms, from Europe and elsewhere, that don't cause any wide scale harms or bring competition concerns. Bringing such companies into the scope of “very large platforms” **could jeopardise their future development and innovation**. Their subsequent **lack of competitiveness** will cement the position of a small group of genuinely very large, dominant market players, lessening competition and narrowing alternative offers to European consumers.

Rather than focusing only on a single quantitative threshold number to determine the harm caused by a given platform, **the definition should be improved with qualitative criteria that would reflect the ability of the platform to limit harmful content and would encourage good behaviour of all platforms** large and small. The DSA could take inspiration from existing

good practice examples all around the world¹. As a result, Snapchat suggests promoting an approach whereby platforms that take **stronger mitigating steps in terms of user safety** would see their **potential liability reduced**. This would **incentivise more socially responsible companies** that are taking good faith steps to make their platforms safer through additional monitoring, curation or privacy- and safety-by-design principles to significantly reduce the volume and severity of illegal and harmful content. A commensurate reduced liability exposure would provide the necessary legal certainty and regulatory proportionality, acting as an incentive for companies to take proactive measures appropriate to raising safety levels on their services.

→ Snap suggests **replacing the current 45m users threshold with a two stage - quantitative and qualitative - test and to reduce liability exposure for good faith actors:**

1. The quantitative: **minimum of 30% of the EU population consistent over a 3 year period, with a full explanation of the methodology to calculate the number of** (average monthly/daily active) users.
2. The qualitative: add a **new criterion based on a company's ability to meet best-in-class standards in three areas: safety-by-design, privacy-by-design, content curation and pre-moderation**. If a company achieves high scores in these areas (to be determined by the supervising regulatory authority and evidenced by the relative lack of harms occurring on the platform), there will be no need to apply additional regulatory burden of the "very large platform" section of DSA.
3. The platforms that take the **strongest mitigating good faith steps** (through additional monitoring, curation or privacy- and safety-by-design principles) **in terms of user safety** would see their **potential liability exposure reduced**.

3/ An accountability approach with more proportionality in mind

One of the most important goals of the DSA is to improve the safety of consumers in demanding very large platforms be more transparent and drastically limit the risks generated. This is a very important and welcomed target. However, **the DSA proposal currently fails to take the variety of risks generated by platforms into account**. A one-size-fits-all approach **assumes that the very large platforms generate the same type and volumes of harm**, have taken similar **safety precautions up front**, have almost **limitless resources**, are **highly profitable** and that they are in **some way generic and equals in the market**. These assumptions are misleading and so it is crucial that this instrument doesn't indirectly help to cement the dominance of a few platform companies for years to come in Europe.

¹ Australian safety-by-design code:

<https://www.esafety.gov.au/sites/default/files/2019-10/LOG%207%20-Document8b.pdf>

Canadian privacy-by-design principles (Privacy Commissioner of Ontario):

https://iapp.org/media/pdf/resource_center/pbd_implementation_7found_principles.pdf

UK Information Commissioner's Office age-appropriate-design-code:

<https://ico.org.uk/for-organisations/guide-to-data-protection/key-data-protection-themes/age-appropriate-design-a-code-of-practice-for-online-services/>

In imposing a **large number of administratively heavy constraints** on all digital service providers targeted as very large platforms (i.e. transparency reporting, enhanced cooperation with external public and private bodies, voluntary codes of conduct, algorithm transparency, standards for APIs to access data. etc.), the DSA inevitably misses some of the reasons why and how a platform may generate illegal or harmful content. To address this paradox **greater emphasis should be placed on proportionality**, in particular concerning overall administrative burden. For all except the largest companies, these obligations will diminish competitiveness in the market while having minimal impact on reducing overall harms.

→ **All risks** should be read with an appreciation of **proportionality for scale of harms, the size of the platform, mitigating factors to reduce harms or the underlying business model of the platform and its approach to managing risk**. The DSA should develop an **accountability approach based on principles of appropriateness and proportionality, as well as an appreciation for the position of smaller start up and medium-sized challenger companies** and their importance to the vibrancy of competition and choice of service provision to EU consumers.

4/ For a principles-based approach

Wherever possible, **principles not prescriptions should be used in the DSA** proposal. Fewer prescriptive measures are needed, and more principles. The focus should be on “what” has to be done to achieve a result, not on “how” platforms have to get there. It is important that the proposal should **describe clearly the “what” that needs to be achieved**, but as far as possible **leave the “how” to individual companies**. The reason for this is that business models are highly differentiated and a one-size-fits-all approach will favour the largest companies to the detriment of small and medium sized challengers.

→ It is important to ensure that **any approach is principles based**.

5/ For a clear regulatory oversight and enforcement

There is a growing concern on the increasing **number of regulatory bodies** now, or soon to be, involved in regulating digital markets (BEREC/NRAs, ERGA, EDPS, EBDS, NCAs/DGComp) as well as the **number of service provider definitions in EU instruments that overlap and sometimes contradict one another** (ISSP, OCSSP, ODPS, VSP, ECS, ICS, NIICS, now VLP).

Relatedly, **the interplay of DSA and existing EU instruments** (e.g. AVMS Directive, Copyright Directive, EECC, eCommerce Directive, etc) should be made much clearer. Again, all this complexity and uncertainty can be accommodated by the very largest companies, but not by smaller competitors. Regulatory complexity, just like prescription and derogations from country of origin rules, creates nothing but a competitive advantage for a very small number of elite companies.

The Commission should provide guidance for companies that are covered by different regulations and regulators (BEREC, ERGA, EBDS...). The confusion of scopes and definitions — which is currently spreading in the institutional space — leads to confusion, and ultimately uncompetitiveness, for smaller, challenger service providers and their users.

→ Snap encourages the Commission to **avoid creating duplicate requirements for services already covered by existing EU instruments** (e.g. AVMSD; Platform-to-business Regulation; EECC, Copyright Directive, etc). The Commission should **provide clear guidance for those companies that now seem to be covered by multiple EU level instruments and multiple regulatory authorities** (members of BEREC, ERGA, EBDS, etc).

