EUROPEAN
COMMISSION

Brussels, 15.12.2020
SWD(2020) 349 final

COMMISSION STAFF WORKING DOCUMENT

EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT REPORT

Accompanying the document

PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on a Single Market For Digital Services (Digital Services Act) and amending Directive 2000/31/EC

{COM(2020) 825 final} - {SEC(2020) 432 final} - {SWD(2020) 348 final}

Executive Summary Sheet

Impact assessment on the Digital Services Act

A. Need for action

What is the problem and why is it a problem at EU level?

Digital services have transformed the EU's economy and society over the last two decades, in particular with the emergence of online platforms. This initiative builds on the evaluation of the E-Commerce Directive from 2000. The annexed evaluation of the Directive shows that its core principles remain valid, but some of its specific rules require an update in light of the specific challenges emerging around online intermediaries and online platforms in particular. Against this background, the impact assessment report analyses three core problems and their drivers.

First, citizens are exposed to increasing risks and harms online – from spread of illegal activities, to risks for their fundamental rights and other societal harms. These issues are widespread across the online ecosystem, but they are most impactful where very large online platforms are concerned, given their reach.

Second, the supervision of online platforms more broadly is to a large extent uncoordinated and ineffective in the EU, despite the systemic importance of such services. The limited administrative cooperation framework set by the E-Commerce Directive for addressing cross-border issues is underspecified and inconsistently used by Member States.

Third, Member States have started regulating digital services at national level leading to new barriers in the internal market. This leads to a competitive advantage for the established very large platforms and digital services.

What should be achieved?

The general objective is to ensure the proper functioning of the single market, especially the provision of cross-border online intermediary services. Specific objectives aim to (i) maintaining a safe online environment, (ii) improving conditions for innovative cross-border digital services, (iii) empowering users and protecting their fundamental rights online, and (iv) establishing an effective supervision of digital services and cooperation between authorities.

What is the value added of action at the EU level (subsidiarity)?

The availability of content and services over the internet is typically transnational. Parallel and divergent regulation by individual Member States hampers the provision of intermediary services across the EU and is ineffective in ensuring the safety and protection of all European citizens. Action at EU level would reduce legal fragmentation and compliance costs, enhance legal certainty, ensure equal protection for citizens and a level playing field for businesses, strengthen the integrity of the single market, and enable effective supervision across borders. No Member State can tackle these issues alone.

B. Solutions

What are the various options to achieve the objectives?

Three options were assessed in detail, in addition to the baseline:

1. Limited measures against illegal activities, laying down the procedural obligations for online platforms to tackle illegal activities, in order to protect users' fundamental rights and ensure transparency. Enhanced cooperation mechanisms for authorities to resolve cross-border issues through a digital clearing house.

2. Fully harmonised measures to incentivise actions from service providers, to enhance transparency and address a wider set of emerging risks by empowering users. Enforcement and cooperation mechanism reinforced by harmonised conditions for administrative orders and the appointment of a central coordinator in each Member State.

3. Asymmetric measures with stronger obligations for very large online platforms, further clarifications of the liability regime for online intermediaries and EU governance with reinforced oversight and enforcement. This is the preferred option.

What are different stakeholders' views? Who supports which option?

Extensive consultation with stakeholders shows a broad consensus for EU action, in particular through a

strengthened EU-wide framework, whilst persevering the fundamental principles set out in the E-Commerce Directive. Overall, there is broad support by online intermediaries, businesses and civil society for a harmonisation of notice and action procedures across the EU. Online intermediaries call for a clear framework for taking voluntary measures against illegal content in good faith with legal certainty. Transparency measures are also widely supported by businesses and civil society, the latter also focusing on recommender algorithms. Some business organisations and start-ups call for asymmetric rules. Improved cooperation between authorities in Member States, and the importance of sharing data with public authorities is key for Member States. Civil society organisations, as well as some businesses and national authorities call for EU level oversight. Three different European Parliament draft own initiative reports on the Digital Services Act support – when taken together – an option similar to the preferred option in the Impact Assessment report.

C. Impacts of the preferred option

What are the benefits of the preferred option (if any, otherwise of main ones)?

A positive effect can be expected on the single market and on competition, estimated to lead to a 1-1.8% increase of cross-border digital trade. Asymmetric rules will ensure that smaller emerging competitors are boosted helping competitiveness, innovation, and investment in digital services, while targeting specific harms emerging through large platforms. Transparency and safety online, as well as the protection of fundamental rights will improve. Enhanced cooperation between Member States and the EU level governance will improve enforcement, and provide an up-to-date supervisory system for digital services.

What are the costs of the preferred option (if any, otherwise of main ones)?

Direct costs are proportionate to the size and reach of a service provider. Services would also incur marginal technical design and maintenance costs. Costs related to information requirements will diminish compared to the baseline. The most significant costs would be limited to very large online platforms.

What are the impacts on SMEs and competitiveness?

Updated and uniform rules will help SMEs operate across the Single Market, helping scale-ups and innovators. The IA shows cost-savings also for SMEs that might have to deal with illegal content. Micro and small enterprises would however not be covered by the obligations imposed on online platforms and would also be exempted from extensive reporting obligations.

Will there be significant impacts on national budgets and administrations?

We estimate a significant decrease in the costs brought by the inefficiencies of the existing set-up for the cooperation of authorities. Various additional costs of the enhanced cooperation mechanism would be born at EU level.

Will there be other significant impacts?

A core impact of the preferred option is related to safeguarding the rights and interests of consumers and businesses and the protection of fundamental rights online.

Proportionality?

The preferred option would meet the objectives of the initiative without exceeding what is necessary to solve the identified problems. A fragmented approach across Member States is unable to ensure an appropriate level of protection to citizens across the Union, and the supervision of services would remain inconsistent.

D. Follow up

When will the policy be reviewed?

The establishment of a system for data collection and monitoring is in itself one of the core impacts pursued by the preferred option. This includes both the enhanced ability to monitor and account for the functioning of the cooperation across Member States' authorities, and the supervision of digital services.
The revision should take place within 5 years of the entry into force, but regular reports would be part of the design of the supervisory system itself.