



Developers Alliance¹ feedback on the inception impact assessments (IIAs) for the Digital Services Act package

On the ex ante regulatory instrument for large online platforms with significant network effects acting as gate-keepers in the European Union's internal market

Software developers, like other entrepreneurs, need a predictable regulatory environment. The proposed regulatory initiative raises concerns from this perspective.

The Platform-to-Business Regulation (EU) 2019/1150 already responds to issues faced by developers and other small businesses in the online platform environment. It provides them not only much needed transparency, but requires online intermediaries services to engage in fair commercial practices (e.g. notice periods, specific contractual terms, internal complaint systems). There is no evidence to show a drastic change is required before seeing the effects of the P2B regulation. Beyond this, current studies and investigations by competition authorities are already addressing specific complaints that relate to the issues mentioned by the IIA.

There is no clear indication to suggest structural problems across digital markets that require a new horizontal regulation. The problems mentioned by the IIA seem more specific to certain sub-sectors or particular online platforms.

The IIA recognizes the risk of overlapping with the proposed new competition tool and the need to ensure consistency. However it doesn't explicitly mention the option to address the issues exclusively by competition policy, which is more targeted to specific issues.

We also observe that the presumptions of the IIA are very biased, and the benefits of the online platform ecosystems are completely overlooked. There are multiple opportunities offered by these ecosystems to entrepreneurs, including growing their business in "adjacent markets". We will provide our perspective and detailed comments on these aspects in the consultation.

Short comments regarding the proposed options:

¹ [Developers Alliance](#) advocates on behalf of developers and the companies invested in their success, to support the industry's continued growth, and promote innovation. Alliance members include industry leaders in consumer, enterprise, industrial, and emerging software development, and a global network of more than 70,000 developers.

Option 1 - The role of the EU Observatory on the Online Platform Economy is to evaluate whether more specific, sectoral rules will be needed and inform the review of the P2B Regulation. We propose to maintain the course of this legislative intervention, as set by art. 18 of the regulation.

Option 2 - There is a high risk of overlapping with the existing powers of authorities at national level and also a subsidiarity issue. The transparency provided by the P2B Regulation benefits not only business users, but also national regulators (e.g. competition authorities, market surveillance authorities, authorities designated to ensure the implementation of P2B Regulation).

Option 3 - 3a) As previously mentioned, a horizontal approach is not feasible due to the wide range of business models. The problems identified are more likely sector-specific or platform-specific. 3b) Establishing remedies via legislative intervention entails a high risk of unintended consequences, with an irreversible impact. Specific conduct by “large online platforms” may require intervention. Remedies are to be identified and applied after an appropriate case-by-case evaluation. The equilibrium of the markets can be restored only in a targeted way. Competition policy is the best answer for these problems.

In conclusion, we strongly caution against this type of intrusive intervention on the market which could permanently change the European digital economy, creating new barriers to entry and growth. In such a situation, innovators and entrepreneurs will be incentivized to do business outside the EU where the business environment is more favourable. This will obviously have a negative impact on European consumer welfare. The decision to intentionally distort the market and its irreversible effects should be fully acknowledged and assumed by the co-legislators.

On the IIA on deepening the Internal Market and clarifying responsibilities for digital services:

The future regulation governing the provision of online services in the EU should be fit-for-purpose and provide a clear and stable legal framework which will allow businesses to provide a diversity of products and services to consumers, in a safe way and with respect to fundamental rights.

We fully agree with the Commissions’ evaluation, which confirms the validity of the main objectives and the core principles of the e-commerce directive, as an “underpinning basis”. The “country of origin principle”, freedom of establishment, freedom of cross-border digital services across the Single Market and the limited liability regime should be maintained.

Furthermore, the liability regime should remain anchored in the notice and takedown mechanism based on “actual knowledge”. It is essential that the new framework provide legal clarity and certainty. This means, inter alia, a clear scope of application, including on the notions of “active” and “passive” hosts, that create considerable legislative uncertainty for online services and requires an update.

The prohibition of general monitoring should be preserved as a guarantee for fundamental rights. The capabilities and limitations of different technologies should also be carefully considered. If the rules are such that a provider of online services will have no other alternatives than to use automated content filters to tackle illegal content, then the regulation will fail to provide a proportionate solution, endangering citizens' fundamental rights and freedoms or forcing smaller platforms out of the market. The updated rules should be flexible in order to allow online service providers to balance the fundamental values of safety, privacy, and freedom of expression for themselves and their users.

As proposed by the second policy option, the new framework should “remove disincentives for their voluntary actions to address illegal content, goods or services they intermediate.” Also, it should avoid unnecessary burdens for small businesses, while taking into consideration the characteristics of different online services, the nature of the services they provide, and their targeted audience. A proportionate approach is recommended in establishing transparency and reporting obligations, and for enforcement as well. The regulation should not serve as a barrier to entry for new competitors in the market. The transparency requirements of algorithmic systems and online advertising should be carefully considered with respect to intellectual property rights, privacy and other relevant existing legal provisions.

Businesses that operate or want to develop their operations across borders need a coherent set of rules across the entire Single Market. Harmonized oversight systems at the EU level, as described by the third policy option, could represent a solution in this sense. Correlation with sector-specific regulations is also necessary.

Regarding the intention for extraterritorial application, the impact of conflict of laws should be considered, especially when it comes to provisions and constitutional principles related to freedom of expression (which varies outside the EU). An EU content regulation should not lead to the creation of an “European internet”, but should rather seek coherence with jurisdictions based on democratic values and allow companies to provide online services at a global level.