

# Regulatory environment for platforms, online intermediaries, data and cloud computing and the collaborative economy

Fields marked with \* are mandatory.

## Objectives and General Information

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**The views expressed in this public consultation document may not be interpreted as stating an official position of the European Commission. All definitions provided in this document are strictly for the purposes of this public consultation and are without prejudice to differing definitions the Commission may use under current or future EU law, including any revision of the definitions by the Commission concerning the same subject matters.**

You are invited to read the privacy statement attached to this consultation for information on how your personal data and contribution will be dealt with.

This public consultation will close on 30 December 2015 (12 weeks from the day when all language versions have been made available).

The Commission invites all interested parties to express their views on the questions targeting relations between platform providers and holders of rights in digital content (Question starting with "[A1]"), taking account of the Commission Communication "Towards a modern, more European copyright framework" of 9 December 2015. Technical features of the questionnaire have been adapted accordingly.

**Please complete this section of the public consultation before moving to other sections.**

- Respondents living with disabilities can request the questionnaire in .docx format and send their replies in email to the following address:  
CNECT-PLATFORMS-CONSULTATION@ec.europa.eu.
- If you are an association representing several other organisations and intend to gather the views of your members by circulating the questionnaire to them, please send us a request in email and we will send you the questionnaire in .docx format. However, we ask you to introduce the aggregated answers into EU Survey. In such cases we will not consider answers submitted in other channels than EU Survey.
- If you want to submit position papers or other information in addition to the information you share with the Commission in EU Survey, please send them to  
CNECT-PLATFORMS-CONSULTATION@ec.europa.eu and make reference to the "Case Id" displayed after you have concluded the online questionnaire. This helps the Commission to properly identify your contribution.
- Given the volume of this consultation, you may wish to download a PDF version before responding to the survey online. The PDF version includes all possible questions. When you fill the survey in online, you will not see all of the questions; only those applicable to your chosen respondent category and to other choices made when you answer previous questions.

\* Please indicate your role for the purpose of this consultation

- An individual citizen
- An association or trade organization representing consumers
- An association or trade organization representing businesses
- An association or trade organization representing civil society
- An online platform
- A business, including suppliers using an online platform to provide services
- A public authority
- A research institution or Think tank
- Other

\* Please indicate your country of residence

Belgium
▼

\* Please provide your contact information (name, address and e-mail address)

Address: rue du trone 60, 1050 Brussels, Belgium  
E-mail: info@edima-eu.org

\* Is your organisation registered in the Transparency Register of the European Commission and the European Parliament?

*Note: If you are not answering this questionnaire as an individual, please register in the Transparency Register. If your organisation/institution responds without being registered, the Commission will consider its input as that of an individual and will publish it as such.*

- Yes
- No
- Non-applicable

\* Please indicate your organisation's registration number in the Transparency Register

53905947933-43

If you are an economic operator, please enter the NACE code, which best describes the economic activity you conduct. [You can find here the NACE classification.](#)

*Text of 3 to 5 characters will be accepted*

The Statistical classification of economic activities in the European Community, abbreviated as NACE, is the classification of economic activities in the European Union (EU).

\* I object the publication of my personal data

Yes

No

## Online platforms

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### SOCIAL AND ECONOMIC ROLE OF ONLINE PLATFORMS

Do you agree with the definition of "**Online platform**" as provided below?

"Online platform" refers to an undertaking operating in two (or multi)-sided markets, which uses the Internet to enable interactions between two or more distinct but interdependent groups of users so as to generate value for at least one of the groups. Certain platforms also qualify as Intermediary service providers.

Typical examples include general internet search engines (e.g. Google, Bing), specialised search tools (e.g. Google Shopping, Kelkoo, Twenga, Google Local, TripAdvisor, Yelp.), location-based business directories or some maps (e.g. Google or Bing Maps), news aggregators (e.g. Google News), online market places (e.g. Amazon, eBay, Allegro, Booking.com), audio-visual and music platforms (e.g. Deezer, Spotify, Netflix, Canal play, Apple TV), video sharing platforms (e.g. YouTube, Dailymotion), payment systems (e.g. PayPal, Apple Pay), social networks (e.g. Facebook, LinkedIn, Twitter, Tuenti), app stores (e.g. Apple App Store, Google Play) or collaborative economy platforms (e.g. AirBnB, Uber, Taskrabbit, Bla-bla car). Internet access providers fall outside the scope of this definition.

No



\* Please explain how you would change the definition

1000 character(s) maximum

Trying to define platforms so as to be able to regulate them is a faulty starting point. The concept of a platform has existed since commerce began, with buyers and sellers being brought together by intermediaries in markets of all kinds. Today, TV providers and newspapers connect their users. The ability to transform an offline platform online increases its reach, but the concept remains fundamentally the same. The objective of the DSM is to bring together offline and online worlds so there is little reason to attempt to define online platforms. Online platforms don't have common and unifying features, for e.g. online payment systems have more in common with payment card systems than with other online platforms. It remains unclear that there are any differences between platforms and "internet society services" (defined in Directive 98/34/EC) which are already regulated under a number of Directives incl. e-Commerce Directive, InfoSoc & ePrivacy Directives.

What do you consider to be the key advantages of using online platforms?

Online platforms...

- make information more accessible
- make communication and interaction easier
- increase choice of products and services
- create more transparent prices and the possibility to compare offers
- increase trust between peers by providing trust mechanisms (i.e. ratings, reviews, etc.)
- lower prices for products and services
- lower the cost of reaching customers for suppliers
- help with matching supply and demand
- create new markets or business opportunities
- help in complying with obligations in cross-border sales
- help to share resources and improve resource-allocation
- others:

\* Please specify:

100 character(s) maximum

Provide support for SMEs/startups to scale-up; greater outlets for creativity/culture; new employment

Have you encountered, or are you aware of problems faced by **consumers** or **suppliers** when dealing with online platforms?

"Consumer" is any natural person using an online platform for purposes outside the person's trade, business, craft or profession.

"Supplier" is any trader or non-professional individual that uses online platforms to provide services to third parties both under their own brand (name) and under the platform's brand.

- Yes
- No
- I don't know

## TRANSPARENCY OF ONLINE PLATFORMS

Do you think that online platforms should ensure, as regards their own activities and those of the **traders** that use them, more transparency in relation to:

a) information required by consumer law (e.g. the contact details of the supplier, the main characteristics of products, the total price including delivery charges, and consumers' rights, such as the right of withdrawal)?

"Trader" is any natural or legal person using an online platform for business or professional purposes. Traders are in particular subject to EU consumer law in their relations with consumers.

- Yes
- No
- I don't know

b) information in response to a search query by the user, in particular if the displayed results are sponsored or not?

- Yes
- No
- I don't know

c) information on who the actual supplier is, offering products or services on the platform

- Yes
- No
- I don't know

d) information to discourage misleading marketing by professional suppliers (traders), including fake reviews?

- Yes
- No
- I don't know

e) is there any additional information that, in your opinion, online platforms should be obliged to display?

*500 character(s) maximum*

Existing legislation addresses all above issues including acceptable guidelines provided within the framework of the CRD & UCPD including provisions regarding information requirements for consumers preventing companies from providing false/deceiving statements or omitting information that might impact a consumer's decisions. Thus to maintain globally focused policies to allow European businesses to remain competitive there is no reason to create special rules for online platforms.

Have you experienced that information displayed by the platform (e.g. advertising) has been adapted to the interest or recognisable characteristics of the user?

- Yes
- No
- I don't know

Do you find the information provided by online platforms on their terms of use sufficient and easy-to-understand?

- Yes
- No

Do you find reputation systems (e.g. ratings, reviews, certifications, trustmarks) and other trust mechanisms operated by online platforms are generally reliable?

- Yes
- No
- I don't know

What are the main benefits and drawbacks of reputation systems and other trust mechanisms operated by online platforms? Please describe their main benefits and drawbacks.

1500 character(s) maximum

Before deciding whether any particular reputational system works well or poorly, one would need to study the individual platform, its mechanisms and the pros and cons of that specific system. At a high level however, the primary benefit of these reputation systems is that they provide additional information for the user to make a more informed choice. User reviews and ratings continue to play an important role in helping consumers to make informed decisions when consumers are looking to purchase/use goods or services online as well as offline. User reviews ensure that consumers can make quicker and confident decision which further boosts competition between businesses offering products and services, and allows for new enterprises and small businesses to enter, compete, expand and build their reputation within a market.

Reputation systems and trust mechanisms operated by online intermediaries are not only reliable, but also allow online communities to play an important role in improving the online environment. These are some of the most beneficial online tools available to consumers as they provide: speedy responses should concerns arise. a key driver to companies taking action and making improvements if/where needed, for e.g. adding the "verified buyer" tag to note who has actually purchased an item and to put consumers in the driving seat of their choices and empower them to control their online presence.

## USE OF INFORMATION BY ONLINE PLATFORMS

In your view, do online platforms provide sufficient and accessible information with regard to:

a) the personal and non-personal data they collect?

- Yes
- No
- I don't know

b) what use is made of the personal and non-personal data collected, including trading of the data to other platforms and actors in the Internet economy?

- Yes
- No
- I don't know

c) adapting prices, for instance dynamic pricing and conditions in function of data gathered on the buyer (both consumer and trader)?

- Yes
- No
- I don't know

Please explain your choice and share any best practices that you are aware of.

*1500 character(s) maximum*

Existing legislation has allowed widespread best practices to develop across the industry e.g. data dashboards already provided by a number of companies. For example, Directive 95/46/EC contains obligations to inform data subjects (including users of online platforms) about collection of personal data including that personal data is being collected, identity of the controller and purpose of the processing. These obligations will become even more detailed in the upcoming Data Protection Regulation (see Chapter III of legal text). These information provision requirements encompass a very broad range of data, practically anything that has the potential of identifying an individual. Given the very detailed existing and upcoming legislation in this field, further requirements do not seem necessary. Beyond the legal obligations, industry has also developed numerous tools designed to provide consumers not only with more transparency as to how their data is being used but also allows the consumers to decide which data they want to share and control how they wish to share it. Furthermore the digital industry in Europe promotes and conforms to industry guidelines and codes of practice covering many aspects of data processing, with a view to setting common standards and educating users. One example is the EDAA good practice principles on the processing of data for interest based advertising, which includes the Your Online Choices website and opt out mechanism.

Please share your general comments or ideas regarding the use of information by online platforms

*3000 character(s) maximum*

Platforms use the information from those suppliers, traders and users who use the platforms in order to improve the overall services provided by means of data analytics. For example, data from suppliers, users, and traders can help businesses predict inventory needs more reliably and react to consumer demands in real-time.

Platforms must ensure that they provide a high level of security for the information they handle as in the highly competitive landscape the trust of the users and their general ecosystem is often a market differentiator. At the same time platforms must be able to provide an added value for its users. This requires finding a balance between allowing room for different business models to exist while ensuring the highest level of privacy rights.

**RELATIONS BETWEEN PLATFORMS AND SUPPLIERS/TRADERS/APPLICATION DEVELOPERS OR HOLDERS OF RIGHTS IN DIGITAL CONTENT**

Please provide the list of online platforms with which you are in regular business relations and indicate to what extent your business depends on them (on a scale of 0 to 3). Please describe the position of your business or the business you represent and provide recent examples from your business experience.

	Name of online platform	Dependency (0: not dependent, 1: dependent, 2: highly dependent)	Examples from your business experience
1			
2			
3			
4			
5			

How often do you experience the following business practices in your business relations with platforms?

The online platform ...

\* A parity clause is a provision in the terms of use of an online platform or in an individual contract between the online platform and a supplier under which the price, availability and other conditions of a product or service offered by the supplier on the online platform have to maintain parity with the best offer of the supplier on other sales channels.

	Never	Sometimes	Often	Always
requests me to use exclusively its services	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
applies "parity clauses" *	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
applies non-transparent fees	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
applies fees without corresponding counter-performance	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
applies terms and conditions, which I find unbalanced and do not have the possibility to negotiate	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
unilaterally modifies the contractual terms without giving you proper notification or allowing you to terminate the contract	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
limits access to data or provides it in a non-usable format	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
puts significant constraints to presenting your offer	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
presents suppliers/services in a biased way	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
refuses access to its services unless specific restrictions are accepted	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
promotes its own services to the disadvantage of services provided by suppliers	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

If you do experience them, what is their impact on your business activity (on a scale from 0 to 3).

Impact on my business:

The online platform ...

\* A parity clause is a provision in the terms of use of an online platform or in an individual contract between the online platform and a supplier under which the price, availability and other conditions of a product or service offered by the supplier on the online platform have to maintain parity with the best offer of the supplier on other sales channels.

	0 – no impact	1 – minor impact	2 – considerable impact	3 – heavy impact
requests me to use exclusively its services	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
applies "parity clauses" *	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
applies non-transparent fees	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
applies fees without corresponding counter-performance	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
applies terms and conditions, which I find unbalanced and do not have the possibility to negotiate	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
unilaterally modifies the contractual terms without giving you proper notification or allowing you to terminate the contract	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
limits access to data or provides it in a non-usable format	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
puts significant constraints to presenting your offer	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
presents suppliers/services in a biased way	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
refuses access to its services unless specific restrictions are accepted	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
promotes its own services to the disadvantage of services provided by suppliers	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

If you are aware of other contractual clauses or experience other potentially problematic practices, please mention them here

*1000 character(s) maximum*

[A1] Are you a holder of rights in digital content protected by copyright, which is used on an online platform?

- Yes
- No

As a holder of rights in digital content protected by copyright have you faced any of the following circumstances:

An online platform such as a video sharing website or an online content aggregator uses my protected works online without having asked for my authorisation.

- Yes
- No

An online platform such as a video sharing website or a content aggregator refuses to enter into or negotiate licensing agreements with me.

- Yes
- No

An online platform such as a video sharing website or a content aggregator is willing to enter into a licensing agreement on terms that I consider unfair.

- Yes
- No

An online platform uses my protected works but claims it is a hosting provider under Article 14 of the E-Commerce Directive in order to refuse to negotiate a licence or to do so under their own terms.

- Yes
- No

Is there a room for improvement in the relation between platforms and suppliers using the services of platforms?

- No, the present situation is satisfactory.
- Yes, through market dynamics.
- Yes, through self-regulatory measures (codes of conducts / promotion of best practices).
- Yes, through regulatory measures.
- Yes, through the combination of the above.

Are you aware of any dispute resolution mechanisms operated by online platforms, or independent third parties on the business-to-business level mediating between platforms and their suppliers?

- Yes
- No

Please share your experiences on the key elements of a well-functioning dispute resolution mechanism on platforms

*1500 character(s) maximum*

Standard arbitration provisions can be used by online platforms and would likely work well. Judicial process can also be a good option in some cases. The Uniform Domain-Name Dispute-Resolution Policy is a process established by the Internet Corporation for Assigned Names and Numbers for the resolution of disputes regarding the registration of internet domain names. Created in 1999, it is the oldest online dispute resolution system around and has proven itself ever since. Since its inception, the UDRP has decided on 35,000+ cases involving disputes regarding domain names. Interestingly, there are several dispute resolution providers, not just one. Its success can be attributed to the highly-skilled professionals it employs. Overall, it has shown itself to shorten proceedings duration, ease enforcement and have a global reach. A number of platforms have well-functioning dispute resolution mechanisms in place today.

**CONSTRAINTS ON THE ABILITY OF CONSUMERS AND TRADERS TO MOVE FROM ONE PLATFORM TO ANOTHER**

Do you see a need to strengthen the technical capacity of online platforms and address possible other constraints on switching freely and easily from one platform to another and move user data (e.g. emails, messages, search and order history, or customer reviews)?

- Yes
- No

Should there be a mandatory requirement allowing non-personal data to be easily extracted and moved between comparable online services?

- Yes
- No

Please share your general comments or ideas regarding the ability of consumers and traders to move from one platform to another

*3000 character(s) maximum*

An online trader or consumer is always freely able to move from one platform to another. This is the essence of consumer choice online. As there are a number of competing online platforms and marketplaces for traders/sellers to offer their products and services, many of these use this to their advantage to add their products on various marketplaces(s). Any consideration of this question would necessarily have to focus on the specific online platform, the specific data involved, and the specific options available for moving; therefore, it is difficult to generalize across all online platforms to address this issue.

Online platforms also provide solutions to help the seller/trader price their products, improve their delivery capabilities, maximise the sale of their products by selling on multiple different platforms/marketplaces and provide the seller/traders with easily accessible data on their product sales across all platforms/marketplaces and channels where they do business. Different platforms may provide all or some of these services. Therefore, online platforms are already incentivised to make efforts to ensure their platforms are compatible for sellers/traders that are using various online platforms.

In a recent study, Oxera, a leading consulting firm, found that both businesses and consumers use multiple services for similar purposes with ease and do not report issues of 'lock-in'. They move easily between one platform and another. We support portability principles but would caution against strict legal requirements. For example, requiring extremely detailed portability (specific details of formatting) risks replacing innovation in proprietary standards with consistent but inflexible government-mandated standards that deter the development of new kinds of formatting and data handling. Requiring a company to share the fruits of their ingenuity can deter investment, innovation, and economic growth. Data portability should not extend to requiring firms to share sensitive consumer information with rivals, which could violate the terms of a firm's contractual obligations to its users and raise separate individual privacy concerns.

## ACCESS TO DATA

As a trader or a consumer using the services of online platforms did you experience any of the following problems related to the access of data?

a) unexpectedly changing conditions of accessing the services of the platforms

- Yes  
 No

b) unexpectedly changing conditions of accessing the Application Programming Interface of the platform

- Yes  
 No

c) unexpectedly changing conditions of accessing the data you shared with or stored on the platform

- Yes  
 No

d) discriminatory treatment in accessing data on the platform

- Yes  
 No

Would a rating scheme, issued by an independent agency on certain aspects of the platforms' activities, improve the situation?

- Yes  
 No

\* Please explain your answer

*1500 character(s) maximum*

Online users already have a number of tools at their disposal on some platforms, including user controlled preferences, and while it is important to understand that changes to access to data may represent inconveniences to consumers, it is important for business to retain the possibility to adjust their services and the related terms of use to the changing business environment and other changing circumstances. This is in particular true in the online environment, which is clearly characterised by dynamic and constant change. While businesses already make important efforts to highlight the changes they make, any obligation that would prohibit companies to adjust their business practices to the competitive environment and even more importantly to the ever evolving needs of their customers would be hugely detrimental to European businesses. Such new rules would hit start-ups especially hard as they would lose their nimbleness, one of their key advantages they hold over bigger competitors. In the interest of the budding start-up scenes in London, Berlin, Stockholm, Paris and Dublin, the European Commission should refrain from adding unnecessary red tape that would prevent European start-ups to scale up.

Furthermore, it is worth noting that there is no offline equivalent to this kind of regulatory intervention. This would be considered overly intrusive

Please share your general comments or ideas regarding access to data on online platforms

*3000 character(s) maximum*

The high level of innovation activity on digital markets is favoured by low barriers to market entry and access to data. Digitalisation, and the Internet in particular, has reduced a whole range of economic costs for businesses. As the German Monopolies Commission has highlighted in their recent special report on “The challenge of digital markets” ([http://www.monopolkommission.de/images/PDF/SG/s68\\_fulltext\\_eng.pdf](http://www.monopolkommission.de/images/PDF/SG/s68_fulltext_eng.pdf)) “Through such cost reduction companies can set up and expand their operations very quickly. In addition, whereas high investment costs can frequently make a market entry difficult, such costs have in recent times increasingly become variable costs in certain parts of the digital economy. This is the case where computing power or storage space can be rented by companies to fit their needs, for instance thanks to new technologies (e.g. cloud computing) or open source software. These lower barriers to entry increase competition in digital markets.

## Tackling illegal content online and the liability of online intermediaries

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## Please indicate your role in the context of this set of questions

Terms used for the purposes of this consultation:

"Illegal content"

Corresponds to the term "illegal activity or information" used in Article 14 of the E-commerce Directive. The directive does not further specify this term. It may be understood in a wide sense so as to include any infringement of applicable EU or national laws and regulations. This could for instance include defamation, terrorism related content, IPR infringements, child abuse content, consumer rights infringements, or incitement to hatred or violence on the basis of race, origin, religion, gender, sexual orientation, malware, illegal online gambling, selling illegal medicines, selling unsafe products.

"Hosting"

According to Article 14 of the E-commerce Directive, hosting is the "storage of (content) that has been provided by the user of an online service". It may for instance be storage of websites on servers. It may also include the services offered by online market places, referencing services and social networks.

"Notice"

Any communication to a hosting service provider that gives the latter knowledge of a particular item of illegal content that it transmits or stores and therefore creates an obligation for it to act expeditiously by removing the illegal content or disabling/blocking access to it.. Such an obligation only arises if the notice provides the internet hosting service provider with actual awareness or knowledge of illegal content.

"Notice provider"

Anyone (a natural or legal person) that informs a hosting service provider about illegal content on the internet. It may for instance be an individual citizen, a hotline or a holder of intellectual property rights. In certain cases it may also include public authorities.

"Provider of content"

In the context of a hosting service the content is initially provided by the user of that service. A provider of content is for instance someone who posts a comment on a social network site or uploads a video on a video sharing site.

- individual user
- content provider
- notice provider
- intermediary
- none of the above

\* Please explain

Representing online intermediaries

Have you encountered situations suggesting that the liability regime introduced in Section IV of the E-commerce Directive (art. 12-15) has proven not fit for purpose or has negatively affected market level playing field?

- Yes
- No

Do you think that the concept of a "mere technical, automatic and passive nature" of information transmission by information society service providers provided under recital 42 of the ECD is sufficiently clear to be interpreted and applied in a homogeneous way, having in mind the growing involvement in content distribution by some online intermediaries, e.g.: video sharing websites?

- Yes
- No
- I don't know

Please explain your answer.

*1500 character(s) maximum*

Concept of "mere technical, automatic & passive" information transmission by ISS providers has proven flexible to apply in multiple instances/cases (media & intellectual property law, privacy, etc.). ECJ has clarified in several cases (C-236/08, Google; C-324/09, L'Oréal; C-70/10, Scarlet; C-360/10, SABAM; C-291/13, Papasavvas) the concepts used in the e-commerce Directive and harmonised its construction by national courts. Established sites don't raise specific issues and shouldn't be treated differently than other hosting service providers. Established sites (Facebook, YouTube, Vimeo, DailyMotion, Vine, Wat TV, etc.) promptly remove content when given valid notice, some developed specific systems to prevent sharing of copyright infringing content, e.g. DailyMotion's signature, YouTube's Content ID, & Facebook's recent copyright matching tool. Responsible providers developed mechanisms for notifying infringements. In some cases, providers allow right holders to keep infringing content on the service and monetise it. Such systems are only possible through the flexible/proportionate framework of e-commerce Directive. They are no substitutes to rule of law, collaborations of right holders, and can't be extended systematically to other types of services. Some platform providers also create and/or distribute content. For this activity they aren't passive but this doesn't mean they also become more liable for content for which they are a mere transmitter.

Mere conduit/caching/hosting describe the activities that are undertaken by a service provider. However, new business models and services have appeared since the adopting of the E-commerce Directive. For instance, some cloud service providers might also be covered under hosting services e.g. pure data storage. Other cloud-based services, as processing, might fall under a different category or not fit correctly into any of the existing ones. The same can apply to linking services and search engines, where there has been some diverging case-law at national level. Do you think that further categories of intermediary services should be established, besides mere conduit/caching/hosting and/or should the existing categories be clarified?

- Yes
- No

**On the "notice"**

Do you consider that different categories of illegal content require different policy approaches as regards notice-and-action procedures, and in particular different requirements as regards the content of the notice?

- Yes  
 No

### On the "action"

Should the content providers be given the opportunity to give their views to the hosting service provider on the alleged illegality of the content?

- Yes  
 No

\* Please explain your answer

*1500 character(s) maximum*

Under the e-commerce Directive, hosting providers are required to remove or disable access to the information. Neither remedy consists of making a judgement on the content. Were the intermediary to receive the views of the content provider on the alleged illegality of the content, this could not have any legal effect as the platform is not dealing with the content. Platforms cannot act as judges in cases where illegality is not obvious and undeniable e.g. re. copyright infringement where there is not always a proof of title. The greater the pressure that is put upon platforms, the greater will be the incentive to remove content without carefully reviewing, or otherwise testing the validity of the notices received. Before approaching the platform, the complainant should first be required to make a reasonable effort, making use of the means and information publicly available, to contact the user, webmaster, or other content provider responsible for posting the objectionable content and ask to have it removed. Such a requirement would provide effective notice to the person most capable of controlling further dissemination of the content in question. Where this remedy is impossible, policy efforts should focus on developing processes by which they can apply directly to the platform without the platform having to take on additional liability—beyond what the Directive envisaged—in order to assist the process. This is a very important principle of the Directive that must be retained.

If you consider that this should only apply for some kinds of illegal content, please indicate which one(s)

*1500 character(s) maximum*

Should action taken by hosting service providers remain effective over time ("take down and stay down" principle)?

- Yes
- No

Please explain

Any policy should take into consideration that there will always be bad actors that circumvent even well-designed policies, and online platforms should not have to worry about being punished for not being perfect. Moreover, notice needs to be specific and regulators should understand that content that is unlawful in one setting, may not in another.

An intermediary should not be subjected to proactive monitoring obligations. As confirmed by the recent Court of Justice of the European Union decisions (SABAM v. Scarlet and SABAM v. Netlog), such general monitoring obligations were both inconsistent with the letter of the E-Commerce Directive and with important underlying rights of users, including the rights of freedom of expression and access to information.

In addition, even if an intermediary had the technical capacity to put in place stay down measures, it would have no effect. The content would quickly be available somewhere else (on a site that does not play by EU rules) and users would still be able to access it. A stay-down requirement would provide significant technical challenges. Even if an automated filter is applied to service, it would need to be based on an algorithm with defined parameters. All an infringing party needs to do is change one or two variables to the content for it to go undetected.

#### **On duties of care for online intermediaries:**

Recital 48 of the Ecommerce Directive establishes that "[t]his Directive does not affect the possibility for Member States of requiring service providers, who host information provided by recipients of their service, to apply duties of care, which can reasonably be expected from them and which are specified by national law, in order to detect and prevent certain types of illegal activities". Moreover, Article 16 of the same Directive calls on Member States and the Commission to encourage the "drawing up of codes of conduct at Community level by trade, professional and consumer associations or organisations designed to contribute to the proper implementation of Articles 5 to 15". At the same time, however, Article 15 sets out a prohibition to impose "a general obligation to monitor".

(For online intermediaries): Have you put in place voluntary or proactive measures to remove certain categories of illegal content from your system?

- Yes
- No

\* Please describe them.

*1500 character(s) maximum*

Under current law the notice & takedown system designed by e-Commerce Directive shouldn't create additional liability on the intermediary where none exists under the applicable law. Liability for the action taken as a result of a notice should remain with the claimant not the intermediary taking action as per the notice it is given. This is a core principle under e.g. DMCA and CDA that is absent in the EU framework. It's important to distinguish such measures from systems that review websites for the presence of specific products or products that the platform has chosen not to offer on its marketplace. When the platform realises a product can't be sold on its marketplace, the product is removed immediately. Many intermediaries have help pages to inform sellers/traders about products that can't be sold, which are available prior to removal of any products. Voluntary systems for notice & action, flagging systems, manual review systems and other content monitoring/optimisation and moderation systems aimed at preventing illegal content, or content that violates terms and conditions of service, shouldn't be counted against the intermediary, when considering whether activities of an intermediary are merely technical, automatic & passive nature, or whether the intermediary has knowledge/control over the data transmitted/stored. The adoption of such pro-active measures shouldn't be used as a basis for denying the intermediary the benefit of limited liability set out in the e-commerce Dir.

\* Could you estimate the financial costs to your undertaking of putting in place and running this system?

*1500 character(s) maximum*

Documentation on costs of such systems is rare, but the few figures that exist show how expensive they are. YouTube is one of the rare intermediaries which discloses how much it spent in developing Content ID: € 55.8 million for a system that works just for copyright. An Irish court estimated that a software to send notices to users of an intermediary would cost between € 800.000 and 940.000.

Do you see a need to impose specific duties of care for certain categories of illegal content?

- Yes
- No
- I don't know

Please specify for which categories of content you would establish such an obligation.

*1500 character(s) maximum*

The main obstacle to a well-functioning process for dealing with illegal content online is a process for ascertaining illegality combined with explicit liability on a claimant for a wrongful notice as well as a genuine safe harbour for intermediaries acting in good faith. The policy focus should lie in making this a reality thus making the duty of care concept redundant.

Please specify for which categories of intermediary you would establish such an obligation

*1500 character(s) maximum*

Please specify what types of actions could be covered by such an obligation

*1500 character(s) maximum*

Do you see a need for more transparency on the intermediaries' content restriction policies and practices (including the number of notices received as well as their main content and the results of the actions taken following the notices)?

- Yes
- No

Do you think that online intermediaries should have a specific service to facilitate contact with national authorities for the fastest possible notice and removal of illegal contents that constitute a threat for e.g. public security or fight against terrorism?

- Yes
- No

Please share your general comments or ideas regarding the liability of online intermediaries and the topics addressed in this section of the questionnaire.

*5000 character(s) maximum*

For the first time in history, the Internet allows anyone, anywhere to instantly connect with billions of people around the world. Through a variety of online services -- search engines, social networks, video sites, blogging tools, auction services, and many others -- we are able to create content, find information published by one other, communicate, and buy and sell goods and services. Platforms and services that help users interact with another are often called "intermediaries," and as the Internet evolves, so too do intermediaries.

Intermediary liability is the concept of holding an online platform responsible for the illegal or harmful content created by users of those services. Who counts as an "intermediary" often includes access providers, search engines, hosting platforms, email providers, payment processors, social networks and many more. The commonality between these entities is that they enable others to do things on the Internet, they are intermediaries in the sense that they provide services that allow for user A to interact with user B in different ways.

Requiring online services to monitor every piece of content or imposing harsh liability would be bad for innovation, free expression, and privacy. This is analogous to the offline world; telephone companies are not forced to monitor people's calls to make sure they are not doing something illegal, and they are not held legally responsible for callers who plan a crime over their phone lines.

The liability regime of the e-commerce Directive (Articles 12-15) remains fit for purpose. The limited liability regime is not only necessary for the functioning and growth of online intermediaries, but it is also beneficial to the European economy. The intermediaries' contributions to the economy would not be possible at the current level without the liability regime as it is currently designed. Any adverse changes to the liability regime - such as increased legal obligations on intermediaries - could have a chilling effect on innovation and the economic activity of online intermediaries, putting this value at risk.

In addition, if a service were automatically liable for illegal content, it would be much more likely to remove all sorts of controversial (though legitimate) speech, for fear of facing legal penalties. The intermediary liability regime is a standard that can be found in several legislations (US, CA, JP, AU, etc.). It would be a fundamental problem for internet commerce if companies can be subject to a more severe liability regime in Europe, and in particular a burden on European start-ups that could not compete on the same basis as companies abroad.

## Data and cloud in digital ecosystems

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### FREE FLOW OF DATA

#### ON DATA LOCATION RESTRICTIONS

In the context of the free flow of data in the Union, do you in practice take measures to make a clear distinction between personal and non-personal data?

- Yes
- No
- Not applicable

Have restrictions on the location of data affected your strategy in doing business (e.g. limiting your choice regarding the use of certain digital technologies and services?)

- Yes
- No

Do you think that there are particular reasons in relation to which data location restrictions are or should be justifiable?

- Yes
- No

#### ON DATA ACCESS AND TRANSFER

Do you think that the existing contract law framework and current contractual practices are fit for purpose to facilitate a free flow of data including sufficient and fair access to and use of data in the EU, while safeguarding fundamental interests of parties involved?

- Yes
- No

\*Please explain your position

3000 character(s) maximum

All businesses that operate or transact using digital technology process data for many purposes. Data is analysed to measure the underlying performance of a business and the resilience of the technology that supports it. Data are also used to improve or personalize the customer's experience. It is hard to overstate the importance of data to the success of modern business.

Existing EU law allows this fundamental transformation to proceed because it already provides for sufficient and fair access to and use of data in the EU, while safeguarding fundamental interests of parties involved. Concretely, we would like to highlight a necessary distinction between two separate relationships between the user of an Information Society Services ("ISS") (as defined in the E-commerce Directive, 2000/31/EC) and the provider of that service. On the one hand, the contractual relationship between the user and service provider and, on the other hand, the "data relationship" between those two parties.

The contractual relationship between the user and the service provider is, by definition, primarily governed by contract law and the terms agreed between the parties. When dealing with consumers, the user also enjoys additional consumer law protections under the Consumer Rights Directive (2001/83/EC) and other such instruments. The data relationship between the parties is governed by the Data Protection Directive (95/46/EC) and related instruments. On the whole, the current regulatory framework is sufficiently equipped to facilitate the free flow of data, including the sufficient and fair access to and use of data, and safeguarding fundamental interests of data subjects. However, there is currently insufficient clarity on the legal implications of the European Court of Justice ruling on the invalidation of the Commission's Safe Harbour decision for the transfer of personal data to the United States (Schrems case). Companies may cut off data flows in the current environment to avoid legal risk even where fundamental rights are not at risk.

In order to ensure the free flow of data within the European Union, in your opinion, regulating access to, transfer and the use of non-personal data at European level is:

- Necessary
- Not necessary

When non-personal data is generated by a device in an automated manner, do you think that it should be subject to specific measures (binding or non-binding) at EU level?

- Yes
- No

Please share your general comments or ideas regarding data access, ownership and use

*5000 character(s) maximum*

EDiMA shares the view that trust and security in digital services is a key factor to the Digital Single Market. EU data protection rules must find a balance to ensure that they meet the expectations of consumers while being fit for purpose for businesses. The fact that many Member States impose additional layers of data requirements in certain sectors (e.g., health, etc.) creates a barrier to cross-border supply of cloud services to organizations within these sectors, and the sheer complexity of these rules against the backdrop of EU laws makes many organizations reluctant to even consider moving to the cloud—even though many such organizations might achieve a higher level of data protection and security if they were to do so.

The recent OECD Report on Data-driven Innovation for Growth and Well-being highlights the complexity of the policy questions around data, including access, ownership and use: “In contrast to other intangibles, data typically involve complex assignments of different rights across different stakeholders who will typically have different power over the data depending on their role. In cases where the data are considered “personal”, the concept of ownership is even less practical, since most privacy regimes grant certain explicit control rights to the data subject that cannot be restricted - see for example the Individual Participation Principle of the OECD Guidelines Governing the Protection of Privacy and Transborder Flows of Personal Data.” Given this complexity, the report suggests that policymakers should engage in further thinking on how issues of data ownership and the attribution of liability between decision makers, data and data analytics providers. It is commendable that the European Commission is committing to this thinking exercise and we would like to assist the Commission in its endeavour.

**ON DATA MARKETS**

What regulatory constraints hold back the development of data markets in Europe and how could the EU encourage the development of such markets?

*3000 character(s) maximum*

Before looking at what regulatory constraints hold back the development of data markets in Europe, it is important to consider how commercial decisions are taken on where and what services to offer.

There are, overall, three basic factors that influence businesses' commercial decisions to offer data services: commercial considerations such as language, profitability or market demand variations; where businesses can secure the necessary rights, in particular copyright, to do so; and whether the sale of digital content or a good or the providing of a service leads to additional charges or compliance requirements under national law (e.g. copyright levies). Short of commercial considerations, copyright, data protection and other compliance requirements seems to be the main obstacle to the development of data markets in Europe.

Regulations can be modified without sacrificing privacy protections for individuals, which are of course also essential, not least because they generate trust in data exchanges. Codes of conduct, and certification schemes can help to resolve some of the privacy-related protection concerns relating to exchanges of data for Big Data purposes. Given the borderless nature of DSM technologies, it is also critical that codes of conduct and standards that are developed for European cloud services are also aligned with international efforts. Alignment of European and international cloud standards and codes will enable European cloud businesses to participate in international data markets with less "friction" and cost.

## ON ACCESS TO OPEN DATA

Do you think more could be done to open up public sector data for re-use in addition to the recently revised EU legislation (Directive 2013/37/EU)?

Open by default means: Establish an expectation that all government data be published and made openly re-usable by default, while recognising that there are legitimate reasons why some data cannot be released.

- Introducing the principle of 'open by default'[1]
- Licensing of 'Open Data': help persons/ organisations wishing to re-use public sector information (e.g., Standard European License)
- Further expanding the scope of the Directive (e.g. to include public service broadcasters, public undertakings);
- Improving interoperability (e.g., common data formats);
- Further limiting the possibility to charge for re-use of public sector information
- Remedies available to potential re-users against unfavourable decisions
- Other aspects?

\*Please specify

Access to open data will have a positive impact on the economy and society at large. Specifically, there are four main advantages to open data - as identified by the European Commission:

- public data has significant potential for re-use in new products and services;
- addressing societal challenges - having more data openly available will help us discover new and innovative solutions;
- achieving efficiency gains through sharing data inside and between public administrations;
- fostering participation of citizens in political and social life and increasing transparency of government.

To fully reap these four benefits for Europe, the Commission should focus on improving interoperability, introducing the principle of “open by default”, further limiting the possibility to charge for re-use of public sector information and make remedies available to potential re-users against unfavourable decisions. By focusing on these four actions, the Commission will be able to make access to open data even more meaningful and unleash the promises of the Big Data era holds.

Do you think that there is a case for the opening up of data held by private entities to promote its re-use by public and/or private sector, while respecting the existing provisions on data protection?

- Yes  
 No

#### ON ACCESS AND REUSE OF (NON-PERSONAL) SCIENTIFIC DATA

Do you think that data generated by research is sufficiently, findable, accessible identifiable, and re-usable enough?

- Yes  
 No

\* Why not? What do you think could be done to make data generated by research more effectively re-usable?

3000 character(s) maximum

The question of access to and re-use of data generated by publicly funded research is only one aspect of the question. Another issue - in relation to research data in general - is the way copyright may impact text-and-data mining activities.

Access to material being mined should be secured - including, if appropriate, with a licence. But once access is secured, there should be no additional copyright permission required to mine the material, irrespective of whether the purposes are commercial or not. Exemptions in the US or Japan are already giving those countries a competitive edge, from research to business applications.

Do you agree with a default policy which would make data generated by publicly funded research available through open access?

- Yes  
 No

#### ON LIABILITY IN RELATION TO THE FREE FLOW OF DATA AND THE INTERNET OF THINGS

As a provider/user of Internet of Things (IoT) and/or data driven services and connected tangible devices, have you ever encountered or do you anticipate problems stemming from either an unclear liability regime/non -existence of a clear-cut liability regime?

The "Internet of Things" is an ecosystem of physical objects that contain embedded technology to sense their internal statuses and communicate or interact with the external environment. Basically, Internet of things is the rapidly growing network of everyday objects—eyeglasses, cars, thermostats—made smart with sensors and internet addresses that create a network of everyday objects that communicate with one another, with the eventual capability to take actions on behalf of users.

- Yes  
 No  
 I don't know

If you did not find the legal framework satisfactory, does this affect in any way your use of these services and tangible goods or your trust in them?

- Yes  
 No  
 I don't know

Do you think that the existing legal framework (laws, or guidelines or contractual practices) is fit for purpose in addressing liability issues of IoT or / and Data driven services and connected tangible goods?

- Yes
- No
- I don't know

Is the legal framework future proof? Please explain, using examples.

*3000 character(s) maximum*

Please explain what, in your view, should be the liability regime for these services and connected tangible goods to increase your trust and confidence in them?

*3000 character(s) maximum*

We take note that there are already in place various legal instruments governing liability of different actors. Examples include the E-commerce Directive that put in place a specific liability regime for services; or the data protection framework (95/46/EC) that contains a clear division of liability between controllers and processors, which will be not likely to be fundamentally altered by the General Data Protection Regulation. To the extent liability rules are addressed, however we agree they should be consistent and harmonized across the EU.

As a user of IoT and/or data driven services and connected tangible devices, does the present legal framework for liability of providers impact your confidence and trust in those services and connected tangible goods?

- Yes
- No
- I don't know

In order to ensure the roll-out of IoT and the free flow of data, should liability issues of these services and connected tangible goods be addressed at EU level?

- Yes
- No
- I don't know

ON OPEN SERVICE PLATFORMS

What are in your opinion the socio-economic and innovation advantages of open versus closed service platforms and what regulatory or other policy initiatives do you propose to accelerate the emergence and take-up of open service platforms?

*3000 character(s) maximum*

There are benefits to both open and closed service platforms. These benefits are realised through the advantages of scale, market making and the ability to interact across geographic boundaries. There are both advantages and disadvantages of different approaches to openness. The variety of business models and approaches allow for a proliferation of approaches at the platform and application level. These systems are in the process of being developed and shaped by market forces. We would not encourage intervention into this fast moving market at this time.

## PERSONAL DATA MANAGEMENT SYSTEMS

The following questions address the issue whether technical innovations should be promoted and further developed in order to improve transparency and implement efficiently the requirements for lawful processing of personal data, in compliance with the current and future EU data protection legal framework. Such innovations can take the form of 'personal data cloud spaces' or trusted frameworks and are often referred to as 'personal data banks/stores/vaults'.

Do you think that technical innovations, such as personal data spaces, should be promoted to improve transparency in compliance with the current and future EU data protection legal framework? Such innovations can take the form of 'personal data cloud spaces' or trusted frameworks and are often referred to as 'personal data banks/stores/vaults'?

- Yes
- No
- I don't know

## EUROPEAN CLOUD INITIATIVE

What are the key elements for ensuring trust in the use of cloud computing services by European businesses and citizens

"Cloud computing" is a paradigm for enabling network access to a scalable and elastic pool of shareable physical or virtual resources with self-service provisioning and administration on-demand. Examples of such resources include: servers, operating systems, networks, software, applications, and storage equipment.

- Reducing regulatory differences between Member States
- Standards, certification schemes, quality labels or seals
- Use of the cloud by public institutions
- Investment by the European private sector in secure, reliable and high-quality cloud infrastructures

As a (potential) user of cloud computing services, do you think cloud service providers are sufficiently transparent on the security and protection of users' data regarding the services they provide?

- Yes
- No
- Not applicable

As a (potential) user of cloud computing services, do you think cloud service providers are sufficiently transparent on the security and protection of users' data regarding the services they provide?

- Yes
- No
- Not applicable

As a (potential) user of cloud computing services, do you agree that existing contractual practices ensure a fair and balanced allocation of legal and technical risks between cloud users and cloud service providers?

- Yes
- No

What would be the benefit of cloud computing services interacting with each other (ensuring interoperability)

- Economic benefits
- Improved trust
- Others:

What would be the benefit of guaranteeing the portability of data, including at European level, between different providers of cloud services

- Economic benefits
- Improved trust
- Others:

Have you encountered any of the following contractual practices in relation to cloud based services? In your view, to what extent could those practices hamper the uptake of cloud based services? Please explain your reasoning.

	Never (Y[es] or N[no])	Sometimes (Y / N)	Often (Y / N)	Always (Y / N)	Why (1500 characters max.)?
Difficulties with negotiating contractual terms and conditions for cloud services stemming from uneven bargaining power of the parties and/or undefined standards	Y				
Limitations as regards the possibility to switch between different cloud service providers	Y				
Possibility for the supplier to unilaterally modify the cloud service	Y				
Far reaching limitations of the supplier's liability for malfunctioning cloud services (including depriving the user of key remedies)	Y				
Other (please explain)					

What are the main benefits of a specific European Open Science Cloud which would facilitate access and make publicly funded research data re-useable?

- Making Science more reliable by better quality assurance of the data
- Making Science more efficient by better sharing of resources at national and international level
- Making Science more efficient by leading faster to scientific discoveries and insights
- Creating economic benefits through better access to data by economic operators
- Making Science more responsive to quickly tackle societal challenges
- Others

Would model contracts for cloud service providers be a useful tool for building trust in cloud services?

- Yes
- No

Would your answer differ for consumer and commercial (i.e. business to business) cloud contracts?

- Yes
- No

\* What approach would you prefer?

Allow self-regulation based on marketplace

Please share your general comments or ideas regarding data, cloud computing and the topics addressed in this section of the questionnaire

*5000 character(s) maximum*

When providing services to a consumer, a provider of cloud computing services just like any other provider of consumer services may use General Terms and Conditions of use. The Directive on unfair terms in consumer contracts ensures that consumers are more than sufficiently protected against unfair terms. It introduces a notion of "good faith" thereby preventing significant imbalances in the rights and obligations of consumers versus those of sellers and suppliers. Terms that are found unfair under the Directive are not binding for consumers. The Directive also ensures that contract terms are drafted in plain and intelligible language and states that ambiguities will be interpreted in disfavour of sellers and suppliers.

EU countries have implemented effective means under national law to enforce these rights and that invalid terms are no longer used by businesses. In addition Directive 95/46/EC reduces technical risks for consumers as it obliges providers of cloud services that they implement appropriate technical and organisational measures to protect consumers' personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing. It is not possible for a cloud service provider to set forth contractual terms that stay below this high standard of security. In the business to business context, cloud service providers process personal data according customer instructions. It is customers' responsibility to determine the lawfulness of such instructions (e.g. to obtain appropriate consent before proceeding with an email marketing campaign) whilst it is the provider's responsibility to deliver the contracted services securely (i.e. to apply appropriate controls in order to achieve availability, integrity, and confidentiality objectives). Cloud service providers are already under the security requirements of Directive 95/46/EC and will be under similar requirements by GDPR.

In light of current practices, during the pre-contractual phase customers are empowered to evaluate the security measures deployed by cloud service providers in order to determine whether they are appropriate and proportionate to their data. Due to the economies of scale, cloud service providers are able to develop security capabilities very difficult to match.

## The collaborative economy

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The following questions focus on certain issues raised by the collaborative economy and seek to improve the Commission's understanding by collecting the views of stakeholders on the regulatory environment, the effects of collaborative economy platforms on existing suppliers, innovation, and consumer choice. More broadly, they aim also at assessing the impact of the development of the collaborative economy on the rest of the economy and of the opportunities as well as the challenges it raises. They should help devising a European agenda for the collaborative economy to be considered in the context of the forthcoming Internal Market Strategy. The main question is whether EU law is fit to support this new phenomenon and whether existing policy is sufficient to let it develop and grow further, while addressing potential issues that may arise, including public policy objectives that may have already been identified.

**Terms used for the purposes of this consultation:**

**"Collaborative economy"**

For the purposes of this consultation the collaborative economy links individuals and/or legal persons through online platforms (collaborative economy platforms) allowing them to provide services and/or exchange assets, resources, time, skills, or capital, sometimes for a temporary period and without transferring ownership rights. Typical examples are transport services including the use of domestic vehicles for passenger transport and ride-sharing, accommodation or professional services.

**"Traditional provider"**

Individuals or legal persons who provide their services mainly through other channels, without an extensive involvement of online platforms.

**"Provider in the collaborative economy"**

Individuals or legal persons who provide the service by offering assets, resources, time, skills or capital through an online platform.

**"User in the collaborative economy"**

Individuals or legal persons who access and use the transacted assets, resources, time, skills and capital.

Please indicate your role in the collaborative economy

- Provider or association representing providers
- Traditional provider or association representing traditional providers
- Platform or association representing platforms
- Public authority
- User or consumer association

Which are the main risks and challenges associated with the growth of the collaborative economy and what are the obstacles which could hamper its growth and accessibility? Please rate from 1 to 5 according to their importance (1 – not important; 5 – very important).

- Not sufficiently adapted regulatory framework

- 1
- 2
- 3
- 4
- 5

- Uncertainty for providers on their rights and obligations

- 1
- 2
- 3
- 4
- 5

- Uncertainty for users about their rights and obligations

- 1
- 2
- 3
- 4
- 5

- Weakening of employment and social rights for employees/workers

- 1
- 2
- 3
- 4
- 5

- Non-compliance with health and safety standards and regulations

- 1
- 2
- 3
- 4
- 5

- Rise in undeclared work and the black economy

- 1
- 2
- 3
- 4
- 5

- Opposition from traditional providers

- 1
- 2
- 3
- 4
- 5

- Uncertainty related to the protection of personal data

- 1
- 2
- 3
- 4
- 5

- Insufficient funding for start-ups

- 1
- 2
- 3
- 4
- 5

- Other, please explain

How do you consider the surge of the collaborative economy will impact on the different forms of employment (self-employment, free lancers, shared workers, economically dependent workers, tele-workers etc) and the creation of jobs?

- Positively across sectors
- Varies depending on the sector
- Varies depending on each case
- Varies according to the national employment laws
- Negatively across sectors
- Other

### Please explain

As with the Commission's definition of online platforms, the scope of the "collaborative economy" is extremely broad, and it is impossible to suggest a single impact that this range of business models will have on jobs and employment in every sector.

Some collaborative platforms are providing people with the ability to generate additional money to supplement other sources of income they may have. They may share their home on a platform like Airbnb when they are away on business or holiday. They might rent their driveway to someone who needs a parking spot for their car. This kind of additional income is different from "employment".

Likewise, other collaborative platforms provide more efficient marketplaces for existing forms of self-employment (such as cleaning, "handyman" services, accountancy, and private hire drivers). These may be providing self-employed people with larger potential markets for their services, making them more productive as a result.

In short, it is difficult to say how the growth of these marketplaces will affect the wider market for labour in the EU.

Do you see any obstacle to the development and scaling-up of collaborative economy across borders in Europe and/or to the emergence of European market leaders?

- Yes
- No

## Please explain

In most respects, the platforms powering the collaborative economy are identical to existing e-commerce and internet businesses.

While these platforms may be facilitating new kinds of economic activity (and providing “disruptive” competition to established businesses), they are not necessarily entirely new kinds of businesses. Online marketplaces are already commonplace, and - as noted elsewhere in this response - existing laws applies relatively comfortably to the things that they do.

The same concerns about fragmentation and a lack of harmonisation across the EU are felt by collaborative economy platforms in the same way as other kinds of online intermediary. More consistent application of existing regulatory frameworks would benefit all marketplaces, including those in the collaborative economy.

In relation to providers in the collaborative economy, they face even more fragmentation given the existence of national, regional and local laws that are ill-suited to peer-to-peer service provision. For example, people in Catalonia face tough restrictions on their ability to rent a spare room to a paying guest. An equivalent person in Paris does not. A person providing an apartment for rent in Brussels is subject to detailed regulations concerning the amenities they must offer to their guests (including specifying the furniture that must be available in each room). The equivalent person in London is not. While not all of this fragmentation is possible for the EU to solve - since it lacks competence over many of the applicable frameworks - instruments such as the Services Directive could be more rigorously policed by the EU, to ensure that unnecessary and disproportionate regulation - especially that which restricts cross-border provision of services - is challenged.

Do you see a need for action at European Union level specifically to promote the collaborative economy, and to foster innovation and entrepreneurship in its context?

- Yes  
 No

Please indicate the sector/action

While the European Union may lack competence over many of the policy areas that relate to the collaborative economy, it has the ability to bring together best practices and insights from across all Member States, and to examine the ways in which existing laws and regulations are already adequately protecting consumers in the collaborative economy. As noted above, the EU should also be vigorously challenging member states to remove burdensome and unjustified restrictions on European citizens’ ability to participate in peer-to-peer marketplaces.

What action is necessary regarding the current regulatory environment at the level of the EU, including the Services Directive, the E-commerce Directive and the EU legislation on consumer protection law?

- No change is required
- New rules for the collaborative economy are required
- More guidance and better information on the application of the existing rules is required
- I don't know what is the current regulatory environment

How many people work for you?

- I am an individual provider
- 1
- 2-10
- 11-50
- 51-100
- 101-250
- More
- I do not wish to reveal this information

What percentage of your revenues/turnover is earned via collaborative platforms in the last twelve months?

- 0-20%
- 21-40%
- 41-60%
- 61-80%
- 81-100%
- I do not wish to reveal this information

What has been your revenue/turnover growth in the last twelve months earned via collaborative platforms?

- 0-5%
- 6-15%
- 16-35%
- 36-50%
- More than 50%
- I do not wish to reveal this information

What sector of the economy do you operate in?

- Transport
- Tourism
- Accommodation
- Professional services
- Other

As a provider active in the collaborative economy, are you aware if the following requirements have to be fulfilled in order to offer/share your assets, resources, time, skills, and/or capital on a platform?

- Specific authorisation or licence

- Yes
- No
- I don't know

- Registration in a business registry

- Yes
- No
- I don't know

- Specific qualifications

- Yes
- No
- I don't know

- Insurance coverage

- Yes
- No
- I don't know

- Membership in a professional chamber

- Yes
- No
- I don't know

- Compliance with health and safety requirements

- Yes
- No
- I don't know

- Compliance with planning permission or fire safety requirements

- Yes
- No
- I don't know

- Compliance with fixed-tariffs

- Yes
- No
- I don't know

- Compliance with consumer protection requirements

- Yes
- No
- I don't know

- Other, please specify

In case you need to comply with at least one of the above requirements, does this represent a burden for the exercise of your services via collaborative business models?

- A significant burden
- A minor burden
- No burden
- N/A (no requirements apply to my activities)

Do you think that lighter rules should be applied to smaller providers?

- Yes
- No

Is the online platform imposing specific requirements on providers?

- Yes
- No

Are providers using platforms able to find the right insurance to protect themselves against risks when providing services and assets in the collaborative economy?

- Yes
- No

## Submission of questionnaire

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End of public consultation

### Background Documents

BG\_ Въведение (/eusurvey/files/17798068-07b6-4cfb-8c80-a8e6a4f75e29)

BG\_ Декларация за поверителност (/eusurvey/files/0b5a7e6a-5c26-47ca-b263-9ece4aa566ca)

CS\_ Prohlášení o ochraně osobních údajů (/eusurvey/files/a93fa8dd-757e-421e-81f9-e1c9bca745af)

CS\_ Úvod (/eusurvey/files/af54c429-c5bf-482f-8525-c156be285051)

DA\_ Databeskyttelseserklæring (/eusurvey/files/5dd2c272-17fa-47f4-b0c7-2c207a86235f)

DA\_ Introduktion (/eusurvey/files/05c0d888-2d35-4e19-a314-65e8092597d6)

DE\_Datenschutzerklärung (/eusurvey/files/b5e037cf-0350-40c3-b803-04f6357f9603)

DE\_Einleitung (/eusurvey/files/300a2e87-e030-422a-b678-33fe2c7520a6)

EL\_Δήλωση περί απορρήτου (/eusurvey/files/b408fd27-c292-4fc0-9c2d-fd70c74062c4)

EL\_Εισαγωγή (/eusurvey/files/0be38358-a600-4568-bfd0-fd9697b1810f)

EN\_Background Information (/eusurvey/files/0873ffeb-56b2-40d7-bf56-5aadbd176c3c)

EN\_Privacy Statement (/eusurvey/files/8861750d-baa1-4113-a832-f8a5454501b5)

ES\_Declaración de confidencialidad (/eusurvey/files/edd31f1e-fe9d-493a-af5e-7a7c793295a9)

ES\_Introducción (/eusurvey/files/600be540-eef2-4bde-bd3a-436360015845)

ET\_Privaatsusteave (/eusurvey/files/294d2e58-3a3d-4e32-905f-74e8b376c5e6)

ET\_Sissejuhatus (/eusurvey/files/4bc0f8b9-febc-478a-b828-b1032dc0117f)

FI\_Johdanto (/eusurvey/files/a971b6fb-94d1-442c-8ad7-41a8e973f2d5)

FI\_Tietosuojaseloste (/eusurvey/files/28a1f27e-3a8e-41f3-ae27-201e29134555)

FR\_Déclaration relative à la protection de la vie privée  
(/eusurvey/files/1341b7cb-38e5-4b81-b3bc-bd0d5893d298)

FR\_Introduction (/eusurvey/files/308a1cf7-5e78-469c-996a-372b33a1992b)

HR\_Izjava o zaštiti osobnih podataka (/eusurvey/files/618120e1-286a-45d4-bbbd-2493d71617fb)

HR\_Uvod (/eusurvey/files/6bfc9d48-cd5c-4603-9c68-5c45989ce864)

HU\_Adatvédelmi nyilatkozat (/eusurvey/files/76f442e6-3e2d-4af3-acce-5efe8f74932b)

HU\_Bevezetés (/eusurvey/files/3ea8491d-429d-4c8f-be30-82db40fa59c5)

IT\_Informativa sulla privacy (/eusurvey/files/e2eb5a94-9e5e-4391-a8e3-35f9e151310b)

IT\_Introduzione (/eusurvey/files/aa3bf020-9060-43ac-b92b-2ab2b6e41ba8)

LT\_Pareiškimas apie privatumo apsaugą (/eusurvey/files/ab30fabd-4c4e-42bc-85c5-5ee75f45805d)

LT\_Ivadas (/eusurvey/files/d5a34e68-4710-488a-8aa1-d3b39765f624)

LV\_Ievads (/eusurvey/files/3a9bd2b1-7828-4f0e-97f1-d87cf87b7af1)

LV\_Konfidencialitātes paziņojums (/eusurvey/files/7156fdc0-b876-4f73-a670-d97c92e6f464)

MT\_Dikjarazzjoni ta' Privatezza (/eusurvey/files/03139a3f-7b5f-42c0-9d2f-53837c6df306)

MT\_Introduzzjoni (/eusurvey/files/ceb27908-207c-40cf-828a-6cf193731cdf)

NL\_Inleiding (/eusurvey/files/ca756d80-8c02-43e1-9704-3148a13c8503)

NL\_Privacyverklaring (/eusurvey/files/83d9394e-b179-442f-8a1b-41514ad072df)

PL\_Oświadczenie o ochronie prywatności (/eusurvey/files/15612e0b-807d-4c6e-af1c-d65fe4ec9ddb)

PL\_Wprowadzenie (/eusurvey/files/df9e1828-bbd0-4e4a-90bb-ec45a8bf46da)

PT\_Declaração de privacidade (/eusurvey/files/50a6e820-91bc-4531-9a0f-47b3685753d7)

PT\_Introdução (/eusurvey/files/003979c0-5277-41e9-8092-2de66d57ca00)

RO\_Declarație de confidențialitate (/eusurvey/files/25c135c6-ce01-4081-a83e-53e86086797e)

RO\_Introducere (/eusurvey/files/4334379b-e465-43a5-a944-8602090b0bf5)

SK\_Vyhlasenie o ochrane osobných údajov (/eusurvey/files/7fab071c-85f9-47eb-aaa9-949f2239701d)

SK\_Úvod (/eusurvey/files/e45df825-5e71-4172-b2ec-e07789cc3966)

SL\_Izjava o varstvu osebnih podatkov (/eusurvey/files/498ec1f0-3405-4454-9aa6-40607efe118f)

SL\_Uvod (/eusurvey/files/1b0b239a-630d-4d36-a92f-d4b758d41ddc)

SV\_Inledning (/eusurvey/files/e9111c5b-4637-4ea1-b235-ec85ef8fe1a)

SV\_Regler för skydd av personuppgifter (/eusurvey/files/0d8275b2-8344-4895-8c09-51d075671061)

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## Contact

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