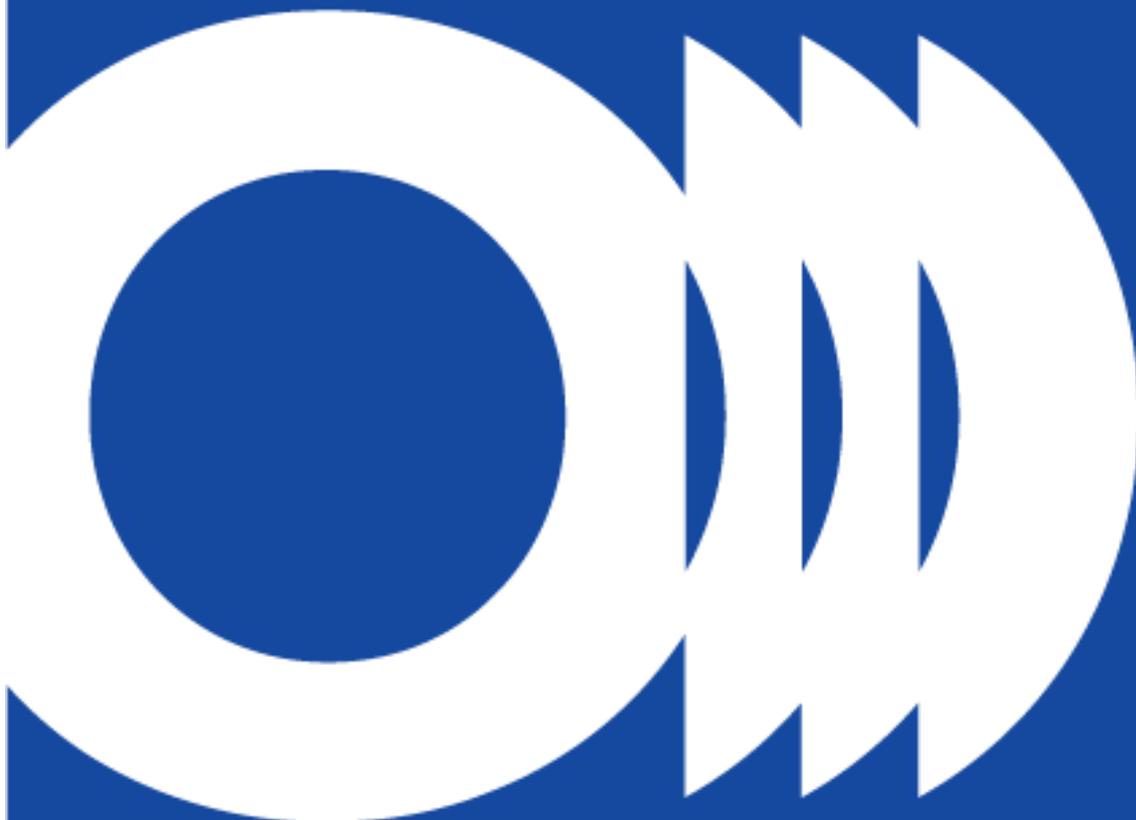


**EBU**

OPERATING EUROVISION AND EURORADIO

# EBU responses to the European Commission's public consultation on the Digital Services Act

07 SEPTEMBER 2020



# Digital Services Act package: open public consultation

Fields marked with \* are mandatory.

## Introduction

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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



- 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

Sarah

\* 4 Surname

Turnbull

\* 5 Email (this won't be published)

turnbull@ebu.ch

\* 7 Organisation name

*255 character(s) maximum*

European Broadcasting Union

\* 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

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.

93288301615-56

## \* 21 Country of origin

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

- |                                      |  |                                     |  |
|--------------------------------------|--|-------------------------------------|--|
| <input type="radio"/> Afghanistan    | <input type="radio"/> Djibouti           | <input type="radio"/> Libya         | <input type="radio"/> Saint Martin                     |
| <input type="radio"/> Åland Islands  | <input type="radio"/> Dominica           | <input type="radio"/> Liechtenstein | <input type="radio"/> Saint Pierre and Miquelon        |
| <input type="radio"/> Albania        | <input type="radio"/> Dominican Republic | <input type="radio"/> Lithuania     | <input type="radio"/> Saint Vincent and the Grenadines |
| <input type="radio"/> Algeria        | <input type="radio"/> Ecuador            | <input type="radio"/> Luxembourg    | <input type="radio"/> Samoa                            |
| <input type="radio"/> American Samoa | <input type="radio"/> Egypt              | <input type="radio"/> Macau         | <input type="radio"/> San Marino                       |

- Andorra
- Angola
- Anguilla
- Antarctica
- Antigua and Barbuda
- Argentina
- Armenia
- Aruba
- Australia
- Austria
- Azerbaijan
- Bahamas
- Bahrain
- Bangladesh
- Barbados
- Belarus
- Belgium
- Belize
- Benin
- Bermuda
- Bhutan
- Bolivia
- Bonaire Saint Eustatius and Saba
- El Salvador
- Equatorial Guinea
- Eritrea
- Estonia
- Eswatini
- Ethiopia
- Falkland Islands
- Faroe Islands
- Fiji
- Finland
- France
- French Guiana
- French Polynesia
- French Southern and Antarctic Lands
- Gabon
- Georgia
- Germany
- Ghana
- Gibraltar
- Greece
- Greenland
- Grenada
- Guadeloupe
- Madagascar
- Malawi
- Malaysia
- Maldives
- Mali
- Malta
- Marshall Islands
- Martinique
- Mauritania
- Mauritius
- Mayotte
- Mexico
- Micronesia
- Moldova
- Monaco
- Mongolia
- Montenegro
- Montserrat
- Morocco
- Mozambique
- Myanmar /Burma
- Namibia
- Nauru
- São Tomé and Príncipe
- Saudi Arabia
- Senegal
- Serbia
- Seychelles
- Sierra Leone
- Singapore
- Sint Maarten
- Slovakia
- Slovenia
- Solomon Islands
- Somalia
- South Africa
- South Georgia and the South Sandwich Islands
- South Korea
- South Sudan
- Spain
- Sri Lanka
- Sudan
- Suriname
- Svalbard and Jan Mayen
- Sweden
- 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
- Colombia
- Comoros
- Congo
- Cook Islands
- Costa Rica
- Côte d'Ivoire
- Croatia
- Cuba
- Curaçao
- Cyprus
- Czechia
- Democratic Republic of the Congo
- Denmark
- Japan
- Jersey
- Jordan
- Kazakhstan
- Kenya
- Kiribati
- Kosovo
- Kuwait
- Kyrgyzstan
- Laos
- Latvia
- Lebanon
- Lesotho
- Liberia
- Philippines
- Pitcairn Islands
- Poland
- Portugal
- Puerto Rico
- Qatar
- Réunion
- Romania
- Russia
- Rwanda
- Saint Barthélemy
- Saint Helena Ascension and Tristan da Cunha
- Saint Kitts and Nevis
- Saint Lucia
- United States Minor Outlying Islands
- Uruguay
- US Virgin Islands
- Uzbekistan
- Vanuatu
- Vatican City
- Venezuela
- Vietnam
- Wallis and Futuna
- Western Sahara
- Yemen
- Zambia
- Zimbabwe

## \*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?

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

Please rate from 1 star (very difficult) to 5 stars (very easy)	
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6 How satisfied were you with the procedure following your report?

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

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

### 12 What measure did you take?

- I reported it to the platform via its existing reporting procedure
- I contacted the online platform by other means to report the illegal content
- I contacted a national authority
- I contacted a consumer organisation
- I did not take any action
- I took a different action. Please specify in the text box below

### 13 Please specify

*3000 character(s) maximum*

EBU Members frequently come across and report illegal content, such as content which harms their journalists or their business reputation. Members also regularly come across content infringing their intellectual property rights. We do not include IP infringing content in this response.

Some members have noticed a growth in “deepfakes” using extracts of content, with their meaning changed or inserting images (e.g. faces of journalists) within third party content.

Our experience is that content flagged as racist or homophobic, is rapidly taken down but that this is not the case for all content flagged as illegal.

Members use the general notification form provided by the platforms or their direct contacts. Not all platforms processes are clear at the moment, and it requires internal resources to keep across new services and content – resources that are taken away from the development of new services and content.

These notification forms and procedures could be better harmonized to have a uniform approach across platforms.

### 14 How easy was it for you to find information on where you could report the illegal content/activity?

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



### 15 How easy was it for you to report the illegal content/activity?

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



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

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



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

- Yes
- No

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

*3000 character(s) maximum*

EBU members have seen an increase in certain illegal practices such as phishing and the dissemination of hoaxes/fake news in social media, chats and certain media about political affairs and coronavirus treatment. Such practices have become widespread. These have taken advantage of the pandemic, the uncertainty from the pandemic and the resultant move online for citizens.

Some of the platforms claim they are taking a more proactive stance to identify illegal content during the pandemic. However, overall there appears to have been no significant improvement.

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*

Overall EBU Members consider that there has been no significant change and therefore it is difficult to identify good practices.

Improvements by platforms include fast track procedures for granting consumer rights, promoting fact checking systems, prohibitions on third party sellers from any promotional deals on COVID-19 related products or from charging excessively high prices on products exploiting an emergency.

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*

Platforms mainly have tried to create transparency but have not taken enough action to avoid these problems since their main interest is to commercialise content and user data.

Some platforms responded, with moderate and unequal success, to the Commission's call to take proactive measures to address and prevent scams and unfair practices with measures including: reporting offensive comments, fact-checking systems for fake news, policies and reminders to prohibit exploitative or deceptive advertisements and sales of healthcare products and services, temporary prohibition of the sale of certain products seeking to exploit peoples fear of COVID-19 to charge higher prices, measures to limit the spread of misinformation and false claims related to COVID-19 and remove as much of this content as they can. This includes human moderation.

21 Do you consider these measures appropriate?

- Yes
- No
- I don't know

22 Please explain.

*3000 character(s) maximum*

Platforms should be more active to block/delete illegal content (and fake news) and develop technical and other measures to prevent abusive use of programmatic and other forms of automated advertising. Citizens are still clearly exposed to illegal practices so measures are still insufficient. There may have been some improvement but clearly scams and misleading adverts and other illegal content still appear on platforms.

## 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

2 Were you able to follow-up on the information?

- Yes, I complained to the platform
- Yes, I escalated to an out-of-court dispute mechanism
- No, but it was useful to learn about the platform's policy
- No
- Other. Please specify in the text box below

### 3 Please explain.

*3000 character(s) maximum*

Platforms frequently take down content without prior information to the content provider. There are no effective out of court dispute mechanisms. Platforms do not always provide an efficient system to report erroneous removal. EBU members have generally received a standardized answer with a short general explanation with limited additional information after challenge:

- Removal by YouTube in 2019 of RTVE content uploaded in 2017 due to nudity during a few seconds in a drama episode of 1 hour 8 minutes.
- San Fermin bull runs have been uploaded for years without objection but in 2019, the last San Fermin bull run content was removed a few minutes after being uploaded with no explanation. RTVE complained the video was re-uploaded only 20 days later. One month later, it was removed again. It took 10 days for YouTube to reinstate.
- Removal of content from ZDF that was lawful under German regulation (content showing a comedian wearing a Swastika, and content showing nudity as part of a satirical montage).
- Google Play rejection of the DR Ramasjang-app (children's content made for 4-8 years). This removal was explained as content violating Google's family policy requirements. Google referenced a loading-screen picture of a child with a liquorice sweet shaped as a 'pipe' (traditional candy in Denmark). The pipe was deemed in violation of children content. DR only found out through user complaints. Google only reinstated the original app months later after political pressure.
- Rejection of an update due to the word "lort," (poo in English), as this was considered in conflict with Google's policies. The word for poo was used in the context of a game, where children can find seeds in animal excrements to plant trees. To solve this DR removed the word poo and only mentioned that seeds can be found and sowed.
- Google recently decided that NRK's educational content about puberty was a "policy violation". They considered the program to be "sexually offensive or include violent content", while in contrast is regarded as educational content by NRK, Norwegian audiences and regulatory authorities.
- The Instagram account for SR's youth-oriented satirical show Tankesmedjan was removed from Facebook-owned Instagram with just an alert that an individual post had violated the Terms and Conditions. SR contacted Facebook and after two weeks the account was reinstated. SR has still not received a full explanation.

These examples clearly show how decisions by platforms, based on unilateral global community standards and terms and conditions, can have major consequences for cultural pluralism, freedom of expression and media freedom. Within their own cultural contexts, these examples are considered educational, entertaining and age appropriate. If platform operators plan to modify or remove content belonging to editorially responsible media companies, they should immediately provide a local contact/case handler and a full transparent explanation.

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*

No, EBU Members generally find that there is a lack of transparency as regards the categorization, recommendation, and the selection of content by platforms.

One example is YouTube which provides no information on the way the algorithm operates either for search or for recommendation. Facebook's new function "why am I seeing that" gives some indications why the content is recommended but no information on the functioning of the algorithm.

The same is true for other platforms – EBU Members only receive indicators of the content most likely to circulate or on the data taken into account by the algorithm (viewing time, last content posted).

## **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*

Providing children with the opportunity to enjoy quality programming tailored to their age and with safe spaces online where they can watch, engage and create is very much part of the DNA of public service media. Public service media organisations have an outstanding track record in providing suitable content for children and for doing everything within their sphere of control to provide a safe viewing/online environment. Their editorial policy and principles are the same in all cases, should the content be transmitted on television or online. They make no links to the open Internet unless the webpage is safe for children. PSM also work closely with educational partners to encourage creativity and reflective skills in children within a trusted online space.

The protection of children online is indeed a special concern as many children access content and engage with each other on major online platforms for which no high editorial and quality audiovisual standards apply. Access to Youtube, for example, is in principle prohibited or subject to conditions for minors, but as access to the platform does not require the creation of an account, these limitations are practically without effect and cannot qualify as an effective parental control tool. Advertisements and trailers associated with content aimed at minors can also be problematic: even if parents control the selection of content on Youtube Kids, inappropriate images may be shown. Against this background, measures/tools to protect minors should be reinforced, including parental control tools, guides to protect privacy, reporting of inappropriate content, bullying, abuse etc. However, technological measures will not fully protect children. We need to firm up commitments to promote media literacy among children and ensure that content and services suitable and trustworthy for children can easily be found online by children. Overall media literacy initiatives should be further promoted. They play a key role in fighting the information disorder and in helping users of all age groups to have the necessary skills to navigate an ever-changing media landscape. Public service media are at the forefront of offering tools and services that raise awareness of the importance of developing adequate skills, strengthening media literacy.

In Germany, according to the latest annual reports of jugendschutz.net (jugendschutz.net monitors internet content, identifies violations of youth protection laws and forwards these cases to the German Commission for the Protection of Minors in the Media for further action.) there is too little protection for children and young people online and the risk of cyberbullying, harassment and inappropriate advertising is still high. (<http://www.jugendschutz.net/en/annual-reports/> - June 2020)

## 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	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
To protect freedom of expression online, diverse voices should be heard	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Disinformation is spread by manipulating algorithmic processes on online platforms	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Online platforms can be trusted that their internal practices sufficiently guarantee democratic integrity, pluralism, non-discrimination, tolerance, justice, solidarity and gender equality.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>

## 3 Please explain.

*3000 character(s) maximum*

Relying solely on self-regulatory measures to tackle disinformation is no longer tenable. Decisions taken by online platforms can have far-reaching consequences for the exercise of freedom of expression and information and for media freedom and pluralism. Recent assessments of the Code of Practice on Disinformation show that it is time to address the need to go beyond the Code's voluntary actions and consider a co-regulatory model.

Any new legislation at EU level must respect fundamental rights and support pluralism and cultural diversity (e.g. smaller language groups and communities). Interventions by public authorities must be proportionate to the threat posed by disinformation, minimizing the damaging effect on freedom of expression. Any adequate response to disinformation must build on close collaboration between those on the front-line fighting 'fake news'.

EBU has identified at least three areas for which rules are needed.

1. Increasing the visibility for quality media content online will help diluting disinformation. Easy access to and prominent display of general interest content must be guaranteed on all relevant platforms. Independent PSM play a key role in building informed citizenship. A clear brand attribution is instrumental in tackling disinformation. It helps citizens to decide for themselves if they can trust a certain news/source of

information. With increased polarisation of societies and increasing levels of online disinformation, the role played by trustworthy independent media is becoming more important than ever before.

2. Safeguarding editorial freedom and media independence is key to safeguard public trust. Allowing global platforms to ban and/or erroneously remove media content and services when they clash with their unilateral corporate community standards creates a serious threat for editorial freedom and media pluralism. When media content and services that are already subject to regulation and oversight are offered on major platforms, platform operators shall not subject these services to any form of control or interference. Instead, they should be under a positive obligation to respect such services as conceived by the media provider.

3. Platforms' ability to control what content appears and when, in full opacity, has far-reaching consequences for freedom of expression. Enhancing algorithmic transparency as well as transparency of content policies will help media and media users to understand why which content appears in the ranking and the news feed and react to it accordingly. Similarly, providing trusted fact-checkers and academia with access to platform data would enable them to better monitor the algorithms' functioning and facilitate independent assessments. See also further below on access to data generated by or related to media content.

In addition, media literacy initiatives should be further promoted (see above).

#### 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*

The spread of fake news and harmful content online is an ongoing phenomenon and should be analyzed carefully.

News and information related to the COVID-19 pandemic were subject to misleading information and manipulation on platforms. SVT, EBU Swedish member, observed that false press articles circulating on social networks and illegally using their logo, were spreading false information about the COVID-19 crisis. EBU Members have, however, not noticed any significant changes in the way harmful activities were spread online. They have, though, noticed an increase in certain platform's videos misusing their content (mainly the information content).

Free use of social media, low control barriers and the roles blogs have played in the constant spread of fake news and misinformation during the COVID-19 emergency have been a principal cause. The explosion of news around COVID-19 with much of it questionable by science with extreme political polarization are an example of how quickly such news can spread and escalate in the digital environment.

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

*3000 character(s) maximum*

Major online platform operators refer to practices such as the removal of misleading information about COVID-19, implementation tools to detect and limit it fact checking and reporting. Unfortunately, there is no independent verification of how successful these initiatives are.

Public service media have responded to the COVID-19 crisis by increasing their volume of news

programming in order to keep citizens informed about developments related to the crisis. Information was provided through additional and extended news bulletins, as well as dedicated coronavirus current affairs shows and talk shows. Audiences for PSM evening news bulletins across Europe have gone up by 20% on average and by 44% among young viewers and the daily reach of PSM online news sites has increased by 2.6 times during the crisis.

As the EBU, we have brought journalists and factcheckers together to share crucial information and real-time intelligence on misinformation and disinformation around the virus (EBU Flashlight COVID-19 initiative) and we teamed up with a number of international news organizations to create the Trusted News Initiative which enables alerting each other to disinformation about coronavirus so that content can be reviewed promptly by platforms, whilst publishers ensure they don't unwittingly republish disinformation. Alerts will also flag up content that undermines trust in partner news providers by identifying imposter content which claims to come from trusted brand identities or sources.

Digital skills media and information literacy are essential means of tackling disinformation. Public service media help to increase levels of societal knowledge and participation and play a key role in strengthening societal resistance to manipulation, rumors and disinformation. This is not only by trustworthy and reliable content, but through transparency in relation to journalistic and production methods. See the recent EBU Report on PSM in the COVID-19 and their role in providing news revealing the massive efforts public service media across Europe are making to keep citizens informed. PSM are top investors in news and current affairs and children content (see <https://www.ebu.ch/publications/research/loginonly/report/public-service-media-and-news>)

## 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*

Earlier on in our response, we listed a range of examples where platforms claimed that legal content from broadcasters infringed platforms' community standards even though the content is culturally acceptable and lawful in the EU and/or national context.

Erroneous removals of EBU Members content are numerous and this has a direct impact on media pluralism and on the freedom of information. Amongst numerous examples include medical information content which Facebook has removed using the justification that the content included content of a sexual nature or contained nudity.

Content removed due to platforms community standards is not the only damaging action by platforms, they also remove advertisement from this content, or classify it in a category to downgrade its visibility.

A recent experience from "Sexy soucis", a sex education program distributed on France Televisions' "Slash" platform for young people, is significant. In November 2019 Snapchat published new very strict guidelines. These meant that in a program on contraception, it was not possible to show visuals (of the pill for example),

nor to write words referring to contraceptive methods. Faced with restrictive content policies, EBU members find themselves forced to adapt their content to the general conditions of the platforms if they want it to remain accessible online and run the risk of being less relevant and less impactful for their target audience. Any reduction in the number of unjustified content withdrawals can therefore be explained by content providers' efforts to comply with the platforms' business rules (and not only by a relaxation of platforms' requirements). By acting in this way, platforms impede the right to freedom of expression of media providers and restrict media plurality.

There are numerous examples of political or social content (widespread content on PSM) being labelled as political advertising by platforms and blocked (by Facebook).

Failure to attribute content to its publisher or erroneous attribution also violates freedom of information, depriving the user of an essential element of judgment for information.

There are many examples of non-attribution, erroneous or uncertain attribution of EBU Member's content. For example: sometimes the France Télévisions logo is not displayed, sometimes it is but not very visible or it is not immediately recognizable as content distributors and aggregators like Apple TV follow Apple's general conditions for displaying logos.

EBU Members recognise that some of these examples of removals are due to the platform's own terms and conditions and community standards (which EBU Members have to sign up to). These unilateral terms and community standards often have different criteria than the law/regulations in the EU or in individual Member States and cause unnecessary removals of content on 3rd party platforms. This is a direct threat to media organisations' editorial independence and media pluralism. The DSA package should clarify that contractual agreements cannot prevail over sectoral rules and, in particular, that platforms' terms and conditions and community standards cannot take precedence over current and future EU legislation (as is ensured in the Portability Regulation 2017/1128 in Article 7).

The cornerstone of independent public service media is exercising full editorial responsibility over content guided by strict national and European rules as well as journalistic and editorial principles. Public trust is built on maintaining this independence. When digital platforms and social networks are used to make independent content of societal general interest available to audiences, such content should never be subject to any undue form of secondary control or removal.

Platforms have become gatekeepers for what and how PSM content can reach its audience. This directly impacts the editorial independence of media and further underlines the need to limit third party influence of editorial decisions by content providers. Stronger safeguards for the editorial independence of editorial content are needed on all platforms. Content by a provider with editorial responsibility should not be removed or modified, if doing so this could negatively affect their independence or trustworthiness.

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***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*

Complaints are usually handled tardily, and illegal content often reappears. EBU members also find it difficult to get in touch with a responsible person for follow-up questions after having submitted their request. Finally, little information on actions taken by the platform is accessible.

We elaborate on this further below.

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

*3000 character(s) maximum*

It takes internal manpower of EBU Members to deal with the different mechanisms provided by the platforms and because of the lack of engagement by the platforms themselves.

#### 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*

Please see response above. We consider that the situation where global online platform operators ban and /or erroneously remove services and content from providers of legal content (such as broadcasters) solely because these services clash with platform's community standards deserves further scrutiny and action at EU level. Media, including broadcast media, in Europe abide by European and/or national legal standards. Allowing unilateral global community standards to take precedence creates a serious threat to editorial freedom, cultural diversity and media pluralism in Europe. Online platform providers' freedom to conduct a business (Art. 16 EU Charter) is not absolute and finds its limits in other fundamental rights and general interest objectives.

Illegal/harmful content is not uniformly defined at EU level and Member States have different rules and cultural norms. Defining illegal and harmful content and related enforcement should be within the competence of individual EU members states in respect of their cultural norms and respecting fundamental EU values.

#### 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

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

The quality and quantity of data provided by internet service providers vary. In France, most comprehensive audience measurements are those provided by operators who accept integration of the “Médiamétrie” marker in the broadcast signal. Only a few operators do. Most operators prefer to use their own measurement system. However, these are not sufficient to provide an accurate overview of media services' consumption online. Some operators refuse or limit sharing of audience information: Orange recently stopped transmitting audience data for its programs to France Télévisions. In 2019, SFR ended the detailed program performance report to market it. Distributors can use audience data from publishers distributed for the benefit of companies in the same group or to market them.

The same issue arises with online platforms which do currently not provide meaningful access to data related to or generated by PSM content and services. If they do provide access, data remains fragmented and may not be relevant. Online platforms use their own measurement systems.

The same applies to app stores such as Apple. Apple refuses to transmit usage data to third parties (via Médiamétrie) for performance measurement purposes via the app store of France Télévisions Okoo's app, intended for young audiences. France Télévisions cannot therefore measure the success of its service and adapt it accordingly. An example of the need for greater cooperation with platforms is clearer communication and transparency regarding changes to terms of service. On occasion, EBU Members have discovered changes only at the point at which apps are rejected from Apple's app stores.

This growing tendency to refuse or limit audience information is a worrying trend meaning that media editors cannot measure the performance of their services. Media need access to data in a usable form generated by or related to making their content available on third party platforms, in line with data protection and privacy rules. This ensures further innovation and enhancement of services for the long-term benefit of audiences. Full and usable return of data when making content available on 3rd party platforms is crucial for PSM's ability to understand audiences and innovate further on content and services. Transparency around what data the platforms gather and what content providers can access is increasingly important to continue

development of services in the future. This must be done within the framework of the obligations of the platforms and corporate users respecting the GDPR.

The degree of human interaction dialogue with the global platforms varies from good relationships, to nonexistent or merely automated messages. This results in lengthy case processing and restricts development of a partnership. Global platforms increasingly take part in distributing PSM content and in such matter acts as a distributor, it is important to establish good conditions for healthy and fair business relations.

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?

*3000 character(s) maximum*

Analytics provided by platforms (see Q9) and general market research.

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*

In the majority of cases WHOIS information does not deliver the contact details of the responsible person or entity of the content on websites, only the registrar of the domain. Registrars often refuse to disclose personal information with respect to the GDPR. Often the information is not sufficient.

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 are you aware of alternative sources of such data? Please explain.

*3000 character(s) maximum*

No

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*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

### 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

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

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*

#### **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	Yes, only by	Yes, only platforms at particular risk of	Such measures should not be
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	they intermediate (e.g. content hosting, selling goods or services)	larger online platforms	exposure to illegal activities by their users	required by law
Maintain an effective 'notice and action' system for reporting illegal goods or content	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Maintain a system for assessing the risk of exposure to illegal goods or content	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Have content moderation teams, appropriately trained and resourced	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Systematically respond to requests from law enforcement authorities	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Cooperate with national authorities and law enforcement, in accordance with clear procedures	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Cooperate with trusted organisations with proven expertise that can report illegal activities for fast analysis ('trusted flaggers')	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Detect illegal content, goods or services	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
In particular where they intermediate sales of goods or services, inform their professional users about their obligations under EU law	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Request professional users to identify themselves clearly ('know your customer' policy)	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
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)	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Inform consumers when they become aware of product recalls or sales of illegal goods	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Cooperate with other online platforms for exchanging best practices, sharing information or tools to tackle illegal activities	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Be transparent about their content policies, measures and their effects	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Maintain an effective 'counter-notice' system for users whose goods or content is removed to dispute erroneous decisions	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other. Please specify	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

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

*5000 character(s) maximum*

We can no longer tolerate that online platform providers determine content policies (and thus influence access to and the visibility of content) and moderate speech far removed from public scrutiny. The DSA thus needs to improve transparency and accountability of platforms' content policies and practices in relation to users (including PSM and other content providers), society at large as well as academic researchers and regulators.

Effective transparency measures should include:

- Effective notice-and-action procedures with clear deadlines,
- Information about platform and content providers (see our answer to question 17 in this chapter)
- The publication of platforms' content policies, including clear, easily understandable and sufficiently detailed explanations of their policies
- The transparency of platforms' content-related decisions in individual cases (e.g. confirmation of receipt to notice provider, clear and transparent notices including reasoning)
- The publication of regular reports on activities related to the removal of content,
- The consultation of users and other stakeholders before changes to content policies are made
- Informing content providers before substantial changes to content policies are made,
- The Provision of relevant data to researchers or, as appropriate, competent regulatory authorities (see our answer to questions 20 and 21 in this chapter),
- The submission of regular reports to competent regulatory authorities on the application of content policies, on measures taken to fight illegal and harmful content and on safeguards applied to protect fundamental rights, including on the resources deployed

## 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*

Information on all these parameters are crucial to identify and effectively act against illegal content. The level of detail setting out why the activity is considered illegal must be proportionate and a summary reasoning should suffice as long as it gives sufficient detail to understand. It is also key that there is a system providing direct and easy contact for users to discuss questions and problems with the platforms.

## 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*

It is a legitimate objective to prevent the reappearance of illegal content, which, due to its dangerous nature, may cause wide-spread harm, sometimes to a significant proportion of the general public. Online platforms should be required to put in place appropriate and practicable measures to ensure the stay-down of illegal content. Such measures should be specific to the nature of the content and may differ accordingly: the reappearance of manifestly illegal material such as terrorist content may require different actions/tools /systems than, for instance, copyright infringements or privacy violations. It is important that these measures be targeted and proportionate, balancing all interests at stake and ensuring the highest level of protection for parties' fundamental rights.

We consider that automated tools may be used to detect and prevent the reappearance of content previously found to be illegal, provided that there are relevant safeguards. The use of automated or algorithmic tools should be accompanied by appropriate human oversight (see also Q 6 below). What is more, effective and user-friendly redress mechanisms should be provided to allow content providers to contest online platforms' content-related decisions. As a rule, PSM and other media content should be presumed to be complying with the law and should therefore stay online, unless, ultimately, a court finds otherwise (see our answer to question 6 below).

In the exceptional case that online platforms take decisions affecting PSM and other media providers' content, it is essential that online platforms provide a contact point for the national market to clarify for example, the nature of the content and adapt necessary action (e.g. suspension, removal or reinstatement of content). Moreover, such mechanisms should be harmonised across all online platforms and be clear and transparent in order to raise online platforms' level of responsibility and ensure that they take swift and effective action in line with national law and cultural perceptions.

## 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*

We agree that the use of automated tools brings with it opportunities and risks. Given the size, scale and volume of illegal content on online platforms, automated tools certainly constitute an effective and efficient method to swiftly and rapidly detect illegal content.

While they represent an affordable means, such systems may not appropriately recognise or understand the context within which speech is iterated or they may not recognise the precise meaning of it (for example if material constitutes a parody or contains irony). Lawful speech, as demonstrated above, is already being blocked. Over-removal of lawful content is a severe threat to freedom of expression that PSM aim to foster.

Hence, care needs to be taken that such tools do not interfere with content that is under the editorial control of media providers (including PSM) who are subject to regulatory standards and oversight. In respecting PSM's and other content providers' editorial freedom, their content should be presumed to be lawful and safe. No content should therefore be removed without the platform provider giving notice and offering the content provider the opportunity to defend itself. Content by PSM and other content providers should stay online until a court finds otherwise.

In addition, the use of automated tools should be combined with appropriate human oversight (see Q 5 above). Such human component should include a specific point of contact within a given Member State. For content providers such as PSM, it is vital to have such a contact point specifically dedicated to the national market, for instance, to clarify platforms' content-related decisions.

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*

Service providers established outside the EU should also be in the scope of the future DSA package. This is in line with other legal instruments and regulatory fields, such as the General Data Protection Regulation, the Platform-to-Business Regulation and competition law. The DSA should cover non-European providers who offer digital services to users in the EU.

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.?

*5000 character(s) maximum*

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?

*5000 character(s) maximum*

## 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*

Online platforms have greatly facilitated the free circulation of information and have become important channels to access and exchange information. But the abundance of content and information shared and spread online also comes with serious challenges as it created new ways to disseminate illegal and harmful content.

This matters to public service media organizations. We produce a diverse range of content and information; offer our own trusted digital services to audiences and we also use digital service offerings by major third-party global platforms, especially to reach young audiences or to challenge disinformation at source.

PSM are concerned about the proliferation of harmful content, such as disinformation (as has been forcefully shown during the coronavirus pandemic), content unsuitable for minors or hateful and defamatory comments, particularly towards journalists.

Online platform providers currently shape public discourse by moderating speech and even restricting free speech through their terms and conditions/community standards. Online platform providers define these standards in a unilateral and non-transparent manner, unaccountable to the public and with an interest to augmenting traffic and maximizing profits.

Whenever platforms engage in the distribution of content, organize or moderate content, there is a need for effective safeguards to protect the general interest, fundamental rights and European values. Leaving it solely to the discretion of global online platforms to define what is in the public interest and to apply content display and removal policies and automated tools without any form of regulatory oversight is unacceptable.

This endangers public interest objectives and values in EU, such as the freedom of expression and information, media pluralism (Art. 11 EU Charter of Fundamental Rights with Art. 10 European Convention on Human Rights), cultural diversity as well as the protection of consumers and vulnerable audiences such as children. Opaque decision-taking about the legality of content without adequate redress mechanisms may also be seen as violating the fundamental right to fair trial (Art. 47 EU Charter in conjunction with Art. 6 ECHR). Online platform providers' freedom to conduct a business (Art. 16 EU Charter) is not absolute and finds its limits in other fundamental rights and general interest objectives.

Current online platforms' practices also encroach on Member States' ability to define what they consider harmful and this ability should be preserved. This notion has not been harmonised at EU level and remains subject to socio-cultural perceptions that evolve over time. Standards of harm are therefore different across Member States and so are the legal requirements linked to its distribution. This unity in diversity is part of the EU's very fabric and it should continue to be respected.

To stop platform providers from acting as governors of all online communication space, we believe that online platform providers should be subjected to clear duties of care. Such requirements should include, at least, enhanced transparency about their content policies as well as information obligations, vis-à-vis content providers and users ("Know-your-business-customer-principle", see also our answer to question 2 above) as well as the implementation of user-friendly tools to flag and/or report harmful activities and content. The provision of flagging and/or reporting systems should be accompanied by appropriate explanations about the effect that has been given to flagged/reported content as well as by transparent, easy-to-use and effective procedures for the handling and resolution of complaints. Platforms should also regularly publish reports on their activities relating to the fight against harmful content. Such duties should be clearly outlined in law and be flanked by measures that ensure their effective enforcement, including regulators competence to sanction non-compliance, in particular by imposing deterrent fines. Policy interventions in relation to activities and content that might cause harm must take due account of the impact on fundamental rights and the diverse interests at stake. Such measures should therefore be designed in a careful, targeted manner, paying utmost attention to the proportionality principle. (see Q16 below). Enhanced transparency requirements applicable to business users ("Know-your-business-customer-principle") will help online platforms to adapt

their duty of care depending on the business user's identity. For media services and content which are subject to editorial/regulatory standards, platforms should respect media's existing editorial standards and regulations and do not interfere with the media's content that is already subject to independent oversight. This is crucial to uphold public trust in media and democracy and it would also incentivise platforms to render content from PSM and other trusted media sources appropriately prominent

## 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*

For PSM, providing all groups of society (in particular children) with dedicated programmes and services is at the heart of their national remit. EBU Members currently make available 233 unique dedicated children and youth services (including linear avms and radio, as well as standalone online brands) in their own safe online environments (EBU MIS data 2020). PSM also provide innovative and immersive online content, including on online platforms, operating more than 127 official children and youth dedicated social media offers (EBU MIS data 2020). PSM abide by broadcast regulations and apply the highest editorial standards to all services however consumed.

Current broadcast standards are outlined in the Audiovisual Media Services Directive (AVMSD), a sector-specific instrument. The AVMSD provides a high level of protection in relation to audiovisual media services (avms). It needs to be ensured, in designing the future EU legal framework for online platforms, that in case of conflict, the AVMSD prevails over any horizontal legislation. Applying a graduated and harms-based approach, the AVMSD requires avms providers to protect minors from harmful and extremely harmful content (Art. 6a (1) AVMSD). The revised AVMSD also empowers audiences by requiring avms providers to give sufficient information about the harm associated with a particular programme (Art. 6a (3) AVMSD). In addition, the AVMSD imposes substantial advertising standards on avms providers, including rules that protect minors (Art. 9(1)(g) AVMSD).

Although the revised AVMSD introduces new rules for video-sharing platform services (VSPs), regulatory asymmetries persist between heavily regulated avms providers and lightly regulated VSP providers. Likewise, the current basic rules applicable to information society service providers according to the E-Commerce Directive do not protect minors on online platforms. Users are generally unaware of distinctions between services online that are regulated or not (ERGA Position Paper on the DSA, p. 5, para. 6). The new rules applicable to VSPs under the AVMSD may serve as a useful blueprint for protecting users, particularly minors against harmful content.

While PSM do their utmost to provide dedicated and suitable programmes and services for children that they can enjoy in a safe online space (oftentimes going beyond the AVMSD's legal requirements), the viewing environment on online platforms is less regulated and provides more opportunities for harm to occur. This is deplorable as current consumption trends show that minors and young adolescents (below 24 years) increasingly watch content on-demand and on online platforms, particularly on YouTube (see, e.g. p. 11 of Ofcom's Children and Parents' media attitude report 2019 and p. 41 of Ofcom's Online Nation report 2019), but also through other VSPs like TikTok, Twitch or Snapchat as well as social media networks like Facebook and Twitter.

Apart from the lack of safeguards for content harmful to children, PSM are likewise disturbed by the deterioration of public discourse as well as the proliferation of disinformation and hate speech online. We have witnessed the damage that disinformation may cause during election times to our democracies (e.g. during the 2019 European elections) or to public health (during the ongoing international sanitary crisis). Self-regulatory initiatives have failed and it is time to consider structured co-regulatory responses in the future (see our answer to question 3 above).

Increasingly, journalists are victims of aggression, harassment (cyber-bullying), hateful comments and in extreme cases this even amounts to illegal hate speech (see Media Pluralism Monitor 2020, p. 122). This

may have a chilling effect on the freedom of expression and the watchdog role PSM play in our societies. The safety and integrity of journalists is crucial for PSM and their ability to produce investigative reporting and to provide independent, high quality news and current affairs programmes which are trusted by the public.

PSM have particular responsibilities towards their audiences, whether they air content on TV or make it available on online platforms. Audiences must be able to rely on a safe online space when they consume PSM content on online platforms. It is necessary that online platform providers meet additional obligations (see question 10 above).

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	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Provide users with tools to flag disinformation online and establishing transparent procedures for dealing with user complaints	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Tackle the use of fake-accounts, fake engagements, bots and inauthentic users behaviour aimed at amplifying false or misleading narratives	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
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	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
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	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Adapted risk assessments and mitigation strategies undertaken by online platforms	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Ensure effective access and visibility of a variety of authentic and professional journalistic sources	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Auditing systems for platform actions and risk assessments	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
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.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Other (please specify)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

### 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*

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	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Diligence in assessing the content notified to them for removal or blocking	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Maintaining an effective complaint and redress mechanism	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>

Diligence in informing users whose content/goods/services was removed or blocked or whose accounts are threatened to be suspended	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
High accuracy and diligent control mechanisms, including human oversight, when automated tools are deployed for detecting, removing or demoting content or suspending users' accounts	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Enabling third party insight – e.g. by academics – of main content moderation systems	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Other. Please specify	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

## 16 Please explain.

*3000 character(s) maximum*

Public service media organisations in Europe are heavily regulated and subject to independent oversight. They bear editorial responsibility for the content they publish and may be held liable for it under national laws. Liability should remain to be limited to the content PSM produce or commission and for which they bear editorial responsibility, excluding any liability for user comments on social media platforms (as insinuated by Australian Justice Rothman in a heavily criticised decision holding media companies liable for defamatory comments posted by users in the comments section of the media organisations' Facebook pages (See <https://www.caselaw.nsw.gov.au/decision/5d0c5f4be4b08c5b85d8a60d>).

While we understand online platforms should act in relation to certain types of content, they should not subject media services and content, for which editorial responsibility is already exercised, to any form of control or interference. Any additional control by platforms over media's content already subject to oversight would be inappropriate and interfere with the right to freedom of expression and information. Any decisions on suspension or removal of such content should be left to independent judicial authorities. When content is taken down or suspended, effective remedy and redress mechanisms should be available to content providers, granting them an effective right to defence.

Platforms' algorithms used for ranking content can also have far-reaching consequences on users' right to freedom of expression. By their community standards and more practically, through their algorithms, platforms control what content appears, where and when. They do so unilaterally and in full opacity, unaccountable to regulatory authorities and the general public. To promote a flourishing online space where free speech is possible within acceptable limits, it is inevitable to enhance algorithmic transparency. To reach audiences through online platforms and understand why each content item appears in the ranking or news feed, PSM and other content providers need to understand platforms' content policies (including ranking) and be aware of any changes.

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

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

It is crucial to have full transparency and information available for content and services available on platforms including on the online platform provider and the content provider to include:

1. Information on content provider uploading content (know your (business) customer)

Information obligations should be outlined that enhance transparency of content providers. The E-Commerce Directive's information requirements for information society service providers (Art. 5 ECD) could be broadened and complemented. Information should at least include:

- The name and the address at which they are established (for legal entities, the legal form, the authorized representative),
- Possibly, the name and address of the responsible editor,
- Information that enables quick electronic contact and direct communication, including email and website,
- If the service is offered as part of an activity that requires official approval (such as notification), information on the responsible supervisory authority

2. Information of the responsible person within the online platform

Information about the responsible persons for the blocking and deleting of content, whether the content is illegal or not, must be easily accessible.

3. Clear information about the complaint mechanism and reinstatement:

The complaint mechanism must be easy to handle.

All information in points 1-3 must be

- easily recognizable,
- immediately and readily accessible and
- always available for all users at any time and in the same place.

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

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

*5000 character(s) maximum*

It is without doubt that online platforms have facilitated information sharing and enabled free circulation of views and expressions. Their services enhance participation in public debate and thereby contribute to the public good. For PSM, online platforms have become an indispensable partner in reaching certain audiences and PSM are experimenting with new, innovative ways of distributing content (to the extent that their national remit allows). Yet, the proliferation of illegal content like hate speech and other harmful material such as disinformation on such platforms has forcefully revealed the dangers and risks platforms' practices may have on the coherence of our societies.

Online platforms have also become powerful gatekeepers, by determining the way content is accessed, made available, found, suspended or removed. Online platforms are essentially moderating speech (in line with their community standards/terms of service) and they do so as profit-driven companies. They manage the way content is displayed on their platforms, including by ranking, personalising and recommending content to users, based on a significant amount of data they gather of and about every single user.

A means to curating/managing/moderating the vast amounts of content available on online platforms, is algorithmic recommender systems that, very often, attribute preference to the online platforms' own content (by way of self-preferencing, see below on gatekeeper power of online platforms), to affiliated third parties or to the party that pays the most. Online platforms gain huge profits by trading users' attention to the highest bidder (be it for editorial or commercial content) while platform users lack the necessary transparency on how these systems work and how their data are exploited and lack the tools to empower them.

Major online platforms are driven by their own global, commercial motivations and this has propelled them to much success, but they have become powerful gatekeeping platforms through which users access content, control vast amounts of data and are not subject to robust regulation. If we want to secure the ability to offer great and diverse European content to audiences the DSA needs to establish the right legal framework, that (i) promotes content by authentic/trustworthy media providers and (ii) enhances transparency about recommender systems.

To promote a safe online space within which public discourse and opinion forming can take place within acceptable limits, it is necessary that online platforms take measures to promote and render appropriately prominent general interest content (see Q 7 on the liability regime). This is especially vital in situations of crises, like the coronavirus pandemic (also dubbed infodemic due to the sheer amount of disinformation that has proliferated on the virus).

More generally, online platforms' opaque content moderation policies are problematic as they put at risk general interest objectives like the freedom of expression and the right to information as well as media pluralism and media freedom, all of which are expressly protected by Art. 11 of the EU Charter of Fundamental Rights and cultural diversity, which is inherent in the EU's sui generis nature. More transparency is needed for content providers, especially with regard to the effects of recommender systems on the visibility/accessibility of content. Without prejudice to platform providers' obligation to ensure that general interest content is prominently displayed, it is vital that online platforms be transparent and inform content providers about changes to ranking and recommendation systems so that content providers can react and adapt their services accordingly, minimising the negative impact of such changes/decisions on content visibility/findability and access/availability

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?

*5000 character(s) maximum*

Content providers, such as PSM, are contingent on the algorithms deployed by online platforms. Whether content is surfaced or found by users depends on the way the algorithm is programmed. In addition to enhancing transparency of online platforms' content policies, we believe that more enhanced data sharing between online platforms and competent authorities would promote algorithmic accountability. While online platforms may not be obliged to disclose their algorithms publicly (due to trade secrets regulation), they should at least grant access to independent regulators/authorities to allow for effective control and enforcement.

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)?

*5000 character(s) maximum*

Experience from European competition and data protection law shows that the only sanction providing incentives for platforms to respect rules are deterrent financial sanctions

24 Are there other points you would like to raise?

*3000 character(s) maximum*

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

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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 how the current liability exemption regime is working and the areas where an update might be necessary.

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*

PSM rely on a diverse range of distributors that make PSM’s programmes and services available to the general public. PSM, as avms providers, assume full editorial responsibility for and control over the content they provide. Editorial control, however, has its limits and PSM and other content providers cannot be made liable for comments posted by users on social media networks, as they do not have any control (including no control over settings) over the comments section. We therefore sincerely regret the recent preliminary decision by Australian Justice Rothman who found that publishers had legal liability for comments on their Facebook pages (<https://www.caselaw.nsw.gov.au/decision/5d0c5f4be4b08c5b85d8a60d>).

In general, it is noteworthy that the character and role of the intermediary, i.e. the actor placed between PSM and its audiences, has become more fluid and varied than at the time the E-Commerce Directive was adopted. We are especially concerned that the category of “hosting services” as referred to in the E-Commerce Directive is too broad and does not adequately reflect the multi-functional nature of online platforms. We therefore recommend that the DSA establish meaningful and future-proof sub-categories. Whatever future denominations, it is important that one such sub-category captures hosting service providers whose business centers around the commercialization of content by providing access, making available tools for sharing content and by promoting/categorizing/organizing content (the future definition could draw inspiration from the definition of “video-sharing platform service” as set out in Art. 1(1)(aa) Audiovisual Media Services Directive or that of “online content-sharing service provider” as introduced by Art. 2(6) of the Copyright in the Digital Single Market Directive).

Apart from the problematic definition of “hosting service”, the E-Commerce Directive’s underlying assumption upon which the liability regime is based is no longer up to date. This is because certain online platforms, notably video-sharing platforms (VSPs) and social media networks do not merely passively host or assemble (third-party) audiovisual content, but they organize, rank, label, personalize, monetize or otherwise moderate or commercialize content for public use and thus take content-related decisions (see also Cole/Etteldorf /Ullrich, Cross-border dissemination of online content, p. 44-45). Their business models are geared towards maximizing profits through the sale of space and visibility (for editorial and commercial content) on their platforms.

We see an urgent need to act as online platform providers determine what users see/find and what they do not/are unlikely to see/find. By moderating and curating content (primarily through algorithmic means), they

decide upon the degree of visibility and access to online content. In accordance with the principle of universality that underpins PSM's public service mission and on account of the shift in consumption patterns, PSM offer services to reach audiences on online platforms. However, PSM can only effectively fulfill its democratic, social and cultural role in today's society if there is a safe online environment and if their programmes and services are clearly visible and easily findable in the online space – and not buried under an avalanche of sponsored content and disinformation that becomes viral (see also our answer to question 7 below).

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*

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 legal framework is insufficient in that it does not provide incentives for online platform providers to take proactive measures against illegal activities. This should be corrected in the DSA which should set out binding harmonised rules tackling the spread of illegal content online, including effective notice-and-action procedures as well as redress mechanisms.

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*

Today, certain distributors still retain a passive role. These are, for example, providers of electronic communications services as defined by Art. 2(4) EECC, such as traditional/legacy telecommunications or cloud service providers. As long as these providers do not interfere with the content (including by automated /algorithmic tools), they should be regarded as neutral or passive intermediaries within the meaning of Recital 42 E-Commerce Directive and consequently benefit from the E-Commerce Directive's liability exemptions.

If, however, providers interfere with the content/information they transmit, they must be considered as active and cannot be allowed to escape potential claims for secondary liability (provided that the DSA retains the E-Commerce Directive's link between a provider's passiveness and the liability exemptions). This is also relevant in case a telecommunications provider offers several services and performs diverse roles: (i) the one of a passive intermediary transmitting audiovisual content as well as (ii) the one of an active content provider. Providers offering several services must therefore assume an appropriate degree of (secondary) responsibility for (the part of) the service for which it assumes an active role.

We note, however, that, in the future, the active/passive dichotomy may no longer be suitable to capture the complexities of activities/services provided by a same provider. An updated liability regime may instead be based on clearer definitions of services (see Q 2 above) that the DSA will apply to, attributing the appropriate level of responsibility to each service category.

Should the DSA retain the active/passive distinction, it is necessary to acknowledge that hosting service providers do no longer play a role of a “mere technical, automatic and passive nature” in the transmission of content/information. In fact, online platforms take content-related decision in line with their community standards (see Q 2 above), which override the media’s editorial standards and decisions. In combination with the dominant position of certain platforms, such secondary control by platforms does not only threaten media pluralism but also severely limit media freedom, a fundamental right expressly protected by Art. 11(2) EU Charter of Fundamental Rights (see also our answer to question 7 below).

**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 availability of illegal content - including illegal hate speech against journalists - on online platforms is increasing. Online platform providers must take more responsibility with respect to the content available on their platforms, the current E-Commerce Directive as well as additional self-regulatory initiatives fighting illegal content are no longer sufficient. The existing liability regime allows them to hide from responsibility based on self-perception as being passive and neutral. The DSA must include a comprehensive legal framework including clear responsibilities, duty of care rules as well as effective oversight and enforcement (see our answers to questions 2 and 10 in the chapter on responsibilities and our answer to question 4 above and 7 below).

Indeed, the ban on general monitoring obligations should not prevent specific monitoring obligations : For example, in case of manifestly illegal content (inciting terrorism, child sexual abuse material) platforms must put more effort into monitoring the availability of this kind of content on their platforms. In this case they should not be able to use the liability exemption.

In addition to counter current information asymmetries, platform providers need to put measures in place that allow for a more reliable identification of uploaders/content providers and enhance transparency (Know-your-business-customer principle). In the case of editorial content provided by regulated media providers (including PSM content), such specific monitoring obligations should not be applicable (see our answer to question 7 below).

**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*

It is high time that the DSA, like the revised AVMSD has done, recognizes hosting service providers’ actual role and their business model whereby they compete for users’ attention. The DSA must establish rules that

correspond to online platform providers' content management activity, taking into account their societal impact and their importance for democratic opinion forming. Three regulatory solutions are indispensable:

1. Respecting media providers' editorial decisions. The DSA must bring an end to online platforms' private enforcement of unilaterally imposed content standards and must ensure that independent courts or other public oversight, on the basis of an assessment of relevant fundamental rights, are competent to decide upon the legality of content and thus on the inclusion or suspension/removal of content on online platforms. We also consider it necessary that online platform providers are under a positive obligation to respect media providers' editorial decisions. As a result, they are prohibited from exercising a second layer of control over content that is already under a media provider's editorial control and subject to specific standards/media regulation and independent oversight (such as PSM's services which are governed by sector-specific regulation and compliance of which is monitored by independent national regulatory authorities/supervisory bodies) (see also Schibsted Report Ensuring democracy and freedom of speech online). The beneficiaries of this positive obligation could be determined at the Member State level, either through a multi-stakeholder process, or through an open and objective procedure under the responsibility of national media regulators. Importantly, this positive obligation to respect existing content standards should encompass a requirement to leave intact media provider's branding and to correctly attribute the source. In turn, online platforms should be exempt from liability for content which has been provided by media providers bearing editorial responsibility for content distributed online.

2. Ensuring prominence of general interest content. Online platforms' opaque content policies are problematic because they determine access/availability and visibility/findability of content. These put at risk general interest objectives like freedom of expression, the right to information, media pluralism, media freedom (Art. 11 EU Charter of Fundamental Rights) and cultural diversity which is inherent in the EU's sui generis nature (see Q10 and 11 Responsibilities). To promote a safe online space where public discourse and opinion forming can take place within acceptable limits, active online platforms need to take measures to promote and render appropriately prominent general interest content. This is especially vital in crises like COVID-19 (also dubbed infodemic due to the sheer amount of disinformation published on the virus). The trustworthiness of a provider may be established through different ways, such as using the machine-readable CEN standard of the Journalism Trust Initiative (see Q 5 below), which is a checklist of commonly agreed criteria for high quality and independent journalism to which media providers may subscribe, ranging from ownership and sources of revenue to the editorial process, including topics like correction policies, labelling of opinion or sponsored content, and ensuring accuracy. Alternatively, trusted providers may be defined at the national level, through a multi-stakeholder dialogue or by the competent national media regulators based on open and transparent criteria. Such prominence measures should be placed within the appropriate regulatory framework and take due account of the media's specificities, like the new findability rule applicable to user interfaces introduced in Art. 84 German Medienstaatsvertrag. A recent report from Mediaticque published by Ofcom also demonstrates the importance of prominence in the Connected TV context ([https://www.ofcom.org.uk/\\_\\_data/assets/pdf\\_file/0019/201493/connected-gateways.pdf](https://www.ofcom.org.uk/__data/assets/pdf_file/0019/201493/connected-gateways.pdf)). VUB-SMIT conducted similar research on the Belgian market and the study, which has not yet been published, likewise advocates for national prominence.

3. Enhancing procedural responsibility. The DSA should outline clear and effective procedures enhancing online platforms' accountability. This includes efficient and effective notice-and-action mechanisms in relation to fighting the (re)appearance of illegal content including effective complaints mechanisms (e.g. respecting content providers' rights in contesting online platforms' content-related decisions), as well as enhanced transparency rules (about content moderation and curation as well as about business customers). As enforcement of the new rules is key, an effective mechanism should be established, including administrative sanctions (notably dissuasive fines possibly indexed to platform providers' global turnover as in the case of the GDPR) in case of non-compliance.

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

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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.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>

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").	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
It is easy for individuals to port their data in a useful manner to alternative service providers outside of an online platform.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
There is sufficient level of interoperability between services of different online platform companies.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
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.	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
It is easy for innovative SME online platforms to expand or enter the market.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Traditional businesses are increasingly dependent on a limited number of very large online platforms.	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
There are imbalances in the bargaining power between these online platforms and their business users.	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
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.	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Certain large online platform companies create barriers	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

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.	<input checked="" type="radio"/>	<input type="radio"/>				
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.	<input checked="" type="radio"/>	<input type="radio"/>				

**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	<input checked="" type="radio"/>
Wide geographic coverage in the EU	<input checked="" type="radio"/> <input checked="" type="radio"/> <input type="radio"/> <input type="radio"/> <input type="radio"/>
They capture a large share of total revenue of the market you are active/of a sector	<input checked="" type="radio"/> <input checked="" type="radio"/> <input checked="" type="radio"/> <input type="radio"/> <input type="radio"/>
Impact on a certain sector	<input checked="" type="radio"/>
They build on and exploit strong network effects	<input checked="" type="radio"/>
They leverage their assets for entering new areas of activity	<input checked="" type="radio"/>

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*

-User behavior (e.g. users do not 'multi-home'; users' trust in the platform)  
 -Many widely used platforms are vertically and/or diagonally integrated

Due to several traits characterizing the markets under consideration (e.g. network effects, high production /low distribution costs, the ability to reap large economies of scale and scope), certain platforms are vertically and/or diagonally integrated. As a result, those platforms have the ability and incentive to control entire digital ecosystems/the entire value chain. We believe that this is a characteristic that should be taken into account in determining whether a platform is a gatekeeper. Vertical integration is very common in 'mature' digital markets, such as online search, social networking and news aggregation, as well as in emerging audio markets (consider, for instance, a popular music streaming platform expanding into content development by acquiring podcast production companies and by offering advertising services that would facilitate monetization of the content concerned. Another example is a company producing smart phones that expands into content aggregation by offering its own application store and audio streaming service). The greater the degree of vertical integration in a specific sector is, the greater the impact of a platform on that sector will be.

In addition to the criteria identified by the Commission and vertical/diagonal integration, we find that an assessment of whether a large online platform is a gatekeeper must not be restricted to supply-side considerations. It should further consider how users behave. This is clearly illustrated by the Commission's Google Shopping decision. In its decision, the Commission found that, though it is easy for users to switch from one search engine to another, only a minority of users multi-home (paragraphs 307-311). Moreover, and perhaps more importantly, the Commission relied on experiments showing that a significant number of online users trusted Google to such an extent that they would be highly unlikely to use a different search engine even if Google were to deliver less relevant search results (paragraph 312 and fn. 333). Taking account of user attitude enabled the Commission to gain a more complete understanding of Google's gatekeeper position in the affected market.

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

In some cases, a combination of the above criteria may be necessary to conduct relevant assessments. For example, in the case of a nascent market, there may be very few services to which the consumer may switch. If combined with practices that lock the consumer into its services without the consumers switching to another service, this would arguably be an indication that the platform under consideration acts as a gatekeeper. Similarly, if a platform that benefits from strong network effects controls a large user base, rendering it difficult for other providers to enter or expand into the market concerned, that would also be an indication that the platform acts as a gatekeeper.

However, we believe that a combination of the above criteria is not necessary in all cases. For example, based on the 2020 Reuters Institute Report, 72% of online users access news through a gate, including a social network (26%) or a search engine (25%) (p. 23). Another example concerns PSM organizations that are required to use as many platforms as possible in order to reach all segments of society, including younger generations, to fulfil their public service obligations. In such cases, the platform in question may possess intermediation power and become an 'unavoidable partner' for content providers that may not otherwise reach the audiences concerned. In other words, in cases such as those described above, the user base that a platform controls may be sufficient to determine that a platform acts as a gatekeeper. A 'large' user base should not be defined with reference to an absolute number. Other parameters, such as the demographics of the user base, how users consume content (e.g. do they use the platform as their primary source of news?), should define whether the platform is a gatekeeper.

As regards the criterion of wide geographic coverage, the presence of a platform in several Member States could, in principle, determine whether that platform is a gatekeeper. Yet, in many cases, including in the case of audiovisual and audio markets, markets are mainly national in nature. In such cases, other criteria, such as the user base that a platform controls and the degree of vertical integration, should define whether a platform acts as a gatekeeper.

Finally, it is our understanding that, in this Part, the Commission focuses on 'large, gatekeeper' platforms. However, we find that rules must be set that apply to platforms irrespective of their size. For example, the P2B Regulation imposes on all platforms a set of transparency obligations. Yet, the regulatory framework has many gaps that need to be filled (e.g. the P2B Regulation does not establish the platforms' obligation to disclose whether they engage in retaliatory practices). Put differently, though the focus on certain large platforms may be justified to address certain issues, appropriate rules capturing all platforms are needed in order to promote fairness in the platform economy.

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 strengthen 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*

## Emerging issues

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***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*

PSM organizations are bound by 'universality' obligations, which require them to reach all segments of society. Given that a vast amount of content is now consumed on platforms, PSM rely on platforms to reach their audiences. Being present on different platforms is linked to the different purposes which those platforms serve. For example, app stores and smart TVs are used to distribute applications; social networks are mainly used for marketing purposes and community building; communications apps are used to make content 'go viral'; audio streaming platforms are used for podcast distribution; and VOD platforms are used for content monetization.

In dealing with platforms, many problems arise from practices that prevent PSM from reaching their audiences. For example, lack of transparency about how a social media network works in practice does not allow PSM to assess how the relevant algorithm impacts the newsfeed. The same applies to how apps are promoted on popular app stores. Other issues concern the preferential treatment that platforms grant to their own services (or the services provided by advertising partners), lack of access to (reliable) data, and lack of attribution.

#### 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 main source of the issues we have encountered in dealing with platforms is lack of bargaining power. Combined with the large user base platforms control, lack of bargaining power translates into accepting unfair contractual terms or being subject to unfair practices.

In many cases, PSM organizations are forced to grant a non-exclusive, sublicensable and royalty-free worldwide licence of their content.

Another example concerns retaliatory and bundling practices. Certain platforms bundle subscription-based and free services. If PSM do not agree to the distribution of their content through the subscription-based channel, they are not allowed to distribute their content for free. This is a 'take-it-or-leave-it offer', which requires PSM to either refrain from reaching the young audiences that such platforms control or acquire the relevant rights in order to be able to distribute their content through the subscription-based channel.

Another issue concerns unilateral (and often unannounced) modifications to the T&Cs imposed by platforms. Such modifications concern a range of issues, including the prices that platforms charge for their services and de-referencing of PSM sub-domains that led to a significant decline in audiences.

Other practices which we have experienced and consider unfair include:

- The removal of legal content;
- Platforms' self-preferencing;
- Platforms' refusal to grant access to data;
- Other data-related practices, including:
  - An opportunistic interpretation of the GDPR (e.g. a platform's insistence that it qualifies as a 'data controller' whereas it could be regarded as 'data processor');
  - Practices to limit the possibilities of data processing by business users on their own applications, even if such processing is carried out in compliance with applicable data protection regulation. For example, a platform may impede in-app tracking (even when it is compatible with the GDPR and the e-privacy rules) to prevent the transmission of data to the app owner. In the case of PSM, this practice impedes the ability to engage in audience measurement.
  - Practices related to the consent granted by users. Platforms may impose a mechanism of 'double' consent to trackers, which reduces the quality of the user's experience. This practice, which may lead to users refusing permission, is not a standard required by law in the EU.
  - Lack of transparency regarding ranking (and, more broadly, recommendation mechanisms) and, in the case of voice assistants, lack of transparency regarding the parameters that determine the outcome of the user's query.
  - Lack of brand attribution: Platforms may remove logos and/or other distinctive features of their business users, including content providers. As a result, the online user is not in the position to assess who offers the content she consumes and the content provider cannot establish a relationship with its audiences.
- Practices concerning monetization, including:
  - Platforms' refusal to apply to buyers of ad space the general conditions of sale of their business users, including content providers. As a result, content providers are prevented from setting their standards of compliance with advertising ethics. Moreover, the control exercised by platforms is generally insufficient, rendering it possible to publish unsuitable advertisements on the sites of content providers. For example, an advertiser (or a buyer acting on behalf of an advertiser) may replace the ad content with other (unsuitable) content.
  - Practices raising barriers to monetizing content offered on platforms. Broadly speaking, platforms require the use of their own ad tools. This requires a content provider/publisher to either entrust the platform with carrying out the ad campaign or implement the technical solution chosen by the platform. In such cases, the

sales process becomes lengthier and the content provider/publisher must cope with the difficulties involved in the installation of the tools required by the platforms, the optimization of targeted advertising, etc.

-The placement of ads next to PSM content. In many cases, PSM are legally required to offer online content that is ad-free. Yet, platforms may place advertisements next to it without the authorization of the PSM concerned and in breach of applicable media regulation. Such practices have significant effects on the economy and the society. Recent cases illustrate, self-preferencing prevents services of higher quality from reaching the consumer. For PSM, platforms' preferential treatment of own services may restrict the consumption of public interest content. Removal of legal content and bundling/retaliation restrict the fair and free flow of information, interfering with freedom of expression. Platforms' refusal to grant access to data deprives the user of the benefits of competition, including a wide range of services to choose from. Platforms' interpretation of the GDPR may undermine data protection.

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***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*

Please see our replies to Questions 3 and 4 above.

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

*3000 character(s) maximum*

Please see our replies to Questions 3 and 4 above.

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***The following questions are open to all respondents.***

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

*5000 character(s) maximum*

Please see our replies to Questions 3 and 4 above.

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*

We are concerned that certain platforms have little incentive to share their data with any firm that might compete with them for users' attention or that may compromise their ability to drive revenues from paid

placement and/or promotion. This is particularly true of vertically integrated platforms where content providers such as PSM act as both business users of the online platform and downstream competitors. In order to reach a certain number or type of audience, it is difficult for content providers to avoid putting their content on them (in other words, these platforms have market power).

There is an emergence of gatekeeper platforms that commercialize the real estate inventory on their platforms. Platforms will sell inventory and package analytics into such deals. These analytics are not made available to non-paying parties. There is not a level playing field for PSM when competing with global organizations with bountiful resources or the ability to leverage significant debt in a way that is out of reach for PSM.

This concentration of market power enables these platforms to impose broad Terms of Service on their users, which can be used to further strengthen their market power. This can occur in two ways:

- Terms of Service may allow for the collection of vast amounts of user data. The way in which some platforms' business models work (in particular, those that are ad-funded) provides them with an incentive to amass large volumes of user data which can be monetized, for example through targeted advertising; and
- Given that this data is valuable, these platforms are incentivized not to share their data with Third Parties. As a result, Terms of Service may include restrictive clauses that prevent data from being shared with Third Parties (even where the product being used is provided by the Third Party to the platform) and we note the CMA's findings in the UK for example that platforms such as Google and Facebook may have incentives to take a stricter interpretation of GDPR than is necessary.

The above reality is recognized in the Commission's Communication on A European Strategy for Data where it notes that: 'data sharing between companies has not taken off at sufficient scale. This is due to a lack of economic incentives (including the fear of losing a competitive edge) [and] imbalances in negotiating power. [...] A case in point comes from large online platforms, where a small number of players may accumulate large amounts of data, gathering important insights and competitive advantages from the richness and variety of the data they hold. The high degree of market power resulting from the "data advantage" can enable large players to set the rules on the platform and unilaterally impose conditions for access and use of data or, indeed, allow leveraging of such "power advantage" when developing new services and expanding towards new markets' (pp. 7-8).

For more information about our views on what could be effective measures related to data held by platform companies beyond those laid down in the General Data Protection Regulation, please see our reply to Question 15 below.

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

*3000 character(s) maximum*

Please see our reply to Question 4 above.

## 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

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

Please see our reply to Question 4 above.

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 remarks that follow are by no means limited to large, gatekeeper platforms.

First, legal content offered by PSM organizations, which are editorially responsible for the content they produce and disseminate, should not be subject to ‘secondary’ control. Where platforms exercise such secondary control, which may lead to the removal of the content concerned, freedom of expression is unjustifiably undermined, media pluralism is harmed, and online users are deprived of the ability to access public interest content.

Secondly, public interest content should be made easily findable, prominent and fully attributed. We have already referred to certain practices (e.g. self-preferencing, retaliatory/bundling practices) that may limit the user’s ability to access public interest content. Measures to support prominence of public interest content would increase exposure diversity, thereby promoting media pluralism.

Moreover, media organizations need access to data generated by or related to their content and services on third party platforms. Such data is essential to understand the evolving needs of the audiences they are meant to serve.

Furthermore, platforms must ensure that the brand or other distinctive features of the media organization providing content to the online user is clearly visible. Lack of brand attribution not only prevents media organizations from establishing a direct relationship with their audiences, but it also prevents users from assessing whether the content they consume is distributed by a trustworthy provider.

In addition, attention must be drawn to issues concerning smart TVs, which act as platforms/intermediaries between the viewer and the content provider. For example, consumers using a smart TV can access content via a series of apps on the home screen. The order in which these apps are presented will be decided by the TV set manufacturer and/or the provider of the TV set’s OS. A recent report prepared for Ofcom shows, the order in which apps are presented reinforce ‘the importance of prominence while establishing a role for the operating system and user interface as key loci for enabling user choice’ (see Mediatique (2020). Connected TV gateways: review of market dynamics, pp. 3-4). It must be noted that many TV manufacturers now use a standard OS offered by large platforms. Another striking example of intermediaries is voice assistants. Voice assistants usually deliver one search result following the user’s query. This deprives the user of choosing the content that may be more relevant to her query or content that is of higher quality. Lack of transparency regarding the parameters determining the outcome of the user’s query does not solely raise competition concerns. In the case of consumption of news content, it also raises concerns over opinion-forming.

Finally, media literacy initiatives are essential to raise awareness about how platforms influence the variety and quality of content to which users are exposed

## 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*

The current regulatory framework is inadequate to address issues arising from platform practices; instruments that apply to platforms do not capture concerns that have emerged in recent years. For example, we have explained above why the distinction between 'active' and 'passive' service providers does not adequately reflect the role that platforms play in today's information society.

Recent attempts to regulate platforms, most notably the P2B Regulation and the New Deal for Consumers, focus on transparency. Though lack of transparency is pervasive in the platform economy, we are concerned that relevant obligations are not sufficient to address concerns arising from harmful practices. For example, while the platform-to-business Regulation imposes on platforms the obligation to disclose whether they grant preferential treatment to their own services, large platforms are not prevented from engaging in preferential treatment. Yet, as explained above, self-preferencing may significantly harm competition and artificially reduce consumer choice.

General competition law is sufficiently flexible to address some concerns arising from platform practices. However, competition law applies only if the companies under scrutiny hold market power and, if a decision finding an infringement of the competition rules is adopted, it is binding only on the companies under investigation (please see our replies to Questions below regarding the New Competition Tool).

Other instruments are inadequate to address concerns arising from platform practices because of the subjects they protect (which essentially limits their scope). For example, obligations under the GDPR cover only 'personal data', that is, information relating to an identifiable individual. As a result, data-related issues facing the business users of the platforms, such as access to data and restrictions on the portability of non-personal data, remain unregulated.

The EU telecoms rules, meanwhile, regulate access to network infrastructure and do not cover online platforms.

In the light of the above and given that consumption of (audiovisual) content online is only expected to increase, PSM organizations would clearly benefit from revised and/or new rules that effectively address any unfair practices curtailing their ability to reach their audiences.

Even if such rules were limited to platforms acting as gatekeepers, we would encourage the Commission to consider establishing obligations for all platforms that act as gateways, despite the fact that their user base is not on the same global scale as some of the current tech giants; gatekeeping can occur regardless of size and the impact on business users and citizens can be significant. The rules should be applicable to all platforms that are being used to a significant extent by their target groups, provided that their customers cannot be effectively accessed any other way (see also our reply to Question III.3. above)

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*

One of the reasons why platforms must be regulated is that, as a result of the large user base they control, they have the ability and incentive to engage in harmful practices, exploiting firms that have come to depend on them. This is the problem the P2B Regulation seeks to address. The Regulation states ‘Given that increasing dependence, [platforms] often have superior bargaining power, which enables them to, in effect behave unilaterally in a way that can be unfair and harmful to the legitimate interests of their businesses users and, indirectly, also of consumers in the Union’ (Recital (2)).

However, the P2B Regulation focuses on promoting transparency.

Competition law is also insufficient to address concerns arising from an increasing dependence on platforms. The goal of competition law is to protect competition. The goal of competition law is not to protect individual competitors. At best, competition authorities may intervene to protect competitors that are ‘as efficient’ as the dominant company under investigation. However, the ‘as efficient competitor test’ is made complicated in the digital space by other effects that favor declining costs like the existence of economies of scale and scope, learning curve effects, or first mover advantages.

In view of the above, we find that the current legal framework is not adequate to protect platforms’ business users against abuses of economic dependence. Given the fast-moving character of platform markets, we would encourage the Commission to consider an ‘umbrella provision’ prohibiting the abuse of economic dependence, which could set out a non-exhaustive list of abusive practices, such as self-preferencing, refusal to grant access to data, and lack of interoperability. This is an approach adopted in several Member States (e.g. Greece, Belgium, Germany) in order to fill the lacunae of the legal framework described above. Since the problem we are considering here is pan-European and the criteria set by the relevant national laws have limited the effectiveness of such ‘umbrella provisions’, a well-designed obligation prohibiting the abuse of economic dependence that is established in an EU instrument could address concerns arising from harmful platform practices.

Another solution is to adopt an approach similar to the Directive on unfair trading practices in business-to-business relationships in the agricultural and food supply chain, which includes a non-exhaustive list of unfair trading practices that are prohibited. This is similar to proposals made in a report recently published by the UK Consumer and Markets Authority (CMA). The CMA proposes the establishment of an enforceable code of conduct for platforms that would be based around three high-level objectives. One of those objectives is fair trading, which ‘is intended to address concerns around the potential for exploitative behavior on the part of the [...] platform’ (CMA (2020). Online platforms and digital advertising, para 7.76

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.

*3000 character(s) maximum*

Please see our reply to Question 2 above.

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.

*3000 character(s) maximum*

We find that, in order to ensure the effective implementation of the regulatory rules we are considering here, their interpretation and application should not be left only to the courts. There is a need for specific authorities with the relevant expertise to enforce these rules. We also find that existing authorities could carry out this task. For example, National Competition Authorities (NCAs) and the Directorate General for Competition of the European Commission could be entrusted with this mission. Given that platform markets are rather complex, there may be a need for the establishment of specific units within the respective authorities that have relevant expert knowledge. A similar solution was followed recently in the UK (Digital Markets Taskforce within the CMA) and the US (Technology Task Force within the Federal Trade Commission).

Clearly, competition authorities would benefit from cooperation with other authorities, including especially data protection authorities and media regulators. This is necessary because, as mentioned in our replies to other questions, platform practices may have negative effects on both the economy and the society at large, which a regulatory authority must consider holistically.

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.

*3000 character(s) maximum*

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

*3000 character(s) maximum*

Please see our reply to Question 6 above.

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*

Please see our reply to Question 6 above.

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*

We find that the regulatory rules we are considering here could complement existing and future sector-specific rules. We distinguish between rules that seek to address economic concerns and those that seek to address non-economic concerns.

As regards rules that seek to address economic concerns, we have already referred to the platform-to-business Regulation and the New Deal for Consumers, which impose transparency obligations on platforms in order to address the information asymmetries between platforms and business users/consumers. We believe that the rules that would be included in the DSA package should go beyond transparency with a view to promoting fairness and competition in the platform economy.

Rules that seek to address non-economic concerns, including especially rules that promote freedom of

expression and media pluralism (e.g. measures to support prominence of public interest content) must prevail over any new horizontal rules in the DSA package. This is because the non-economic objectives are different from those aimed at promoting fairness and competition in the platform economy.

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*

Whilst the principle of subsidiarity generally means that Member States should be primarily responsible for adopting regulation dealing with negative societal effects, it is clear that there is an overlap here with negative economic effects. Therefore, the DSA can certainly aim to promote certain societal objectives (and therefore to address negative societal effects, such as damage to media pluralism) by addressing negative economic effects (for example, by prohibiting self-preferencing, which may have the effect of addressing reduced media pluralism).NB: Under the Charter of Fundamental Rights of the EU, both the EU institutions and the Member States are bound to implement EU law, including instruments that address economic effects with a view to completing the single market, in a way that respects the principles enshrined in the Charter (e.g. media pluralism).

Addressing negative societal effects could be achieved by ensuring that certain terms are interpreted in a way that takes into account the specificities of digital markets. For example, the revenue generated by large platforms (or the share they hold in advertising markets) are not the sole indicators of their ability to produce negative economic and societal effects. The user base they control and their ability to shape public opinion should also be taken into account in an attempt to tackle the aforementioned effects.

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*

We believe that ex ante regulation is needed to ensure that platforms' business users have access to data generated by or relating to their own services and content. For more details on our position, please see our reply to the Commission's consultation on A European Strategy for Data, which we attach to this document.

- Lack of access to data is not addressed by current regulation. In particular:

-Under the P2B Regulation, access to data remains entirely contingent on a platform's goodwill or commercial strategy. As the Commission itself noted in its Communication on A European Strategy for Data (pp. 7-8), powerful platforms are reluctant to share data because they fear they might lose a strong competitive advantage.

-It is becoming increasingly clear that the right to data portability, enshrined in Article 20 GDPR, is not adequate to ensure access to data (see, for instance, Special Advisers Report on 'A Competition Policy for the Digital Era', p. 9).

- Why do PSM organizations need access to data?

Data is a key input for PSM as it allows us to tailor our services to users and adapt to the evolving needs of

our audiences. It also helps support value for money through informing where resources are best allocated. The refusal of platforms to provide data to PSM continues to have an adverse impact on the ability of PSM to develop digital products and to understand content performance, which also impacts on PSM ability to commission the best and most relevant content. The refusal of platforms to provide data therefore inhibits the industry's ability to exploit the full range of relevant data on its services which would otherwise be available. This in turn may hinder dynamic investment, to the detriment of users.

- The form of access to data needed

We have consistently advocated for regulation mandating platforms to grant access to data generated by or related to the services and content of platforms' business users, in full respect of data protection regulation.

We believe that such a right:

- Respects the right to the protection of personal data enshrined in Article 8 CFREU. Data on consumption of the relevant PSM services would need to be transferred in a manner consistent with the GDPR;
- Is proportionate to the objective it seeks to achieve, as access would be restricted to the data generated by or related to the services and content offered by the business user concerned;
- Is founded on the principle of 'shared value creation' which the Commission advocates for in its Communication Towards a Common European Data Space (p. 10). This principle is founded on the acknowledgment that, where data is generated as a by-product of using a service, several parties have contributed to creating the data.

## 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*

Effective measures to promote media pluralism include:

- (1) prohibiting gatekeeper platforms from self-preferencing in their services, particularly their news, search and social media services, so that news from other platforms can be surfaced more easily (NB: We believe that, to capture the fast-moving pace of digital markets, the definition of self-preferencing should be as broad as possible – see, for instance, Article 7(3) of the platform-to-business Regulation);
- (2) where appropriate, imposing measures to ensure that gatekeeper platforms take a fair, reasonable and non-discriminatory (FRND) approach to allocating search results, ordering display areas and deciding on default settings. As a result, larger media companies would not be able to buy out all the relevant slots and squeeze out the smaller (often national, rather than international) news providers. For the avoidance of confusion, the aforementioned measures should not preclude any measures taken to promote prominence of public interest content; and
- (3) Measures to promote algorithmic transparency, especially transparency of algorithms that determine access to news content, that go beyond the requirements set by the platform-to-business Regulation (please see our reply to Section I.1.B.5 of the Questionnaire).

Finally, we note that any measures to promote media pluralism must respect the principle of subsidiarity; while the EU may take initiatives to advance media pluralism, this should not impede the ability of the Member States to adopt relevant rules to serve the social, democratic and cultural needs of the society they serve.

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*

No, please see our reply to Question 6 above.

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

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 [the parallel consultation on a proposal for a New Competition Tool](#) 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	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
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	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
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	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
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.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
5. There is a need for combination of two or more of the options 2 to 4.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>

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*

As already explained above, though flexible, the current competition rules are not sufficient to address concerns arising from platform practices that have emerged in recent years. For example, Article 102 TFEU only applies to dominant companies. However, the 'dominance' threshold is very high and platforms may pose concerns to competition without necessarily being dominant. One of the policy options the Commission is currently considering is a New Competition Tool that would apply to non-dominant platforms. We would strongly support such an approach (for a more detailed analysis of the reasons why we support the aforementioned policy option, please see our reply to the consultation on the New Competition Tool). However, the ongoing process of reform of competition policy, including the adoption of a New Competition Tool, is not sufficient to promote fairness in the platform economy. Though several steps have been (and will be) taken to ensure that competition law is adapted to the specificities of digital markets, the reform of competition policy will not challenge the foundations of competition law. As already mentioned above, the goal of competition law is to protect competition. The goal of competition law is not to protect individual competitors. At best, competition authorities may intervene to protect competitors that are 'as efficient' as the dominant company under investigation. However, the 'as efficient competitor test' is made complicated in the digital space by other effects that favor declining costs like the existence of economies of scale and scope, learning curve effects, or first mover advantages. Moreover, competition law is ex post and therefore is often engaged only after substantial harm has already been done to firms operating in the market. Furthermore, competition law is expensive to enforce and investigations take time to reach a conclusion. Further regulation is required to mitigate the harm of online platform and ensure third parties can operate and innovate within digital markets.

Similarly, in order to understand whether a conduct or transaction is harmful to competition, competition authorities must assess its effects on competition/the market as a whole. In other words, competition authorities do not assess its effects on individual competitors or customers. And yet, to ensure a well-functioning marketplace, those competitors or customers may merit protection even if there are no actual or potential effects on the competitive process. In view of the above, competition rules must be complemented with effective regulatory rules that promote fairness, to the benefit of competition and consumers/citizens alike

27 Are there other points you would like to raise?

*3000 character(s) maximum*

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

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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 through 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 through 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*

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

*3000 character(s) maximum*

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

*3000 character(s) maximum*

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*

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*

First of all, we wish to point out that there are huge differences in national rules applicable to political advertising. A wide array of requirements are imposed on broadcast media, in particular during elections. These may include, inter alia, the requirement to cover elections in a fair, balanced and impartial manner, rules on the allocation of airtime for political parties/candidates, rules regarding paid political advertising or rules on reflection/silence periods. The rationale for such rules is to facilitate the pluralistic expression of opinions during electoral campaigns, the very motor of democratic societies.

While a great proportion of the population continues to inform itself about elections and follows election coverage on TV, citizens, in particular young users, increasingly access news via social media networks, particularly young users aged between 18 and 24 (Reuters Institute Digital News Report 2020, p. 10/11). The strict requirements imposed on broadcasters are therefore in stark contrast to the lack of rules in relation to online platforms and no longer reflect citizens' opinion-forming processes as well as online platform's impact on society, particularly in crucial times of elections. Self-regulatory initiatives or voluntary measures

like the Code of Practice on Disinformation no longer suffice to ensure that citizens are properly informed about the sponsors and reasons why they see political commercial messages (see Kirk/Culloty/Casey /Teeling/Park/Kearns/Suiter, Elect Check 2019, pp.38-40, ERGA Report on Disinformation, pp.18-19). Disinformation coupled with secluded methods to target the electorate with political advertisements can have a devastating effect on elections' impartiality and integrity.

This should not be tolerated and this is why we believe that the DSA should set out binding minimum standards for political advertising displayed on online platforms. It needs to be ensured that Member States can impose stricter standards in their territories, on account of the significance of elections for democratic societies. At the very least, online platforms should clearly separate editorial from commercial content, allowing users to quickly identify political advertisements. Political advertisements should thus be presented in such a way as to be readily recognisable as a paid-for communication or labelled as such. In addition, online platforms should be transparent about the identity of the sponsor and possibly disclose the amounts spent. Importantly, the EU's minimum set of rules should be without prejudice to existing national rules, in particular those applicable to broadcast media.

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*

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?

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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	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Flexibility of choosing when and /or where to provide services	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Transparency on remuneration	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Measures to tackle non-payment of remuneration	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Transparency in online ratings	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

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

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?

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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	

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*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	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Requirements to have a legal representative or an establishment in more than one Member State	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Different procedures and points of contact for obligations to cooperate with authorities	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other types of legal requirements. Please specify below	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

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*

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	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
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.)	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Cooperation mechanism with swift procedures and assistance across national competent authorities across Member States	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Coordination and technical assistance at EU level	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
An EU-level authority	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Cooperation schemes with third parties such as civil society organisations and academics for specific inquiries and oversight	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other: please specify in the text box below	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

### 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*

### 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*

### 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*

Given the inherent international dimension of the provision of digital services and similar to other regulatory fields and instruments (e.g. General Data Protection Regulation, Platform-to-Business Regulation, competition law), the future legal framework should cover providers established outside the EU offering digital services to users in the EU (see our answer to question 6 above). The lack of an establishment in the EU should not relieve foreign platform providers from complying with the future DSA. In this respect, it is important to establish a supervisory scheme that ensures effective enforcement of the new rules, especially in relation to non-European providers.

The supervisory system under the DSA may build on elements from other EU legal instruments, notably the General Data Protection Regulation (GDPR), while at the same time learning from its weaknesses. To guarantee the uniform application and implementation of the DSA, competent regulatory authorities should closely cooperate, where possible within existing bodies (i.e. ERGA in the field of media regulation, see our answer to question 11). Within these bodies, international cooperation mechanisms could be established, including engagement of relevant stakeholders, for example as regards content-related responsibilities (see for example Art. 50 GDPR).

In addition, regulators should provide mutual assistance and be empowered to conduct joint operations. In relation to providers established outside the EU, the GDPR's "one-stop-shop" or "lead supervisory authority" concepts (see for example Art. 60-62 GDPR) could be employed, while making sure that all relevant regulators collaborate closely and prevent a situation where one regulator's capacities are over-stretched.

Non-European service providers should also designate a representative in the EU or within each Member State where the platform provider pursues significant activities. This would not only greatly facilitate interaction with regulatory authorities (for the purpose of supervision) but the representative could also serve as contact point for content providers (see our answer to questions 5 and 6 in the chapter on Responsibilities). To facilitate communication, the representative's identify and contact details should be made easily accessible alongside other information about platform providers (see our answer to question 17 in the Responsibilities chapter). While the designation of a representative should not amount to an establishment understood under EU law, it should imply a meaningful presence that is more than just a letterbox

## 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*

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.

*3000 character(s) maximum*

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*

Member States are competent to establish and organise the regulatory authorities that oversee media markets. They thus determine, among others, the authorities' status, structure, funding and competencies.

Specialized media regulators or otherwise media units of converged regulators have ample experience as well as vast expertise in content regulation and are thus the best placed to protect users against illegal and certain forms of harmful content disseminated online. In exercising their competence under national law, media regulators take due account of the fundamental rights (above all, the freedom of expression and right to information) and general interest objectives (e.g. media pluralism and media freedom, cultural and linguistic diversity) that lie at the heart of media regulation. When enlarging their field of activities to digital services, which is necessary given these providers importance in distributing and granting access to content services, media regulators should improve and facilitate cross-border or even pan-European coordination within ERGA. This is necessary to improve understanding of national sensitivities and priorities, but also because the provision of digital services is inherently cross-border, due to the borderless nature of the Internet and the technologies underlying it.

The internal market permits businesses from inside and outside Europe to offer services to users in the EU or to locate in one Member State and to target users in (an)other Member State(s). The country-of-origin principle that has facilitated the growth of digital services is not, however, absolute and reasons for derogating from it need to be qualified for the purpose of securing above-mentioned fundamental rights and general interest objectives. The derogations must, in particular, safeguard Member States' competence to promote cultural and linguistic diversity and to ensure the defence of pluralism – including, where necessary, in a cross-border manner.

To fully protect these values, the future legal framework must also grant precedence to EU sectoral law (e.g. the Audiovisual Media Services Directive or the Directive on Copyright in the Digital Single Market). To respect the distribution of competences between the EU and the Member States, the DSA must include a clear statement that sector-specific legislation prevails over EU-wide harmonised horizontal rules, in line with

current conflict clauses that have characterized the relationship of sectoral instruments to the E-Commerce Directive (e.g. Art. 4(7) AVMSD or first sentence of Art. 17(3) DSM Directive).

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

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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.

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## 2 Other final comments

*3000 character(s) maximum*

### Useful links

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

### Background Documents

[\(BG\) Речник на термините](#)

[\(CS\) Glosř](#)

[\(DA\) Ordliste](#)

[\(DE\) Glossar](#)

[\(EL\) á](#)

[\(EN\) Glossary](#)

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