



Digital Single Market Bulletin

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Further Reading: More in-depth updates and commentary on the Digital Single Market agenda is available at:

https://ec.europa.eu/info/strategy/priorities-2019-2024/europe-fit-digital-age_en

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Minister Breen meets with the Swedish Minister for Digital Development

On 7 May 2020, Minister Pat Breen and representatives from the Department of Business, Enterprise and Innovation (DBEI) met with the Swedish Minister for Digital Development, Anders Ygeman via videoconference.

It was a wide-reaching general discussion on a number of areas. The Covid crisis was discussed and the dependency it has highlighted on digital technologies. The use of contact tracing apps was also touched upon, which the Department of Health and the Office of the Government Chief Information Officer are leading on for Ireland. In this context, the link to GDPR to ensure that people have trust in using such apps was also mentioned.

Much of the meeting focussed on Artificial Intelligence (AI) and the Digital Services Act package which DBEI lead on. The latter was the focus of the last D9+ Ministers meeting, which took place last December 2019 in Poland. On AI, both Ireland and Sweden welcome the EU White Paper, published in February of this year, and agree with the focus on human-centred AI based on trust, ethics and security.

Ireland and Sweden also share a similar view on the future Digital Services Act, in that we will engage constructively in the review of the e-Commerce directive and a Digital Services Act Package. The Covid crisis has led to a many calls from European Parliament committees to pursue ex ante competition rules on platforms as part of the Digital Services Act package.

D9+ Non-Paper on the Creation of a Modern Regulatory Framework for the Provision of Online Services in the EU

The countries forming the Digital 9+ (Belgium, Czech Republic, Denmark, Estonia, Finland, Ireland, Luxembourg, Netherlands, Poland and Sweden) met in Warsaw at Ministerial level in December 2019 to discuss the market of online services in the EU and the need for regulatory changes to make it fit for the modern digital age. The European Commission plans to propose a Digital Services Act Package, which is expected to include an upgrade of the rules on liability and security of digital platforms, services and products offered on the EU market.

The D9+ subsequently communicated a non-paper to the European Commission in mid-May raising some points to take into consideration while conducting the review of the current legislation, in particular the e-Commerce Directive, and designing the new framework for providing digital services in the EU.

According to the paper, there exist several problems with the legal framework as it stands today. There is a patchwork of EU and national legislation regulating this area, undermining the foundations of a strong Single Market. This is a result of the passage of time since the original e-Commerce Directive was adopted 20 years ago and the fact that more and more issues have come to light for which no provisions were envisaged in the Directive. This fragmentation makes it harder for enforcers to oversee the EU market. It is also more difficult for new innovative digital services to launch in the current legal environment, for smaller players to scale up, for consumers to navigate the online world, and for Europe to compete effectively with digital leaders outside of the EU.

To address these challenges, the paper proposes that the Digital Services Act Package should provide an improved regulatory framework for the digital economy. It stresses that the upcoming Digital Services Act must contribute to a truly functioning Single Market where technology companies can grow and scale up and be globally competitive, by enabling digital services and platforms in the whole European market.

The D9+ countries stress that the core principles of the e-Commerce Directive should not only be maintained, but modernized, in a targeted manner that takes into account the emergence of new types of online intermediaries that didn't exist at the time of introduction of the e-Commerce Directive, but which have a significant impact on our societies today.

These core principles include:

- the country of origin principle, which means that a provider of information society services is subject to the law of the EU Member State in which it is established. This rule enables SMEs to expand and scale up quickly without the need to adapt to specific laws of other Member States. The principle has contributed significantly to the EU economic development.
- exemption for intermediaries from liability for the content they store if they fulfil certain conditions. It guarantees that the internet remains an open environment for everyone to use.
- no general obligation for providers to monitor information, which they transmit, store or publish, nor a general obligation for them to actively seek facts or circumstances indicating illegal activity. This rule safeguards freedom of expression and access to information.

The D9+ countries also feel that the time has come to consider the introduction of a framework for notice and action mechanisms across the EU, with measures that are proportionate to the nature and impact of the harm committed, so as to:

- enable swift and effective removal of the clearly illegal content. The goal is to minimise potential harm, not make the rules too burdensome and costly for companies, and to include a mechanism for preservation of the removed content when necessary for the prevention, detection, investigation and prosecution of a criminal offence.
- ensure appropriate balance between the interests and expectations of those reporting illegal content that should be removed, and those posting content, making it possible to counter-notice.

- guarantee internet intermediaries an appropriate level of legal certainty.
- improve coordination and cooperation between national authorities as well as with the European Commission.
- ensure clarity and swift reaction for individuals whose rights are at stake.
- safeguard online users' rights to freedom of expression and information.
- encourage internet intermediaries to take a more proactive approach to content on a voluntary basis by exploring incentives and safeguards for them to do so.

Finally, an issue that is stressed in the non-paper is the nature of global competition. Strong competition rules and open markets have made the EU one of the most prosperous and competitive economies in the world.

Meeting of the e-Commerce Experts Group

The e-Commerce Experts Group met on the 26 May 2020. In the meeting a number of items were discussed including the Digital Services Act (DSA) Package. The reference point for the DSA is the EU Digital Strategy *Shaping Europe's Digital Future* which contains two specific references to the DSA:

1. New and revised rules to deepen the Internal Market for Digital Services, by increasing and harmonising the responsibilities of online platforms and information service providers and reinforce the oversight over platforms' content policies in the EU.

2. 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.

These separate streams will be the two legs of the DSA package.

The growth in the number and diversity in activities of platforms since the current eCommerce Directive came into force was highlighted as a key reason for revisiting these rules.

The review will commence with the publication of an Inception Impact Assessment which will be followed almost immediately by a public consultation carried out by the Commission. While this will cover matters relevant to the two streams it is likely to encompass other issues covered by the eCommerce Directive which have not been



highlighted in previous discussions on the review such as eContracts. The consultation period is expected to last until late August/early September.

The Commission is encouraging Member States to supplement the findings of this consultation through their own direct engagement with their own stakeholders to highlight national specificities.

The Commission has expressed its intention to pursue the two streams by means of separate legal instruments, the nature of which is still to be agreed.

This Bulletin is issued by the EU Digital Single Market and Digital Economy Unit of the Department of Business, Enterprise & Innovation. The Unit supports the Minister of State for Trade, Employment, Business, EU Digital Single Market and Data Protection on DSM issues with the cooperation of the members of the Digital Single Market Inter-Departmental Committee.