

# European Tech Alliance

## Position on the future eCommerce framework ('Digital Services Act')

April 2020

### “Foreword

The EUTA welcomes the opportunity to clarify the e-Commerce Directive with a view to promoting the growth of digital services throughout Europe, protecting internet users against illegal content online, and preventing fragmented rules at the national level. This paper sets out EUTA members' preliminary recommendations for clarifying the legal framework and can serve as a basis for further dialogue on how to ensure a safe and thriving Internet in Europe.

We agree that illegal activity online is an important issue and understand the need to review current rules in light of recent technological and societal developments. We urge the European Commission to pursue a proportionate and targeted approach that nurtures innovation, incubates the EU's tech industry and strengthens investment in research and development, while making the Internet a safer place for consumers and citizens.

As European operators of digital services and online platforms, EUTA members are

committed to playing their part in providing a secure and trustworthy environment. We believe that this goal requires commitment and responsibility from the entire ecosystem, including users, online services, right owners, public authorities and NGOs. It is also vital that new rules reflect the diversity of digital services today rather than a handful of digital business models or sectors, and create a level playing field for companies to grow and compete with global actors.

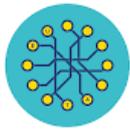
We believe the existing EU legal framework already introduced a duty of care which has allowed measures to be taken against illegal content. However, this is not the interpretation in all Member States, nor from all platforms operating in the EU. Consequently, we acknowledge that certain risks persist over ensuring an appropriate level of user safety online. In clarifying the rules, the distinction between users' liability for their activities online and platforms' responsibility for removing illegal content should guide the work of the European Commission.”

*Gianpiero Lotito*

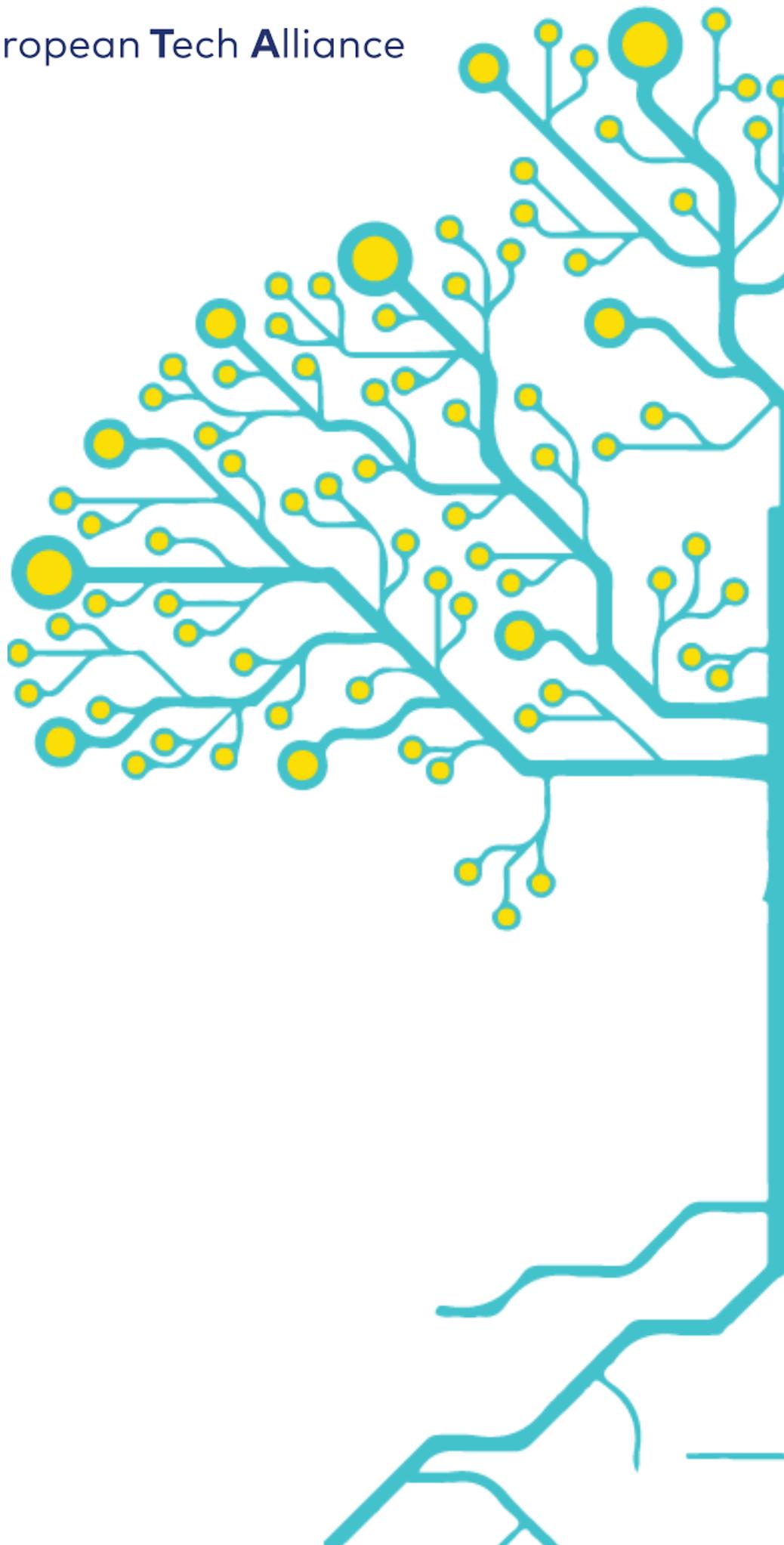
Gianpiero Lotito  
President of the EUTA

*Magdalena Piech*

Magdalena Piech  
Chair of the EUTA



**European Tech Alliance**



# “EUTA’s recommendations for the future framework”

## 1.

### Proposed policy objectives

#### Harmonised rules across Member States

The implementation of the e-Commerce Directive has been disparate between European countries, which has created legal uncertainty and complexity for digital services. Addressing this fragmentation must be a key goal of the reform, in particular through unambiguous definitions of intermediary services and clear obligations and implementation guidance.

#### Better enforcement

With the paramount objective of protecting the rights and prerogatives of European residents, the new rules should ensure applicability and, more importantly, enforcement of measures to third country players providing their services to European users.

#### Regulatory consistency

The new rules will have important implications for existing and future EU legislation. Coherence with existing content-specific legislation (Copyright, AVMS, Terrorist content) and regulations protecting users’ rights (Platform to business, GDPR, Consumer framework) is crucial. A thorough review of

existing rules that could overlap or come into conflict with a revision of the e-Commerce Directive must be part of the Impact Assessment, and a constant consideration throughout the process.

#### A risk-based approach

Any new rules must be commensurate with the nature and degree of illegal content that could appear on a platform, as well as its reach and pact on society. The risk and exposure to different categories of content can vary significantly depending on a platform’s business model or commercial activities. There are also important differences between different types of illegal content, their potential for harm and therefore various measures to fight it in the most efficient manner. In cases where the content is particularly egregious (e.g. terrorist content, child abuse) and the risk exposure of the platform is considered high, it may be appropriate to consider additional obligations.

# 2.

## Principles to be reaffirmed

The following principles remain valid and it is of paramount importance that they underpin the legal framework:

### Country of origin

This principle enables online businesses to flourish by providing legal clarity on laws applicable to online services. Any departure from this principle would create enormous complexity and reduce investment incentives and growth opportunities in Europe.

### Prohibition of a general monitoring obligation

The future reform should explicitly maintain the prohibition of a general monitoring obligation in order to ensure the protection of Internet users' rights, and ensure platforms can continue to flourish. In addition, existing technical solutions to proactively monitor content can lack efficiency in certain cases (false positives) and generate disproportionate costs related to their implementation and maintenance.

### Limited liability

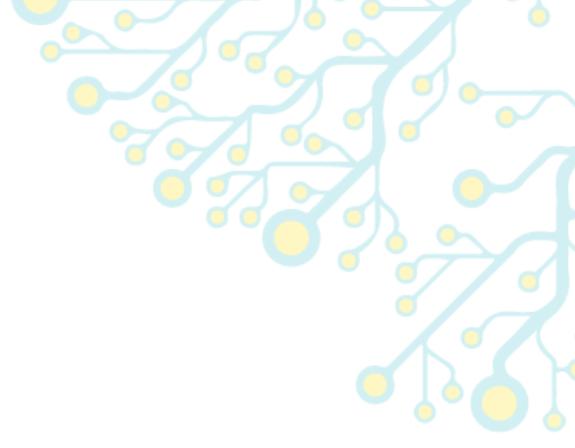
The principle of limited liability enables online services to grow and is a critical safeguard against violations of fundamental rights. If platforms were to become automatically liable for the content they host, they would likely take an overly prudent approach to removal. Online platforms should only be held liable for illegal content when they become aware of its existence or, if defined by EU law such as in the Copyright Directive, have not taken proportionate actions to deal with illegal content once it is uploaded.

# 3.

## New and clear definitions and obligations

### Clarify responsibility and appropriate actions

Our members have taken different measures to address illegal content depending on their specific situations, such as processes to flag illegal content, cooperation with stakeholders and public authorities, cooperation with law enforcement agencies, or deactivating offers that do not meet legal requirements. In this context, while primary liability for illegal activity should remain with the user, we recognise that online platforms have a responsibility to address illegal content online. We call for new obligations (e.g. notice and action requirements) to be clear and proportionate to the risk of illegal content appearing online, taking into account the technical feasibility and related costs.



### Introduce a ‘Good Samaritan’ clause

Online platforms should not lose their limited liability when taking measures to tackle illegal content online. A “Good Samaritan Clause” would provide a suitable safeguard enabling online platforms to take more voluntary measures without threatening their liability exemptions.

### Acknowledge differences in types of illegal content

Different types of content raise different issues and may need specific solutions. Digital services will not apply the same measures to remove illegal goods present online (e.g. counterfeited products or illegal private accommodation listings) compared to the removal of illegal content such as user-generated hate speech. There are also significant differences within the category of digital content, for example between defamation and terrorist content. The future framework should acknowledge these differences by remaining principles-based and horizontal in nature. Sector-specific legislation and effective self-regulatory measures could serve as a point of reference for how to deal with illegal content in a more targeted manner. The future legislation could therefore encourage the industry to set up sector-specific codes of conduct, when deemed necessary.

### Clarify the definition of intermediary services

The future framework should consider the new and diverse actors that have emerged in the online space and update the definition of information society service providers and hosting service providers so that it is clear which kind of services are covered by the law. Any new rules should be technology-neutral to be able to adapt to future developments.

### Focus on illegal content

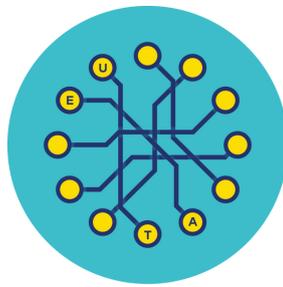
It is essential to clarify in EU law that illegal content differs from harmful/offensive content that can be nonetheless legal. Harmful content requires a much broader consideration, for example of context or local culture, and cannot be addressed under the same framework as illegal content. The EUTA believes that online platforms should not become substitutes for the judicial authorities that are responsible for ruling what constitutes illegal content.

### Ensure new rules protect platforms and content providers against unjustified removals and bad faith notifications

Entities that demand protection of their rights from online platforms shall be ready to cooperate by filing claims against users sharing illegal content, providing relevant information and dividing costs in case of more advanced solutions.







European Tech Alliance

The European Tech Alliance (EUTA) brings together and gives a voice to the major European digital champions, scaleups and leading startups. We believe that Europe is good at tech and our sector is driving jobs and growth across the continent. With an overarching goal of fostering innovation in Europe, EUTA members are keen to provide expert insights to the EU institutions and promote the EU competitiveness in the global tech space.

This paper has been developed at a preliminary stage in the policy discussions in order to share our members' expertise and inform the debate. It is not directly attributable to any individual member and we invite you to contact our members, should you like to better understand their specific situation.

