

## Allied for Startups' Position on the European Commission's proposal on the Digital Services Act

**Startups contribute to and benefit from the platform economy.** The growth of the internet and online services in our daily life has transformed the way we communicate, connect, consume and commute. Platforms are highly interconnected. They function as intermediaries for citizens, businesses or other platforms. The services offered by the platform economy improve the lives of EU citizens and support business growth. Many startups are platforms and all startups use platforms. They also benefit from this thriving platform economy - it helps them to grow, operate with little cost and connect easily with customers and consumers. Instead of doing repetitive tasks, platforms allow entrepreneurs to focus on what they're good at: innovating.

**Startups are key innovators and competitors in the Digital Single Market.** There are currently about [10,000 high growth platforms](#) in Europe. Today's startups are tomorrow's scale-ups and job creators. Policy makers should design a Digital Services Act (DSA) that empowers startups to fulfill their economic potential.

**The Digital Services Act can update, harmonise and clarify** the E-Commerce Directive, a regulatory framework that has allowed startup ecosystems across Europe to thrive. Just as in other economic sectors, the growth and maturation of the digital economy raise new possibilities and challenges. The Digital Services Act therefore has a unique opportunity to identify what has been working well and where adjustments are necessary.

Allied for Startups' membership of startup associations spans across the entire EU and the world. Their respective memberships consist of thousands of startups that use platforms and startups that are platforms.

The Digital Services Act should focus on the potential to offer startups the right regulatory environment by:

### 1. **Focusing on illegal content (Article 2)**

- The definition of illegal content at the EU level should be as harmonised and as specific as possible to not include harmful activities.
- The lack of a clear definition of what illegal content constitutes at the EU level, including what is illegal in any Member State leads to uncertainty regarding the scope and application of the DSA.

2. **Strengthening the intermediary liability exemption on user-generated content (Chapter II, Articles 3, 4, 5)**
  - The intermediary liability exemption is a paramount principle of an open and diverse platform economy and will provide the legal certainty startups need when they start their business. It should not be tied to due diligence requirements (Chapter III).
  - The distinction of information society service between ‘mere conduit’ (Article 3), ‘caching’ (Article 4) and ‘hosting’ (Article 5) should be further clarified. It is important for startup entrepreneurs to know in which category their services fall.
  
3. **Maintaining the no-monitoring obligations for startups (Article 7)**
  - For a startup, it is extremely difficult to invest human or technological resources to monitor user-uploaded content 24/7. The prohibition of general monitoring will give startups certainty when experimenting and designing ‘avant-garde’ new services.
  
4. **Allowing startup platforms to implement voluntary own-initiative measures without losing their liability exemption (Article 6)**
  - In order to incentivise platforms to provide the best-possible user-experience, it is vital to allow them to take voluntary own-initiative measures without losing their liability exemption. Own-initiative investigations or other activities aimed at detecting, identifying and removing or disabling access to illegal content should not be treated as an admission of liability.
  
5. **Harmonising the notice and action mechanisms to facilitate startups navigation of digital markets across Europe (Article 14)**
  - The harmonisation of notice and action mechanisms is one of the key updates of the Digital Services Act. The new mechanisms (Article 14.2) should be designed with the smallest hosting providers in mind and should simplify the flagging of illegal content across the Union. The notice should be considered valid only if it has been submitted through the appropriate and official channels of the hosting service providers.
  - A clarification of the concept of ‘actual knowledge’ is needed in Article 14.3. Only notification requirements that have been processed by the hosting service providers should be admitted as giving rise to ‘actual knowledge’.

The Digital Services Act should not:

**1. Introduce thresholds that disincentivise growth**

- Thresholds will always create a ceiling for startups and scale-ups. If thresholds are to be applied, they should be as high as possible to encourage growth below them.
- Thresholds on processes that are in startups' self-interest are insufficient to ensure proportionality. An illustration of this are the due diligence requirements (Chapter III, Section 3) which are designed by the Commission to ensure the trust of users.
- A clarification of the definition of 'active recipient' would provide more legal certainty for all actors of the platform economy. The threshold for very large online platforms (Article 25) is not fully taking into account the dynamics of the online world as it is possible for any platform - be it a startup or an established company - to have 45 million active recipients monthly. Threshold criteria based on size will only discourage startups to become scale-ups in Europe.

**2. Burdening them with costly administrative requirements (Chapter III, section 1-3)**

- Ideally the cost of complying with the DSA should be lower than the potential savings achieved, encouraging widespread adoption and implementation. Although in theory no single provision is impossible to meet, the total cost of complying with all of them for a small business should not turn into a barrier for market entry.
  - Trusted flaggers (Article 19) should include clear indications about the conditions in which the status is granted and revoked, as well be independent from any governmental authority.
  - Internal complaint-handling (Article 17) mechanisms should be aligned with the provisions established in already existing EU laws on this matter.
  - Traceability of traders' scope (Article 22) should only target online marketplace platforms and should not be tied to any restriction of the liability exemption. The processes around the tracing of traders should also take into account startups' resources.
  - Transparency reporting obligations (Article 13, 23) should be required only if they are helping the prevention of the dissemination of illegal content online, as it is another cost that entrepreneurs will need to think about before starting up. It should be up to platforms to define

who are their active users (Article 23.2). The time period should be extended in order for smaller startup platforms to be able to comply with this requirement.

- Non-EU startups should be incentivised to offer products and services in the EU. Establishing a legal representative should be as simple and cost-effective as possible

### **3. Undermining the Country of Origin Principle, including with diverging enforcement bodies and measures**

- The Country of Origin (Article 40) principle is of paramount importance to ensure legal certainty for the smallest platform providers. The Articles on orders to provide information (Article 9) and orders to act against illegal content (Article 8) should be further clarified to create legal certainty for startups. They should only have to respond to the authorities in the Member State where they have their main legal establishment.
- Furthermore, the Digital Services Coordinator of the Member State of destination should only be able to take action against illegal content considered as manifestly illegal in its jurisdiction and not in the jurisdiction of the Digital Services Coordinator of the Member State of establishment (Article 39).

The Digital Services Act has the potential to update, clarify and harmonise the ground rules for the platform economy. We encourage policy makers to design a DSA for startups. Rules should be designed with the smallest providers in mind, ensuring they can comply with the rules when they enter digital markets and give them the flexibility they need to scale in the European Union.

*Allied for Startups is a worldwide network of over 46 advocacy organisations focused on improving the policy environment for startups. We are working together to create a consensus on policies that can positively impact startups and grow the digital entrepreneurship and digital economy at large. Our mission is to ensure that the voices of startups are heard in government.*