EUROPEAN COMMISSION
Regulatory Scrutiny Board

Brussels,
RSB

Opinion

Title: Impact assessment / Digital Services Act

Overall opinion: POSITIVE WITH RESERVATIONS

(A) Policy context

The 2000 e-Commerce Directive harmonised the principles for cross-border provision of digital services. Since then the nature and scale of such services have grown significantly. This has generated new social and economic challenges. These include illegal activities and fundamental rights issues. Enforcement of the current Directive remains uncoordinated and the single market continues to be fragmented.

This initiative proposes new rules to frame the responsibilities of digital services, to tackle the risks faced by users and to protect their rights. It follows an evaluation of the e-Commerce Directive. The new obligations also aim to ensure enhanced supervision of platforms and effective enforcement.

(B) Summary of findings

The Board notes the useful additional information provided in advance of the meeting and the commitments to make changes to the report.

However, the report still contains significant shortcomings. The Board gives a positive opinion with reservations because it expects the DG to rectify the following aspects:

(1) The report does not sufficiently explain the coherence between the Digital Services Act and the broader regulatory framework, in particular the relation to sectoral legislation and the role of self-regulation.

(2) The policy options are not complete and not sufficiently developed. They lack detail and their content is not well explained.

(3) The report does not clearly present the evidence that leads to the choice of the preferred policy option. The assessment of compliance costs is insufficient.

(C) What to improve

(1) The report should clarify the regulatory context of the initiative. It should further

This opinion concerns a draft impact assessment which may differ from the final version.

specify to what extent already existing instruments, including non-legislative ones, have been successful or failed in delivering on the objectives. It should better explain how the Digital Services Act relates to the current sectoral instruments, whether there are any overlaps and if there is scope for simplification.

(2) The report should better justify and provide more detail on the measures in the policy options, including how they would be implemented in practice. The report should explain how it determines the threshold defining a very large platform (10% of the EU population) and outline which current platforms would be covered. The report should also clarify the role of self-regulation in this new regulatory framework. Where possible different approaches exist, the report should present alternative options. The report should show how the options would address each of the problems. It should also specify the main trade-offs and risks related to the options.

(3) The report should clarify how enforcement and supervision would work under the different options. It should reflect on the availability and best use of scarce expertise. It should include an assessment of possible alternative set-ups to an EU-level board. In doing so, it should explore the relation and possible synergies between the supervisory mechanism foreseen in this initiative and other supervisory structures in the digital area (existing or planned - e.g. as envisaged in the parallel Digital Markets Act). The report should clarify the type of data access that will be given to the authorities and researchers.

(4) The evidence base for the choice of the preferred policy option should be further developed and clarified. The analysis should compare the policy options objectively and clarify the scoring system for efficiency and proportionality. The report should further analyse the compliance costs for businesses under the preferred option.

(5) The report should provide more precision on the terminology used and the proposed definitions, e.g. the exact meaning of "public spaces" or of the concept of "fundamental rights by design" and the definition of a platform.

(6) The report should present stakeholder views in a more granular manner. It should clearly distinguish the views of the various stakeholder categories and explain how the initiative would address possible concerns expressed.

The Board notes the estimated costs and benefits of the preferred option in this initiative, as summarised in the attached quantification tables.

Some more technical comments have been sent directly to the author DG.

(D) Conclusion

The DG must revise the report in accordance with the Board's findings before launching the interservice consultation.

If there are any changes in the choice or design of the preferred option in the final version of the report, the DG may need to further adjust the attached quantification tables to reflect this.

Full title	Digital Services Act: deepening the Internal Market and clarifying responsibilities for digital services
Reference number	PLAN/2020/7444

Submitted to RSB on	08 October 2020
Date of RSB meeting	04 November 2020

ANNEX: Quantification tables extracted from the draft impact assessment report

The following tables contain information on the costs and benefits of the initiative on which the Board has given its opinion, as presented above.

If the draft report has been revised in line with the Board's recommendations, the content of these tables may be different from those in the final version of the impact assessment report, as published by the Commission.

I. Overview of Benefits (total for all provisions) – Preferred Option		
Description	***Amount***	***Comments (main recipients)***
Direct benefits		
Reduced costs related to legal fragmentation (i.e. compliance costs)	Cost reduction of around EUR 400.000 per annum for a medium enterprise (up to 4-11 million EUR for a company present in more than 10 Member States)	All digital services, especially small online platforms
Improved legal clarity and predictability		All digital services
Increased transparency about content moderation, recommending and advertising systems	Cutting costs of uncertainty over which reporting system to use Agency based on information for making real choices rather than dependent on design features from platforms	Citizens, businesses, regulators, researchers, civil society
Stronger and more efficient cooperation between Member States	General cost reduction by streamlining the cooperation mechanisms, cutting inefficiencies and obtaining results	Member States, national authorities
Increased transparency of potential businesses wrongdoers (Know Your Business Customer)	Dissuasive for the majority of sellers of illicit products	Legitimate businesses, national authorities, rightholders, consumers
Reduced information asymmetries and increased accountability	User empowerment to make informed choices	Users, including citizens, businesses and society at large
Fundamental rights by design and protection of legitimate users and content		All citizens and businesses, in particular journalists and other content providers
Indirect benefits		
Increase of cross-border digital trade and a more competitive and innovative environment	1 to 1.8% (estimated to be the equivalent of an increase in turnover generated cross-border of EUR 8.6 billion. and up to EUR 15.5 billion)	All digital services and businesses
Diminished illegal trade into the Union Increased online safety Reduced systemic risks posed by large online platforms	Quantitative estimates imprecise	Citizens, businesses, smaller digital services and society at large

II. Overview of costs – Preferred option							
		Citizens/Consumers		Businesses		Administrations	
		One-off	Recurrent	One-off	Recurrent	One-off	Recurrent
Notice and action	Direct costs		Minimal time spent on sending a notice – this should not be a significant costs, but rather an overwhelmingly important reduction of costs compared to the current unclear and deeply fragmented system	Costs of design	Depends on volume of notices, expected to decrease overall (EUR 15K per annum for SMEs)		
	Indirect costs						
Complaint and redress mechanism	Direct costs			Costs of design	Costs of maintenance		
	Indirect costs						
Alternative dispute resolution	Direct costs					Negligible	Negligible
	Indirect costs						
Know Your Business Customer	Direct costs			Costs of design	Marginal costs per business customer		
	Indirect costs						
Transparency obligations	Direct costs			Marginal technical design costs	Marginal maintenance costs		
	Indirect costs						
Cooperation obligations	Direct costs				Negligible		Negligible
	Indirect costs						
Fundamental rights by design	Direct costs			Costs of design			
	Indirect costs						

Enhanced transparency obligations: reporting, data access, audit)	Direct costs			Potentially high costs of technical design	Potentially high costs of maintenance and reporting		Costs of audit, access to data
	Indirect costs						
Accountability of executive boards	Direct costs						
	Indirect costs				Potentially high in case of wrongdoing		
Co-regulatory framework	Direct costs			[to be added]	[to be added]	[to be added]	[to be added]
	Indirect costs						
Removal of disincentives for action	Direct costs						
	Indirect costs			Design costs	Marginal maintenance costs		
Clarifications of liability for intermediaries	Direct costs			[possible reduction for lower in the stack]	[possible reduction for lower in the stack]		
	Indirect costs			Costs for intermediaries with predominant influence	Costs for intermediaries with predominant influence		
Digital Clearing House (see details below)	Direct costs					Marginal adaptation costs	0.5FTE per 5K requests per year
	Indirect costs						
Digital Coordinator	Direct costs					Potential costs of creation	Costs of maintenance
	Indirect costs						
EU Board and Secretariat	Direct costs						0.5 FTE
	Indirect costs						

Detailed costs of supervision

Type of activity	
1. *Supervising systemic compliance with due diligence obligations (country of establishment)*	*Cost efficiencies:* streamline evidence and information for supervising platforms through the clearing house system. *Direct costs:* varying from 0.5 FTEs up to 25 FTEs, depending on scale of services hosted[1]
2. *Law enforcement actions & public authorities requests (re. supervision of illegal activities online)*	*Cost efficiencies:* streamline cooperation processes for cross-border assistance; clear process for information requests to digital services and information obligations *Direct costs:* no direct costs entailed by the measures, but no net reduction of costs expected, as volumes of illegal activities consistently higher than law enforcement capacities
3. *Clearing house*	*Significant cost efficiencies* expected from smoother, clearer cooperation processes
a. *Country of establishment*	0.5FTE per 5K requests per year (expected to be lower for most MS, and increase per requests should not be linear)
b. *Host country*	0.5FTE per 5K requests issued per year (expected to be lower for most MS, and increase per requests should not be linear)
c. *EU-level: for clearing house and coordination*	One-off: ~ 15 FTE for setting up and maintaining a shared database and cooperation tools (over 2 years) Recurrent: 1 FTE for running the system, and technical analysis + computing costs for servers (absorbed in EC IT infrastructure)
4. *Supervision of enhanced obligations for online platforms – expenditures at MS level and/or EU capability*	*Significant cost efficiencies* through enhanced transparency obligations on platforms Costs expected to fluctuate depending on inspections launched. For one inspection/audit, estimates between EUR 50 K and EUR 300K. Codes of conduct and co-regulatory framework: investment at EU level of 0.5-2 FTEs per initiative
5. *EU Board*	EU level: 25 FTEs Participation from each MS: 0.5 FTE

[1] Benchmarked against resources currently reported by DPAs, and estimating 0.5 FTE for investigators per 15 million users reached by a digital service hosted in the Member State, with efficiencies of scale accounted for