

Digital Services Act package: open public Consultation – FEDMA answer

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About you

- 1 Language of my contribution: **English**
- 2 I am giving my contribution as: **Business association**
- 3 First name:
- 4 Surname
- 5 Email (this won't be published)
- 6 Scope: **International**
- 7 Organisation name: **FEDMA**
- 8 Organisation size:
 - <=€2m
 - <=€10m
 - <= €50m
 - Over €50m
- 9 What is the annual turnover of your company?
- 10 Are you self-employed and offering services through an online platform?
- 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

13 What type(s) of services do you provide?

- Internet access provider
- Domain name services
- Messaging service between a finite number of users
- Cloud computing services
- E-commerce market place: for sales of goods, travel and accommodation booking, etc.
- Collaborative economy platform
- Social networking
- Video, audio and image sharing
- File hosting and sharing
- News and media sharing
- App distribution
- Rating and reviews
- Price comparison
- Video streaming
- Online advertising intermediation
- Blog hosting
- Other services

14 Please specify:

15 What types of services does your platform intermediate?

- Temporary accommodation
- Private transportation
- Food delivery
- Household maintenance

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: **Belgium**

20 Transparency register number: **39300567160-02**

21 Country of origin:

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

2 What measure did you take?

- I sent the product back to the seller
- I reported it to the platform via its existing reporting procedure

- I contacted the platform through other means
- I notified a public authority
- I notified a consumer organisation
- I did not take any action
- Other. Please specify in the text box below**

3 Please specify.

3000 character(s) maximum

FEDMA is a member of EASA, the European Advertising Standard alliance, and support the development of effective self-regulation in Europe for advertising. In the scope of their activities, EASA's self-regulatory organisation (SRO), established at national level, handle cases related to advertisement that could be illegal or ads that might promote illegal goods. On average 97% of the received complaints are resolved by the SROs within two-month time frame.

In 2018 European SROs received almost 57,000 complaints relating to nearly 30,000 advertisements. Digital Marketing Communications represented 43% of total complaints received in 2018, 57% in 2017 and 34% in 2016. According to EASA' statistics, misleading advertising represents around 60% of all complaints received and dealt with by the SROs. EASA and its network define misleading advertising as any claim, whether made expressly, by implication, or by omission, which is likely to lead members of the general public to suppose that the advertised goods or services, or the conditions (including price) under which they are offered, are materially different from what is in fact the case. More information is available in EASA's [European Trends in Advertising Complaints, Copy Advice and Pre-clearance.](#)

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)

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

The COVID-19 pandemic severely impacted people's lives, economic and social systems. The lockdown measures and uncertainty caused serious anxiety that spread throughout our society.

Almost immediately after the start of pandemic, EASA's network handled complaints addressing commercial communications that undermined public health advice or exploited people's fears. Advertising self-regulatory organisations continued handling consumer complaints.

In terms of complaint handling and industry advice, most of the SROs prioritised treating COVID-19 related complaints as a priority. In total EASA and its SRO network received over 500 COVID-19 related complaints until mid-May 2020. Some members of EASA's network took additional steps beyond publishing rulings against irresponsible, misleading and harmful ads which target public anxieties or prejudices surrounding the coronavirus outbreak to sell products. For instance, several members set up quick reporting complaint forms, provided consumer advice on avoiding coronavirus scams, as well as issued guidance to advertisers on the dos and don'ts during the COVID-19 times with specific care and attention to ensure responsible advertising.

EASA, together with ICAS published a joint Report on Advertising Self-Regulation in Times of COVID-19. The report provides an insight into the challenges and actions taken by our SRO members since the start of the pandemic to ensure the safety of their employees whilst advising businesses on how to advertise responsibly in times of COVID-19, and the measures necessary to remove misleading and harmful advertising. The report is available [here](#).

Illegal content

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

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

12 What measure did you take?

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

13 Please specify

3000 character(s) maximum

EASA and its network do come across illegal content online, specifically related to possible consumer law infringements. On average 97% of the received complaints related to advertising are resolved by the SROs within two-month time frame. To resolve complaints, advertisers can, for example modify the ad or cease the advertising campaign. EASA's self-regulatory members deal with advertisement and do not cover any other type of content, such as editorial content that could be considered as illegal.

14 How easy was it for you to find information on where you could report the illegal content/activity?

***** Please rate from 1 star (very difficult) to 5 stars (very easy)

15 How easy was it for you to report the illegal content/activity?

***** Please rate from 1 star (very difficult) to 5 stars (very easy)

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

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

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

- Yes
- No

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

3000 character

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

Platforms address these issues through company specific policies and procedures.

21 Do you consider these measures appropriate?

- Yes
- No
- I don't know

22 Please explain.

3000 character(s) maximum

No matter how genuine company specific initiatives are, they cannot be as robust as industry wide SR systems. It is therefore important that like any responsible member of ad ecosystem such as advertisers, marketers, agencies and media, platforms participate in collective and independent advertising SR and EASA's advertising self-regulatory network which aims to ensure advertising is legal, honest, truthful, and decent

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

2 Were you able to follow-up on the information?

- Yes, I complained to the platform
- Yes, I escalated to an out-of-court dispute mechanism
- No, but it was useful to learn about the platform's policy
- No
- Other. Please specify in the text box below

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

Through its participation within EASA, FEDMA strongly believe that ad SR standards and rules provide adequate protection for children, when it comes to exposure to potentially inappropriate content in advertising. Self-regulation can offer an effective tool to address challenges related to harmful content online and should be taken into consideration as an option during the impact assessment.

EASA and its members pay special attention to advertising content that might be considered as inappropriate for children. All national advertising codes in the EU are either based on the [International Chamber of Commerce \(ICC\) Advertising and Marketing Communications Code](#) or have similar provisions. The ICC codes is in its core pursuing various objectives on responsible marketing and advertising, including ensuring “special responsibility as regards marketing communications and children and teens”. Article 2 of the ICC code calls for high level of social responsibility in marketing communication. Article 18.3 of the ICC code states that “marketing communications should not contain any statement or visual treatment that could have the effect of harming children or teens mentally, morally or physically Children and teens should not be portrayed in unsafe situations or engaging in actions harmful to themselves or others, or be encouraged to engage in potentially hazardous activities or inappropriate behaviour in light of the expected physical and mental capabilities of the target demographic”. Some SROs have developed special sectoral codes of conduct that aim to protect minors in online and offline advertising.

Platforms are therefore encouraged to participate in collective and independent advertising SR and EASA’s advertising self-regulatory network which aims to ensure advertising is legal, honest, truthful, and decent.

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						X
To protect freedom of expression online, diverse voices should be heard					X	
Disinformation is spread by manipulating algorithmic processes on online platforms			X			
Online platforms can be trusted that their internal practices sufficiently guarantee democratic integrity, pluralism, non-discrimination, tolerance, justice, solidarity and gender equality.					X	

3 Please explain.

3000 character(s) maximum

Algorithms are used for a number of purposes, including to provide personalised services, content and offer. Users and consumers already benefit from rights regarding automated decision making thanks to the GDPR and the recently adopted Digital Content Directive, notably the right to be informed about the use of such practices.

The development of Artificial intelligence and the use of algorithms, as well as their impact on users are being monitored. Consumers should be protected from unfair decisions and consequences, however it is important to maintain a legislative environment in which technology development and its added value for society can thrive.

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

See answer to question 10 of section A

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

3000 character(s) maximum

See answer to question 10 of section A

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

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?

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

The EASA's advertising self-regulatory network aims to ensure advertising is legal, honest, truthful, and decent and covers complaints originating from Europe. It may address complaints related to ads that were placed or intermediated by services established in third countries. If a complaint concerns an ad from a third country, the relevant self-regulatory organisation (SRO) members may:

- Contact the advertiser and/or media owners directly, informing them of existing issues with commercial communications complained about;
- Contact local non-Europe SRO in a third country for assistance, if such SRO is established;
- Refer the complaint to the relevant national authority.

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

7 Please provide a link to publicly available information or reports.

The EASA's network of self-regulatory organisations (SROs) conducts own initiative monitoring and handles consumer complaints that relate to advertising featuring illegal content or goods or services. In such an instance the SRO will contact the advertiser or the relevant intermediary to ensure action is taken against these ads which are found in breach of applicable advertising standards. This activity is reflected in EASA's annual statistics report ([*European Trends in Advertising Complaints, Copy Advice and Pre-clearance*](#)).

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

9 Please indicate which one(s). What data is shared and for what purpose, and are there any constraints that limit these initiatives?

3000 character(s) maximum

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

12 Please specify for what specific purpose and if the information available to you sufficient, in your opinion?

3000 character(s) maximum

13 How valuable is this information for you?

***** Please rate from 1 star (not particularly important) to 5 (extremely important)

14 Do you use or are you aware of alternative sources of such data? Please explain.

2. Clarifying responsibilities for online platforms and other digital services

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

	Yes, by all online platforms, based on the activities they intermediate (e.g. content hosting, selling goods or services)	Yes, only by larger online platforms	Yes, only platforms at particular risk of exposure to illegal activities by their users	Such measures Should not be required by law
Maintain an effective 'notice and action' system for reporting illegal goods or content				
Maintain a system for assessing the risk of exposure to illegal goods or content				
Have content moderation teams, appropriately trained and resourced				

Systematically respond to requests from law enforcement authorities				
Cooperate with national authorities and law enforcement, in accordance with clear procedures				
Cooperate with trusted organisations with proven expertise that can report illegal activities for fast analysis ('trusted flaggers')				
Detect illegal content, goods or services				
In particular where they intermediate sales of goods or services, inform their professional users about their obligations under EU law				
Request professional users to identify themselves clearly ('know your customer' policy)				
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)				
Inform consumers when they become aware of product recalls or sales of illegal goods				
Cooperate with other online platforms for exchanging best practices, sharing information or tools to tackle illegal activities				
Be transparent about their content policies, measures and their effects				
Maintain an effective 'counter-notice' system for users whose goods or content is removed to dispute erroneous decisions				
Other. Please specify				

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

5000 character(s) maximum

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3 What information would be, in your view, necessary and sufficient for users and third parties to send to an online platform in order to notify an illegal activity (sales of illegal goods, offering of services or sharing illegal content) conducted by a user of the service?

- Precise location: e.g. URL
- Precise reason why the activity is considered illegal
- Description of the activity
- Identity of the person or organisation sending the notification. Please explain
- under what conditions such information is necessary:
- Other, please specify

4 Please explain

3000 character(s) maximum

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

5000 character(s) maximum

6 Where automated tools are used to detect illegal content, goods or services, what opportunities and risks does their use present as regards different types of illegal activities and the particularities of the different types of tools?

3000 character(s) maximum

7 How should the spread of illegal goods, services or content across multiple platforms and services be addressed? Are there specific provisions necessary for addressing risks brought by:

- a. Digital services established outside of the Union?
- b. Sellers established outside of the Union, who reach EU consumers through online platforms?

3000 character(s) maximum

8 What would be appropriate and proportionate measures for digital services acting as online intermediaries, other than online platforms, to take – e.g. other types of hosting services, such as web hosts, or services deeper in the internet stack, like cloud infrastructure services, content distribution services, DNS services, etc.?

5000 character(s) maximum

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

5000 character(s) maximum

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						
Provide users with tools to flag disinformation online and establishing transparent procedures for dealing with user complaints						
Tackle the use of fake-accounts, fake engagements, bots and inauthentic users behaviour aimed at amplifying false or misleading narratives						
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						
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						
Adapted risk assessments and mitigation strategies undertaken by online platforms						
Ensure effective access and visibility of a variety of authentic and professional journalistic sources						
Auditing systems for platform actions and risk assessments						
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.						
Other (please specify)						

13 Please specify

3000 character(s) maximum

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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

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

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

16 Please explain.

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

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

24 Are there other points you would like to raise?

3000 character(s) maximum

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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	Somewhat disagree	Fully disagree	I don't
--	-------------	----------------	---------------	-------------------	----------------	---------

			not disagree			know/ No reply
Consumers have sufficient choices and alternatives to the offerings from online platforms.				X		
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").				X		
It is easy for individuals to port their data in a useful manner to alternative service providers outside of an online platform.				X		
There is sufficient level of interoperability between services of different online platform companies.				X		
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.		X				
It is easy for innovative SME online platforms to expand or enter the market.				X		
Traditional businesses are increasingly dependent on a limited number of very large online platforms.	X					
There are imbalances in the bargaining power between these online platforms and their business users.	X					
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.	X					
Certain large online platform companies create barriers to entry and expansion in the Single Market (gatekeepers).	X					
Large online platforms often leverage their assets from their primary activities (customer base, data, technological solutions, skills, financial capital) to expand into other activities.	X					
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.	X					

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	5
Wide geographic coverage in the EU	3
They capture a large share of total revenue of the market you are active/of a sector	5
Impact on a certain sector	5
They build on and exploit strong network effects	5
They leverage their assets for entering new areas of activity	5
They raise barriers to entry for competitors	5
They accumulate valuable and diverse data and information	5
There are very few, if any, alternative services available on the market	4
Lock-in of users/consumers	5
Other	5

2 If you replied "other", please list

3000 character(s) maximum

- Platforms have acquired the status of gatekeeper through their vertical integration in an ecosystem giving that player substantial control over the ecosystem, and increasing the dependency of other players, as well as of consumers, due to lack of alternative trading partners. The constitution of such a dependant ecosystem can be assimilated to a conglomerate strategy based on acquisitions, in a logic of horizontal and/or vertical integration
- the centralisation of a number of consumer-facing services by a single player (i.e. the number of user facing services accessible through a single log-in), and the practice of self-preferencing the platform own services, at the expense of competing independent services.
- the capacity to leverage large quantity of data as an asset to gain significant market power in adjacent market.
- Gatekeeper platform decision making power to limit access of other players to the market.

See separate paper

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

- Platforms with gatekeeping position could be defined through a series of cumulative criteria:
- Quantitative criteria:
- Financial valuation
 - User base
 - Vertical integration or the degree of control of an ecosystem by one player, including the ability of said player to limit access to market (and to consumer) to other players.
 - Market share
- Qualitative criteria:
- Access to large quantity of data, including from the provision of BtoC services and the ability to develop more services based on such access
 - The capture of a large share of revenue of a market
 - The intensity of the network effect

See separate paper

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

- Any software enabling access to the internet for a device (i.e. internet browser, operating system)
- data management platform, including user facing privacy settings platforms

See attached paper for more details

Emerging issues

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

Many digital players need access to a platform in order to provide their services. Gatekeeping platform who compete with other market players, are in a position to drive competitors out of business by limiting their access to the platform. Their position also allows them to continue collecting personal data from users, which strengthen their position on the market and their leverage power.

As an example, in July 2020, FEDMA, together with other trade associations, [alerted on the upcoming changes that Apple has announced for the Apple Identifier for Advertiser \(IDFA\)](#) and the substantial impact such changes would have on the entire mobile app industry, and on advertising revenue for online publisher, raising concerns with regard to interoperability, legal compliance and competition. Similarly, the announce by Google in January 2020 with respect to their Browser Chrome's handling of third-party cookie will have significant impact on an entire industry and raise interoperability issues. Google's Chrome browser market share in Europe is 61.1% ([source](#))

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

in July 2020, FEDMA, together with other trade associations, [alerted on the upcoming changes that Apple has announced for the Apple Identifier for Advertiser \(IDFA\)](#) and the substantial impact such changes would have on the entire mobile app industry, and on advertising revenue for online publisher, raising concerns with regard to interoperability, legal compliance and competition. Similarly, the announce by Google in January 2020 with respect to their Browser Chrome's handling of third-party cookie will have significant impact on an entire industry and raise interoperability issues

FEDMA is concerned by these moves by large platforms to limit the ability for players in the online advertising ecosystem to directly access users on their devices and request granular consent while providing users with transparency. Such platform de facto imposes their definition of privacy, and their interpretation of the GDPR to an entire ecosystem, also limiting the ability for publisher to derive revenue from online advertising.

In addition, FEDMA is concerned by the creation of walled gardens/logged in environment, providing a range of services once the user is logged in (after having agreed to the terms and condition once), while other publishers and advertising services must obtain the user's consent at every visit of the website, and at a more granular level to be in compliance with the law. The difference of online experience for the user is likely to drive him/her towards larger platform with logged in environment, at the expense of the other diverse players in the market.

9 Are there specific issues and unfair practices you perceive on large online platform companies?

5000 character(s) maximum

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

The combination of data collected through the different range of BtoC services provided by platform provide a significant competitive advantage over their competitors, as well as a important leverage to develop and gain significant market power in adjacent market.

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

3000 character(s) maximum

Such practices have an impact on competition, by limiting the ability of new players to enter the market, and by driving existing players out of business. It consequently has an impact on innovation. While large players can use their data sets and walled garden to innovate, other players with innovative services cannot enter the market, preventing users from benefiting of innovation. Finally, by restricting online player from accessing users directly on their device, platform prevent user's from exercising meaningful choice with regard to their privacy.

See attached paper

12 Do startups or scaleups depend on large online platform companies to access or expand? Do you observe any trend as regards the level of dependency in the last five years (i.e. increases; remains the same; decreases)? Which difficulties in your view do start-ups or scale-ups face when they depend on large online platform companies to access or expand on the markets?

3000 character(s) maximum

13 Which are possible positive and negative societal (e.g. on freedom of expression, consumer protection, media plurality) and economic (e.g. on market contestability, innovation) effects, if any, of the gatekeeper role that large online platform companies exercise over whole platform ecosystem?

3000 character(s) maximum

By limiting the ability for online publisher to derive revenue from advertising, or by driving the majority of ad revenue through their own service, platforms have a direct impact on publisher's existence, and consequently on media plurality and freedom of expression.

14 Which issues specific to the media sector (if any) would, in your view, need to be addressed in light of the gatekeeper role of large online platforms? If available, please provide additional references, data and facts.

3000 character(s) maximum

Regulation of large online platform companies acting as gatekeepers

1 Do you believe that in order to address any negative societal and economic effects of the gatekeeper role that large online platform companies exercise over whole platform ecosystems, there is a need to consider dedicated regulatory rules?

- I fully agree
- I agree to a certain extent
- I disagree to a certain extent
- I disagree
- I don't know

2 Please explain

3000 character(s) maximum

FEDMA believes that the current ex-post control of anti-competitive behaviour is not efficiently addressing the challenges raised by large platform in the position of gatekeeper. This approach (ex-post control and fine) is no longer acting as a sufficient deterrent to anti-competitive strategy by platforms. In addition, the fast pace of the digital industry means that market players can be driven out of business very quickly.

Monitoring, and proactive regulatory intervention is needed to better address the specific challenges raised by the gatekeeping platform. FEDMA believes that an ex ante proposal with a carefully defined scope tailored specifically to the challenges created by gatekeeper platform could address them efficiently.

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

- the practice of self-preferencing the platform own services, at the expense of competing independent services.
 - The practice of providing integrated partners with privileged access to data collected in the primary market, or the practice of bundling data collected across different market segments in order to generate more value.
 - the capacity to leverage large quantity of data as an asset to gain significant market power in adjacent market.
 - imposing unfair terms and condition or unilateral terms to business partners, limiting their ability to negotiate terms while having limited alternative for trading partners.
- In addition, it should be considered whether the practices that constitute an abuse of dominant position should be prohibited to any platform reaching the position of gatekeeper, regardless of whether that platform has reached a dominant position as currently being defined in the law. Such practices include:
- refusing a sale,
 - directly or indirectly impose prices and conditions of purchase or sale,
 - limit production or technical development to the detriment of consumers,
 - apply unequal conditions to equivalent services with regard to trading partners, thereby placing them at a competitive disadvantage (discrimination),
 - or make the conclusion of contracts subject to the acceptance by the partners of additional services which, by their nature or according to commercial practice, are not related to the subject matter of the contract.

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

Obligations to provide fair access to their services: Gatekeeping platforms decision-making power concerning other players' access to market should be limited, and based on fair, transparent, and non-discriminatory principles.

Obligation of notifying changes to the right of access accompanied by an explanation of reasons: When changing the rights of access, gatekeeping platforms typically invoke misleading arguments such as privacy or security issues. Therefore, any decision to modify, restrict or ban access to the platform should be accompanied by a notice detailing the reasons for the restriction of access and preceded by a notice period. This notice period should be suspended if the recipient lodges an appeal before a supervisory authority.

Obligations of interoperability: Gatekeeping platforms, which often provide their own competing services on the platform they handle, should be subject to an obligation to guarantee the interoperability of services with the providers of complementary and alternative services ensuring multi-homing and mobility for businesses and consumers.

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

A specific regulatory authority at European level should be responsible for the monitoring of large online platforms. The substantial size of some of the gatekeeping platforms could be a deterrent for smaller regulatory authorities to effectively implement and enforce the rules, strengthening the need for a European body as the most effective approach. While such authority should be under the lead of the European Commission Competition services, it should ensure full consistency with other related policies and full coordination with national regulators, such as Data Protections Authorities, Consumer protection authorities, and other relevant regulatory bodies.

Considering the globalized nature the digital market, as well as its fast pace, a dedicated European body, in charge of monitoring and with the ability to gather information to ensure efficient oversight, the power to impose behavioural and structural remedies, impose interim measures, and settle dispute.

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

Regulatory intervention should be specifically adapted to gatekeeping platform with case by case adapted remedies. In particular these remedies could be an obligation for gatekeeping platform to provide fair and non-discriminatory access to their infrastructure, or to unlock access to data sets necessary for competition.

While such authority should be limited to the monitoring and intervention with regard to gatekeeping platform, it should ensure full consistency with other related policies and full coordination with national regulators, such as Data Protections Authorities, Consumer protection authorities, and other relevant regulatory bodies.

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

A European regulatory authority should be able to both set the obligations and prohibitions rules for gatekeeping platforms and to enforce these rules, including case by case remedies.

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

Considering the globalized nature of the digital market, as well as its fast pace, a dedicated European body should be exclusively competent to address the issues related to gatekeeping platforms. In charge of monitoring and with the ability to gather information to ensure efficient oversight, the power to impose behavioural and structural remedies, impose interim measures, and settle dispute. The substantial size of some of the gatekeeping platforms could be a deterrent for smaller regulatory authorities to effectively implement and enforce the rules, strengthening the need for a European body.

Such authority would have to coordinate with national competition authorities to ensure coordination and consistency.

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

Sector-specific regulations already exist and coexist with competition law. The competent authorities each have their own prerogatives and are often linked to each other. The specific rules that would apply to gatekeepers should follow a similar pattern and a European regulatory oversight should be able to mobilise in a complementary way sectoral regulations and competition law.

While a European body should be solely responsible to tackle the issue of platform in the position of gatekeeper, it should be in a position to coordinate and dialogue with the different stakeholders, exchange their opinions and intervene in a coordinated and complementary manner.

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

The objective of asymmetrical regulation that would target digital platforms in a gatekeeper position should indeed be to limit the societal and economic effects resulting from this status. As with the regulation of companies in a dominant position, the economic objective of the regulation of gatekeepers should be the efficient functioning of the markets in which they operate, the aim being to maximise collective welfare, taking into account the intrinsic characteristics of the markets and the positive and negative externalities generated by the players.

Thus, the objective of regulation would not be to prevent actors from reaching the critical size that allows them to make the best use of the network effects present in these markets, but to preserve the contestability of these markets.

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

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

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

3000 character(s) maximum

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

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

23 Other – please list

3000 character(s) maximum

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

3000 character(s) maximum

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

	1 (not effective)	2 (somewhat effective)	3 (sufficiently effective)	4 (very effective)	5 (most effective)	Not applicable /No relevant experience or knowledge
1. Current competition rules are enough to address issues raised in digital markets			X			
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				X		
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					X	
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.	X					
5. There is a need for combination of two or more of the options 2 to 4.					X	

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

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

Transparency is essential in building trust in the advertising industry, and in the data economy in general. The [2018 GDMA Global data privacy report](#) showed that 88% of consumers cite transparency as the key to trusting organisations.

This consultation covers a vast area of activities, including commercial advertising, criminal activities and online disinformation/political advertising. It is worth pointing out that commercial advertising is already subject to a high number of legislations to ensure the full protection of the consumer/ user, ranging from the Unfair Commercial Practices, the ongoing consumer rights legislation work, to data protection and privacy rules. Each issue may need to be looked at separately in order to assess the appropriate solution, as one approach may not be appropriate to address all issues together.

Existing legislations already imposes a high standard of transparency and information to individuals about, among other aspects, how their personal data is processed for the purposes of advertising and marketing communication. In many cases, the user's consent is required. In addition, the industry has put in place several self-regulatory programmes to increase user's transparency over digital advertising they receive.

FEDMA is a founding member of the European Digital Advertising alliance. A pan European self-regulatory programme which provides transparency and control over digital advertising through the use of an icon.

The "AdChoices Icon" is today commonplace across online advertising (usually placed in the top right corner of an ad). The AdChoices Icon, appears on most digital advertising, together with a standard "AdMarker" text, (this is either rolled out or rolls out when the user hovers over the Icon for smaller ad sizes). The text is tailored to each European language, for instance, in English is "AdChoices", in French, "Choisir sa pub", in German "Datenschutzinfo", in Italian "Scegli Tu", and so on. This aims to be intuitive to consumers and in one-click they are guided to further real time information about which company delivered that particular ad and based on what information. The interstitial page behind the "AdChoices Icon" (which is revealed in one-click), then provides information from the company serving the ad. This is flexible to allow companies to provide as much information as they wish in order to promote user understanding, though it is mandatory to include:

- The "AdChoices Icon" prominently
- The Third Party's identity and contact details
- The types of data collected and used for the purpose of providing interest-based advertising, including an indication of whether any data is 'personal data' or 'sensitive personal data'
- The purpose(s) for which interest-based advertising data is processed and the recipients or categories of recipient to whom such data may be disclosed
- A clear link to the consumer choice platform at YourOnlineChoices.eu

Crucially, on the last point above, the consumer must always be invited to visit a pan-European, information and control portal at www.youronlinechoices.eu. This website is currently available in 33 markets (EU, EEA, Switzerland, Turkey and the UK), and in 27 European languages. It provides a wealth of further information about digital data-driven advertising, as well as a preference management tool (to turn on/off interest based ads from any participating company, as well as a blanket switch to turn interest based ads from all companies on/off in one-click). Furthermore, in 12 European markets to-date, the website encourages consumers to address any queries or complaints independently to the well-established network of national advertising self-regulatory organisations under the umbrella of EASA – the European Advertising Standards Alliance.

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

The “AdChoices Icon”, as referenced in Q3 above, is placed in the top right corner of online ads delivered across different publisher sites.

FEDMA is not responding as a publisher. However, it is important to note that the “AdChoices Icon”, by displaying the company involved in the delivery of the ad, may also be used by publishers and their audiences, to understand which third parties serve the ads on their properties and provides an easily accessible reference to those third parties’ data processing and privacy practices.

Publishers may also use the “AdChoices Icon” in a distinct way, in the footer of their web pages, to provide further disclosures about third party advertising that may be happening across their sites (the Icon in this manner can link directly to the relevant layer of the publisher’s privacy notice – a simple and intuitive manner to help inform their online audiences of digital advertising and data privacy practices across their properties). This kind of use of the “AdChoices Icon” offers a clear and consistent way to find out more about activity on the publishers site, including a list of 3rd parties partnered with the site and with which the user may interact, links to further information about data-driven advertising and online privacy, particularly to YourOnlineChoices.eu, and finally, any further information from the publisher that supports user understanding.

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

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

FEDMA is not responding as a platform but believes that the EDAA self-regulatory programme plays an important role in regard to this question. Tools and resources that empower consumers to understand, learn more about, and take purposeful actions with regard to their online advertising preferences and experiences, are of paramount importance.

To this end, a wide range of consumer-centric resources is available on the EDAA website youronlinechoices.eu. These resources help to better inform consumers about how the ads they see online have been served and often tailored to them, for instance, based on inferred interest categories. Furthermore, the website offers consumers with a number of options regarding their online advertising preferences and queries (and even complaints). They can use the advertising preference management tool to turn on or off interest based ads from some or all participating companies, and they can contact their national advertising standards organisations "SROs" (where available) to register queries or complaints in their own language, to be handled independently by those SROs.

Users can access this service at youronlinechoices.eu, which provides several options regarding advertising that they receive through online platforms, completely free of charge and under no conditions (no advertising or revenue is drawn from consumer use of the platform and tools) except those which are deemed strictly necessary for the functioning of the site as laid out in the website privacy policy and terms and conditions (and relate solely to the configuration of browser or device settings to enable the service).

Youronlinechoices.eu registered over of 9.5 million visits last year, with hundreds of thousands of choices expressed. Interestingly, many users engage with the information and material made available, informing about how digital advertising works, and do not continue to take actions to alter their preferences. This interesting observation is supported by recent 2019 research, conducted through an independent research agency, MTM, which shows willingness to provide data for advertising purposes increases when consumers have a greater understanding of how that data may be collected and used by the relevant companies involved:

- respondents knowing a bit or a lot about GDPR feel 42% and 54% respectively more knowledgeable about online data
- 63% of respondents who understand the use of data for online advertising find OBA [Online Behavioural Advertising] appealing, as opposed to 15% who aren't aware or don't understand it

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

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

EDAA's self-regulatory "AdChoices Icon" and interstitial, are an optimal vehicle to provide consumers a meaningful overview about the ad placement process (including how, and by whom, data may be collected and processed). This AdChoices Icon has been running across online ads since 2012 and has become an increasingly used and widely recognisable symbol for all internet users.

The "AdChoices Icon" is one element of a broad and effective cross-industry response to harnessing consumer trust in light of the growing use of digital advertising platforms and technologies to reach potential audiences with commercial advertising. It is displayed as an enhanced notice on digital ads (usually in the top right corner) or through an additional site-level disclosure in the website footer, and links through (via an interstitial page, presenting more information to the consumer) to the consumer choice website "YourOnlineChoices.eu", an educational portal where internet users can find easy-to-understand information about data-driven advertising and manage their online ad experience – if they so wish, enacting preferences to turn on or off interest-based advertising by some/all companies.

This self-regulatory measure, already in place, benefits from significant traction in the market (over 150 participating companies) and is an ideal vehicle to inform users and website owners about data use for digital advertising and ensures that individual preferences can be expressed. Strong accountability and enforcement mechanisms ensure those preferences are subsequently respected.

FEDMA would encourage all measures to support this initiative and further increase its traction to deliver on meaningful transparency, choice and control solutions, alongside impactful education and awareness initiatives localised per market, going forward. We believe it is important to build on, and continuously reinforce, this consumer-centric initiative, in light of the rapidly changing landscape from regulatory, consumer expectation, and industry innovation perspectives.

16 What information about online ads should be made publicly available?

3000 character(s) maximum

Today, information about ads displayed online, available through the "AdChoices Icon" include key messages such as why users are seeing a particular ad and who is delivering the ad to them, striving to provide users with greater transparency over the ad delivery process.

As shown in [EDAA's 2019 consumer research](#), Internet users have mixed levels of awareness and understanding of their rights and the regulations regarding data privacy. 97% of respondents are aware that data is used for online advertising, but 72% agree they'd like to know more about how information about them is used online, which confirms EDAA's position to focus on educating consumers on their data-driven advertising choices. Furthermore, most consumers using the AdChoices Icon and/or the YourOnlineChoices website understand data usage for advertising, but there is a need to bring in those less aware.

There are opportunities to increase trust amongst consumers by tackling the occasional lack of clarity in how data is collected and used. There is indeed evidence EDAA is successful in improving understanding as users feel more informed and positive to online advertising:

- 54% of respondents who have used the AdChoices Icon and/or the YourOnlineChoices website trust that organisations are using the information about them in a legal and responsible way
- 59% of respondents who have used the AdChoices Icon and/or the YourOnlineChoices website would rather have ads tailored to their interest rather than general and irrelevant ads

It would benefit all users, as well as the digital advertising industry, if greater educational resources about digital advertising were put in place and could be geared differently to different age ranges. In this regard, the EDAA is currently collaborating with Media Smart (an educational programme supporting media literacy amongst young people) to develop materials on data privacy and digital advertising, which can be adopted within the national school curriculum. The first iteration will be launched in the UK in October 2020, which will serve as a pilot we hope to subsequently roll out across other European markets.

We believe that it is important to convey information currently contained when companies display the “AdChoices Icon” and interstitial, which includes, at a minimum, the features outlined in response to Q3 above.

Companies are able to add further disclosures and information to consumers via the current Interstitial page, and beyond this we are currently engaged in a cross-stakeholder dialogue as to further developing the information requirements to provide a more information-rich experience to the end consumer.

17 Based on your expertise, which effective and proportionate auditing systems could bring meaningful accountability in the ad placement system?

3000 character(s) maximum

Today, platforms which can be considered as gatekeepers generally do not allow advertisers and publishers to run audit on the placement of ads within the walled garden of the platform, which leads to a lack of transparency and information. Publishers and advertisers should be able to determine an independent entity to run audits in the platform.

In other cases, the European self-regulatory best practices ensure that companies delivering advertising technology for the purposes of ad placement will be audited by independent providers and can ensure a constant monitoring is in place with regards to key areas, such as:

- Enhanced notice and adequate disclosure about data collection and use;
- Privacy policies of the parties involved in the ad-delivery;
- User choice
- Data security safeguards in place and data storage;
- Sensitive segmentation;
- Education;
- Enforcement (including complaints handling through well-recognised, tried and tested self-regulatory mechanisms in the consumers’ local market and language).

Independent providers grant successfully audited companies with a renewable Trust Seal, which can act as a representation – both to the market and towards consumers – that the company is compliant with the relevant principles. Such trading seals hold a significant market value to

compliant businesses, conveying a sense of trust and good standing from consumers and business partners towards the company that receives it.

As an initial part of the auditing process, the EDAA programme also requires companies to initially submit a self-declaration of compliance with all of the best practice principles. This combination of initial self-declaration, followed by independent verification, helps to ensure that companies are also fully engaged in their efforts to review and verify systems and practices, which often requires a holistic cross-functional, cross-departmental and even cross-border approach.

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

A suggested functional definition of political advertising would refer to advertising expressly advocating for or against a political party, a political candidate and/or the stand for a national or European referendum.

It is important to differentiate political advertising and issue-based advertising from the concept of commercial advertising. In 2018, European advertising Self-Regulatory Organisations ("SROs") investigated the state of play around national policy standards for online political ads in Europe.

A breakdown, by country, is available below:

- **UK** - In conjunction with the UK Electoral Commission, the Information Commissioner's Office (ICO) advised the UK Government to conduct a review of the regulatory gaps in relation to the content, provenance and jurisdictional scope of political advertising online, including consideration of requirements for digital political advertising to be archived in an open data repository to enable scrutiny and analysis of the data. These recommendations are contained in the 2018 report "Democracy Disrupted?" and haven't been addressed since: indeed, as indicated by the 2019 "Disinformation and fake news: final report" issued by the UK Digital, Culture, Media and Sport Committee, non-broadcast political advertising in the UK remains unregulated;
- **IT** - Through a set of Guidelines for the Italian political elections in 2018, the Italian Authority for Communications Guarantees extended the broadcasting-related framework to online paid political communications, but it did so with a relatively mild approach ("It is desirable that rules also apply to online political propaganda");
- **CZ** - Czech legal Criteria for assessing the transparency of the parties include specific provision for digital media and references to campaign expenditure's requirement;
- **DE, PL, GR** - There is no specific legal framework for online political ads in these countries, nor self-regulatory or co-regulatory initiatives;
- **LU** - There is no specific legal framework for online political ads in Luxembourg, nor self-regulatory or co-regulatory initiatives but a "gentlemen agreement" approach between parties on a voluntary basis.

A few additional developments, by country, are available below:

- In late 2018, **France** introduced new rules under Art. L. 163-1 providing that in the three months prior to elections, online platforms must provide users with information about who paid for the "promotion of content related to a debate of general interest". Moreover, users must be provided with fair, clear and transparent information on the use of personal data in the context of the promotion of information content related to a debate of general interest.

- In November 2019 the **Irish** government announced a proposal to regulate transparency of online paid political advertising during election periods. The legislation will apply to online platforms (as sellers or intermediaries of political advertising), and buyers of political advertisements. The obligation will be placed on the seller to determine that an ad falls under the scope of the regulation. Online paid-for political advertisements will be required to be labelled, and clearly display certain information, or a link to the information, in a clear and visible manner.
- Still in 2019, The **Dutch** government proposed a new Political Parties Act, including new transparency obligations for political parties with regard to digital political campaigns and political micro-targeting.

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

FEDMA would like to share with the European Commission the existence of self-regulatory programmes on political advertising in both the US (<https://aboutpoliticalads.org/>) and Canada (<https://politicalads.ca/>). Each jurisdiction leverages a “PoliticalAd” Icon, and this is currently being rolled-out. In Canada, the PoliticalAd Programme is supported by the national Electoral Commission.

It will be important to monitor how these initiatives develop and see which aspects would be feasible to adopt for a similar European initiative.

Drawing inspiration from these programme, it would be interesting to consider a visual icon-based approach to address the issue of political ad in Europe. Such icon would leverage tried and tested methods of information disclosure in online advertising to apply such transparent notices, in a way which is clear and engaging for the consumer but does not significantly detract from the political advertising message itself.

Whilst interest-based advertising online has long benefitted from disclosure via the “AdChoices Icon” as part of a broader self-regulatory set of best practice principles, backed up by accountability and enforcement, similarly advertising of a political (and non-commercial) nature could be disclosed via a “PoliticalAd Icon” notice, at the ad-level, in a contextual and real-time way for the consumer. Such “PoliticalAd” notice in Europe could be attached of a series of mandatory requirements (including disclosures, for instance, of the name of the political advertiser, contact details, campaign expenditure, targeting criteria, etc.). The nature of such disclosures to be required, could best be arrived at via a cross-stakeholder and community dialogue involving industry associations and the Institutions. Additional transparency standards could then translate into displaying consumers the targeting criteria that have been used for the personalisation of a political ad and offering the possibility to manage and control political ads that have been targeted to them (e.g. switching off the possibility of being targeted by a specific political advertiser or based on a specific targeting criterion).

Current thinking on this topic in Europe is already underway, and the EDAA (European Interactive Digital Advertising Alliance) is proactively commissioning a detailed assessment of all different pure regulatory, co-regulatory, and self-regulatory standards across the majority (20) of different European markets, as such a clear and vital preliminary mapping exercise seems to be lacking in all of the current debates. This study will help to inform next steps for the EDAA to work towards

greater consumer awareness, knowledge and empowerment in this area, alongside improved degrees of transparency and control in the sphere of political advertising.

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

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	

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 Ecommerce 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

FEDMA believes that, in the current framework, cooperation amongst various regulatory authorities should be further facilitated and enforcement procedures should be reviewed in order to increase transparency for all stakeholders, but most importantly, to avoid overlaps between questions relating to the consumer agenda, the Digital Services Act and the GDPR. In addition, in order to tackle effectively issues related directly to platform acting as gatekeeper, a specific regulatory authority should be created at European level.

However, in order to operate properly, Businesses require legal stability and certainty. Consequently, it is important to have an harmonized and coherent legal framework, with responsibility clearly allocated to each regulatory authorities, and efficient coordination in place to avoid overlap (i.e. Any consumer issues that also relates to personal data should include consultation of the data protection authorities, to avoid conflict of interpretation, and to preserve the one stop shop mechanism set in place with the GDPR).

The EPDS has launched the digital clearing house which is an informal cooperation tool among competition, consumer protection and data protection authorities. The European Commission should review the work of the digital clearing house and draw lessons from that experience. finally, any work in this area should be transparent and open to dialogue with stakeholders.

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	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		X				
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.)				X		
Cooperation mechanism with swift procedures and assistance across				X		

national competent authorities across Member States						
Coordination and technical assistance at EU level					X	
An EU-level authority					X	
Cooperation schemes with third parties such as civil society organisations and academics for specific inquiries and oversight				X		
Other: please specify in the text box below						

3 Please explain

5000 character(s) maximum

As answered in section 3 of this consultation, FEDMA believes that a specific regulatory authority at European level should be responsible of large online platforms. While such authority should be under the lead of the European Commission Competition DG, it should ensure full consistency with other related policies and full coordination with national regulators, such as Data Protections Authorities, Consumer protection authorities, and others.

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

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

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	5
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

2 Other final comments

3000 character(s) maximum