

# CCBE Responses to the “Digital Services Act package: open public consultation”

04/09/2020

## 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.

## This consultation

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

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

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

## Digital services and other terms used in the questionnaire

The questionnaire refers to **digital services** (or ‘information society services’, within the meaning of the E-Commerce Directive), as ‘services provided through electronic means, at a distance, at the request of the user’. It also refers more narrowly to a subset of digital services here termed **online intermediary services**.

By this we mean services such as internet access providers, cloud services, online platforms, messaging services, etc., i.e. services that generally transport or intermediate content, goods or services made available by third parties. Parts of the questionnaire specifically focus on **online platforms** – such as e-commerce marketplaces, search engines, app stores, online travel and accommodation platforms or mobility platforms and other collaborative economy platforms, etc. Other terms and other technical concepts are explained in a glossary.

## 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 subsection.

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

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#### A. Experiences and data on illegal activities online

##### Illegal content

11 Did you ever come across illegal content online (for example illegal incitement to violence, hatred or discrimination on any protected grounds such as race, ethnicity, gender or sexual orientation; child sexual abuse material; terrorist propaganda; defamation; content that infringes intellectual property rights, consumer law infringements)?

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

12 What measure did you take?

- I reported it to the platform via its existing reporting procedure

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

13 Please specify

On this part, we wonder what can be qualified as "illegal content", and in particular whether the Commission considers illegal activities, such as those carried out by persons who are not qualified to offer professional services online or who are subject to disciplinary sanctions (radiation) by a professional body but are still active on third party platforms (intermediation services).

As to the way to remove "illegal content" many issues may arise:

- The exact moment when the platform is made aware of the illegal content,
- the rapidity of reaction to remove the said content,
- the assessment of the term "illegal".

The European Commission could consider in any future rules to address those difficulties.

**2. Clarifying responsibilities for online platforms and other digital services**

1 What responsibilities (i.e. legal obligations) should be imposed on online platforms and under what conditions?

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

	Yes, by all online platforms, based on the activities they intermediate (e.g. content hosting, selling goods or services)	Yes, only by larger online platforms	Yes only platforms at particular risk of exposure to illegal activities by their users	Such measures should not be required by law
Maintain an effective 'notice and action' system for reporting illegal goods or content	●			
Maintain a system for assessing the risk of exposure to illegal goods or content	●			
Have content moderation teams, appropriately trained and resourced	●			
Systematically respond to requests from law enforcement authorities	●			
Cooperate with national authorities and law enforcement, in accordance with clear procedures	●			
Cooperate with trusted organisations with proven expertise that can report	●			

illegal activities for fast analysis ('trusted flaggers')				
Detect illegal content, goods or services				<input checked="" 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"/>			
Request professional users to identify themselves clearly ('know your customer' policy)	<input checked="" 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"/>			
Inform consumers when they become aware of product recalls or sales of illegal goods	<input checked="" type="radio"/>			
Cooperate with other online platforms for exchanging best practices, sharing information or tools to tackle illegal activities	<input checked="" type="radio"/>			
Be transparent about their content policies, measures and their effects	<input checked="" type="radio"/>			
Maintain an effective 'counter-notice' system for users whose goods or content is removed to dispute erroneous decisions	<input checked="" type="radio"/>			
Other, please specify	<input checked="" type="radio"/>			

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

We believe that online platforms should not have an obligation to actively detect illegal content, goods, or services, unless such content, goods or services are manifestly or obviously illegal.

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

The identification of the person or organisation who/ which sends the notification (the "Sender") is needed to (i) to know if the Sender has a real interest in the removal or a spurious one; and (ii) to assume the potential responsibilities arising from the removal of the content when such content finally is deemed lawful.

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

If after a suitable notice-and-takedown (NTD) procedure, the online platform allows the reappearance of illegal content, the online platforms should be held liable.

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?

We believe that such private entities should be entitled to ask the removal of the illegal content and, when requested by the public authorities, should cooperate in order to determine if the content in question is illegal. Obviously, public authorities must play a more active role in this regard.

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?

In our view, this question can be considered quite complicated since it is not clear what should be understood by “harm without illegality”. As a general rule, a person is not entitled to stop a harmful activity if such activity is not illegal. However, such an activity can be stopped on the basis of “extracontractual regulation” (such regulation may protect, for example, among other things, health – including mental health – honor, reputation, etc. provided that some requirements are met). Each Member State has its own regulation on extracontractual damage.

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.

Obviously, particular attention must be paid to protection of minors, which should be as high as possible. However, it should not be the primary task of the online platforms but the one of the (EU and/or national) legislators to determine what is/ should be forbidden in connection with the protection of minors.

For example, certain platforms (especially social networks) should be required to implement systems that allow for the verification of the age of minors registered on their platforms, all for the purpose of checking whether or not the registration of the minor on these platforms is in accordance with the law.

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

	1 (not at all necessary)	2	3 (neutral)	4	5 (essential)	I don't know/ No answer
Transparently inform consumers about political advertising and sponsored content, in particular during election periods					●	
Provide users with tools to flag disinformation online and establishing transparent procedures for dealing with user complaints					●	

### 13 Please specify

It could be interesting to address systems for detecting illegal content on various internet platforms, mainly because, on many platforms, many of the algorithms dedicated to this function often wrongly confuse legal content (e.g. where a limit to intellectual property rights is applicable) with illegal content without remedying this issue, which can greatly restrict the rights and behaviour of the users of these platforms.

It should be reasonable to require platforms to indicate to Internet users that such content is suspicious, while not deleting it, and thus allowing its author to use his freedom of expression.

Platforms should also be required:

- to give citizens the technical means to report the circulation of false information and the existence of false accounts disseminating such information,
- and to establish transparent procedures for dealing with user complaints.

Moreover, platforms could be obliged to transparently inform users of political advertising and sponsored content, especially during elections.

Finally, it could be useful for online platforms to include warning tools.

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?

Online platforms should notify the relevant authorities (public and/or judicial) when a content may involve a systemic threat, so that the authorities would be able to carry out appropriate measures (if any). Moreover, the idea of creating a European alert platform could also be considered in this regard.

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

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

deployed for detecting, removing or demoting content or suspending users' accounts						
Enabling third party insight – e.g. by academics – of main content moderation systems	●					
Other. Please specify					●	

16 Please explain.


As an example, as regard the moderation carried out by platforms concerning lawyers' activities, we would like to stress that these platforms should not have the technical or contractual opportunity to violate the lawyer's freedom of speech.

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

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

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

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

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

The categories, as established in the E-Commerce Directive, are sufficiently clear and complete except when it comes to the active/passive nature of hosting services providers (HSPs) where further clarification would be needed (see the response to the next question).

The notion of « intermediation » could also be defined more precisely by considering questions such as the following: Where does intermediation begin and end? Where does the service itself begin? Does a platform constitute a real activity in itself?

Moreover, as a generic remark to the question of liability of platforms, the difficulty of creating a common liability regime for platforms in the framework of the Digital Services Act must be taken into account by the Commission. In light of the principle of equal treatment before law, it is important that all platforms will be

concerned (regardless their size or capacity): a specific regime/ or specific obligations could, however, be considered and imposed to platforms fulfilling certain predefined criteria (such as the GAFAM for example).

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?

Yes. It should be further clarified when the services provided will be considered 'passive' and thus qualified for the liability limitations provided for by the E-Commerce Directive.

In the L'Oréal v eBay Case (Judgement of 12 July 2011, Case C-324/09), the CJEU offered some guidance for the Member States when classifying the active/passive nature of hosting services providers (HSPs). Thus, the fact of receiving remuneration for the services provided, setting the users' terms and conditions, and/or providing general information regarding the services do not imply the existence of active services. By contrast, optimising the presentation of the offers or promoting such offers should be understood as an active role from the HSP which, therefore, cannot benefit from the liability limitations provided for in the E-Commerce Directive. In any case, the final decision as to the passive/active nature of an HSP is for the Member States to consider.

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.

Yes, especially when it comes to hosting services providers (HSP). The main issue is related to when it can be considered that the HSP has actual knowledge or is aware about the existence of an illegal content. The CJEU has not provided any definition or interpretation of the concept of 'actual knowledge' and, therefore, it is not clear what information shall be provided to the HSP in order to conclude that it has 'actual knowledge' about the existence of a given content. Regarding the concept of 'awareness', in the above-mentioned case, L'Oréal v eBay (2011), the CJEU applied the 'diligent economic operator' standard establishing that a HSP can be considered being aware of facts or circumstances from which the illegal content is apparent if a diligent economic operator should have identified the illegality in question. Again, it will be for the Member States to determine whether an HSP has acted as a diligent economic operator.

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.

Yes. However, as mentioned in the response to question 3, the difference between passive vs. active nature should be further clarified.

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.

Yes, the approach is still appropriate. However, the relevant question is if the Member States can establish not general monitoring obligations but specific obligations for specific sector or issues. If the answer is affirmative, the functioning of the internal market and the aim of establishing a unified policy for the online platforms in all the Member States might be put at risk.

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



Yes, when it comes to what can be considered an ‘expeditious’ removal in light of the e-Commerce Directive.

The CJEU has not provided any guidance as to the time limits which can be considered an ‘expeditious’ removal of the illegal content. Besides, the E-Commerce Directive only provides a general recommendation of implementing rapid and reliable procedures for the removal of illegal content (Recital 42) while taking into account the principle of freedom of speech (Recital 46). Therefore, it has been for the Member States to determine which specific procedures shall be followed for the effective removal of illegal content, if any. Most Member States have not adopted specific procedures, limiting themselves to implementing the general requirements set forth by the E-Commerce Directive on ‘actual knowledge/awareness’ and ‘expeditious’ removal. The E-Commerce Directive is, however, lacking of a pre-established notice-and-takedown (NTD) procedure which has generated heterogeneous national legislations, according to the study of the Council of Europe (2017) “Comparative study on blocking, filtering and take-down of illegal Internet content” (available at <https://edoc.coe.int/en/internet/7289-pdf-comparative-study-on-blocking-filtering-and-take-down-of-illegal-internet-content-.html>)

As a separate remark, another question to be considered, when reviewing the liability regimes of digital services acting as intermediaries, is the possible criminal responsibility of these platforms in case they do not respect the obligation to quickly remove the illegal content in question. Already considered but not adopted in the context of the Copyright Directive, it is, however, clear that the question is not an easy one, raising other questions, such as the creation of a general monitoring obligation for platforms.

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

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

The issues explored here do not refer to the selling of goods (e.g. online marketplaces) or the sharing of assets (e.g. sub-renting houses) through platforms.

***The following questions are targeting self-employed individuals offering services through online platforms.  
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 checked="" type="radio"/>
Flexibility of choosing when and /or where to provide services						<input checked="" type="radio"/>

Transparency on remuneration					●	
Measures to tackle non-payment of remuneration						●
Transparency in online ratings					●	
Ensuring that individuals providing services through platforms can contact each other and organise themselves for collective purposes					●	
Tackling the issue of work carried out by individuals lacking legal permits					●	
Prevention of discrimination of individuals providing services through platforms, for instance based on gender, racial or ethnic origin						●
Allocation of liability in case of damage						●
Other, please specify					●	

33 Please explain the issues that you encounter or perceive.

The CCBE has issued a guide on [lawyers' use of online legal platforms](#) (2018) which addresses certain issues when lawyers are providing services through platforms. Some issues are briefly explained below and are not necessarily specific to lawyers: they concern any professional who, or/and regulated profession which, may offer their services through third-party platforms.

- A main issue is the interference of the platform in the relationship between the lawyer (services provider) and its client affecting the services delivered by the lawyer. Such interference is even more problematic from a deontological point of view, if the platform intervenes in the lawyer-client relationship to an extent that undermines the lawyers' obligation of maintaining professional secrecy/ legal professional privilege with the client.

For example: The lawyers' obligation to secrecy is already violated if correspondence is exchanged with the client via the platform. The same applies if the platform monitors the activities of the lawyer, for example, to assess the quality of the lawyer's work - which also put his/ her independence at risk. Considering that all activities of the lawyer must be exclusively based on the needs of the client, it is also questionable if the platform offers itself as a mediator for possible disputes between the lawyer and the client (for example, if there is a dispute about the fee to be paid).

- Another issue is the accuracy of the information displayed through the platform providers, especially with "referral websites". This information must be clear and precise, indicating the professional title, and must never mislead the public about professional qualifications. Lawyers should also be able to check the basic business terms as to how they will connect to clients by a referral.
- Moreover, algorithms used for "referral" might influence the customer's choice on his/her lawyer since the platform may select and will turn into an assessment of lawyers' competence by the platforms. Moreover,

platforms can impose their terms of use upon their users including lawyers. If lawyers do not accept them, they will not be able to be referenced.

- Further improvements are needed when it comes to ratings because of the lack of adequate information and transparency regarding customer reviews. There are also several open questions, such as: Can the lawyer dispute a review made on his/her services (other than by writing a reply)? Is it ensured that only those customers can review the lawyer with whom they have worked with, and not e.g. the lawyer's opponent in a lawsuit? Does the platform in question moderate the reviews before they are published?
- Regarding the remuneration of services by the platform, more clarity is needed on what is being paid not only toward the consumers, but also toward the professionals. This is of particular relevance for lawyers considering the professional rules on sharing of fees.

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.

When services are provided in a traditional manner, lawyers ensure themselves the respect of their ethical obligations and professional rules. When services are provided through a platform, the situation becomes more complex. In such a situation, the lawyer relies on an intermediary to gain visibility, but loses part of the control of the relationship with his/her client. The professional obligations continue, however, to apply to lawyers when providing services through platforms, in comparison to third parties which are not bound by these rules.

- Standards set by platforms:

Platforms tend to exploit their strategic position by imposing their obligations and own rules on service providers that use them. From a lawyer's perspective, a conflict between the rules of the platform and the deontological rules of lawyers might, therefore, arise.

A relationship between a platform and the service providers using it might also transform into a relationship of dependence, resulting in a partial loss of independence. This phenomenon is particularly worrying for lawyers' independence and the relationship of trust which is the basis of their relationship with clients. When providing services through online platforms, it may prove to be more difficult for lawyers to comply with their professional rules, for example, when it comes to:

- Issues relating to advertising rules: there are rules on misleading and/or comparative advertising specific to the legal profession which might be affected for example, when lawyers are benefiting from the publicity carried out by the platform and this publicity does not comply with rules specific to the legal profession. Also, referral websites could be compared to comparative advertising, thus subject to specific rules.

In this regard, Article 8 of Directive 2000/31/EC contains a set of rules for regulated professions (see, in particular, paragraph 1). In the CCBE's view, it is of utmost importance to maintain this provision in any Directive replacing the Directive 2000/31/EC.

- Issues related to fees: Remuneration for the referral of business is prohibited by the professional rules of lawyers in most EU countries. The sharing of fees is likely to impair the independence of the lawyer, which is part of the service due to the client. The remuneration set by a platform can also be problematic from a deontological perspective when a service is advertised for free, or when a fee is paid to establish contacts with potential clients, the latter being often likened to fee sharing or referral fees.

- The use and re-use of data and how clients' data are being processed: A particular concern is that platforms rarely provide information about their policy on the possible reuse of data at their disposal, raising safety and reliability questions and possibly putting the lawyer at risk of non-compliance with the confidentiality of client's information.

40 Are there other points you would like to raise?

Yes.

- All these examples make it clear that commercial strategies of platforms usually do not take into account the ethical specificities of regulated professions, such as the legal profession. These rules are in place both in the interest of the protection of litigants and consumers of legal services and the protection of the general public, here especially the rule of law (This is also reflected in unfair competition practices, for example, see decision from the French court of appeal (CA Versailles, 12th chapter, Nov. 14, 2017, No. 16/03656) according to which a website of a commercial company owned by non-lawyers is considered as unfair competition to the prejudice of lawyers if it offers legal services).
- In general, and bearing in mind the examples given above, it is our conviction that the liability provisions of the E-Commerce directive have proven helpful and that no fundamental changes are required.

## 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).

14 Are there other points you would like to raise?

As to the governance of digital services warranting new regulatory intervention, one of the foremost questions is what kind of regulatory measures are needed and who will enforce these measures. Taking into account the recent regulatory initiatives of the Commission and the Parliament on Artificial Intelligence (AI) (and also, that of European data space), we consider important to emphasise that introduction of new powers and regulatory bodies should only be made as a last resort. Similar to issues of AI, digital services also encompass virtually every aspects of life, affecting not only specific enterprises, but every citizen of the EU, from birth to death.

There is no clear single competent authority in the EU that could address all the regulatory aspects listed in this questionnaire. Consumer protection bodies, competition or electronic communications law authorities, and trust services providers clearly do not have competence to cover all the problems related to an approach based on "digital services". Of course, ordinary courts do have jurisdiction and power to decide on these cases, but one

can hear ample of opinions from decisionmakers that recourse to courts is rarely able to solve problems that require short-term intervention.

Nevertheless, introducing new regulatory bodies either at EU level or at the level of the Member States to address problems of digital services would probably raise a lot more problems that it could hope to solve. We should not forget that mandating a centralised data protection authority in all Member States by the GDPR involved remapping core competencies of many authorities at national level – even if there were already data protection authorities in most Member States.

Therefore, introducing a centralised EU level authority for digital services would not decrease the number of cross-border issues, it would only make some existing problems more visible, affecting more people within a short timeframe, and making provision of digital service more costly. Even introducing a single new national authority for all Member States would necessarily create new regulatory problems for both services providers and consumers, due to changes in the competencies of different authorities and thus bringing new uncertainties into the market of digital services.

Merely creating new regulatory bodies with competencies that overlap with the competences of existing bodies would not provide a solution to the problems we are trying to solve. This also applies to the sector of digital services: a "regulatory body focused" approach will never be effective, even if called as an "agile approach to governance". Solutions to such digital regulatory problems require very detailed, coordinated work at the level of Member States as well, where providers, users and currently existing authorities of different competences have to first find a common ground. Appointment of new national regulatory bodies would not solve any such problems.