Digital Services Act package: open public consultation

> Fields marked with * are mandatory.

Introduction

The Commission recently announced a Digital Services Act package with two main pillars:

- first, a proposal of new and revised rules to deepen the Single Market for Digital Services, by increasing and harmonising the responsibilities of online platforms and information service providers and reinforce the oversight over platforms' content policies in the EU;
- second, ex ante rules to ensure that markets characterised by large platforms with significant network effects acting as gatekeepers, remain fair and contestable for innovators, businesses, and new market entrants.

T h i s **c o n s u l t a t i o n**

The Commission is initiating the present open public consultation as part of its evidence-gathering exercise, in order to identify issues that may require intervention through the Digital Services Act, as well as additional topics related to the environment of digital services and online platforms, which will be further analysed in view of possible upcoming initiatives, should the issues identified require a regulatory intervention.

The consultation contains 6 modules (you can respond to as many as you like):

1. **How to effectively keep users safer online?**
2. **Reviewing the liability regime of digital services acting as intermediaries?**
3. **What issues derive from the gatekeeper power of digital platforms?**
4. **Other emerging issues and opportunities, including online advertising and smart contracts**
5. **How to address challenges around the situation of self-employed individuals offering services through online platforms?**
6. **What governance for reinforcing the Single Market for digital services?**

Digital services and other terms used in the questionnaire

The questionnaire refers to **digital services** (or 'information society services', within the meaning of the E-Commerce Directive), as 'services provided through electronic means, at a distance, at the request of the user'. It also refers more narrowly to a subset of digital services here termed **online intermediary services**. By this we mean services such as internet access providers, cloud services, online platforms, messaging services, etc., i.e. services that generally transport or intermediate content, goods or services made available by third parties. Parts of the questionnaire specifically focus on **online platforms** – such as e-commerce marketplaces, search engines, app stores, online travel and accommodation platforms or mobility platforms and other collaborative economy platforms, etc.

Other terms and other technical concepts are explained in <u>a glossar</u>y.

H o w   t o   r e s p o n d

Make sure to **save tour draft** regularly as you fill in the questionnaire. You can break off and return to finish it at any time. At the end, you will also be able to upload a document or add other issues not covered in detail in the questionnaire.

D e a d l i n e   f o r   r e s p o n s e s

8   S e p t e m b e r   2 0 2 0 .

L a n g u a g e s

You can submit your response in any official EU language. The questionnaire is available in 23 of the EU's official languages. You can switch languages from the menu at the top of the page.

About you

*1 Language of my contribution

- ○ Bulgarian
- ○ Croatian
- ○ Czech
- ○ Danish
- ○ Dutch
- ● English
- ○ Estonian
- ○ Finnish

- ◉ French
- ◉ Gaelic
- ◉ German
- ◉ Greek
- ◉ Hungarian
- ◉ Italian
- ◉ Latvian
- ◉ Lithuanian
- ◉ Maltese
- ◉ Polish
- ◉ Portuguese
- ◉ Romanian
- ◉ Slovak
- ◉ Slovenian
- ◉ Spanish
- ◉ Swedish

*2 I am giving my contribution as

- ◉ Academic/research institution
- ◉ Business association
- ◉ Company/business organisation
- ◉ Consumer organisation
- ◉ EU citizen
- ◉ Environmental organisation
- ◉ Non-EU citizen
- ◉ Non-governmental organisation (NGO)
- ◉ Public authority
- ◉ Trade union
- ◉ Other

*3 First name

Thomas

*4 Surname

BIHLMAYER

*5 Email (this won't be published)

> thomas.bihlmayer@eco.de

*7 Organisation name

255 character(s) maximum

> eco - Association of the Internet Industry

*8 Organisation size

- ○ Micro (1 to 9 employees)
- ○ Small (10 to 49 employees)
- ● Medium (50 to 249 employees)
- ○ Large (250 or more)

9 What is the annual turnover of your company?

- ○ <=€2m
- ○ <=€10m
- ○ <= €50m
- ○ Over €50m

10 Are you self-employed and offering services through an online platform?

- ☐ Yes
- ☐ No

11 Would you describe your company as :

- ☐ a startup?
- ☐ a scaleup?
- ☐ a conglomerate offering a wide range of services online?

12 Is your organisation:

- ☐ an online intermediary
- ☑ an association representing the interests of online intermediaries
- ☐ a digital service provider, other than an online intermediary
- ☑ an association representing the interests of such digital services
- ☐ a different type of business than the options above
- ☑ an association representing the interest of such businesses

☐ other

13 What type(s) of services do you provide?

☐ Internet access provider
☐ Domain name services
☐ Messaging service between a finite number of users
☐ Cloud computing services
☐ E-commerce market place: for sales of goods, travel and accommodation booking, etc.
☐ Collaborative economy platform
☐ Social networking
☐ Video, audio and image sharing
☐ File hosting and sharing
☐ News and media sharing
☐ App distribution
☐ Rating and reviews
☐ Price comparison
☐ Video streaming
☐ Online advertising intermediation
☐ Blog hosting
☑ Other services

14 Please specify

> our members offer services that cover all of the above; eco is running an internet hotline / complaints office

15 What types of services does your platform intermediate?

☐ Temporary accommodation
☐ Private transportation
☐ Food delivery
☐ Household maintenance
☐ Other types of on-location services
☐ Software development
☐ Design
☐ Social media editing
☐ Other services provided online

16 Does your organisation play a role in:
- ☑ Flagging illegal activities or information to online intermediaries for removal
- ☐ Fact checking and/or cooperating with online platforms for tackling harmful (but not illegal) behaviours
- ☐ Representing fundamental rights in the digital environment
- ☐ Representing consumer rights in the digital environment
- ☐ Representing rights of victims of illegal activities online
- ☐ Representing interests of providers of services intermediated by online platforms
- ☐ Other

17 Is your organisation a
- ☐ Law enforcement authority, in a Member State of the EU
- ☐ Government, administrative or other public authority, other than law enforcement, in a Member State of the EU
- ☐ Other, independent authority, in a Member State of the EU
- ☐ EU-level authority
- ☐ International level authority, other than at EU level
- ☑ Other

18 Is your business established in the EU?
- ◉ Yes
- ○ No

19 Please select the EU Member States where your organisation is established or currently has a legal representative in:
- ○ Austria
- ○ Belgium
- ○ Bulgaria
- ○ Croatia
- ○ Cyprus
- ○ Czechia
- ○ Denmark
- ○ Estonia
- ○ Finland

- ○ France
- ● Germany
- ○ Greece
- ○ Hungary
- ○ Ireland
- ○ Italy
- ○ Latvia
- ○ Lithuania
- ○ Luxembourg
- ○ Malta
- ○ Netherlands
- ○ Poland
- ○ Portugal
- ○ Romania
- ○ Slovak Republic
- ○ Slovenia
- ○ Spain
- ○ Sweden

20 Transparency register number

255 character(s) maximum

Check if your organisation is on the [transparency register](). It's a voluntary database for organisations seeking to influence EU decision-making.

483354220663-40

*21 Country of origin

Please add your country of origin, or that of your organisation.

○ Afghanistan	○ Djibouti	○ Libya	○ Saint Martin
○ Åland Islands	○ Dominica	○ Liechtenstein	○ Saint Pierre and Miquelon
○ Albania	○ Dominican Republic	○ Lithuania	○ Saint Vincent and the Grenadines
○ Algeria	○ Ecuador	○ Luxembourg	○ Samoa
○ American Samoa	○ Egypt	○ Macau	○ San Marino

○ Andorra	○ El Salvador	○ Madagascar	○ São Tomé and Príncipe
○ Angola	○ Equatorial Guinea	○ Malawi	○ Saudi Arabia
○ Anguilla	○ Eritrea	○ Malaysia	○ Senegal
○ Antarctica	○ Estonia	○ Maldives	○ Serbia
○ Antigua and Barbuda	○ Eswatini	○ Mali	○ Seychelles
○ Argentina	○ Ethiopia	○ Malta	○ Sierra Leone
○ Armenia	○ Falkland Islands	○ Marshall Islands	○ Singapore
○ Aruba	○ Faroe Islands	○ Martinique	○ Sint Maarten
○ Australia	○ Fiji	○ Mauritania	○ Slovakia
○ Austria	○ Finland	○ Mauritius	○ Slovenia
○ Azerbaijan	○ France	○ Mayotte	○ Solomon Islands
○ Bahamas	○ French Guiana	○ Mexico	○ Somalia
○ Bahrain	○ French Polynesia	○ Micronesia	○ South Africa
○ Bangladesh	○ French Southern and Antarctic Lands	○ Moldova	○ South Georgia and the South Sandwich Islands
○ Barbados	○ Gabon	○ Monaco	○ South Korea
○ Belarus	○ Georgia	○ Mongolia	○ South Sudan
○ Belgium	◉ Germany	○ Montenegro	○ Spain
○ Belize	○ Ghana	○ Montserrat	○ Sri Lanka
○ Benin	○ Gibraltar	○ Morocco	○ Sudan
○ Bermuda	○ Greece	○ Mozambique	○ Suriname
○ Bhutan	○ Greenland	○ Myanmar /Burma	○ Svalbard and Jan Mayen
○ Bolivia	○ Grenada	○ Namibia	○ Sweden
○ Bonaire Saint Eustatius and Saba	○ Guadeloupe	○ Nauru	○ Switzerland

- Bosnia and Herzegovina
- Botswana
- Bouvet Island
- Brazil
- British Indian Ocean Territory
- British Virgin Islands
- Brunei
- Bulgaria
- Burkina Faso
- Burundi
- Cambodia
- Cameroon
- Canada
- Cape Verde
- Cayman Islands
- Central African Republic
- Chad
- Chile
- China
- Christmas Island
- Clipperton

- Guam
- Guatemala
- Guernsey
- Guinea
- Guinea-Bissau
- Guyana
- Haiti
- Heard Island and McDonald Islands
- Honduras
- Hong Kong
- Hungary
- Iceland
- India
- Indonesia
- Iran
- Iraq
- Ireland
- Isle of Man
- Israel
- Italy
- Jamaica

- Nepal
- Netherlands
- New Caledonia
- New Zealand
- Nicaragua
- Niger
- Nigeria
- Niue
- Norfolk Island
- Northern Mariana Islands
- North Korea
- North Macedonia
- Norway
- Oman
- Pakistan
- Palau
- Palestine
- Panama
- Papua New Guinea
- Paraguay
- Peru

- Syria
- Taiwan
- Tajikistan
- Tanzania
- Thailand
- The Gambia
- Timor-Leste
- Togo
- Tokelau
- Tonga
- Trinidad and Tobago
- Tunisia
- Turkey
- Turkmenistan
- Turks and Caicos Islands
- Tuvalu
- Uganda
- Ukraine
- United Arab Emirates
- United Kingdom
- United States

○ Cocos (Keeling) Islands	○ Japan	○ Philippines	○ United States Minor Outlying Islands
○ Colombia	○ Jersey	○ Pitcairn Islands	○ Uruguay
○ Comoros	○ Jordan	○ Poland	○ US Virgin Islands
○ Congo	○ Kazakhstan	○ Portugal	○ Uzbekistan
○ Cook Islands	○ Kenya	○ Puerto Rico	○ Vanuatu
○ Costa Rica	○ Kiribati	○ Qatar	○ Vatican City
○ Côte d'Ivoire	○ Kosovo	○ Réunion	○ Venezuela
○ Croatia	○ Kuwait	○ Romania	○ Vietnam
○ Cuba	○ Kyrgyzstan	○ Russia	○ Wallis and Futuna
○ Curaçao	○ Laos	○ Rwanda	○ Western Sahara
○ Cyprus	○ Latvia	○ Saint Barthélemy	○ Yemen
○ Czechia	○ Lebanon	○ Saint Helena Ascension and Tristan da Cunha	○ Zambia
○ Democratic Republic of the Congo	○ Lesotho	○ Saint Kitts and Nevis	○ Zimbabwe
○ Denmark	○ Liberia	○ Saint Lucia	

* 22 Publication privacy settings

The Commission will publish the responses to this public consultation. You can choose whether you would like your details to be made public or to remain anonymous.

○ **Anonymous**

Only your type of respondent, country of origin and contribution will be published. All other personal details (name, organisation name and size, transparency register number) will not be published.

◉ **Public**

Your personal details (name, organisation name and size, transparency register number, country of origin) will be published with your contribution.

☑ I agree with the [personal data protection provisions](#)

I. How to effectively keep users safer online?

This module of the questionnaire is structured into several subsections:

First, it seeks evidence, experience, and data from the perspective of different stakeholders regarding illegal activities online, as defined by national and EU law. This includes the availability online of illegal goods (e.g. dangerous products, counterfeit goods, prohibited and restricted goods, protected wildlife, pet trafficking, illegal medicines, misleading offerings of food supplements), content (e.g. illegal hate speech, child sexual abuse material, content that infringes intellectual property rights), and services, or practices that infringe consumer law (such as scams, misleading advertising, exhortation to purchase made to children) online. It covers all types of illegal activities, both as regards criminal law and civil law.

It then asks you about other activities online that are not necessarily illegal but could cause harm to users, such as the spread of online disinformation or harmful content to minors.

It also seeks facts and informed views on the potential risks of erroneous removal of legitimate content. It also asks you about the transparency and accountability of measures taken by digital services and online platforms in particular in intermediating users' access to their content and enabling oversight by third parties. Respondents might also be interested in related questions in the module of the consultation focusing on online advertising.

Second, it explores proportionate and appropriate responsibilities and obligations that could be required from online intermediaries, in particular online platforms, in addressing the set of issues discussed in the first sub-section.

This module does not address the liability regime for online intermediaries, which is further explored in the next module of the consultation.

1. Main issues and experiences

A. Experiences and data on illegal activities online

Illegal goods

1 Have you ever come across illegal goods on online platforms (e.g. a counterfeit product, prohibited and restricted goods, protected wildlife, pet trafficking, illegal medicines, misleading offerings of food supplements)?

○ No, never

○ Yes, once

○ Yes, several times

○ I don't know

3 Please specify.

3000 character(s) maximum

4 How easy was it for you to find information on where you could report the illegal good?

Please rate from 1 star (very difficult) to 5 stars (very easy)	☆ ☆ ☆ ☆ ☆

5 How easy was it for you to report the illegal good?

Please rate from 1 star (very difficult) to 5 stars (very easy)	☆ ☆ ☆ ☆ ☆

6 How satisfied were you with the procedure following your report?

Please rate from 1 star (very dissatisfied) to 5 stars (very satisfied)	☆ ☆ ☆ ☆ ☆

7 Are you aware of the action taken following your report?

- ○ Yes
- ○ No

8 Please explain

3000 character(s) maximum

9 In your experience, were such goods more easily accessible online since the outbreak of COVID-19?

- ○ No, I do not think so
- ○ Yes, I came across illegal offerings more frequently
- ○ I don't know

10 What good practices can you point to in handling the availability of illegal goods online since the start of the COVID-19 outbreak?

5000 character(s) maximum

Illegal content

11 Did you ever come across illegal content online (for example illegal incitement to violence, hatred or discrimination on any protected grounds such as race, ethnicity,

12

gender or sexual orientation; child sexual abuse material; terrorist propaganda; defamation; content that infringes intellectual property rights, consumer law infringements)?

- ○ No, never
- ○ Yes, once
- ○ Yes, several times
- ○ I don't know

18 How has the dissemination of illegal content changed since the outbreak of COVID-19? Please explain.

3000 character(s) maximum

> Where there is a market there has always been a group of people trying to benefit from it beyond legal ways. This has already been the case before the Internet. However, the Internet was adapted as a new tool and means of distribution of content. Be it information or products and goods.
> The Covid outbreak did, in our opinion, not change much but the perception and the focus on a narrow range of illegal content. While the whole world was desperately looking for the same kind of products at once, criminals were trying to use the situation to sell the wanted commodities at an inferior quality or not even existing. However, this is nothing unique, has nothing to do with Covid and nothing to do with the Internet. Massive issues in the "offline-world" for example have been brought to light where States failed to get hundreds of thousands ordered masks delivered.
> Numbers from eco's Complaints Office show that there was no increase of number of reports received since the COVID-19 outbreak. However, the ratio of actionable reports has increased. Those numbers are confirmed by the other two hotlines in Germany, FSM and jugendschutz.net, as well as by the hotline in Luxemburg.

19 What good practices can you point to in handling the dissemination of illegal content online since the outbreak of COVID-19?

3000 character(s) maximum

> The focus on one topic, rather a hand full of also words and expression, made it easier to recognise the potentially fraudulent cases in the context of Covid-19/Corona. It was therefore possible to reduce awareness to products or posts related to it. We have seen this being done by many major online market players.

20 What actions do online platforms take to minimise risks for consumers to be exposed to scams and other unfair practices (e.g. misleading advertising, exhortation to purchase made to children)?

3000 character(s) maximum

> It is not in the interest of online platforms to host sellers that execute scams or other unfair practices. Platforms are looking for long term relationships with their customers and their customers' customers. This is why they introduced check-ups for sellers. These include basic identity checks and validation. Sellers fulfilling certain criteria could also be given a certification as a trusted seller. User reviews are additional ways to rate and judge products and suppliers, helping to pin-point negative cases.

21 Do you consider these measures appropriate?

- ◉ Yes
- ○ No
- ○ I don't know

22 Please explain.

3000 character(s) maximum

[   ]

B. Transparency

1 If your content or offering of goods and services was ever removed or blocked from an online platform, were you informed by the platform?

- ○ Yes, I was informed before the action was taken
- ○ Yes, I was informed afterwards
- ○ Yes, but not on every occasion / not by all the platforms
- ○ No, I was never informed
- ○ I don't know

3 Please explain.

3000 character(s) maximum

[   ]

4 If you provided a notice to a digital service asking for the removal or disabling of access to such content or offering of goods or services, were you informed about the follow-up to the request?

- ○ Yes, I was informed
- ◉ Yes, but not on every occasion / not by all platforms
- ○ No, I was never informed
- ○ I don't know

5 When content is recommended to you - such as products to purchase on a platform, or videos to watch, articles to read, users to follow - are you able to obtain enough information on why such content has been recommended to you? Please explain.

3000 character(s) maximum

C. Activities that could cause harm but are not, in themselves, illegal

1 In your experience, are children adequately protected online from harmful behaviour, such as grooming and bullying, or inappropriate content?

3000 character(s) maximum

The Internet, as the real world, is of an enormous size and contains a massive variety of content and services. It is therefore practically impossible to know about everything and prevent all possible harms – in both worlds. While online services are doing their best to remove harmful content once known, the responsibility of users, and in the case of minors of their guardians (also assisted by numerous available tools), cannot be ignored. Digital literacy taught by parents and in school is a necessity in a digital era like the current. This responsibility cannot be shifted to Internet Service Providers and should not lead to further liability for them.

Content platforms have already implemented tools like age verification to protect minors or supply special versions of their platforms only for young users.

In addition, the AVMS Directive has just been adopted lately. It would be recommendable to evaluate the result of its regulation on youth protection before introducing new measures.

2 To what extent do you agree with the following statements related to online disinformation?

	Fully agree	Somewhat agree	Neither agree not disagree	Somewhat disagree	Fully disagree	I don't know/ No reply
Online platforms can easily be manipulated by foreign governments or other coordinated groups to spread divisive messages	○	○	●	○	○	○
To protect freedom of expression online, diverse voices should be heard	○	●	○	○	○	○
Disinformation is spread by manipulating algorithmic processes on online platforms	○	○	●	○	○	○

Online platforms can be trusted that their internal practices sufficiently guarantee democratic integrity, pluralism, non-discrimination, tolerance, justice, solidarity and gender equality.	○	●	○	○	○	○

3 Please explain.

3000 character(s) maximum

> Online platforms offer users space to express themselves, to share and consume. They consist of software platforms with human interaction and intervention on both sides – in front and behind the platforms interface. Any software can only be as good as its programming and is a mere reaction to actions that can be foreseen. As a consequence programs are never perfect but they do have flaws that can be used and misused by people aware of the gaps. However, this is not generally an easy thing to do, looking at bugs, unforeseen reactions or algorithmic processes.
> On the other hand, concerning manipulations by governments, it seems relatively easy in numerous cases to intervene in classic media which themselves use online media to spread their messages. This happens on dedicated web pages, blogs and social media accounts run by those medias or on accounts of regular users sharing their messages. However, this is not a manipulation of online platforms.

4 In your personal experience, how has the spread of harmful (but not illegal) activities online changed since the outbreak of COVID-19? Please explain.

3000 character(s) maximum

> As already pointed out in A.18 the situation has not changed much in our believe. It is only the focus on one specific topic that made it a unique situation.

5 What good practices can you point to in tackling such harmful activities since the outbreak of COVID-19?

3000 character(s) maximum

> As already pointed out in A.19 the focus on one topic allowed companies to focus on a narrow list of words, or expressions to inform and counter balance. As a consequence information pages could be set up and linked to be found easily where there is a context to COVID-19. These pages were giving an overview of the available information on the situation and links to further sources.

D. Experiences and data on erroneous removals

This section covers situation where content, goods or services offered online may be removed erroneously contrary to situations where such a removal may be justified due to for example illegal nature of such content, good or service (see sections of this questionnaire above).

1 Are you aware of evidence on the scale and impact of erroneous removals of content, goods, services, or banning of accounts online? Are there particular experiences you could share?

5000 character(s) maximum

The following questions are targeted at organisations.
Individuals responding to the consultation are invited to go to section 2 here below on responsibilities for online platforms and other digital services

3 What is your experience in flagging content, or offerings of goods or services you deemed illegal to online platforms and/or other types of online intermediary services? Please explain in what capacity and through what means you flag content.

3000 character(s) maximum

> Aside of its members and their own activities, eco is running its own hotline – eco Complaints Office. With this hotline eco is a point of contact collecting notices by private people, other hotlines, etc and the hosting providers. eco's hotline team of qualified lawyers checks the reported content against the law and flags illegal content directly to hosting providers and platforms using their official reporting channels or trusted flagging/reporting opportunities. A well-developed network, not only in Europe but internationally, and eco's reputation as a hotline run by an industry association, also being trusted by the industry, lead to great co-operation and a long success-story. This is confirmed by the latest numbers from 2019: 95.5% of content reported to host or platform providers was removed.

4 If applicable, what costs does your organisation incur in such activities?

3000 character(s) maximum

> The Complaints Office is one of eco's departments and part of eco's general budget. Typical costs such as salary (currently for 7 staff members), travel expenses, psychological support and overheads are incurred. eco receives regional and EU (co-)funds to support the hotline.

5 Have you encountered any issues, in particular, as regards illegal content or goods accessible from the EU but intermediated by services established in third countries? If yes, how have you dealt with these?

3000 character(s) maximum

6 If part of your activity is to send notifications or orders for removing illegal content or goods or services made available through online intermediary services, or taking other actions in relation to content, goods or services, please explain whether you report on your activities and their outcomes:

☑ Yes, through regular transparency reports

☐ Yes, through reports to a supervising authority

☐ Yes, upon requests to public information

☐ Yes, through other means. Please explain

☐ No , no such reporting is done

7 Please provide a link to publicly available information or reports.

1000 character(s) maximum

https://international.eco.de/download/121587/

8 Does your organisation access any data or information from online platforms?

☐ Yes, data regularly reported by the platform, as requested by law

☐ Yes, specific data, requested as a competent authority

☐ Yes, through bilateral or special partnerships

☐ On the basis of a contractual agreement with the platform

☑ Yes, generally available transparency reports

☐ Yes, through generally available APIs (application programme interfaces)

☐ Yes, through web scraping or other independent web data extraction approaches

☐ Yes, because users made use of their right to port personal data

☐ Yes, other. Please specify in the text box below

☐ No

9 Please indicate which one(s). What data is shared and for what purpose, and are there any constraints that limit these initiatives?

3000 character(s) maximum

10 What sources do you use to obtain information about users of online platforms and other digital services – such as sellers of products online, service providers, website holders or providers of content online? For what purpose do you seek this information?

> The goal for the eco Complaints Office is not to locate an individual but to qualify reported content. For this purpose content is traced to the apparent hosting provider. Illegal content is flagged to hosting providers and in relevant cases to law enforcement. It is on them to seek the culprit and the criminal prosecution.

11 Do you use WHOIS information about the registration of domain names and related information?

- ◉ Yes
- ○ No
- ○ I don't know

12 Please specify for what specific purpose and if the information available to you sufficient, in your opinion?

3000 character(s) maximum

13 How valuable is this information for you?

Please rate from 1 star (not particularly important) to 5 (extremely important)	★★★☆ ☆

14 Do you use or ar you aware of alternative sources of such data? Please explain.

3000 character(s) maximum

The following questions are targeted at online intermediaries.

A. Measures taken against illegal goods, services and content online shared by users

1 What systems, if any, do you have in place for addressing illegal activities conducted by the users of your service (sale of illegal goods -e.g. a counterfeit product, an unsafe product, prohibited and restricted goods, wildlife and pet trafficking - dissemination of illegal content or illegal provision of services)?

- ☐ A notice-and-action system for users to report illegal activities
- ☐ A dedicated channel through which authorities report illegal activities
- ☐ Cooperation with trusted organisations who report illegal activities, following a fast-track assessment of the notification
- ☐ A system for the identification of professional users ('know your customer')

☐ A system for penalising users who are repeat offenders

☐ A system for informing consumers that they have purchased an illegal good, once you become aware of this

☐ Multi-lingual moderation teams

☐ Automated systems for detecting illegal activities. Please specify the detection system and the type of illegal content it is used for

☐ Other systems. Please specify in the text box below

☐ No system in place

2 Please explain.

5000 character(s) maximum

3 What issues have you encountered in operating these systems?

5000 character(s) maximum

4 On your marketplace (if applicable), do you have specific policies or measures for the identification of sellers established outside the European Union ?

○ Yes

○ No

5 Please quantify, to the extent possible, the costs of the measures related to 'notice-and-action' or other measures for the reporting and removal of different types of illegal goods, services and content, as relevant.

5000 character(s) maximum

6 Please provide information and figures on the amount of different types of illegal content, services and goods notified, detected, removed, reinstated and on the number or complaints received from users. Please explain and/or link to publicly reported information if you publish this in regular transparency reports.

5000 character(s) maximum

7 Do you have in place measures for detecting and reporting the incidence of suspicious behaviour (i.e. behaviour that could lead to criminal acts such as acquiring materials for such acts)?

3000 character(s) maximum

>

B. Measures against other types of activities that might be harmful but are not, in themselves, illegal

1 Do your terms and conditions and/or terms of service ban activities such as:
- ☐ Spread of political disinformation in election periods?
- ☐ Other types of coordinated disinformation e.g. in health crisis?
- ☐ Harmful content for children?
- ☐ Online grooming, bullying?
- ☐ Harmful content for other vulnerable persons?
- ☐ Content which is harmful to women?
- ☐ Hatred, violence and insults (other than illegal hate speech)?
- ☐ Other activities which are not illegal per se but could be considered harmful?

2 Please explain your policy.

5000 character(s) maximum

>

3 Do you have a system in place for reporting such activities? What actions do they trigger?

3000 character(s) maximum

>

4 What other actions do you take? Please explain for each type of behaviour considered.

5000 character(s) maximum

>

5 Please quantify, to the extent possible, the costs related to such measures.

5000 character(s) maximum

>

6 Do you have specific policies in place to protect minors from harmful behaviours such as online grooming or bullying?

○ Yes
○ No

7 Please explain.

3000 character(s) maximum

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[                                                            ]
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C. Measures for protecting legal content goods and services

1 Does your organisation maintain an internal complaint and redress mechanism to your users for instances where their content might be erroneously removed, or their accounts blocked?

○ Yes
○ No

2 What action do you take when a user disputes the removal of their goods or content or services, or restrictions on their account? Is the content/good reinstated?

5000 character(s) maximum

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[                                                            ]
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3 What are the quality standards and control mechanism you have in place for the automated detection or removal tools you are using for e.g. content, goods, services, user accounts or bots?

3000 character(s) maximum

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[                                                            ]
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4 Do you have an independent oversight mechanism in place for the enforcement of your content policies?

○ Yes
○ No

5 Please explain.

5000 character(s) maximum

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[                                                            ]
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D. Transparency and cooperation

1 Do you actively provide the following information:

- ☐ Information to users when their good or content is removed, blocked or demoted
- ☐ Information to notice providers about the follow-up on their report
- ☐ Information to buyers of a product which has then been removed as being illegal

2 Do you publish transparency reports on your content moderation policy?

- ◉ Yes
- ◉ No

3 Do the reports include information on:

- ☐ Number of takedowns and account suspensions following enforcement of your terms of service?
- ☐ Number of takedowns following a legality assessment?
- ☐ Notices received from third parties?
- ☐ Referrals from authorities for violations of your terms of service?
- ☐ Removal requests from authorities for illegal activities?
- ☐ Number of complaints against removal decisions?
- ☐ Number of reinstated content?
- ☐ Other, please specify in the text box below

4 Please explain.

5000 character(s) maximum

5 What information is available on the automated tools you use for identification of illegal content, goods or services and their performance, if applicable? Who has access to this information? In what formats?

5000 character(s) maximum

6 How can third parties access data related to your digital service and under what conditions?

- ☐ Contractual conditions
- ☐ Special partnerships

☐ Available APIs (application programming interfaces) for data access

☐ Reported, aggregated information through reports

☐ Portability at the request of users towards a different service

☐ At the direct request of a competent authority

☐ Regular reporting to a competent authority

☐ Other means. Please specify

7 Please explain or give references for the different cases of data sharing and explain your policy on the different purposes for which data is shared.

5000 character(s) maximum

The following questions are open for all respondents.

2. Clarifying responsibilities for online platforms and other digital services

1 What responsibilities (i.e. legal obligations) should be imposed on online platforms and under what conditions?
Should such measures be taken, in your view, by all online platforms, or only by specific ones (e.g. depending on their size, capability, extent of risks of exposure to illegal activities conducted by their users)? If you consider that some measures should only be taken by large online platforms, please identify which would these measures be.

	Yes, by all online platforms, based on the activities they intermediate (e.g. content hosting, selling goods or services)	Yes, only by larger online platforms	Yes, only platforms at particular risk of exposure to illegal activities by their users	Such measures should not be required by law
Maintain an effective 'notice and action' system for reporting illegal goods or content	◉	○	○	○
Maintain a system for assessing the risk of exposure to illegal goods or content	○	○	○	◉

Have content moderation teams, appropriately trained and resourced	○	○	●	○
Systematically respond to requests from law enforcement authorities	○	●	○	○
Cooperate with national authorities and law enforcement, in accordance with clear procedures	●	○	○	○
Cooperate with trusted organisations with proven expertise that can report illegal activities for fast analysis ('trusted flaggers')	○	●	○	○
Detect illegal content, goods or services	○	○	○	●
In particular where they intermediate sales of goods or services, inform their professional users about their obligations under EU law	●	○	○	○
Request professional users to identify themselves clearly ('know your customer' policy)	●	○	○	○
Provide technical means allowing professional users to comply with their obligations (e.g. enable them to publish on the platform the pre-contractual information consumers need to receive in accordance with applicable consumer law)	●	○	○	○
Inform consumers when they become aware of product recalls or sales of illegal goods	●	○	○	○
Cooperate with other online platforms for exchanging best practices, sharing information or tools to tackle illegal activities	○	○	○	●
Be transparent about their content policies, measures and their effects	○	●	○	○
Maintain an effective 'counter-notice' system for users whose goods or content is removed to dispute erroneous decisions	○	●	○	○
Other. Please specify	○	○	○	○

2 Please elaborate, if you wish to further explain your choices.

5000 character(s) maximum

3 What information would be, in your view, necessary and sufficient for users and third parties to send to an online platform in order to notify an illegal activity (sales of illegal goods, offering of services or sharing illegal content) conducted by a user of the service?

- ☑ Precise location: e.g. URL
- ☑ Precise reason why the activity is considered illegal
- ☑ Description of the activity
- ☑ Identity of the person or organisation sending the notification. Please explain under what conditions such information is necessary:
- ☐ Other, please specify

4 Please explain

3000 character(s) maximum

When action is necessary to take down illegal content details are important. Therefore it is necessary that intermediaries know exactly where and what they have to look for. The more specific the information the less time is wasted. Often it would not be possible to single out a piece of content in the mass of activities happening, if there is no specific information on it. Further, there might be a need for identification where it relates to infringements of personal rights which need a proof of ownership or have a very personal context (e.g. copyright or libel).

5 How should the reappearance of illegal content, goods or services be addressed, in your view? What approaches are effective and proportionate?

5000 character(s) maximum

Taking down or removing illegal content ex post is a (semi-)manual process. Pieces of illegal content can be judged either objectively (if clear infringements) or subjectively, depending on the content and the circumstances. However, while it is one thing to remove content once, it is way more complicated to keep it off a platform. This is only practically possible by the use of automatic ex ante filtering or, again, after publishing.
However, both obligations, to filter ex ante and to remove ex post identical information or information similar to the at-issue content, would have a negative effect on the freedom of companies to conduct a business. Putting in place a system capable of interpreting potentially very high volumes of context-sensitive information would further be extremely burdensome for companies, which would need to install costly filtering systems and hire specific personnel for this task. As a consequence, small and medium sized companies – which represent the majority of European businesses – would be penalized compared to large companies.
In the case where the same user uploads the same piece of illegal content again, which has been taken down already before, there are two ways to react. One would be to run a filter on this specific user with the specific taken down content s/he already uploaded before and to block its publication. Another would be a manual review of the content after (or before) it has been published and to (un)block it after a decision has been taken by a human controller.
Additionally, the illegality of content may depend on the context. Just filtering out specific postings/sentences

may lead to erroneous removal, particularly when only technical/automated solutions shall decide on the removal.

6 Where automated tools are used to detect illegal content, goods or services, what opportunities and risks does their use present as regards different types of illegal activities and the particularities of the different types of tools?

3000 character(s) maximum

Automated tools are too often seen as the silver bullet against illegal content online. However, this is far from the truth. Automation can effectively only be a supportive instrument flagging content to be reviewed by a human.
However, as mentioned before, filters, if one is to ignore the e-Commerce Directive and its prohibition of general monitoring as a precondition for filtering, generate significant initial set-up and reoccurring operational costs. This is especially the case for SMEs and start-ups, which represent the majority of companies in Europe.
Automated tools to detect illegal content, goods or services do also present significant risks for the freedom of expression (due to false positives or overblocking), which is why their use should not be mandatory.

7 How should the spread of illegal goods, services or content across multiple platforms and services be addressed? Are there specific provisions necessary for addressing risks brought by:
    a. Digital services established outside of the Union?
    b. Sellers established outside of the Union, who reach EU consumers through online platforms?

3000 character(s) maximum

The European Single Market has a well-developed set of rules to support it. As in the offline world mischief can happen online. Information duty is a key feature of the e-Commerce Directive that helps consumers to be informed about who they are contracting with. Additional transparency on platforms might be able to support this. However, the big challenge will be to achieve higher digital literacy and to get consumers to be aware of their choices and actions. If prices are too cheap or circumstances unusual, like Gucci bags on street sales, the consumer needs to act responsibly.

The Internet does not know any borders. Literally anyone can offer their services to anyone else connected around the globe. This is also where a big opportunity for entrepreneurs as well as for consumers lies. However, in its consequence this means that there will be no absolute security when it comes to services and goods offered. Digital services mostly work across borders without any limitation. To regulate any service offered on the Internet is an impossible task to solve. While physical goods sold from outside the EU can be checked when crossing the border of the EU, digital content and goods cross unrecognized. The most important piece of the puzzle is probably information in combination with media literacy.
What the EU can do, in addition to measures it has already taken, is to promote services that follow European rules and to educate consumers on how to distinguish sellers following European Regulations from the ones which don't and to explain the benefits of contracting with these companies.

8 What would be appropriate and proportionate measures for digital services acting as online intermediaries, other than online platforms, to take – e.g. other types of hosting services, such as web hosts, or services deeper in the internet stack, like cloud infrastructure services, content distribution services, DNS services, etc.?

Caching, hosting and access providers offer services that are often in the background, not interacting with content directly or not even having access to content. This is also why the e-Commerce Directive's protection from liability is essential to them. Tackling illegal content proactively would be an impossible task for these kinds of services.

These neutral services and others referred to, such as electronic communication services, registries and registrars, DNS (domain name system) or adjacent services, such as payment services or DDoS (distributed denial of service) protection services have no knowledge about content or about its (il)legality.

Even after gaining knowledge about content accessible through their infrastructure, their room for manoeuvre is very limited, and the possible measures are likely to have a wider affect than only on the content of concern. Access providers can restrict access to certain IP addresses, but by doing so they would take a whole infrastructure offline of which the targeted service is probably just the size of a grain of sand. DNS services can block access to certain domains, but such measures are largely ineffective and disproportionately burden local, regional and national DNS providers. Because of the nature of DNS, it is impossible to restrict such blocking to particular geographic regions, except by focusing on DNS providers that exclusively target those regions. Because users are free to choose alternative more global DNS services, these measures do not have the intended effect, but instead disadvantage local, regional and national DNS providers. We therefore strongly oppose measures for DNS services.

Technical services already co-operate closely with law enforcement and respond to legal requests wherever possible. But due to the disproportionate nature of possible actions to be taken at the technical layers, measures should always be taken first at the highest layers of the Internet stack with services that have access to content and services related to the offender in question. Cloud infrastructure services, for example, are more limited in what they can do to address illegal content stored at the direction of their customers or their customers' users, given the technical architecture of their services designed with privacy protections and the contractual obligations they hold towards their customers' data. They therefore are normally not able to identify a single user on the system and would have to unplug a server running hundreds or thousands of independent services, which would have an impact on a variety of for different customers.

9 What should be the rights and responsibilities of other entities, such as authorities, or interested third-parties such as civil society organisations or equality bodies in contributing to tackle illegal activities online?

Any new or adapted framework for the role of digital services should be balanced and clear. It sure further be assured that it takes into account the legitimate interests of all stakeholders, not only or primarily rightsholders'.

Competent authorities on the other hand should look for cooperation wherever possible and provide transparency towards the platforms (in regards to which authority is responsible and what are the rules and criteria) but also on the side of the public and transparency (regarding reports).

Law Enforcement should be supplied with the necessary tools and equipment to follow up on the registered cases of e.g. distribution of illegal goods and services online. They also should get the necessary training to

have a basic technical knowledge. Last but not least an appropriate amount of staff members is necessary to handle the registered cases.

Users and rightsholders who might have an interest in content being taken down should be aware of what their claims are eventually triggering. Notices should be posted accurately and in good faith. Fraudulent notices or notices in bad faith should lead to legal responsibility and liability due to their interference with publishing rights and the possible resulting economic consequences. Platforms should have the right of account suspension and of deactivating notification for unregistered users in the case of content, that has been wrongfully notified multiple times within short periods before to prevent misuse.

The accuracy and expeditious removal of notified content goes hand in hand with priority (or trusted) flaggers. This special status of trustworthiness should only be given by platforms (and dropped again) under their own judgment and rules with no obligation on the consequences the status comes with.

10 What would be, in your view, appropriate and proportionate measures for online platforms to take in relation to activities or content which might cause harm but are not necessarily illegal?

5000 character(s) maximum

Illegal activities or content, as defined by law, might be illegal in one EU member state or in the EU as a whole. However, they are objectively defined by laws and controlled by courts.
Harmful but legal activities and content on the other hand are very subjective in their judgment. The clear distinction between the two needs to be preserved. The focus on illegal content and activity in the updated liability framework shall not preclude further evaluation and action on "lawful but harmful" content through self- and co-regulatory initiatives, which have proven success through EU initiatives such as the Code of Conduct on Hate Speech and the EU Code of Practice on Disinformation.

However, platforms should have the right to look for and remove (potentially) harmful content under their own judgement or their Terms and Conditions without risking legal consequences and liabilities, e.g. losing the limited liability under the e-Commerce Directive or becoming liable for taking down what might in the end be decided to have been legal content.

11 In particular, are there specific measures you would find appropriate and proportionate for online platforms to take in relation to potentially harmful activities or content concerning minors? Please explain.

5000 character(s) maximum

Depending on the type of platform and the type of content it could be an option to classify content as child-friendly and to introduce checks and verifications of the user's age.
However, these classifications – on platforms for user generated content – would strongly depend on a correct categorization by the users and on the manual ex post verification by the platforms.

12 Please rate the necessity of the following measures for addressing the spread of disinformation online. Please rate from 1 (not at all necessary) to 5 (essential) each option below.

	1 (not at all necessary)	2	3 (neutral)	4	5 (essential)	I don't know / No answer
Transparently inform consumers about political advertising and sponsored content, in particular during election periods	○	○	○	○	◉	○
Provide users with tools to flag disinformation online and establishing transparent procedures for dealing with user complaints	○	○	○	◉	○	○
Tackle the use of fake-accounts, fake engagements, bots and inauthentic users behaviour aimed at amplifying false or misleading narratives	○	○	○	○	◉	○
Transparency tools and secure access to platform data for trusted researchers in order to monitor inappropriate behaviour and better understand the impact of disinformation and the policies designed to counter it	○	○	○	◉	○	○
Transparency tools and secure access to platform data for authorities in order to monitor inappropriate behaviour and better understand the impact of disinformation and the policies designed to counter it	○	○	○	◉	○	○
Adapted risk assessments and mitigation strategies undertaken by online platforms	○	○	○	◉	○	○
Ensure effective access and visibility of a variety of authentic and professional journalistic sources	○	○	◉	○	○	○
Auditing systems for platform actions and risk assessments	○	◉	○	○	○	○
Regulatory oversight and auditing competence over platforms' actions and risk assessments, including on sufficient resources and staff, and responsible examination of metrics and capacities related to fake accounts and their impact on the manipulation and amplification of disinformation.	○	◉	○	○	○	○

Other (please specify)	○	○	○	○	○	○

13 Please specify

3000 character(s) maximum

14 In special cases, where crises emerge and involve systemic threats to society, such as a health pandemic, and fast-spread of illegal and harmful activities online, what are, in your view, the appropriate cooperation mechanisms between digital services and authorities?

3000 character(s) maximum

> The current pandemic has shown that this special situation can be managed better when authorities coordinate their approach with platforms. Platforms can help to distribute confirmed or official information and to demote or demonetize attempts of misuse or distribution of wrongful information.

15 What would be effective measures service providers should take, in your view, for protecting the freedom of expression of their users? Please rate from 1 (not at all necessary) to 5 (essential).

	1 (not at all necessary)	2	3 (neutral)	4	5 (essential)	I don't know / No answer
High standards of transparency on their terms of service and removal decisions	○	○	○	○	●	○
Diligence in assessing the content notified to them for removal or blocking	○	○	○	○	●	○
Maintaining an effective complaint and redress mechanism	○	○	○	○	●	○
Diligence in informing users whose content/goods/services was removed or blocked or whose accounts are threatened to be suspended	○	○	○	●	○	○
High accuracy and diligent control mechanisms, including human oversight, when automated tools are deployed for detecting, removing or demoting content or suspending users' accounts	○	○	○	○	●	○

Enabling third party insight – e.g. by academics – of main content moderation systems	○	○	○	●	○	○
Other. Please specify	○	○	○	○	●	○

16 Please explain.

3000 character(s) maximum

It is vital that the regulation protects citizens' fundamental rights. Standing up for free expression means enabling access to content, including content that some people may find offensive, frivolous, or controversial. Any regulation shall not restrict the ability of services to maintain diligence in assessing content, and in particular the risks to fundamental rights where companies are forced to prioritise speed of removal over careful decision-making.

17 Are there other concerns and mechanisms to address risks to other fundamental rights such as freedom of assembly, non-discrimination, gender equality, freedom to conduct a business, or rights of the child? How could these be addressed?

5000 character(s) maximum

While discussion on freedoms are often focused on the freedom of expression it should not be ignored that companies, and therefore platforms, have the freedom to conduct a business. The freedom to provide lawful services, which is guaranteed by the Charter of Fundamental Rights and the Telecoms Framework Directive, should not be infringed. Therefore, digital services should not be prohibited from offering certain types of otherwise legitimate services on the grounds that it is not technically possible or commercially feasible to apply content regulation obligations to such a service. Rather, these obligations should only apply to the extent that they are feasible for the service in question. Furthermore, digital services should not be subjected to a priori licensing or approval.

18 In your view, what information should online platforms make available in relation to their policy and measures taken with regard to content and goods offered by their users? Please elaborate, with regard to the identification of illegal content and goods, removal, blocking or demotion of content or goods offered, complaints mechanisms and reinstatement, the format and frequency of such information, and who can access the information.

5000 character(s) maximum

Platforms of a certain size take individual measures to fight illegal content online. Some of these measures are of technical nature, some are human driven or a combination of both. Users should be made aware of what these measures are in general and which activities are under observation and what kind of behaviour is allowed in general. Where there is specific content, that is prohibited this should be clearly stated. This information should leave the regular user with a general understanding of what s/he can expect when interacting with/on a platform and the intended and acceptable use of the service offered.
In the case individual measures are taken, the concerned user should be given a brief explanation about the infringement and the consequence as well as possible follow up procedures (counter actions). With an exception in cases where this information could interfere with investigations by law enforcement.

19 What type of information should be shared with users and/or competent authorities and other third parties such as trusted researchers with regard to the use of automated systems used by online platforms to detect, remove and/or block illegal content, goods, or user accounts?

5000 character(s) maximum

When it comes to automated systems it should be distinguished between mandatory and voluntary measures. Where there is an obligation to act and automated systems are used to achieve the task, general information on the systems in place, the results of rightful/wrongful detections and the control mechanisms (e. g. human oversight) could be shared with researchers and/or competent authorities.

Where measures are taken on a voluntary basis, only a general understanding should have to be given to the users on what systems are installed, the algorithms involved and which processes are concerned. However, it is important to understand that disclosing the underlying algorithms could open up such systems for abuse and risks to trade secrets.

20 In your view, what measures are necessary with regard to algorithmic recommender systems used by online platforms?

5000 character(s) maximum

The system of content recommendation offers the possibility for users to find relevant content to one's personal interest. However, these systems are based on algorithms and experience. Some have proven to be misleading and to amplify a certain direction or interest. We could imagine an obligation to inform the users on the measures and systems in place in relation to recommendations.

21 In your view, is there a need for enhanced data sharing between online platforms and authorities, within the boundaries set by the General Data Protection Regulation? Please select the appropriate situations, in your view:

- ☑ For supervisory purposes concerning professional users of the platform - e. g. in the context of platform intermediated services such as accommodation or ride-hailing services, for the purpose of labour inspection, for the purpose of collecting tax or social security contributions
- ☐ For supervisory purposes of the platforms' own obligations – e.g. with regard to content moderation obligations, transparency requirements, actions taken in electoral contexts and against inauthentic behaviour and foreign interference
- ☑ Specific request of law enforcement authority or the judiciary
- ☑ On a voluntary and/or contractual basis in the public interest or for other purposes

22 Please explain. What would be the benefits? What would be concerns for companies, consumers or other third parties?

23 What types of sanctions would be effective, dissuasive and proportionate for online platforms which systematically fail to comply with their obligations (See also the last module of the consultation)?

Where sanctions come into play it has to be made sure that they are proportionate to the offence and the level of culpability. This is also the case where sanctions are to be taken against operators for non-compliance with any new legal obligations.

Sanctions should only be assigned after verifying that the online platform has made its best efforts to comply with the obligations, rather than because of the failure to achieve the assumed result.

When determining the sanctions the aggravating and mitigating factors, such as the size and capabilities of the intermediary, need to be taken into account. Individual instances of non-compliance with a statutory duty should only give rise to a maximum penalty proportionate to that instance of non-compliance. If the operator systematically refuses to comply, extended sanctions, sufficiently dissuasive, may be justified, but this further aggravation should not only be based on assumption.

24 Are there other points you would like to raise?

II. Reviewing the liability regime of digital services acting as intermediaries?

The liability of online intermediaries is a particularly important area of internet law in Europe and worldwide. The E-Commerce Directive harmonises the liability exemptions applicable to online intermediaries in the single market, with specific provisions for different services according to their role: from Internet access providers and messaging services to hosting service providers.

The previous section of the consultation explored obligations and responsibilities which online platforms and other services can be expected to take – i.e. processes they should put in place to address illegal activities which might be conducted by users abusing their service. In this section, the focus is on the legal architecture for the liability regime for service providers when it comes to illegal activities conducted by their users. The Commission seeks informed views on hos the current liability exemption regime is working and the areas where an update might be necessary.

1 How important is the harmonised liability exemption for users' illegal activities or information for the development of your company?

Please rate from 1 star (not important) to 5 stars (very important)	⭐ ⭐ ⭐ ⭐ ⭐

2 The liability regime for online intermediaries is primarily established in the E-Commerce Directive, which distinguishes between different types of services: so called 'mere conduits', 'caching services', and 'hosting services'.

In your understanding, are these categories sufficiently clear and complete for characterising and regulating today's digital intermediary services? Please explain.

5000 character(s) maximum

> The existing categories established by the E-Commerce Directive's Articles 12, 13, and 14 (as mentioned in the question) are in general still valid and fitting for classifying intermediaries.
>
> However, we would suggest to add a new category of "online platforms" in addition to the existing ones, in order to distinguish more precisely between pure hosting service providers, who do not have control over the content that they host (e.g. cloud infrastructure or software as a service [SaaS]), and other (potentially algorithm-driven, consumer-facing) service providers with at least some control over the content that they host, focussing on user-generated content (such as social media platforms).
>
> Such online platforms should be subject to additional statutory obligations in terms of tackling illegal content as compared to other hosting services. The precise definition of the category will determine what obligations can be imposed, in alignment with the capabilities of the services falling within the definition. Accordingly, a more precise definition would allow a broader range of obligations, while the reverse would be true with a less precise definition.

For hosting services, the liability exemption for third parties' content or activities is conditioned by a knowledge standard (i.e. when they get 'actual knowledge' of the illegal activities, they must 'act expeditiously' to remove it, otherwise they could be found liable).

3 Are there aspects that require further legal clarification?

5000 character(s) maximum

> The ECJ has been addressed with multiple cases concerning the E-Commerce Directive also in relation to questions of actual knowledge or active/passive. For these questions a final answer to a definition has still not be found.
>
> A further explanation on what would lead to actual knowledge would therefore possibly lead to more clarity. The active/passive distinction however, should be abolished. This distinction is impractical and does not reflect the technical reality. Instead we would recommend the introduction of an additional category for platforms as mentioned in the earlier question.

4 Does the current legal framework dis-incentivize service providers to take proactive measures against illegal activities? If yes, please provide your view on how disincentives could be corrected.

5000 character(s) maximum

> The current prohibition on imposing general monitoring obligations does not mean that intermediaries should or do not take reasonable steps to voluntarily moderate the content on their platforms, with the aim of removing harmful material. However, an intermediary engaging in such voluntary moderation risks being labelled as an "active" service provider, or otherwise being deemed to have knowledge of all of the content on its platform.
>
> This potentially dis-incentivizes service providers from taking proactive measures against illegal activities. If service providers decide to put in place proactive measures in good faith, they currently risk to fall out of the liability exemption for third parties' content under the e-Commerce Directive. This creates a discouraging effect on them to address illegal content online in a proactive way.
>
> To address this issue, it would be necessary to explicitly provide exemption from liability for digital services when intervening in the public interest. Concretely, this would mean extending protection from liability in cases where they have actual knowledge of allegedly illicit content if they apply procedures designed to

tackle said content in good faith.

In practice, this would extend liability protection both (1) when proactively searching for illicit content and (2) after any good faith decision that potentially illicit content does not qualify for removal. The introduction of such a clause would both enhance suppression of genuinely illicit content (by removing the disincentive to search actively) and enhance protection of fundamental rights (by removing the legal impediment to offer an appeals process).

5 Do you think that the concept characterising intermediary service providers as playing a role of a 'mere technical, automatic and passive nature' in the transmission of information ([recital 42 of the E-Commerce Directive]) is sufficiently clear and still valid? Please explain.

5000 character(s) maximum

While we do believe, that the concept of intermediaries as playing a role of a mere technical, automatic and passive nature is still to be considered valid, as mentioned above, we do not see the concept of active /passive hosts as developed correctly. The jurisdiction of the ECJ has developed what looks prima facie like an easily understandable idea practically into a killing argument against every service that interprets content even in an automatic sense to make it sortable or searchable which only improves its usability. This, as also mentioned earlier, is an impractical point of view that focuses on platforms and at best shows a misunderstanding of the technology these systems offer. To overcome the not working concept, which should be abolished, we would again refer to the additional category of platforms, which addresses similar issues while an active/passive distinction creates significant uncertainty and liability risks.

6 The E-commerce Directive also prohibits Member States from imposing on intermediary service providers general monitoring obligations or obligations to seek facts or circumstances of illegal activities conducted on their service by their users. In your view, is this approach, balancing risks to different rights and policy objectives, still appropriate today? Is there further clarity needed as to the parameters for 'general monitoring obligations'? Please explain.

5000 character(s) maximum

The general monitoring prohibition constitutes an essential and vital part of the e-Commerce Directive. It prohibits general monitoring and filtering based on content on the order of member states, which could lead to oppression of free speech and limit access to information. The "no general monitoring" rule is necessary to prevent the monitoring of content submission and its examination for review before being published or distributed. This limitation is still necessary and its validity must be maintained. It is a core principle and a cornerstone of the Internet system.

However, the concept of general monitoring has led to a lot of misunderstanding, which could also be experienced during the discussion around the DSM Regulation.

In our understanding general monitoring means to generally look at transmitted information – at every piece, by any user – waiting and searching for specific content. However, there is a trend to make the interpretation fit a rightsholder centred interpretation arguing that looking for specific content does not constitute general monitoring, because the information sought-after is specific, even though you have to generally monitor every transmission made by anyone.

We see this trend very critical and ill-advised. We would therefore recommend to further specify the general monitoring prohibition as pointed out, where monitoring of e.g. specific users are possible.

7 Do you see any other points where an upgrade may be needed for the liability regime of digital services acting as intermediaries?

5000 character(s) maximum

> In general we do believe, that the existing liability regime for digital services acting as intermediaries should be preserved. The approach of granting the limited exemptions from secondary liability to information society service providers is essential.
>
> Where policy requires that digital services intervene (i.e. to remove or block content), this should be implemented through complementary statutory obligations) and not by creating derogations to the liability protection in the e-Commerce Directive.

III. What issues derive from the gatekeeper power of digital platforms?

There is wide consensus concerning the benefits for consumers and innovation, and a wide-range of efficiencies, brought about by online platforms in the European Union's Single Market. Online platforms facilitate cross-border trading within and outside the EU and open entirely new business opportunities to a variety of European businesses and traders by facilitating their expansion and access to new markets. At the same time, regulators and experts around the world consider that large online platforms are able to control increasingly important online platform ecosystems in the digital economy. Such large online platforms connect many businesses and consumers. In turn, this enables them to leverage their advantages – economies of scale, network effects and important data assets- in one area of their activity to improve or develop new services in adjacent areas. The concentration of economic power in then platform economy creates a small number of 'winner-takes it all/most' online platforms. The winner online platforms can also readily take over (potential) competitors and it is very difficult for an existing competitor or potential new entrant to overcome the winner's competitive edge.

The Commission announced that it 'will further explore, in the context of the Digital Services Act package, ex ante rules to ensure that markets characterised by large platforms with significant network effects acting as gatekeepers, remain fair and contestable for innovators, businesses, and new market entrants'.

This module of the consultation seeks informed views from all stakeholders on this framing, on the scope, the specific perceived problems, and the implications, definition and parameters for addressing possible issues deriving from the economic power of large, gatekeeper platforms.

The Communication 'Shaping Europe's Digital Future' also flagged that 'competition policy alone cannot address all the systemic problems that may arise in the platform economy'. Stakeholders are invited to provide their views on potential new competition instruments through a separate, dedicated open public consultation that will be launched soon.

In parallel, the Commission is also engaged in a process of reviewing EU competition rules and ensuring they are fit for the modern economy and the digital age. As part of that process, the Commission has launched a consultation on the proposal for a New Competition Tool aimed at addressing the gaps identified in enforcing competition rules. The initiative intends to address as specific objectives the structural competition problems that prevent markets from functioning properly and that can tilt the level playing field in favour of only a few market players. This could cover certain digital or digitally-enabled markets, as identified in the report by the Special Advisers and other recent reports on the role of competition policy, and/or other sectors. As such, the work on a proposed new competition tool and the initiative at stake complement each other. The work on the two impact assessments will be conducted in parallel in order to ensure a coherent outcome. In this context, the Commission will take into consideration the feedback received from both consultations. We would therefore invite you, in preparing your responses

to the questions below, to also consider your response to [the parallel consultation on a new competition tool](#)
.

1 To what extent do you agree with the following statements?
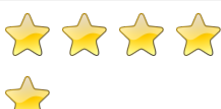
	Fully agree	Somewhat agree	Neither agree not disagree	Somewhat disagree	Fully disagree	I don't know/ No reply
Consumers have sufficient choices and alternatives to the offerings from online platforms.	○	●	○	○	○	○
It is easy for consumers to switch between services provided by online platform companies and use same or similar services provider by other online platform companies ("multi-home").	○	○	●	○	○	○
It is easy for individuals to port their data in a useful manner to alternative service providers outside of an online platform.	○	○	●	○	○	○
There is sufficient level of interoperability between services of different online platform companies.	○	○	○	○	○	●
There is an asymmetry of information between the knowledge of online platforms about consumers, which enables them to target them with commercial offers, and the knowledge of consumers about market conditions.	○	○	○	○	○	●
It is easy for innovative SME online platforms to expand or enter the market.	○	●	○	○	○	○
Traditional businesses are increasingly dependent on a limited number of very large online platforms.	○	○	○	●	○	○

Statement	1	2	3	4	5	6
There are imbalances in the bargaining power between these online platforms and their business users.	○	○	●	○	○	○
Businesses and consumers interacting with these online platforms are often asked to accept unfavourable conditions and clauses in the terms of use/contract with the online platforms.	○	○	○	●	○	○
Certain large online platform companies create barriers to entry and expansion in the Single Market (gatekeepers).	○	○	○	○	○	●
Large online platforms often leverage their assets from their primary activities (customer base, data, technological solutions, skills, financial capital) to expand into other activities.	○	○	○	○	○	●
When large online platform companies expand into such new activities, this often poses a risk of reducing innovation and deterring competition from smaller innovative market operators.	○	○	○	○	○	●

Main features of gatekeeper online platform companies and the main criteria for assessing their economic power

1 Which characteristics are relevant in determining the gatekeeper role of large online platform companies? Please rate each criterion identified below from 1 (not relevant) to 5 (very relevant):

Large user base	★★★★☆
Wide geographic coverage in the EU	★★★☆☆

They capture a large share of total revenue of the market you are active/of a sector	★★★★☆
Impact on a certain sector	★☆☆☆☆
They build on and exploit strong network effects	★★☆☆☆
They leverage their assets for entering new areas of activity	★★★★☆
They raise barriers to entry for competitors	★★★★☆
They accumulate valuable and diverse data and information	★★★★☆
There are very few, if any, alternative services available on the market	★★★★☆
Lock-in of users/consumers	★★★★☆
Other	☆☆☆☆☆

2 If you replied "other", please list

3000 character(s) maximum

3 Please explain your answer. How could different criteria be combined to accurately identify large online platform companies with gatekeeper role?

3000 character(s) maximum

First eco would like to note that many of the suggestions listed in the consultation are very subjective and therefore difficult to measure. To satisfy the need for legal certainty objective criteria would be necessary. Therefore, eco will refrain from making recommendations on the combination of the above suggestions.

In order to determine the gatekeeper characteristics of a large platform, a case-by-case assessment under consideration of the prevailing conditions in each individual case should be made instead. With the help of this case-by-case assessment, relevant criteria and findings can be carefully examined and individual case-

specific characteristics, e.g. of the market or company, can be adequately assessed.

Competition online is not far off of competition in other classic sectors. One difference might be, that even small companies (from a financial or staff member perspective) can be very successful and influential online, which is barely achievable offline. Digital markets have the unique prerequisite that market entry barriers are low – once a service is set up the services are scalable and outreach is possible with low effort. In addition it is also easier to reach users internationally/world-wide. Therefore it would make sense to look closer at these values, in combination with more obvious / classic criteria to categorize online companies in general.

4 Do you believe that the integration of any or all of the following activities within a single company can strengthen the gatekeeper role of large online platform companies ('conglomerate effect')? Please select the activities you consider to steengthen the gatekeeper role:

- ☐ online intermediation services (i.e. consumer-facing online platforms such as e-commerce marketplaces, social media, mobile app stores, etc., as per Regulation (EU) 2019/1150 - see glossary)
- ☐ search engines
- ☐ operating systems for smart devices
- ☐ consumer reviews on large online platforms
- ☐ network and/or data infrastructure/cloud services
- ☐ digital identity services
- ☐ payment services (or other financial services)
- ☐ physical logistics such as product fulfilment services
- ☐ data management platforms
- ☐ online advertising intermediation services
- ☑ other. Please specify in the text box below.

5 Other - please list

1000 character(s) maximum

What the question tries to achieve is at best doubtful. It seems to be disregarded that there is a high level of innovation originating from big companies. Companies and start-ups interact with various services offered by large digital companies which help them find new customers, reduce their operating costs or create new experiences for their customers.
However, while any of the listed services has the potential – by itself or at least in certain combinations – to strengthen a company accordingly, the enumeration could be infinite and is not limited to the targeted services. As mentioned in Question 3 a case-by-case analysis is necessary to determine gatekeepers and the same applies to their strength. In some cases, like digital identities, a conglomerate effect can have bigger effects than in others, like search engines.

tbc in III / Regulation of large online platform companies acting as gatekeepers / #27

Emerging issues

The following questions are targeted particularly at businesses and business users of large online platform companies.

2 As a business user of large online platforms, do you encounter issues concerning trading conditions on large online platform companies?

- ○ Yes
- ○ No

3 Please specify which issues you encounter and please explain to what types of platform these are related to (e.g. e-commerce marketplaces, app stores, search engines, operating systems, social networks).

5000 character(s) maximum

4 Have you been affected by unfair contractual terms or unfair practices of very large online platform companies? Please explain your answer in detail, pointing to the effects on your business, your consumers and possibly other stakeholders in the short, medium and long-term?

5000 character(s) maximum

The following questions are targeted particularly at consumers who are users of large online platform companies.

6 Do you encounter issues concerning commercial terms and conditions when accessing services provided by large online platform companies?
Please specify which issues you encounter and please explain to what types of platform these are related to (e.g. e-commerce marketplaces, app stores, search engines, operating systems, social networks).

5000 character(s) maximum

7 Have you considered any of the practices by large online platform companies as unfair? Please explain.

3000 character(s) maximum

9 Are there specific issues and unfair practices you perceive on large online platform companies?

5000 character(s) maximum

10 In your view, what practices related to the use and sharing of data in the platforms' environment are raising particular challenges?

5000 character(s) maximum

11 What impact would the identified unfair practices can have on innovation, competition and consumer choice in the single market?

3000 character(s) maximum

Unfair or abusive practices can lead to a variety of problems in the field of competition and innovation. Companies in a dominant market position could for example use their financial power and deeper market knowledge to increase barriers for new and innovative competitors to enter the market. Difficulties of a market entry are also higher by the lack of financial resources of new market participants, who are not able to spread their activities in similar ways. There is also the risk that dominant companies will use their market position and financial power to acquire innovative companies with their products and ideas. Both of these procedures could impair competition and the innovation of markets or market segments.
Similarly, competition problems can arise if a dominant company has exclusive access to certain resources and technologies. A combination of exclusive access to certain resources and technologies, financial power and deeper knowledge of products as well as of customers could lead to an advantage in services or products development.

12 Do startups or scaleups depend on large online platform companies to access or expand? Do you observe any trend as regards the level of dependency in the last five years (i.e. increases; remains the same; decreases)? Which difficulties in your view do start-ups or scale-ups face when they depend on large online platform companies to access or expand on the markets?

3000 character(s) maximum

While access to the resources a large online platform can offer is most likely able to increase a start-up's opportunities and its performance, in general we do not believe that start-ups depend on large online platforms.

13 Which are possible positive and negative societal (e.g. on freedom of expression, consumer protection, media plurality) and economic (e.g. on market contestability, innovation) effects, if any, of the gatekeeper role that large online platform companies exercise over whole platform ecosystem?

3000 character(s) maximum

Platforms of a certain size can run into the dilemma of becoming a de facto online public fora. Their size means that they have a significant impact on the exercise of fundamental rights and freedoms as well as access to information in our society.

Therefore, users who feel treated unfairly by them (e.g. by suppression of content they share or prevention from accessing information), have limited options because they cannot switch operator, in the absence of actual alternatives.

On the other hand businesses or media might stop innovating and just join the platforms themselves. As a consequence they give up control over their stores, content and products while multiplying the effect of the platform.

This can have negative consequences for everyone including the platforms, which imposes lots of pressure and huge liabilities on them.

14 Which issues specific to the media sector (if any) would, in your view, need to be addressed in light of the gatekeeper role of large online platforms? If available, please provide additional references, data and facts.

3000 character(s) maximum

The media sector is one of the players that gave in to trend of "anything happens on social media platforms". Many failed to monetarize their valuable content and to establish digital business models. Some of them relied on their old business models and ignored digitalization and user expectations. As a consequence they are currently facing structural transformation and are challenging digitalization. Many saw opportunities and ignored the consequences. After realising that transferring tasks to platforms (e.g. creating, further developing and running the technical infrastructure and software, supplying a certain user base, etc.) also comes with limitations, many of them blamed the platforms for their own decisions and their own lack of innovation. However, this doesn't seem right. Therefore, if any issues specific to the media sector need to be addressed it is that while platforms might (have) become a public fora, businesses (incl. the media sector) have the possibilities to live outside of this system without bigger complications or limitations.

Regulation of large online platform companies acting as gatekeepers

1 Do you believe that in order to address any negative societal and economic effects of the gatekeeper role that large online platform companies exercise over whole platform ecosystems, there is a need to consider dedicated regulatory rules?

- ☐ I fully agree
- ☐ I agree to a certain extent
- ☑ I disagree to a certain extent
- ☐ I disagree
- ☐ I don't know

2 Please explain

3000 character(s) maximum

> We do believe that online companies in general should follow the same rules as companies acting (only) offline. This is also true when it comes to competition law.

3 Do you believe that such dedicated rules should prohibit certain practices by large online platform companies with gatekeeper role that are considered particularly harmful for users and consumers of these large online platforms?

- ○ Yes
- ○ No
- ◉ I don't know

4 Please explain your reply and, if possible, detail the types of prohibitions that should in your view be part of the regulatory toolbox.

3000 character(s) maximum

> We don't know if it would be beneficial to regulate large online platforms by limiting practices considered harmful for its users and consumers. As mentioned just before we think that online platforms should in general not be treated differently to offline companies.
>
> However, as also described above the qualification and evaluation of possible gatekeepers should be taken on an individual case-by-case assessment. In principle, it should be critically questioned whether (total) restrictions or prohibitions are always necessary. If anything, measures to restrict or control certain activities could also be envisaged.
>
> Potential restrictions should be unambiguous, limited and narrowly construed in order to preserve the economic efficiencies brought about by online platforms. Bans should be limited to conduct only where experience and/or empirical evidence shows detrimental effects to competition. Or as the EU Commission pointed out in its inception impact assessment: "There is wide consensus concerning the benefits for consumers and innovation, and a wide-range of efficiencies, brought about by online platforms in the European Union's internal market."
>
> Finally, it is necessary to clarify whether the prohibitions or restrictive measures under consideration are permanent or temporary. A permanent, or even a long term prohibition of certain activities could lead to a distortion of the actual market situation and, in the worst case, could weaken Europe's position in the digital sector.

5 Do you believe that such dedicated rules should include obligations on large online platform companies with gatekeeper role?

- ○ Yes
- ○ No
- ◉ I don't know

6 Please explain your reply and, if possible, detail the types of obligations that should in your view be part of the regulatory toolbox.

> When considering obligations for gatekeepers the EU Commission should take into account Article 16 of the Charter of Fundamental Rights of the EU, which recognizes the freedom to conduct a business. Possible obligations should generally be limited in their duration and should not be disproportionate.

7 If you consider that there is a need for such dedicated rules setting prohibitions and obligations, as those referred to in your replies to questions 3 and 5 above, do you think there is a need for a specific regulatory authority to enforce these rules?

- ○ Yes
- ○ No
- ○ I don't know

8 Please explain your reply.

> N/A

9 Do you believe that such dedicated rules should enable regulatory intervention against specific large online platform companies, when necessary, with a case by case adapted remedies?

- ○ Yes
- ○ No
- ⦿ I don't know

10 If yes, please explain your reply and, if possible, detail the types of case by case remedies.

> N/A

11 If you consider that there is a need for such dedicated rules, as referred to in question 9 above, do you think there is a need for a specific regulatory authority to enforce these rules?

- ○ Yes
- ○ No

12 Please explain your reply

> We don't think that there is a need for dedicated rules. However, if a regulatory authority needs to be chosen we believe that an existing authority should be charged with the tasks.

13 If you consider that there is a need for a specific regulatory authority to enforce dedicated rules referred to questions 3, 5 and 9 respectively, would in your view these rules need to be enforced by the same regulatory authority or could they be enforced by different regulatory authorities? Please explain your reply.

3000 character(s) maximum

N/A

14 At what level should the regulatory oversight of platforms be organised?

- ○ At national level
- ○ At EU level
- ○ Both at EU and national level.
- ○ I don't know

15 If you consider such dedicated rules necessary, what should in your view be the relationship of such rules with the existing sector specific rules and/or any future sector specific rules?

3000 character(s) maximum

N/A

16 Should such rules have an objective to tackle both negative societal and negative economic effects deriving from the gatekeeper role of these very large online platforms? Please explain your reply.

3000 character(s) maximum

Possible social impacts should not be regulated with competition law. In contrast the EU has created effective legal bases for solving social problems with the Platform-to-Business Regulation, the Regulation on preventing the dissemination of terrorist content online and the directive on combating the sexual abuse and sexual exploitation of children and child pornography.

17 Specifically, what could be effective measures related to data held by very large online platform companies with a gatekeeper role beyond those laid down in the General Data Protection Regulation in order to promote competition and innovation as well as a high standard of personal data protection and consumer welfare?

3000 character(s) maximum

18 What could be effective measures concerning large online platform companies with a gatekeeper role in order to promote media pluralism, while respecting the subsidiarity principle?

3000 character(s) maximum

19 Which, if any, of the following characteristics are relevant when considering the requirements for a potential regulatory authority overseeing the large online platform companies with the gatekeeper role:

- ☑ Institutional cooperation with other authorities addressing related sectors – e. g. competition authorities, data protection authorities, financial services authorities, consumer protection authorities, cyber security, etc.
- ☑ Pan-EU scope
- ☑ Swift and effective cross-border cooperation and assistance across Member States
- ☑ Capacity building within Member States
- ☑ High level of technical capabilities including data processing, auditing capacities
- ☐ Cooperation with extra-EU jurisdictions
- ☐ Other

21 Please explain if these characteristics would need to be different depending on the type of ex ante rules (see questions 3, 5, 9 above) that the regulatory authority would be enforcing?

3000 character(s) maximum

22 Which, if any, of the following requirements and tools could facilitate regulatory oversight over very large online platform companies (multiple answers possible):

- ☐ Reporting obligation on gatekeeping platforms to send a notification to a public authority announcing its intention to expand activities
- ☐ Monitoring powers for the public authority (such as regular reporting)
- ☐ Investigative powers for the public authority
- ☑ Other

23 Other – please list

3000 character(s) maximum

Regulatory oversight depends on information. However, the amount of information must not be too high. On the one hand, any information obligation adds costs for providers and increases risks of misuse of the shared information. Further, an extensive notification obligation would also risk to limit the freedom to conduct a business. On the other hand, there is also a too much of information which slows down controls.

24 Please explain if these requirements would need to be different depending on the type of ex ante rules (see questions 3, 5, 9 above) that the regulatory authority would be enforcing?

3000 character(s) maximum

25 Taking into consideration <u>the parallel consultation on a proposal for a New Competition Tool</u> focusing on addressing structural competition problems that prevent markets from functioning properly and tilt the level playing field in favour of only a few market players. Please rate the suitability of each option below to address market issues arising in online platforms ecosystems. Please rate the policy options below from 1 (not effective) to 5 (most effective).

	1 (not effective)	2 (somewhat effective)	3 (sufficiently effective)	4 (very effective)	5 (most effective)	Not applicable /No relevant experience or knowledge
1. Current competition rules are enough to address issues raised in digital markets	○	○	●	○	○	○
2. There is a need for an additional regulatory framework imposing obligations and prohibitions that are generally applicable to all large online platforms with gatekeeper power	○	○	○	○	○	●
3. There is a need for an additional regulatory framework allowing for the possibility to impose tailored remedies on individual large online platforms with gatekeeper power, on a case-by-case basis	○	○	○	○	○	●
4. There is a need for a New Competition Tool allowing to address structural risks and lack of competition in (digital) markets on a case-by-case basis.	○	○	○	○	○	●
5. There is a need for combination of two or more of the options 2 to 4.	○	○	○	○	○	●

26 Please explain which of the options, or combination of these, would be, in your view, suitable and sufficient to address the market issues arising in the online platforms ecosystems.

3000 character(s) maximum

First we would like to point out, that we find Question 25 rather confusing because of what is in our view a mismatch between the horizontally and vertically reply options.

However, we do see the current competition rules generally fit for the digital, as mentioned before. On the other hand we would like to repeat, that digital companies should not be treated different than companies in the classic, non-digital industry. If new rules are to be applied it will depend on the rules as how to apply them, generally or specifically. Therefore a combination of general obligations and a case by case based approach seem to be the most promising constellation to address issues in specific areas.

27 Are there other points you would like to raise?

3000 character(s) maximum

Continuing from III / Main features of gatekeeper online platform companies and the main criteria for assessing their economic power / #5:

We would further like to underline, that the Federal Ministry for Economic Affairs and Energy in Germany has installed a "Competition Law 4.0" committee to modernize the national competition law in 2018. In course of the work, the committee has noted the following findings with regard to conglomerate effects:

The available data sets of digital companies can have cross-market significance and possible competitive advantages, which are referred to as conglomerate effect. The impact of conglomerate effects can prevent new digital ecosystems from developing whose dynamics could break up previous sector structures. In general, conglomerate effects are nothing negative and have already occurred in traditional markets. In terms of competition law, conglomerate effects only lead to problems if, e.g. digital companies abuse their market power by either exploiting their financial power, exclusive access to certain resources or technologies, controlling the access to their users or occupying new markets as quick as possible, preventing innovative market entries by third parties or by developing their own ecosystems.

IV. Other emerging issues and opportunities, including online advertising and smart contracts

Online advertising has substantially evolved over the recent years and represents a major revenue source for many digital services, as well as other businesses present online, and opens unprecedented opportunities for content creators, publishers, etc. To a large extent, maximising revenue streams and optimising online advertising are major business incentives for the business users of the online platforms and for shaping the data policy of the platforms. At the same time, revenues from online advertising as well as increased visibility and audience reach are also a major incentive for potentially harmful intentions, e.g. in online disinformation campaigns.

Another emerging issue is linked to the conclusion of 'smart contracts' which represent an important innovation for digital and other services, but face some legal uncertainties.

This section of the open public consultation seeks to collect data, information on current practices, and informed views on potential issues emerging in the area of online advertising and smart contracts. Respondents are invited to reflect on other areas where further measures may be needed to facilitate

innovation in the single market. This module does not address privacy and data protection concerns; all aspects related to data sharing and data collection are to be afforded the highest standard of personal data protection.

Online advertising

1 When you see an online ad, is it clear to you who has placed it online?

- ○ Yes, always
- ○ Sometimes: but I can find the information when this is not immediately clear
- ○ Sometimes: but I cannot always find this information
- ○ I don't know
- ○ No

2 As a publisher online (e.g. owner of a website where ads are displayed), what types of advertising systems do you use for covering your advertising space? What is their relative importance?

	% of ad space	% of ad revenue
Intermediated programmatic advertising though real-time bidding		
Private marketplace auctions		
Programmatic advertising with guaranteed impressions (non-auction based)		
Behavioural advertising (micro-targeting)		
Contextual advertising		
Other		

3 What information is publicly available about ads displayed on an online platform that you use?

3000 character(s) maximum

4 As a publisher, what type of information do you have about the advertisement placed next to your content/on your website?

3000 character(s) maximum

5 To what extent do you find the quality and reliability of this information satisfactory for your purposes?

Please rate your level of satisfaction	☆ ☆ ☆ ☆ ☆

6 As an advertiser or an agency acting on behalf of the advertiser (if applicable), what types of programmatic advertising do you use to place your ads? What is their relative importance in your ad inventory?

	% of ad inventory	% of ad expenditure
Intermediated programmatic advertising though real-time bidding		
Private marketplace auctions		
Programmatic advertising with guaranteed impressions (non-auction based)		
Behavioural advertising (micro-targeting)		
Contextual advertising		
Other		

7 As an advertiser or an agency acting on behalf of the advertiser (if applicable), what type of information do you have about the ads placed online on your behalf?

3000 character(s) maximum

8 To what extent do you find the quality and reliability of this information satisfactory for your purposes?

Please rate your level of satisfaction	☆ ☆ ☆ ☆ ☆

The following questions are targeted specifically at online platforms.

10 As an online platform, what options do your users have with regards to the advertisements they are served and the grounds on which the ads are being served to them? Can users access your service through other conditions than viewing advertisements? Please explain.

3000 character(s) maximum

11 Do you publish or share with researchers, authorities or other third parties detailed data on ads published, their sponsors and viewership rates? Please explain.

3000 character(s) maximum

12 What systems do you have in place for detecting illicit offerings in the ads you intermediate?

3000 character(s) maximum

The following questions are open to all respondents.

14 Based on your experience, what actions and good practices can tackle the placement of ads next to illegal content or goods, and/or on websites that disseminate such illegal content or goods, and to remove such illegal content or goods when detected?

3000 character(s) maximum

First of all, to prevent placement of ads with undesired content or goods, policies and contracts with producers of ads, about acceptable and unwanted environment and affiliation need to be clear and explicit. Services can be run on either a black- or a whitelist basis defining a limited range of pages or criteria for pages on which corresponding advertisements should (not) be shown. A reporting system could further help to identify webpages, that do not fulfil these criteria. If advertisements are not removed after notification to the service provider, contracts could be terminated.

Contracts with partners interested in showing ads need to be as clear and explicit about fulfilling criteria that prevent illegal activities. Misbehaviour could lead from warnings, a delay in payments and a suspension of the contract to a termination and loss of earnings.

15 From your perspective, what measures would lead to meaningful transparency in the ad placement process?

3000 character(s) maximum

Advertising always needs to be distinguishable from original content not to be misleading. This concerns for example ads in between news articles that might even be designed in an indistinguishable way to the original news content.

16 What information about online ads should be made publicly available?

3000 character(s) maximum

Additional information in the context of advertising would help to more transparency. Insofar the following information would be the name of the legal or natural person commissioning and paying for the ad to be published, an indication of criteria for targeted viewers where applicable and the information on the intermediary service in charge of placing the ad (i.e. the advertising service) and how to file a complaint.

17 Based on your expertise, which effective and proportionate auditing systems could bring meaningful accountability in the ad placement system?

3000 character(s) maximum

18 What is, from your perspective, a functional definition of 'political advertising'? Are you aware of any specific obligations attached to 'political advertising' at national level ?

3000 character(s) maximum

To find a proper definition of political advertising seems like an impossible task.

It is possible to define it as content either commissioned by or paid for by political parties, groups or individuals in politics as well as legal entities owned fully or partially by any of the earlier or where the earlier have decision power in the latter. Political advertising can be commissioned by or paid for by anyone if it focusses on elections and public opinion building especially close to and during election times.

In some countries, like Austria, political parties are only allowed to spend a certain amount of money on political advertising.

However, original content by political parties, groups or individuals can easily be mistaken as political

advertising or at least hard to distinguish from it. Further there could be content that has been supported by a political party, a group or an individual in politics that does not classify as advertisement but is de facto exactly that.

19 What information disclosure would meaningfully inform consumers in relation to political advertising? Are there other transparency standards and actions needed, in your opinion, for an accountable use of political advertising and political messaging?

3000 character(s) maximum

For political advertising the transparency should go along with the criteria in Questions 15 and 16.

20 What impact would have, in your view, enhanced transparency and accountability in the online advertising value chain, on the gatekeeper power of major online platforms and other potential consequences such as media pluralism?

3000 character(s) maximum

Due to the various interdependencies it seems impossible to foresee the impact of enhanced transparency and accountability. This would have to be carefully monitored.

21 Are there other emerging issues in the space of online advertising you would like to flag?

3000 character(s) maximum

Smart contracts

1 Is there sufficient legal clarity in the EU for the provision and use of "smart contracts" – e.g. with regard to validity, applicable law and jurisdiction?

Please rate from 1 (lack of clarity) to 5 (sufficient clarity) ☆ ☆ ☆ ☆ ☆

2 Please explain the difficulties you perceive.

3000 character(s) maximum

3 In which of the following areas do you find necessary further regulatory clarity?

☐ Mutual recognition of the validity of smart contracts in the EU as concluded in accordance with the national law

☐ Minimum standards for the validity of "smart contracts" in the EU

☐

☐ Measures to ensure that legal obligations and rights flowing from a smart contract and the functioning of the smart contract are clear and unambiguous, in particular for consumers

☐ Allowing interruption of smart contracts

☐ Clarity on liability for damage caused in the operation of a smart contract

☐ Further clarity for payment and currency-related smart contracts.

4 Please explain.

3000 character(s) maximum

5 Are there other points you would like to raise?

3000 character(s) maximum

V. How to address challenges around the situation of self-employed individuals offering services through online platforms?

Individuals providing services through platforms may have different legal status (workers or self-employed). This section aims at gathering first information and views on the situation of self-employed individuals offering services through platforms (such as ride-hailing, food delivery, domestic work, design work, micro-tasks etc.). Furthermore, it seeks to gather first views on whether any detected problems are specific to the platform economy and what would be the perceived obstacles to the improvement of the situation of individuals providing services through platforms. This consultation is not intended to address the criteria by which persons providing services on such platforms are deemed to have one or the other legal status. The issues explored here do not refer to the selling of goods (e.g. online marketplaces) or the sharing of assets (e.g. sub-renting houses) through platforms.

The following questions are targeting self-employed individuals offering services through online platforms.

Relationship with the platform and the final customer

1 What type of service do you offer through platforms?

☐ Food-delivery

☐ Ride-hailing

☐ Online translations, design, software development or micro-tasks

☐ On-demand cleaning, plumbing or DIY services

☐ Other, please specify

2 Please explain.

3 Which requirements were you asked to fulfill in order to be accepted by the platform(s) you offer services through, if any?

4 Do you have a contractual relationship with the final customer?

- ○ Yes
- ○ No

5 Do you receive any guidelines or directions by the platform on how to offer your services?

- ○ Yes
- ○ No

7 Under what conditions can you stop using the platform to provide your services, or can the platform ask you to stop doing so?

8 What is your role in setting the price paid by the customer and how is your remuneration established for the services you provide through the platform(s)?

9 What are the risks and responsibilities you bear in case of non-performance of the service or unsatisfactory performance of the service?

Situation of self-employed individuals providing services through platforms

10 What are the main advantages for you when providing services through platforms?

3000 character(s) maximum

11 What are the main issues or challenges you are facing when providing services through platforms? Is the platform taking any measures to improve these?

3000 character(s) maximum

12 Do you ever have problems getting paid for your service? Does/do the platform have any measures to support you in such situations?

3000 character(s) maximum

13 Do you consider yourself in a vulnerable or dependent situation in your work (economically or otherwise), and if yes, why?

14 Can you collectively negotiate vis-à-vis the platform(s) your remuneration or other contractual conditions?

- ○ Yes
- ○ No

15 Please explain.

The following questions are targeting online platforms.

Role of platforms

17 What is the role of your platform in the provision of the service and the conclusion of the contract with the customer?

18 What are the risks and responsibilities borne by your platform for the non-performance of the service or unsatisfactory provision of the service?

19 What happens when the service is not paid for by the customer/client?

20 Does your platform own any of the assets used by the individual offering the services?

- ○ Yes
- ○ No

22 Out of the total number of service providers offering services through your platform, what is the percentage of self-employed individuals?

- ○ Over 75%
- ○ Between 50% and 75%
- ○ Between 25% and 50%
- ○ Less than 25%

Rights and obligations

23 What is the contractual relationship between the platform and individuals offering services through it?

3000 character(s) maximum

24 Who sets the price paid by the customer for the service offered?

- ☐ The platform
- ☐ The individual offering services through the platform
- ☐ Others, please specify

25 Please explain.

3000 character(s) maximum

26 How is the price paid by the customer shared between the platform and the individual offering the services through the platform?

3000 character(s) maximum

27 On average, how many hours per week do individuals spend offering services through your platform?

3000 character(s) maximum

28 Do you have measures in place to enable individuals providing services through your platform to contact each other and organise themselves collectively?

- ○ Yes
- ○ No

29 Please describe the means through which the individuals who provide services on your platform contact each other.

3000 character(s) maximum

[ ]

30 What measures do you have in place for ensuring that individuals offering services through your platform work legally - e.g. comply with applicable rules on minimum working age, hold a work permit, where applicable - if any?
(If you replied to this question in your answers in the first module of the consultation, there is no need to repeat your answer here.)

3000 character(s) maximum

[ ]

The following questions are open to all respondents

Situation of self-employed individuals providing services through platforms

32 Are there areas in the situation of individuals providing services through platforms which would need further improvements? Please rate the following issues from 1 (no improvements needed) to 5 (substantial issues need to be addressed).

	1 (no improvements needed)	2	3	4	5 (substantial improvements needed)	I don't know / No answer
Earnings	○	○	○	○	○	○
Flexibility of choosing when and /or where to provide services	○	○	○	○	○	○
Transparency on remuneration	○	○	○	○	○	○
Measures to tackle non-payment of remuneration	○	○	○	○	○	○
Transparency in online ratings	○	○	○	○	○	○

Ensuring that individuals providing services through platforms can contact each other and organise themselves for collective purposes	◉	◉	◉	◉	◉	◉
Tackling the issue of work carried out by individuals lacking legal permits	◉	◉	◉	◉	◉	◉
Prevention of discrimination of individuals providing services through platforms, for instance based on gender, racial or ethnic origin	◉	◉	◉	◉	◉	◉
Allocation of liability in case of damage	◉	◉	◉	◉	◉	◉
Other, please specify	◉	◉	◉	◉	◉	◉

33 Please explain the issues that you encounter or perceive.

3000 character(s) maximum

34 Do you think individuals providing services in the 'offline/traditional' economy face similar issues as individuals offering services through platforms?

  ◉ Yes
  ◉ No
  ◉ I don't know

35 Please explain and provide examples.

3000 character(s) maximum

36 In your view, what are the obstacles for improving the situation of individuals providing services

1. through platforms?
2. in the offline/traditional economy?

3000 character(s) maximum

37 To what extent could the possibility to negotiate collectively help improve the situation of individuals offering services:

through online platforms?	☆ ☆ ☆ ☆ ☆
in the offline/traditional economy?	☆ ☆ ☆ ☆ ☆

38 Which are the areas you would consider most important for you to enable such collective negotiations?

3000 character(s) maximum

39 In this regard, do you see any obstacles to such negotiations?

3000 character(s) maximum

40 Are there other points you would like to raise?

3000 character(s) maximum

VI. What governance for reinforcing the Single Market for digital services?

The EU's Single Market offers a rich potential for digital services to scale up, including for innovative European companies. Today there is a certain degree of legal fragmentation in the Single Market . One of the main objectives for the Digital Services Act will be to improve opportunities for innovation and '*deepen the Single Market for Digital Services*' .

This section of the consultation seeks to collect evidence and views on the current state of the single market and steps for further improvements for a competitive and vibrant Single market for digital services. This module also inquires about the relative impact of the COVID-19 crisis on digital services in the Union. It then focuses on the appropriate governance and oversight over digital services across the EU and means to enhance the cooperation across authorities for an effective supervision of services and for the equal protection of all citizens across the single market. It also inquires about specific cooperation arrangements such as in the case of consumer protection authorities across the Single Market, or the regulatory oversight and cooperation mechanisms among media regulators. This section is not intended to focus on the enforcement of EU data protection rules (GDPR).

Main issues

1 How important are - in your daily life or for your professional transactions - digital services such as accessing websites, social networks, downloading apps, reading news online, shopping online, selling products online?

Overall	☆ ☆ ☆ ☆ ☆
Those offered from outside of your Member State of establishment	☆ ☆ ☆ ☆ ☆

The following questions are targeted at digital service providers

3 Approximately, what share of your EU turnover is generated by the provision of your service outside of your main country of establishment in the EU?

- ○ Less than 10%
- ○ Between 10% and 50%
- ○ Over 50%
- ○ I cannot compute this information

4 To what extent are the following obligations a burden for your company in providing its digital services, when expanding to one or more EU Member State(s)? Please rate the following obligations from 1 (not at all burdensome) to 5 (very burdensome).

	1 (not at all burdensome)	2	3 (neutral)	4	5 (very burdensome)	I don't know / No answer
Different processes and obligations imposed by Member States for notifying, detecting and removing illegal content/goods/services	○	○	○	○	●	○
Requirements to have a legal representative or an establishment in more than one Member State	○	○	○	○	●	○
Different procedures and points of contact for obligations to cooperate with authorities	○	○	○	○	●	○
Other types of legal requirements. Please specify below	○	○	○	○	○	○

5 Please specify

3000 character(s) maximum

6 Have your services been subject to enforcement measures by an EU Member State other than your country of establishment?

- Yes
- No
- I don't know

8 Were you requested to comply with any 'prior authorisation' or equivalent requirement for providing your digital service in an EU Member State?

- Yes
- No
- I don't know

10 Are there other issues you would consider necessary to facilitate the provision of cross-border digital services in the European Union?

3000 character(s) maximum

11 What has been the impact of COVID-19 outbreak and crisis management measures on your business' turnover

- Significant reduction of turnover
- Limited reduction of turnover
- No significant change
- Modest increase in turnover
- Significant increase of turnover
- Other

13 Do you consider that deepening of the Single Market for digital services could help the economic recovery of your business?

- Yes
- No
- I don't know

14 Please explain

3000 character(s) maximum

The following questions are targeted at all respondents.

Governance of digital services and aspects of enforcement

The 'country of origin' principle is the cornerstone of the Single Market for digital services. It ensures that digital innovators, including start-ups and SMEs, have a single set of rules to follow (that of their home country), rather than 27 different rules.

This is an important precondition for services to be able to scale up quickly and offer their services across borders. In the aftermath of the COVID-19 outbreak and effective recovery strategy, more than ever, a strong Single Market is needed to boost the European economy and to restart economic activity in the EU.

At the same time, enforcement of rules is key; the protection of all EU citizens regardless of their place of residence, will be in the centre of the Digital Services Act.

The current system of cooperation between Member States foresees that the Member State where a provider of a digital service is established has the duty to supervise the services provided and to ensure that all EU citizens are protected. A cooperation mechanism for cross-border cases is established in the E-Commerce Directive.

1 Based on your experience, how would you assess the cooperation in the Single Market between authorities entrusted to supervise digital services?

5000 character(s) maximum

> In short, there is still space for improvement. However, it depends on the authority and the related topic. In some areas national authorities work together well. In some areas there are national differences between requirements and decisions by different authorities. This is also due to diverging national regulation and regulation based on EU directives, giving leeway to Member States when transposing them into national law. We would like to point out the current tendencies in Member States to deviate from Single Market regulation by e.g. introducing requirements to have an establishment or local legal representatives in more than one Member State. This lack of harmonization should be taken up and acted upon quickly.

2 What governance arrangements would lead to an effective system for supervising and enforcing rules on online platforms in the EU in particular as regards the intermediation of third party goods, services and content (See also Chapter 1 of the consultation)?

Please rate each of the following aspects, on a scale of 1 (not at all important) to 5 (very important).

	1 (not at all important)	2	3 (neutral)	4	5 (very important)	I don't know / No answer
Clearly assigned competent national authorities or bodies as established by Member States for supervising the systems put in place by online platforms	○	○	○	○	●	○
Cooperation mechanism within Member States across different competent authorities responsible for the systematic supervision of online platforms and sectorial issues (e.g. consumer protection, market surveillance, data protection, media regulators, anti-discrimination agencies, equality bodies, law enforcement authorities etc.)	○	○	○	○	●	○
Cooperation mechanism with swift procedures and assistance across national competent authorities across Member States	○	○	○	○	●	○
Coordination and technical assistance at EU level	○	○	○	●	○	○
An EU-level authority	○	○	●	○	○	○
Cooperation schemes with third parties such as civil society organisations and academics for specific inquiries and oversight	○	○	○	○	○	●
Other: please specify in the text box below	○	○	○	○	○	○

3 Please explain

5000 character(s) maximum

4 What information should competent authorities make publicly available about their supervisory and enforcement activity?

3000 character(s) maximum

Transparency is something demanded from companies, also from digital service providers. However, predictability and transparency is also something companies require especially from oversight bodies or authorities. This could be in regards to objective criteria like thresholds or limits. Additional information gives companies legal certainty regarding their business.

5 What capabilities – type of internal expertise, resources etc. - are needed within competent authorities, in order to effectively supervise online platforms?

3000 character(s) maximum

> The most important thing for authorities is to be well equipped with staff, knowledge and technical equipment. For companies it is also important to know which authority has the competence and to make sure, it is only one. This is especially important for international companies active in more than only one Member State. Ideally a single point of contact (SPOC) should be available.

6 In your view, is there a need to ensure similar supervision of digital services established outside of the EU that provide their services to EU users?

- ○ Yes, if they intermediate a certain volume of content, goods and services provided in the EU
- ● Yes, if they have a significant number of users in the EU
- ○ No
- ○ Other
- ○ I don't know

7 Please explain

3000 character(s) maximum

8 How should the supervision of services established outside of the EU be set up in an efficient and coherent manner, in your view?

3000 character(s) maximum

> The GDPR has introduced the system of having companies established only outside of the EU choosing a Member State to have a legal representative. This could also work in other, comparable cases to define the relevant national authority.

9 In your view, what governance structure could ensure that multiple national authorities, in their respective areas of competence, supervise digital services coherently and consistently across borders?

3000 character(s) maximum

> Any new governance structures in the DSA should support the country of origin principle. For example, a network or committee in which national authorities exchange best practices may lead to more equal treatment and higher predictability between member states.

10 As regards specific areas of competence, such as on consumer protection or product safety, please share your experience related to the cross-border cooperation of the competent authorities in the different Member States.

11 In the specific field of audiovisual, the Audiovisual Media Services Directive established a regulatory oversight and cooperation mechanism in cross border cases between media regulators, coordinated at EU level within European Regulators' Group for Audiovisual Media Services (ERGA). In your view is this sufficient to ensure that users remain protected against illegal and harmful audiovisual content (for instance if services are offered to users from a different Member State)? Please explain your answer and provide practical examples if you consider the arrangements may not suffice.

3000 character(s) maximum

12 Would the current system need to be strengthened? If yes, which additional tasks be useful to ensure a more effective enforcement of audiovisual content rules?

Please assess from 1 (least beneficial) – 5 (most beneficial). You can assign the same number to the same actions should you consider them as being equally important.

Coordinating the handling of cross-border cases, including jurisdiction matters	☆☆☆ ☆☆
Agreeing on guidance for consistent implementation of rules under the AVMSD	★★★ ★★
Ensuring consistency in cross-border application of the rules on the promotion of European works	★★★ ☆☆
Facilitating coordination in the area of disinformation	★★★ ☆☆
Other areas of cooperation	☆☆☆ ☆☆

13 Other areas of cooperation - (please, indicate which ones)

3000 character(s) maximum

14 Are there other points you would like to raise?

3000 character(s) maximum

Final remarks

If you wish to upload a position paper, article, report, or other evidence and data for the attention of the European Commission, please do so.

1 Upload file

The maximum file size is 1 MB
Only files of the type pdf,txt,doc,docx,odt,rtf are allowed

2 Other final comments

3000 character(s) maximum

Useful links

Digital Services Act package (https://ec.europa.eu/digital-single-market/en/digital-services-act-package)

Background Documents

(BG) Речник на термините

(CS) Glosř

(DA) Ordliste

(DE) Glossar

(EL) ά

(EN) Glossary

(ES) Glosario

(ET) Snastik

(FI) Sanasto

(FR) Glossaire

(HR) Pojmovnik

(HU) Glosszrium

(IT) Glossario

(LT) Žodynėlis

(LV) Glosārijs

(MT) Glossarju

(NL) Verklarende woordenlijst

(PL) Słowniczek

(PT) Glossrio

(RO) Glosar

(SK) Slovnk

(SL) Glosar

(SV) Ordlista

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