

TikTok Under the DSA: Why the EU Is Scrutinising Platform Design

Interview with Dr Lucas Henrique Muniz da Conceição (Postdoctoral researcher (LCEL, University of Luxembourg))

The Commission's preliminary findings suggest a shift from regulating online content to looking more closely at platform design. From your perspective, why is this such a significant moment for EU digital governance?

The Commission's preliminary findings are significant because they signal the Union's willingness to exercise its regulatory authority not only over unlawful content, but also over the structural features of digital platforms that shape user behaviour. This development reflects a deepening of the EU's commitment to constrain private digital power, strengthen the protection of fundamental rights in the online environment, and ensure the effective enforcement of the Digital Services Act (DSA).

Since the DSA entered into force, debates on EU digital governance have increasingly been framed by concerns about competitiveness and the Union's position in a more fragmented and multipolar global order. The 2024 Draghi report, for instance, warned about regulatory burdens and suggested simplifying elements of the EU's digital acquis. This was followed by the Commission's "Digital Omnibus" proposal in November 2025, which sought to streamline digital legislation. While competitiveness is a legitimate policy concern, these initiatives also raised apprehensions among academics and policymakers about the potential dilution of safeguards protecting fundamental rights and consumer interests.

Against this background, the Commission's preliminary findings are important because they reaffirm a rights-based understanding of digital regulation. By scrutinising platform design choices under the DSA, the Commission signals that digital governance in the EU is not reducible to economic optimisation or regulatory simplification. Rather, it remains anchored in a constitutional framework that places fundamental rights, transparency, and accountability at its core. In doing so, the Commission resists both a purely self-regulatory model and the risk of regulatory capture by large platforms.

To understand why this case matters: what is the Digital Services Act (DSA), and what is it trying to achieve?

The DSA is an EU regulation that establishes a consolidated regime for digital intermediary services, addressing policy issues such as the dissemination of illegal or harmful content, the protection of users' fundamental rights, and the promotion of internal market integration through harmonised EU-wide rules.

As a policy instrument, the DSA can be understood from at least four complementary perspectives. First, it constitutes a cornerstone of the European Digital Single Market. It reinforces the country-of-origin principle, limits Member States' ability to impose divergent rules on intermediary liability, and introduces harmonised due diligence and risk management obligations. In doing so, it seeks to prevent regulatory fragmentation while ensuring legal certainty for cross-border digital services. Second, the DSA may be understood as a digital rights framework. Through a horizontal and broadly applicable approach, it integrates and operationalises fundamental rights protections already present in EU law, including those under the Charter of Fundamental Rights (CFR), the GDPR, and sector-specific legislation such as the Copyright in the Digital Single Market Directive. Third, it establishes a mixed enforcement system. It combines public enforcement, by the European Commission, national Digital Services Coordinators (DSCs), and the European Board for Digital Services, with private enforcement mechanisms, including out-of-court dispute settlement bodies and judicial actions brought by individuals and consumer organisations. Fourth, the DSA defines the guardrails of a co-regulatory model of digital governance. It recognises that intermediary services are de

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facto regulatory actors within the digital ecosystem and structures this reality through transparency, accountability, auditing, and oversight mechanisms.

Importantly, the DSA introduces a layered regulatory regime. While all intermediary services benefit from conditional liability exemptions, additional due diligence obligations apply depending on the type and size of the service. Hosting services, online platforms, and, in particular, Very Large Online Platforms (VLOPs) and Very Large Online Search Engines (VLOSEs) are subject to progressively stricter obligations. TikTok, designated as a VLOP on 25 April 2023, must therefore comply with systemic risk assessment and mitigation duties, independent auditing requirements, enhanced transparency, and heightened supervision by the Commission.

In this sense, the DSA is a complex regulatory framework that balances liability exemptions with structured accountability. It does not directly regulate content as such; rather, it regulates the procedures, safeguards, and risk-management systems through which digital intermediaries govern online information.

The DSA is often associated with content moderation. Why is the Commission now shifting its attention towards TikTok's platform design?

The focus on platform design does not represent a departure from the DSA's logic; rather, it reflects its full implementation. While the DSA is frequently associated with content moderation in the narrow sense, namely the removal or restriction of unlawful content, it adopts a broader governance perspective. Systemic risks may stem not only from specific pieces of content, but also from the design, functioning, and use of platforms (Article 34(1) DSA). This architectural perspective of digital platforms is taken into account when content moderation is understood as a series of trade-offs, particularly involving policy decisions. Thus, the Commission's preliminary findings indicate its focus on the economic and policy affordances of online platforms to control user behaviour and engagement within their services. These design choices are not neutral technical features; they may intensify exposure to harmful content, affect minors' mental well-being, or distort user autonomy. Recital 67 DSA explicitly warns against practices that manipulate or otherwise materially distort users' ability to make free and informed decisions.

The Commission's scrutiny of TikTok's design therefore falls squarely within the DSA's systemic risk framework. For VLOPs, the obligation is not merely to remove illegal content, but to identify and mitigate risks linked to the design and operation of their services. This includes risks to fundamental rights, civic discourse, public health, and the protection of minors.

Importantly, this shift is not confined to EU law. In the US, where a comprehensive regulation of platforms is still lacking, [TikTok has recently reached a settlement](#) in legal proceedings in California brought forward by a 20-year-old user alleging to have become addicted to social media, with negative effects on their mental health. In this case, platform design will still be adjudicated alongside other co-defendants, namely Meta and YouTube. Moreover, TikTok is also facing similar claim in [a series of lawsuits filed by US states and the District of Columbia](#) with similar allegations, stemming from a national investigation into the company and findings supporting a "dopamine-inducing" effect of the platform's algorithm that may lead to profound psychological and physiological harms, such as, among others, anxiety, depression, and body dysmorphia. Thus, questions

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about engagement-driven design and behavioural harm are emerging transnationally, even if the legal frameworks differ substantially.

The term “addictive design” sounds more psychological than legal. How can the Commission treat this as a legal risk under EU law?

Although not specifically mentioned as a standalone category of illegality, “addictive design” can be treated as a legal risk under several provisions of the DSA, particularly when concerning VLOPs.

Article 25 DSA prohibits online platforms from designing, organising, or operating their online interfaces in a way that deceives or manipulates recipients of the service, or otherwise materially distorts or impairs their ability to make free and informed decisions. Design features such as infinite scrolling, autoplay, or frictionless re-engagement mechanisms may raise concerns where they exploit cognitive biases or reduce users’ capacity to disengage.

For VLOPs such as TikTok, Article 34 (1) provides that risks encompass the “design, functioning, and use” of digital services. The DSA explicitly recognises that systemic risks may arise from recommender systems, advertising systems, or other platform functionalities. If a VLOP fails to identify foreseeable risks associated with engagement-maximising design, particularly when minors are concerned, this may constitute a breach of its due diligence obligations. The DSA also includes enhanced protections for minors, including restrictions on profiling-based targeted advertising (Article 28) and obligations to ensure a high level of privacy, safety, and security. When addictive design disproportionately affects children or adolescents, the legal implications become even more pronounced.

The DSA relies on broad concepts such as “systemic risks.” If “addictive design” is not clearly legally defined, how can platforms know what is allowed and what is not?

The DSA adopts a risk-based governance model rather than a system of exhaustive prohibitions. For VLOPs, the primary obligation is procedural: they must identify, assess, and mitigate systemic risks (Article 34(1) of the DSA). This first step in risk management enables regulators to assess whether platform governance is adequate and compliant with the regulation’s fundamental rights anchoring. Thus, legal certainty is enhanced not by the exhaustive classification of risks, but by structuring a risk governance framework that enables their identification and management, with further administrative proceduralization of the exercise of platform power.

Although not clearly defined, Recitals 79–81 and 138 clarify that systemic risks may depend on factors such as scale, speed of dissemination, and societal impact. The annual risk assessment, independent audits, mitigation measures, and Commission oversight collectively create a framework within which expectations are progressively clarified.

Moreover, Article 45 DSA foresees the development of Codes of Conduct to further specify systemic risk mitigation, thereby providing industry, civil society, and regulators with an opportunity to jointly specify how

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to address such risks. The ongoing discussions on an Age-Appropriate Design Code, which aims to align due diligence obligations under the DSA, the Audiovisual Media Services Directive (AVMSD), and the General Data Protection Regulation (GDPR), illustrate how regulatory standards may be progressively concretised through co-regulation involving industry, civil society, and public authorities.

What is ultimately at stake for the EU's approach to digital regulation?

Ultimately, the Commission's scrutiny of features such as infinite scrolling is not merely a question of interface design, but the constitutional direction of digital regulation. By investigating whether engagement-driven architecture may create "systemic risks" under the DSA, the Commission signals that platform design is no longer treated as a neutral technical choice or a purely entrepreneurial prerogative. Instead, it may constitute an exercise of structural power with consequences for mental health, minors' development, and user autonomy. The shift reflects a broader transformation in EU regulatory philosophy: from focusing primarily on illegal content to interrogating the behavioural effects of platform architecture itself. In this sense, infinite scrolling, a feature not only of TikTok's business model but also many other VLOPs, becomes emblematic of a deeper contest over how far engagement-maximizing design can go before it collides with public interests embedded in fundamental rights and consumer protection.

This raises a fundamental tension between entrepreneurial freedom and constitutional constraints. Platforms can invoke the freedom to conduct a business (Article 16 CFR) and argue that product design, recommender systems, and engagement metrics are core elements of innovation and competition. However, under a systemic approach, they should also justify how their right is coherent and proportionate to other EU fundamental rights. For two decades, much of digital governance operated through private ordering: terms of service, internal moderation policies, and voluntary commitments. The DSA disrupts this equilibrium by embedding design choices within a risk-governance framework that requires documentation, mitigation, and an independent audit. In doing so, it reframes the debate: large platforms are no longer treated simply as private market actors but as systemic intermediaries whose design decisions must be justified in light of consumer protection, the protection of minors, and broader societal interests. What is contested, therefore, is the boundary between legitimate business optimization and legally relevant behavioural exploitation.

The global dimension is evident. In the United States, litigation concerning allegedly addictive platform design is emerging through tort law and state-level enforcement actions rather than comprehensive federal regulation. The EU, by contrast, institutionalises *ex ante* systemic risk assessment and regulatory supervision. The clash is therefore not merely about infinite scrolling. It concerns competing models of constitutional and digital governance: whether platform architecture remains primarily a matter of profit optimisation, or whether it becomes subject to public accountability grounded in fundamental rights and consumer interests.