



The Digital Services Act must safeguard freedom of expression online

Imagine a world where platforms can censor negative news about themselves, where they can make arbitrary adjustments to their terms and conditions to block or remove news stories and real debate between citizens online is curtailed. This is what could happen if platforms are not obliged to respect European fundamental rights in the Digital Services Act (DSA).

This week in plenary, MEPs will vote on the DSA's final amendments. This is an historic moment for European citizens whose activities and media consumption, especially since the pandemic, have largely shifted online. Representatives from the media sector remind lawmakers that, without the proper policies in place, platforms will continue to have free rein on what content is seen by European citizens. This is unacceptable from a media freedom and democratic perspective.

Despite contradictory and false messaging, **the recently tabled amendments to article 12(1) and recital 38 are not a “media exemption” but would ensure the safeguard of fundamental rights online.** Tabled by MEPs from across the political spectrum, **amendments 511 and 513** (see text below) clarify that platforms must respect media freedom and pluralism, as well as respect better communication with media organizations. We wholeheartedly welcome the efforts of a diverse group of MEPs to include this important safeguard in the DSA and encourage the Plenary to support them during the vote.

“These amendments draw from abuses directly experienced by media organizations, from the suspension of business accounts to the [deletion of entire uploads](#). Making platforms accountable to fundamental rights and media laws should not be a nice-to-have but the cost of doing business. Moreover, preserving a quality and diverse media ecosystem is our best tool against the proliferation of fake news,” concluded Conor Murray from EGTA.

“Our sector regrets that the very organisations that claim to fight disinformation – a very serious and technical matter - would publicly campaign against the media freedom amendment and especially overlook the substance of the suggestions,” lamented Nikolas Moschakis from AER.

“There is no filter to lawful content in the offline world, so citizens should not be forced to accept such behaviour online. Failure to protect fundamental rights and media content online would mean that under a DSA without the safeguard clause, the boundaries of press freedom would no longer be defined by law, but by private companies,” stated Ilias Konteas, from EMMA & ENPA.

Wout van Wijk, from News Media Europe added: “The DSA is all about clarifying platforms’ responsibilities and content moderation, including towards media organisations. As the DSA creates a risk of muzzling the media, such risk must be addressed right now.”

Wouter Gekiere from the EBU said: “The latest amendments look to introduce obligations to make platforms accountable for upholding fundamental rights and to respect media freedom and applicable content rules. No more, no less. The media sector is subject to many content rules at European and national level. Platforms should not override them, for example by setting different age limitations on editorial content. These types of actions put limits to our media and freedom of expression laws.”

Angela Mills Wade from EPC noted, “There is no justification for imposing on legitimate news publishers a second, parallel system of regulation. The platforms’ algorithms are not remotely capable of making the very sophisticated judgements which our editors make, and which they defend in Court if necessary. Furthermore, we have seen all too often that algorithms cannot understand context; for instance, an algorithm will be unable to understand the difference between a video of a terrorist incident used by a terrorist website to promote its aims, and the same piece of content used on by a news publishers to illustrate a legitimate news report.”

Without amendments to safeguard the fundamental rights enshrined in the Charter, including media freedom and freedom of speech, online platforms would be legally allowed to remove editorial content entirely on the basis of their terms and condition. This would lead to a situation where the boundaries of press freedom are not defined by law but by private companies.

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Annex: [Full text of amendments](#)

Amendment 513 - Proposal for a regulation Article 12 – paragraph 1

<i>Text proposed by the Commission</i>	<i>Amendment</i>
<p>1. Providers of intermediary services shall include information on any restrictions that they impose in relation to the use of their service in respect of information provided by the recipients of the service, in their terms and conditions. That information shall include information on any policies, procedures, measures and tools used for the purpose of content moderation, including algorithmic decision-making and human review. It shall be set out in clear and unambiguous language and shall be publicly available in an easily accessible format.</p>	<p>1. Providers of intermediary services shall use fair, non-discriminatory and transparent terms and conditions. Providers of intermediary services shall draft those terms and conditions in clear, plain user friendly, and unambiguous language and shall make them publicly available in an easily accessible and machine-readable format in the languages of the Member State towards which the service is directed. In their terms and conditions, providers of intermediary services shall respect the freedom of expression, freedom and pluralism of the media, and other fundamental rights and freedoms, as enshrined in the Charter as well as the rules applicable to the media in the Union.</p>
<p><i>Justification</i></p> <p><i>Article 12 should explicitly recognize that the restrictions provided in terms and conditions are drawn up, applied and enforced in compliance with rules applicable to the media, including content standards that serve to protect, for example, minors as well as, more broadly, the freedom of expression and information and the freedom of the media (Article 11 of the Charter). The impact of intermediaries' T&Cs and decisions taken in relation to lawful media content (e.g. content removal/suspension, suspension of business accounts, re-labelling content suitable for certain age groups, shadow banning, etc) is a very concrete issue, experienced by a variety of media on a variety of platform services regardless of size. The unilateral and unpredictable nature of such decisions represents a hurdle on citizens' access to information and on media freedom.</i></p>	

Amendment 511 - Proposal for a regulation - Recital 38

<i>Text proposed by the Commission</i>	<i>Amendment</i>
<p>(38) Whilst the freedom of contract of providers of intermediary services should in principle be respected, it is appropriate to set certain rules on the content, application and enforcement of the terms and conditions of those providers in the interests of transparency,</p>	<p>(38) Whilst the freedom of contract of providers of intermediary services should in principle be respected, it is appropriate to set certain rules on the content, application and enforcement of the terms and conditions of those providers in the interests of protecting fundamental rights, in particular freedom of</p>

the protection of recipients of the service and the avoidance of unfair or arbitrary outcomes.

expression and of information, transparency, the protection of recipients of the service, ***including their legitimate interests***, and the avoidance of ***discriminatory***, unfair or arbitrary outcomes. ***This implies that intermediary service providers should pay utmost regard to relevant rules applicable to the media and put in place specific procedures, ensuring that the media are promptly informed and have the possibility to challenge any content moderation measure before its implementation. Terms and conditions should not restrict freedom and pluralism of the media as enshrined in Article 11 of the Charter. In particular, it is equally important to ensure that terms and conditions are drafted in a clear and unambiguous language in line with applicable Union and national law. The terms and conditions should include information on any policies, procedures, measures and tools used for the purpose of content moderation, including algorithmic decision-making, human review, as well as on the right to terminate the use of the service. Providers of intermediary services should also provide recipients of services with a concise and easily readable summary of the main elements of the terms and conditions, including the remedies available, using, where appropriate graphical elements, such as icons.***

Justification

In line with the changes made in Article 12.1