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Publication date
2020
Document Version
Final published version
Published in
IRIS

Link to publication

Citation for published version (APA):
Ó Fathaigh, R. (2020). Public consultation on Digital Services Act package. *IRIS*, *2020*(7), 14-15. Article 9. https://merlin.obs.coe.int/article/8935

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Download date:10 Nov 2026

EUROPEAN UNION

EU: EUROPEAN COMMISSION

Public consultation on Digital Services Act package

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On 2 June 2020, the European Commission launched a public consultation on proposals for a Digital Services Act (DSA) package, which will be designed to modernise the current EU legal framework for digital services. This follows the Commission's Communication in February 2020 on "Shaping Europe's digital future", where it was announced that there would be new and revised rules to deepen the internal market for digital services (see IRIS 2020-4/14).

The Commission notes that the legal framework for digital services has "remained unchanged" since the adoption of e-Commerce Directive 2000/31 (see IRIS 1999-9/2), which harmonised the basic principles allowing the cross-border provision of services and which is a "foundational cornerstone for regulating digital services in the EU." However, the Commission argues that Europe needs a "modernised regulatory framework to reduce the ever-increasing regulatory fragmentation across Member States, to better ensure that everyone across Europe is protected online as they are offline and to offer to all European businesses a level playing field to innovate, grow and compete globally." As such, the DSA package would be comprised of two main pillars: (a) new rules framing the responsibilities of digital services to address the risks faced by their users and to protect their users' rights; increasing and harmonising the responsibilities of online platforms and information service providers; and reinforcing the oversight over platforms' content policies in the European Union; and (b) *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.

The purpose of the public consultation is to support the Commission's work in analysing and collecting evidence for scoping the specific issues that may require an EU-level intervention. As such, the 59-page consultation document is divided into a number of main themes, including (1) how to effectively keep users safer online, with the gathering of experiences and data on illegal activities online; (2) what responsibilities should be legally required from online platforms, and under what conditions; (3) what issues derive from the gatekeeper power of digital platforms; (4) questions on the regulation of large online platform companies acting as gatekeepers; (5) questions relating to online advertising, including online political advertising; (6) the situation of self-employed individuals providing services through platforms; and (7) the governance of digital services and various

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aspects of enforcement. The consultation will be open until 8 September 2020, and both European and non-European individuals and organisations may contribute to the consultation. Following the consultation, the Commission is scheduled to present proposals for the DSA package in the fourth quarter (Q4) of 2020.

Finally, alongside the public consultation, the Commission also provided further details of possible legislative proposals under the DSA package, and published two important documents called Inception Impact Assessments, which also provide the "initial range of possible options to regulate large online platforms." The first impact assessment clarifies the responsibilities of digital services, while the second concerns the *ex ante* regulatory instrument of very large online platforms acting as gatekeepers. Stakeholders have four weeks, until 30 June 2020, to provide feedback on the impact assessments.

The Digital Services Act package, European Commission

https://ec.europa.eu/digital-single-market/en/digital-services-act-package

"Commission launches consultation to seek views on Digital Services Act package", European Commission

https://ec.europa.eu/commission/presscorner/detail/en/ip_20_962

Inception Impact Assessment - Digital Services Act package: deepening the Internal Market and clarifying responsibilities for digital services, European Commission.

https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12417-Digital-Services-Act-deepening-the-Internal-Market-and-clarifying-responsibilities-for-digital-services

Initial Impact Assessment - Digital Services Act package: ex ante regulatory instrument of very large online platforms acting as gatekeepers, Ares(2020)287764, European Commission.

https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12418-Digital-Services-Act-package-ex-ante-regulatory-instrument-of-very-large-online-platforms-acting-as-gatekeepers

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