

## DG CONNECT

Discussion with [REDACTED] Facebook, [REDACTED], moderated by CERRE [REDACTED]  
Brussels, 18 May 2020

### BRIEFING NOTE *(Commission Internal)*

#### Scene setter/Context of the meeting:

- You are going to discuss a post Covid-19 world with [REDACTED]. The topic is what benefits, opportunities and risks online platforms can bring to the society and industry for the “day after”.
- You last met [REDACTED] on 17 February, when he iterated his call for Regulation, and where you recalled Facebook’s responsibility towards EU citizens.
- On Covid-19, broadly speaking Facebook, Google, Twitter and other platforms have been responsive during the crisis.
- They’ve taken action to combat disinformation, taking down illegal content that could lead to physical harm or undermine public order, demoting content fact-checked as false or misleading, and limiting ads that promote false products and services. They have also promoted authoritative information about COVID-19, and stepped up their partnerships with fact-checkers.
- Your discussion comes days after Facebook announced the set-up of an “Oversight Board”, for which the first 20 of 40 members have been appointed among high-profile freedom of expression online advocates.
- The discussion will be moderated by CERRE [REDACTED], who also [REDACTED] Expert Group to the Observatory on the Online Platform Economy that is organised by the Commission.
- There will be high media interest in this event and your statements made.

#### Objective of the meeting:

- Position the European Commission as the world’s main regulatory authority that can hold platforms accountable
- Keep political pressure on Facebook to further adjust their practices in the interest of European society, acknowledging recent progress in their responsibility

- Get media coverage for the Digital Services Act package – as the upcoming regulatory framework that will regulate platforms’ responsibility; and promote the voluntary by the EU and the platforms together in the interest of society – including the code of practice

#### KEY messages

- Welcome Facebook’s reaction to the COVID-19 crisis, and their openness to regulation as a sign that they know their responsibilities in society
- Voluntary, private actions are important and useful – but we now need Regulation in the form of the Digital Services Act to frame the responsibility of companies like Facebook
- Facebook should not be marking its own homework any longer: we need public oversight and democratic accountability, to protect citizens and our democracy.
- Facebook’s business model and commercial interest of selling advertising and getting eye balls may also sometimes be at odds with public interest.
- As a first and immediate step, the area where Facebook needs to do more now is on giving researchers wide access to data to study their platforms, especially on disinformation. News reports that advertisers have been able to target Facebook users who are interested in “pseudoscience” for years are very worrying.
- Ultimately, Facebook’s responsibility and accountability needs to be rooted in a clear legal framework, not just based on its own voluntary actions. This will be the aim of the Digital Services Act.
- Regardless of the issue of content moderation, all online platforms need to pay back to the EU society their fair share as regards the revenues obtained from operations in the EU. A fair taxation system for platforms such as Facebook is a priority for this Commission.

### Sound bites / Media quotes

- Facebook has shown a greater sense of responsibility during this crisis than in other situations before in the EU. I can only applaud this.
- But Facebook is not off the hook. This is a new beginning, and we need to see more action, not only the EU, but also in the poorer neighbourhood.
- We fully agree that Facebook should not be put in a position where it gets to decide on what people can see and do on its platform. This is a recognition that public oversight is necessary. Our response is the Digital Services Act.
- As a first step, [REDACTED] is to embrace openness of their platforms and give researchers much broader access to data on how content spreads on their platforms, details of ads and targeting criteria
- We need to be sure that Facebook's business model and commercial interest of selling advertising and getting eye balls by over-extracting personal data is not at odds with the wider public interest.
- We know these services are free, but there is legitimate concerns about the hidden costs to society.
- Facebook needs to be more accountable to democratic institutions. Private "oversight boards" can be seen as smoke screens; instead Facebook needs to be accountable to public institutions. This will be one of the goal of the Digital Services Act. EU citizens expect that their speech online is governed by the law, not by private standards.
- [REDACTED], I know Facebook has the resources to deal with multiple laws at national level, but many smaller platforms cannot. Our aim is to have one set of rules for the whole of the EU. So greater responsibility should go together with easier operating conditions across the DSM.
- There is bigger conversation here about disinformation and democracy, filter bubbles, and the importance of quality journalism. We will not accept in Europe that our quality press and media disappears since they are part of the foundation on which are democratic societies are built. Social networks must not undermine this.
- You wanted to "move fast and break things". You almost broke democracy. In some parts of the world, you contributed to breaking the society. It's high time that you realise your responsibility; and we invent a new legal framework for today and tomorrow.

## **Role of large platforms in the society**

- Facebook is now a grown-up platform. It has shown that it is starting to behave like a grown up now.
- We've engaged in a lot of self-regulation and demanding them to step up in their responsibilities vis-à-vis the users and society. Some progress has been done, and needs to be acknowledged.
- However, it is time for regulate the public space. There is a need for a clear and framework of rules. It will benefit citizens and businesses, as they will have a clear set of rights, but the platforms themselves, which will enjoy a predictable environment to operate in the EU.
- It is crucial that Facebook –and other large platforms- understand that their activities need to be deeply rooted in the law, and cannot depend solely on the good faith of unilateral contractual terms.
- This concerns also, in particular, the need for transparency on the way they moderate and decide on the users' content, and the need to put in place measures to protect users from manipulative or simply illegal practices.
- We welcome some steps taken by Facebook to improve the way content is moderated. In this sense, the "oversight board" might be a step in the right direction. But this should not be a smoke screen.
- It is important not to deviate the attention from the fact that law comes first: EU citizens expect that the decisions on their speech are based on democratic rules, not on the private company's Terms of Service and private interests. Real "oversight" should be in the hands of democratic institutions.
- The Commission is going to propose, under the Digital Services Act, a set of rules to ensure that online content is subject to legal standards, as much as offline content. Digital services can be provided for the benefit of the citizen, not at their cost. This will set a new standard for consumer protection and consumer choice – as well as safeguarding diversity and fair competition.

## Platforms acting as gatekeepers

- Today few large digital platforms are able to control increasingly important ecosystems, due to significant economies of scale and scope in the digital economy.
- Traditional businesses are becoming increasingly dependent on these large digital platforms – now more than ever during the COVID-19 crisis.
- Facebook is an enormous gatekeeper for market access – and this requires Facebook to be fair, open, and transparent. This will help help contestable for innovators, businesses, and new market entrants.
- This is linked to increasing concerns in the EU that Facebook is now an enormously powerful rule-setter in huge parts of public life. We will not accept in Europe that our quality press and media disappears since they are part of the foundation on which democratic societies are built. Social networks must not undermine this.
- Facebook's business model and commercial interest of selling advertising and getting eye balls may sometimes be at odds with public interest.

## Role of platforms and collaboration between them and governments during Covid-19 crisis as regards disinformation

- The COVID-19 pandemic has been accompanied by an overflow of information –and increase of scams- through online media, which has made it difficult for citizens to find trustworthy sources and reliable guidance.
- The Commission has been in close contact with online platforms - signatories of the **Code of Practice against disinformation** - since the beginning of the crisis.
- Facebook has been actively supporting the global efforts to respond to the crisis. We welcome the strong decision made to provide authoritative information to users across all their platforms – in particular collaborating since the early stages of the pandemic with the WHO, removing content that may bring physical harm, demoting content deemed false, prohibiting exploitative tactics in ads and establishing strong links with authoritative journalism and the fact checking community.

- Nevertheless, there is still a significant flow of falsehoods and conspiracy theories about COVID-19 spread through social media channels, in particular through Facebook - as recently reported by NewsGuard.
- Platforms should provide more information about the actual effect on users of their actions to promote authoritative content. Particularly, we would need to be able to evaluate what is the impact of the user engagement with quality information, in each Member State.
- Also, more transparency is needed on media manipulation and coordinated inauthentic behaviour detected on the platforms, including information on geographic origin and target audience.
- More information is also required from the platforms and the advertising industry on the scope and nature of these practices as well as information enabling a better understanding of the flow of advertising revenues to websites trafficking in disinformation around COVID 19.

## **The world tomorrow**

- Looking ahead, I would stress the need to strengthen platforms' collaboration with researchers and fact checkers, and also with national authorities.
- We value Facebook's efforts to support and cooperation with fact checkers, and this is important for content curation and moderation, but the actions we require should go beyond today's system and include many more fact checkers that operate under internationally recognised standards, and not only in the rich parts of the world. There are serious concerns that influence operations in the EU's neighborhood are going undetected, and unchecked.
- Ultimately, we now need to move to regulation under the Digital Services Act – which should make all platforms accountable to democratic institutions, and define clear and uniform rules for content moderation and transparency across the EU.

## **DEFENSIVES – Online platforms & Covid-19, DSA package**

### ***How will the current emergency affect legislative initiatives that are being prepared by the Commission?***

Currently the Commission focuses its work and attention on the management of the crisis, but at the same time, the services continue work on the major initiatives announced earlier during the Commission mandate. The Digital Services Act package will build also on an experience from the crisis to create a sustainable and modern framework for governing our information space.

### ***Will you delay future public consultations? Mostly small and medium companies may not have capacity to respond to consultations now.***

We are very conscious of the difficulties that the European companies are facing and will do the utmost to ensure that we have meaningful consultations on the proposals in preparation. We have already extended some deadlines and will take into account the developments when launching new ones.

### ***When is the DSA package planned and what will it address?***

We announced the DSA package for the end of this year. Launch of the open public consultation has been slightly delayed because of the crisis but we have resumed work. We believe that the DSA package will be very important in the post crisis situation to recreate a fair market for platforms in Europe.

The DSA package should include a proposal on modernisation of the ecommerce framework and a proposal on ex ante regulation of platforms with market power

### ***Are you considering specific obligations for very large platforms?***

Large platform obligations could include the participation in crisis protocols and other cooperation mechanism, as well as much more far-reaching transparency and audit obligations, e.g. on ranking or recommendation algorithms, which should not be imposed on smaller platforms with limited resources. Potentially, harsher sanctions for non-compliance could be envisaged.

### ***Does the Commission envisage temporary VAT waiver on some products?***

The Commission will consider a broad range of measures that are suitable to support the industry, including for VAT.

### ***What does the Commission think of the new Oversight Body that Facebook established recently?***

We are looking carefully at any self-regulatory activities of large online platform companies, and in general, we welcome such an approach reflecting its role in a society. However, we don't think that the large companies should set up limits of what is acceptable in the online space and what is not; this role should remain to the Governments and regulators, and final decision should rely on Court careful consideration.

## **Tracing apps**

### **Is the Commission developing a single pan-European application?**

- No, the Commission is not developing a pan-European application but supports Member States in developing a common European approach via the toolbox by setting requirements and functionalities collectively identified by Member States' authorities. Interoperability is an essential functionality so that a user can be alerted by his or her app while travelling across Europe. However, should Member States decide that one EU app is needed, the Commission stands ready to work closely with them on the development of such an app.

### **What about tracking apps (not tracing)?**

- EU Member States, supported by the Commission, published a toolbox to use mobile applications for efficient contact tracing and warning in response to the coronavirus pandemic.
- The Commission also issued guidance on the development of new apps that support the fight against coronavirus in relation to data protection and privacy.
- Both the toolbox and the guidance only cover apps that are used voluntarily.
- Location data is not necessary for the purpose of contact tracing functionalities, as their goal is neither to follow the movements of individuals nor to enforce quarantine. In addition, the processing of location data in the context of contact tracing would create security and privacy issues. For this reason, the Commission advises not to use location data in this context. In the Toolbox and the Guidance, the use of Bluetooth Low Energy (BLE) communications data (or data generated by equivalent technology) is recommended to determine proximity.
- That being said, the Commission is monitoring the actions by Member States and is in touch with data protection authorities.

## **Mobile data**

### **How will the system work?**

- The Commission and the Joint Research Center (JRC) gets aggregated and anonymised data from mobile network operators. The JRC will then perform the data analytics. There is no tracing of individuals.
- The statistical model looks into mobility patterns. Patterns will be correlated with the propagation level of the coronavirus.

### **What is the timeline?**

- The system will be operational with data as soon as possible. Operators have sent samples of data sets.
- The datasets that are used will as much as possible go back to the beginning of the crisis..
- This will then also be the end of that project. This is a temporary measure that will be terminated at the end of the crisis. .



**How exactly will the data be aggregated? How is ensured that the anonymised metadata remain anonymised and protected?**

- National data will be aggregated by operators. Anonymised and aggregated data received by the Commission will be stored on a secure server at the JRC. The JRC will ensure the highest security standards.
- The data will only be used for that particular purpose in the fight against the coronavirus pandemic, and it will not be shared with third parties. The data will be deleted as soon as the crisis is over.

## **Background**

[REDACTED] is the [REDACTED] of the [Centre on Regulation in Europe](#), an independent, not-for-profit think tank whose mission is to promote through policy-focused recommendations based on research and scientific excellence applied to real-world issues, robust and innovative regulation systems and practices in Europe's digital and network industries. CERRE's diversified membership currently includes more than 50 regulatory authorities, operators/infrastructure managers/platforms/systems integrators, and universities. At CERRE, [REDACTED] is leading a group of some 25 top-level academics - economists, lawyers, engineers & political scientists - from across Europe.

Recent activities of CERRE include the publication of research reports and the organisation of dissemination events on "[Liability of online hosting platforms: should exceptionalism end?](#)", "[A fresh look at zero-rating](#)", "[Internet platforms non-discrimination](#)" and "[Towards smarter consumer protection rules for the digital society](#)".

[REDACTED] has been teaching for many years at the Université Libre de Bruxelles (ULB)'s Solvay Brussels School of Economics and Management (SBS-EM). His recent courses focused primarily on the regulation of the digital and energy industries. Earlier in his career, he has been a member of the private office of former European Commission President Jacques Delors, whom he advised on policy aspects relating to industrial affairs, technology and R&D.

[REDACTED]

### **Observatory on the Online Platform Economy and its expert group**

The EU Observatory on the Online Platform Economy was created as part of the Commission's P2B initiative. It is composed of a dedicated team of Commission's officials and an expert group, established by the Commission Decision of 26 April, supported by the data gathering and analysis capabilities (contract to be signed in March/April).

The Observatory has been set up in order to monitor the opportunities and challenges of the online platform economy to ensure an appropriate and up-to-date rule-making. The Observatory has been looking into current and emerging challenges and opportunities for the EU in the online economy and online general search. It will also monitor the implementation of the P2B Regulation. The EU Observatory has been liaising with other relevant expert groups related to the online platform economy, including the eCommerce expert group, as well as with centres of excellence at national and EU level.

### **Online platforms & COVID-19**

- As Member States (MS) are taking strict measures to prevent spreading of COVID-19, some sectors of the digital economy are hit more significantly than others.
- As regards SMEs, although the current crisis helped a limited number of sectors to grow, the majority **struggle**, mostly e-retail, mobility, travel, advertising, and some others are likely to be crucially affected as well (app developers,...).

- Initial [data](#) projects that in some countries, almost 40% of start-ups will have to reduce their employees and more almost 50% will run out of financial sources in three months<sup>1</sup>.
- There are indications of excessive surge prices in *essential* items as well as fake claims on digital players' effectiveness in combatting the virus.
- Here are also indications that some companies are also prioritizing its assortment; essential products such as food, soap, cleaning gear, baby products, and articles that support telework and entertainment are prioritized over others. The consequence is that other products can be temporarily offline or that delivery takes longer.
- **Both of these actions have a negative impact on smaller businesses**, whose delivery of products and services provision might be disadvantaged.
- **On the other hand**, beside the **financial aid that the Commission has launched** (EUR 1 bn. redirected from the Structural Funds to help SMEs) or suggested (EUR 37 bn. to provide liquidity to corporates) and targeted measures approved by the **Member States**, some **large platforms have announced rather modest financial or technical assistance that targets mostly SMEs**.
- As regards **Facebook**, it has taken diverse actions:
  - Announced new Data for Good tools to support selected health researchers and non-profit organizations- three new types of Disease Prevention Maps were launched to help inform disease forecasting efforts and protective measures, using aggregated data to protect people's privacy:
    - **Co-location maps:** reveal the probability that people in one area will come in contact with people in another, helping illuminate where COVID-19 cases may appear next.
    - **Movement range trends:** show at a regional level whether people are staying near home or visiting many parts of town, which can provide insights into whether preventive measures are headed in the right direction.
    - **The social connectedness index:** shows friendships across states and countries, which can help epidemiologists forecast the likelihood of disease spread, as well as where areas hardest hit by COVID-19 might seek support.
  - Limited the spread of misinformation and harmful content about the virus also on WhatsApp and Instagram via Global network of third-party fact-checkers, that are continuing their work reviewing content and debunking false claims that are spreading related to the coronavirus. When information is related as false, **the spread on Facebook and Instagram is limited** and accurate information from these partners is show.
  - Prohibited ads for products that refer to the coronavirus in ways intended to create panic or imply that their products guarantee a cure or prevent people from contracting it.
  - Launched Whatsapp Worked together with the WHO and launched WHO Health Alerts as a way to get authoritative information about the corononavirus sent directly to WhatsApp. People can receive daily situation reports, as well as tips on how to protect themselves and answers to FAQ.
  - Started retroactively informing people that they have seen a misinformation content that was removed later.
  - Launched its digital literacy program 'Get Digital' to provide lessons and resources to help young people develop the competencies and skills they need to more safely navigate the internet.
  - Diverse support for SMEs, but only in the US.

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<sup>1</sup> Impact of the Corona crisis on start-ups & tech. Dealroom, 24 March 2020.

- Despite the claims to fight misinformation, almost 40 Facebook pages across the European Union with large online followings continue to spread falsehoods and conspiracy theories about COVID-19, according to an [analysis](#) published on 5 May by NewsGuard, an analytics firm that tracks misinformation.

## Platforms role vis-a-vis SMEs

With the lockdown measures introduced by many Member States, shops selling non-food products had to limit their operations or even close their doors. Food retailers could remain open but important limitations have been introduced. Because of this but also out of health concerns, many consumers turned to online shopping. Online grocery sales experienced double-digit growths within weeks. For example, in week 12 compared to the same week in 2019, online food sales grew by 142% in Italy, 55% in Spain, 93% through home delivery and by 74% through Drive-in in France.<sup>2</sup> This trend caused grocery delivery Internet applications downloads grow two- or three-fold. Data indicates that European consumers under lockdown measures are placing more orders online.

Data indicates that European consumers under lockdown measures are placing more orders online. As of May 2020, a number of orders with ecommerce brands, which trade purely digitally, has increased in Europe by around 80% compared to the same period last year, with for example Ireland and Belgium seeing growth of 200% and 86%, respectively. At the same time, retail brands that mainly trade in physical stores have seen growth of digital sales of over 100%.<sup>3</sup>

However, online sales of discretionary products have fallen significantly. Consumers are cautious with their spending. Fashion retailers, DIY, furniture and other shops, even if they are able to still sell via multichannel distribution, have been observing a dramatic drop in sales.

Platforms that experience increased consumer demand also face numerous challenges, for example with labour force shortages, protection of employees, logistics, parcel delivery, etc. Platforms' focus on essential goods but also changes in consumer demand caused online sales of many SMEs dropping to zero.

However, the use of many Internet applications has increased. Average weekly hours spent in non-gaming apps in March 2020, grew by 30% in Italy, 10% in Germany and 15% in France. Conference call apps use jumped by 30 times for certain providers, e.g. in France and Germany. Education app downloads grew by 90% globally (190% in Australia, 150% in UK, 95% in France, 65% in Germany, 55% in Italy). Health and fitness app downloads grew by 45% worldwide, 105% in Italy, 85% in France, 80% in Spain. Consumer spend on these apps also grew by 85% in Italy, 70% in France and 65% in Spain. These trends also hold for social and communication apps, for streaming and gaming. The growth in use does not however mean growth in revenue, as new app users have not yet been monetised (most apps were free downloads).<sup>4</sup>

The Single Market is crucial during the crisis. Closing of borders to certain goods or workers must not take place. To this end, the Commission issued guidelines for borders management, which aim at helping reinstating necessary flow of certain goods. The Commission also issued guidelines that deal with the free movement of critical workers during COVID-19 outbreak, including workers involved in the supply of goods.

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<sup>2</sup> Nielsen data, quoted after EuroCommerce.

<sup>3</sup> <https://ccinsight.org/trends-by-location/>, 8.05.2020.

<sup>4</sup> Information from DG CNECT.

Despite the fact that consumers increasingly turn to online shops, sale of non-essential goods have seen a significant drop. The situation is dynamic, however, even popular ecommerce platforms have seen a decline in traffic up to 50%.<sup>5</sup>

The Single Market will also be key in the post-crisis phase. The Commission needs to work closely with Member States, businesses and other stakeholders on the recovery strategy.

Retailers are joining forces with social partners, to ensure continued safety of the workforce in retail and wholesale. They call on EU and national authorities to secure jobs where shops had to close, to provide for temporary unemployment, support workers in training and childcare, as well as ensure that those workers can cross borders to get to work.<sup>6</sup>

Solidarity between Member States as well as between businesses is important. We hear of positive examples of online platforms involvement in supporting SMEs. Free trainings provided to small traders on how to digitalise (e.g. Amazon), accelerated payments to suppliers (e.g. Amazon, Facebook), grants programmes and funds (e.g. Facebook, Google, Amazon), etc. Some digital services providers also waive their fees (e.g. Microsoft, Ebay, UberEats, Alibaba and others).

Social responsibility of digital services providers means nowadays not only being sustainable in environmental and social terms, but also supporting governments in their fight with the COVID-19 crisis and helping small companies keep afloat. Positive examples include Allegro, a Polish online e-commerce platform launched a support package for sellers worth over PLN 16 million in order to help current sellers maintain their business continuity and to facilitate new companies open new online channels. The package includes extended commission payment periods for small businesses, easy access to cashback loans, suspension of previously announced increases in fees and no commission for new Polish sellers.<sup>7</sup> Another European e-commerce platform, the French Cdiscount, provides their sellers with knowledge of crisis management by organizing webinars which allow live discussion. Their vendors can also benefit from a shorter payment cycle in order to increase their cash-flow capacity. Cdiscount further launched a system to facilitate the registration of new French sellers by offering, inter alia, 6 months of standard subscription, with no commitment and no cancellation fees.<sup>8</sup>

Experts tend to predict that changes in consumer spending might last longer, or even be permanent. This will depend on many factors, ranging from consumer income and spending power to consumer attitudes and beliefs. For some companies this will mean new opportunities but other might find it challenging. In both cases, the swift functioning of the Single Market has an important positive role to play.

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<sup>5</sup> <https://thenextweb.com/corona/2020/03/24/online-marketplaces-tanking-corona-except-for-amazon/>, 29.04.2020.

<sup>6</sup> Joint statement by EuroCommerce and UNI-Europa; <https://www.eurocommerce.eu/resource-centre.aspx#PressRelease/13379>

<sup>7</sup> <https://magazyn.allegro.pl/90778-allegro-oglasza-pakiet-wsparcia-dla-sprzedajacych-zeby-pomoc-polskim-firmom-w-czasie-pandemii-koronawirusa>

<sup>8</sup> <https://tamebay.com/2020/03/cdiscount-marketplace-coronavirus-update.html>

## Digital Services Act

- The Commission will present a new framework “...to upgrade our liability and safety rules for digital platforms, services and products, and complete our Digital Single Market.”, as President von der Leyen announced in her Political Guidelines.
- New framework **is envisaged as a revision of the eCommerce Directive** under the umbrella of the **Digital Services Act package**.
- The eCommerce Directive from 2000 is widely regarded as one of the central pieces of Internet Regulation in the EU. It regulates Treaty Freedoms such as the freedom to provide (digital) services in the Internal Market, as well as the freedom of establishment for providers of these services. It also regulates the liability that intermediaries such as internet service providers, Cloud service providers, or online platforms have for third party content, which they transmit or host. The established framework guarantees a balanced framework helping both innovators while also protecting fundamental rights online.
- The purpose of the Digital Services Act is to **adapt the current regulatory framework** to the continuously **changing landscape of digital services** that has evolved since the adoption of the eCommerce Directive. So has the **scale of their use** as well as our **behaviour online**.
- The Commission does not intend to modify the **core principles of the current framework**, i.e. the country of origin principle and the limited liability exemption of online intermediaries, but rather to **reinforce and clarify** them.
- In this regard, the Digital Services Act will aim at **completing the Single Market** and at **enabling platforms to innovate and scale up** across the EU, in particular to the **European SMEs**.
- **Fundamental rights, freedom of expression particularly, and safety of users on internet** are of high importance for the Commission as well, including preparatory work towards Digital Services Act.
- At the same time, we need to make sure that our societies and citizens are not exposed to undue risks emanating from new digital services and technologies.
- Service providers will have to act responsibly, providing us with **reasonable reassurance that they mitigate risks** such as illegal content (hate speech, terrorist propaganda, or child sexual abuse material) or products placed on our markets that are totally unsafe, i.e. do not respect European product safety and consumer protection rules.
- **Simultaneously, European companies – especially the small ones – are confronted with a legal framework** that is neither clear nor predictable, nor sufficiently **harmonised** within Single Market.
- Against this background, some Member States have started to regulate in this field, which is creating a patchwork of national rules that create undue fragmentation in the Single Market. *[Germany with NetzDg or France with Avia law]*.
- **No new European digital leader** can scale up in Europe against this dis-harmonised background. **Only the current, big companies (most of which are American) have the resources to offer their services all over Europe**. The less clear and harmonised our legal framework is, the more the big companies will strive.
- We also need to ensure that European rules are properly **enforced** in Europe. This also concerns services provided by **the third countries platforms in the EU (beside US also Chinese)**, that brings new challenges as regards e.g. product safety.

- This will require **better cooperation between platforms and public authorities**, as well as between national authorities that are able to **cooperate better across jurisdictions and in enforcing** the law.
- Needless to say that **current corona crisis** also brings new experience as regards **large platforms response**, that quickly reacted to the emergency situation and shows that they are aware of the **societal responsibility** they bear. Although voices are that they still do **much more** (e.g. to support small companies), this is a **considerable difference** in comparison to a situation only a few years ago.
- Nevertheless, due to the emergency situation publication of an open public consultation is likely to be slightly delayed from originally targeted end of March 2020 to May. It will contain also questions regarding the economic power of the large platforms.
- The legislative proposal is still planned to be adopted in December 2020, therefore at the very end of the German Presidency to the Council of the EU.
- Under the current timeline, the German Presidency will be in charge of a choice which Council formation will be negotiating the proposal, and this might significantly influence the final outcome of the negotiation. For the moment, Telecommunication Council and Competitiveness Council are at stake. The Commission would prefer the Competitiveness Council to negotiate the proposal, as there is a prominent link to the internal market. The latest information at working level is that Germany might move the proposal rather to the Competitiveness Council.

### **Regulation of Online Platforms with Significant Network Effects acting as gatekeepers**

- The Commission announced, in the Communication on Shaping Europe's Digital Future, that it would further 'explore, in the context of the Digital Services Act Package ex ante rules to ensure that markets characterised by large platforms with significant network effects acting as gatekeepers, remain fair and contestable for innovators, businesses, and new market entrants. The package is announced in the Commission's Work Programme for Q4 2020.
- Building on the platform-to-business Regulation (EU) 2019/1150 as well as on the work of the Observatory on the Online Platform Economy, we are exploring a flexible and fast regulatory framework specifically for online platform ecosystems.
- The platform economy is characterised by strong concentration processes, driven by strong economies of scale, and direct and indirect network effects, reinforced through private or business data captured through the provision of their services. These platforms also increasingly act as private gatekeepers to critical online activities for an exceptionally large population of private and business users. This gatekeeper role is enabled inter alia by their hold over **vast troves of data** and in some cases very large customer bases.
- The above described market failures cannot sufficiently be addressed by competition law alone. The new tool will be designed as a necessary **complement to competition law** as it would close perceived enforcement gaps left by the complex substantive requirements and corresponding duration of competition law proceedings.
- The intrinsic cross-border nature of online platforms imply that the objectives of this initiative cannot be reached effectively by any Member States alone. Further **fragmentation** of the Digital Single Market into 27 different, potentially contradictory frameworks should be avoided. National solutions like the German or French proposals are likely to lead to conflicting outcomes where they are implemented by platforms operating at a pan-European scale, whereas a multiplication of national rules in addition makes it disproportionately difficult for start-up platforms to scale-up and compete.



- This file is sensitive because it may affect the market value of some of the largest corporations in the world. It is also sensitive as it may raise **trade** related issues.

## Data portability

Facebook has identified 'data portability' as one of the four strategic challenges for its company next to privacy, preservation of integrity of democratic elections and fighting harmful content<sup>9</sup>. It has published in September 2019 a 'White Paper' on the topic and sponsors on-going work by researchers of the CERRE network (a report is being prepared and presented in June 2020).

Already for a number of years, Facebook allows the export of uploaded content to a destination of the users choice through a simple API process, even before adoption of GDPR.

Key challenges to data portability (also identified in the Facebook paper):

- Imperfections of Article 20 GDPR:
- Conceived for provider switching, it does not enable real-time access to data through APIs in machine-readable formats; this makes it difficult to build services on the basis of e.g. Facebook data outside the platform.
- Unclear delineation when data relate to several persons
- Unclear scope: Only data actively provided by users covered, or also passively observed data.
- Liability of Facebook (or data holder) when it comes to third party use of ported data (as exposed in Cambridge Analytica scandal).

## Data Tracing App

- On 8 April 2020, the Commission adopted a **Recommendation** on a common Union toolbox for the use of technology and data to combat and exit from the COVID-19 crisis, in particular concerning mobile applications and the use of anonymised mobility data. The Recommendation sets out key principles for the use of these apps and data, as regards data security and the respect of EU fundamental rights, such as privacy and data protection.
- Furthermore, the Recommendation sets out a process towards the adoption with the Member States of a **Toolbox**. The first priority of the Toolbox is a pan-European approach for COVID-19 mobile contact tracing and warning applications, published on 16 April. This is a key element of the Commission's and Council's Joint European Roadmap towards lifting COVID-19 containment measures published on 15 April.
- In combination with other measures like increased testing, these apps can play an important role in the crisis exit strategy when the confinement is gradually lifted. The toolbox reflects a common approach to these apps as regards an epidemiological framework, technical requirements, cybersecurity measures, safeguards and governance.

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<sup>9</sup> In many op-eds, such as here: [https://www.washingtonpost.com/opinions/mark-zuckerberg-the-internet-needs-new-rules-lets-start-in-these-four-areas/2019/03/29/9e6f0504-521a-11e9-a3f7-78b7525a8d5f\\_story.html](https://www.washingtonpost.com/opinions/mark-zuckerberg-the-internet-needs-new-rules-lets-start-in-these-four-areas/2019/03/29/9e6f0504-521a-11e9-a3f7-78b7525a8d5f_story.html)



- The common approach emphasises the interoperability requirements of these apps so that European citizens are protected also when they cross borders. To this end, on 13 May, the eHealth Network published **interoperability guidelines** for approved contact tracing mobile applications in the EU.
- The Recommendation and the toolbox are complemented by the **Commission Guidance** on privacy and data protection aspects of contact tracing and warning apps, published also on 16 April. It is important to ensure that EU citizens can fully trust such innovative digital solutions. EU rules, notably the General Data Protection Regulation (GDPR) and the ePrivacy Directive, provide the strongest safeguards of trustworthiness (i.e. voluntary approach, data minimisation, time limitation) for such apps to operate widely and accurately. The Guidance takes into account the contribution from the EDPB.
- The **EDPB published its Guidelines** on the use of location data and contact tracing tools in the context of the COVID-19 outbreak on 21 April 2020. The EDPB encourages a common European approach and an interoperable framework respecting the principles of effectiveness, necessity, and proportionality, as part of a comprehensive public health strategy to fight the pandemic, including testing and subsequent manual contact tracing. The EDPB Guidelines are in line with the Commission Guidance.
- The Commission Recommendation also sets up a process for a common approach for **modelling and predicting the evolution of the virus through anonymous and aggregated mobile location data**, and sets out the necessary safeguards to protect data security and privacy. Work of Member States and the Commission on this common approach (toolbox) has already started.

#### **Mobile data**

- The Commission works with the Global System for Mobile Communications Association (GSMA) to facilitate the sharing of anonymised and aggregated mobile phone location data by European mobile operators. The Commission's Joint Research Centre (JRC) is receiving and analysing this data to better understand the dynamics and propagation of Covid-19 by feeding into the epidemiological model; to quantify the impact of social distancing measures and the gradual lifting of those measures on mobility.
- The JRC has adopted strict security measures, the data will be hosted on a dedicated secure platform and will not be shared with any third parties. The data access will be controlled by the Commission and granted to a limited number of research staff at the JRC. The provision of the data by the mobile operators is voluntary and the data will be deleted as soon as the current emergency ends. The project will be finalised at the end of the Covid-19 crisis. The European Data Protection Supervisor (EDPS) has confirmed the lawfulness of the use of aggregated and anonymised mobile location data.

### **Actions taken by Facebook to fight COVID-19 disinformation**

**(Please also see Annex 1 for more comprehensive overview)**

#### **On Facebook**

- [Facebook has created a "coronavirus information centre"](#) at the top of the News Feed, with data from the WHO and other resources and has been pushing authoritative content and connecting people to accurate information, while prohibiting ads intended to create panic or imply that certain products guarantee a cure or prevent people from contracting the coronavirus.
- Facebook has been removing COVID-19 related misinformation that could contribute to imminent physical harm, and banning ads and commerce listings for hand sanitizer, surface disinfecting wipes and COVID-19 testing kits, but also removing organic posts that try to sell Covid19-related medical material.
- By mid-April, [Facebook started informing people who had interacted with Harmful COVID-19 claims](#), showing messages in News Feed to people who have liked, reacted or commented on harmful misinformation about COVID-19 that FB has since removed. These messages will connect people to COVID-19 myths debunked by the WHO.
- Facebook announced a \$100-million investment to support journalists — including \$25 million in emergency grant funding for local news [through the Facebook Journalism Project](#) and an extra \$75 million in marketing to get money to publishers around the world at a time when their advertising revenue is declining.
- As part of its [Data for Good](#) program, Facebook released aggregated data that can help academics and non-governmental organizations understand population movements.

In particular,

- Facebook has directed over 2 billion people to resources from the WHO and other health authorities through our COVID-19 Information Center and pop-ups on Facebook and Instagram with over 350 million people clicking through to learn more
- During the month of March, it displayed warnings on about 40 million posts on Facebook related to COVID-19, based on around 4,000 articles by its independent fact-checking partners. When people saw those warning labels, 95% of the time they did not go on to view the original content.
- To date, Facebook has also removed hundreds of thousands of pieces of misinformation that could lead to imminent physical harm. It also reacted promptly, and in coordination with YouTube, to prevent further spreading of disinformation relating to possible links between 5G deployment and the diffusions of the virus.
- In the US, Facebook is removing content that promotes anti-quarantine protests using false information, while allowing information about gatherings that stick to local government guidelines.
- On 13 May Facebook released its fifth Community Standards Enforcement Report with data on how much content it actioned, including how much content was appealed, how much content was restored, and where possible, the prevalence of certain violating content on Facebook and Instagram. There was an increase in content actioned from 5.7M in Q4 2019 to 9.6M in Q1 2020, 88.8% of which was proactively detected by Facebook.

## **WhatsApp and Facebook Messenger**

- WhatsApp reduced from five down to one the number of simultaneous “forwards” of the same content to different users/groups. “Highly forwarded” messages are now labelled with double arrows to indicate they did not originate from a close personal contact.
- WhatsApp activated a chatbot created with the WHO that answers to specific topics and queries related to COVID-19. The chatbot is available in multiple languages. Similar chatbots has been activated for fact-checkers in several countries, and a specific one for the International Fact Checking Network.
- WhatsApp identified and banned 2 million accounts per month engaged in mass messaging.
- WhatsApp partners with NGOs and governments all over the world to set up Coronavirus health information lines, with the goal of keeping people safe and informed, but also to provides a source of accurate information in order to combat misinformation.
- WhatsApp also announced a \$1M grant to the International Fact Checking Network to support fact-checking for the #CoronaVirusFacts Alliance, to report on rumours that may be circulating on various messaging services including WhatsApp or SMS.
- Facebook launched the Facebook Messenger Coronavirus Community Hub with tips and resources to keep people connected to their friends, family, colleagues and community, and prevent the spread of misinformation.

### **In particular:**

- Since putting into place the new limit of WhatsApp chats a “highly-forwarded” message can be forwarded to, from five down to one, globally, there has been a 70 per cent reduction in the number of highly forwarded messages sent on WhatsApp.
- WhatsApp identified and banned 2 million accounts per month engaged in mass messaging.

## **Facebook Oversight Board**

- This newly created body, consisting of 20 experts, including the former Prime Minister of Denmark, former judges, and several law professors, launched its work at the beginning of May 2020.
- It should work as a self-regulatory experiment for content moderation: it will decide whether to remove or leave up content that might violate the community standards of Facebook and Instagram.
- According to Facebook announcement made on 13 May, their decision are going to be final and binding, “even if I [redacted] or anybody else in the company disagree with them”.
- Its main criticism is based on a fact that while the Oversight Board members say the panel shouldn’t be viewed as a court, the board will develop a kind of precedential

case law just like a court. It's decision will be publicised, though meetings of the Board will not be.

#### 5<sup>th</sup> [Community Standards Enforcement Report \(CSER\)](#).

**Facebook and Instagram** just released their fifth [Community Standards Enforcement Report](#) (CSER). The CSER provides data on how much content they actioned, proactively detected before people reported it, how much content was appealed after they took action, how much content was restored, and where possible, the prevalence of certain violating content on Facebook and Instagram.

The CSER is released alongside their Transparency Report, which includes data on Internet Disruptions, Government Requests for User Data and Content Restrictions, and Intellectual Property removals, all of which can be found at [transparency.facebook.com](https://transparency.facebook.com).

They continue to expand upon the data provided in the CSER. This latest report includes new data for:

- content removals for organized hate, on both Instagram and Facebook
- content appeals and restores on Instagram
- Instagram in the areas of hate speech, violent & graphic content, bullying & harassment, and adult nudity & sexual activity

The data provided in the CSER shows a continued trend toward Facebook identifying more violating content proactively, through the use of AI technologies. In particular, greater and improved use of hate speech classifiers made possible an increase in content actioned from 5.7M in Q4 2019 to 9.6M in Q1 2020, 88.8% of which was proactively detected by Facebook.

They expect to see the full impact of Covid-19 on content moderation data in their next report, and possibly beyond. You can read more about their efforts related to Covid-19 here: <https://about.fb.com/news/2020/04/coronavirus/>. They are also announcing [new user control features on Instagram](#) and updates on [efforts to combat organized hate](#).

#### Contact(s):

Covid-19 & platforms - [REDACTED] (DG CNECT F2), tel.: [REDACTED]

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Gatekeeper platforms – [REDACTED] (DG CNECT F2), tel.: [REDACTED]

Data tracing app - [REDACTED] ((DG CNECT H2), tel.: [REDACTED]

Digital Inclusion - [REDACTED] (DG CNECT G3), tel. [REDACTED]

Safer Internet for Kids – [REDACTED] (DG CNECT G3), tel.: [REDACTED]

Data - [REDACTED] (DG CNECT G1), tel.: [REDACTED]

Collaboration between health authorities and platforms in the Covid contex- [REDACTED] (DG CNECT F3), tel.: [REDACTED]

Platforms vis-à-vis SMEs- [REDACTED] (DG GROW E4) tel. : [REDACTED]