



FACULTY  
OF LAW  
Charles University



Central European  
Digital Media  
Observatory

CENTRE FOR LAW, TECHNOLOGY AND DIGITISATION

# ROUNDTABLE ON THE DIGITAL SERVICES ACT



On **2 October 2023**, the Faculty of Law hosted a **roundtable on the Digital Services Act** (hereinafter as "DSA"). The roundtable focused on the implementation of the DSA in the Czech Republic and Slovakia. The event was held under the auspices of the Deputy Prime Minister of the Czech Republic, Ivan Bartoš, and the Ministry of Industry and Trade, with the active participation of representatives of the Czech Telecommunications Office and the Slovak Council for Media Services.

**The following topics were discussed during the roundtable discussion:**

- online illegal content,
- out-of-court dispute settlement,
- trusted flaggers.

## IMPLEMENTATION OF THE DSA IN THE CZECH REPUBLIC

Representatives of the Ministry of Industry and Trade confirmed that the proposal for **Digital Economy Act** will be submitted to legislation procedure soon. In the proposal, the Czech Republic has taken only a minimal approach to implementation (like Slovakia, for example). Representatives of the Ministry mentioned that the Ministry of Justice was also partly involved in the implementation of the DSA. The reason is that the Article 9 of the DSA will require an amendment to the Criminal Procedure Code. Regarding the DSA provision on illegal content, most of the provisions will be directly applicable from the regulation itself.

A key issue was who would act as the Digital Services Coordinator. It was decided that the **Czech Telecommunications Office** will be the coordinator.

**Out-of-court dispute settlement.** The entity for out-of-court dispute settlement will be certified by the CTO under the administrative procedure. An online form will be available for interested parties. It is now unsure whether any entity will be capable to fulfil all the conditions under Article 21 of the DSA. Currently, two entities have expressed interest, but it remains to be seen whether they will be able to meet the conditions.

**Trusted flaggers.** Only a legal entity will be able to be a trusted flagger. Like the out-of-court settlement, there will be an online form and the status will be granted by the CTO in the administrative procedure. There has also already been an interest from some entities in certification.

## SITUATION IN SLOVAKIA

In Slovakia, the Media Services Act (264/2022 Coll.) has been in force since last year. This Act provides in § 151 for the possibility to lodge a complaint concerning illegal content with the Council for Media Services. § 151 should then largely fulfil the requirements of Article 9 of the DSA.

As in the Czech Republic, the implementation in Slovakia will be carried out only in a minimal regime. A legislative proposal is expected to be discussed in December 2023 and the final version of the law should come into force in February 2024.

The Council for Media Services actively cooperates with other authorities (e.g. police) regarding the illegal content. It also cooperates directly with platforms such as Google, Facebook or TikTok.

The Council plans to add 16 new staff members in the first year. According to the study, the Council would like to open 80 new positions, but realistically it is unlikely to get that many.

**Out-of-court dispute settlement.** There was an idea that the mediators would be perfect for this role. However, the Slovak implementation of the ADR Directive does not allow for them to be involved. As a result, no entity currently meets the requirements of Article 21 of the DSA. However, there is an idea of creating a regional body covering more countries.

**Trusted flaggers.** There is an idea that trusted flaggers would specialize in certain types of illegal content.

## THE SERVICE PROVIDERS' VIEW

**Service providers will be newly subject to a number of new obligations, for instance:**

- transparency of terms and conditions,
- the need to respect orders from public authorities to remove illegal content,
- publication of content moderation reports,
- mandatory use of notice & action mechanism,
- provision of reasoned decision
- EU-wide reporting of suspected criminal activity,
- obligation to return a content if it has not been declared illegal or in breach of terms and conditions,
- transparency in advertising and algorithmic processes.

The approval of the DSA marks the first EU-wide introduction of Notice & Action. Providers will also now have a duty of care which means they will no longer have the absolute power over content.

### **The following issues may arise in practice:**

1. the DSA does not directly regulate what constitutes illegal content - this will depend on the specific national law. This may be problematic in cases where some content is considered illegal in one Member State and not in another (this will often be the case in personal rights disputes such as defamation). The burden then lies with the service provider. Guidance can be taken from CJEU Decision C-460/20.
2. Practical issues with out-of-court dispute settlement – on one hand, the decisions will not be binding but providers are obliged to cooperate. The DSA does not require an online proceeding or states a jurisdiction. At the same time, it is not clear how costs are to be covered, e.g. whether attorney is covered.

Another issue may be the regulation of content that is harmful but it is not clear whether it is illegal (disinformation for example).

## **FURTHER INSIGHTS FROM THE DEBATE**

**Complaints to the coordinator.** The CTO expects to receive complaints from the public. Those would be possible even without DSA since the CTO is required to accept them under the Administrative Code. CTO does not intend to restrict the form of the complaint.

At the same time, CTO representatives stated that the CTO cannot and will not judge what is and what is not illegal content. In Slovakia, there is a detailed procedure with an online form for complaints. The Council decides on the complaints as an administrative body. What is interesting is that only the platform is a party to the proceedings and not the user. Platforms sometimes contest the jurisdiction of the Media Services Council. The representatives of the Media Services Council assume that Article 9 of the DSA will also apply to national proceedings.

**Public awareness.** The Ministry of industry and trade plans to organise further events with stakeholders in the future. It has also produced a Q&A on the DSA, which is available on the Ministry's website. The CTO is then going to hold similar events with focus on the service providers.

In Slovakia, a campaign is also planned to target users and the tools that DSA gives them.

The roundtable focused only on some of the challenges that the implementation of the DSA into national legislation will bring. However, it was interesting for the participants to compare the similarities and differences in approaches in the Czech Republic and Slovakia.