



Digital Services Act: ARTICLE 19 proposed amendment to Article 14

Notice and action

14 May 2021

ARTICLE 19’s concerns about Article 14

Proposed Article 14 of the draft Digital Services Act sets out a notice and action mechanism. Under Article 14 (3), providers of hosting services would be fixed with actual knowledge of illegality once they receive a notice in line with the requirements of Article 14 (2).

This is problematic for two reasons. First, this means that, in practice, hosting providers are given a strong incentive to remove content since they lose immunity from liability upon receipt of an adequately substantiated notice and may therefore be held liable if they fail to take action. This balance of incentives could have a serious chilling effect on freedom of expression. Secondly, it puts hosting providers in the position of deciding the legality of content in the first instance rather than the courts, which is inappropriate from a rule of law perspective.

Instead, we propose a notice-and-notice mechanism that would place the decision whether or not to remove content in the first instance in the hands of the uploader of the allegedly illegal content. If the uploader refuses to remove the content and files a counter-notice, the out-of-court dispute settlement mechanism or a court would decide whether the content is illegal or not and therefore whether it must be removed. If, by contrast, the uploader of the allegedly illegal content fails to respond to the notice of complaint within the required time limit, the hosting provider would be deemed to have actual knowledge of illegality and lose the immunity shield under Article 5 of the draft DSA.

The proposed amendment has implications for other provisions in the DSA, such as those on statement of reasons (Article 15) or measures and protection against misuse (Article 20). These are not set out below, but our experts are available for any queries on these issues.

Proposed amendments to Article 14

SECTION 2 ADDITIONAL PROVISIONS APPLICABLE TO PROVIDERS OF HOSTING SERVICES, INCLUDING ONLINE PLATFORMS	SECTION 2 ADDITIONAL PROVISIONS APPLICABLE TO PROVIDERS OF HOSTING SERVICES, INCLUDING ONLINE PLATFORMS
<i>Article 14</i> <i>Notice and action mechanisms</i>	ARTICLE 19’s proposed amendments to Article 14
1. Providers of hosting services shall put mechanisms in place to allow any individual or entity to notify them of the presence on their	1. Providers of hosting services shall put mechanisms in place to allow any individual or entity to notify them of the presence on their

service of specific items of information that the individual or entity considers to be illegal content. Those mechanisms shall be easy to access, user-friendly, and allow for the submission of notices exclusively by electronic means.	service of specific items of information that the individual or entity considers to be illegal content. Those mechanisms shall be easy to access, user-friendly, and allow for the submission of notices exclusively by electronic means.
2. The mechanisms referred to in paragraph 1 shall be such as to facilitate the submission of sufficiently precise and adequately substantiated notices, on the basis of which a diligent economic operator can identify the illegality of the content in question. To that end, the providers shall take the necessary measures to enable and facilitate the submission of notices containing all of the following elements:	2. The mechanisms referred to in paragraph 1 shall be such as to facilitate the submission of sufficiently precise and adequately substantiated notices, on the basis of which a diligent economic operator can identify the illegality of the content in question. To that end, the providers shall take the necessary measures to enable and facilitate the submission of notices containing all of the following elements:
(a) an explanation of the reasons why the individual or entity considers the information in question to be illegal content;	(a) an explanation of the reasons why the individual or entity considers the information in question to be illegal content;
(b) a clear indication of the electronic location of that information, in particular the exact URL or URLs, and, where necessary, additional information enabling the identification of the illegal content;	(b) a clear indication of the electronic location of that information, in particular the exact URL or URLs, and, where necessary, additional information enabling the identification of the illegal content;
(c) the name and an electronic mail address of the individual or entity submitting the notice, except in the case of information considered to involve one of the offences referred to in Articles 3 to 7 of Directive 2011/93/EU;	(c) the name and an electronic mail address of the individual or entity submitting the notice, except in the case of information considered to involve one of the offences referred to in Articles 3 to 7 of Directive 2011/93/EU;
(d) a statement confirming the good faith belief of the individual or entity submitting the notice that the information and allegations contained therein are accurate and complete.	(d) a statement confirming the good faith belief of the individual or entity submitting the notice that the information and allegations contained therein are accurate and complete.
3. Notices that include the elements referred to in paragraph 2 shall be considered to give rise to actual knowledge or awareness for the purposes of Article 5 in respect of the specific item of information concerned.	Delete
4. Where the notice contains the name and an electronic mail address of the individual or entity that submitted it, the provider of hosting services shall promptly send a confirmation of receipt of the notice to that individual or entity.	3. Where the notice contains the name and an electronic mail address of the individual or entity that submitted it, the provider of hosting services shall promptly send a confirmation of receipt of the notice to that individual or entity.

<p>5. The provider shall also, without undue delay, notify that individual or entity of its decision in respect of the information to which the notice relates, providing information on the redress possibilities in respect of that decision.</p>	<p>4. The provider shall also, without undue delay, notify that individual or entity of its decision in respect of the information to which the notice relates, providing information on the redress possibilities in respect of that decision. the uploader of the allegedly illegal content of the complaint that has been made.</p> <p>5. Upon receipt of the notice of alleged illegality, the uploader of the allegedly illegal content shall either remove the disputed content promptly and inform the complainant directly or through the hosting provider of the same or file a counter-notice with the hosting provider in respect of the disputed content within 7 days.</p> <p>6. The hosting provider shall forward the counter-notice within 48 hours of receipt to the complainant, who will then have another 7 days to decide whether to exercise his or her rights to an effective remedy and bring a complaint before the out-of-court dispute settlement mechanisms under Article 18 of this Regulation.</p> <p>7. The hosting provider shall be liable to pay statutory damages of EUR [sum] for failing to comply with its obligations under Article 14 (3), (4) and (6).</p> <p>8. If the uploader of the allegedly illegal content fails to respond or file a counter-notice within the required time limit under paragraph 5 above, the provider of hosting services shall be considered to have actual knowledge for the purposes of Article 5 in respect of the specific item of information concerned.</p>
<p>6. Providers of hosting services shall process any notices that they receive under the mechanisms referred to in paragraph 1, and take their decisions in respect of the information to which the notices relate, in a timely, diligent and objective manner. Where they use automated means for that processing or decision-making, they shall include information on such use in the notification referred to in paragraph 4.</p>	<p>Delete</p>