Regulatory environment for platforms, online intermediaries, data and cloud computing and the collaborative economy

Fields marked with * are mandatory.

***Please indicate your role for the purpose of this consultation**

An individual citizen

An association or trade organization representing consumers

X An association or trade organization representing businesses

An association or trade organization representing civil society

An online platform

A business, including suppliers using an online platform to provide services

A public authority

A research institution or Think tank

Other

***Please describe the type of online platforms that you represent, a brief description of the online platform and indicate its name and web address**

1500 character(s) maximum

EuroISPA is the world's largest association of Internet Services Providers (ISPs) representing the interests of more than 1800 ISPs across the EU. EuroISPA – as an umbrella association - benefits from a broad membership, including Internet access providers, hosting providers, hotlines, information society services. EuroISPA is a major voice of the Internet industry on information society subjects such as cybercrime, data protection, e-commerce regulation, EU telecommunications law and safe use of the Internet.

You can find out more about EuroISPA in the following website: http://www.euroispa.org/

***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**

3000 character(s) maximum

EuroISPA is a pan European association of European Internet Services Providers Associations (ISPAs). It is the world's largest association of Internet Services Providers (ISPs), representing over 2300 ISPs across the EU and EFTA countries – including ISPs from Austria, Belgium, the Czech Republic, Finland, France, Germany, Ireland, Italy, Norway, Romania and the UK.

The association was established in 1997 to represent the European ISP industry on EU policy and legislative issues and to facilitate the exchange of best-practices between national ISP associations. Its secretariat is located in Brussels.

EuroISPA is recognised as the voice of the EU ISP industry and is the largest ‘umbrella’ association of Internet Services Providers in the world. The reason for EuroISPA’s success to date is doubtlessly that it reflects the views of ISPs of all sizes from across its member base.

***Are you a SME or micro enterprise?**

Yes

x No

*Please specify

100 character(s) maximum

Please indicate your country of residence

Austria

X Belgium

Bulgaria

Czech Republic

Croatia

Cyprus

Germany

Denmark

Estonia

Greece

Spain

Finland

France

Hungary

Ireland

Italy

Lithuania

Luxembourg

Latvia

Malta

The Netherlands

Poland

Portugal

Romania

Slovakia

Slovenia

Sweden

United Kingdom

Non-EU country

* Please specify the Non-EU country

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

EuroISPA - European Internet Services Providers Association

Rue du Commerce 124/5 - 1000 Brussels

T: +32 (0)2 550 41 22

secretariat@euroispa.org

*** Is your organisation registered in the Transparency Register of the European Commission and the European Parliament?**

X Yes

No

Non-applicable

*** Please indicate your organisation's registration number in the Transparency Register**

EU Transparency Register ID Number: 54437813115-56

*** I object the publication of my personal data**

Yes

X No

Please provide a brief justification.

1000 character(s) maximum

Online platforms

SOCIAL AND ECONOMIC ROLE OF ONLINE PLATFORMS

Do you agree with the definition of "Online platform" as provided below?

"Online platform" refers to an undertaking 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.

Typical examples include general internet search engines (e.g. Google, Bing), specialised search tools (e.g. Google Shopping, Kelkoo, Twenga, Google Local, TripAdvisor, Yelp,), location-based business directories or some 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."

Yes

X No

***Please explain how you would change the definition**

1000 character(s) maximum

OPTION 3: COMPROMISE PROPOSED BY THE SECRETARIAT

The term "information society services" defined in Directive 98/34 has never been challenged because it is still fit for purpose and brings the legal certainty needed in the digital economy ecosystem. This new definition of "online platform" focuses on specific aspects of some digital businesses. Having a generic and unique definition for online platform is unlikely to fit for all purposes and could lead to uncoherent legislation that could hamper innovation. EuroISPA wishes to contribute to the debate on the role of online platforms, but calls the Commission to clarify the scope of the definition and the implications that it would have vis-à-vis other existing legal concepts. Additionally, we believe that introducing intermediary liability on the debate on platforms is not appropriate. The debate on platforms should focus on the role of innovative digital players, and should not be used to alter the regime of intermediary liability under Directive 2000/31.

What do you consider to be the key advantages of using online platforms?

Online platforms…

X make information more accessible

X make communication and interaction easier

X increase choice of products and services

X create more transparent prices and the possibility to compare offers

X increase trust between peers by providing trust mechanisms (i.e. ratings, reviews, etc.)

X lower prices for products and services

X lower the cost of reaching customers for suppliers

X help with matching supply and demand

X create new markets or business opportunities

X help in complying with obligations in cross-border sales

X help to share resources and improve resource-allocation

X others:

*Please specify:

Drive and promote innovation, growth, jobs and consumer choice. Decrease of transfer costs.

Have you encountered, or are you aware of problems faced by consumers or suppliers when dealing with online platforms?

"Consumer" is any natural person using an online platform for purposes outside the person's trade, business, craft or profession.

"Supplier" is any trader or 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.

Yes

X No

I don't know

Please list the problems you encountered, or you are aware of, in the order of importance and provide additional explanation where possible.

EuroISPA is the world's largest Internet Services Providers Association and as such, we have not directly encountered major problems faced by consumers or suppliers when dealing with online platforms. Naturally, as with any business, a small proportion of consumers may be disappointed with their experience; the real question is then whether the business has adequate means to address such issues as they arise. We believe that in general platforms have developed sophisticated mechanisms to manage customer service complaints at scale, including the development of innovative means to manage complaints regarding other platform users rather than the platform itself.

Nonetheless, we are aware that online platforms are a recent, spectacular development of the digital economy and are shaping personal behaviours and business models with a rapidity and depth that few people could foresee. Because of this tremendous change of society and market, we cannot rule out that consumers and business may face temporary problems as platforms continue to develop improved means to address issues as they arise in the new environment.

EuroISPA is following such debates in various areas and it is convinced that market dynamics have proven to be successful to help consumers and suppliers to adapt to the changes that the booming of online platforms have brought. In this regard, it is crucial to have an open and competitive market that is flexible and that creates the right environment for innovation to thrive.

Notwithstanding the above, it should be noted that EuroISPA is a wide association that represents both large global Internet operators and small ones focused on national markets. As a logical consequence of this diversity, the experiences that our members face in different markets with different circumstances may differ, and some of our members consider that targeted regulatory intervention can be justified in some areas.

EuroISPA members are united in the view that any action from legislators should require a careful assessment of the complexity, diversity and interdependence that is intrinsic to the online market, and should favor continued innovation in both technical matters and new ways to improve customer service.

3000 character(s) maximum

How could these problems be best addressed?

X market dynamics

regulatory measures

X self-regulatory measures

a combination of the above

TRANSPARENCY OF ONLINE PLATFORMS

Do you think that online platforms should ensure, as regards their own activities and those of the traders that use them, more transparency in relation to:

a) information required by consumer law (e.g. the contact details of the supplier, the main characteristics of products, the total price including delivery charges, and consumers' rights, such as the right of withdrawal)?

"Trader" is 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.

Yes

No

X I don't know

b) information in response to a search query by the user, in particular if the displayed results are sponsored or not?

Yes

No

X I don't know

c) information on who the actual supplier is, offering products or services on the platform

Yes

No

X I don't know

d) information to discourage misleading marketing by professional suppliers (traders), including fake reviews?

Yes

No

X I don't know

e) is there any additional information that, in your opinion, online platforms should be obliged to display?

500 character(s) maximum

EuroISPA finds the formulation of above questions to be misleading and incorrect. It does not make sense to ask generically whether online platforms should be "more" transparent, given that this sector consists of a huge variety of different business models.

Notwithstanding the above, given the broad diversity of EuroISPA, it would be useful that online platforms clarify and publish potential limits about interoperability and portability of services.

Have you experienced that information displayed by the platform (e.g. advertising) has been adapted to the interest or recognisable characteristics of the user?

X Yes

No

I don't know

Do you find the information provided by online platforms on their terms of use sufficient and easy-to-understand?

Yes

No

***What type of additional information and in what format would you find useful? Please briefly explain your response and share any best practice you are aware of.**

1500 character(s) maximum

We would like to stress that the above question about sufficiency and easiness of Terms & Conditions ("T&C") is too generic, considering the variety of services and business models involved. Letting just "yes" and "no" as a possible answer make very difficult for EuroISPA to provide a useful response. An evaluation could be given only on a case by case basis.

Best practice experience should be shared and improved. For instance, businesses often receive changes to T&C via a separate notification, highlighting a change to a certain part of the terms. For businesses it might get difficult to follow-up on different notifications on specific changes, without having the whole 'revised' terms at hand. Therefore it is advisable that, upon modifications in the terms, the whole T&C should be made available, highlighting the changes made.

Do you find reputation systems (e.g. ratings, reviews, certifications, trustmarks) and other trust mechanisms operated by online platforms are generally reliable?

X Yes

No

I don't know

Please explain how the transparency of reputation systems and other trust mechanisms could be improved?

The universe of online platforms is very diverse and thus we should avoid making generalisations and try to find fit-for-all answers. Most of the online services count with user-generated rating systems that are based on subjective views. This empowers online communities of consumers, but, at the same time, makes the system dependent on the collective evaluation of reviews, which may not necessarily reflect the reality, but the average views of the reviewers based on subjective experiences. The users should be aware of what reputation systems are, i.e. the result of a collective human evaluation and not of an objective, responsible activity. A recent Italian decision in the matter of restaurants rating (Tar Latium decision of May 20, 2015, in the AGCM/Tripadvisor proceeding) confirms that the online platforms cannot be responsible for fake reviews and that should only alert users of such potential inconveniences.

There is always room for improvement with regard to the transparency of reputation systems or trust mechanisms. For example, operators could exchange their best practices. However, there is little regulators could do in this field, and it should be left to solutions derived from a free market and consumer demand. This will be sufficient to address any existing concerns and spur further innovation in this field.

What are the main benefits and drawbacks of reputation systems and other trust mechanisms operated by online platforms? Please describe their main benefits and drawbacks.

Reputation systems (RS) and trust mechanisms can have the benefit to spur transparency and foster competition in former non-transparent markets. Reviewed providers benefit from RS by receiving feedback on their products or services. Furthermore, they can improve the relation with customers, who have the opportunity to improve the product or service with their comments. However, there can be drawbacks when those RS are not managed in an optimal way. This is still an emerging technology and there could be room for improvement in some areas, such as fake reviews.

USE OF INFORMATION BY ONLINE PLATFORMS

In your view, do online platforms provide sufficient and accessible information with regard to:

a) the personal and non-personal data they collect?

X 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?

X Yes

No

I don't know

c) adapting prices, for instance dynamic pricing and conditions in function of data gathered on the buyer (both consumer and trader)?

X Yes

No

I don't know

Please explain your choice and share any best practices that you are aware of.

1500 character(s) maximum

It is not possible to respond to the above questions in a yes/no fashion if we are to include all online players, especially for EuroISPA, which has a diverse membership and some of the elements of its constituency may face different realities.

All in all, the current legal framework has proven to be flexible enough to allow the emergence of a wide range of best practices. The upcoming General Data Protection Regulation foresees in its Chapter III new requirements on the collection of personal and non-personal data, which will already complement the current system.

Consumer demand favours best practise models which will lead to the adaption of successful best practices offering a high level of transparency and user protection.

Please share your general comments or ideas regarding the use of information by online platforms

3000 character(s) maximum

See above

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

Please provide the list of online platforms with which you are in regular business relations and indicate to what extent your business depends on them (on a scale of 0 to 3). Please describe the position of your business or the business you represent and provide recent examples from your business experience.

	Name of online platform	Dependency (0:not dependent, 1: dependent, 2: highly dependent)	Examples from your business experience
1			
2			
3			
4			
5			

How often do you experience the following business practices in your business relations with platforms?

The online platform …

* 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.

Never		**Sometimes**	**Often**	**Always**
requests me to use exclusively its services				
applies “parity clauses" *				
applies non-transparent fees				
applies fees without corresponding counter-performance				
applies terms and conditions, which I find unbalanced and do not have the possibility to negotiate				
unilaterally modifies the contractual terms without giving you proper notification or allowing you to terminate the contract				
limits access to data or provides it in a non-usable format				
puts significant constraints to presenting your offer				
presents suppliers/services in a biased way				
refuses access to its services unless specific restrictions are accepted				
promotes its own services to the disadvantage of services provided by supplier				

If you do experience them, what is their impact on your business activity (on a scale from 0 to 3).

Impact on my business:

The online platform …

	0 – no impact	1 – minor impact	2 – considerable impact	3 – heavy impact
requests me to use exclusively its services				
applies “parity clauses" *				
applies non-transparent fees				
applies fees without corresponding counter-performance				
applies terms and conditions, which I find unbalanced and do not have the possibility to negotiate				
unilaterally modifies the contractual terms without giving you proper notification or allowing you to terminate the contract				
limits access to data or provides it in a non-usable format				
puts significant constraints to presenting your offer				
presents suppliers/services in a biased way				
refuses access to its services unless specific restrictions are accepted				
promotes its own services to the disadvantage of services provided by suppliers				

If you are aware of other contractual clauses or experience other potentially problematic practices, please mention them here

1000 character(s) maximum

Please briefly describe the situation

3000 character(s) maximum

Are you a holder of rights in digital content protected by copyright, which is used on an online platform?

Yes

X No

Platforms (including hosting service providers and content aggregators) or any other interested party are invited to express their positions with regard to relations of platforms with holders of rights in digital content.

Platforms are online intermediaries, and as such they benefit from the liability regime laid down in the E-commerce Directive. Holders of digital contents are just one example of a wide range of stakeholders who may disagree with particular content displayed on a platform. The E-Commerce Directive offers an adequate framework to guide the relations between these two.

As a holder of rights in digital content protected by copyright have you faced any of the following circumstances:

An online platform such as a video sharing website or an online content aggregator uses my protected works online without having asked for my authorisation.

Yes

No

An online platform such as a video sharing website or a content aggregator refuses to enter into or negotiate licensing agreements with me.

Yes

No

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

An online platform uses my protected works but claims it is a hosting provider under Article 14 of the E-Commerce Directive in order to refuse to negotiate a licence or to do so under their own terms.

Yes

No

If you own/develop an online platform, what are the main constrains that negatively affect the development of your online platform and prevent you from extending your activities to new markets in the EU?

3000 character(s) maximum

How do you ensure that suppliers of your platform are treated fairly?

1500 character(s) maximum

Can a supplier personalize its offer of products / services on the platform you represent?

Yes

No

***How?**

1500 character(s) maximum

Is there a room for improvement in the relation between platforms and suppliers using the services of platforms?

No, the present situation is satisfactory.

X Yes, through market dynamics.

Yes, through self-regulatory measures (codes of conducts / promotion of best practices).

Yes, through regulatory measures.

Yes, through the combination of the above.

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?

X Yes

No

Please share your experiences on the key elements of a well-functioning dispute resolution mechanism on platforms

1500 character(s)

No answer unless members provide a DRM fit for this question.

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

Do you see a need to strengthen the technical capacity of online platforms and address possible other constraints on switching freely and easily from one platform to another and move user data (e.g. emails, messages, search and order history, or customer reviews)?

Yes

No

If you can, please provide the description of some best practices (max. 5)

Name of the online platform Description of the best practice (max. 1500 characters)

Google Inc.: Google Takeout allows a user to remove their data including email history, contacts, browsing history, etc from Google and transfer them to other competing services.

Should there be a mandatory requirement allowing non-personal data to be easily extracted and moved between comparable online services?

Yes

No

Please explain your choice and share any best practices that you are aware of.

1500 character(s) maximum

Data portability **should not be a mandatory requirement** for online services but only an option provided by some services to their internet users. A lot of social networks already provide a tool to their consumers allowing them to obtain an electronic copy of their content and data hosted on the service. This enables internet users can then easily move the data obtained to another service.

However, given the wide and diverse membership of EuroISPA, we acknowledge that portability of services would be highly appreciated by consumers and would address competition concerns without over-regulation. The same has been done in the telecom, energy and banking sector, therefore it would be wise to evaluate this option also in the digital market, provided that technology allows it.

In any case, portability of data should be in line with the rules on data protection.

Please share your general comments or ideas regarding the ability of consumers and traders to move from one platform to another

3000 character(s) maximum

Even though portability principles are positive, we should refrain from strict legal requirements and extremely detailed portability prescriptions. Moreover, data portability will also have a cost, and could limit the development of the sector by dissuading start-ups to develop new online services.

ACCESS TO DATA

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?

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

Would a rating scheme, issued by an independent agency on certain aspects of the platforms' activities, improve the situation?

Yes

X No

*Please explain your answer

1500 character(s) maximum

While it is important to understand that changes to access to data may represent inconveniences to consumers, it is important for business to retain the possibility to adjust their services and the related terms and conditions to the changing business environment. This is in particular true in the online environment, which is clearly characterised by dynamic and constant change. While businesses already make important efforts to highlight the changes they make, any obligation that would prohibit companies to adjust their business practices to the competitive environment and even more importantly to the ever evolving needs of their customers would be hugely detrimental to European businesses. Such new rules might hit start-ups especially hard as they would lose their flexibility, one of their key advantages they hold over bigger competitors. In the interest of the emerging start-up the European Commission should refrain from adding unnecessary red tape that would prevent European start-ups to scale up.

Please share your general comments or ideas regarding access to data on online platforms

3000 character(s) maximum

Access to data on online platforms is the key for the high level of innovation that characterises digital markets. It is the driving force behind the economic development that the digital sector can foster.

The high level of innovation activity on digital markets is favoured by low barriers to market entry and access to data. Data in the digital age might be seen akin to a renewable resource that many actors can use to build a successful business. Digitalisation and the Internet in particular, have reduced a whole range of economic costs for businesses. As the German Monopolies Commission has highlighted in their recent special report on "The challenge of digital markets": "Through such cost reduction companies can set up and expand their operations very quickly. In addition, whereas high investment costs can frequently make a market entry difficult, such costs have in recent times increasingly become variable costs in certain parts of the digital economy. This is the case where computing power or storage space can be rented by companies to fit their needs, for instance thanks to new technologies (e.g. cloud computing) or open source software. Furthermore lower barriers to entry increase competition in digital markets".

As a final remark, it is important to consider that collecting and analyzing data is becoming an inherent part of commercial activity, and there are many businesses (e.g., data aggregators and sellers) that provide access to data. As such, every company is, or has the potential to be a data company. Understanding data can help businesses create better products and services and work more efficiently. None of these benefits are unique to digital businesses or Internet platforms.

Tackling illegal content online and the liability of online content

Please indicate your role in the context of this set of questions

Terms used for the purposes of this consultation:

"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, consumer rights infringements, 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, hosting 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 that gives the latter knowledge of a particular item of illegal content that it transmits or stores and therefore creates an obligation for it to act expeditiously by removing the illegal content or disabling/blocking access to it.. Such an obligation only arises if the notice provides the internet 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.

individual user

content provider

notice provider

intermediary

X none of the above

***Please explain**

EuroISPA is the largest internet association. As such, its membership represents intermediaries, notice providers, hosting services, internet access providers, private companies, hotlines, Intellectual Property Right holders and business federations.

Have you encountered situations suggesting that the liability regime introduced in Section IV of the E-commerce Directive (art. 12-15) has proven not fit for purpose or has negatively affected market level playing field?

Yes

X No

***Please describe the situation.**

3000 character(s) maximum

The E-commerce Directive's liability regime has proven itself effective and proportionate, and has promoted dynamic, competitive, markets since its inception. It gives online service providers the confidence to provide their services. Consequently, we do not see the need of changing its liability regime for the following reasons:

1. The exact scope of 'hosting' is sufficiently clear

The e-Commerce Directive and the different CJEU case laws have contributed to defining the definition of 'hosting'. The L'Oreal – eBay case, in particular, clarified that the part dedicated to the effective hosting of content should be differentiated from the rest of the activities from an online services provider. This is a value judgment that can be performed on a case-by-case basis only.

2. The terms "actual knowledge" and "awareness" are sufficiently clear: We understand "actual knowledge" as an order coming from the court or a public authority and "awareness" as coming from a third party's notice (i.e. citizen, user, hotline, etc.)

Focusing on "awareness" of facts and circumstances, we consider that any alleged illegal content notified by a non-public authority or court must depend on the fulfilment of the notification requirements, with an engagement of notice providers' responsibility to avoid abuses. This would also allow meeting the standard set by the CJEU in the L'Oreal - eBay case stating that a notice cannot automatically lead to awareness of illegal content. If the notice is "insufficiently precise or inadequately substantiated" the notice does not make the hosting service provider aware of illegal content. This ruling adds an additional and needed extra-layer of protection for the hosting provider, preventing it from blindly execute all notifications even if incomplete or misleading. In case of alleged manifest illegal content (i.e. child sexual abuse material), any notification received by the hosting provider should be promptly forwarded to the competent authority in accordance with the article 15.2 of the e-Commerce Directive. Considering the severe aspect of such content, both morally and from a public interest point of view, any action by hosting providers should follow a proper assessment by a competent body.

3. The term "expeditiously" is sufficiently clear: The definition provided in the ECD allows Member States to be sufficient flexible when determining deadlines for action according to the kind of alleged illegal content.

To sum up, the ECD provides the necessary legal certainty and should remain as it is. The Directive holds that hosting providers are not liable for infringement unless they fail to take action on reported content. Without such legal protections, content hosts, blogs, Internet access providers, and a wide range of other online platforms would be hampered in providing an environment for free expression due to potential civil and criminal liability. Finally, The ECD protects everyone from small startups to companies of all kinds.

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 and applied in a homogeneous way, having in mind the growing involvement in content distribution by some online intermediaries, e.g.: video sharing websites?

X Yes

No

I don't know

Please explain your answer.

1500 character(s) maximum

As the previously stated concepts, the concept of «mere technical, automatic and passive» information transmission by ISS has proven to be flexible enough and interpreted several times by the Courts in a consistent manner, bringing legal certainty into the sector. Some examples are found in the following cases: C-236/08, Google; C-324/09, L'Oréal; C-70/10, Scarlet; C-360/10, SABAM; C-291/13, Papasavvas. Video sharing websites have not raised any specific issue, and therefore, should not be treated in a different way than hosting service providers. The majority of the video sharing websites have developed their own systems that prevents users from uploading copyright infringing content. These systems are possible today due to the flexibility and adequacy of the E-commerce Directive.

However, such systems can never be a substitute to the rule of law, require the collaborations of rightholders, and cannot be extended systematically to other types of services.

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 e.g. 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 diverging 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

X No

Please provide examples

1500 character(s) maximum

With all arguments considered, retaining the status quo on the liability regime of the E-commerce Directive is the best option to allow businesses and consumers to benefit from further growth and innovation in the digital economy.

Same is true for the debate as to whether to revisit the existing categories of intermediary services. In fact, the key advantage of the E-commerce Directive is its technological neutrality, making it able to adjust to new developments on the market. The directive does not list specific business models, instead laying down a resilient, future proof model.

There is no doubt that technologies have evolved and that some intermediaries have more capacity of action, for example, providers offering mailing services may apply mechanism to reject spam messages so that their users are not flooded with unwanted messages. However this does not change the rationale of the intermediaries' liability regime. In other words, it's not because these providers can decrease the number of unsolicited mails that they can or under any condition should become liable for all forms of content they carry.

Diverging case law at the national level is due to local legal specificities that arguably are not compatible with the principles of the e-commerce directive, for example the peculiar duty of care ("Störerhaftung") regime in Germany.

On the "notice"

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?

Yes

X No

Do you think that any of the following categories of illegal content requires a specific approach:

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

***Please specify.**

500 character(s) maximum

It is important to keep the uniform horizontal application of article 14 ECD. Some types of content can be more easily identified as illegal content (such as child sexual abuse content, which is manifestly illegal), but some others may require difficult legal assessments that should not be carried by intermediaries. Enforcement and public authorities should analyse the content and issue clear and precise notices to ISPs. This is particularly important in the context of radical content.

Please explain what approach you would see fit for the relevant category.

1000 character(s) maximum

Under the liability system of the E-Commerce Directive and its case law, intermediaries must take action when the content is obviously unlawful. In Austrian the Supreme Court of Civil matter has established the criteria of "obviousness to a lay" as the respective threshold. This is a good rule, as intermediaries are private entities and are not in position to arbitrate complex legal situations.

Thus the E-commerce Directive already distinguishes between content that obviously requires immediate action (e.g. CSAM) and other content. This approach is more effective and rational than distinguishing between different categories or types of illegal content. There is no need to implement a specific approach for single or several of the categories listed above, as intermediaries have developed their own policies, or adhered to codes of conduct, under which remedies can be provided that are broader than could be prescribed by law e.g. global removal of copyright infringing content.

On the "action"

Should the content providers be given the opportunity to give their views to the hosting service provider on the alleged illegality of the content?

Yes

X No

*Please explain your answer

1500 character(s) maximum

Hosting providers cannot in all cases consult the content owner before acting. In case manifestly illegal content such as child sexual abuse images, we can hardly imagine that paedophiles will respond to such a notification. In addition, it is unwise to be in contact with the alleged criminal as this could jeopardize police investigation and also the possibility for the hosting provider to keep taking stock of the alleged illegal activity. In some Member States, such a contact attempt could even be regarded as cooperation with criminals and therefore would be treated as a crime itself.

However, there are some cases in which the illegality of the content is not straight forward, obvious and undeniable. In those cases, Intermediaries such as hosting providers cannot be forced to act as judges. In most cases intermediaries don't have the resources to act as a mediator.

It is understandable (though clearly regrettable) that some intermediaries might take content down without properly examining the asserted grounds for removal. The greater the pressure that is put upon intermediaries in terms of liability to mediate or judge such disputes, the greater will be the

incentive to remove content without carefully reviewing or testing the veracity of the notices received. Before approaching the intermediary, the complainant should make a reasonable effort, to contact the content provider responsible for posting the objectionable content and ask to have it removed.

If you consider that this should only apply for some kinds of illegal content, please indicate which one(s)

1500 character(s) maximum

Should action taken by hosting service providers remain effective over time ("take down and stay down" principle)?

Yes

X No

Please explain

Rights owners should have an expectation that online providers take reasonable steps to make sure items taken down remain down. However, any policy should take into consideration that there will always be bad actors that circumvent even well-designed policies, and online platforms should not have to worry about being punished for not being perfect. When a hosting provider has taken action following a notification, it cannot prevent the same content from being re-uploaded by the content owner or someone else. Obliging a hosting provider to take pro-active measures with regard to content already taken down, albeit by court order or third party notification, will amount to imposing a general monitoring obligation, which is not allowed under the e-Commerce Directive. The latter has been confirmed by the recent Court of Justice of the European Union decisions (SABAM v. Scarlet and SABAM v. Netlog).

In addition, even if an intermediary had the technical capacity to put in place stay down measures, it would have no effect. The content would quickly be available somewhere else (on a site that does not play by EU rules) and users would still be able to access it.

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 by trade, professional and consumer associations or organisations designed to contribute to the proper implementation of Articles 5 to 15". At the same time, however, Article 15 sets out a prohibition to impose "a general obligation to monitor".

(For online intermediaries): Have you put in place voluntary or proactive measures to remove certain categories of illegal content from your system?

Yes

No

*Please describe them.

1500 character(s) maximum

***Could you estimate the financial costs to your undertaking of putting in place and running this system?**

1500 character(s) maximum

Could you outline the considerations that have prevented you from putting in place voluntary measures?

1500 character(s) maximum

Do you see a need to impose specific duties of care for certain categories of illegal content?

Yes

X No

I don't know

Please specify for which categories of content you would establish such an obligation.

1500 character(s) maximum

The Intermediary is already expected to take action when specifically notified or if the content is manifestly illegal, regardless of its category. Therefore, it does not make sense to introduce a specific provision that categorises the different content. In addition, the virtue of this system is that it leaves to third parties to notice the unlawful content, as the intermediary should not be in a position whereby they have to assess which content is unlawful.

In addition, there should be no liability on the intermediary where it acts in good faith to restrict allegedly illegal or otherwise objectionable content. Voluntary systems for notice and action, flagging systems, manual review systems, and other content monitoring/optimization and moderation systems aimed at preventing illegal content, or content that violates terms and conditions of service, should not be counted against the intermediary, when considering whether the activities of an intermediary are of a merely technical, automatic and passive nature, or whether the intermediary has knowledge of or control over the data which is transmitted or stored.

That is to say, that the adoption of such pro-active measures should not be used as the basis for denying the intermediary the benefit of the limitation of liability set out in the E-commerce Directive. Otherwise, the intermediary is obviously incentivised to take a hands-off approach and do nothing.

Please specify for which categories of intermediary you would establish such an obligation

1500 character(s) maximum

Please specify what types of actions could be covered by such an obligation

1500 character(s) maximum

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 and the results of the actions taken following the notices)?

Yes

X No

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

X No

Do you think that online intermediaries should have a specific 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?

X Yes

No

Do you think a minimum size threshold would be appropriate if there was such an obligation?

X Yes

No

Please share your general comments or ideas regarding the liability of online intermediaries and the topics addressed in this section of the questionnaire.

5000 character(s) maximum

We do support the European Commission’s goal to make effective the fight against illegal content online with specific focus to massive and commercial piracy. However, the fundamentals of the e-Commerce Directive, in particular the exclusion of a general monitoring obligation and the liability

limits for hosting providers, should not be questioned as they have proven to be effective and are essential for the further development of the Internet.

The clear commitment to a notice-and-take down approach assures legal certainty for the hosting providers regarding illicit behaviours committed by third parties (violation of privacy rights, infringements of copyrights and others). This mechanism guarantees the practicability and therefore the success of numerous online services. Requiring online services to monitor every piece of content or imposing harsh liability on them doesn't make sense -- it would be bad for innovation, free expression, and privacy. This is analogous to the offline world; postal companies are not forced to monitor people's letters to make sure they are not doing something illegal, and they are not held legally responsible for callers who plan a crime using the postal service.

Imposing liability on online intermediaries may create undue costs and burdens, but also chill innovation by creating legal uncertainty. Therefore, intermediaries should receive a fair compensation to cover the costs that the implementation of these measures may entail. In addition, in a scenario in which a service were automatically liable for illegal content, it would be much more likely to remove all sorts of controversial (though legitimate) speech, for fear of facing legal penalties. We recognize the need for online intermediaries to quickly remove illegal content from their websites when notified and to develop reasonable systems to keep illegal products off. At the same time such Notice and Take down requirements must be proportionate and reasonable as to avoid penalizing small and medium enterprises, thereby hampering their business models. Flexibility is key in order to avoid a strong chilling effect on any efforts made by online platforms to help SMEs grow their business and expand their offerings across Europe. If online platforms fear a lawsuit due to a lack of a perfect notice and takedown system, then SMEs will lose one of their greatest opportunities to grow into a pan-EU or global business.

EuroISPA believes that the existence of illicit online content is mostly due to markets failures and to an old-fashioned copyright regime. Therefore, the modernisation of the content market, both from commercial and legislative point of view, constitutes the most important mission to perform, in order to sustain a vibrant and single legal online content market in the EU. The intermediary liability regime is a standard that can be found in multiple legislations (US, Canada, Japan, Australia, etc.). It would be a fundamental problem for internet commerce if multinational companies were subject to a more severe liability regime in Europe, and in particular a burden on European startups that could not compete on the same basis as companies abroad.

Overall, the current regime has proven its worth in the last 15 years and allows a balanced consideration of the interests of both hostings providers and copyright holders.

Finally, it is important to stress that any notice and action measure should have a clear legal basis and be proportionate. Online intermediaries should just be responsible for executing the orders received from the competent public authorities.

Data and cloud in digital ecosystems

FREE FLOW OF DATA

ON DATA LOCATION RESTRICTIONS

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

*Please explain why not

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

Do you think that there are particular reasons in relation to which data location restrictions are or should be justifiable?

Yes

X No

***What kind(s) of ground(s) do you think are justifiable?**

National security

Public security

Other reason

Please explain:

Security is a fundamental concern when determining where to store and how to transfer data.

Yet data localization requirements increase data security risks and costs by requiring storage of data in a single centralized location that is more vulnerable to natural disaster, intrusion, and surveillance.

Data localization requirements make it more difficult to implement best practices in data security - including redundant geographic storage of data and the usage of distributed security solutions such as sharing and obfuscation. Storing data in a single centralized location can also present a more attractive target for surveillance.

ON DATA ACCESS AND TRANSFER

Do you think that the existing contract law framework and current contractual practices are fit for purpose to facilitate a free flow of data including sufficient and fair access to and use of data in the EU, while safeguarding fundamental interests of parties involved?

X Yes

No

***Please explain your position**

3000 character(s) maximum

Existing EU law is well positioned to allow this fundamental transformation to proceed because it already provides for sufficient and fair access to and use of data in the EU, while safeguarding fundamental interests of parties involved.

Concretely, we would like to highlight a necessary distinction between two separate relationships between the user of an Information Society Services ("ISS") (as defined in the E-commerce Directive, 2000/31/EC) and the provider of that service. On the one hand, the contractual relationship between the user and service provider and, on the other hand, the "data relationship" between those two parties.

a) The contractual relationship between the user and the service provider is, by definition, primarily governed by contract law and the terms agreed between the parties. When dealing with consumers, the user also enjoys additional consumer law protections under the Consumer Rights Directive (2001/83/EC) and other such instruments.

b) The data relationship between the parties is governed by the Data Protection Directive (95/46/EC) and related instruments. On the whole, the current regulatory framework is sufficiently equipped to facilitate the free flow of data, including the sufficient and fair access to and use of data, and safeguarding fundamental interests of data subjects.

All these different mechanisms provide a system that allows fair access to data and provides the necessary safeguards for the fundamental rights of data subjects.

In order to ensure the free flow of data within the European Union, in your opinion, regulating access to, transfer and the use of non-personal data at European level is:

Necessary

X Not necessary

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?

Yes

X No

***Which of the following aspects would merit measures? between 1 and 4 choices**

- 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 share your general comments or ideas regarding data access, ownership and use

5000 character(s) maximum

As the digitisation of the European economy continues, data will increase in value. Collecting and analyzing data is becoming an inherent part of commercial activity, and there are many businesses (e.g., data aggregators and sellers) that provide access to data. Every company is, or has the potential to be a data company. Understanding data can help businesses create better products and services and work more efficiently. None of these benefits are unique to digital businesses or Internet platforms.

The recent OECD Report on Data-driven Innovation for Growth and Well-being[1] highlights the complexity of the policy questions around data, including access, ownership and use:

"In contrast to other intangibles, data typically involve complex assignments of different rights across different stakeholders who will typically have different power over the data depending on their role. In cases where the data are considered "personal", the concept of ownership is even less practical, since most privacy regimes grant certain explicit control rights to the data subject that cannot be restricted – see for example the Individual Participation Principle of the OECD Guidelines Governing the Protection of Privacy and Transborder Flows of Personal Data." Given this complexity, the report suggests that policymakers should engage in further thinking on how issues of data ownership and the attribution of liability between decision makers, data and data analytics providers.

EuroISPA would like to use the opportunity also to stress that obligations to inform users about complex technical details in relation to the aspect of "consent" might not live up to its goal as it mostly confuses people rather than helps them.

All in all, EuroISPA observes that the current rules on data access are often too restrictive to allow players in the maket to innovate and thrive. Data Protection laws frequently mix security matters and commercial treatment of personal data, which leads to a stringent framework. In this regard, many times national security concerns are used to impede commercial transactions. Finally, strict data protection regulations should not be applied to micro-SMEs as it poses excessive burdens for their growth.

ON DATA MARKETS

[1] http://www.oecd.org/sti/inno/data-driven-innovation-interim-synthesis.pdf 45

What regulatory constraints hold back the development of data markets in Europe and how could the EU encourage the development of such markets?

3000 character(s) maximum

Before looking at what regulatory constraints hold back the development of data markets in Europe, it is important to consider how commercial decisions are taken on where and what services to offer.

There are, overall, three basic factors that influence businesses' commercial decisions to offer data services: a) commercial considerations such as language, b) profitability or market demand variations; where businesses can secure the necessary rights, in particular copyright, to do so; and c) whether the sale of digital content or a good or the providing of a service leads to additional charges or compliance requirements under national law (e.g. copyright levies).

Short of commercial considerations, copyright, data protection and other compliance requirements seems to be the main obstacle to the development of data markets in Europe.

ON ACCESS TO OPEN DATA

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)?

Open by default means: Establish an expectation that all government data be published and made openly re-usable by default, while recognising that there are legitimate reasons why some data cannot be released.

- Introducing the principle of 'open by default'[1]
- 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 limiting the possibility to charge for re-use of public sector information
- Remedies available to potential re-users against unfavourable decisions
- Other aspects?

*Please specify

Access to open data will have a positive impact on the economy and society at large.

Specifically, there are four main advantages to open data - as identified by the European Commission:

1. Public data has significant potential for re-use in new products and services. By standardising the PSI legislation in the course of implementing the PSI directive, cross border solutions and European wide products will be facilitated. Therefore the implementation process has to be monitored very carefully as some (e.g. Austrian) national public administrations try to avoid obligations put on them by the PSI directive.

As access to public sector information is the key element for re-use purposes, minimum standards for freedom of information acts have to be considered. The recommendation No. R (81) 19 of the Council of Europe on freedom of information could in this respect serve as a draft for a directive on EU Level;

2. Addressing societal challenges – having more data openly available will help us discover new and innovative solutions. The respective Freedom of information acts in the member statesshould be enshrined in the constitutions and seen as fundamental rights.

3. Achieving efficiency gains through sharing data inside and between public administrations;

4. Fostering participation of citizens in political and social life and increasing transparency of government.

To fully reap these four benefits for Europe, the Commission should focus on 1) improving interoperability, 2) introducing the principle of "open by default", 3) further limiting the possibility to charge for re-use of public sector information and 4) make cost free redress mechanisms available to potential re-users against unfavourable decisions.

By focusing on these four actions, the Commission will be able to make access to open data even more meaningful and unleash the promises of the Big Data era holds. Finally, these efforts should be balanced in order to ensure privacy, security, competition and business secrecy.

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, while respecting the existing provisions on data protection?

Yes

No

Under what conditions?

- in case it is in the public interest
- for non-commercial purposes (e.g. research)
- other conditions

*Please explain

Open data is a major opportunity for Europe in many areas; it may provide potential economic growth, improve knowledge and boost research throughout the continent. But it is also a market in its infancy whose growth should be accompanied gradually in order for Europeans to fully benefit from this evolution. First and foremost, personal data should be guarded against any unforeseen and undesired effects; this also extends to specific data that may relate to the security and welfare of citizens and Member States. For example, mobile operators and energy suppliers may hold data (e.g. mobile base stations' location) that could be used with malevolent intent if publicly disclosed.

In the meantime, private companies should be encouraged to develop the data market; this also implies that they should be guaranteed a return on their investment to develop more data through the assurance that these data can be properly valued.

There needs to be a balance between the interests of the various stakeholders for the big data market to grow in line with the core objectives of the European Union. EuroISPA believes that competition law already provides a sound legal framework until specific actions are required.

3000 character(s) maximum

ON ACCESS AND REUSE OF (NON-PERSONAL) SCIENTIFIC DATA

Do you think that data generated by research is sufficiently, findable, accessible identifiable, and re-usable enough?

Yes

No

***Why not? What do you think could be done to make data generated by research more effectively re-usable?**

3000 character(s) maximum

The question of access to and re-use of data generated by publicly funded research is only one aspect of the question. Another issue - in relation to research data in general - is the way copyright may impact text-and-data mining activities.

Access to material being mined should be secured - including, if appropriate, with a licence. But once access is secured, there should be no additional copyright permission required to mine the material, irrespective of whether the purposes are commercial or not.

Exemptions in the US or Japan are already giving those countries a competitive edge, from research to business applications.

Do you agree with a default policy which would make data generated by publicly funded research available through open access?

Yes

No

***Why not?**

3000 character(s) maximum

ON LIABILITY IN RELATION TO THE FREE FLOW OF DATA AND THE INTERNET OF THINGS

As a provider/user of Internet of Things (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?

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.

Yes

No

I don't know

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?

Yes

No

I don't know

Do you think that the existing legal framework (laws, or guidelines or contractual practices) is fit for purpose in addressing liability issues of IoT or / and Data driven services and connected tangible goods?

X Yes

No

I don't know

Is the legal framework future proof? Please explain, using examples.

3000 character(s) maximum

There are already different liability regimes in place for different actors. The E-Commerce Directive establishes the one for ISS and the Data Protection Framework (95/46/EC) clearly divides the liability between controllers and processors. This system will likely be maintained in the future General Data Protection Regulation.

Please explain what, in your view, should be the liability regime for these services and connected tangible goods to increase your trust and confidence in them?

3000 character(s) maximum

As a user of IoT and/or data driven services and connected tangible devices, does the present legal framework for liability of providers impact your confidence and trust in those services and connected tangible goods?

Yes

No

I don't know

In order to ensure the roll-out of IoT and the free flow of data, should liability issues of these services and connected tangible goods be addressed at EU level?

Yes

X No

I don't know

ON OPEN SERVICE PLATFORMS

What are in your opinion the socio-economic and innovation advantages of open versus closed service platforms and what regulatory or other policy initiatives do you propose to accelerate the emergence and take-up of open service platforms?

3000 character(s) maximum

PERSONAL DATA MANAGEMENT SYSTEMS

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'.

Do you think that technical innovations, such as personal data spaces, should be promoted to improve transparency 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'?

Yes

X No

I don't know

Would you be in favour of supporting an initiative considering and promoting the development of personal data management systems at EU Level?

Yes

X No

EUROPEAN CLOUD INITIATIVE

What are the key elements for ensuring trust in the use of cloud computing services by European businesses and citizens?

"Cloud computing" is a paradigm for enabling network access to a scalable and elastic pool of shareable physical or virtual resources with self-service provisioning and administration on-demand. Examples of such resources include: servers, operating systems, networks, software, applications, and storage equipment.

Reducing regulatory differences between Member States

Standards, certification schemes, quality labels or seals

X Use of the cloud by public institutions

X Investment by the European private sector in secure, reliable and high-quality cloud infrastructures

As a (potential) user of cloud computing services, do you think cloud service providers are sufficiently transparent on the security and protection of users' data regarding the services they provide?

Yes

No

X Not applicable

***What information relevant to the security and protection of users' data do you think cloud service providers should provide?**

Cloud service providers are sufficiently regulated. The process of personal data is subject to the transparency requirements under the 95/46/EC ePrivacy Directive and the future General Data Protection Regulation. These laws also contemplate obligations on securing personal data in the cloud. In addition, it is foreseeable that cloud service providers will have to face new additional security obligations, notably on reporting of security breaches in the upcoming Network and Information Security Directive.

As a (potential) user of cloud computing services, do you think cloud service providers are sufficiently transparent on the security and protection of users' data regarding the services they provide?

Yes

No

X Not applicable

As a (potential) user of cloud computing services, do you agree that existing contractual practices ensure a fair and balanced allocation of legal and technical risks between cloud users and cloud service providers?

Yes

No

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

X Economic benefits

Improved trust

Others

***Please specify**

3000 character(s) maximum

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

X Economic benefits

Improved trust

Others:

***Please specify**

3000 character(s) maximum

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 (Y/N)	Sometimes (Y/N)	Often (Y/N)	Always (Y/N)	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					
e Y Far reaching limitations of the supplier's liability for malfunctioning cloud services (including depriving the user of key remedies)					
Other (please explain)					

What are the main benefits of a specific European Open Science Cloud which would facilitate access and make publicly funded research data re-useable?

- Making Science more reliable by better quality assurance of the data
- Making Science more efficient by better sharing of resources at national and international level
- Making Science more efficient by leading faster to scientific discoveries and insights
- Creating economic benefits through better access to data by economic operators
- Making Science more responsive to quickly tackle societal challenges Others

Please specify

3000 character(s) maximum

Would model contracts for cloud service providers be a useful tool for building trust in cloud services?

Yes

No

Would your answer differ for consumer and commercial (i.e. business to business) cloud contracts?

Yes

No

***What approach would you prefer?**

Please share your general comments or ideas regarding data, cloud computing and the topics addressed in this section of the questionnaire

5000 character(s) maximum

****** END OF OUR CONTRIBUTION *****