



Council of the European Union  
General Secretariat

**Brussels, 01 February 2021**

---

---

**Interinstitutional files:  
2020/0361 (COD)**

---

---

**WK 1428/2021 INIT**

**LIMITE**

**COMPET  
MI  
JAI  
TELECOM**

**CT  
PI  
AUDIO  
CONSOM  
CODEC**

*This is a paper intended for a specific community of recipients. Handling and further distribution are under the sole responsibility of community members.*

**NOTE**

---

From: DE Delegation  
To: Working Party on Competitiveness and Growth (Internal Market - Attachés)  
Working Party on Competitiveness and Growth (Internal Market)

---

Subject: Questions from DE delegation: Digital Services Act - Chapters I and II

---

## **Questions raised by the German delegation re. chapter I and II of the DSA**

### **Chapter I**

#### **Articles 1 and 2**

1. With regard to the rules of the draft DSA, does the DSA pursue the goal of full harmonisation so that the Member States are not allowed to make any regulations at national level that go beyond or deviate from those rules? If so, in which precise areas (scope of application) would there be scope for Member States' regulation (e.g. national reporting systems in case of a criminal offence, additional requirements for complaint filing systems, fixed time lines for deletion of illegal content)?
2. Will Member States be free to take measures at national level, e.g. in order to promote cultural and linguistic diversity and to ensure the protection of pluralism provided for in Art. 1(6) of the eCommerce Directive (see recital 9)?
3. Concerning the broad variety of "illegal content" and the different rights and values at stake, why does the COM not differentiate between illegal information on the one hand and illegal goods and services on the other hand?
4. Is the "illegality of content" determined by the law of the country of origin or (also) by the law of the country in which the provider provides its services?
5. Do the provisions of the draft DSA which are applicable to all providers of intermediary services (Chapter III Section 1) and to providers of hosting services (Chapter III Section 2) apply to interpersonal messaging services and what (public) messaging services are additionally covered by the definition of "online platform" in Art. 2 lit. h of the draft DSA?

### **Chapter II**

#### **Articles 3 to 9**

1. What does the announced "modernisation of the rules" for the responsibility of platforms consist of, if rules from the eCommerce Directive are taken over verbatim? Why do online traders and sales platforms not have to assume more responsibility, especially despite the negative experiences of users in the COVID-19 crisis?
2. Can Member States determine in which cases hosting service providers must delete illegal content?
3. Does Art. 6 of the draft DSA stipulate that a provider who has uncovered illegal content as a result of voluntary investigations can still lose the exemption from liability if he does not act expeditiously to remove or to disable access to the illegal content?

4. Art. 15(1) of the eCommerce Directive has been transferred to Art. 7 of the draft DSA; will Member States be allowed to lay down obligations for providers to inform the competent public authorities of suspected illegal activities, as provided for in Art. 15(2) of the eCommerce Directive?
5. Regarding orders under Art. 8 and 9: What is the legal basis for the obligation of the providers to act against illegal content / provide information? Which Member State (country of origin of the provider or country in which the provider provides its services) can enforce orders under Art. 8 and 9 of the draft DSA and how? Should there be cross-border enforcement? If so, must the country of origin enforce an order from another Member State without further examination? What legal remedies are available to providers in order to defend themselves against orders under Art. 8 and 9 that may be unlawful? With regard to Art. 9 of the draft DSA, how can Member States protect the public interest, especially with regard to the local level?