



EU Digital Single Market Bulletin

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Further Reading: More in-depth updates and commentary on the EU Digital Single Market agenda is available [here](#).

Further information:

EU Digital Single Market Unit,
dsmunit@dbei.gov.ie Tel: 01-631 2176

National submission to the EU consultation on the Digital Services Act package

On 8 September 2020, the Department of Business, Enterprise and Innovation, made a national submission to the European Commission as part of its public consultation on the Digital Services Act (DSA). It is based on an extensive cross-Government collaboration of relevant departments and a wider national stakeholder consultation.



The Irish position on the EU Commission's proposed Digital Services Act package - Submission to the Public Consultation

8 September 2020

In the submission, Ireland states that it supports an approach to the development of a Digital Services Act package which supports business and innovation while protecting consumers. We urge that any measures taken should be clearly evidence based, targeted to deal with specific concerns, and proportionate to the harms that they wish to prevent.

There are two strands - the review of the e-Commerce Directive of 2000 strand and the Ex-Ante Regulation strand.

e-Commerce Directive Strand

The submission argues that the main principles of the e-Commerce Directive have stood the test of time and that the framework does not need to be changed but to be added to with specific requirements relevant to the types of services and issues that have presented themselves. In order to address the tensions that naturally arise between the country of origin principle and the measures within national legislation of destination countries, we suggest that the system that is adopted to achieve cooperation should also involve collaboration between Member States and recourse to European oversight in order to ensure that no disproportionate burden falls on the regulatory body of one, or a small number of, Member States.

Ireland believes that an EU Authority or Commission based entity will help to provide much needed cohesion, collaboration and consistency and that the Commission should act in accordance with these goals in devising the DSA package. It is felt that it is important that the Commission appreciates real issues that arise from the specifics of individual Member States legal systems when implementing enforcement elements of its EU Regulations and learnings from these should be incorporated into the DSA Package proposals.

Meeting of Irish Delegation with DG CONNECT on the proposed Digital Services Act Package

In early September 2020, an Irish delegation led by the Department of Business, Enterprise and Innovation along with officials from the Department of the Taoiseach, Department of Communications, Climate Action and Environment, Department of Justice and Equality and the Permanent Representative of Ireland in Brussels met with officials from the Directorate General for Communications Networks, Content and Technology (DG CONNECT) on the proposed Digital Services Act (DSA) package via videoconference. The purpose of the meeting was for the Irish delegation to outline their coordinated views and concerns to the Commission arising from the inception impact assessments (IIAs) on the proposed package and to hear the Commission's current views on the DSA in advance of providing a submission to the public consultation on the DSA.

Strand 1 on the review of the e-Commerce Directive

The Irish delegation set out its position as summarised above and stressed that the main principles of the e-Commerce Directive do not need to be changed. The delegation also raised concerns as to how the DSA will fit with existing proposals

Ex-Ante Regulation Strand

In order to justify the need for ex-ante intervention, Ireland believes the onus is now on both DG CONNECT and DG GROW to demonstrate that innovation is being stifled by so called 'gatekeeper platforms' and that digital markets are not contestable due to exclusionary behaviour. Ireland remains to be convinced that this evidence base exists at present. Ireland supports innovation and aspires to position itself as a global leader in this field. It also fully supports competition in the marketplace and full market contestability.

Were it to be convincingly demonstrated that there is potential for increased competition in digital markets, that these markets are not contestable, and innovation is being stifled by large platforms, then Ireland would be open to proportionate ex-ante measures complimenting existing and future competition policy. Any measure or measures would ultimately have to be proportionate to any dampening effect these platforms have on innovation and achieve an appropriate balance in terms of the different stakeholders and retain what is functioning optimally for the broader digital economy.

such as the Terrorist Content Online Regulation, Audio Visual and Media Services (AVMS) Directive and the Copyright Directive.

The Commission responded that Ireland's position on Strand 1 is in close alignment with the Commission Services current views. They pointed out, regarding the cross-border notice of illegal

content removal orders, that a distinction will need to be made between the notice orders of removals. The volume of user notice is enormous and could be an administrative burden for the home state. The Commission will be looking at measures they can design to reinforce the country of origin principle that will provide for meaningful and holistic measures. Commission is seeking synergies on the AVMSD and look to provide a holistic framework in the DSA. The Commission will also not propose anything that will undermine the Copyright Directive.

Strand 2 on Ex Ante rules for Gatekeeper platforms

From Ireland's perspective it was set out that it will not be enough for the Commission's final Impact Assessment to show certain platforms have significant market power. Credible evidence that

innovation is being stifled by so called 'gatekeeper platforms' and/or that digital markets are not contestable will be required. Ireland also raised concerns concerning the proportionality of the options proposed and the complementarity of this proposal with the proposed National Competition Tool.

The Commission stated that they share the evidence base concern on the proposed ex-ante rules. They have commissioned several studies on evidence gathering and believe there is compelling evidence that gatekeeper platforms engage in exclusionary behaviour. The future regulatory framework will look more closely to an EU Competition Authority. In the Consultation process so far, a lot of contributions have been received from small businesses along with many inputs from well know companies.

Platform to Business Regulation

The Platforms to Business Regulation aims to create a fairer, more transparent and predictable business environment for small businesses and traders who use online platforms.

The Regulation has direct effect in EU Member States from 12 July 2020 and was signed into law by the Tanaiste by way of S.I. No. 256/2020 - European Union (Promoting Fairness and Transparency for Business Users of Online Intermediation Services) Regulations 2020 - prepared by the Department of Business, Enterprise and Innovation.

In essence the Regulations seek to protect companies that depend on online platforms for reaching consumers, while safeguarding the innovation potential of platforms themselves. It does so by placing the following minimum transparency obligations on platforms:

- Platforms are now required to make their standard terms and conditions more transparent, and easily available to business users. Furthermore, most changes to terms and conditions that have a non-positive impact on users will have to be announced and businesses given a reasonable time to adjust before the changes come into effect; and
- The reason or reasons why a platform restricts, suspends or terminates a business

user account will also now have to be explained.

Business users will now be made aware of the principles that affect their ranking position in general platform search results and how they can influence their ranking position, for example, through payments of additional commissions.

Finally, the Regulations also provide effective and quick means to resolve disputes between businesses and online platform intermediaries via:

- platforms establishing internal complaints handling systems;
- commitments by platforms to engage mediation in good faith; and
- allowing businesses to be represented by associations or organizations in cases against platforms to stop or prohibit any non-compliance with the requirements of the Regulation.

The Competition and Consumer Protection Commission has been designated as the Irish enforcement body for the Regulations and will investigate and tackle any structural non-compliance with the provisions of the Regulations.

This Bulletin is issued by the Department of Business, Enterprise and Innovation that supports the Minister of State for Trade Promotion, Digital and Company Regulation on Digital Economy aspects of the EU DSM with the cooperation of the members of the Inter-Departmental Committee on the EU Digital Single Market.