

Legislative Initiative Report on Digital Services Act “DSA: Improving the functioning of the Single Market” – IMCO Committee

Position of AFEP on tabled amendments

Topics	Amendments	Position of AFEP	Remarks
General principles	61, 64, 68, 70, 87, 88, 93, 94, 97, 101, 102, 107, 108, 109, 117, 119, 124, 126, 133, 141, 149, 153, 160, 179, 182, 202, 380, 410, 509, 518, 852,	+	AFEP asks for an update of this text to strengthen its legal certainty while preserving some of its most structuring principles. To do so, it supports the drafting of a regulation to harmonise these new provisions and to reinforce consumer confidence within the single market, which must be equivalent to the one within physical trade.
	84, 99, 122, 159, 195, 300, 515	-	
Territorial scope	75, 78, 79, 80, 81, 82, 83, 156, 344, 417, 555	+	The E-commerce Directive is currently based on the country of origin principle (Article 3). It requires Member States to ensure that information society services provided by a service provider established in their territory comply with national provisions without restricting the free movement of these services between states. Therefore, providers established outside of the EU, but providing services on European territory, are not subject to the obligations of the directive. To ensure effective protection of European consumers and intellectual property right holders, as well as the conditions for fair competition between players in e-commerce, it is necessary to extend the scope to services supplied to consumers in the EU, by a provider who is not established in the Union. European consumers and IP right holders must be protected whatever the country in which the service provider is established.
	85, 553, 809, 810, 835	-	
Identification of sellers	50, 206, 207, 209, 210, 392, 422, 606, 610	+	Internet should be considered as a commercial vehicle where the rights of any interested party (consumers, holders of intellectual property rights, etc.) must be ensured with a level of protection equivalent to that existing in physical sales points: as in any commercial relationship, business users using digital platforms acting under a pseudonym must be able to be identified through verification by the concerned platform.
	203, 204,	-	
Clarification of passive and active host criteria	86, 89, 237, 373, 377, 378, 379, 381, 382, 388, 565, 578, 703, 698, 704, 707, 708, 797, 798,	+	The forthcoming legislative proposal should integrate the case-law establishing the conditions under which intermediaries would become active hosts , hence not able to claim the protection of Article 14 and thus calling into question their non-liability, namely when: <ul style="list-style-type: none"> – their activity goes beyond simple storage and transmission of data: they have visibility and control over this data by selecting, using, modifying and/or editing it to optimize or promote it, – they refuse control over the processed content while this control is technically and contractually possible; – they distribute/make their content accessible to the public. Consequently, only passive intermediaries should benefit from the safe harbour provisions.
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Responsibility regime & Due diligence	213, 239, 252, 260, 281, 285, 291, 293, 301, 303, 324, 325, 326, 376, 381, 382, 401, 402, 403, 405, 406, 413, 414, 525, 527, 528, 532, 600, 602, 654, 755, 812	+	<p>The responsibility of active hosts should be assessed as soon as they have fulfilled their duty of care for all their activities, implying an obligation of means to remedy the violations of rights on their platform. To do this, the hosts must set up an adapted vigilance plan, the practical modalities of which must be established by the national authorities and regulators concerned, in consultation with the stakeholders.</p> <p>This vigilance plan should be based on the following four principles: identify the risks; prevent infringements; remedy the negative consequences; report on the way they remedy it.</p>
	342, 346, 371, 372, 383, 529, 603, 604, 680, 681, 712, 805	-	<p>The introduction of this duty of care would thus induce a responsibility of active hosts not for the existence of illegal content on their sites but because of the absence of implementation of an effective vigilance plan, which would include both ex-ante control measures and reactivity after notification. In the event of litigation, it would be up to the judge to assess the implementation of his duty of vigilance concerning the content in question, with the most recent case-law.</p>