

Digital Services Act

Impact assessment SWD(2020) 348, SWD(2020) 349 (summary) accompanying the Commission proposal for a regulation of the European Parliament and of the Council on a single market for digital services (digital services act) and amending Directive 2000/31/EC

This briefing offers an initial analysis of the strengths and weaknesses of the European Commission [impact assessment](#) (IA) accompanying the above proposal, adopted on 15 December 2020 and referred to the Committee on the Internal Market and Consumer Protection (IMCO).

Digital services¹ in the EU are currently regulated by the [e-Commerce Directive](#) of 2000 and some non-legislative measures, for instance the Commission's [recommendations](#) to tackle illegal content online, as well as by targeted sectoral EU rules, such as the audio-visual media services directive, the directive on copyright in the digital single market and the regulation on fairness and transparency for business users of platforms (IA, pp. 17, 29-30). Since 2000, the rapid development of digital technologies and business models has transformed both the economy and society, which is why the Commission February 2020 communication [Shaping Europe's digital future](#) and its 2020 work programme committed to update the rules on the responsibilities and obligations of digital service providers in the EU. That is the objective of this proposal for a [digital services act](#) (DSA).²

Problem definition

The IA highlights the 'dramatic' changes in the EU's economy and society caused by the rapid development of digital services, the 'backbone of the digital economy' (IA, pp. 5-10). According to the IA, 20 % of European businesses are involved in e-commerce and over 70 % of citizens use online shops, social networks or online platforms – the latter rising particularly in the last two decades (data from before the Covid-19 crisis, IA, p. 8). Against this backdrop, the IA defines the **main three problems** to be tackled by this initiative: 1) current (and emerging) serious societal and economic harm caused by **illegal online activities** and insufficient protection of fundamental rights; 2) ineffective and **fragmented supervision** of digital services and 3) **legal barriers** preventing digital services, especially smaller companies, from scaling up in the single market.

Illegal activities online refer to a wide range of issues, from the sale of illegal goods and services to the dissemination of illegal content, such as child abuse, terrorist content, hate speech or illegal advertising (IA, p. 12). The IA acknowledges that data on these issues is scarce, but provides evidence from an overall convincing qualitative analysis based on the evaluation of the e-commerce directive, pertinent examples of detected illegal activities, stakeholder consultations and EU-wide surveys, which found that 60 % of respondents had experienced some sort of online fraud, scam or other illegal practice (IA, pp. 13-15). The IA identifies particular risks and harms from very large **online platforms**, resulting from their high volume of information and commercial offers, with some very large ones playing a 'systemic' role in information flows for citizens and businesses (IA, pp. 16-17, 27-28). The lack of transparency in terms of how they shape, rank and target information and advertising leads to major information asymmetries that affect behaviours and choices in the economy according to the IA. The IA indicates, for instance, that digital advertising has grown more than 10-fold since 2006 and grew 12.3 % in 2019 alone (IA, p. 27). Insufficient protection of fundamental rights can relate, for instance, to child sex abuse material that is not taken down. It can also concern freedom of speech and freedom to conduct a business, which can be limited by the

erroneous removal, blocking or restriction of content by platforms. The scale of such removals, as the IA puts it, is 'virtually impossible to estimate in quantitative terms', but its effects on users' freedom of expression are considered 'chilling' (IA, p. 19). This lack of protection under problem 1 is linked to problem 3 (legal barriers to digital services in the single market) and also overlaps with problem 2 (ineffective supervision) in so far as the latter two stem from a lack of cooperation and trust between Member States and the legal uncertainty of the current legislative patchwork of national and EU-rules, as well as numerous court cases (IA, pp. 10, 19, 22-25, 28-33). These interconnections – and in particular the link to the uncertainties of the current **liability** scheme for third party content, which is highlighted in the evaluation – could have been better explained in the IA.³ Under the baseline scenario, the IA expects illegal online activities, weak supervision of digital services and legal fragmentation and gaps to increase in the rapidly growing digital economy, citing the Covid-19 crisis as accelerator of the problems (IA, pp. 9-10, 33-34, 38).

While the various aspects of the problems, their scope and causes are described thoroughly, the structure of the relatively long problem definition (nearly half of the IA, annexes excluded) does not facilitate easy understanding of the IA's intervention logic. As some aspects are reiterated in several sections without clarifying links and overlaps, the lines between the main problems, their causes and drivers seem blurred, and it is not clear which driver relates to which problem (including in the relevant Figures 4 and 5, IA, pp. 27-34, 38). The problems' effects on different stakeholders and some causes are described before the drivers are explored (IA, pp. 16, 20-25). In the same vein, reflections on the '**cost of non-Europe**' are squeezed in the section 'Who is affected and how', but refer (only) to legal barriers under problem 3 (IA, pp. 23-24). The IA indicates that legal barriers represent a loss of 1 % to 1.8 % in online trade. The exact method behind this estimate, which is also used to calculate the potential benefits of the initiative (see section on impacts below), is not entirely clear, as the model used is not specified and the explanations provided seem incoherent.⁴ In addition, some important elements, such as the question of active and passive hosting, the use of algorithms, the power of large platforms and the principle of the country of establishment are mentioned only incidentally throughout the IA, without sufficient explanation or coherence (IA, pp. 17, 22, 27, 31). The IA hints at the complex interconnections between the various elements and at its own limited scope (IA, 20). This may be true in terms of an exhaustive list of all illegal online activities, but not for the interdependencies between the main problems, drivers and current legal gaps, which could have been presented in a more structured way. Nevertheless, the relevant elements of the problems seem to be covered, as are the stakeholder groups most affected. Their views are mentioned consistently, but could also have been presented in a more coherent way throughout the IA (citizens and consumers, businesses, national authorities, large and smaller online service providers) (IA, pp. 10, also Annex 3). The IA offers no thoughts on a sectoral analysis of the problems – for example by presenting the most affected sectors – or on territorial differences deriving from vast differences between Member States and regions in terms of cross-border online trade activities.

Subsidiarity / proportionality

The IA stresses the cross-border nature of digital services and sees the increasing 'plethora' of national laws and the lack of trust between Member States as major problem drivers (IA, pp. 9-10, 22-24, 32-35). This is also reflected in the evaluation, which refers to an [external study](#) on the national transposition of the liability provisions of the e-Commerce Directive (Annex 5, p. 95). The IA argues convincingly that only harmonised EU rules can address the current legal fragmentation, improve supervision of digital services and reduce current compliance costs, which, in turn, would have the added value of boosting the single market and positioning the EU as global 'standard-setter' in the fight against illegal online content (IA, p. 36).⁵ Proportionality in the screening, assessment and selection of the options is considered in the IA, in particular as regards SMEs, but respect for the principle could have been better substantiated (IA pp. 51, 55). The subsidiarity deadline for national parliaments is 7 April 2021.

Objectives of the initiative

The **general** objective of the initiative is to foster cross-border digital services in the single market (IA, p. 36). The **four specific** objectives (IA, pp. 36-37) are to:

- provide a consistent and proportionate EU-wide legal framework for the cross-border provision of digital services, to ensure legal clarity and reduce legal fragmentation;
- provide a clear set of incentives and obligations to facilitate a safe online environment for citizens, businesses and digital intermediaries, especially platforms, to ensure that their services are not misused for illegal activities;
- protect fundamental rights of users by clear and proportionate responsibilities for authorities and private companies alike, to ensure freedom of expression online; and
- establish effective supervision, transparency and accountability of online intermediaries.

As required by the Better Regulation Guidelines, the IA also defines **nine operational** objectives in the framework of the monitoring and evaluation provisions of the initiative (IA, pp. 74-75).⁶ The overlaps characterising the problems also affect the specific and operational objectives, which therefore do not seem to respond fully to the guidelines' SMART criteria of being specific, measurable, achievable, relevant and time-bound. In fact, some operational objectives are rather similar to the specific objectives, without designing concrete actions, for instance regarding legal fragmentation, and for none of them does the IA indicate any specific timeline. Instead, it notes at the end that 'sufficient flexibility' is needed for implementation of the proposed measures (IA, p. 75).

Range of options considered

Based on the ex-post evaluation, the IA considers the general principles of the e-Commerce Directive still valid and consequently retains them in the policy options to achieve the objectives (IA, pp. 10-11). In addition to the baseline scenario, the IA presents **three cumulative packages of policy options**, all containing measures to harmonise due diligence obligations for digital service providers and their supervision, as well as updates of the existing liability regime under the e-Commerce Directive (IA, p. 39). Alternative options deriving from these features, for instance a focus on a sector-specific approach, a fundamental change in the current liability regime or in the country of establishment principle, were **discarded at an early stage** and not retained for further analysis. The IA justifies this decision for each discarded option (IA, pp. 48-49). Annex 9 provides an analysis of several discarded options for the liability regime, from unconditional exemption from liability, to specific liabilities to a regime without any exemption from liability (pp. 150-181). Thus, the range of options retained concentrates on the following broad cumulative packages of measures, bound to complement the existing sectoral and e-commerce rules:

- **Option package 1: limited action against illegal activities online as defined in EU and national law**

Due diligence obligations: establishment and management of an 'easy to use' system to allow notification of illegal content, goods or services offered online, informing users of content removal and providing them with an accessible redress mechanism, as well as an external out of court dispute mechanism ('notice and action'); obligation to collect identification from traders ('know your business customer'); obligation to cooperate with 'trusted flaggers';⁷ obligation to state clearly fundamental rights standards for digital service use. On **supervision**, development of a 'clearing house' (enhanced administrative cooperation) to facilitate exchange of information between competent authorities, designated by Member States. **Extension of obligations and supervision to all providers** offering digital services in the EU, including from third countries (IA, pp. 41-43).

- **Option package 2: option 1 + obligations for online platforms on transparency of advertisements and harmonisation of rules for removal of content**

Additional provisions to ensure **transparency** for users regarding all types of **advertising**, including targeting information; **harmonisation of cross-border** court or administrative orders for the **removal of illegal content**, goods or services; removal of existing disincentives to voluntary actions

in terms of liability; clarification of exemptions under the current liability regime; designation of central national 'digital coordinators' by the Member States (IA, pp. 43-44).

➤ **Option package 3: option 2 + asymmetric measures for very large platforms⁸**
(preferred option, IA, pp. 45-46)

This package **adds obligations** for very large online platforms to set up a **risk management** system with annual risk assessments of their services and algorithmic processes; an obligation to take measures to mitigate detected risks; **enhanced transparency** and reporting on content moderation or amplification and on online advertising at the request of supervisory authorities; transparency for users on content recommender systems; access to data for researchers for investigations; **further clarification of the diverse national interpretations of the liability regime** while maintaining conditional liability exemption; obligations to notify suspicion of a criminal offence; establishment of an **EU board**⁹ with participating national digital (services) coordinators to ensure EU supervised risk management for 'systemic' issues (not further specified) linked to large platforms.

All packages include providers established *outside* the EU and encourage self-regulating measures through codes of conduct (not further specified) (IA, pp. 41, 43). All three options are broad, combining a spectrum of measures to ensure due diligence, clarify liability rules and improve digital service supervision, in particular for online platforms. While description of the options is generally logical and balanced, it is more a summary of items under each package than a coherent presentation. Importantly, details of the measures and their implementation, for example as regards the 'notice and action' system, out of court settlements, supervisory competences (including sanctions) or clarifications on liability exemptions are not discussed in depth. Stakeholder views are given after the description of each option, but present a mix of multiple views on the current situation and opinions on some of the proposed measures, rather than a structured overview (IA, pp. 42-48).

Assessment of impacts

The IA offers a qualitative analysis of the economic, social and environmental impacts of the three option packages, complemented by quantitative information, but does not assess the individual measures under the packages. It notes from the start that all packages would have positive effects on the single market, i.e. the general objective of the initiative (IA, p. 50). The difference lies in the varying degree the options would change cooperation between national authorities and supervision of digital services. The IA analyses the impacts not by package, but by category (i.e. economic impacts of each package in the same section), thus underlining their cumulative effects.

On **economic impacts**, the IA expects beneficial **macroeconomic** effects, while digital services and public authorities would incur some costs and administrative burdens (IA, pp. 50-55). In line with the 'cost of non-Europe' discussion (whose caveat is highlighted in the problem definition above), the IA argues that the reduction of legal fragmentation and the gain in trust among Member States 'in all three options' would lead to an increase in cross-border digital trade of 1 to 1.8%, the equivalent of an €8.6 billion to €15.5 billion increase in turnover (IA, p. 51).¹⁰ Based on own estimations, using an 'input-output' model, the IA anticipates that option package 1 would generate increased gross domestic product (GDP) of 0.3% or €38.6 billion, package 2 a 0.4% GDP increase (€61.8 billion) and package 3 a 0.6% or €81.7 billion GDP increase (benchmarked against 2019 values, IA, p. 52). The GDP reference (EU27, EU28 or other) and the exact data used for these estimates are not specified in the IA (nor in Annex 4). The IA corroborates the estimates with the results of a [study](#) of the European Parliamentary Research Service, which expects a GDP increase of €76 billion between 2020 and 2030 by means of measures similar to option 3 (this study used the E3ME model).

For the **cost estimations for companies**, the IA used a 'simple model' (IA, pp. 53-55). It anticipates annual cost *reductions* of around €400 000 for a 'medium enterprise assumed present in three Member States' (IA, p. 53). For similar companies present in 10 Member States, cost savings would be €4 million, and €11 million (or €15 million) if present in 27 Member States.¹¹ At the same time, the IA expects companies to incur direct costs from due diligence obligations 'common across all three

options', but stresses the uncertainty in estimating those costs because the number of notices and counter-notices received by a platform 'can vary to a large extent' (IA, p. 53). According to Table 4 of the IA, these costs imply one-off maximum costs to set up the 'notice and action' system and recurrent costs of €15 000 (for 200 notices per day) to €1 million (for 3 000 notices per day) (IA, p. 54). The IA provides other estimated costs for different groups of online intermediaries, for example for the designation of a legal representative by third country providers (€50 000 to €550 000 per year), or for risk assessment obligations for large platforms, estimated at between €40 000 and €86 000 per year. However, the line between costs, types of providers and the different option packages is not evident from the table, and a more structured and clear overview of all costs for the respective digital services concerned – including in particular information on total costs – would have been preferable. The same is true of the **costs** that the IA expects **public authorities** to incur, both in Member States and at EU-level (for enforcement and supervision) (IA, pp. 56-58). Again, the IA mentions several types of costs, for example between €50 000 and €300 000 for one audit,¹² but it does not provide a complete picture (or total costs). The IA stresses that the investments of public authorities under all option packages would create significant (but non-quantified) 'efficiency gains' from harmonised cooperation across Member States and mutualising some resources for technical assistance at EU-level (IA, pp. 57-58). It is to be noted that the IA's estimates do not take into account the effects of the Covid-19 crisis.

The IA provides a qualitative assessment of the **social impact** of the three option packages, expecting all three to have positive effects on the enforcement and supervision of digital services by authorities, on online safety and the protection of all users of digital services, increasing with the additional measures under options 2 and 3 (IA, pp. 59-60). Regarding the **impact on fundamental rights**, said to have been decisive in discarding several options (IA, p. 60), the IA highlights the positive effects on freedom of expression of the possibilities of user complaint and redress to challenge decisions by platforms to block content, as well as on discrimination, privacy of communications, the rights of children and on the freedom to conduct a business (IA, pp. 61-66). All options are expected to affect these aspects positively, becoming most effective with the addition of safeguards, transparency and disclosure provisions under option 3. Combined with the assessment of the option packages' effectiveness, efficiency, coherence and proportionality against the baseline, package 3 is the preferred option in the IA. Finally, the **environmental impact** of all options is expected to be 'marginal' (IA, p. 66). The IA doubts the initiative would affect the overall demand for digital services (which would entail increased energy consumption), but it does not rule out that a reduction in illegal online activities, such as selling counterfeit products that tend to be related to polluting manufacturing, could also reduce their production (IA, p. 66).

SMEs/ competitiveness

The IA considers 96% of the approximately 10 000 EU online platforms to be SMEs, for which the current legal fragmentation is prohibitive, especially for micro-enterprises (IA, pp. 24, 55-56). In an 'SME test', it justifies why SMEs are not (fully) exempted from the minimum requirements of a 'notice and action' system. It does not provide quantitative substantiation, but argues that successful small platforms typically grow fast and can be 'instrumental to the spread of certain crimes online', which they could address, in turn, by using the 'notice and action' system. At the same time, the IA defends the costs of the preferred option for SMEs as proportionate compared with the obligations of very large platforms (IA, p. 56). As indicated above, the IA's cost estimates for companies do not seem complete and do not give information on total costs. The IA highlights the positive effects of streamlining legal requirements under all three option packages on **competition**, with the asymmetric obligations for very large platforms under option 3 being most effective in terms of online safety and the fight against the illegal activities currently hampering the competitiveness of smaller platforms (IA, p. 51). By cutting the costs of legal fragmentation, even option 1 is expected to create a level playing field, fostering innovation and investment in the single market. The qualitative analysis appears overall convincing, but a better measurement of the impacts on SMEs, as required by a full SME test according to [Tool 22 of the Better Regulation Guidelines](#), would have been helpful. Finally, the IA further stresses that by extending the due diligence obligations to

service providers established outside the EU, all options contribute to a reduction in illegal trade and fairer competition with **third countries** (without further substantiation, IA, p. 58). Only in this context does the IA name sectors that would benefit from the options, in view of recovery from the Covid-19 crisis: tourism, accommodation, food and transport (IA, p. 52).

Simplification and other regulatory implications

A weakness of the IA is the lack of clarity and coherence as regards the overlaps between the problems, drivers and options, including the gaps in existing sectoral or non-legislative rules for digital services. Elements of the Copyright Directive, the Platform to Business Regulation or the proposed digital markets act are briefly mentioned as compatible, but coherence with other legislation and the simplification potential could have been better illustrated (IA, pp. 71-72). As noted, the IA assumes significant efficiency gains from streamlined rules, but does not substantiate this with consistent and comparable cost estimates (IA, pp. 57, 74). For public authorities, it does not provide quantified estimates of efficiency gains because of varying situations in Member States and uncertainty regarding both the volume of notified cases and precise supervisory activities (IA, p 74).

Monitoring and evaluation

The IA presents a number of monitoring and key performance indicators for the specific and operational objectives, calling the 'robust' collection of data one of the core impacts pursued by the preferred option (IA, pp. 74-75). The indicators seem pertinent, but the IA does not always state who would provide certain data, and when. The IA suggests the new EU board should report yearly with an evaluation within five years of entry into force (IA, p. 75). This was taken up in the proposal, which also stipulates assessment of the functioning of the board after three years, with a view to possibly establishing an 'autonomous agency' (legislative financial statement, p. 92). Rules on 'monitoring actions' are not specified, but are proposed to be developed with the advice from the new board.

Stakeholder consultation

The IA refers to several open public and targeted consultations undertaken by the Commission in recent years. The [open public consultation](#) for this procedure ran from 2 June to 8 September 2020, receiving a total of 2 863 responses and 300 additional position papers (IA, Annex 2, pp. 13-28). Sixty-six per cent of the replies came from EU citizens, 7.4 % from companies or business organisations and 2.2 % from public authorities.¹³ A targeted survey that received replies from 17 Member States, was conducted during the summer of 2020, as were several workshops with experts on specific topics, such as online marketplaces and liability issues. The IA stresses the broad support of stakeholders for harmonisation of the obligations on online platforms to address illegal content, while also noting disagreements on issues such as disclosure of information and the procedure for removing content. Although the various stakeholder opinions could have been presented in a more coherent manner, their preferences appear to support and substantiate the IA's reasoning.

Supporting data and analytical methods used

Although the DSA is certainly a 'major' initiative, building on several years of reflection and research, the IA underpinning the proposal was carried out within a relatively short period. The obligatory open public consultation was conducted in parallel to the feedback to the [inception impact assessment](#) of 4 June 2020. In addition, the six months between the inception IA and the adoption of the proposal included the ex-post evaluation¹⁴ of the e-Commerce Directive, which means the ex-ante and ex-post analyses were done in parallel. This 'back to back' procedure can be challenging, considering the methods, objectives and data needs of these exercises, but the 'evaluate first' principle seems to have been upheld in the IA. The IA draws on the evaluation and other solid sources, including a number of external studies and a 2018 IA on preventing the dissemination of terrorist content online, as well as on several recent stakeholder consultations and Eurobarometer surveys in the area of digital services (IA, Annex 1 and 2). In addition, it notably took into account

extensive work of the European Parliament, in particular three legislative own-initiative reports and their suggestions (IA, Annex 13 and explanatory memorandum of the proposal, pp. 1-2, 11).

The IA complements qualitative analysis with quantified information. It could have been more transparent, consistent and complete regarding the availability of pertinent data and the origin and nature of data used for its quantified estimates.¹⁵ The same is true of the methods applied, their limitations and uncertainties and of the assumptions underlying the macro-economic and company cost estimates in particular. Annex 4 briefly explains the characteristics of an 'input output model', but does not specify the method used precisely, presenting only a table summarising the computation (Annex 4, pp. 66-67). Some references in the IA are either not (yet) published, incomplete and/or missing (IA, pp. 9, 24, 57). Also, the IA could have been more precise in its use of terminology (digital services, online intermediaries, hosting services, online platforms, digital (services) coordinators, etc.). When analysing the impacts of 'all three options', it is not always clear whether this means each of the options or all of them taken together. All in all, it appears that the IA would have benefited from further elaboration in terms of coherence, transparency and precision.

Follow-up to the opinion of the Commission's Regulatory Scrutiny Board

The Regulatory Scrutiny Board (RSB) issued a [positive opinion with reservations](#) on the draft IA on 6 November 2020, asking for significant revisions to the draft. These concerned clarification of the legal framework the proposal is expected to complement, and a more detailed description of the policy options and of the proposed supervisory provisions. It also required a better explanation of the evidence base of the IA. These issues have been addressed only partially (either in the IA or its annexes), as this appraisal finds them still persisting in parts of the final IA.

Coherence between the Commission's legislative proposal and the IA

The proposal follows the IA's preferred option package, but is more specific, namely regarding the practical implementation of the measures under the preferred option, for instance the notification and redress system, transparency provisions, the tasks of the digital services coordinators and the board, as well as the power of supervision and sanctions in case of non-compliance by the online service providers. As noted above, an analysis in the IA of some of these elements would have been useful to policy makers and would have made the assessment more specific.

The IA explores ways to update the EU's horizontal rules on online providers offering their services in the EU. It contains a lot of valuable information and is based on solid sources and broad consultations and feedback, but could have been more coherent in its problem definition, and more specific regarding practical implementation of the three broad option packages assessed in addition to the status quo. It could also have been more transparent, precise and complete regarding the data and methods used for the analysis, particularly in relation to the quantitative estimates. As 96% of the companies affected are SMEs, a better quantified substantiation of the effects of the initiative on them would have been pertinent. Some important information, for instance on existing national and EU liability rules or on core elements of digital services (active and passive hosting, country of establishment principle) are mentioned only briefly or feature in the annexes, which does not help the reader grasp the complex and partly overlapping elements. Overall, the IA informs the proposal, but could have benefited from further consistency, coherence and transparency.

ENDNOTES

- ¹ Defined as synonymous with 'information society services' in the e-Commerce directive, thus 'services normally provided against remuneration, at a distance, by electronic means and at the individual request of a recipient of services'. They include a wide range of services, from apps, newspapers and online shops to 'online intermediaries' (internet service providers, online forums, media-sharing platforms, social networks and messaging services) IA, p. 7).
- ² See T. Madięga, [Digital services act](#), EPRS, European Parliament, March 2021.
- ³ Under the current rules, online platforms are not legally responsible for hosting illegal content, but are required to remove such material once it is flagged, see [Reform of the EU liability regime for online intermediaries](#). Annex 9 of the

- IA provides an overview of the current rules on liability, which would have been useful in the main text of the IA. It refers to two studies commissioned by the Commission on this issue, but the corresponding footnote is empty (p. 155).
- 4 The IA explains that the estimates are based on cross-border use of online platforms for 31 084 web-domains (p.24). Annex 4, pp. 56-61, mentions a non-specified JRC model using the 'legal distance' indicator based on data from cross-border use of 100 websites in 20 Member States, from 2018 to 2020, and concludes that cross-border trade could be increased by 1 % to 1.5 %.
 - 5 Annex 6 of the IA provides a supporting analysis of the legal basis of the proposal (Article 114 TFEU).
 - 6 The operational objectives are: 1) harmonised application of due diligence obligations for online platforms; 2) legal certainty and consistent enforcement of due diligence obligations and legal clarity in the liability regime for online intermediaries; 3) mitigation and prevention of further burdensome legal fragmentation; 4) effective application of due diligence obligations by service providers; 5) effective law enforcement; 6) service providers' compliance with due diligence and transparency obligations; 7) investigations, audits and data requests from authorities, researchers and independent auditors; 8) effective supervision and enforcement by Member State of establishment; 9) responsive and effective cross-border cooperation.
 - 7 Defined in the IA's glossary as 'an individual or entity which is considered by a hosting service provider to have particular expertise and responsibilities for the purposes of tackling illegal content online' (IA, p. 4).
 - 8 The IA defines platforms with 45 million monthly users from the EU as 'very large' and explains the reasoning behind this classification (IA, p. 45 and Annex 4, pp. 62-65).
 - 9 The IA considers two sub-options for the EU board, an ad hoc independent advisory group to support the national digital services coordinators and the Commission, or a permanent agency with legal personality and a secretariat (IA, p. 46). The IA alternates between 'digital coordinators' and 'digital services coordinators'.
 - 10 The source indicated for the estimate of the equivalent turnover is a press release: '[Cross border commerce Europe](#)'.
 - 11 Little explanation is given by the IA in Annex 4 of the method used for these estimations, indicating that they are based on company data on 'notice and action' and transparency obligations in German law over a period of six months (no indication of the year or the number of companies, nor on the extrapolation of these estimations to the EU-27). This was combined with the JRC model on 'legal distance' mentioned in footnote 4. Table 7 features annual cost savings for SMEs on due diligence obligations of between €400 000 and €15 million, without explaining the deviation from the maximum €11 million cost savings mentioned earlier in the IA (IA, pp. 53, 74).
 - 12 The source of this estimate is incomplete and indicated as 'forthcoming', so this cannot be checked (IA, p. 57).
 - 13 The synthesis report in Annex 2 of the IA provides break-downs of the type and geographical origin of respondents. It also reports on four other open public consultations on digital services conducted in 2018, 2016, 2012 and 2010.
 - 14 Annex 5 of the IA.
 - 15 [For instance, the Evidence Hub for Policymakers](#) criticises the IA's use of data on counterfeit goods (IA, p. 13).

This briefing, prepared for the IMCO committee, analyses whether the principal criteria laid down in the Commission's own Better Regulation Guidelines, as well as additional factors identified by the Parliament in its Impact Assessment Handbook, appear to be met by the IA. It does not attempt to deal with the substance of the proposal.

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