

FACTSHEET

The proposed Digital Services Act better protecting consumers online

What is the Digital Services Act?

The European Commission's December 2020 proposal for an EU Digital Services Act (DSA) aims to create a safer digital space. The DSA would in particular aim to oblige the likes of Amazon, Facebook, Google and

Booking.com and smaller platforms to act diligently to protect consumers that are using the internet to shop, socialise, look for information and book their holidays.

Why is the DSA needed?

The DSA updates and adds new obligations to the existing EU's e-Commerce Directive, particularly for online platforms. As the e-Commerce Directive was adopted back in 2000, it is unable to cope with recurring problems consumers face on online markets, notably:

- Two-thirds of 250 products (across 18 product categories) bought from online marketplaces [fail safety tests](#). BEUC member organisations are constantly raising the alarm about dangerous products sold on popular e-commerce sites such as Amazon, AliExpress, Wish and eBay, including [Christmas tree lights](#) that can electrocute people, [toys](#) and [jewellery](#) that contain dangerous levels of hazardous chemicals above legal limits and [chargers](#) that risk catching fire as reported by UFC-Que Choisir in France. Out of 28 [electronic products](#) purchased by Sveriges Konsumenter, 26 fail to comply with legal standards.

DANGEROUS PRODUCTS



SCAMS



- Fraudsters can create [fake Facebook and Google ads](#) within hours and it only takes a few minutes to list [unsafe children car seats](#) on Amazon, despite UK consumer group Which? flagging the problem in [2014](#), [2017](#) and [2019](#), and broadcaster [BBC doing so again](#) after an investigation [in 2020](#). Traders manipulate consumers with [multiple fake reviews](#); rogue advertisements trick [victims out of money](#) and [personal data](#); and platforms fail to take effective action to prevent harm to consumers, [including children below 18](#).

These problems arise because platforms do not sufficiently verify the legitimacy of traders or the services/products these traders sell on the platform and because shoppers are exposed to additional risks online compared to offline. Although platforms are not sellers, they greatly profit from acting as the intermediary between traders and consumers and so should carry their share of liability and responsibility.



What needs to be improved?

BEUC sees the proposed DSA as a step forward but wants improvements in three main areas:

1 GETTING LIABILITY OF MARKETPLACES RIGHT

Though the proposed DSA would hold marketplaces responsible in cases where consumers mistakenly believe the marketplace itself was the seller, it fails to go far enough. The DSA must establish a clear liability regime to tackle widespread illegal activities in online marketplaces and to ensure consumers are adequately protected and compensated if they suffer damages.

This means online marketplaces should be liable to consumers if they do not comply with their obligations, and liable for damages when failing to quickly stop illegal activities once they have credible evidence of wrongdoing. Online marketplaces should also be jointly and severally liable with the trader for damages, contract performance or guarantee issues when they:

- have a predominant influence over the supplier or the transaction
- fail to take reasonable steps regarding known misleading information, guarantees or statements provided by traders, and
- fail to give information about the supplier of the goods or services.

An e-commerce site should, for example, be liable to pay damages to consumers if it had been alerted by a consumer organisation about the sale of a faulty phone charger that could harm consumers but did not remove the product or, if necessary, remove the trader from its site.

The DSA proposal must now be adopted by European Parliament and the EU's Council of Ministers. Their discussions are likely to last at least into 2022. Once adopted, the DSA Regulation will apply directly in all EU Member States.

RELATED BEUC DOCUMENTATION

- The Digital Services Act: [position paper](#)
- Unsafe and Illegal activities online: [Evidence and research from BEUC members](#)
- Sewing up the holes in Europe's product safety net: [factsheet](#)

2 COMPREHENSIVE AND EFFECTIVE DUE DILIGENCE OBLIGATIONS

The proposed DSA would oblige platforms to 1) be transparent about their content moderation policies, 2) put in place an internal complaint handling mechanism and 3) provide more transparency on advertising and recommendation systems. But the proposal would exclude too many smaller businesses from some obligations. Only micro-enterprises should be excluded in some cases.

The DSA should oblige platforms to conduct regular and diligent checks on the **legality of traders** and of the products and services they offer. This is particularly important to prevent rogue traders from using online marketplaces to sell illegal and dangerous products or offer illegal services.

The proposed DSA must also have stricter rules on **advertising and recommending content**. Profiling and tracking-based content promotion should not be the default. Consumers must take back control and have real choices. The prohibition of certain practices (e.g. pervasive tracking and profiling of minors to target them with advertising) should be considered.

3 SWIFT AND EFFECTIVE ENFORCEMENT

Authorities in the country where consumers are affected should be competent for enforcing the DSA's rules. The unsatisfactory experience of tackling cross-border infringements of the EU's data protection law (GDPR) has demonstrated that giving competence for enforcement to authorities in the intermediary service providers' *country of origin*, as in the current DSA proposal, risks undermining effective public enforcement. Authorities in the country where consumers are affected should be competent. In addition, the Commission should be obliged to step in where the lead competent enforcement authority fails to act. The DSA also needs effective complaint procedures and civil law remedies for consumers, in cases where platforms fail to comply with their obligations.