



Limited liability for the Net? The future of the E-Commerce Directive

CEPS

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Some basics



Limited liability exemptions and **limitations**: no far west



The ECD is a **single market measure**:

- purpose is to favour online services, not to keep internet clean
- Purpose still valid (no European platforms)
- Services are expected to pursue profit-making!



It **harmonises liability exemptions**, not liability

- It does not attribute liability; the contrary would mean to harmonise tort or criminal law

Some basics (II)

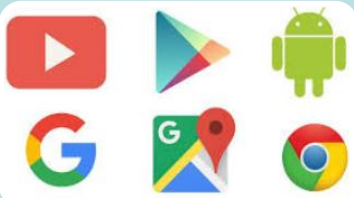


It is **neutral** – it does not define what is illegal



It is **horizontal** – all types of illegal content, civil and criminal liability

- Many COM services involved – no silos here!
- Only to illegal content, not harmful content!



It **applies to services**, not to actors

- Don't need to say "facebook is an intermediary", but "it provides intermediary services")

Some history

ECD already contains a reference to N&A and liability in the review clause

2013: public consultation

2012: Action plan announces initiative on N&A

2015: DSM Strategy + public consultation

2016: Communication on online platforms



Communication on online platforms

Maintain the liability regime under the E-commerce Directive

Sectoral solutions (copyright, AVMSD)

Encouraging self-regulatory efforts by platforms

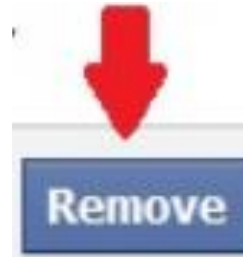
**Further
assessment on
the need of**

**Guidance on liability of online platforms implementing
voluntary measures against illegal content
Need for formal notice-and-action procedures**

Identified issues



**legal
fragmentation**



**illegal content
removed slowly,
legal content
removed
erroneously**



**lack of public
oversight/
transparency**



lack of legal clarity

Additional evidence gathering

Study

mapping of

- existing legislation and case law in the field of intermediary liability,
- existing voluntary practices by intermediaries

costs of

- N&A and voluntary measures (and its effectiveness)
- legal fragmentation

Workshops

Voluntary measures

Difficulties faced by national judges when applying the E-commerce Directive

Impact of voluntary measures on fundamental rights

N&A procedures



European
Commission

Terrorism Directive (HOME)

**Wildtrafficking
(ENV)**

**Child abuse Directive
(HOME)**

**Food safety
(SANTE)**

**Code of Conduct on Hate
speech (JUST)**

**Collaborative economy
communication (GROW)**

**E-commerce
Directive**

IPRED / MoU (GROW)

Chemicals (GROW)

**Copyright reform
(CONNECT)**

**Product safety
(GROW/JUST)**

AVMSD (CONNECT)

**Data protection
(JUST)**

**UCPD / Consumer
protection (JUST)**