

## Norway's views on the consultation regarding the Digital Services Act (DSA) October 2020

### Introduction

Norway welcomes the Commission's initiative to modernise the current legal framework for digital services through a new Digital Services Act package.

We share the Commission's view that this is a necessary initiative to take account of technical developments and capabilities, to strengthen the Single Market for digital services and foster innovation and competitiveness of the European online environment. We also agree that a modern legal framework is required to ensure the safety of users online and to allow innovative digital businesses to grow, while respecting the basic principles underpinning the current legal framework of the e-Commerce Directive.

We would like to stress that we consider it important that the new framework does not lead to an excessive regulatory burden that disproportionately impacts European small and medium-sized enterprises and creates barriers to market entry. It is nevertheless important that necessary considerations concerning security and crime are taken into account.

Furthermore, we would like to underline the importance of having a continuous focus on all digital solutions being universally designed and preventing discriminatory content, including hate speech on online platforms and services, against persons with disabilities.

We support the approach that the Commission has taken by initiating a consultation process to support the work in analysing and collecting evidence for scoping the specific issues that may require an EU-level intervention.

As an EEA EFTA state and a close partner for the EUs work on digitalisation, we would like to share the Norwegian Government's views on some of the topics raised in the consultation. These views are grouped according to the first four main headlines in the Commission's online consultation.

### Main positions

The main positions can be summarized as follows:

#### **1. How to effectively keep users safer online**

Defining harmful and illegal content and related enforcement not already harmonised at EEA level should remain within the competence of individual EEA states. Any potential measures to keep users safe online should be targeted towards the platform's system design. Online platforms should ensure that clearly illegal content is removed.

Platforms have the means to contribute to ensuring that consumer protection rules, including those on product safety, are adhered to by those operating on the platforms. The new framework should not only establish more responsibility in this respect on the platforms but also ensure that the rules are effective and enforceable.

#### **2. Reviewing the liability regime of digital services acting as intermediaries**

The main principles in the e-commerce directive should be maintained. This implies that the principle of country of origin, the principle of limited liability for online intermediaries and no general monitoring obligations, should be upheld.

While recognizing these principles, an update of the current legal framework is needed. Any potential provisions on platforms' liability should not lead to platforms exercising control over content made available by editorial media (such as take-down or modification).

### **3. What issues derive from the gatekeeper power of digital platforms**

Online platforms use automated and algorithmic means to moderate, curate and promote content. This can potentially harm media pluralism and the general public's access to important information. The Commission should therefore consider mechanisms to achieve more algorithmic transparency.

An ex ante-regulation must be based on objective criteria and be targeted so that the desired goals are achieved. Furthermore, the regulation should not go beyond what is necessary.

### **4. Other emerging issues and opportunities, including online advertising and smart Contracts**

Consumers often become victims of unfair and unlawful practices. Platforms should play a role in reducing "aggressive marketing", for example by limiting the number of ads and pop-up screens. Equally, they have the possibility to, and should tackle scams. In addition, there is a strong need for requirements for transparency and consumer information on advertising.

For more in-depth comments, please see below.

### **1. How to effectively keep users safer online?**

Dissemination of harmful and illegal content online may cause harm, not only to children and young adults, but also for society as a whole through the spread of disinformation. What constitutes harmful and illegal content is not fully harmonized at EEA level, due to cultural and normative differences between the Member States. Defining harmful and illegal content and related enforcement not already harmonised at EEA level should therefore remain within the competence of individual EEA states. Any potential measures to keep users safe online should be targeted towards the platform's system design, such as parental control mechanisms age-verification systems, user complaint mechanism, rating and notification tools.

In order to safeguard freedom of speech and editorial independence in editorial media, online platforms should be prevented from any undue form of secondary control, by modifying or removing editorial content produced and published under editorial responsibility on the platform. If platform operators are about to modify or remove content

belonging to editorial media, they should have in place an efficient and transparent system for dialogue and complaints handling.

Removal and modification based on a platform's internal code of conduct may have a negative impact on the freedom of expression and editorial freedom of editorial media. An example in this regard, is that Google recently claimed a "policy violation" had been found in educational TV content about puberty from NRK, the Norwegian public service broadcaster. The program was considered to be "sexually offensive or violent content". The same content is well received and regarded as educational content in Norway, both by the Norwegian audience and by regulatory authorities. The above mentioned example illustrates that online platforms may have stricter criteria than laws and regulations that apply in individual Member States. In this regard, the DSA should put in place measures which prevent a platform's internal code of conduct to overrule editorial decisions that comply with laws and regulations in the individual member state.

Online platforms such as social media platforms are popular amongst kids from an early age. Even though the platforms have age limits, and GDPR prevents social media companies from processing children's personal data before they are 13 if they do not have their parent's permission, more than 50 per cent of Norwegian 9-year-olds use social media – pretending to be older than they are. "Online kids" are exposed to tailored marketing of products to lose weight or build muscles, to violent content, ways to self-harm and hate speech targeting people of color, religion, nationality or sexual orientation. Online platforms can no longer shy away from the responsibility to make their platform safer for kids, they have to improve their age verification systems and provide parental consent forms that enable a valid consent for their kid's digital explorations. Online platforms should ensure that clearly illegal content is removed, and that algorithms don't favor content or ads that are known to increase mental health problems and negative body image amongst kids.

The forthcoming Digital Services Act is an opportunity to maximize the benefits of digital services, catch up with market developments and address inter alia existing consumer protection and safety problems. It should be noted that in relation to the principle of freedom of speech, commercial communications are different to i.e. expression of political or religious beliefs.

We observe that there exists a wide range of illegal commercial activities online, including sales of illegal and unsafe products and misleading, deceptive and unfair commercial practices. Hence, strengthening consumer protection should be given high priority in the new legal framework.

Compared to the situation when the e-commerce directive was adopted, the tools and technical solutions available are more developed, making it less of a burden for platforms to perform responsibilities of control and management. This was clearly demonstrated under the Covid19-situation, when platforms such as Google and eBay took more responsibility and removed large amounts of misleading covid19-related advertising and products from their platforms.

However, responsibility should not be limited to extreme situations and dependent on goodwill from the platforms. Regulatory obligations are needed and should apply to all platforms. This would contribute towards a level playing field for businesses and better protection of consumers.

Platforms set the terms and conditions for their users and decide upon the design and choice of architecture, and therefore have the means to play a far larger role in ensuring that consumer protection rules, including those on product safety, are adhered to by those operating on the platforms.

The new framework should not only establish more responsibility in this respect on the platforms but also ensure that the rules are effective and enforceable. Hence, new rules should establish principles for notice and action procedures for tackling illegal activities, and should provide enforcers with adequate tools to effectively monitor and enforce. In addition, platforms should ensure robust business user authentication as well as service and product verification process, while preserving the right to anonymity for consumers.

## **2. Reviewing the liability regime of digital services acting as intermediaries?**

Due to the importance of protecting free speech and democracy, the main principles in the e-commerce directive should be maintained. This implies that both the principle of country of origin, the principle of limited liability for online intermediaries and no general monitoring obligations, should be upheld. Online platforms are very different both in size, activity level and focus. Any changes to liability rules and principles for platforms must therefore take this into consideration.

Recognising that the principles of the current regulation should be upheld, technological developments and new business models make an update of the current legal framework necessary. The distinction between "active" hosting services such as Facebook and Youtube and "passive" hosting services such as ISPs and network access providers, needs to be clarified and the role and responsibility of the two types of intermediaries needs to be addressed.

Furthermore, due account should be taken of the principle of Open Internet Access that follows from the Telecom Single Market regulation that prohibits services categorized as "mere conduit" to block, slow down, alter, restrict, interfere with, degrade or discriminate specific content, applications or services.

It is important that any potential provisions on platforms' liability do not lead to platforms exercising editorial control over content made available by editorial media (such as take-down or modification). The DSA should establish safeguards which prevent platforms from applying additional or secondary control over such content. The Commission should take particular care not to overrule national sector-specific liability schemes and other national sector specific laws that apply to editorial media as content providers, even when editorial media content is published on platforms. The Norwegian Media Liability Act provides

detailed rules for all editorial media on editorial independence, on criminal liability and liability for damages, which hold the author, the editor or the publisher responsible for the content. The Norwegian Media Liability Act applies to all editorial media, both self-published editorial content and editorial content published via online platforms such as Facebook and Snapchat. Editorial publishers also adhere to national criminal law and self-regulated ethical standards for the press.

### **3. What issues derive from the gatekeeper power of digital platforms?**

Online platforms use automated and algorithmic means to moderate, curate and promote content. These automated processes impact the accessibility and visibility to users of content of general societal interest. This can potentially harm media pluralism and the general public's access to important information, and may create filter-bubbles which weaken unity of society. Another aspect is the potential harm that may arise from disinformation and the polarisation of debate. The Commission should therefore consider mechanisms to achieve more algorithmic transparency. Such transparency is important in order to understand and foster public and political debate on how information of general societal interest is disseminated online.

User data from online platforms are important to enable editorial media to innovate and enhance their services, in order to stay relevant and be able to fulfill their democratic function. The Commission should therefore look into mechanisms to secure that editorial media get access to user data generated from making their editorial content available on third party platforms, in line with data protection and privacy rules.

Digital markets are dynamic and complex, which make them very challenging to regulate. Any regulation should therefore be designed in such a way that it takes into account rapid changes in technology and changes in the interaction between companies in the relevant markets.

An ex ante-regulation must be based on objective criteria and be targeted so that the desired goals are achieved. Furthermore, the regulation should not go beyond what is necessary. Regulations that are designed this way could ensure predictability for market participants. This can strengthen competition and contribute to increased value creation.

The proposed new competition tool can make it easier for national competition authorities to intervene against competition issues that are not necessarily captured by the traditional tools in the competition rules. This can make competition policy more effective. The conditions for when such a tool can be used should be transparent and predictable. Interventions in markets should be proportionate to the competition issue it is intended to solve.

### **4. Other emerging issues and opportunities, including online advertising and smart contracts**

Consumers often become victims of unfair and unlawful practices. This also includes advertising and marketing, such as hidden marketing of products without revealing that they are paid for, “aggressive marketing” and advertising scams. In addition, there is a lot of marketing directed at children with direct exhortation to buy an advertised product or encouragement for children to persuade an adult to buy the product for them.

Platforms should play a role in reducing “aggressive marketing”, for example by limiting the number of ads and pop-up screens. Equally, they have the possibility to and should tackle scams. Platforms could also do more to make sure the content is tailored to the user's age, for instance concerning in-game marketing.

In addition, there is a strong need for requirements for transparency and consumer information on advertising. There should be obligations to avoid manipulative and deceptive practices and algorithm design patterns, as well as obligations to provide information regarding the collection and use of personal data in online services. This should apply particularly to those platforms that perform ranking or comparison services.

### **Concluding remarks**

Norway hopes to be able to contribute in many areas included in the new Digital Services Act package and we look forward to collaborating with the Commission and the EU Member States in developing the new legal framework in line with our common European values.