

# **PUBLIC CONSULTATION on the regulatory environment for platforms, online intermediaries, data and cloud computing and the collaborative economy**

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## 1. INTRODUCTION

In its Communication on a Digital Single Market Strategy for Europe<sup>1</sup> adopted on 6<sup>th</sup> May, the Commission committed to undertake a **comprehensive assessment on the role of platforms**, covering the social and economic role of online platforms, transparency (e.g. in search results), terms of use, ratings and reviews, the use of information by platforms, the relation between platforms and their suppliers, the conditions of switching between comparable services offered by platforms, and the **role of online intermediaries**, including ways to tackle illegal content on the Internet. It includes also **initiatives on data** – a free flow of data initiative and a European Cloud initiative. The DSM also announces that the issue of the **collaborative economy** will be addressed both under its remit and in the forthcoming Internal Market Strategy.

With the present public consultation the Commission services now wish to obtain the views of stakeholders on specific issues related to the four strands identified above.

The public consultation is available in all 24 official European Union (EU) languages. Responses may be submitted in any of these languages, but replying in English, French or German would enable Commission services to process them more quickly. Answers to the questions must be sent by using the electronic application XXXXXXXX. The views expressed in this public consultation document may not be interpreted as stating an official position of the European Commission.

The respondents to the public consultation have the option to answer all questions or limit their replies to questions in one or more of the sections (platforms, online intermediaries, data and the collaborative economy).

**All definitions provided in this document are strictly for the purposes of this public consultation and without prejudice to any future revision of the definitions by the Commission.**

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<sup>1</sup> COM(2015) 192 final

## 2. PUBLIC CONSULTATION / QUESTIONS

*You are asked to answer a number of questions revolving around the issues identified above. Please motivate your answers and illustrate them as much as possible with concrete examples and substantiate them with data.*

Respondents to the public consultation have the option to address either all questions or just particular questions within any of the sections (platforms and online intermediaries, data and collaborative economy). The number of questions to be answered by the respondent depends on the choices made throughout the questionnaire. The maximum number of questions per section is indicated below.

### 2.1 General information

#### 1. Please indicate to which sections you would like to respond: (Multiple choice)

- a) Online platforms (maximum number of questions: X)
- b) Liability of online intermediaries (maximum number of questions: X)
- c) Data and Cloud (maximum number of questions: X)
- d) Collaborative Economy (maximum number of questions: X)

#### • Please indicate your role for the purpose of this consultation: (Multiple choice)

- 1) Individual citizen
- 2) Association or trade organization representing
  - a) consumers
  - b) businesses (specify what kind)
  - c) civil society

#### 3) Online platform

Please describe the type of online platforms that you represent:

Name and web address of online platform	Brief description (max. 500 words)

- 4) Business, including suppliers using an online platform to provide services
  - o Please briefly explain the nature of your activities, the main services you provide, and your relation to the online platform(s), which you use to provide services. (max. 500 words)
  - o Option to tick SMEs/micro enterprise)
- 5) Public authority
- 6) Research institution / Think tank
- 7) Other: Optional: Please specify. (max 100 characters)

#### 2. Please indicate your country of residence (In case of legal entities, please select the primary place of establishment of the entity you represent): (Single choice)

- Austria
- Belgium
- Bulgaria
- Czech Republic
- Croatia
- Cyprus
- Germany
- Denmark
- Estonia
- Greece

- Spain
- Finland
- France
- Hungary
- Ireland
- Italy
- Lithuania
- Luxembourg
- Latvia
- Non-EU country: Optional: *Please specify.* (max 100 characters)
- Other: Optional: *Please specify.* (max 100 characters)
- Malta
- The Netherlands
- Poland
- Portugal
- Romania
- Slovakia
- Slovenia
- Sweden
- United Kingdom

**3. Please provide your contact information (name, address and e-mail address)**

**4. Is your organisation registered in the the Transparency Register of the European Commission and the European Parliament? (*Single choice*)**

- Yes. Please indicate your organisation's registration number in the Transparency Register.
- No.
- Non-applicable.

If you are not answering this questionnaire as an individual, please register in the Transparency Register. If your organisation/institution responds without being registered, the Commission will consider its input as that of an individual and will publish it as such.

**5. If you are an economic operator, please explain in which market sector you provide your services.**

Drop-down menu allowing multiple choices with NACE codes:  
[http://ec.europa.eu/competition/mergers/cases/index/nace\\_all.html](http://ec.europa.eu/competition/mergers/cases/index/nace_all.html)

Text field for short description (max. 500 characters)

Privacy statement and publication of contributions:

Please read the Specific Privacy Statement (link) on how we deal with your personal data and contribution.

Received contributions, together with the identity of the contributor, will be published on the Internet, unless the contributor objects to the publication of the personal data on the grounds that such publication would harm his or her legitimate interests. In this case the contribution may be published in anonymous form. Otherwise the contribution will not be published nor will, in principle, its content be taken into account. Any objections in this regard should be sent to the service responsible for the consultation.

**EXPLICIT CHOICE BETWEEN PUBLIC AND ANONYMOUS RESPONSES**

## 2.2 Online platforms

Online platforms (search engines, social media, video sharing websites, app stores, etc.) play an increasingly central role in social and economic life and are an important part of a thriving internet-enabled economy. They bring many benefits to both consumers and suppliers by allowing market participants to exploit the advantages of digitisation and e-commerce. They have also changed the manner in which cultural content is distributed. Increasingly, certain platforms play a more or less active role in making the content available to the public.

While their emergence has been generally seen as beneficial, the way that online platforms operate raises issues that require further exploration. These include how online platforms collect and make use of users' data and the transparency with which they do it, the impact of some platforms' relative bargaining power when negotiating the terms and conditions of access to a given market with other market players (particularly SMEs but also content providers), as well as the dual role of some platforms, acting both as marketplace operators and suppliers competing with their customers in downstream markets. The growing role of platforms also poses challenges as regards consumer protection. There is a need to further explore whether platforms provide sufficient information and safeguards to consumers where they act on their own behalf, or on behalf of their suppliers. There is also the question of whether platforms engaging directly or indirectly in content distribution rely on the limitation of liability provided under article 14 of the E-commerce directive to not take or negotiate licences with the holders of rights in digital content (see also 3.3).

With the following questions on online platforms and their economic role the Commission would like to enhance its understanding of the social and economic role of platforms, market trends, the dynamics of platform-development and the various business models underpinning platforms.

### Definitions:

**"(Intermediary service providers" or "information society service providers" provide online services (or information society services as defined by the E-commerce Directive<sup>2</sup>) that consist of transmitting or storing content that has been provided by a third party. The E-commerce Directive distinguishes three types of intermediary services: mere conduit (transmitting of data by an internet access provider), caching (i.e. automatically making temporary copies of web data to speed up technical processes) and hosting.**

**"Online platform" refers to a firm operating in two (or multi)-sided markets, which uses the Internet to enable interactions between two or more distinct but interdependent groups of users so as to generate value for at least one of the groups. Certain platforms also qualify as Intermediary service providers (see definition above).**

<sup>2</sup> Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce')

Typical examples include general internet search engines (e.g. Google, Bing), specialised search tools (e.g. Google Shopping, Kelkoo, Twenga, Google Local, TripAdvisor, Yelp.), maps (e.g. Google or Bing Maps), news aggregators (e.g. Google News), online market places (e.g. Amazon, eBay, Allegro, Booking.com), audio-visual and music platforms (e.g. Deezer, Spotify, Netflix, Canal play, Apple TV), video sharing platforms (e.g. YouTube, Dailymotion), payment systems (e.g. PayPal, Apple Pay), social networks (e.g. Facebook, LinkedIn, Twitter, Tuenti), app stores (e.g. Apple App Store, Google Play) or collaborative economy platforms (e.g. AirBnB, Uber, Taskrabbit, Bla-bla car). Internet access providers fall outside the scope of this definition.

**"Application Programming Interface"** is an interface used by applications to call upon the services provided by an online platform.

**"Consumer"**

Any natural person using an online platform for purposes outside the person's trade, business, craft or profession.

**"Holder of rights in digital content"**

Any natural or legal person that holds, directly or indirectly, intellectual property rights in a given content (e.g. music, films, books, etc...) and who has the right(s) to negotiate and authorize the online use(s) of such content.

**"Trader"**

Any natural or legal person using an online platform for business or professional purposes. Traders are in particular subject to EU consumer law in their relations with consumers.

**"Supplier"**

Any trader or consumer (non-professional individual) that uses online platforms to provide services to third parties both under their own brand (name) and under the platform's brand.

## **2.2.1 SOCIAL AND ECONOMIC ROLE OF ONLINE PLATFORMS**

**(Questions to be answered by respondents in all categories)**

1) Do you agree with the above definition of **"Online platform"**? YES / NO

a) If you think it is necessary, please explain how you would change the definition.

2) What do you consider to be the key advantages of using online platforms? *(multiple choice of options)*

Online platforms...

- o make information more accessible;
- o make communication and interaction easier;
- o increase choice of products and services;
- o create more transparent prices and the possibility to compare offers;
- o increase trust between peers by providing trust mechanisms (i.e. ratings, reviews, etc.);
- o lower prices for products and services;

- o lower the cost of reaching customers for suppliers;
  - o help with matching supply and demand;
  - o create new markets or business opportunities;
  - o help in complying with foreign legal obligations;
  - o help to share resources and improve resource-allocation;
  - o Others: Please specify: (max. 500 characters)
- 3) Have you encountered, or are you aware of, problems faced by consumers or suppliers vis-a-vis online platforms? YES/NO
- a) If YES. Please list the problems you encountered, or you are aware of, in the order of importance and provide additional explanation where possible (max 1000 characters).
- b) How could these problems be best addressed: Market dynamics, regulatory measures, self-regulatory measures, the combination of the above

### **2.2.2 TRANSPARENCY OF ONLINE PLATFORMS**

**(questions to be answered by respondents in categories: 1, 2, 4, 5, 6, 7)**

- 4) Do you think that online platforms should be more transparent on the way they present information in response to a search query? YES/NO/I don't know
- a) If yes, what information should platforms be obliged to display? Are you aware of best practices in this respect? (max 1000 characters)
- 5) Do you find the information provided by online platforms on their "terms of use" sufficient and accessible? YES/NO
- a) If Not: What type of additional information and in what format would be useful for you? Please briefly explain your response and share any best practice you are aware of. (max. 1000 characters).

**(Questions to be answered by all respondents in categories)**

- 6) Do you find reputation systems and other trust mechanisms operated by online platforms generally reliable and transparent? YES / NO / I don't know
- a) If No then display: How could the transparency of reputation systems and other trust mechanisms be improved? (max. 1000 characters).
- 7) What are the main benefits and drawbacks of reputation systems and other trust mechanisms (e.g. ratings, reviews, certifications, trustmarks) operated by online platforms? Please list the three main benefits and the three main drawbacks you see, also and briefly describe them (max. 1000 characters).

### **2.2.3 USE OF INFORMATION BY PLATFORMS**

**(questions to be answered by all respondents)**

- 8) In your view, do online platforms provide sufficient and accessible information with regard to:
- a) the personal and non-personal data they collect? YES / NO/I don't know

- b) what use is made of the personal and non-personal data collected, including trading of the data to other platforms and actors in the Internet economy? YES / NO/ don't know
- c) adapting prices, for instance dynamic pricing and conditions in function of data gathered on the buyer (both consumer and trader)? YES / NO/ don't know
- d) Please explain your choice and share any best practices that you are aware of. (max. 1000 characters).

**2.2.4 RELATIONS BETWEEN PLATFORMS AND SUPPLIERS/TRADERS/APPLICATION DEVELOPERS OR HOLDERS OF RIGHTS IN DIGITAL CONTENT**

**A. (Questions to be answered by respondents in categories 2-b, 4, 5, 7):**

- 9) Please provide the list of online platforms which you are in regular business relation with and indicate to what extent does your business depend on them (max. 5). Please describe the position of your business or the business you represent and provide recent examples from your business experience.

Name of online platform	Not dependent at all on this online platform	Dependent on this online platform	Highly dependent on this online platform. Without it my business model would not be viable.	I don't know

- 10) How often do you experience the following business practices in your business relations with platforms? If you do experience them, what is their impact on your business activity (on a scale from 0 to 5).

	Never	Sometimes	Often	Always	Impact on my business (0 – no impact, 1 – minor impact, 2 – considerable impact, 3 – heavy impact)
The online platform requests me to exclusively use its services					



The online platform applies "parity clauses" <sup>3</sup>					
The online platform applies non-transparent fees					
The online platform applies fees without corresponding counter-performance					
The online platform applies terms and conditions, which I find unbalanced and do not have the possibility to negotiate					
The online platform unilaterally modifies the contractual terms without giving you proper notification or allowing you to terminate the contract					
The online platform limits access to data or provides it in a non-usable form					
The online platform puts significant constraints to presenting your offer					
The online platform presents suppliers/services in a biased way					
The online platform refuses access to its services unless specific restrictions are accepted					
The online platform promotes its own services to the disadvantage of					

<sup>3</sup> A parity clause is a provision in the terms of use of an online platform or in an individual contract between the online platform and a supplier under which the price, availability and other conditions of a product or service offered by the supplier on the online platform have to maintain parity with the best offer of the supplier on other sales channels.

services provided by suppliers					
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- a) If you are aware of other contractual clauses or experience other potentially problematic practices, please mention them here (max 1000 words)
- b) If you have given a positive reply to any of the above options, please briefly describe the situation (max. 1000 words)

- 11) Are you a Holder of digital rights digital contents protected by copyright, which are displayed on an online platform? YES/NO - If yes, show Q12
- 12) As an Holder of rights in digital content protected by copyright do you face any of the following circumstances:
- a) An online platform such as a video sharing website or a content aggregator use my protected content online without my authorisation. YES / NO
  - b) An online platform such as a video sharing website or a content aggregator refuse to enter into or negotiate licensing agreements with me. YES / NO
  - c) An online platform such as a video sharing website or a content aggregator is willing to enter into a licensing agreement on terms that I consider unfair. YES / NO
  - d) An online platform uses my protected content but claims it is a hosting provider under Article 14 of the E-Commerce Directive in order to negotiate unfair terms. YES/NO
  - e) If you answered YES to any of the above questions, please explain your situation. (max. 1000 words)

**B. QUESTIONS TO BE ANSWERED BY RESPONDENTS IN CATEGORY 3):**

- 13) What are the main constrains that negatively affect the development of your online platform? (max. 1000 words)
- 14) How do you ensure that suppliers of your platform are treated fairly? (max 1000 words)
- 15) Can a supplier personalize its offer of products / services on the platform you represent?  
YES/NO  
a) If YES, how? (max. 1000 words)

**C. QUESTIONS TO BE ANSWERED BY ALL RESPONDENTS:**

- 16) Should the relation between platforms and suppliers using the services of platforms be improved
- o through market dynamics?
  - o self-regulatory measures (codes of conducts / promotion of best practices)?
  - o regulatory measures?
  - o the combination of the above?
- 17) Are you aware of any dispute resolution mechanisms operated by online platforms, or independent third parties on the business-to-business level mediating between platforms and their suppliers?
- YES / NO

- If YES, please share your experiences on the key elements of a well-functioning dispute resolution mechanism on platforms (max. 1000 words)

**2.2.5 CONSTRAINTS ON THE ABILITY OF CONSUMERS AND TRADERS TO MOVE FROM ONE PLATFORM TO ANOTHER**

**Questions To Be Answered By All Respondents**

18) Do you see a need to strengthen the capacity of online platforms' users to switch freely and easily from one platform to another and port their personal data, i.e. emails, messages, search and order history, or personal reputation? YES / NO

a) If YES: If you can, please provide some best practices (max. 5)

Name of the online platform	Description of the best practice (max. 500 words)

19) Should data portability as a right be defined for companies as it is the case for individuals at present? YES / NO

a) If YES, why? (max. 1000 words)

**2.2.6 ACCESS TO DATA (to be answered by respondents in categories 1,2,4,5)**

20) As a trader or a consumer using the services of online platforms did you experience any of the following problems related to the access of data? (multiple choice)

- a) unexpectedly changing conditions of accessing the services of the platforms YES/NO
- b) unexpectedly changing conditions of accessing the Application Programming Interface of the platform YES/NO
- c) unexpectedly changing conditions of accessing the data you shared with or stored on the platform YES/NO
- d) discriminatory treatment in accessing data on the platform YES/NO

21) If any options chosen, then display: What legal, technological or other tools could be used to strengthen the transparency or otherwise address these issues? Would independent rating or reputational systems be a solution? (max. 1000 words)

### 3.3 Tackling illegal content online and the liability of online intermediaries

The principle, enshrined in the E-commerce Directive 2000/31, that Internet intermediary service providers should not be held liable for the content that they transmit, store or host, as long as they act in a strictly passive manner has underpinned the development of the Internet in Europe (articles 12 to 14). It is however not always easy to define the limits on what intermediaries can do with the content that they transmit, store or host before losing the possibility to benefit from the limitations of liability set out in the e-Commerce Directive. In addition, there could be instances where online service providers engaging directly or indirectly in content distribution try to overly rely on the limitations of liability and claim that they are mere hosting providers..

At the same time when illegal content is identified, whether it be information related to illegal activities such as terrorism/child pornography or information that infringes the property rights of others (e.g. copyright, trademarks), intermediaries should take effective action to remove it. Today the disabling of access to and the removal of illegal content by providers of hosting services can be slow and complicated while content that is actually legal may be taken down erroneously. Differences in national practices can impede enforcement and undermine users' confidence. Moreover, there are also differences in the way national courts apply the liability regime to online service providers engaging directly or indirectly in content distribution

In 2010 and in 2012 the Commission consulted the public on the future of e-commerce, the implementation of the E-commerce Directive and in particular on its liability regime. In general terms, the consultations gave as a result a general impression that the Directive was still "fit for purpose", but that there were difficulties with the interpretation of its Article 14 (liability regime applicable to hosting services). However, these last five years have seen important technological, legal and political developments which merit being taking into consideration in order to resubmit new elements of this issue to the general public.

In its DSM Strategy, the Commission announced its intention to analyse the need for new measures to tackle illegal content on the Internet, with due regard to their impact on the fundamental right to freedom of expression and information, such as rigorous procedures for removing illegal content while avoiding the take down of legal content, and whether to require intermediaries to exercise greater responsibility and due diligence in the way they manage their networks and systems – a duty of care.

The following questions seek to improve the Commission's understanding on how best to define 'intermediaries', the fitness of the limited liability regime provided under the E-commerce directive for the transmission, and temporary or permanent storage of infringing information on behalf of third parties, the necessity for Europe-wide notice-and-action procedures, the design of such systems, and finally if there is a need for a 'duty of care' for certain online intermediaries

Definitions:

"Illegal content"

Corresponds to the term "illegal activity or information" used in Article 14 of the E-commerce Directive. The directive does not further specify this term. It may be understood in a wide sense so as to include any infringement of applicable EU or national laws and regulations. This could for instance include defamation, terrorism related content, IPR infringements, child abuse content, misleading advertisements or incitement to hatred or violence on the basis of race, origin, religion, gender, sexual orientation, malware, illegal online gambling, selling illegal medicines, selling unsafe products.

#### **"Hosting"**

According to Article 14 of the E-commerce Directive, is the "storage of (content) that has been provided by the user of an online service". It may for instance be storage of websites on servers. It may also include the services offered by online market places, referencing services and social networks.

#### **"Notice"**

Any communication to a hosting service provider intermediary that could give the latter knowledge of a particular item of illegal content that it transmits or stores. It could therefore create an obligation for it to act expeditiously by removing the illegal content or disabling/blocking access to it if the provider wishes to be exempted from liability under Articles 12- 14 of the E-commerce Directive. Such an obligation only arises if the notice provides the Internet intermediary hosting service provider with actual awareness or knowledge of illegal content.

#### **"Notice provider"**

Anyone (a natural or legal person) that informs a hosting service provider about illegal content on the internet. It may for instance be an individual citizen, a hotline or a holder of intellectual property rights. In certain cases it may also include public authorities.

#### **"Provider of content"**

In the context of a hosting service the content is initially provided by the user of that service. A provider of content is for instance someone who posts a comment on a social network site or uploads a video on a video sharing site.

#### **Questions:**

- 22) Please indicate your role in the context of this chapter: content provider, notice provider, intermediary, none of the above.
- 23) Have you encountered situations suggesting that the liability regime introduced in Section IV of the E-commerce Directive (art. 12-15) has proved not to be fit for purpose or has affected market level playing field? YES / NO
- 24) Do you think that the concept of a *"mere technical, automatic and passive nature"* of information transmission by information society service providers provided under recital 42 of the ECD is sufficiently clear to be interpreted in a homogeneous way, having in mind the growing involvement in content distribution by some online intermediaries, e.g.: video sharing websites? YES/NO.

If NO, please explain why.

- 25) Do you think there are activities/services carried out by information society service providers that cannot be considered of a "mere technical, automatic and passive nature"? YES/NO.

If YES, please provide a list of those activities.

- 26) Mere conduit/caching/hosting describe the activities that are undertaken by a service provider. However, new business models and services have appeared since the adopting of the E-commerce Directive. For instance, some cloud service providers might also be covered under hosting services eg. pure data storage. Other cloud-based services, as processing, might fall under a different category or not fit correctly into any of the existing ones. The same can apply to linking services and search engines, where there has been some erratic case-law at national level. Do you think that further categories of intermediary services should be established, besides mere conduit/caching/hosting and/or should the existing categories be clarified? YES / NO

a. If YES, please provide examples

#### On the "notice"

- 27) Do you consider that different categories of illegal content require different policy approaches as regards notice-and-action procedures, and in particular different requirements as regards the content of the notice? In particular, do you think that any of the following categories of illegal content requires a specific approach:

- o Illegal offer of goods and services (e.g. illegal arms, fake medicines, dangerous products, unauthorised gambling services etc.).
- o Illegal promotion of goods and services.
- o Content facilitating phishing, pharming or hacking.
- o Infringements of intellectual property rights (e.g. copyright and related rights, trademarks)
- o Infringement of consumer protection rules, such as fraudulent or misleading offers
- o Infringement of safety and security requirements
- o Racist and xenophobic hate speech
- o Homophobic and other kinds of hate speech and incitement to hatred or violence
- o Child abuse content
- o Terrorism related content (e.g. content inciting the commitment of terrorist offences and training material)
- o Defamation
- o Privacy infringements
- o Other: Optional: Please specify. (max 500 characters).

#### On the "action"

- 28) Should the content providers be given the opportunity to give their views on the alleged illegality of the content)? YES / NO
- Please explain your answer
  - If you consider that this should only apply for some kinds of illegal content, please indicate which one(s)
- 29) Should action taken by hosting service providers remain effective over time ("take down and stay down" principle)? YES / NO

**On duties of care for online intermediaries:**

Recital 48 of the Ecommerce Directive establishes that "[t]his Directive does not affect the possibility for Member States of requiring service providers, who host information provided by recipients of their service, to apply duties of care, which can reasonably be expected from them and which are specified by national law, in order to detect and prevent certain types of illegal activities". Moreover, Article 16 of the same Directive calls on Member States and the Commission to encourage the "drawing up of codes of conduct at Community level [...] designed to contribute to the proper implementation of Articles 5 to 15".

- 30) (For online intermediaries): Have you put in place voluntary or proactive measures to remove certain categories of illegal content from your system? YES / NO
- If YES, please describe them.
  - If YES, could you estimate the financial costs to your undertaking of putting in place and running this system?
- 31) Do you see a need to impose specific duties of care for certain categories of illegal content? YES / No / I don't know
- If yes – please specify for which categories of content you would establish such an obligation.
  - If yes – please specify for which categories of intermediaries you would establish such an obligation
- 32) Do you see a need for more transparency on the intermediaries' content restriction policies and practices (including the number of notices received as well as their main content)? YES / NO
- If yes: Should this obligation be limited to those hosting service providers, which receive a sizeable amount of notices per year (e.g. more than 1000)? YES / NO
- 33) Do you think that online intermediaries should have a specific legal officer service to facilitate contact with national authorities for the fastest possible notice and removal of illegal contents that constitute a threat for e.g. public security or fight against terrorism? YES / NO
- If YES: Do you think a minimum size threshold would be appropriate if there was such an obligation? YES / NO

### 3.4 Data and cloud in digital ecosystems

Data and digital technologies and services that can be used for the collection, processing and storage of that data, such as big data, cloud services and the Internet of Things, are becoming essential production factors for the digital economy.

In order to maximise the growth potential of the digital economy in Europe, an effective free movement of data in the Union needs to be established. The free movement of data in the Union is not yet a reality, being hampered by several legal and technical barriers. It should be noted that the free flow of personal data is regulated under the framework of Directive 95/46/EC. The principle of free flow of personal data will be enhanced with the adoption of the General Data Protection Regulation, currently going through the legislative process in European Parliament and Council. The free movement of non-personal data in the Union is not yet a reality, being hampered by legal and technical barriers.

In the Digital Single Market strategy, the European Commission committed to launching a European 'Free flow of data' initiative in 2016, which will tackle restrictions to the free movement of data within the EU. This will complement the provisions on the free flow of personal data as part of the current and future framework for the protection of personal data. The initiative will address unjustified restrictions on the location of data for storage or processing purposes. Data location restrictions specify a particular, often geographically defined, area where data needs to be collected, processed or stored, hence restricting the cross-border flow of data within the Union. The Digital Single Market strategy also indicated that addressing emerging issues in relation to data ownership and access is a priority and that providing legal certainty as to the allocation of liability between providers and users (other than personal data related) is important for the roll-out of the Internet of Things.

The European Commission also undertook to launch a 'European Cloud initiative' with the aim to create trust in cloud computing, including cloud services certification, balanced and clear contracts, switching of cloud services providers and a research open science cloud.

#### **Definitions:**

##### **"Cloud computing"**

Cloud computing can be understood as the storage, processing, management and use of data on remotely located servers or network of computers accessed over the Internet. Cloud services may consist of the use of the infrastructure, platform services or software services, or a combination of them.

##### **"Internet of Things"**

The Internet of Things is an ecosystem of physical objects that contain embedded technology to sense their internal statuses and communicate or interact with the external environment. Basically, Internet of things is the rapidly growing network of everyday objects—eyeglasses, cars, thermostats—made smart with sensors and internet addresses that create a network of everyday objects that communicate with one another, with the eventual capability to take actions on behalf of users.

#### 3.4.1. FREE FLOW OF DATA ON DATA LOCATION RESTRICTIONS



34) In the context of the free flow of data in the Union, do you in practice take measures to make a clear distinction between personal and non-personal data? YES / NO / Not applicable

a. If NO, please explain why not

35) Have restrictions on the location of data affected your strategy in doing business (e.g. limiting your choice regarding the use of certain digital technologies and services?) YES / NO

36) Do you think that there are particular reasons in relation to which data location restrictions are or should be justifiable? YES / NO

a. If YES, what kind(s) of ground(s) do you think are justifiable? (multiple choice)

a. National security,

b. Public security,

c. Other reasons, please explain,

#### **ON DATA ACCESS AND TRANSFER**

37) Do you think that the existing framework for contractual law (that is based on contractual freedom) is fit for purpose to facilitate a free flow of data in the EU, while safeguarding fundamental rights of parties involved? YES / NO

38) In order to ensure the free flow of data within the European Union, in your opinion, addressing the issues on the access to, transfer and the use of non-personal data at European level is: necessary / not necessary.

39) When non-personal data is generated by a device in an automated manner, do you think that it should be subject to specific measures (binding or non-binding) at EU level?

a. If YES, which of the following aspects would merit measures? (multiple choice)

- Obligation to inform the user or operator of the device that generates the data;
- Attribution of the exploitation rights of the generated data to an entity (for example the person / organisation that is owner of that device);
- In case the device is embedded in a larger system or product, the obligation to share the generated data with providers of other parts of that system or with the owner / user / holder of the entire system;
- Other aspects (please specify).

#### **On data markets**

40) What regulatory constraints hold back the development of data markets in Europe and how could the EU encourage the development of such markets? (max. 1000 words)

#### **On access to open data**

41) Do you think more could be done to open up public sector data for re-use in addition to the recently revised EU legislation (Directive 2013/37/EU)? (multiple choice)

- Introducing the principle of 'open by default'<sup>4</sup>;
- Licensing of 'Open Data': help persons/ organisations wishing to re-use public sector information (e.g., Standard European License);
- Further expanding the scope of the Directive (e.g. to include public service broadcasters, public undertakings);
- Improving interoperability (e.g., common data formats);
- Further regulating the possibility to charge for re-use of public sector information;
- Remedies available to potential re-users against unfavourable decisions;
- Other aspects?

42) Do you think that there is a case for the opening up of data held by private entities to promote its re-use by public and/or private sector? YES/NO

a. If YES, under what conditions? (multiple choice)

- (a) in case it's in the public interest,
- (b) for non-commercial purposes (e.g. research)
- (c) other conditions, please explain

#### **On access and reuse of (non-personal) scientific data**

43) Do you think that data generated by research is re-usable enough? YES / NO

a. If NO, why not? What do you think could be done to make data generated by research more effectively re-usable?

#### **On liability in relation to the free flow of data and the Internet of Things**

44) As a provider/user of IoT and/or data driven services and connected tangible devices, have you ever encountered or do you anticipate problems stemming from either an unclear liability regime/non –existence of a clear-cut liability regime? YES/NO/I don't know

a. If you did not find the legal framework satisfactory, does this affect in any way your use of these services and tangible goods or your trust in them?

45) Are you aware of any legal framework or guidelines that specifically cover liability issues of IoT or / and Data driven services and connected tangible goods? YES/NO/I don't know

- a. If YES, please explain.
- b. If NO, does this affect in any way your use of these services and connected tangible goods? Please explain.
- c. If NO, does this affect in any way your offer of these services as service provider? Please explain.

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<sup>4</sup> As specified in the G8 Open data Charter: Establish an expectation that all government data be published openly by default, while recognising that there are legitimate reasons why some data cannot be released.

- b. Does this affect in any way your offer of these services/goods as supplier?  
Please explain.

### **Personal Data Management Solutions**

The following questions address the issue whether technical innovations should be promoted and further developed in order to improve transparency and implement efficiently the requirements for lawful processing of personal data, in compliance with the current and future EU data protection legal framework. Such innovations can take the form of 'personal data cloud spaces' or trusted frameworks and are often referred to as 'personal data banks/stores/vaults'.

- 46) Do you think that technical innovations, such as personal data spaces, would contribute to enhanced transparency and better compliance with EU data protection requirements, as well as allow lawful access to personal data for organisations that process it?  
YES/NO

- a. If YES, would you be in favour of supporting an initiative considering and promoting the development of personal data management systems at EU Level? Please explain

### **3.4.2. European Cloud Initiative**

- 47) What are the key elements for ensuring trust in the European cloud (*multiple choice*)

- a. Reducing regulatory differences between Member States
- b. Standards, certification schemes, quality labels or seals
- c. Use of the cloud by public institutions
- d. Investment by the European private sector in secure, reliable and high-quality cloud infrastructures

- 48) As a (potential) user of cloud computing services, do you think cloud service providers are sufficiently transparent on the security and protection of (personal) data regarding the services they provide? YES / NO / Not applicable

- a. If NO, what information relevant to the security and protection of (personal) data do you think cloud service providers should provide?

- 49) What would be the benefit of cloud computing services interacting with each other (ensuring interoperability)

- a. Economic benefits
- b. Improved trust
- c. Others (max. 500 words)

- 50) What would be the benefit of guaranteeing the portability of data, including at European level, between different providers of cloud services

- d. Economic benefits
- e. Improved trust
- f. Others (max. 500 words)

51) Have you encountered any of the following contractual practices in relation to cloud based services? In your view, to what extent could those practices hamper the uptake of cloud based services? Please explain your reasoning.

	Never	Sometimes	Often	Always	Why?
Difficulties with negotiating contractual terms and conditions for cloud services stemming from uneven bargaining power of the parties and/or undefined standards					
Limitations as regards the possibility to switch between different cloud service providers					
Possibility for the supplier to unilaterally modify the cloud service					
Far reaching limitations of the supplier's liability for malfunctioning cloud services (including depriving the user of key remedies)					
Other (please explain)					

52) Would model contracts for cloud service providers be a useful tool for building trust in cloud services? Would your answer differ for consumer and commercial (i.e. business to business) cloud contracts? YES / NO

a. If NO, what approach would you prefer?

### 3.5 The collaborative economy

The following questions focus on these issues raised by the collaborative economy and seek to improve the Commission's understanding by collecting the views of stakeholders on the regulatory environment, the effects of collaborative economy platforms on existing suppliers, innovation, and consumer choice. More broadly, they aim also at assessing the impact of the development of the collaborative economy on the rest of the economy and of the opportunities as well as the challenges it raises. They should help devising a European agenda for the collaborative economy to be considered in the context of the forthcoming Internal Market Strategy. The main question is whether EU law can support this new phenomenon and whether existing policy is sufficient to let it develop and grow further, while addressing potential issues that may arise, including public policy objectives that may have already been identified.

#### Definitions

### **"Collaborative economy"**

For the purposes of this consultation the collaborative economy links individuals and/or enterprises through online platforms (collaborative economy platforms) allowing them to exchange assets, resources, time, skills, or capital, sometimes for a temporary period and without transferring ownership rights. Typical examples are transport services including the use of domestic vehicles for passenger transport and ride-sharing, accommodation or professional services.

### **"Traditional provider"**

Individuals or enterprises who provide their services mainly through other channels, without an extensive involvement of online platforms.

### **"Provider in the collaborative economy"**

Individuals or enterprises who provide the service by exchanging assets, resources, time, skills or capital through an online platform.

### **"User in the collaborative economy"**

Individuals or enterprises who access and use the transacted assets, resources, time, skills and capital.

## **QUESTIONS FOR ALL INTERESTED PARTIES**

### **A. Gaining a better understanding of the overall drivers and challenges in the collaborative economy**

53) Which are the main obstacles and risks which could hamper the growth of the collaborative economy? Please rate from 1 to 5 according to their importance.

- not sufficiently adapted regulatory framework
- uncertainty for providers on their rights and obligations
- uncertainty for consumers about their rights and obligations
- weakening social rights for employees/workers
- opposition from traditional providers
- uncertainty related to lack of personal data protection
- other (please explain)

54) How do you see the effects of the expansion of the collaborative economy on labour (self-employment vs employment, availability of social benefits, etc)?

- Positive across sectors
- They vary depending on the sector
- They vary depending on each case
- They vary according to the national employment laws
- Negative across sectors
- Other

Please explain briefly.

55) Do you see any obstacle to the development and scaling-up of collaborative economy across borders in Europe and/or to the emergence of European market leaders?  
YES/NO

- If yes, please explain

56) Do you see a need for action at European Union level specifically to promote the collaborative economy, and to foster innovation and entrepreneurship in its context?  
YES/NO

- If yes, please indicate the sector/action

57) Do you see a need for change of the current regulatory environment at the level of the EU, including the Services Directive, the E-commerce Directive and the EU legislation on consumer protection?

- no change is required
- new rules for the collaborative economy are required
- more guidance and better information on the application of the existing rules is required
- I don't know what is the current regulatory environment  
*If applicable, please indicate the sectors and the rules concerned.*

#### **B. Questions which concern providers and/or associations representing them**

58) How many people work for you:

- I am an individual provider
- 1
- 2-10
- 10-50
- 50-100
- 101 - 250
- more (*please specify*)

59) What percentage of your revenues is earned via collaborative platforms in the last twelve months?

- 0-20%
- 21-40%
- 41-60%
- 61-80%
- 81-100%

60) What has been your revenue growth in the last twelve months earned via collaborative platforms?

- 0-5%
- 6-15%
- 16% - 35%
- 36% - 50%
- More than 50%

61) What sector of the economy do you operate in?

- o transport
- o tourism
- o accommodation
- o audio-visual
- o professional services
- o other (please specify)

62) As a provider active in the collaborative economy, are you aware if the following requirements have to be fulfilled in order to offer/share your assets, resources, time, skills, and/or capital on a platform?

- o specific authorisation or licence *Yes / No / I don't know*
- o registration in a business registry *Yes / No / I don't know*
- o specific qualifications *Yes / No / I don't know*
- o insurance coverage *Yes / No / I don't know*
- o membership in a professional chamber *Yes / No / I don't know*
- o compliance with health and safety requirements *Yes / No / I don't know*
- o compliance with planning permission or fire safety requirements *Yes / No / I don't know*
- o compliance with fixed-tariffs *Yes / No / I don't know*
- o compliance with consumer protection requirements *Yes / No / I don't know*
- o other (please specify)

63) In case you need to comply with at least one of the above requirements, does this represent

- o a significant burden,
- o a minor burden or
- o no burden for the exercise of your services via collaborative business models?
- o N/A (no requirements apply to my activities)

64) Do you think that lighter rules should be applied to smaller providers? YES/NO

- o *If yes, what should be the threshold of a provider's activity in the collaborative economy for it to become subject to rules, such as authorisations, registrations, consumer protection (e.g. level of absolute revenue from collaborative economy, relative share of revenue from collaborative economy, in overall revenues, number of rented units/rental days etc)?*

65) Is the online platform imposing specific requirements on providers? YES/NO

- o *If yes, what are the requirements and did the online platform verify their fulfilment and if so how? Please explain briefly.*

66) Are providers using platforms able to find the right insurance product from the insurance market to provide services and assets in the collaborative economy? YES/NO

- o *If not, please specify why.*

**C. Questions which concern traditional providers and/or associations representing them**

67) What sector of the economy do you operate in?

- transport
- tourism
- accommodation
- audio-visual
- professional services
- other (*please specify*)

68) Have your revenues been reduced as a result of competition from collaborative platforms? YES/NO

*If yes, by what percentage?*

- 0-5%
- 6-15%
- 16-35%
- 36% to 50%
- more than 50%?

69) Do you use or intend to use collaborative platforms to offer your existing services and assets? YES/NO, Please explain

70) If applicable, how can we ensure a level playing field between providers and traditional providers?

- enforcing existing legislation against platforms and providers in the collaborative economy
- developing specific legislation for providers in the collaborative economy
- adapting the rules of traditional services and providers in the collaborative economy
- other (*please specify*)

#### **D. Questions which concern platforms and/or associations representing them**

71) What sector of the economy do you operate in?

- transport
- tourism
- accommodation
- audio-visual
- professional services
- other (*please specify*)

72) How many people work for your company:

- 1
- 2-10
- 11-50
- 51-100
- 101-250
- More than 250

73) What has been your revenue growth over the last twelve months?

- 0-20%
- 21-40%
- 41-60%
- 61-80%
- 81-100%



- negative

74) Do you offer services and products in countries other than your own? YES/NO

*If yes, what percentage of your revenue is due to cross-border activities?*

- 0-20%
- 21-40%
- 41-60%
- 61-80%
- 81-100%

75) What type of transactions does your platform provide?

- only peer-to-peer
- peer-to-peer and business to consumer
- peer-to-peer, business to consumer and business to business

76) Are there any specific prior authorisation requirements in place in your country of establishment for collaborative economy platforms? Are there specific authorisation requirements for your sector of activity and with which you, as a platform, have to comply? YES/NO/ Don't know

*If yes, please indicate whether these are*

- specific authorisation or licence *Yes / No / I don't know*
- registration in a business registry *Yes / No / I don't know*
- insurance coverage *Yes / No / I don't know*
- membership in a professional chamber *Yes / No / I don't know*
- specific qualifications *Yes / No / I don't know*
- compliance with health and safety requirements *Yes / No / I don't know*
- compliance with planning permission or fire safety requirements *Yes / No / I don't know*
- compliance with fixed-tariffs *Yes / No / I don't know*
- other *(please specify)*

77) Do you face any specific authorisation requirements in those EU countries where you provide temporary cross border services? YES/NO

- *If yes, please explain briefly.*

78) As a platform, are you involved in tax collection from the providers in the collaborative economy? YES/NO Please explain

79) Are you providing insurance or other types of guarantees for consumers and providers active on your platform? YES/NO

- *If yes, please explain briefly.*

80) Do you inform providers regarding their legal obligations and do you ensure compliance of providers with specific legislation applying to them (for example, possession of authorisations, licences, consumer information requirements etc.)? YES/NO

- *If yes, please explain briefly.*

#### **E. Questions which concern public authorities**

81) Is collaborative economy raising specific regulatory and enforcement issues? YES/NO

- *If yes, please explain briefly.*
- 82) Is self-regulation, including voluntary standards, sufficient in the context of collaborative economy? YES/NO
- *If no, please explain briefly.*
- 83) How do we ensure that social protection is applied regardless of the business model (collaborative economy model or traditional business models)? Please explain briefly
- 84) How do you distinguish between commercial activity within the collaborative economy and the occasional intervention of private individuals in this context?
- VAT threshold
  - frequency of the activity concerned
  - on the basis of the safety risk
  - other (*please explain*)
- 85) Do you see problems related to taxation of collaborative economy activities? YES/NO  
Please explain briefly
- 86) Do you think there is a need for a special tax regime for collaborative economy providers? YES/NO Please explain briefly

#### **F. Questions which concern users and/or consumer associations**

- 87) Have you used a service or asset via a collaborative platform? YES/NO
- If yes, please specify in which period:*
- during the last month
  - during the last three months
  - during the last six months
  - during the last twelve months
- 88) Have you exchanged your assets or services against other persons' assets or services or did you pay for them?
- exchange
  - payment
- 89) In which sectors have you used services or assets offered through platforms?
- Transport
  - Tourism
  - Accommodation
  - Audio-visual
  - Finance
  - Professional services
  - Other. *please specify*
- 90) Do you receive, on the collaborative economy platform, sufficient information on the provider in the collaborative economy, your consumer rights, the characteristics and modalities of the offer including your statutory rights (such as withdrawal/cancellation right when applicable)? YES/NO
- *If not, please explain*

91) How important are reputation/rating systems in facilitating transactions on collaborative economy platforms?

- very important
- important
- not important

92) Do you rely on other elements when deciding to use a service or asset via collaborative economy platforms?

- vetting of the provider
- existence of a complaint process
- reputation of the platform
- other (*please specify*)