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Digital Services Act Package

COMMISSION STAFF WORKING DOCUMENT
EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT REPORT

Digital Services Act: deepening the single market and clarifying responsibilities for digital services

Accompanying the document

[Mandatory element]

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### Executive Summary Sheet

**Impact assessment on the Digital Services Act: deepening the single market and clarifying responsibilities for digital services**

#### A. Need for action

**What is the problem and why is it a problem at EU level?**

Digital services have transformed the EU’s economy and society over the last two decades. This initiative concerns the update of the horizontal rules for such services in the EU, as set out in the E-Commerce Directive from 2000. The annexed evaluation of the Directive shows that the core principles of the directive remain valid, but that the specific rules require an update. Against this background, the impact assessment report analyses three core problems and their drivers. **First**, citizens are exposed to increasing risks and harms online – from spread of illegal activities, to risks for their fundamental rights and other societal harms. These issues are widespread across the online ecosystem, but they are most impactful where very large online platforms are concerned, given the reach. **Second**, the supervision of digital services more broadly is to a large extent uncoordinated and ineffective in the EU, despite the systemic importance of such services. The limited administrative cooperation framework set by the E-Commerce Directive for addressing cross-border issues is underspecified and inconsistently used by MS. **Third**, MS have started regulating digital services at national level leading to new barriers in the internal market. This leads to a competitive advantage for the established very large platforms and digital services.

**What should be achieved?**

The general objective is to ensure the proper functioning of the single market, esp. for the provision of cross-border digital services. Specific objectives aim to (i) maintaining a safe online environment, (ii) improving conditions for innovative cross-border digital services, (iii) empowering users and protecting their fundamental rights online, and (iv) establishing an effective supervision of digital services and cooperation between authorities.

**What is the value added of action at the EU level (subsidiarity)?**

The availability of content and services over the internet is typically transnational. Parallel and divergent regulation by individual Member States hampers the provision of services across the EU and is ineffective in ensuring the safety and protection of all citizens, not just their nationals. Action at the EU level would reduce legal fragmentation and compliance costs, enhance legal certainty, ensure equal protection for citizens and a level playing field for businesses, strengthen the integrity of the single market, and enable effective supervision across borders. No Member State can tackle these issues alone.

#### B. Solutions

**What are the various options to achieve the objectives?**

Three options were assessed in detail, in addition to the baseline:

1. **Limited measures against illegal activities**, laying down the procedural obligations for online platforms to tackle illegal activities, in order to protect users’ fundamental rights and ensure transparency. It would also enhance the cooperation mechanisms for authorities to resolve cross-border issues.

2. **Fully harmonised measures** to incentivise actions from service providers, to enhance transparency and address a wider set of emerging risks by empowering users. Enforcement and cooperation mechanism enhanced with the appointment of a central coordinator in each Member State.

3. **Asymmetric measures with stronger obligations for very large online platforms**, further clarifications of the liability regime for online intermediaries and EU governance with reinforced oversight and enforcement. This is the preferred option.

**What are different stakeholders' views? Who supports which option?**

Extensive stakeholders consultation shows a broad consensus for EU action, esp. through a strengthened EU-wide framework, whilst persevering the fundamental principles set out in the E-Commerce Directive. Overall, there is broad support by online intermediaries, businesses and civil society for a harmonisation of notice and action procedures across the EU. Online intermediaries call for a clear framework for taking voluntary measures in good faith with legal certainty. Transparency measures are also widely supported by
businesses and civil society, the latter also focusing on recommender algorithms. Some business organisations and start-ups call for asymmetric rules. Improved cooperation between authorities in MS, and the importance of sharing data with public authorities is key for MS. Civil society organisations, as well as some businesses and national authorities call for EU level oversight. Three different European Parliament draft own initiative reports on the Digital Services Act support – when taken together – an option similar to the preferred option in the IA report.

### C. Impacts of the preferred option

#### What are the benefits of the preferred option (if any, otherwise of main ones)?

A positive effect can be expected on the single market and on competition, estimated to lead to a 1-1.8% increase of cross-border digital trade. Asymmetric rules will ensure that smaller emerging competitors are boosted helping competitiveness, innovation, and investment in digital services, while targeting specific harms emerging from large platforms. Transparency and safety online, as well as fundamental rights protections online will improve. Improved cooperation between Member States and the EU level governance will improve enforcement, and provide an up-to-date supervisory system for digital services.

#### What are the costs of the preferred option (if any, otherwise of main ones)?

Direct costs are proportionate to the size and reach of a service provider. Services would also incur marginal technical design and maintenance costs. Costs related to information requirements will diminish compared to the baseline. The most significant costs would be limited to very large online platforms.

#### What are the impacts on SMEs and competitiveness?

Updated and uniform rules will help SMEs operate across the Single Market, helping scale-ups and innovators. The IA shows cost-savings also for SMEs that might have to deal with illegal content. SMEs would however be not be covered by the additional obligations for very large platforms.

#### Will there be significant impacts on national budgets and administrations?

We estimate a significant decrease in the costs brought by the inefficiencies of the existing set-up for the cooperation of authorities. Various additional costs of the enhanced cooperation mechanism would be born at EU level.

#### Will there be other significant impacts?

A core impact of the preferred option is related to the protection of fundamental rights online, as the intervention introduces obligations which serve to safeguard the rights of individuals and businesses.

#### Proportionality?

The preferred option would meet the objectives of the initiative without exceeding what is necessary to solve the identified problems. A fragmented approach across Member States is unable to ensure an appropriate level of protection to citizens across the Union, and the supervision of services would remain inconsistent.

### D. Follow up

#### When will the policy be reviewed?

The establishment of a system for data collection and monitoring is in itself one of the core impacts pursued by the preferred option. This includes both the enhanced ability to monitor and account for the functioning of the cooperation across Member States’ authorities, and the supervision of digital services. The revision should take place within 5 years of the entry into force, but regular reports would be part of the design of the supervisory system itself.