

Open Letter on the Censorship Provisions of the Digital Services Act

Date: 9 October 2025

Re: Urgent Call for a Robust and Transparent Review of the Digital Services Act, Including Reviewing Protections for Free Expression

We write amid global instability—marked by conflict, inequality, and accelerating digitalisation. Particularly in such times, the ability of citizens to freely express their views, question prevailing narratives, and engage in open public discourse is not a luxury. It is a necessity.

Freedom of expression is the cornerstone of democratic societies. It is through the exchange of ideas—including controversial ones—that societies evolve, and public officials remain accountable.

Yet across the European Union and beyond, we are witnessing a shrinking of civic space. Each week brings new reports of individuals facing censorship or punitive measures for speech that challenges prevailing orthodoxy—whether it is member of Parliament Päivi Räsänen in Finland, or veteran Adam Smith-Connor in the United Kingdom.

In an era where public discourse increasingly takes place online, the Digital Services Act (DSA) compounds these concerns. Although the Commission has claimed that the DSA enhances “legal certainty” and provides “greater democratic control”, its current framework undermines free speech.

The DSA introduces sweeping mechanisms that empower both institutions and private actors to flag content they believe to be “illegal”—a term broadly defined as any content not compliant with EU or national laws. This creates a situation in which speech lawful at the time of publication could be retroactively flagged and penalised under shifting legal standards across 27 member states.

Let us be clear: there is a broad consensus that certain forms of expression—such as child exploitation or incitement to terrorism—must be prohibited. However, the DSA goes far beyond these narrow and universally agreed limits. Instead, it constructs a pan-European censorship infrastructure with loosely defined boundaries and the potential to suppress legitimate democratic discourse. This raises several pressing concerns:

1. A Race to the Bottom in Censorship Standards

The wide definition of illegal content allows the most speech-restrictive provisions of one single EU country to be imposed as a standard across the entire Union, and potentially worldwide, effectively importing the lowest common denominator of expression

2. Cross-Border Enforcement and Worldwide Takedown Orders

The broad definition of “illegal content” in the DSA, combined with existing jurisprudence of the Court of Justice of the European Union (CJEU), opens the door to worldwide takedowns. For example, in the Glawischnig-Piesczek case, the CJEU allowed removal obligations to extend beyond national borders within the EU, while in the Google LLC case, it confirmed that takedowns could even have a worldwide effect. Reflecting these concerns, the U.S. House Judiciary Committee warned in a letter to European Commissioner Henna Virkkunen that the DSA, though formally limited to EU speech, could end up curbing the constitutionally protected speech of Americans. “Though nominally applicable to only EU speech, the DSA, as written, may limit or restrict Americans’ constitutionally protected speech in the United States. Companies that censor an insufficient amount of ‘misleading or deceptive’ speech—as defined by EU bureaucrats—face fines up to six percent of global revenue, which would amount to billions of dollars for many American companies. Furthermore, because many social media platforms generally maintain one set of content moderation policies that they apply globally, restrictive censorship laws like the DSA may set de facto global censorship standards.”

3. Incompatibility with Freedom of Expression

The DSA risks contravening the well-established principles of freedom of expression enshrined in Article 11 of the Charter of Fundamental Rights of the European Union, Article 10 of the European Convention on Human Rights, and Article 19 of the International Covenant on Civil and Political Rights. These instruments require that any limitation on speech be lawful, necessary, proportionate, and foreseeable. Yet, under the DSA, content moderation decisions are increasingly governed by vague categories such as disinformation, hate speech, abuse of information, information integrity, and information manipulation, many of which lack clear legal definitions or consistent judicial interpretation.

4. Delegation of Censorship to Unaccountable Entities

The DSA deputizes so-called “trusted flaggers”—many of whom operate without transparency, democratic oversight, or accountability—to police online discourse. These entities may act with their own political or ideological agendas, further eroding public trust.

5. Opaque Review Process

We are also concerned by the Commission’s ongoing implementation review. According to the response to an urgent Written Question in the European Parliament, the review is based on undisclosed surveys sent to unnamed

stakeholders. This process lacks transparency, undermining the very democratic legitimacy the DSA claims to enhance.

In light of these concerns, and pursuant to Article 91 of the DSA—which mandates a formal review by 17 November—we, the undersigned, urge the European Commission to:

1. Conduct a comprehensive and inclusive consultation with independent experts in freedom of expression, constitutional law, and digital rights, ahead of the November review, inviting public comments.
2. Publicly disclose the list of NGOs, civil society actors, and partner entities engaged in the review process, including the criteria and methodology used for their selection.
3. Ensure that the review includes a rigorous legal analysis of the DSA's compatibility with fundamental rights protections, especially under Article 11 of the Charter of Fundamental Rights of the EU, Article 10 of the ECHR, and Article 19 of the ICCPR.

The European Union has long prided itself on being a beacon of democracy, human rights, and the rule of law. But rights safeguarded in charters and treaties must also be protected in regulation and practice. Only through an honest and critical assessment can the EU ensure that its digital policies remain aligned with the very human rights principles it seeks to defend.

Yours sincerely,

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