



**NEDERLAND ICT**

**ANNEX DOCUMENT for Case Id: fd846a85-ebd6-4f2d-8a08-8893a06932ae**

**Nederland ICT's response to the public consultation on the regulatory environment for platforms, online intermediaries, data and cloud computing and the collaborative economy.**

1. Introduction

Nederland ICT welcomes the opportunity to contribute to the public consultation on the regulatory environment for platforms, online intermediaries, data and cloud computing and the collaborative economy, as we believe that this question deserves in-depth consultation with all parties involved and analysis before rushing into any legislative action.

However, we would like to outline the difficulties we encountered in trying to respond to the questionnaire built by the European Commission. We are disappointed, for instance, by the fact that sections for comments were not made available for every question of the consultation as such availability depended on the answer given – yes or no. This constitutes a missed opportunity for respondents to explain their position as well as for the European Commission to understand the context and the reasons why a specific position is taken. We are also disappointed by the phrasing of many questions, for which we see a degree of bias that will result in misleading answers from the respondents.

In this regard, we would like to provide some additional comments which we hope the European Commission will find useful.

2. The Role of Platforms

The European Commission has not made sufficiently clear what problems they are trying to address with this consultation. It is therefore difficult to answer the questions in this section without the full context in which these questions are raised. The context would also help in defining what platforms are.

In our opinion, platforms are a mere business model, not an industry in itself. Therefore we believe the definition proposed by the Commission should not be used as a basis for future legislative initiatives.

3. Tackling illegal content online and the liability of online intermediaries

The Articles 12 to 15 of the eCommerce Directive have been essential for the development of online services in Europe. These Articles served as a catalyst for the development of a prosperous European Internet Ecosystem, a fact the Digital Single Market Communications recognises.



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As the current liability regime strikes precisely the right balance between the interest of right holders, consumers and online intermediaries, we see no need to reopen the Directive and amend these Articles. The Directive specifies three main activities: mere conduit, caching and hosting. These activities have been applied successfully to new services, which mean they are perceived as technology neutral and in essence very flexible.

Assigning a new service to an activity under the eCommerce Directive has been done by the courts. Currently there is a great body of jurisprudence and for the main actors their position, in the current legal environment, is very clear. A change of the Directive will introduce legal uncertainty until the newly introduced amendments have been legally tested and defined by the courts. Aside from the cost factor, this also hampers innovation.

#### 4. Data and cloud in digital ecosystems

European data localisation policies will prevent the emergence of a true Digital Single Market. Data transfers within Europe should always be allowed, and whenever possible even outside Europe.

For more information please contact:

Alex de Joode  
Policy advisor  
+31 348 49 3636  
info@nederlandict.nl

#### *About Nederland ICT*

*Nederland ICT is the trade association for more than 550 IT, telecom, internet and office companies in the Netherlands. Nederland ICT represents a business community with a turnover of almost €30 billion and over 250,000 employees, making it the foremost advocate and representative of the Dutch ICT sector.*

PO Box 401  
3440 AK Woerden  
Pompomolenlaan 7  
3447 GK Woerden  
The Netherlands

**T** +31 (0)348 49 36 36  
info@nederlandict.nl  
www.nederlandict.nl

ING Bank  
IBAN: NL 53 ING B 0662 590546  
Chamber of Commerce 30174840