

How could the Digital Services Act affect the digital economy in Bulgaria and Romania?

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What is the Digital Services Act?

The European Commission is planning to update, clarify and harmonise the existing e-Commerce Directive (ECD). The new regulation, known as the Digital Services Act (DSA), will set the rules for trade in online services within the EU.¹ It has the potential to harmonise the single market for digital services, protect consumers and provide smaller businesses with legal clarity and a level playing field. However, if it creates imbalanced incentives, overextends the regulatory scope, or is unclear, the DSA could result in unintended consequences that harm businesses, consumers and wider society.

Scope: what is included?

The scope is expected to be wider than for the existing ECD, covering all digital services, including online platforms (e.g. social platforms and marketplaces), search engines, Internet service providers, cloud services, content delivery networks, domain name services, collaborative economy platforms, online advertising services, and services built on electronic contracts and distributed ledger technologies. It is likely to cover content, algorithms, data, and potentially business models. In addition, it may categorise services in scope on the basis of their market status—e.g. introducing a threshold based on the scale, scope, or reach of a service.

Intermediary liability and content moderation

Digital service providers in the EU are currently exempt from intermediary liability, as long as they have no knowledge of illegal content on their services. Policymakers are considering changing this. Proposed changes could range from extensive liability (meaning the provider must undertake moderation of all content and products offered), to obligations requiring certain processes be in place (such as notify-and-act mechanisms) in order for the provider to benefit from 'Safe Harbour' protection. Other proposals involve creating greater incentives for digital services to apply pro-active measures against illegal and harmful content (e.g. self- and co-regulatory moderation) while still exempting them from broad liability.

General monitoring

Until now there has been a 'no general monitoring obligation' on digital firms; however, the DSA could include changes to this. It may become mandatory to conduct upload checks and filtering, on top of due diligence obligations such as 'Know your business customer', as seen in financial services. Alternatively, there could be provisions governing algorithms for automated filtering technologies or mandatory external audits of such algorithms.

Country of origin principle

The ECD introduced this principle for selected areas of law. Where applicable, this means that EU digital services need only comply with the rules of the member state in which they are established. The DSA provides an opportunity to extend the scope of this principle to include consumer protection, commercial communications and contract law. This avoids EU digital services having to comply with 27 different legal regimes. However, digital services from outside the EU may face new regulation if the DSA extends the scope of the ECD to include services from third countries.

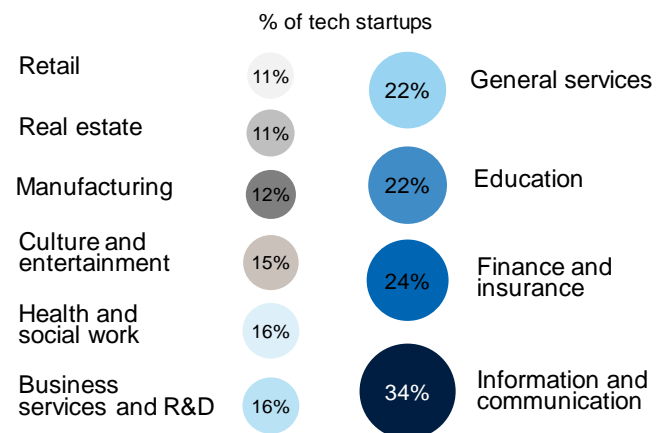
Introduction of a regulator

The DSA could introduce a spectrum of regulatory oversight: from an authority with wide-reaching powers to set ex ante regulation (e.g. mandatory audits of algorithms and codes of conduct or access to data), to a less strict system of rules covering transparency, guidance and oversight for service providers regarding adherence to their responsibility.

The importance of tech startups in Bulgaria and Romania

In 2016, **Romania** had around **532 startups**, mostly located in Bucharest, with the tech industry accounting for **6% of GDP** by 2018.¹ In 2019, 82% of the 233 **Bulgarian** tech startups were based in Sofia, up from 71% in 2018. 45% of Bulgarian tech startups have ten employees or fewer. **42%** of Bulgarian tech startups are building online platforms.²

Figure 1 Sectors served by Bulgarian startups



Note: Percentage of tech startups serving different economic sectors in Bulgaria (2019). Respondents may report serving multiple sectors.

Source: MOVE.BG (2019), 'Innovation Ship Bulgaria: Digital 2019'.

Digital economy and platforms

- In 2019, **7% of the turnover** for all non-financial enterprises in Romania came through **e-commerce** channels (up from 4% in 2010), while in **Bulgaria**, **4%** of turnover came through e-commerce (up from 2% in 2010).³
- In 2017, **8.1% of workers** in Romania were involved in the **gig economy** and 12% of services were performed digitally. In **Bulgaria**, more than **43,000 freelancers** were registered on the main platforms in 2018, up from 23,000 in 2015.⁴
- In 2016, **Romanian collaborative economy** platforms generated a market of **€88m** and **employed 6,254** people. **Bulgarian** collaborative economy platforms generated a market of **€50m** and **employed 3,065** people.⁵
- In Bulgaria and Romania, **around a third of enterprises use social media**.⁶

Digital engagement

Millions of people in both countries engage with platforms as consumers and providers of content, goods, and services.

- In **Romania**, **11m** people are **active on social media**, equivalent to 56% of the population; while in **Bulgaria**, **3.8m** people are active on social media, equivalent to 54% of the population.⁷
- In **Romania and Bulgaria**, **23% and 22%** of individuals order goods or services **online** respectively.⁸
- In **Bulgaria and Romania**, **9%** of people have **used** peer-to-peer online services **for accommodation booking**, while **5% of Romanians and 2% of Bulgarians** have used peer-to-peer online services **for transport**.⁹

Sources:

¹ McKinsey, 'The rise of Digital Challengers: how digitization can become the next growth engine for CEE', Perspective on Romania; Koritar, S. (2018), 'Discover the Romanian tech startup ecosystem', EU-Startup, <https://www.eu-startups.com/2018/12/discover-the-romanian-tech-startup-ecosystem/>; Eurostat (2016), 'Population on 1 January by age and sex', https://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=demo_pjan&lang=en

² MOVE.BG (2019), 'Innovation Ship Bulgaria, Digital 2019', <http://edit.bg/wp-content/uploads/2019/12/innovationship-2019-en-pdf-web.pdf>

³ Enterprises with fewer than ten employees are excluded from the sample. The financial sector is not included. Eurostat (2020), 'Share of enterprises' turnover on e-commerce - %', <http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=tin00110&lang=en>

⁴ European Commission (2018), 'Platform Workers in Europe: Evidence from the COLLEEM Survey', JRC Science for Policy Report; Eurofound (2018), 'Employment and working conditions of selected types of platform work', Publications Office of the European Union, Luxembourg, https://www.eurofound.europa.eu/sites/default/files/ef_publication/field_ef_document/ef18001en.pdf

⁵ Director-General for Internal Market, industry, Entrepreneurship and SMEs (EU Commission), Technopolis, Trinomics and VVA Consulting (2018), 'Study to monitor the economic development of the collaborative economy at sector level in the 28 EU Member States', Final report – Study, June, <https://op.europa.eu/en/publication-detail/-/publication/0cc9aab6-7501-11e8-9483-01aa75ed71a1/language-en/format-PDF/source-72448580>

⁶ The percentage refers to 2019. Eurostat (2020), 'One in two EU enterprises use social media', February, <https://ec.europa.eu/eurostat/en/web/products-eurostat-news/-/DDN-20200224-1>

⁷ Hootsuite (2019), 'Digital 2019 – Bulgaria', <https://hootsuite.com/resources/digital-2020>; Hootsuite (2019), 'Digital 2019 – Romania', <https://hootsuite.com/resources/digital-2020>

⁸ The percentage refers to 2019. Digital Agenda (2019), 'Country profiles, the relative position against all other European countries', eCommerce, <https://digital-agenda-data.eu/charts/country-profiles-the-relative-position-against-all-other-european-countries#chart={%22indicator-group%22:%22e-commerce%22,%22ref-area%22:%22IE%22,%22time-period%22:%222019%22}>

⁹ The percentage refers to 2019. Eurostat (2020), 'Are you part of the collaborative economy?', February, <https://ec.europa.eu/eurostat/web/products-eurostat-news/-/DDN-20200205-1>

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