

Digital Services Act package: open public consultation

Fields marked with * are mandatory.

Introduction

The Commission recently [announced](#) a Digital Services Act package with two main pillars:

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

T h i s

c o n s u l t a t i o n

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

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

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

Digital services and other terms used in the questionnaire

- 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

Julian

* 4 Surname

SCHMÜCKER

* 5 Email (this won't be published)

j.schmucker@ebf.eu

* 7 Organisation name

255 character(s) maximum

European Banking Federation

* 8 Organisation size

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

9 What is the annual turnover of your company?

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

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

- Yes
- No

11 Would you describe your company as :

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

12 Is your organisation:

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

- other

16 Does your organisation play a role in:

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

17 Is your organisation a

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

18 Is your business established in the EU?

- Yes
- No

19 Please select the EU Member States where your organisation is established or currently has a legal representative in:

- Austria
- Belgium
- Bulgaria
- Croatia
- Cyprus
- Czechia
- Denmark
- Estonia

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

20 Transparency register number

255 character(s) maximum

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

4722660838-23

* 21 Country of origin

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

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

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

- Bosnia and Herzegovina
- Botswana
- Bouvet Island
- Brazil
- British Indian Ocean Territory
- British Virgin Islands
- Brunei
- Bulgaria

- Burkina Faso
- Burundi

- Cambodia

- Cameroon

- Canada
- Cape Verde
- Cayman Islands

- Central African Republic
- Chad
- Chile
- China

- Christmas Island
- Clipperton

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

- Nepal
- Netherlands
- New Caledonia
- New Zealand
- Nicaragua
- Niger
- Nigeria
- Niue

- Norfolk Island
- Northern Mariana Islands
- North Korea
- North Macedonia
- Norway
- Oman
- Pakistan
- Palau
- Palestine
- Panama
- Papua New Guinea
- Paraguay
- Peru

- Syria
- Taiwan
- Tajikistan
- Tanzania
- Thailand

- The Gambia
- Timor-Leste
- Togo

- Tokelau
- Tonga

- Trinidad and Tobago
- Tunisia

- Turkey
- Turkmenistan
- Turks and Caicos Islands
- Tuvalu

- Uganda
- Ukraine
- United Arab Emirates
- United Kingdom
- United States

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

*22 Publication privacy settings

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

Anonymous

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

Public

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

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

I. How to effectively keep users safer online?

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)	
---	---

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

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

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

- Yes
- No

8 Please explain

3000 character(s) maximum

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

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

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

5000 character(s) maximum

Illegal content

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

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

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

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

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

3000 character(s) maximum

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

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

3000 character(s) maximum

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

3 Please explain.

3000 character(s) maximum

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

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

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 EBF is of the opinion that the current framework creates asymmetries whereby some firms are acting as data gatekeepers, while others must share data with no reciprocity. Under the PSD2 framework, banks already share a very important part of their data (payment/transaction data i.e. part of the banks' core customer data). As the PSD2 requirements – to provide access to customer data – only apply to banks and mandate this access to be for free, this has created a significant competitive disadvantage for financial institutions, particularly with respect to firms that are able to combine PSD2 data with their own non-financial data sources. EBF members - although seeing partnerships as a valid way to gain access to some of the necessary data - doubt that a voluntary approach to reducing asymmetries in the access to data under a European framework would yield the benefits of a regulatory approach in the foreseeable future. We believe that only a cross-sectorial regulatory approach would unlock the real benefits of data cross-fertilization for the digital economy and call therefore upon the European Commission to take action in this area. The full benefits of any (further) expansion of data sharing can only be reaped if done on the basis of mutual benefits and a fair distribution of value across market players.

Another element important to stress is the concept of data usability. Data usability is often dependent on

standards that minimize costs of data transformation or normalization. But at the same time, it recognizes that the real value of data sharing can only be properly evaluated if one considers the aim of data use and data combinations that are happening. In some cases, two data sets can create a service that multiplies the value of the data originally used.

It appears essential to develop a framework with standardized secure communication mechanisms, such as APIs, along with robust authentication mechanisms (as in the PSD2 context) at cross-sectoral level. Furthermore, data access can be best controlled via technology standards such as APIs (controlling access rights, controlling opt-ins).

The following questions are open for all respondents.

2. Clarifying responsibilities for online platforms and other digital services

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

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

	Yes, by all online platforms, based on the activities they intermediate (e.g. content hosting, selling goods or services)	Yes, only by larger online platforms	Yes, only platforms at particular risk of exposure to illegal activities by their users	Such measures should not be required by law
Maintain an effective 'notice and action' system for reporting illegal goods or content	<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 type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Systematically respond to requests from law enforcement authorities	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Cooperate with national authorities and law enforcement, in accordance with clear procedures	<input 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 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 type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Request professional users to identify themselves clearly ('know your customer' policy)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Provide technical means allowing professional users to comply with their obligations (e.g. enable them to publish on the platform the pre-contractual information consumers need to receive in accordance with applicable consumer law)	<input type="radio"/>	<input 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 type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Be transparent about their content policies, measures and their effects	<input 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

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

Persons or organizations should be always identified, unless risks for their safety might arise.

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

New technologies, such as Artificial Intelligence, Big Data Analytics and Machine Learning are capable of detecting illegal content, goods or services and could significantly increase and accelerate the effectiveness of actions aimed at stopping or preventing illegal activities.

These technologies can provide great opportunities to enhance customer interaction and experience, improve cybersecurity and consumer protection, strengthen risk management and enhance the efficiency of service processes.

It is paramount that any further regulatory initiative can support the increasing adoption of those technologies, in alignment and in coherence with the other EC initiatives regarding emerging technology and innovation (in particular the activities on trustworthy AI).

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

Extraordinary situations, such as the recent crisis due to Covid-19, show an increased potential for fraudsters and actors with bad faith to approach business customers. In the case of the financial sector, fraudulent activities attempted to replicate banks' websites, deliberately using the crisis to their advantage (attempting to trigger consumer actions by abusing the fluctuant situation and peoples' insecurity at times). Fake websites were a main tool of this fraud. European banks see merit in the execution of removal measures targeting websites which host fraudulent content. In situations where cyber criminals try to gain credentials or to impersonate legitimate actors, anti-fraud measures should be available to the private sector and effected customers to initiate block or shut down of such websites, specifically if they replicate real websites of undertakings. We appreciate a strong involvement of the public sector to commonly fight such fraudulent actions by delivering the tools required for website removal.

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

5000 character(s) maximum

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

5000 character(s) maximum

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"/>					
Other (please specify)	<input type="radio"/>					

13 Please specify

3000 character(s) maximum

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

3000 character(s) maximum

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

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

16 Please explain.

3000 character(s) maximum

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

5000 character(s) maximum

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

5000 character(s) maximum

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

Considering that systems such as algorithmic recommender (or more in general automated decision system) are commonly developed leveraging Artificial Intelligence paradigms, it is important to assess whether the AI system that is being deployed, procured or used, adheres to the basic principle for a Trustworthy AI. We

welcome the European Commission's ongoing workstream on AI, with financial institutions providing necessary input, e.g. as part of the past AI White Paper consultation.

Furthermore, Art 22 GDPR is essential, stating that the data subject shall have the right not to be subject to a decision based solely on automated processing, including profiling, which produces legal effects concerning him or her or similarly significantly affects him or her.

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

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

Two measures could provide some effective sanction effect:

1. Closure of the website/marketplace, executed timely in light of the detrimental effect by the systematic failure
2. Application of penalty fees (either stand-alone or in combination with the closure)

24 Are there other points you would like to raise?

3000 character(s) maximum

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

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

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

3 Are there aspects that require further legal clarification?

5000 character(s) maximum

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

5000 character(s) maximum

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

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

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

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

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

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

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

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

In parallel, the Commission is also engaged in a process of reviewing EU competition rules and ensuring they are fit for the modern economy and the digital age. As part of that process, the Commission has launched a consultation on the proposal for a New Competition Tool aimed at addressing the gaps

identified in enforcing competition rules. The initiative intends to address as specific objectives the structural competition problems that prevent markets from functioning properly and that can tilt the level playing field in favour of only a few market players. This could cover certain digital or digitally-enabled markets, as identified in the report by the Special Advisers and other recent reports on the role of competition policy, and/or other sectors. As such, the work on a proposed new competition tool and the initiative at stake complement each other. The work on the two impact assessments will be conducted in parallel in order to ensure a coherent outcome. In this context, the Commission will take into consideration the feedback received from both consultations. We would therefore invite you, in preparing your responses to the questions below, to also consider your response to [the parallel consultation on a new competition tool](#)

1 To what extent do you agree with the following statements?

	Fully agree	Somewhat agree	Neither agree not disagree	Somewhat disagree	Fully disagree	I don't know/ No reply
Consumers have sufficient choices and alternatives to the offerings from online platforms.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input 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 checked="" type="radio"/>	<input 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 checked="" type="radio"/>	<input 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 checked="" type="radio"/>	<input type="radio"/>
Traditional businesses are increasingly dependent on a limited number of very large online platforms.	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
There are imbalances in the bargaining power between these online platforms and their business users.	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Businesses and consumers interacting with these online platforms are often asked to accept unfavourable conditions and clauses in the terms of use/contract with the online platforms.	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Certain large online platform companies create barriers 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	
Wide geographic coverage in the EU	
They capture a large share of total revenue of the market you are active/of a sector	
Impact on a certain sector	
They build on and exploit strong network effects	
They leverage their assets for entering new areas of activity	
They raise barriers to entry for competitors	
They accumulate valuable and diverse data and information	
There are very few, if any, alternative services available on the market	
Lock-in of users/consumers	
Other	

2 If you replied "other", please list

3000 character(s) maximum

The ratings given above should not be considered as a static variable, but put into perspective. In the future, even operators without the above-mentioned characteristics could become critical from a competitive point of view.

The markets where large digital platforms operate exhibit several economic features that, while not novel per se, appear together for the first time and push these markets towards monopolization by a single company.

Among these features are: i) large user base, ii) strong network effects, iii) strong economies of scale and scope; iv) marginal costs close to zero; (v) high and increasing returns to the use of data; and vi) low distribution costs that allow for a global reach. This confluence of features means that these markets are prone to tipping; that is, they reach a point where the market will naturally tend towards a single, very dominant player. A new entrant - even with a better value proposition - will most likely be unable to overcome the barriers to entry represented by networks effects and data control, as they are difficult to achieve in a quick, cost-effective manner.

In addition, large digital platforms acting as gatekeepers are able to impose conditions so as to capture the relationship with users and control the access to adjacent markets. Leveraging this position and through a process of platform envelopment, some firms are able to build services spanning multiple platforms, pushing out other providers in the supply chain so they are no longer visible to the final user and making it very difficult to compete and gain access to customers outside the platform ecosystem.

We agree with the relevance of most of the criteria listed to determine the gatekeeping role of the platforms. We would also like to add other relevant dynamics that may also arise and help to reinforce the role of the gatekeeper:

- a) Vertically integrating with upstream and/or downstream companies, which can lead to a discrimination in favor of their own upstream/downstream businesses in their core platforms;
- b) Having control of key consumer gateways, operating systems and infrastructures.
- c) Refusal to grant access to data and leveraging data superiority to monopolize adjacent markets. In turn, usability of such data for non-platform actors carries more costs;
- f) Cross-subsidizing, providing products or services below cost – or at zero price - to one side of the market;
- g) Tying or bundling new services with their dominant products and services;
- f) Identifying startups with significant potential and using deep financial resources to acquire and absorb them, in order to reduce potential competition with a core platform. Current large digital platforms have achieved such market relevance that these existing platforms are impossible to be replicated, often because the appearance of a new competitor in a near future is blocked by early acquisition strategies.

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

As a general set of principles, the criteria used should:

- Be broad enough - cover the range of sources of market power and gatekeeper roles. The P2B regulation's definition of online intermediation service is too narrow, as it does not include firms which derive their market power from the control of digital infrastructure, or data
- Create stability and prevent regulatory arbitrage / gaming of the system - by ensuring that firms are not rapidly identified and then "de-identified" by virtue of small changes in their operations
- Be forward looking - apply to relevant large platforms before they necessarily exercise the market power associated with a gatekeeper role
- Exclude smaller platforms - to maintain proportionality
- Use clear definitions - offer as much legal certainty as possible for firms
- Relevance/presence across different markets (network effect, accumulation of data)

Suggested two step approach combining quantitative and qualitative criteria:

- 1) Identify platform firms above a minimum size, indicated by number of users or customers above a given threshold. Overall size of the gatekeeping platform (size of the user base) has a direct link with overall power of the platform and therefore the extent to which it can leverage and benefit from its gatekeeping role. This

needs to account for the relative size of European markets, as well as consider value of a global user base (for example, for data-driven services). A threshold of this nature would allow smaller platform firms with much more limited impact on competition to be excluded, providing both legal clarity and ensuring that any ex ante measures applied to large platforms remain proportional, while at the same time ensuring that measures do not hinder the creation and growth of new service providers.

2) Identify any gatekeeping role and the related structural competition problems. An analysis of the relevant market structure includes:

- Whether network effects are present and their relative strength drives the market towards a winner takes all outcome, and as source of barriers to entry
- Extent of user switching and of lock-in effects (incl. data-related lock-in)
- Whether users practice multi-homing or primarily use just one provider
- Control over assets which can be leveraged in other markets, incl. data or access to technical infrastructure (incl. software/ hardware features of a technology platform)
- Accumulation of data, particularly user-generated data that provides economies of scale (it improves the platform services, attracting more users) or economies of scope (it can be used beyond the core platform market)
- Extent and strength of current/ potential connections from the core platform market to other markets (in which the platform firm may or may not be present), incl. the extent to which a firm engages in bundling of multiple products
- Current or announced cooperation with other (in particular smaller) companies
- Maximum technical and lo

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

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

5 Other - please list

1000 character(s) maximum

Emerging issues

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

Intrusive data gathering:

- Collecting personal data without peoples' awareness – Search engines & infrastructure providers
- Abusive use of data policies, collecting user and device-related data from sources outside their platform and merging it with the platform's data – Social networks

Leveraging data superiority to monopolize markets, obstructing rivals' entry and expansion:

- Imposing conditions on large customers (e.g. not permitting use of services from platform's rivals) - Search engines
- Mandating access to one's data when offering their services - Social networks
- Using information collected in the platform in an anticompetitive way – Marketplaces

Discriminating in favor of their own upstream/downstream businesses in their core platforms:

- Adjust product-search system to more prominent feature listings, more profitable for the company/ own brands – Marketplaces
- Use of dominance in the online search market to discriminate in favor of the platform's comparison website – Search engines
- Use of pricing power

Using their control of key consumer gateways, operating systems and infrastructures

- Having the power to impose conditions that force the use of platform payment solution – Marketplaces
- Essential infrastructure is not always equally available to all market participants, with elements controlled by large platforms - operating systems for smart devices
- Limiting communications between business users and their clients and banning marketing campaigns aimed at converting free to paid subscribers – Infrastructure providers
- Block the access to customer data to competitors, causing the product to be aborted during its final testing phases – infrastructure providers
- Service providers can make the use and access to the services difficult by contractual conditions that are difficult to reconcile with sectoral regulation (such as outsourcing guidelines in the case of the financial

industry) – CSPs

Furthermore, “killer” acquisitions can use data to track competitive threats before becoming visible to regulators or competition authorities.

With regards the provision of digital financial services, there is an increasingly reliance on a small number of digital markets/assets (incl. consumer gateways, technologies, data) controlled by large platforms, which are in a position to extend that market power to financial services lines of business and rapidly acquire market share, including through actions to put financial services competitors at a direct disadvantage. They have the capacity to ‘win’ (tip) certain financial services verticals, for example mobile payments, resulting in new or strengthened gatekeeper positions.

Current and potential future issues:

1. Availability and control of digital infrastructure: Certain digital infrastructure directly affects the distribution of financial services to customers (e.g. app store presence) or the availability and quality of particular financial services functions (e.g. possible contactless transactions with mobile device; possible biometric authentication to confirm the customer’s identity).

Large platforms have vertically integrated services that compete directly with those provided by financial services firms. By denying access to digital infrastructure or providing access on worse terms than to the vertically integrated service (self-preferencing), the large platform provides itself with an advantage over competitors, preventing competition on the merits and allows it to leverage its market power to foreclose markets.

2. Control over consumer gateways: Acting as the first point of contact with the consumer across a range of relationships (including search, app stores, e-commerce, social networks, and communication networks) allows large platforms to discover customers’ financial services needs and preferences in real-time, and to distribute financial services as an accompanying or ancillary service. This leveraging of the gatekeeper position and direct relationship with the customer prevents other firms from offering their own services on similar terms.

3. Control over key data sources: Data embedded in non-financial digital services is relevant for the provision of financial services (e.g. for creditworthiness assessments, fraud prevention, or customization). Large platforms are able to leverage data obtained by virtue of a gatekeeper role, and which is frequently collected on terms where users have little option but to agree to its use given the market power of the platform. Examples: data on consumer preferences and relationships, which can be leveraged by a search engine or social network; data on a firm’s commercial situation and outlook (such as sales, client base, inventory and reviews) which can be leveraged by e-commerce platforms. This privileged access to data prevents other firms from competing or innovating on similar terms.

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

Large online platforms are participating directly in financial markets (e.g. as payment service providers or providing lending to SMEs) or indirectly by providing technical infrastructure that is increasingly relevant for the provision of digital financial services. These infrastructures include devices and their associated functionality, such as biometric authentication or communication protocols like Bluetooth and near field communication (NFC) as well as App stores and pre-installed apps on devices.

However, this infrastructure is not always available on an equal basis to all market participants, with

elements controlled by some market players and/or technical providers. This control may result in some infrastructure being completely unavailable, while in other cases access may be restricted with particular terms and conditions. In particular, in the financial industry banks encounter some issues concerning commercial terms and conditions. These include:

1. Access to technical infrastructure such as Near Field Communication (NFC) antennas, which is already under investigation by DG-COMP.

Prominent case on US BigTech company: Company has leveraged its market power in the mobile device and operating system market to extend into the payments market, using its privileged access to the NFC functionality (a form of self-preferencing) to create an advantage over other digital wallet / mobile payment competitors.

NFC allows the transfer of information between electronic devices, including between a mobile device and a point of sale terminal (“card reader”) in a shop, allowing the device to make payments by behaving like a contactless bank card.

The US company allows its own digital wallet to utilize the NFC feature, but does not allow the digital wallet of other competitors to use it. This makes the company the only viable option for customers that wish to use their produced mobile device (large market share) for physical mobile payments. Once customers are users of the wallet for physical purchases, this also strengthens the company’s position in the broader digital wallet market.

2. In addition, providers of digital wallets associated with mobile device operating systems or handset manufacturers only share with card issuers the result of biometric authentication (authenticated / not authenticated), not the underlying data and process that could allow financial services firms to complete customer identification more safely and to strengthen their security and fraud detection processes.

3. Legal and regulatory constraints for cloud adoption by FIs create frictions in ensuring that regulatory compliance is achieved in contractual negotiations between banks as Cloud Service Customers and the Cloud Service Providers (CSPs). In this context, the Commission launched a welcome initiative to foster standard contractual clauses for cloud arrangements. The potential for cloud providers to become critical participants in the financial system is becoming widely recognized, as well as the risk that some CSPs could become a single point of failure. The EBF welcomes the EC’s attention to this aspect under the proposal on digital operational resilience.

4. Marketplaces, such as e-commerce platforms or app stores, often impose the means of payment, sometimes as the lending provider, within their infrastructure, instead of giving their business users the capacity to choose and negotiate their providers on their own. They also discriminate in favor of their own upstream/downstream businesses in their core platforms, adjusting product-search system to more prominent feature listings, more profitable for the company/ own brands. Differentiation algorithms used by e-commerce platforms allow them to enforce their own interests over the industry by improving only selected options. Platforms get a vertical advantage from the data usage; by monetizing user data picked up in e-commerce business elsewhere. This situation gives e-commerce platforms structural advantages.

5. Platforms can introduce financial products in their comparison websites; or develop execution-only applications that directly manage some operations on the consumer’s bank account, or that allow consumers to manage accounts held with different financial service providers. All these possible services may generate conflicts of interest between the platform and consumers, for example if the platform may use its comparison-shopping website to promote its own financial services at the expenses of rival providers.

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

Please consider the general issues or unfair practices of the different large digital platforms identified under Q3 and Q4. Two key issues shall be highlighted again, which help large online platforms to reinforce their gatekeeping role and are very important for the financial industry: access to data and infrastructures. They foster the danger of large online platforms assuming a de facto dominant position and become unavoidable trading partners.

Access to Data: Platforms hold large amounts of data generated by their users in the context of their digital interactions with the platform. However, these users cannot provide access to this data to other players which could build relevant services for the user. Thus, they are limiting the capacity to innovate with the high amount of data that they capture and exacerbating lock-in effects by ensuring data only flows towards digital platforms. Even in the context of personal data, the existing GDPR data portability right does not provide for the convenience and speed needed in the digital world. True portability must put the data owner in control – not the firm holding his data. While some industry initiatives have ostensibly sought to address this, often the companies involved choose the counterparties participating in data portability, the kind of data to be transmitted and set the conditions for doing so. There is no genuine new empowerment for the real data owner - the user.

Access to infrastructures: Large online platforms provide specific infrastructures that are becoming increasingly relevant and critical to serve customers such as cloud services, chatbots, app stores, operating systems, NFC antennas, etc. Controlling the access to these infrastructures, these providers have the market power to impose contractual agreements that not only set the conditions to operate their infrastructure, but affect fundamentally the final conditions of how a digital service is provided, by influencing the cost structure, the customer identification means for a transaction or the advertising channels. At the same time, some infrastructure providers are also entering the market to provide financial services themselves. They are already very relevant in mobile payments and are increasingly important in lending. They leverage their strengths in collecting and analyzing data, high consumer trust, and also cross-subsidizing their services or tying or bundling banking services with others.

Increased market consolidation will ultimately be to the detriment of consumers. In order to ensure effective competition that leads to innovation that maximizes benefits to consumers, individuals need to be able to control their data across different sectors.

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

Relevant data from different sectors holds significant potential for financial industry innovation, competition and consumer empowerment. Data has become a strategic asset in the digital economy. Access to and re-use of data is considered a crucial step towards a competitive EU data economy which will benefit both consumers and EU firms.

This data collection is now an inherent part of most (if not all) platform business models, although the way in which data is then leveraged may differ. Large platforms will often rely on the collection of user data in order to generate revenue on the "other side" of the platform, through targeted advertising, incl. in-page advertisements or placement in search result rankings. In addition, marketplaces (app stores, e-commerce) may utilize the data generated to prioritize the development of their own vertically integrated product offerings.

This key role for data generates some particular challenges:

- 1) Users experience significant data-related lock-in effects, discouraging them from changing providers or using multiple services (multi-homing). This weakens competition in the platform space and reinforces existing platforms' market power. Where a platform firm provides multiple connected products as part of an ecosystem, these lock-in effects are likely to be stronger, as ceasing use of a particular platform (such as a mobile device operating system) is associated with a loss of data across the whole ecosystem. In addition, large online platforms may leverage their superior ability to collect and process data to impose conditions on their customers that obstruct rivals' entry and expansion.
- 2) Platforms can leverage the data collected in a core market to extend their power into new markets, potentially even tipping them in their favor. Or, vice versa, platforms may use data gathered from a target market to strengthen their position in the core market. Data is increasingly relevant across, as well as within, sectors, particularly where it is derived from users' interactions and offers insight into their broader preferences and behavior; it therefore gives platforms an inbuilt advantage over their competitors in many markets.
- 3) By limiting the availability of a key input for the development of new goods and services, the concentration of data prevents more wide-spread data-driven innovation from taking place, particularly by smaller firms. This ultimately limits the growth of the data economy in Europe and the innovative services that can be created by European firms.
- 4) Challenges due to practices related to use and sharing of data:
 - Intrusive data gathering - collecting personal data without people's consent - or forcing access to data when offering their services.
 - Abusively using data policy, collecting user and device-related data from sources outside their platform and merging it with the platform's data.

In the financial sector, both the second and third challenges are particularly pertinent. Non-financial data is increasingly relevant for digital financial services, where it can be used to improve current financial services products and processes, as well as develop entirely new service offerings. The benefits of leveraging additional non-financial data include greater personalization; improved risk management and lending decisions; enhanced security and fraud detection; and improved financial advice.

Users' data is already being leveraged by platforms to increasingly enter into financial services markets, incl. credit provision (inherently data-driven as it relies on extensive knowledge and analysis of a customer's risk profile). The extent to which these benefits can be realized by other firms is severely limited by availability of non-financial data, and in particular by the lack of portability - users' ability to grant access to their data from

a platform provider to another firm.

This is not true in the case of financial sector data, where the revised Payment Services Directive (PSD2) allows users to transfer their payments data directly to an authorized third party provider, often through application programming interfaces (APIs). This places financial service firms at a direct disadvantage, as financial data can be shared easily with platform firms (who can then combine it with non-financial data in order to generate insights that may be relevant for the provision of financial services, other products or advertising), while data held in those platforms can't be shared with financial services firms on the same terms.

The introduction of an appropriate sharing mechanisms for third parties to access large online platform data (based on consumer consent) can help creating the required level playing field, emphasizing the data control by the "data owner" in full respect of users' privacy.

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

3000 character(s) maximum

Platform envelopment strategies weaken the competitive process in markets by undermining other firms' ability to compete on the merits, or in the most extreme cases (e.g. denial of access) effectively prevent other firms from competing at all.

In the short run there may be the perception of additional consumer choice (new products and services). However, in the medium run, as platforms consolidate control over the new market by using the advantages afforded by their gatekeeper position and associated assets, the weaker competitive pressure in the market will lead to less consumer choice, higher prices or inferior quality. This will undermine the incentives for investment and innovation, degrading the quality of future services and removing the likelihood that innovative European firms are able to contest existing market positions.

Effects in financial services markets:

1. Gatekeeping risks: Banks will struggle to provide the best financial services according to customers' demand if they can't have access to relevant data and access to some of the relevant infrastructure is limited or closed.
2. Platform envelopment can lead to market tipping or monopolization. The large platform in question may be able to exclude other platforms and intermediaries, operating one-sided businesses. Part of this success could stem from the ability to combine data generated from various markets, which is difficult to replicate. Consequences:
 - Financial products may be closely tied with the use of a particular platform or ecosystem, increasing lock-in effects and reducing competition in both the core platform market and the associated financial services market.
 - Market power associated with tying may allow platforms to offer worse terms to consumers, incl. pricing financial services above market rate.
 - Banks may find it difficult to offer differentiated services given that open banking policies limit any informational advantage they might have enjoyed regarding their customers. At the same time those customers are unable to share their data held by platform firms.
 - Innovation around user-facing financial products and services may decline, as firms are discouraged from investing in their development. Consumers will be the most impacted, as they will miss out on the opportunities that innovation could bring.
3. Effects on financial stability:
 - An increase in systemic risk, as an increasingly proportion of financial services would be originated by (or also financed by) a small number of platforms firms; moral hazard may increase because platforms may follow an originate-to-distribute model with small or no stakes in the loans generated. Adverse selection could also appear since platforms may have an incentive to price risk very low while searching for

monetization in other markets.

- Pressure on banks' profitability as firms are unable to compete on the same terms with platform firms, which raises risk of disorderly bank failures in the medium term.

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

The central role of platform firms in the digital economy means that many startups or scaleups are dependent on those platforms, particularly during the early phases of their growth. This dependency includes:

- App delivery through app stores controlled by large platforms (reaching customers);
- Platform payment services as the only permissible mechanism for charging customers;
- Infrastructure availability, determined by operating system providers or handset manufacturers (placing products);
- Search as a discovery tool for consumers (advertising and promotion; online visibility);
- E-commerce platforms as the point of entry for consumers.

This dependency is a particular challenge when startups or scaleups are competing directly with services that are vertically integrated with a platform. These vertically integrated services are often given a significant advantage, such as pre-installation on a device, higher rankings in search results, and access to infrastructure and user data that is unavailable to other providers.

Alternatively, a gatekeeping platform may use its privileged access to data regarding third parties' activity, gathered by virtue of its position as the provider of the platform, to take decisions regarding its entry into new business lines, undermining fair competition on the platform.

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

The pressing issues of limited technical infrastructure access and the data gatekeeping role of large online platform companies have a detrimental effect in the digital economy.

Without addressing concentrated data collection through new measures, the society would miss an opportunity to improve both traditional competition "for the market", for example between similar platform services, as well as to ensure that data remains in the consumers control and is used to support competition and innovation in adjacent markets. Without addressing the gatekeeper role of large platforms appropriately, key input for innovative data-driven services will not be available. At the same time, the technological potential for social inclusion and diversity, connected to fair access to data and infrastructure, could be detrimentally affected.

Looking at the details, the consequences of the large digital platforms with gatekeeping roles may manifest through lower quality, lower privacy protection, less creation of new business/entry, and less investments in innovation.

Consequences for consumers could include:

- Pricing discrimination for specific segments or customer profiles
- Barriers to exit for customers, once they entered a service or relationship
- Conflict of interests in the individual use of algorithms, search engines and comparison rules, favoring the company in detriment of consumers, i.e. by promoting the sale of the more expensive products, rather than those that the consumer needs. This is solved in financial regulation, as it includes a general mandate to act in the interest of customers. However, this same rule does not apply in the context of significant platforms, which can also play a key role in the economic wellbeing of consumers.
- Use of customer experience tools to manipulate customer behavior, such as facilitating choices that are not the most suitable for them, including accepting terms and conditions without a proper revision to avoid being constantly asked the same questions before using a service.

Consequences for the market:

In the short term, platforms increase competition in the target markets to the ultimate benefit of users from all sides of that market. However, in the long run, anticompetitive effects could appear when the platforms used the benefits derived in the original market to cross-subsidize its offerings in the target market. This gives them the advantage of being in a unique position to combine and monetize data from the original and target markets and to tie or bundle the services in the new market with its already successful original products. Looking at the technological advances, entry barriers to the platform ecosystem can be expected to steadily raise if not addressed appropriately by ex ante regulation. In turn, there would be an increased economic power for gatekeepers, distorting – and even destroying – competition with a “winner-takes-it-all” approach.

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

Online platforms in media can create or strengthen biases and experience content bubbles for users and groups in society. This could also be harmful in terms of media coverage and perception of certain companies.

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

Just as in other sectors where clear market failures have previously been identified and addressed through targeted regulation, there is a similar need to address these economic challenges raised by large online platforms.

Competition policy has played an important role in addressing a number of the problems that have arisen in European digital markets to date. However, the structural nature of the challenges presented by large platforms require a more general solution in the form of ex ante regulatory rules that address common and recurring problems, as well as limit prospective risks to future competition and innovation. The implementation of new ex ante rules needs to be workable and sufficiently future-proof. In particular, there should be flexibility to apply not just prohibitions or restrictions of certain unfair trading practices but also proactive obligations. The objective is to ensure that the digital ecosystem in Europe provides opportunities and generates benefits for all (including large platforms by reducing uncertainty).

Most EBF members* would support, as part of the framework on ex-ante rules, the introduction of an obligation for large platforms to provide users, both individuals and firms, with an effective mechanism for data portability. Enabling users to transfer their data from the original service provider to another firm would enhance competition and support data-driven innovation. It is important that this mechanism ensures users are able to share their data in a way that is easy, secure, in real time and on a repeated basis, through standardized interfaces such as APIs, and within the frame of data protection laws for users and firms (GDPR and other national data protection laws; competition laws, intellectual property, business secrecy, etc). In addition, introducing this mechanism should not result in increased complexity or lower protection for consumers. It would need to be compliant with competition rules and be based on shared benefits in providing customers with a diverse range of products and services, as well as an enhanced, more personalized experience. Full respect of customer data protection and communication security is essential.

*Please see our uploaded EBF key message paper for the respective footnote for additional context.

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

Where practices of large online platforms, acting as gatekeepers, have particularly deleterious effects on the competitive environment, they should be addressed directly through prohibitions. However, when considering options to codify such prohibitions, the regulatory framework should allow for the necessary flexibility to effectively address not only detrimental practices observed today, but also future practices with equal deleterious effect.

1. Digital neutrality: prohibit discrimination in access to and treatment in digital infrastructure

The central role that platforms play means they provide digital infrastructure that operates as the backbone

of the digital economy and is now essential to the provision of digital goods and services.

This infrastructure includes operating systems, which provide the infrastructure for the installation of applications and access to relevant hardware and software functionality (including communication technologies like NFC, and biometric authentication), and app stores, which are necessary channels for services to reach end-users.

Many providers of digital infrastructure have adopted open access approaches that, subject to certain limitations such as those related to security, do not discriminate as to which third party firms may use that infrastructure. However, other infrastructure providers, particularly providers of mobile device operating systems, have closed access to certain functionalities, while leaving it available for their own vertically integrated products. This ultimately limits the choice and quality of services available to end-users.

A general prohibition on discrimination in access to infrastructure would address this issue directly and effectively (prohibition of self-preferencing by gatekeepers). It would retain the broader incentives for infrastructure development while ensuring that third party firms are not unfairly denied access, or provided with access on unfair terms, to infrastructure that is essential to the provision of their goods or services.

2. Other possible issues/practices to explore that may be subject to prohibitions

- Pricing discrimination for specific segments or customer profiles, and especially against competing providers.
- Using the information generated by platform users in the benefit of the platform owner and against competitors.
- Exclusionary conducts: consider inducements when ranking products, including the provider's own products
- Conflict of interests in the use of algorithms, search engines and comparison rules, favoring the company in detriment of consumers, i.e. by promoting the sale of the more expensive products, rather than those that the consumer needs.
- Use of customer experience tools to manipulate customer behavior, such as facilitating choices that are not the most suitable for them, including accepting terms and conditions without a proper revision to avoid being constantly asked the same questions before using a service.

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

Large online platforms' wide range of business models and services need to be addressed by regulators able to do so across all actors, and not only case by case. Given the increasing overlap between large online platform ecosystems, it is also key to ensure that regulators do not create imbalances between platforms.

For portability challenges please consider above's answer under III. Q. 10.

These issues could be addressed in part with new proactive or positive obligations that would be appropriate across all large online platforms, including a data portability obligation: Users' ability to easily and securely transfer their data from one service provider to another can (i) enhance competition directly between digital platforms by reducing lock-in effects and facilitating multi-homing; (ii) enhance competition from third parties with products that are vertically integrated with the platform or part of the same ecosystem and therefore are

benefiting from the data; and (iii) allow for greater data-driven innovation by firms looking to use data in novel ways. Portability can be achieved by requiring gatekeeper platforms to make available to users a standardized transfer mechanism that allows them to share their data directly with any other service provider. This would need to apply to both business and individual users, covering both personal and non-personal data that they have provided or generated through their use of the platform. A precise obligation should prohibit any attempted discriminatory contractual practice between large and small business users. Please see also Q.2 above.

For personal data this would in effect be an improved way for individuals to exercise their right to portability under Article 20 of the GDPR. Consumers should be empowered to decide which data to share and with whom, within the frame of user data protection laws, by supporting competition and data-driven innovation. But the portability obligation should include a suitable data portability for business' issuers/firms as well. An increasing number of firms depend on and transact through digital platforms, making the data stored in these platforms critical to business users. Enabling users to transfer their data from the original service provider to another firm would increase competition and allow data to be reused across other sectors.

The mechanism would need to allow for easy, secure, real-time and repeatable data transfers. Application programming interfaces (APIs) would be the most effective way to implement this, with standardization of the data formats and of the transfer mechanism, including security requirements and elements of the customer experience.

The outlined data portability should further be complimented by appropriate EU-level action targeting non-discriminatory access to relevant technical infrastructure. This will avoid regulatory fragmentation in the Single Market by diverging national measures addressing this access.

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

Developing appropriate supervision for the future framework will be essential, taking into account the impact and extent of platforms' interactions with users. Such specific supervision can ensure the actual adoption of risk-based rules in the market, enhance the international coordination and provide for cross-sectorial harmonization. In turn, legal clarity will be enhanced and different industries could benefit from a level playing field.

A regulatory authority tasked with enforcement will need to be suitably resourced and develop appropriate expertise, as well as have adequate powers to take action to ensure that the rules are implemented effectively.

Large gatekeeping platforms are often pan-European, operating across national borders and achieving a size that dwarfs many other firms. European banks welcome the general discussion of a single EU-authority and look forward to future engagement on the matter with regulators.

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

There should be flexibility to apply measures to all large online platforms with significant gatekeeper roles, whether these take the form of prohibitions or restrictions of certain unfair trading practices or are proactive or “positive” obligations, such as ensuring access to certain types of technical infrastructure or improving access to data. This would allow authorities to address issues or challenges that are common across these platforms and complement any case-by-case interventions as part of ex ante rules proposed by the European Commission. In the past, monetary fines alone did not prove to be adequate remedies for misconduct of large gatekeeper platforms.

While generalized prohibitions and obligations will be able to effectively address many of the underlying issues common to gatekeeping platforms, there are likely to be idiosyncratic issues that are driven by the dynamics of a specific market or gatekeeper role and are therefore relevant for a particular platform or subset of platforms. Flexibility to intervene on a case by case basis would allow for these issues to be resolved in a targeted way, without needing to resort to inappropriately broad measures that apply to all gatekeeping platforms or leaving them unaddressed.

This type of intervention would need a suitably robust and objective framework to determine when intervention is warranted. Required time for significant market changes needs to be considered carefully. Nevertheless, the approach could build on existing frameworks used in regulated industries, such as telecoms, while ensuring that it is tailored to the particular necessities of gatekeeping platforms - including recognizing the need to move quickly in circumstances where markets are at risk of tipping, and the need to have the scope to intervene both in core or original markets where a platform has a gatekeeping position, and in adjacent or target markets, where the platform may be executing leveraging or envelopment strategy. To ensure that the relevant authority has the scope to take action in the most efficient and targeted way, the range of potential remedies should be relatively broad, including the possibility of both behavioral and structural remedies: (i) non-structural remedies (e.g. the obligation to refrain from certain commercial behavior); (ii) structural remedies (e.g. divestitures, granting access to key infrastructure or inputs or the obligation to separate clearly their activities and roles, owning a platform and running business across it); (iii.) hybrid remedies (containing both obligations and prohibitions). Examples of case by case remedies for consideration could be: unbundling and separation; access to relevant infrastructure.

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 consider Q.8 above. An adequate framework for the supervision and enforcement of new rules is just as important as the rules themselves. Case by case interventions would necessitate in-depth analysis of the particular characteristics of a given platform and market(s), requiring well-resourced authority/ies with suitable powers to investigate and intervene, as well as a clear framework to govern such interventions, and with the ability to impose – where considered necessary and justified following a prior assessment – remedies envisaged by the regulatory framework covering the specific issues.

It is very important that the remedies are common across the EU, given that gatekeeping platforms operate on an EU-wide basis.

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

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

Existing sector specific rules have a range of policy objectives, including preserving competition, consumer protection, and financial stability. These rules are generally associated with particular, well-defined activities, which a gatekeeping platform may or may not be engaged in.

Given that rules for gatekeeping platforms will apply generally to a firm with a certain type of business and market position, rather than to particular activities, in principle these rules should be able to coexist with current (or future) sector specific rules, while ensuring that there is a suitable mechanism to address overlaps or conflicts. For example, if large platforms are registered as payments providers, they should be subject to the regulation of the activity in which they operate (PSD2).

At the same time, where there are existing sector specific rules governing access to a particular platform or element of infrastructure, these should be excluded from the scope of the new ex ante rules, being considered “lex specialis”. For example, in the case of the financial sector, there are already rules in place governing the access to payment systems and to payment account services in order to ensure fair competition.

Comments made do not only apply to regulation, but also to the related aspect of sector specific supervision of that regulation.

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

We welcome this objective. However, ex ante rules for large platforms with gatekeeping roles should be primarily focused on addressing their economic negative effects on the digital economy, through ensuring that competition takes place on the merits and the broader environment is conducive to innovation to the benefit of European consumers.

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

As individuals increasingly utilize digital markets and channels in all aspects of their lives - communication, commerce, leisure - an increasing proportion of their personal data is gathered by and held in large gatekeeping platforms.

As well as the effects on competition and innovation noted above, the expansive collection of data and its concentration in a small number of firms also raises concerns over the extent to which individuals are able to freely exercise their rights laid down in the GDPR.

There is an opportunity to simultaneously address both data protection and competition concerns through measures that enhance individuals' ability to exercise the rights they already have. That is to say, making the rights actionable.

Therefore, and as described in Q6, European banks see data sharing measures as a feasible and efficient solution to mitigate the risks of monopolization, foster market diversity and promote competition.

We support the option of "specific requirements regarding personal data portability" as this would empower individuals enhance competition and support data-driven innovation. This would neither create a new right, modify the GDPR, nor change the obligations on data processors under the GDPR. Rather, it elaborates on consumers' empowerment to decide which data to share and with whom within the frame of user data protection laws. It is also important to help consumers to provide this access in a simple and non-binding way and to ensure that they are aware of and responsible for their choice.

We encourage the Commission also to include a suitable data portability for firms. An increasing number of firms depend on and transact through digital platforms, making the data stored in these platforms critical to business users. Enabling users to transfer their data from the original service provider to another firm would increase competition and allow data to be reused across other sectors. To implement this, the new ex ante rules should require large online platforms to offer their business users portability tools that allow them to share and transfer their data, within the framework of data protection and other relevant legislation.

A number of building blocks would be required to make portability effective:

- Transfer mechanism: dedicated interfaces (i.e. APIs), with real-time, dynamic data transfer that can take place on a one-off or recurrent basis.
- Security: Authentication requirements (such as two factor) and secure communication.
- Standardization: Data formats, security, API models and user experience to be standardized, for example through industry standards validated by an appropriate governance structure.
- Licensing: A full authorization scheme similar to that in PSD2 could create unnecessary burdens if data is less sensitive. A proportional approach could require firms wishing to access data on behalf of users to register with authorities and/or use appropriate security certificates.

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

Together with a high level of technical capabilities, the regulatory authority would need to develop a deep understanding of the dynamics of platform businesses and markets, similar to the high level of expertise found in existing sectoral regulators.

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

European banks believe that these capacities should be built regardless of the type of ex ante rules to be put in place. As platforms are global and highly technology-based innovators move at a fast speed, a horizontal and pan-European scope is necessary to keep regulatory authorities at the same pace. However, the application, supervision and enforcement of case by case rules would require additional resources be provided to the regulatory authority to handle the additional workload. Authorities would need to invest in and upgrade technology, data capabilities and auditing capacities. They would also play a role on supporting this knowledge creation and sharing among EU countries.

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

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

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

3000 character(s) maximum

European banks believe that the requirements and tools should be the same regardless of the type of ex ante rules to be put in place, to ensure the adequate monitoring of these very large platforms. As the Observatory of the Platform Economy has pointed out, there is a lack of data on size and systematicity of platforms which is extremely relevant for authorities to take decisions regarding how to deal with the issues that appear in this ecosystem.

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

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

27 Are there other points you would like to raise?

3000 character(s) maximum

Large online platforms need to be addressed under the discussion of digital taxation, considering new corporate tax rules adapted to the digital age. Factors for unfair competition with European businesses should be removed. We support the work done by the OECD in this field, examining the introduction of a new concept of nexus which should apply to highly digitalized businesses and complimenting the existing when the traditional concept of “permanent establishment” (physical presence) is not sufficient to ensure the payment of a fair share of taxes in the jurisdictions where profits are made.

In regard with large platforms entering crypto currency markets there might be future risks of a potential dominant position on stablecoins. The EBF welcomes the attention by EU institutions and financial supervisory authorities on the matter, taking a careful look at risks involved. Considering the speed of technological solutions in this field, we would like to emphasize the need for addressing the issue in a timely manner. A regulatory framework needs to apply the fundamental principle of “same services, same risks, same rules”: Currently, banks and non-banks are regulated differently, even when they carry out the same economic activity.

The entry of technology firms into financial services would not necessarily generate excessive additional risks if these activities were properly regulated and supervised. Some of the potential risks that could be generated if regulation and supervision would not be continuously adequate could be: liquidity risk in interbank market (e.g. increased volatility), liquidity risk for particular credit institutions, credit risk in household lending and SME lending, pro-cyclical credit provision, operational risks (i.e. the concentration of operational risk in a single point may cause systemic risks for the system), systemic risks (e.g. technology companies and platforms become too big, too interconnected to fail: the interconnection with the economy may be bigger than banks’)

While other non-banking players are also performing operations generating these risks, financial authorities still keep a two-layer approach of supervision and regulation, which implies that non-banks can operate under less strict standards. This turns into a social risk as the volume of operations of these non-bank players becomes significant.

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

Online advertising has substantially evolved over the recent years and represents a major revenue source for many digital services, as well as other businesses present online, and opens unprecedented opportunities for content creators, publishers, etc. To a large extent, maximising revenue streams and optimising online advertising are major business incentives for the business users of the online platforms

and for shaping the data policy of the platforms. At the same time, revenues from online advertising as well as increased visibility and audience reach are also a major incentive for potentially harmful intentions, e.g. in online disinformation campaigns.

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

This section of the open public consultation seeks to collect data, information on current practices, and informed views on potential issues emerging in the area of online advertising and smart contracts.

Respondents are invited to reflect on other areas where further measures may be needed to facilitate innovation in the single market. This module does not address privacy and data protection concerns; all aspects related to data sharing and data collection are to be afforded the highest standard of personal data protection.

Online advertising

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

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

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

	% of ad space	% of ad revenue
Intermediated programmatic advertising 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

A smart contract is a self-executing rule that is executed in presence of pre-agreed conditions; the agreement usually relies on the terms of the agreement between buyer and seller. The code and the agreements contained therein exist across a distributed, decentralized network.

However, smart contracts, enabled by distributed ledger technology, are not easy to reconcile with existing legal and regulatory norms across Member States. Innovative technological aspects, created outside of traditional legal instruments/categories for contractual arrangements, make it difficult to assess the level of consistency between smart contracts and traditional contracts (e.g. terms of liabilities, applicable law or enforceable rules).

Considering the EC’s aspired European leadership in technology, European banks encourage EU regulators to assess such difficulties in light of the potential of smart contracts for European business development. As with other technological innovation, a sound regulatory approach to smart contracts can help to build and foster the attractiveness of Europe for technology-driven players and respective market developments.

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?

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 type="radio"/>	<input type="radio"/>
Flexibility of choosing when and /or where to provide services	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Transparency on remuneration	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Measures to tackle non-payment of remuneration	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Transparency in online ratings	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Ensuring that individuals providing services through platforms can contact each other and organise themselves for collective purposes	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input 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 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 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 type="radio"/>	<input type="radio"/>

Other, please specify	<input type="radio"/>					
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33 Please explain the issues that you encounter or perceive.

3000 character(s) maximum

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

- Yes
- No
- I don't know

35 Please explain and provide examples.

3000 character(s) maximum

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

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

3000 character(s) maximum

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

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

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

3000 character(s) maximum

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

3000 character(s) maximum

40 Are there other points you would like to raise?

3000 character(s) maximum

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

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

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

Main issues

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

Overall	
Those offered from outside of your Member State of establishment	

The following questions are targeted at digital service providers

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

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

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

	1 (not at all burdensome)	2	3 (neutral)	4	5 (very burdensome)	I don't know / No answer
Different processes and obligations imposed by Member States for notifying, detecting and removing illegal content/goods/services	<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

We encourage the European Commission's actions regarding a cross-sectoral regulatory approach, unlocking the benefits of data cross-fertilization for the digital economy. Full benefits of any (further) expansion of data sharing can only be reaped if done on the basis of mutual benefits and a fair distribution of value across market players.

Due to the cross-sectoral nature of online platforms activities and their targeted use of data and market position for moves into adjacent markets, sector-specific regulation can show inconsistencies when considering an approach to platforms. This can include both legislative requirements and respective enforcement. To address this challenge in the case of the financial sector's regulation, finance-specific regulations should be extended accordingly.

For an example, we like to refer to PSD2 as presented in Section III. Q.10. The EU needs a cross-sectoral framework to empower both individuals and firms, ensuring that they can share their data when and with whom they want. We support enhancing the existing right to data portability under Article 20 GDPR, as proposed by the Commission in its Data Strategy, and suggest introducing data portability for individuals and businesses as presented under Section III. Q. 6 and Q.10.

The DSA provides the opportunity to complement a future EU Data Act, focusing on requiring enhanced personal data portability for a subset of organizations holding data of particular value to individuals. This should include data from digital platform providers (e.g. e-commerce, social media, streaming, mobility service) as well as telecommunications providers, utilities (e.g. gas, electric, water) and public authorities (such as public registries, tax, and social contributions data).

Furthermore, cross-border digital service can benefit from proposed sectoral data spaces. We understand that Data Spaces are a way of organizing initiatives around key sectors and policy priorities and we support work to encourage data exchange and re-use. Yet, we would like to underline that data is especially valuable across sectors, also in order to create a future looking data driven financial sector. Data Spaces initiatives should start from the principle of making all data available on a cross-sectoral basis (with necessary controls and licensing wherever appropriate). To do that, it is important to have access to the same information (e.g. public databases and/or distributed registers based on a self-sovereign approach) in order to enable verification of customer consent and identities. As a result, the Commission should consider data space interaction, making this an element of the upcoming horizontal governance framework for common EU data spaces. We would also like to note that, as the data spaces take a sectoral approach, online platforms are

not included in the initiative. This risks that big technology companies continuing to benefit from other sectors' data, while continuing to act as gatekeeper

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

We see room for improvement for authorities' familiarity with digital services business models. An enhanced cooperation between authorities is welcomed.

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 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 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 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"/>					
Other: please specify in the text box below	<input type="radio"/>					

3 Please explain

5000 character(s) maximum

With platform-driven themes cutting across different industries, policy responses need to be appropriately tailored to provide a fair level playing field and consumer/investor protection that does not fall behind the existing threshold under sector-specific regulation. At the same time, platforms' moves into adjacent sectors should not unfairly benefit these companies due to unfair level playing fields, e.g. regarding data access for customers/investors. Strengthening regulatory and supervisory capabilities can help to provide the necessary level playing field and fair market competition, by facilitating an appropriate framework for cooperation and coherence among European policy responses. The EBF considers it important to avoid detrimental fragmentation due to diverging national regulatory and supervisory approaches for innovative technology, specifically with cross-industry effects. Facing the responsibilities entrusted in market participants of the financial sector and its relevance for the European economy, special attention should be paid to the sectors' changes in the wake of large online platforms.

National financial regulators across Europe possess the advanced expertise on supervising European banks. While new technologies may change banks' operations by a cautious adoption of innovative and beneficial technology solutions, it also requires a less individualistic approach by National Competent Authorities (NCAs) on key aspects such as data and cybersecurity. Issues cutting across sectors should be addressed by authorities based on equally cross-sectorial common principles. Cooperation and knowledge sharing are increasingly important and the EBF encourages an engagement of NCAs with the European banking industry to understand and adopt relevant, proportionate solutions for technological changes within the regulatory framework. To name give an example: the EBF Cloud Banking Forum provides a unique policy hub to have regulators, banks and cloud service providers engaging on technical guidance and education on cloud computing.

At the same time, cooperation among Member States and respective supervisors is encouraged to address large online platforms, aiming for tools such as expert groups and fora to enable exchange of good practices across sectoral and national authorities. Examples can be found with the Global Financial Innovation Network and the BIS Innovation Hub.

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

European banks would like to emphasize the importance of relevant expertise on emerging and developing technology. We appreciate the dedication already shown by the respective authorities. In order to further support knowledge gathering and understanding of relevant technology and industry perspectives on them,

the EBF and its members offer a continues dialogue to EU institutions. We encourage to take advantage of created expert groups and policy hubs for exchange, e.g. the EBF Cloud Banking Forum and the EBF Data Protection Officer Forum.

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

We welcome a regulatory approach based on the principle "same services, same risks, same rules, same supervision". We agree with both scenarios answering "yes" in Q.6 above.

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

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

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

ee45559c-6a26-4dfb-bbff-6dbb9f7d1021/200908_EBF_key_messages_Digital_Services_Act_consultation.pdf

2 Other final comments

3000 character(s) maximum

Please consider the uploaded EBF document with key messages on the Digital Services Act. With only some exceptions like China, BigTechs' presence in finance is still nascent in absolute terms. But it is likely that their role in financial services will increase. With prominent BigTech companies having a strong foundation on online platform business, timely, well-targeted and appropriate regulatory solutions are important to allow for a level playing field and fair competition on the Single Market. In line with findings by the IBFed (2020 report "Big Banks, Bigger Techs"), two issues are reflecting the market change due to BigTech engagements on adjacent markets. Firstly, big techs frequently offer innovative products and delivery mechanisms that resemble regular financial activities but are not yet fully classified as such within the existing regulatory framework. Or, they offer services for which existing regulation is entity-based, making it unclear which requirements should apply if the activity is performed by different types of entities. Secondly, a significant part of big tech activities may draw on data and dominant positions outside the financial sector, which are governed by cross-sectoral regulations. Data and competition issues have been flagged by the EBF throughout this consultation response. These issues may still be under development or are still being enhanced by authorities to adapt to new market circumstances. Financial regulators have some established powers, rules, and supervisory practices on many of these areas, such as data, corporate governance, conduct, consumer protection, and anti-money-laundering and counterterrorism financing. But they cannot be legally enforced outside a specific financial license. European banks encourage the European Commission to address identified shortcomings of the regulatory framework for large online platforms. Specifically, access to technical infrastructure and data require the regulator's attention. Most EBF members* support, as part of the framework on ex-ante rules, the introduction of an obligation for large platforms to provide users, both individuals and firms, with an effective mechanism for data portability.

*Please see our uploaded EBF key message paper for the respective footnote for additional context.

Adjusting the current asymmetries between large online platforms and traditional market participants in the financial sector will address experienced disadvantages for financial institutions. Based on the described data portability and infrastructure access, the data driven financial sector can be expected to thrive, continuously applying a responsible approach to financial stability. The EBF considers the Digital Services Act to be an excellent starting point for the European Commission to address business users' data held in digital platforms through ex-ante rules, but we recommend further work towards a broader portability right for firms.

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](#)

[\(CS\) Glossář](#)

[\(DA\) Ordliste](#)

[\(DE\) Glossar](#)

[\(EL\) ἄ](#)

[\(EN\) 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](#)

[\(SK\) Slovník](#)

[\(SL\) Glosar](#)

[\(SV\) Ordlista](#)

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