

# 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

Natalia

\* 4 Surname

WALCZAK

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

n.walczak@etf-europe.org

\* 7 Organisation name

*255 character(s) maximum*

European Trade Union Federation

\* 8 Organisation size

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

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

- Yes
- No

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

## 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.

92545571128-74

## \*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                       |
| <input type="radio"/> Andorra             | <input type="radio"/> El Salvador        | <input type="radio"/> Madagascar       | <input type="radio"/> São Tomé and Príncipe            |
| <input type="radio"/> Angola              | <input type="radio"/> Equatorial Guinea  | <input type="radio"/> Malawi           | <input type="radio"/> Saudi Arabia                     |
| <input type="radio"/> Anguilla            | <input type="radio"/> Eritrea            | <input type="radio"/> Malaysia         | <input type="radio"/> Senegal                          |
| <input type="radio"/> Antarctica          | <input type="radio"/> Estonia            | <input type="radio"/> Maldives         | <input type="radio"/> Serbia                           |
| <input type="radio"/> Antigua and Barbuda | <input type="radio"/> Eswatini           | <input type="radio"/> Mali             | <input type="radio"/> Seychelles                       |
| <input type="radio"/> Argentina           | <input type="radio"/> Ethiopia           | <input type="radio"/> Malta            | <input type="radio"/> Sierra Leone                     |
| <input type="radio"/> Armenia             | <input type="radio"/> Falkland Islands   | <input type="radio"/> Marshall Islands | <input type="radio"/> Singapore                        |
| <input type="radio"/> Aruba               | <input type="radio"/> Faroe Islands      | <input type="radio"/> Martinique       | <input type="radio"/> Sint Maarten                     |
| <input type="radio"/> Australia           | <input type="radio"/> Fiji               | <input type="radio"/> Mauritania       | <input type="radio"/> Slovakia                         |
| <input type="radio"/> Austria             | <input type="radio"/> Finland            | <input type="radio"/> Mauritius        | <input type="radio"/> Slovenia                         |

- Azerbaijan
- Bahamas
- Bahrain
- Bangladesh
- Barbados
- Belarus
- Belgium
- Belize
- Benin
- Bermuda
- Bhutan
- Bolivia
- Bonaire Saint Eustatius and Saba
- Bosnia and Herzegovina
- Botswana
- Bouvet Island
- Brazil
- British Indian Ocean Territory
- British Virgin Islands
- Brunei
- Bulgaria
- Burkina Faso
- France
- French Guiana
- French Polynesia
- French Southern and Antarctic Lands
- Gabon
- Georgia
- Germany
- Ghana
- Gibraltar
- Greece
- Greenland
- Grenada
- Guadeloupe
- Guam
- Guatemala
- Guernsey
- Guinea
- Guinea-Bissau
- Guyana
- Haiti
- Heard Island and McDonald Islands
- Honduras
- Mayotte
- Mexico
- Micronesia
- Moldova
- Monaco
- Mongolia
- Montenegro
- Montserrat
- Morocco
- Mozambique
- Myanmar /Burma
- Namibia
- Nauru
- Nepal
- Netherlands
- New Caledonia
- New Zealand
- Nicaragua
- Niger
- Nigeria
- Niue
- Norfolk Island
- 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
- Syria
- Taiwan
- Tajikistan
- Tanzania
- Thailand
- The Gambia
- Timor-Leste
- Togo
- Tokelau

- Burundi
- Cambodia
- Cameroon
- Canada
- Cape Verde
- Cayman Islands
- Central African Republic
- Chad
- Chile
- China
- Christmas Island
- Clipperton
- Cocos (Keeling) Islands
- Colombia
- Comoros
- Congo
- Cook Islands
- Costa Rica
- Côte d'Ivoire
- Croatia
- Cuba
- Curaçao
- Hong Kong
- Hungary
- Iceland
- India
- Indonesia
- Iran
- Iraq
- Ireland
- Isle of Man
- Israel
- Italy
- Jamaica
- Japan
- Jersey
- Jordan
- Kazakhstan
- Kenya
- Kiribati
- Kosovo
- Kuwait
- Kyrgyzstan
- Laos
- Northern Mariana Islands
- North Korea
- North Macedonia
- Norway
- Oman
- Pakistan
- Palau
- Palestine
- Panama
- Papua New Guinea
- Paraguay
- Peru
- Philippines
- Pitcairn Islands
- Poland
- Portugal
- Puerto Rico
- Qatar
- Réunion
- Romania
- Russia
- Rwanda
- Tonga
- Trinidad and Tobago
- Tunisia
- Turkey
- Turkmenistan
- Turks and Caicos Islands
- Tuvalu
- Uganda
- Ukraine
- United Arab Emirates
- United Kingdom
- United States
- United States Minor Outlying Islands
- Uruguay
- US Virgin Islands
- Uzbekistan
- Vanuatu
- Vatican City
- Venezuela
- Vietnam
- Wallis and Futuna
- Western Sahara

- Cyprus
- Latvia
- Saint Barthélemy
- Yemen
- Czechia
- Lebanon
- Saint Helena Ascension and Tristan da Cunha
- Zambia
- Democratic Republic of the Congo
- Lesotho
- Saint Kitts and Nevis
- Zimbabwe
- Denmark
- Liberia
- Saint Lucia

## \* 22 Publication privacy settings

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

### **Anonymous**

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

### **Public**

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

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

## I. How to effectively keep users safer online?

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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

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

*3000 character(s) maximum*

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*

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*

21 Do you consider these measures appropriate?

- Yes
- No
- I don't know

22 Please explain.

*3000 character(s) maximum*

## **B. Transparency**

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

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

3 Please explain.

*3000 character(s) maximum*

Workers providing services through online platforms, such as delivery and ride-hailing services, are subject to arbitrary suspension or removal, without any prior warning or a transparent right to redress. The platform mention such issues as slow performance or non-delivery. The performance benchmarks are in turn based on algorithms that are not disclosed to workers. In addition, there have been several cases across Europe where workers have been removed from the platform specifically for their attempts to organise and negotiate their working conditions. For instance, in 2017 in Spain Deliveroo, Glovo and UberEats dismissed several of their workers that started a campaign RidersXDerechos.

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*

In the case of digital platforms “recommending” tasks for its workers this is not always the case. Some digital platforms design the task allocation to workers based on persuasive design of slot machines to expand the working period of workers (functions that replicate the same features that make videogames and television addictive). Human-friendly designs should be promoted. Platforms therefore perform psychological inducements to influence when, where and how long drivers work thus pushing workers to working longer and in geographical areas which perhaps are not preferential for them.

### 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*

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 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 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 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*

Algorithms are well-known to be a possible source of different kinds of discrimination, as they are often built on biases and limited diversity in data sets and design team.

The algorithms used by digital platforms need to be tested for bias (e.g. gender-based) impacts in order to ensure that certain groups of workers, e.g. women, are not negatively impacted by it in terms of pay, safety or other issues. For example, with regard to mobility platforms, women are less likely to drive in late night surge times and therefore lose out on the most profitable times. This is an impact of the pricing structure that does not take into account safety concerns.

### 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*

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

*3000 character(s) maximum*

## 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*

Please see the answer to the question 3 in the section 'Transparency' above.

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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*

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

*3000 character(s) maximum*

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

*3000 character(s) maximum*

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

- Yes, through regular transparency reports
- Yes, through reports to a supervising authority
- Yes, upon requests to public information
- Yes, through other means. Please explain
- No , no such reporting is done

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


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*

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

- Yes
- No
- I don't know

13 How valuable is this information for you?

Please rate from 1 star (not particularly important) to 5 (extremely important)	
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14 Do you use or are you aware of alternative sources of such data? Please explain.

*3000 character(s) maximum*

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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 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 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 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 checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Inform consumers when they become aware of product recalls or sales of illegal goods	<input 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 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*

For the case of digital platform companies, no exceptions in matters of applicable legislation should be foreseen for SMEs. The European Commission should guarantee that the highest working standards for workers apply in these companies, no matter the size of the company they work for. There is no evidence of better working conditions in SMEs, let alone SME digital platform companies.

## 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*

## 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*

## 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*

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*

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*

The labour Inspectorate should be mandated and properly equipped to prevent digital labour companies from violating labour legislation.

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*

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*

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 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 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 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 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 type="radio"/>	<input type="radio"/>
Adapted risk assessments and mitigation strategies undertaken by online platforms	<input type="radio"/>	<input type="radio"/>	<input 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 type="radio"/>	<input type="radio"/>
Auditing systems for platform actions and risk assessments	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input 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 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 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 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 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 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*

Whilst consumers can rate workers, the opposite is not always the case – or even if a rating is collected, it is not always made available to workers. Unscrupulous platform users can take advantage of this information asymmetry, for example by refusing to pay for already completed tasks on quality grounds. Platforms should also develop a system which allows workers to challenge ratings, for example when a low rating was given by a consumer in retaliation for a worker’s refusal to bend the rules or worse. Platforms’ rating systems should be monitored on its impact on different segments of the workforce, to ensure that the operation of rating algorithms does not lead to discrimination against a particular group.

## 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*

Algorithms are well-known to be a possible source of different kinds of discrimination, as they are often built on biases and limited diversity in data sets and design team.

The algorithms used by digital platforms need to be tested for bias (e.g. gender-based) impacts in order to ensure that certain groups of workers, e.g. women, are not negatively impacted by it in terms of pay, safety or other issues. For example, with regard to mobility platforms, women are less likely to drive in late night surge times and therefore lose out on the most profitable times. This is an impact of the pricing structure that does not take into account safety concerns.

## 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*

## 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*

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*

The labour inspectorate should be given access to data of digital platforms in order to guarantee labour law enforcement and securing compliance. It will also play a key role in dealing effectively against fraud and undeclared work.

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*

In order to ensure effective compliance and to combat abuse, appropriate enforcement mechanisms, dissuasive sanctions and redress mechanisms should be established. Instruments for sanctioning violations

relating to data protection and commercialisation of data may draw inspiration for existing sanctions and mechanisms under the GDPR and the EU competition policy framework, such as orders to end the violation, adjust processes and behaviours and/or imposing penalties and fines.

Concerning labour violations by platforms, labour inspectorates should be entitled to enforce sanctions on online platforms in the same way as for offline service providers, as regards abuses linked to for examples undeclared work, false self-employment, non-payment of wages and social security contributions, etc. Moreover, with regard to online mobility platforms, they should not be granted access to any MaaS or other digital solutions that are publicly funded unless they can prove compliance with existing labour, tax, licencing, etc regulations.

## 24 Are there other points you would like to raise?

*3000 character(s) maximum*

Workers produce data as they work for a digital platform. This data describes the work process, but it also describes the worker. So the fact that they produce it, often using their own tools, and that it describes them, therefore means that they should have some rights over the data itself and over access to it. Workers should know what data is collected, why it is collected, where it is stored and how it is used to control their labour. In other words there should be transparency in relation to the software being used. This access should recognise that the data is at least partially the workers – it is produced by the worker as they work, it is collected through the phone owned by the worker, while they work driving/riding a car/bike/van that is owned by them. And the workers should be able to access ALL of their data, including rankings, at any time.

Art.88 GDPR, on processing data in the context of employment should be used as leverage for enhanced data protection for workers. Such data could specifically relate to recruitment, performance, management, planning and organisation of work, equality and diversity in the workplace, health and safety at work, and dismissals. Furthermore, trade union representatives should be involved in monitoring the compliance with the GDPR of a given AI system at the workplace. The aim is to lay down measures to safeguard the human dignity, legitimate interests and fundamental rights, with particular regard to the transparency of processing data, the transfer of personal data within a group of undertakings, or a group of enterprises engaged in a joint economic activity, and monitoring systems at the workplace.

## 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*

As platforms have taken and combined multiple roles either acting as intermediaries or as vertically-integrated platforms, the current EU legal framework struggles to capture liability issues, while neither the case law of the Court of Justice of the European Union has provided sufficient guidance. This has resulted in fragmentation. Instead of aiming for increased harmonisation of conditions for exemption, any future legal framework should introduce clear legal obligations relating to liability, including employers' obligations.

Societal challenges have changed the nature and scale of platform generated activities, necessitating increased legal responsibility ranging from liability for content to products and services. Consequently, the categorisation of services should be updated in the law to take into account notably the functions and services of the platforms. Special liability is needed for actors such as online marketplaces, for damages, contract performance and guarantees. Intermediaries should become liable for user-uploaded content if they refuse to remove content that has been declared illegal by a court decision.

Platforms are rarely developed without any commercial interest. Any intermediary function is ultimately designed, deployed and maintained by a physical or legal person which should be held liable. The competitive advantage of platforms cannot consist in the fact that they are omitted/exempt from similar requirements as comparable physical providers of content, goods and services. By introducing a clearer and broader liability for platform, such legal obligations will also be more effectively taken into consideration by their developers.

If platforms are able to capitalise on intermediation, they should also be presumed to be liable based on a reversed burden of proof to the advantage of any third party who has suffered damage and who should be able to claim compensation based on joint and several liability towards the platform. Liability should entail both material and non-material damages, including violations of fundamental rights. The liability rules should apply equally to all platforms regardless of their size, market status or market power.

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

### 3 Are there aspects that require further legal clarification?

*5000 character(s) maximum*

The concept of 'information society services' must be further clarified while remaining restrictively defined, so as to ensure that the Digital Services Act does not undermine the scope of the Services Directive 2006/123/EC and the country of destination principle as the fundamental principle governing the provision of physical services, as opposed to the country of origin principle as set out by the E-commerce Directive for the purpose of information society services. For this reason, the concept of 'information society services' must also in the future legal framework be defined strictly, thus making sure that the country of origin principle is not misused to undermine the level playing-field by circumventing applicable rules regarding services performed in the territory of the host Member State.

In this regard, the case law of the CJEU regarding the concept of 'information society services' should be consolidated in law. In C-434/15 Uber, the Court held that a digital "intermediation service [...] must be regarded as being inherently linked to a transport service" (§ 41). In other words, digital services that are inherently linked to the provision of a physical service should not be considered as a free-standing

information society service, but rather as a tool facilitating the provision of a physical service, and should therefore be bound by the rules regulating the physical service in question in order to ensure a level playing-field among service providers active in the market of the host Member State in accordance with the country of destination principle. This principle must be upheld to ensure the quality of services, protection of workers, consumers, the environment and the public interest, as these overriding interests have a stronger connection to the Member State where the actual service is performed, delivered or consumed. From the judgement it is also clear that the classification as an 'information society service' depends on the degree of control and influence that the platform has over the service provided (§ 39). Such control by the platform over individual providers of labour should result in liability as employer, as further elaborated in our reply to Question 7 in this Chapter.

**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*

It is much questionable whether the introduction of a “Good Samaritan” protective clause that exempts online service providers from liability when acting in good faith is desirable as a means to provide further legal clarity. The major disadvantages are that it does not provide any legal certainty nor predictability. It does not either provide effective remedy to complainants whose rights were infringed, and it encourages excessive take-downs on the intermediary’s own initiative. Case law shows that courts do not hold platforms using Good Samaritan mechanisms to be liable and consequently risks depriving the regulation of platform liability from any effect utile.

**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*

The legal concept in recital 42 that only passive intermediaries are protected is no longer effective. First, there is a constant development of new types of online services, hosting services that have a completely passive, are not that many. Platforms often adopt different approaches to attract and engage users, often becoming hybrid. Second, the distinction between “active” vs. “passive” hosts has become artificial in practice so that reconsideration of whether it is still meaningful is necessary. Finally, it should be recognised that technical or automated services cannot by default be considered as ‘passive’, as they may exercise significant control over the information society service provided or its users. Algorithms have intrinsic bias and produce discriminatory outcomes.

In line with the case law of the CJEU (e.g. C-434/15), the liability should be linked to the degree of control that the platform has over the service provided. In this regard, the concept of control must be further clarified, especially when it comes to the collaborative economy and for the purpose of establishing employer status for online platforms providing services through individual providers of labour (see our reply to Question 7 in this Chapter).

**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 current boundaries between duties of care, filtering and general monitoring are not clear. The prohibition of a monitoring obligations is a key provision for the protection of the right of freedom of expression, personal data and privacy, although some aspects might need clarification. Conducting content monitoring and filtering with automatic tools would have inevitable detrimental effects on the right to freely share, access content online and to data protection and have technical drawbacks. Instead, clarification is needed regarding voluntary monitoring, specific monitoring and the use of the Good Samaritan protection. The law needs to define, harmonize and make mandatory the notice-and-action mechanism for the different types of content. The law can oblige intermediaries to verify the notified content, and notify or respond to the notifier or content uploader. Trade unions can make effective use of this mechanism to notify an intermediary about potentially illegal content.

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

*5000 character(s) maximum*

In clarifying the liability of online platforms, it should be recognised that platforms exercising significant control and influence over users in their capacity as individual providers of labour should in fact be held liable not only as sellers of services, but also as employers in relation to workers working in the platform economy performing the physical services. This is in particular the case when the information society service provided by the platform is inherently linked to the provision of a physical service, as held by the CJEU in C-434/15 Uber, where the platform also exercised significant control over the conditions of the driver and the transport service in question. According to the Court "Uber exercises decisive influence over the conditions under which that service is provided by those drivers. On the latter point, it appears, inter alia, that Uber determines at least the maximum fare by means of the eponymous application, that the company receives that amount from the client before paying part of it to the non-professional driver of the vehicle, and that it exercises a certain control over the quality of the vehicles, the drivers and their conduct, which can, in some circumstances, result in their exclusion." (§ 39).

The concept of control and influence is decisive and should therefore be consolidated and further clarified. Control and influence resulting in the liability of platforms may take expressions such as: the service contract being concluded through the platform, including the terms and conditions set out therein as well as the price for the service and the pay obtained by the labour provider; the platform withholds the identity or contact details of the labour provider until the conclusion of the service contract; the marketing is focused on the platform rather than the labour provider; the payment for the service takes place through the platform, which also has the right to withhold payments and make deductions based on complaints; the platform monitors the conduct of the labour provider, including ratings and handling of complaints; labour providers are not able to contest reviews, complaints and compensations as these are handled by the platform; labour providers are not free to accept or decline tasks, or if they do so it will have an effect on their performance reviews and future tasks; etc.

The current disruptive model of platforms is based on the pressure on workers' rights while not respecting the legal obligations of employers, thus creating unfair competition with companies in the sectors in question. However, no additional or intermediary employment categories are needed or desirable to rectify this problem, as digital workers must not be considered as second-class workers. In order to ensure decent working conditions for all workers and a level playing-field between online and offline businesses providing

comparable services, the Digital Services Act should simply establish that platforms which largely determine the terms and conditions of engagement and provision of services should in fact be held liable as employers, with all the obligations this entails. However, it is not for the Digital Services Act or any ex ante legislation of platforms to define the conditions of workers working in the platform economy as this pertains to social policy and should be regulated by existing labour legislation and collective bargaining.

### 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?

									I don't
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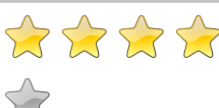

	Fully agree	Somewhat agree	Neither agree not disagree	Somewhat disagree	Fully disagree	know/ No reply
Consumers have sufficient choices and alternatives to the offerings from online platforms.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<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 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 type="radio"/>
Traditional businesses are increasingly dependent on a limited number of very large online platforms.	<input type="radio"/>	<input checked="" 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 to entry and expansion in the Single Market (gatekeepers).	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
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"/>	<input type="radio"/>	<input type="radio"/>	<input 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"/>	<input type="radio"/>	<input type="radio"/>	<input 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"/> <input checked="" type="radio"/> <input checked="" type="radio"/> <input checked="" type="radio"/> <input checked="" type="radio"/> <input type="radio"/>
Wide geographic coverage in the EU	<input checked="" type="radio"/> <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 type="radio"/> <input type="radio"/> <input type="radio"/> <input type="radio"/>
Impact on a certain sector	<input checked="" type="radio"/> <input checked="" type="radio"/> <input checked="" type="radio"/> <input checked="" type="radio"/> <input checked="" type="radio"/> <input checked="" type="radio"/>

They build on and exploit strong network effects	
They leverage their assets for entering new areas of activity	
They raise barriers to entry for competitors	
They accumulate valuable and diverse data and information	
There are very few, if any, alternative services available on the market	
Lock-in of users/consumers	
Other	

## 2 If you replied "other", please list

*3000 character(s) maximum*

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

*3000 character(s) maximum*

Different online platforms offer different kinds of services, whereby some of the services remain pure information society services, whereas other services take physical expressions in a given sector of the traditional economy. The main features of a gatekeeper may therefore vary depending on whether the services offered by the platform take the expression of a search engine, market place or the provision of labour intensive services.

The size of the platform, be it in terms of geographic coverage, market share or turn-over may be relevant, but is not necessarily decisive for whether it can act as a gatekeeper. It is rather the behaviour of the platform which creates negative impacts on the market and on fair competition. Digitalisation and data easily allows for economies of scale. E.g. also an SME in terms of size may have a large user base and possess big quantities of data, which may potentially be used in an anti-competitive way. Consequently, it is important that the regulatory framework does not open up for SME exceptions. When it comes to e.g. platforms providing labour intensive services, it is important that relevant existing rules apply equally across the board for both online and offline services, in order to not distort fair competition in a given sector, be it local,

national or European.

As regards the lock-in effects, the use of algorithms and customer ratings tends to tie workers to specific platforms, which seems contrary to the spirit of freedom and entrepreneurialism embedded in the platform economy. Similarly, platforms may penalise workers who are simultaneously active on multiple platforms in search for the gig which offers the best terms. Ratings should therefore be portable, allowing workers to move between platforms and deploy their skills as and when necessary, receiving adequate compensation and recognition for past work. This seems like an appropriate regulatory response to an otherwise precarious position. In terms of regulatory design, General Data Protection Regulation should be treated as a starting point, which requires personal 'data portability'. Portable ratings could operate along similar lines, with standardised metrics accounting for experience, customer friendliness and work quality.

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*

Digital platforms may exercise control not only in the market (between platforms and companies) but also over individual providers of labour (within the platform), by dictating their working conditions. These workers working in the platform economy find themselves in a dependent relationship, which is further exacerbated as the platform comes to dominate a certain market. The platform may exercise control and dominance by defining the price of the service, working arrangements, assigning clients, managing ratings and algorithms, handling payments and complaints including price reductions, disconnecting or deactivating undesirable workers working in the platform economy, placing bans on using similar platforms in parallel, etc. These kinds of platform behaviours in fact constitute vertical restrictions to competition, while at the same time allowing platforms to avoid employer responsibility.

## 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*

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*

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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*

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

*3000 character(s) maximum*

*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*

Platform do not recognise their obligations as employers, although they exercise considerable control and influence over workers working in the platform economy. This arrangement leaves workers working in the platform economy in a vulnerable position without labour rights and social protection. Furthermore, this artificial arrangement to a large extent unrightfully shifts the economic risks from the platforms to the workers working in the platform economy. As a result, workers working in the platform economy find themselves in a vulnerable situation also in terms of civil liability and insurance. For example, in the specific case of platform companies in the transport and delivery sectors, platform companies should be liable in the event of accidents involving their workers.

In terms of data collection and use, the consent of workers is not properly informed, as information is often hidden or difficult to access, or actualisation of apps set tracing application as default option. Workers must receive clear and transparent information of the purpose and the use of the collection of their data. Collection of workers' data must be done in consultation with and participation of the trade union representatives.

Algorithmic management create and reinforce discrimination. Algorithms are by no means neutral, but reflect the biases of their developers which is exacerbated by the processing of the data collected through machine-learning. The discrimination which is reproduced in a set of data will reproduce the same behaviour by the algorithm and the decision will be wrongly understood as objective algorithmic results.

In the context of the platform economy, the use of ratings and reviews fuel algorithmic decision-making. These evaluations are based on personal perceptions and therefore subjective. Based on these biases, the behaviour of the algorithm may reproduce this discriminatory behaviour and enhance the prejudgment towards certain categories of workers (ethnic groups, women, etcetera). Consequently, discriminatory behaviour of consumers can also be reproduced by the algorithm of the platform when acting in its capacity as employer. In this sense, platforms should be held liable to tackle this kind of discrimination arising towards their workers.

Whilst consumers can rate workers, the opposite is not always the case – or even if a rating is collected, it is not always made available to workers. Unscrupulous platform users can take advantage of this information asymmetry, for example by refusing to pay for or withhold part of the payment of already completed tasks on quality grounds. The use of rating and reviews may result in lock-in effects since they cannot be transferred from one platform to another. Bad ratings or reviews can also result in the suspension of a workers working in the platform economy based on arbitrary grounds, without any possibility to contest or scrutiny a one-sided decision. It must be ensured that workers have access to redress mechanisms and that they are able to transfer ratings and avoid an arbitrary suspension.

## 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*

Exclusive platform ownership of data, coupled with lacking transparency and access to data, not only obstructs effective regulation of anti-competitive market behaviour but also undermines worker agency.

The first fundamental principle in the 'Declaration of Philadelphia' of the International Labour Organization (ILO), is that "labour is not a commodity". Workers' rights and working conditions stem from this principle. When it comes to this regard, AI and data strategies, workers' data and workers' privacy are not a commodity either. Such data should not be extracted and processed for business profit or for any other commercial use.

Currently, tracing applications barely provide for the necessary security, in particular in terms of anonymisation and pseudonimisation of the data collected and stored and access to it. Therefore, security of data storage and access is key. The EU and the Member States need to remain in control. It should be technically feasible and secure to ask an organisation to transfer the individual's personal data to another organisation, or to receive the data in an interoperable format. By doing this, individuals should get control over their data and organisations should demonstrate their compliance with EU data protection and privacy rules. Appropriate and effective sanctions should deter from any violations of data protection rules.

The consent of workers is not properly informed, as information is often hidden or difficult to access, or actualisation of apps set tracing application as default option. Workers must receive clear and transparent information of the purpose and the use of the collection of their data. Collection of workers' data must be done in consultation with and participation of the trade union representatives. The Data Protection Officers should be informed. Workers must be able to make a free and voluntary decision. Through collective bargaining, workers have the right to access and to determine how their data is used.

Data access, storage and processing compliance with GDPR is key and should be fully guaranteed also in the context of platforms. This is particularly true when it comes to the exercise of unambiguous and informed consent but also the right to access information on digital platforms and AI applications: the right to rectification, the right to erasure (thus extending "the right to be forgotten" to the work environment), the right to restrict processing, the right to data portability (as transferring the personal data of a worker can be of particular interest in certain contexts, as ratings), the right to object (request ceasing of processing of the personal data of a worker) and the right not to be subject to a decision based solely on automated processing.

The Commission's standpoint, when claiming that individuals allow the use of the data they generate on the basis of explicit and unambiguous consent, is controversial. Situations such as data collection (not least in the light of the coronavirus spread) where consent is based on opting out of a system, or practically inexistent or "forced", have proven the contrary. In addition, risks brought by biased and malicious management of data cover potential issues of discrimination, unfair practices and "lock-in effects" and cybersecurity threats. It should be reminded that non-discrimination is a fundamental right to be complied with.

The Commission's data strategy calls for the establishment of mechanisms to make it easier for individuals to allow the use of the data they generate for the public good, a concept that the strategy refers to as "data altruism". The fact, that such data may be pursued for commercial purposes raises concerns about potential violation of privacy and surveillance, mostly in vulnerable situations like the employment relationship. Additionally, traffic data generated by private mobility platforms should be made available to public authorities in order to enhance urban mobility planning. The data generated and gathered by public authorities should be in turn granted only to the mobility platforms that are compliant with the existing legal requirements (labour regulations, taxation, licensing, etc.).

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

*3000 character(s) maximum*

Digital platforms do not merely connect supply and demand between clients and service providers or act as enablers of entrepreneurs. Rather, experience shows that the control and market power exercised by these platforms often result in labour exploitation, labour market power abuse and unfair competition in both the online and offline economy.

Such employer monopsony effects may result in a downwards pressure on working conditions in the digital as well as traditional economy. Workers working in the platform economy often find themselves in a vulnerable situation and are not necessarily able to switch to a different platform (e.g. because of lack of competition, lock-in effects or restrictions placed by the platform). Due to their personal circumstances these workers may also struggle to find an alternative job outside the platform economy.

Anti-competitive practices of digital platforms must not be considered in a vacuum but in relation to other platforms as well as in relation to relevant sectors of the traditional economy. If digitally enabled end-services take physical expressions (e.g. transport services), possible abuses of dominance of the enabling platform must be considered also in relation to physical competitors delivering comparable concrete services.

As a result of the lack of targeted regulation as well as the lack of a level playing-field between comparable online and offline services, platforms may build their competitiveness on lower standards rather than competing based on quality services and innovation. The innovative nature of a business model cannot lie in the fact that platform can operate in a regulatory vacuum without obligations.

In the absence of market competition and regulation, platforms are allowed to implement unfair internal policies, controlling e.g. the conditions and remunerations of a dependent workforce. By claiming that workers working in the platform economy are self-employed, platforms economise on taxes and outcompete traditional firms operating with employed labour, thereby carrying a bigger share of the economic risk of the business.

In order to reduce platform control in the market, targeted regulation of platform must address not only competition issues between platforms but also labour related concerns within platforms, so as to introduce limits and liabilities as regards both types of powers and controls exercised by platforms. Platforms must be attributed employer obligations, in order to enable worker agency and ensure fair competition in the relevant service markets (online/offline) as well as in the labour market. Nevertheless, the Regulation to protect workers working in the platform economy should rest under and be elaborated by the relevant competent Cabinet/DG on Jobs and social rights.

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*

In accordance with the International Labour Organisation (ILO) Convention on Freedom of Association and Protection of the Right to Organise (Convention 87), in most European states, trade unions have the right to recruit and represent non-standard workers. However, some platform companies challenge the collective organisation of workers working in the platform economy by exerting varying degrees of resistance, especially those exercising a gatekeeper role in the market. This behaviour ranges from downright refusal to engage to more subtle mechanisms, such as the questioning of existing frameworks and the organisation of alternative mechanisms of worker representation . As previously mentioned, there are also reports of cases where workers have been “disconnected” from the platform as a result of having joined a union or organised workers on the platform. Regulation to protect workers working in the platform economy should rest under and be elaborated by the relevant competent Cabinet/DG on Jobs and social rights.

As described above in question 11 of this section, the control and abuse of market power exercised by platforms may put a downward pressure of working conditions of workers performing comparable tasks in the traditional economy, as well as make it more difficult for physical competitors to enter the relevant sector. Alternatively, platforms may exercise their dominance to push existing companies, be they physical or digital, out of the market due to the lack of a level playing-field as regards applicable rules and obligations. Regulation to protect workers working in the platform economy should rest under and be elaborated by the relevant competent Cabinet/DG on Jobs and social rights.

Additionally, any solutions should be governed by public authorities. Leaving their implementation to the market (private mobility platforms) could lead to discriminatory behaviours, with mobility platforms acting as gatekeepers. Therefore the roles and responsibilities of MaaS platform operators, as well as mobility service providers, need to be clearly established. The access to a MaaS platform should be granted only to the mobility platforms that comply with all the legal requirements.

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*

## **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 lack of regulation allow digital platforms to act as gatekeepers and thereby engage in abuse of their dominant position, not only in regard to other digital platforms but also in relation to physical service providers offering comparable services directly in the traditional market, but also in relation to the workers active on the platform. In order to ensure a level playing-field, existing regulation must apply equally to digital platforms and physical services, when the end-services are comparable. This must also include labour legislation, social protection, access to collective bargaining and protection under applicable collective agreements.

The competitive advantage of digital platforms cannot be built on the fact that rules which apply to comparable services delivered directly through service providers in the traditional market would not apply to platforms. Innovation cannot justify abuse of dominance or exploitation, be it in the service market or labour market. Digital markets are not separate markets, but deeply intertwined with the traditional economy. Separate rules for digital platforms providing comparable services cannot be justified. The legislator should ensure that platforms who are not able to comply with existing rules are not allowed to lawfully operate and compete.

In order to prevent abuses of power between platforms and companies in the market, existing competition rules must be properly enforced. Dedicated regulation is also needed to address the specific issues that pertain to competition in a digital environment. However, regulation of competition is not enough to effectively also address abuses of power within platforms, which can only be remedied by ensuring the effective application and enforcement of existing labour legislation, recognising platforms as employers with all the obligations this entails. However, it is not for the Digital Services Act or any ex ante legislation of platforms to define the conditions of workers working in the platform economy as this pertains to social policy considerations. Regulation to protect workers working in the platform economy should rest under and be elaborated by the relevant competent DG on Jobs and social rights.

Dedicated ex ante regulation is necessitated by the dominance digital giants exercise on the economy, democracy, politics and our societies. Such regulation must address abusive behaviours of platforms across different policy areas. E.g. it must limit the exploitation of personal data for commercial purposes. The use of data must also be connected to tax regulation, ensuring that taxes are paid where the data-based profit is generated. Similarly, the use of data must be thoroughly considered when examining the behaviours of platforms in the use of competition law. Dedicated rules must apply equally to all platforms and companies pursuing business in the EU, in order to prevent unfair international competition and European dependency on foreign digital giants.

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*

In order to ensure fair competition between digital platforms, regulatory action in the field of competition is required to address abuses of a dominant position resulting in vertical restrictions of competitions. Examples of abusive behaviours which should be forbidden include e.g. the absence of portability of ratings, limitations for users to operate simultaneously on similar platforms, or different kinds of exclusionary practices. Similarly, predatory practices whereby services are offered at artificially low prices in order to establish themselves in a new geographical area or new service sector should be prohibited.

Platforms also abuse their dominant position by claiming that the services they sell are provided by independent contractors rather than workers working in the platform economy. Still, the platforms define the conditions and working arrangements of these individual providers of labour, supervising their behaviour and performances, setting prices and remuneration and allocating clients. Consequently, such practices could be comparable to vertical restrictions of competition. However, power abuses within the platform cannot be remedied by competition law (as opposed to abuses between platforms) alone, but requires effective application and enforcement of existing labour legislation, ensuring decent working conditions offline as well as online. For this purpose it must be possible to recognise platforms as employers.

In addition, any digital solutions aimed at providing public services (e.g. MaaS) should be governed by public authorities. Leaving their implementation to the market (private platform providers) could lead to discriminatory behaviours, with private platforms acting as gatekeepers. Therefore the roles and responsibilities of the platform operators, as well as online service providers in case of intermediary platforms, need to be clearly established. The access to an online platform should be granted only to the online service providers that comply with all the legal requirements.

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*

As explained above in question 4, power abuses within a platform providing labour intensive services cannot effectively be remedied by competition law alone, but platforms exercising considerable control and influence over their workforce must be considered employers with all the obligations this entails.

The current model of platform companies is based on the pressure on workers' rights while not respecting the legal obligations of employers, thus creating unfair competition with other companies in the sectors in question. The architecture of digital platforms draw their competitive advantage from the commodification of labour, resulting in an increased control of the conditions under which the workers working in the platform economy perform their tasks. Characteristics such as their instantaneous substitutability shifts the economic risk from the platform to the worker, thereby exacerbating their precarious situation.

Some platform companies tend to identify themselves as a provider of a digital match-making service rather

than as an employer and the person or company that wants work as a customer. However, how the parties identify themselves is of less importance. If an employment relationship is determined, the employer cannot evade legal obligations. Whether there is an employment relationship or self-employment and when someone can be categorized as a worker or employer should be determined based on the actual conditions. In some cases, it might be the platform, in others it might be the actual user of the work, the service buyer. Moreover, compliance with labour, tax, licencing regulations should be proven by online platforms in order to be able to access data gathered by public authorities or solutions such as MaaS platforms.

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*

An independent public authority could be dedicated to the monitoring of AI technologies and should address the specificities of the workplace. Such authority could be equipped with regulatory powers and trade unions should be significantly represented in its decision-making bodies. The idea of an EU Agency on AI would be innovative. However, ETUC would prefer to opt for the existing EU bodies and complement their mandate with AI related dimension, in coordination with dedicated national authorities.

As regards digital platform companies providing labour intensive services, the labour inspectorates at national level and the European Labour Authority (ELA) should be involved to guarantee the effective enforcement also when it comes to the compliance of platform companies with relevant labour legislation. ELA should play a role in guaranteeing the coordination of social security systems and combating fraud and undeclared work also with regard to platforms.

Regulation to protect workers working in the platform economy should rest under and be elaborated by the relevant competent Cabinet/DG on Jobs and social rights.

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*

With regard to digital platforms, the direction, control and influence exercised by the platform company towards the workers may differ from the traditional way as it is mediated via a digital tool, the platform. What matters is not the intention of the company, but the actual design of the employment relationship. A presumption of employment status should be the starting point. A worker who performs work under the same conditions as traditionally employed workers should be classified as such according to the definitions used in the respective industrial relation systems.

As pointed in the answer to question 6, whether there is an employment relationship or self-employment and when someone can be categorised as a worker or employer should be determined based on the actual conditions. In some cases, it might be the platform, in others it might be the actual user of the work, the service buyer.

However, it is not for the Digital Services Act or any ex ante legislation on platforms to define the conditions of workers working in the platform economy as this pertains to social policy and should be regulated by existing labour legislation and collective bargaining.

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 the answer to the question 8.

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 the answer to the question 8.

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*

Digital platform companies should observe the applicable regulations which appertain to the specific sector in which they operate. European case law (C-434/15 Uber) has already ruled that platform companies providing labour intensive services should be regarded as e.g. transport companies (and not digital information society service companies) and therefore they should abide to the existing legal responsibilities at European and national level, including the respective collective agreement which regulates working conditions of its workers.

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*

Both. As outlined above in our replies to questions 4 and 6, competition regulation is needed to address power abuses between platforms, whereas internal power abuses within the platform can only be addressed by ensuring the applicability and enforcement of existing labour and social legislation.

Firstly, in economic terms, ensuring fair competition and the application of homogeneous rules for platforms throughout the EU would equally serve businesses and workers, providing legal predictability and certainty and a sound level playing field for all.

Secondly, as regards the expected social effects, the possibility to recognise a platform as an employer would improve the working conditions of workers of digital platforms by guaranteeing fundamental rights, labour rights (including those laid down in the applicable sectoral agreement) and access to social protection. However, it is not for the Digital Services Act or any ex ante legislation of platforms to define the conditions of workers working in the platform economy as this pertains to social policy considerations. Regulation to protect workers working in the platform economy should rest under and be elaborated by the relevant competent Cabinet/DG on Jobs and social rights.

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*

Improved transparency and access to data is crucial in increasing worker agency and democratisation of AI and data governance within platforms. By increasing the bargaining power of workers in relation to the platform, the risk of dominance of the platform will also be mitigated.

Trade unions must play a significant role in the new governance of data and AI and the EC must ensure that GDPR rights are fully guaranteed in the employment context. This is particularly true when it comes to the exercise of unambiguous and informed consent but also the right to access information on AI applications, the right to rectification, the right to erasure (thus extending "the right to be forgotten" to the work environment), the right to restrict processing, the right to data portability (as transferring the personal data of

a worker can be of particular interest in certain contexts, as ratings), the right to object (request ceasing of processing of the personal data of a worker) and the right not to be subject to a decision based solely on automated processing". Another point which may be worth mentioning is data interoperability, which is hindered by big platforms.

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

*3000 character(s) maximum*

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

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

20 If other, please specify

*3000 character(s) maximum*

Cooperation with national labour inspectorates, including with the support of the European Labour Authority is crucial in strengthening the employer obligations of platforms and labour rights of workers working in the platform economy, combatting false self-employment, undeclared work and social dumping.

The EU Fundamental Rights Agency has dedicated a large range of its activities to data protection. However, little to no attention is given to workers' data protection and AI applications at work. In order to ensure a fundamental rights based approach to the regulation of digital platforms, the FRA should be mandated to deal with AI, with a focus on labour related aspects.

Regulation to protect workers working in the platform economy should rest under and be elaborated by the relevant competent Cabinet/DG on Jobs and social rights.

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

*3000 character(s) maximum*

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

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

23 Other – please list

*3000 character(s) maximum*

Labour inspections controlling the conditions of workers on the platform, including making sure that false self-employment is not used as a way of platforms to evade employer obligations. Similarly, it must be ensured that trade unions are able to reach out to workers working in the platform economy to organise and safeguard their working conditions and detecting abuse.

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 type="radio"/>	<input checked="" 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 checked="" type="radio"/>	<input 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 checked="" type="radio"/>	<input 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 checked="" type="radio"/>	<input 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 outlined above in our replies to questions 4 and 6, competition regulation is needed to address power abuses between platforms, whereas internal power abuses within the platform can only be effectively addressed by ensuring the applicability and enforcement of existing labour and social legislation. Competition regulation should apply across the board, ensuring fair competition between all types of online platforms. In order to ensure a level playing-field between the digital and the traditional economy, regulation should ensure that digital platforms providing services which take physical expressions (e.g. transport services) are bound by the same relevant rules as physical companies providing comparable services. As regards labour intensive services, more of a case-by-case approach with regard to the specific circumstances may be needed to identify the platforms which exercise considerable control and influence over their workforce, and thereby should qualify as employers with all the obligations that this entails under existing labour and social legislation. All rules should apply equally regardless of the size of the platform. For this purpose it must be possible to recognise platforms as employers. Nevertheless, it is not for the Digital Services Act or any ex ante legislation of platforms to define the conditions of workers working in the platform economy as this pertains to social policy considerations. Regulation to protect workers working in the platform economy should rest under and be elaborated by the relevant competent Cabinet/DG on Jobs and social rights.

27 Are there other points you would like to raise?

*3000 character(s) maximum*

As will be developed in Chapter V below, competition rules currently constitute an obstacle to collective bargaining for workers working in the platform economy and other non-standard workers, including self-employed workers. Safeguarding the fundamental right to collective bargaining for all, by clarifying that it falls completely outside the scope of competition law, will rebalance the internal power relations in platform companies, and consequently also have a calibrating effect on the dominant position in the market.

## 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*

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?

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 checked="" 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 checked="" type="radio"/>	<input type="radio"/>
Transparency on remuneration	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" 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 checked="" type="radio"/>	<input type="radio"/>
Transparency in online ratings	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" 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"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Tackling the issue of work carried out by individuals lacking legal permits	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Prevention of discrimination of individuals providing services through platforms, for instance based on gender, racial or ethnic origin	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Allocation of liability in case of damage	<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 checked="" type="radio"/>	<input type="radio"/>

33 Please explain the issues that you encounter or perceive.

*3000 character(s) maximum*

For the purpose of improving the conditions of workers working in the platform economy, the DSA is the wrong instrument/vehicle to enquiry on workplace related issues, in particular as there is no legal base for the lead DG (DG competition) to carry on public consultation on such issues. According to the TFEU, social policy chapter, the Commission should consult the European social partners. Any issue aiming at protecting workers working in the platform economy should rest under and be elaborated by the relevant competent Cabinet/DG on Jobs and social rights.

In addition to the issues mentioned above, the list should include the fundamental issue, which is the misclassification of platform workers active in ride-hailing and food delivery sectors. Management control used by the platforms, such as rating the performance of drivers/riders, arbitrary assignment of work and deactivation, no access or transferability of data for the workers clearly indicates subordination to employer's (platform) authority. Following this, the issue of social security should also be mentioned. Social security coverage should be granted to all workers, despite of their employment status. The COVID-19 crisis has highlighted the issue of platform workers forced into self-employment status that cannot benefit from unemployment benefits or sick leave.

Another issue that should be dealt with is the question of the vehicle operating and/or leasing costs that are covered by the workers.

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*

The question is not clear: do the offline services mean the physical services provided through platforms (such as Uber) and services offered through platforms mean freelance services, such as IT services? If yes, there is indeed a difference between these two categories of workers. The workers of ride hailing/delivery platforms perform physical job that have been existing for decades, their autonomy is limited. They are therefore what we could call 'traditional workers'. In addition, due to the low entry requirements, the earnings oscillate towards the lower end, which also distinguishes them from online freelance work. Online freelancers perform tasks for (usually) different clients that are often project based. Although these individuals are also at risk of precariousness, they have usually bigger autonomy in performing their tasks.

However, if the questions aims at comparing platform workers (e.g. Uber drivers) with the workers providing equivalent services without the use of platforms (e.g. taxi drivers), then yes, they face similar challenges, such as working conditions, low pay, precariousness, bogus self-employment. Only certain issues related to ratings, data protection and AI are limited to platform workers. They might however become relevant for the 'offline workers' as well, as the use of technology is becoming more prevalent also in their sectors. Hence, although the issues faced by the two groups are similar, the platform workers are not recognised and protected by the labour law.

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*



For the purpose of improving the conditions of workers working in the platform economy, the DSA is the wrong instrument/vehicle to enquire on workplace related issues, in particular as there is no legal base for the lead DG (DG competition) to carry on public consultation on such issues. According to the TFEU, social policy chapter, the Commission should consult the European social partners. Any issue aiming at protecting workers working in the platform economy should rest under and be elaborated by the relevant competent Cabinet/DG on Jobs and social rights.

The proliferation of contractual arrangements in the labour market shed light on a growing number of labour relations between workers and employers being configured into relations between self-employed service providers and companies as customers, often with the express aim of avoiding contracts of employment under labour law, or of shifting risk from the employer to the labour provider. Digital platforms represent a clear example of this kind of anti-competitive practice, which must be remedied. Such business models are developing in a legal vacuum, exacerbating inequalities, in-work poverty, social and economic exclusion, marginalising a large range of the population with dramatic long-term consequences in terms of non-access to social protection and social security, collective representations of workers, to name but a few.

Firstly, workers working in the platform economy must be afforded equal protection to that of workers under labour law. Platforms must be legally recognised as employers with all the obligations this entails. Not affording workers working in the platform economy effective protection puts workers working in the platform economy in a particularly vulnerable position while giving platforms unfair competitive advantages. However, no additional or intermediate categories of employment are neither needed nor desirable to remedy this problem. Workers working in the platform economy cannot be isolated or treated differently from other workers by being granted more limited rights or less protection.

Secondly, collective agreements must be considered to fall completely outside the scope of competition law, regardless of whether they protect workers, self-employed or other non-standard workers, including workers working in the platform economy. Collective bargaining is a universal human rights for all. Article 28 of the EU Charter of Fundamental Rights states that 'Workers and employers, or their respective organisations, have, in accordance with Union law and national laws and practices, the right to negotiate and conclude collective agreements at the appropriate levels'.

### 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*

With regards to the drivers/delivery riders: in certain EU member states it is not possible for independent workers to organise, as it is treated as cartel-like behaviour. As platforms maintain that they are not employers in order to avoid complying with labour regulations, the consequence for their workers is that they often cannot organise. In certain cases (delivery riders) were dismissed for their attempts to organise. It will be therefore essential to regulate this situation first. Self-employed workers and other non-standard workers, including those working in the platform economy, and represented by a trade union in bargaining collective agreements, must not be considered undertakings under competition law when acting as economic units



within an undertaking rather than as undertakings in themselves.  
Additionally, workers need to access the company data in order to strengthen their position.

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

*3000 character(s) maximum*

As mentioned above, treatment of organising attempts as cartels, classification of workers as independent contractors, anti-union behaviour of platforms, lack of transparency.

Regarding the organising rights of self-employed workers: there appear to be 11 states (Austria, Belgium, Denmark, France, Germany, Italy, Netherlands, Serbia, Spain, Sweden and the UK) where collective bargaining or some other form of union involvement is used, or has been used recently, to set self-employed workers' terms and conditions. In a 12th state, Ireland, the right to negotiate was restored in 2017. There are two main approaches to collective bargaining for the self-employed. It can be limited to specified occupations /sectors, like journalists or actors, or it can be limited to those who are defined as being "economically dependent", although the two approaches are not mutually exclusive.

However, none of these two approaches succeed in fully and effectively guaranteeing the fundamental right to collective bargaining for all. Any kind of exception under competition laws which would limit the right to collective bargaining to only certain categories of workers or make certain collective agreements subject to approval by National Competition Authorities undermines fundamental rights, fair conditions and the autonomy of social partners.

What is decisive in guaranteeing access to collective bargaining for workers, self-employed and other non-standard workers, including workers working in the platform economy, is not whether they belong to a certain professional group or whether they can be characterised as dependent or vulnerable or not, but rather whether they (through their trade union) have a counter-part with whom they can bargain collectively as part of genuine social dialogue.

Rather than taking an approach where collective bargaining is guaranteed only for some but not for all, by attempting to identify those who "need" to be able to enjoy protection under collective agreements, the European Commission should use the Digital Services Act to recognise digital platforms as employers, thus attributing them the same obligations as traditional companies operating in the same sector, but also making them legitimate actors to engage in collective bargaining with trade unions representing workers working in the platform economy.

### 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 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 type="radio"/>	<input type="radio"/>	<input checked="" 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 type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Coordination and technical assistance at EU level	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
An EU-level authority	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" 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 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 checked="" type="radio"/>	<input type="radio"/>

### 3 Please explain

*5000 character(s) maximum*

For digital services take the expression of physical services, and for which the principle of destination rather than the country of origin therefore applies, other authorities tasked with supervision of physical services should be involved. When it comes to digital labour platform companies, this involved the labour inspectorate at national level and the European Labour Authority (ELA) for digital platforms operating in more than one European country. ELA should play a role in guaranteeing the coordination of social security systems and combating fraud and undeclared work. Also, the Fundamental Rights Agency (FRA) could be mandated to enforce European antidiscrimination legislation in digital platforms.

### 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*

The DSA should not alter the scope of the Services Directive, and the principle of control of the country of delivery should remain the unconditional rule for the provision of physical services, as well as when information society services take physical expression in the host Member State. Also, digital services that are inherently linked to the provision of a physical service should not be considered as an information society service, but rather as a tool facilitating the provision of a physical service. They should thus be bound by the rules regulating the physical service in question.

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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*

Yes, regardless the number of user and the turnover of the platform in the EU.

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*

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*

Relevant European agencies could play a coordination role and as stated in our answers for questions 3 and 5. The Fundamental Rights Agency could be given a reinforced mandate to prosecute discriminatory practices of digital platforms, and the European Labour Authority should play a role in guaranteeing the coordination of social security systems and combating fraud and undeclared work in these platforms.

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*

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.

## 1 Upload file

The maximum file size is 1 MB

Only files of the type pdf,txt,doc,docx,odt,rtf are allowed

**d6af1d30-5b6f-41f3-a76b-f2548d841921/ETF\_comments\_EU\_Digital\_Services\_Act.pdf**

## 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](#)

[\(ES\) Glosario](#)

[\(ET\) Snastik](#)

[\(FI\) Sanasto](#)

[\(FR\) Glossaire](#)

[\(HR\) Pojmovnik](#)

[\(HU\) Glosszrium](#)

[\(IT\) Glossario](#)

[\(LT\) Žodynėlis](#)

[\(LV\) Glosārijs](#)

[\(MT\) Glossarju](#)

[\(NL\) Verklarende woordenlijst](#)

[\(PL\) Słowniczek](#)

[\(PT\) Glossrio](#)

[\(RO\) Glosar](#)

[\(SK\) Slovnk](#)

(SL) Glosar

(SV) Ordlista

## **Contact**

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