

## The EU Digital Services Act: Recommendations from **Public Service Media**



**For members of the European Broadcasting Union (EBU) - public service media organizations in Europe - the adoption of meaningful EU rules for global online platforms is absolutely essential.** Their key role in whether and how citizens access content and information online means that online platforms impact opinion-making, free speech and ultimately democracy. The EBU supports the European Commission's plan for an ambitious Digital Services Act (DSA) package that will reflect the influence of global online platforms on today's way of life. We welcome this opportunity to feed into the Commission's work.

**“The DSA package should enable future generations to have continued access to the trusted news and information and the rich plurality of views that media, including public service media, offers.”**

**Public service media produce diverse content and information.** We offer our own trusted digital services to audiences and have embraced opportunities for innovative online ways of reaching and interacting with them. No matter how our services are consumed, we apply the same high editorial standards and are subject to the same regulatory oversight. **As public service media, we want audiences to be able to access and find our content and**

**services online whether that content is reached through our own platforms or through third-party platforms such a social media network, a news aggregator, or a search engine.**

While these third-party platforms have significantly eased the circulation of content, this comes with critical challenges. They are offered and owned by global players that operate in a largely unregulated environment. **They can no longer be considered**

**passive or neutral hosts because they play an undeniable role in the public's access to content online, using algorithms to organize, rank, moderate or commercialize content.** They are driven by own global, commercial motivations and this has propelled them to much success. They do not serve citizens in the public interest.

It is no longer tenable to leave it solely up to major online platforms to decide whether and how content is found and shared and to decide what constitutes a fair online business practice, using unilaterally imposed terms and conditions. The current minimal legal framework and minimal regulatory oversight risk further eroding public trust in information online. **In an era where broadcast media is an essential trusted source, the DSA package should enable future generations to have continued access to the trusted news and information and the rich plurality of views that media, including public service media, offers.**

**Audiovisual media in Europe is already subject to specific regulation and oversight because of its impact on opinion forming and in the interest of safeguarding plurality and cultural diversity.** In the DSA package, these safeguards must not be weakened and rules such as the Audiovisual Media Services Directive and its implementing instruments must continue to prevail over any future general horizontal regulation.

## **1. Increase platform responsibility to secure public trust in media and user safety**

### **1** *Respect for media's editorial freedom and integrity*

*"Online platforms frequently take down services and content items from media providers without prior information despite being legal content under EU and/or national law."*

Safeguarding editorial freedom and independence is key to safeguard public trust in media providers. Allowing global platforms to ban and/or erroneously remove media content and services when they clash with unilaterally imposed community standards creates a serious threat for editorial freedom, cultural diversity and media pluralism in Europe. **When content and services from media providers that are already subject to regulation and oversight are offered on third-party platforms, platform operators shall not subject these services to any control or interference.** The DSA package should impose such a positive obligation on online platforms. This should be complemented by enhanced transparency rules to help identify the platform user's identity ("Know-your-business-user-principle").

## 2 **Increase the responsibility of platforms to act against illegal and harmful content online**

*“Media editors and journalists frequently encounter and report illegal and harmful content on online platforms, from phishing, dissemination of hoaxes, disinformation on social networks, or hate speech, to content harming journalists or their business reputation.”*

The DSA package should set out **clear obligations to enhance active online platforms’ accountability**. These should at least include: flagging and/or reporting systems for illegal and harmful activity online; transparency obligations vis-à-vis platform users (‘know-your-business-user’); firm commitments to provide appropriate explanations about the follow-up that has been given to flagged/reported content; and transparent, easy-to-use and effective procedures for the handling and resolution of complaints. They should be flanked by effective enforcement, including regulators to sanction non-compliance, in particular by imposing deterrent fines. We recognize the value of automated tools but to prevent the risk of excessive removal of content, this needs to be combined with human oversight and the safeguards mentioned above.

## 3 **Rules on prominence of content of general interest and on content attribution**

*“Third-party platforms have not provided visibility to media content of general interest nor clearly attributed media content and brands.”*

It is in the interest of citizens to have access to a broad range of media services, in particular those deemed important for the democratic, cultural and social needs of European societies. **Failure to attribute content to its source or incorrect attribution violates content providers’ Intellectual Property Rights. It also violates freedom of information which deprives users of an essential element of judgment for the information they see and hear.** Specific rules to support prominence of content of general interest, a specific obligation to leave branding and logos from media intact, and correctly attributed content will increase exposure to diverse sources, thereby promoting media pluralism.

## 4 **Improve algorithmic transparency and accountability**

*“Platforms’ algorithmic recommendation systems very often attribute preference to their own services or services from partners whilst users lack transparency and tools that would empower them.”*

Platforms’ ability to control what content appears and when, in full opacity, has far-reaching consequences for freedom of expression. **Enhancing algorithmic**

**transparency as well as transparency of content policies will help media and media users to understand the reasons behind where content appears in the ranking and the news feed – allowing them to react to it accordingly.** Similarly, providing trusted fact-checkers and academia with access to platform data would enable them to better monitor the algorithms' functioning and facilitate independent assessments.

## **2. Ex ante rules to address the gatekeeping power of online platforms**

Online platforms have considerable economic power as they have become gateways through which users access content, control vast amounts of data and are not subject to robust regulation. The 2019 EU Regulation on platform-to-business (P2B) practices was a first step in the direction of more fairness online, as it sought to bring transparency in platform trading practices. Considering the fast-moving nature of the market, the EU needs to go further and **establish vigorous rules to address problems arising from the dependence on global platforms and to promote fairness, competition, innovation, plurality and choice for European citizens.**

The issues below need to be addressed in such a new legislative initiative.

The **notion of a gatekeeping platform** needs to be defined in a flexible way. It should **not be limited to covering only platform operators that hold a large market share** in a given market, but should also aim to capture a platform operator's ability and incentive to control the entire digital value chain or to capture an operator which controls a specific user base through a given platform.

Ex ante rules need to be crafted to effectively address the overall concern that online platforms have **superior bargaining power** which prevents business users from negotiating with platforms on an equal basis. Too often public service media (like other business users) are **forced into accepting unilateral terms and conditions or platform bundling practices** (eg: linking access to free services to compulsory subscription-based services). This 'take-it-or-leave-it approach' means that public service media are cut off from audiences, particularly young audiences, that they are expected to reach.

New ex ante rules under the DSA package need to cover the following measures:

- **Prevent gatekeeper online platforms from engaging in preferential treatment of own services (self-preferencing).** This applies particularly to their news, search and social network services, so that news from other sources can be more easily accessed. Where appropriate, imposing measures to ensure that gatekeeper platforms take a fair, reasonable and non-

discriminatory (FRND) approach to allocating search results, ordering display areas and deciding on default settings should be considered;

- Set out clear **transparency requirements regarding ranking (and, more broadly, recommendation mechanisms)** and, in the case of voice assistants, the parameters that determine the outcome of the user's query, which go beyond those established in the P2B Regulation;
  - Specific obligations ensuring that media organizations have **access to the data generated by, or related to, their own content and services on third party platforms**, in full respect of data protection rules. Without such access, public service media are restricted in their ability to innovate further and enhance what they can offer to their audiences. In addition, we experienced **unfair data-related platform practices** where they used their own interpretation of GDPR rules to their competitive advantage or where they limited the possibilities of GDPR-compliant data processing by business users on their own applications;
  - Rules to ensure **proper attribution of content** to avoid the harmful practice of removing content logos and other distinctive features when offered on third-party platforms
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