SYNOPSIS REPORT ON THE PUBLIC CONSULTATION ON THE REGULATORY ENVIRONMENT FOR PLATFORMS, ONLINE INTERMEDIARIES AND THE COLLABORATIVE ECONOMY

EXECUTIVE SUMMARY

Online platforms

A consensus emerged from the consultation on the growing importance of online platforms for European social and economic wellbeing. While there is no consensus on a possible legal definition of online platforms, most respondents agreed that there are significant benefits stemming from online platforms: they are driving innovation, facilitating social interactions, and are powerful engines of growth.

However, respondents also acknowledged that these actors raise particular problems, such as the absence of a level playing field, lack of transparency, concerns around personal data collection and imbalanced bargaining power between platforms and suppliers, which could lead to unfair practices vis-à-vis consumers and businesses. A key cross cutting issue mentioned in all the replies relates to the responsibility and liability of platforms. Many responses stressed the need to better enforce existing regulations and to ensure consistency of regulations within the EU.

The majority of respondents stated that they would like to see more transparency, citing complex terms and conditions as an example of an area suffering from a lack thereof. The majority of respondent groups do not believe that online platforms provide sufficient and accessible information with regard to either (i) the collection and use (including trading) of personal and non-personal data - key resources for product and service innovation or (ii) the way in which prices and conditions are adapted. Conversely, the majority of online platform respondents believe that sufficient and accessible information is currently provided. Rating systems and review mechanisms were generally considered effective ways of assessing the quality of products and services, yet there were concerns voiced over the risk of manipulating consumer opinion through fake reviews.

The relationship between platforms and suppliers was considered very important by a vast majority of respondents (9 out of 10[1]) who also feel that there is considerable room for improvement in business-to-business (B2B) relations. A large majority maintained that market dynamics will not tackle the issues raised and that a mix of regulatory and non-regulatory measures is needed. The problematic practices most commonly experienced by the responding suppliers were: (i) a platform applying terms and conditions, which suppliers find unbalanced and do not have the possibility to negotiate, (ii) a platform refusing access to its services without suppliers accepting specific restrictions, (iii) a platform promoting its own services to the disadvantage of services provided by suppliers. Furthermore, responding businesses indicated that, of all the listed practices, unbalanced terms and conditions imposed by platforms most detrimentally affect their activity.

Right holders generally reported on the growing use of protected content without their authorisation by online platforms or through licencing agreements containing, in their view, unfair terms. They consider this largely to be due to legal uncertainties and therefore asked for clarification at EU level of the rules applicable to online platforms using protected

[1] When percentages are mentioned they refer to the percentage of respondent having replied to the question with an answer.

content. Other stakeholders, representing different categories of respondents, argued for the importance of freedom of expression and the applicability of the liability exemption under the e-commerce directive to online platforms.

There was no consensus on whether there was a need to strengthen the technical capacity of online platforms to accommodate the switching and moving of user data. However, developing standards is perceived as the key to allowing users to move data across platforms.

On access to platforms and data, changing conditions of accessing the services of online platforms was regarded as a widespread problem. The rest of practices (changing conditions in access to the Application Programming Interface or to data held by platforms) were also deemed relevant. However, there was consensus that a rating scheme, issued by an independent agency on aspects of the platforms' activities, would not improve the current situation.

Tackling illegal content online and the liability of online intermediaries

In general, this section of the consultation attracted very different views depending on the interests of the respondents and reflected different interpretations of the liability regime. The views are particularly divided over (i) the clarity of the concept of a 'mere technical, automatic and passive nature' of information transmission by information society service providers, (ii) the need to clarify the existing categories of intermediary services (namely mere conduit/caching/hosting) and/or the potential need to establish further categories of intermediary services, (iii) the need to impose a specific duty of care regime for certain categories of illegal content and (iv) establishing a specific service to facilitate contact with national authorities for the fastest possible notice and removal of specific forms of illegal content. However, the majority of respondents think that the existing liability principles on which the Section IV of the E-Commerce Directive is based are fit-for-purpose.

More than two thirds of the respondents 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.

The majority of online intermediaries state that they have put in place diverse voluntary or proactive measures to remove certain categories of illegal content from their system. Finally, more than 75% of the respondents are in favour of increasing transparency with regard to the duties of care for online intermediaries with regard to the general content restrictions policies and practices by online intermediaries.

Collaborative economy

The public consultation on the collaborative economy sheds light on the concerns and issues that impact its development. The consultation sought the views of the different stakeholder groups, such as collaborative economy providers, traditional providers, platforms, public authorities, and users. A majority of respondents considered European action promoting the collaborative economy necessary. However, Member State authorities noted that a regulatory framework that is too rigid can create problems.

Uncertainty over the rights and obligations of users was the most cited potential obstacle to the growth of the collaborative economy across all respondent groups. Additionally, all respondent groups voiced concerns about the insufficiently adapted regulatory framework. Fragmented markets, created by overly strict or unsuitable regulation favouring incumbents,

were by far the most frequently mentioned barriers to the development of the collaborative economy. Uncertainty about the employment status, i.e. whether providers are self-employed or employees, was also mentioned.

Most respondents in all groups preferred to receive more guidance and better information about how existing rules could apply to their problems. A regulatory environment adapted to the collaborative economy and support for innovation and entrepreneurship were cited as desired actions. Meanwhile, traditional providers emphasised the need to maintain a level playing field by removing barriers and having proportionate obligations.

1. INTRODUCTION

The consultation on the role of online platforms gathered evidence and views on the regulatory environment for platforms, liability of intermediaries, data and cloud, and the collaborative economy. It was open from 24 September 2015 - 6 January 2016 in 23 languages. It is part of a broader analysis of the role of platforms in the economy and society as announced in the Digital Single Market Strategy for Europe. Responses have been published except where confidentiality was requested.

The questionnaire had 4 sections:

(1) online platforms
(2) tackling illegal content online and the liability of online intermediaries (online intermediaries)
(3) data and cloud in the digital ecosystem (synopsis report to be published separately)
(4) collaborative economy

All questions were optional except the self-identification ones. Respondents did not answer all questions and sections. The questions were tailored to the respondent groups. Percentages derive from the number of replies to the respective questions in the online questionnaire. Position papers sent by email are considered in the analysis but not in the statistical representation.

2. OVERVIEW OF RESPONDENTS

The consultation received 1034 replies: 1005 through EU-Survey; 29 by email.

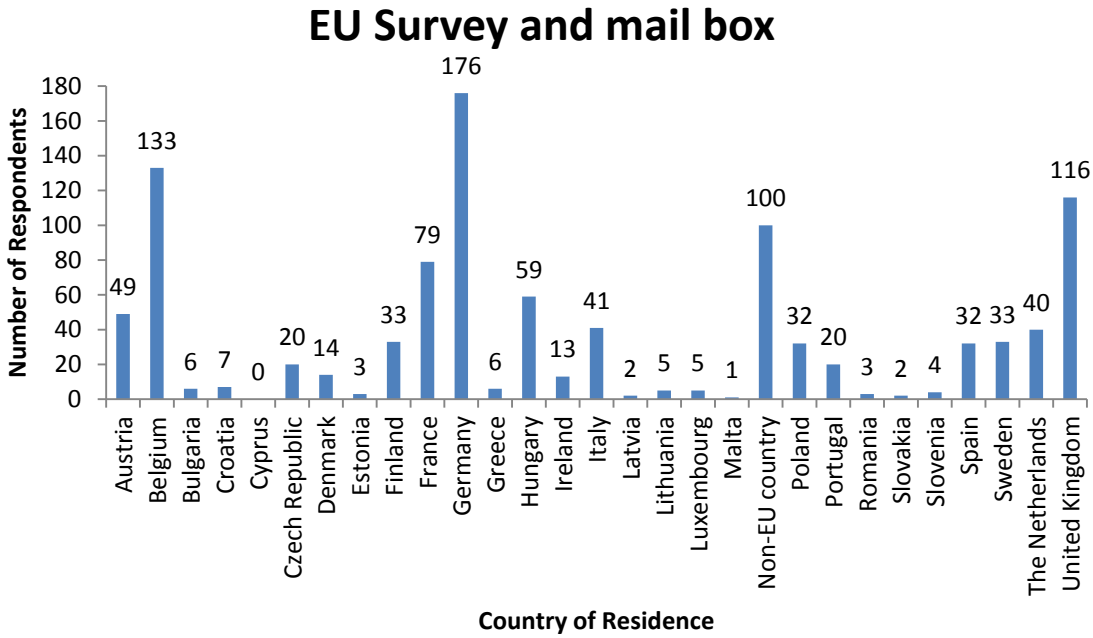
Breakdown of respondents[2]	General information	Online Platforms	Online Inter-mediaries	Collaborative Economy
Business	125	116	103	42
Public authority	29	26	24	14
Research institution or think tank	33	30	22	18
Assoc. businesses	195	179	161	59
Assoc. civil society	37	33	28	12
Assoc. consumers	12	12	8	9
Individual citizen	408	407	332	135
Online platform	43	42	34	21
Other	152	147	135	24
Total	1034	992	847	334

10 599 individual contributions were received via an advocacy association, Openmedia.org. The association submitted a summary contribution through EU-Survey, counted above. The 10 599 respondents addressed eight questions from the online platforms (10 599 replies) and online intermediaries sections (5 371 replies), and modified their phrasing.

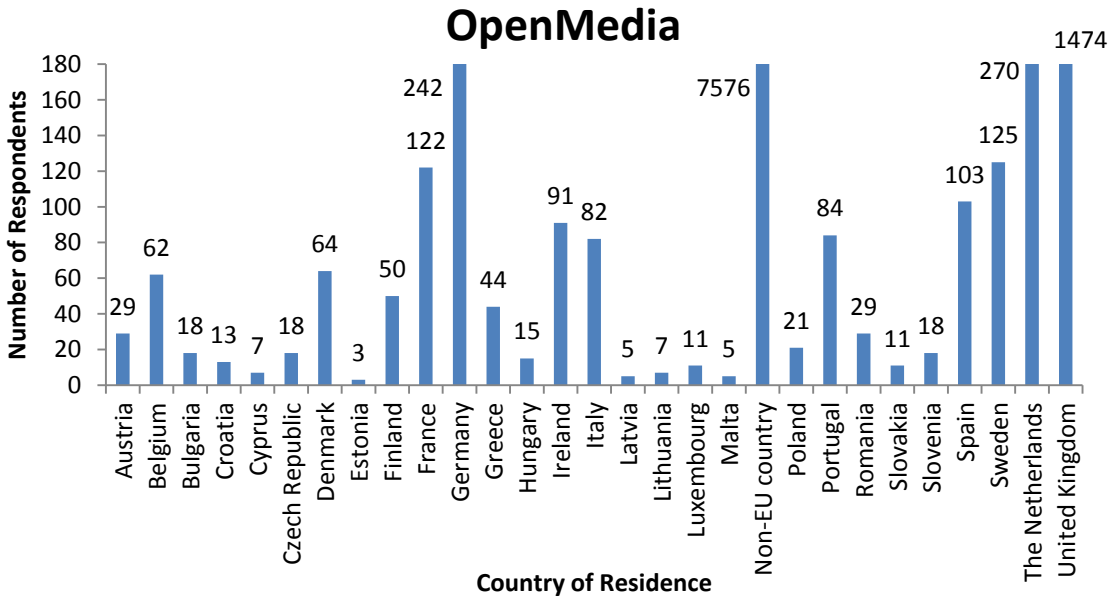
A significant number of responses are "anonymous" and impossible to categorise.

[2] According to the self-declared role in section "Objectives and General Information" of the consultation. Throughout the survey other taxonomies of respondents are also used.

Replies came from all EU Member States (see table for the country breakdown):



Concerning OpenMedia, 71.5% of the individual contributions came from non-EU countries (40.3% from USA), 28.5% from EU countries:



3. ONLINE PLATFORMS

3.1. Overview of respondents for the platforms section

This section received 992 replies through EU-Survey and email from individuals (407); business associations (179) and businesses (116); "others" including right-holders (147).

3.2. Social and economic role of online platforms

3.2.1. Definition

The majority of respondents contest the definition proposed in the consultation, reflecting the concern that regulation could be based on “platform status”, not on analysis of issues and activities. The definition appears too broad or narrow. Concerns about it are shared across stakeholder categories, some stressing that it should focus on activities and business models. There are doubts whether a "one-size-fits-all" definition is feasible as it is unlikely to be future-proof and might overlap with the definition of an online intermediary and information society service provider.

Respondents across categories suggest focusing on online platform activities to ensure coherence and level playing-field, enforce existing regulation and clarify the fields of application. Proposed differentiation within 'platforms' includes: platforms acting B2B vs B2C vs C2C; platforms that act as a “passive conduit” versus those more “active” or with "editorial roles”.

3.2.2. Benefits of platforms

The most frequently quoted benefits are: making information accessible, facilitating communication and interaction, increasing choice of products and services, access to new market and business opportunities. The least quoted benefit across respondents was help in complying with obligations in cross-border sales, particularly for online platforms.

3.2.3. Problems consumers or suppliers face

Around 80% of respondents say they are aware of problems consumers or suppliers face when dealing with online platforms. Most thought a combination of regulatory and self-regulatory measures could best address the problems online platforms raise. A key issue in all replies relates to platforms' responsibility and liability.

Businesses and business associations were concerned with three issues:

1. right infringement
2. inconsistent regulation
3. unfair trading practices

They perceive an imbalance in the bargaining power between (dominant) platforms and less powerful suppliers leading to competition and fair-trading issues (unfair contractual terms, lack of access to platforms controlling critical services, lack of access to data collected during consumer experience), problems with copyright/IP rights protection, lack of liability, and to some extent the fairness of rankings and neutrality of online search results. They point to lack of transparency on the intermediation tariff varying from 5 to 30%, and the use of data.

Consumer associations and individuals perceive uncertainty around personal data collection and use, lack of clarity of consumer protection law, and difficult enforcement of consumer rights.

Civil society associations raised issues on privacy, anonymity (right to be forgotten), and freedom of expression which is threatened when platforms "unilaterally" decide to take down content.

In the OpenMedia campaign, 1 in 6 respondents said they saw legal content unfairly removed or were unable to access it from their region.

Consumers, businesses and platforms see as problematic the complexity of the regulatory framework, the lack of EU harmonization in certain areas, and perceive weak enforcement.

A cross- cutting issue all replies mention is the responsibility and liability of platforms and the distinction between active and passive intermediaries.

3.3. Transparency of online platforms

The consultation probed into: (1) the need for more transparency, the scope and format of additional transparency obligations; (2) benefits and disadvantages of online reputation systems and trust mechanisms, and how such tools could be improved.

3.3.1. The need for more transparency

Over 75% of respondents agree that more transparency is needed for platforms in terms of information required by consumer law, display of sponsored search results, identifying the actual supplier of the service or product, and providing information to discourage misleading marketing by professional suppliers, including fake reviews. Stakeholder dissatisfaction with existing transparency is even higher when looking at the replies of businesses and their representing organisations (75-90%).

Businesses, consumers and their associations demand more transparency on the collection, use and commercialization of user data, traceability (business licence, contacts) and indication of copyright compliance. Think tanks stress the need for users to effectively and transparently switch off tracking of their personal data.

Think tanks, consumer organizations and individuals suggest that transparency should show how platform remuneration influences the listing of search results.

Seventy percent of respondents think the information online platforms provide on their terms of use is insufficient and hard to understand. Over 60% of business associations and businesses find unsatisfactory the information on terms of use.

The following improvements to the terms and conditions are desirable:

– Shorter terms and conditions or a summary of the legally enforceable terms

– Standardising the terms and conditions and applying them uniformly across several platforms or business models

3.3.2. Online reputation systems

Around 85% of respondents have experienced information displayed to them by a platform adapted to their interests. No clear view emerges on whether online reputation systems and trust mechanisms guiding consumer choice are reliable. This inconclusiveness persists for consumers and businesses.

Many stakeholders refer to the following potential improvements to rating systems:
– ensure that reviews are based on actual customer experience and avoid fake reviews
– establish a charter of good practice for reviews and reputational systems
– ensure the accuracy and reliability of statistical information resulting from reviews when it may influence buyer behaviour
– for branded products find ways to ensure that reviews do not relate to counterfeits
– ensure that comparison tools are impartial and transparent about their methodology

When discussing benefits and review systems, many stakeholders referred to their replies on rating systems described above.

There is consensus that rating systems and trust mechanisms are beneficial because they allow consumers to read other consumers' opinions. Respondents realise the risk of manipulation of consumer opinion via fake reviews or misrepresented statistics.

3.4. Use of information by online platforms

3.4.1. Views expressed

Businesses frequently indicated that online platforms are insufficiently transparent in their collection, storage and (commercial) use of personal and non-personal data. Another frequent criticism is that platforms' privacy policies and terms & conditions for the collection and use of personal and non-personal data are not clear and understandable. Some respondents see data as a new form of payment (and potentially of market power) that must be reflected in the regulatory framework for businesses and online platforms.

Individuals were negative as to the transparency online platforms offer on their collection and use of personal and non-personal data. They mention that online platforms' terms of service are often not understandable, need to be simplified and clearly state their implications. Many questioned the legality of dynamic pricing based on user profiles and seek transparency in this regard. Respondents suggest measures to regulate the use of information by online platforms e.g. require that online platforms allow users to 'opt-out' of data collection & use, develop rules to minimize data collection and retention, and introduce strict cyber security requirements.

Major online platforms that responded to these questions believe that the transparency they provide on the use of personal data is sufficient. Others consider that it is lacking, partly because of uninformative privacy statements/policies. One respondent explained that ad-hoc, short and clear disclosures on personal data usage at the time of a particular user action could be effective in tackling this issue.[3]

Associations were split on the need to impose additional transparency requirements on online platforms on top of EU's data/privacy protection rules. Industry associations consider that the existing and foreseen data protection legislation imposes strict transparency

[3] Examples of existing best practices that were mentioned by online platforms include: the BBC's cookie management tool; Facebook's blue privacy dinosaur, and; Ebay's Global Privacy Principles.

requirements on online platforms in relation to their collection and use of personal data based on a wide notion of what constitutes *personal* data. Consumer and civil society associations consider that online platforms offer insufficient transparency, privacy statements are unclear or too complex and that user consent to personal data collection and use is often uninformed. They raised issues around the lack of data access for consumers and businesses (specifically in the car and creative content production industries), and discriminatory (dynamic) pricing.

Public authorities unanimously consider online platforms insufficiently transparent in their collection and use of information. To some this is relevant in relation to the trading of personal and non-personal data by online platforms.

Research institutions and think tanks consider online platforms' existing terms of service insufficiently clear on personal and non-personal data collection and use.

Good practice examples in relation to transparency and online platforms' use of information:

– giving contextual notices of personal and non-personal data collection/use i.e. in relation to a specific user action
– prior consent for the continuation of service
– audio-visual support to explain implications of online platforms' terms and conditions
– reputation systems for online platforms, including on their use of data
– the industry body Data Transparency Lab[4]
– open-sourced transparency initiatives[5]
– specific consumer-oriented online service providers or tools[6]
– existing terms of service and/or privacy policies of certain 'exemplary' online platforms
– rendering 'opt-in' the standard for personal and non-personal data use as opposed to the existing 'opt-out'
– recurring 'pop-up' notices on data usage that clearly and succinctly set out the terms of service
– proactive measures users themselves can undertake e.g. deleting cookies and switching browsers.

3.5. Relations between platforms and suppliers/traders/application developers

3.5.1. Views of businesses and business associations

Businesses identified access to new markets and business opportunities as the main advantage to using platforms. Around 9 out of 10 of those responding on business-to-business relationships consider that there is room for improvement in the relations between platforms and their suppliers.

The problems commonly experienced by responding suppliers were:

1. platform terms and conditions which suppliers find unbalanced and cannot negotiate
2. restrictions to access transactional data generated by the platform
3. refusal of access by the platform to its services unless specific restrictions are accepted

Responding businesses indicated that of all listed practices, unbalanced terms and conditions imposed by platforms most detrimentally affect their activity.

[4] www.datatransparencylab.org
[5] tosdr.org, tosback.org opennotice.org
[6] E.g. DuckDuck Go, Mozilla Firefox and certain ad-blocking software

Given the variety of online platforms, the contractual clauses and practices suppliers consider most problematic depend on the sector. Suppliers of goods to e-commerce marketplaces emphasise that unclear contract terms and unpredictable practices aggravate the difference in bargaining power. Lack of transparency of platform tariff with varying and sometimes unpredictable intermediation rates (5%-30%) was often mentioned. Parity clauses concerning price, availability, conditions, etc. are problematic for suppliers in the hotel sector. Publishers referred to unfair transfer of commercial risk as an example of unbalanced terms and conditions. The restriction on accessing data was considered equally harmful by many of the responding suppliers across different sectors.

Among respondents who find the B2B relation unsatisfactory, over 80% believe that market dynamics will not tackle the issues raised, and that a mix of regulatory and non-regulatory actions is needed.

Around 40% of businesses responding to the relevant question knew of complaint mechanisms of online platforms or third party dispute resolution schemes. Many did not consider effective and cost-efficient the internal complaint mechanisms of platforms in solving problems between them and their suppliers. Most sustain that there is no level playing-field for negotiation; the decisions of platforms' internal complaint mechanisms are arbitrary and biased, and the various dispute resolution mechanisms could lead to conflicting decisions.

Many respondents had problems due to the difference in the bargaining power between suppliers and a small number of "dominant" online platforms possibly abusing their power, controlling critical access points and sometimes competing with them on vertical markets.

3.5.2. Views of online platforms

Of the online platforms commenting on B2B relationships, two thirds find the current situation satisfactory or consider it could improve through market dynamics and self-regulatory efforts. Around a third said that a combination of voluntary and regulatory measures could be required. Very few commented on problematic business practices vis-à-vis their suppliers. Many platforms pointed out that their terms and conditions ensure fair treatment of suppliers which could personalise their offer on the platform. As for out-of-court dispute resolution mechanisms, less than half of responding online platforms knew of them. Those that did, quoted examples of internal mechanisms set up by them e.g. covering notice and take-down processes for counterfeit goods. There were no examples of independent third-party mechanisms covering problematic B2B practices between platforms and their suppliers.

3.5.3. Views of public authorities

The majority of public authorities suggest that the combination of voluntary and regulatory measures could be an initial solution for issues in B2B relationships. A group of public authorities argued that such problems can be addressed through existing competition law and improvements to out-of-court dispute mechanisms. Avoiding fragmentation was perceived as important. Some responses suggest that the relationship between platforms and digital content right-holders is somewhat special and should be examined separately.

3.6. Relations between platforms and digital content right-holders

Two thirds of those who replied to this sub-section identified themselves as right-holders. All individuals of the OpenMedia campaign replied to this sub-section.

3.6.1. Right holders

Right-holders reported on the growing use of their protected content by online platforms without authorisation or through licencing agreements on unfair terms in their view. The reasons for this situation include piracy, an unclear legislative framework and the market power of some online platforms. Some differentiation was made between online services that knowingly build their businesses around illegal content and those willing to obtain licenses.

A substantial number of right-holders remark on the negative effects of piracy and the importance of the fight against illegal content, with support for the 'follow the money' approach.

Regarding the legal framework, the lack of clarity in copyright law around the notion of communication to the public under the Infosoc directive and limited liability for intermediaries under the e-commerce directive are mentioned as important factors for refusing licensing or at least negatively affecting the negotiated licensing terms. Right-holders describe their negotiation relationship with certain platforms as "take it or leave it": they either must accept the terms offered by the service or refuse to grant a licence and continue to notify them when their content appears on the platform without authorisation. They believe this situation deprives them of revenue and creates an imbalance in the online marketplace. They seek clarification at EU level as to the rules applicable to online platforms that use protected content.

Right-holders from the music sector are the most vocal about this problem. They point to the gap between revenues generated by licensed services and those generated by online platforms that rely on what right-holders claim is legal uncertainty to negotiate licensing terms below the market value or to refuse to buy licences. Numerous right-holders from other sectors (images, audio-visual, publishers and to a lesser extent, broadcasters) report problems with the unauthorised or under-licensed use of their content by some online platforms.

Right-holders from the images sector and press publishers mention the negative impact of search engines and news aggregators that take away some of the traffic on their websites.

Concerns from the games and software industries with regard to the use of their content by online platforms are less explicit. These stakeholders (mainly software developers) consider that the positive effects of platforms outweigh the negative ones.

3.6.2. Other stakeholders

Replies under this category include different respondents i.e. online platforms (1 identified itself as such), trade associations representing businesses, civil society organisations, individual businesses and individual users.

Their views vary. Some respondents stress the importance of freedom of expression, the advantages from the use of online content (promotion/visibility of content) and confirm the applicability to platforms of the liability exemptions under the e-commerce directive. Others insist on differentiating between video-sharing websites and content aggregators.

The following more specific points were put forward:

– willingness of some online (sharing) platforms to remunerate right-holders which they consider were hampered by the complexity of rights licensing, the unsuitability of

licensing schemes used for online streaming services for online sharing platforms and the level of remuneration asked for by right holders

– recognition of the efforts made and still to be made by some platforms to put in place content-filtering technologies

– the need for more efforts from right holders to put in place databases allowing online platforms to identify the right-holders for the content used globally

– adequacy of competition law for functioning markets and a need for fair conditions and coherent regulation for all players: content providers, platforms and network operators.

3.6.3. OpenMedia campaign

The OpenMedia campaign addressed different questions. While the consultation focused on the relations of some online platforms using protected content i.e. video-sharing websites and content aggregators with right holders, the questions OpenMedia asked are simpler and focused on the use of links and snippets (extracts of text) by users and online websites i.e. 'Should websites and users be forced to pay a link tax? Should websites have to pay money when using snippets of text to preview other content online?'

All respondents were individuals expressing their personal views. While some recognised the right of content-owners to protect their rights, the overall sentiment is that there should be no payment for the use of snippets on websites. In many cases respondents did not explain their opinions. Where they did, their arguments ranged from references to copyright exceptions that would allow the use of protected content e.g. fair use (under US law), illustration purpose, parody to general comments arguing that the payment for the use of snippets would negatively affect innovative services, freedom of expression and functioning of the Internet.

3.7. Constraints on consumers and traders to move from one platform to another

3.7.1. Strengthening the technical capacity of online platforms to address switching and moving user data

A small majority of respondents sees the need to strengthen the capacity of online platforms to address switching. A narrow majority of business respondents do not see the need to strengthen platforms' technical capacity for the purpose of switching freely from one platform to another and moving user data. A majority of citizens favour such strengthening. The majority of online platforms hold an opposing view.

3.7.2. The need for mandatory requirements allowing moving of non-personal data

Over half of respondents oppose mandatory requirements allowing extraction and moving of non-personal data to another platform. This trend is particularly strong among online platforms and less among businesses. Citizens slightly favour of such requirements.

Business respondents invoke a possible improvement in competition thanks to enhanced data extraction and moving of non-personal data, but do not support mandatory measures. The reasons are among others uncertainty as to what is non-personal data, lack of interoperable formats and the platform-specific character of data.

Stakeholders point out that portability of personal data will be ensured through the recently adopted General Data Protection Regulation which envisages that users can request the service-provider for all the data collected about them. That data should be provided in a "machine-readable format" and can be transmitted to another service-provider.

Some business respondents propose further interoperability through standardised formats for (personal and non-personal) data transfers. They consider that their elaboration should be left to the market.

Individuals' replies mirror those of businesses concerning the lack of certainty over the scope of non-personal data. Respondents complain about lock-in effects and lack of interoperability between data formats. They favour the possibility to delete data from the online platform and fear the role of platforms as "gatekeepers", holding the data for themselves. Some stakeholders suggest using "open-data formats" and give good practice in the field e.g. Google takeout.

There were no replies from public authorities and only one respondent qualified as an online platform.

3.7.3. Consumers' and traders' ability to move data from one platform to another

Business respondents support the idea of enhancing switching possibilities. They hold the view that the development of different computing devices and services will result in addressing the issue by market factors. Regulation should not impose such requirements as they would not cover the diversity of services concerned. Many replies from businesses in the digital sector invoke existing possibilities to port/extract/move non-personal data across various services. Some businesses report that the cost of extracting data may outweigh the benefit of using such data.

Suppliers to online platforms particularly in the area of content demand guaranteed access to their own customers' data, and online platforms should not act as gatekeepers. They favour access to all customer data (subject to consumers' consent) in order to personalise services. Some business respondents suggest that standardisation should be encouraged.

Public authorities did not distinguish between personal and non-personal data. Switching is seen as enhancing competition between platforms by reducing the costs of switching for users. Policy measures could also ensure the definition of standards for interoperability between the different platforms.

Among individuals, many complain of difficulties in switching email providers. Respondents propose common standards for all data transfers and favour general portability/transferability of personal and non-personal data.

3.8. Access to data

3.8.1. Problems in accessing data

Opinions differ on whether the respondents, as traders or consumers of services of online platforms had had problems in accessing their data. Online platforms and 'other' respondents were not asked that because they did not identify themselves as traders or consumers.

A majority of businesses, individuals, public authorities and consumers and civil society associations had experienced sudden changes in the conditions of accessing the services of

online platforms. Consumer associations disagreed; businesses and business associations were split on the issue.

A number of individuals raised restrictive terms of service as an obstacle to accountability.

Changing conditions of accessing the Application Programming Interface (API) of online platforms is a problem for most businesses and individuals. The other respondent groups did not consider it a problem (consumer associations and public authorities) or were split (businesses and civil society associations). A number of businesses emphasised the need for platforms to evolve their APIs as conditions change, and stressed that contract law can effectively protect the parties involved. Individuals gave examples of the changing of APIs by major online platforms. Changing conditions of access to data –which is a different issue to accessing the APIs– was a problem for the majority of public authorities, civil society associations and individuals; consumer associations disagreed. Businesses and business associations were split on the issue.

Some businesses pointed to the need for online platforms to change conditions for data access due to contractual needs or to adapt to market requirements.

Potential discriminatory treatment in accessing data on the platform was flagged as a problem by the majority of public authorities and consumer associations, while some businesses and business associations held the opposing view. Civil society associations and individuals were split on the issue.

3.8.2. Rating agency

Over 60% of respondents agreed that a rating scheme by an independent agency on aspects of the platforms' activities would not improve the current situation.

A number of business and consumer associations asked for clear identification of the problems, in particular which transparency gap or information asymmetry would be addressed and how that would fit with existing EU legislation.

Respondents across different categories think that a rating agency could be an additional tool to tackle fake reviews, but doubt its usefulness in markets where some platforms have "dominant" positions and their clients have no realistic alternative to switch to. Some individuals and businesses pointed to the weakness of a rating scheme as it would not be binding.

Business associations highlighted the importance of innovation. Respondents from all categories questioned whether a ranking system would not be easily gamed, subject to regulatory capture, be too vague or up-to-date with technological changes. Many business respondents pointed to market dynamics and self-regulation as their favoured option. Individuals were sceptical of the rating agency but gave no alternative.

Other associations said that monitoring online platforms' activities would better protect consumer rights and increase transparency. Civil society associations remark that they and public interest organizations already monitor and report on various benchmarks of consumer friendliness or hostility of a range of platforms.

4. TACKLING ILLEGAL CONTENT ONLINE AND LIABILITY OF ONLINE INTERMEDIARIES

4.1. Overview of respondents for the platforms section of the public consultation

This part of the consultation got 847 responses. The main respondent groups are individual users (213), content providers (85), intermediaries (71) and right holders (77). Questions centred on: 1) the liability regime established by Section IV of the E-commerce Directive, 2) elements of the notice-and-action procedure, and 3) duties of care for online intermediaries.

4.2. Liability regime - Section IV of the E-commerce Directive

4.2.1. "Fitness" of the liability regime under the E-commerce Directive

Respondents' replies were almost evenly divided on whether they had had situations suggesting that the liability regime in Section IV of the E-commerce Directive (art. 12-15) was not fit-for-purpose or had negatively affected the market's level playing-field. However, among those that thought it was not fit-for-purpose they were united in dissatisfaction with existing (often national) law or associated case-law, but come from two completely opposite camps, one finding existing liability regime too strict or insufficiently fine-tuned. Significant proportion of these “dissatisfied” respondents complained about the national implementations rather than the EU law. This means that less than half of the respondents appear to question the existing liability principles on which the Section IV of the E Commerce Directive is based.

Most right-holders, their associations, and notice-providers indicate that they have encountered flaws in the present liability regime. The vast majority of individual users, content up-loaders and intermediaries consider the liability regime fit-for-purpose.

Respondents who are dissatisfied with the current regime find it insufficiently clear or not well implemented. They can be split in two. On the one hand, respondents from different groups of stakeholders oppose the current regime as they believe it applies too strictly, without sufficient recourse to counter-notice mechanisms. On the other, right-holders find it is not clear enough, especially the applicability of the limited liability to certain platforms allowing third party uploads of content, contributing to unauthorised use of their content, distorting the market for digital content distribution (see also section 3.6). They argue that the current regime is ineffective in fighting infringements as it fails to provide intermediaries and online platforms incentives to police their content.

4.2.2. The concept of mere technical, automatic and passive nature

Half of the respondents believe that the concept in the E-Commerce Directive of a "mere technical, automatic and passive nature[7]" of information transmission by information society service-providers is sufficiently clear. One third considers it to be unclear; the other respondents are unsure of its clarity.

Almost all notice-providers and the majority of right-holders associations answered that the concept was not clear and could not be applied uniformly. Individuals, civil society and intermediaries associations considered the concept sufficiently understandable.

[7] Recital 42 of the E-Commerce Directive

Most intermediaries, individual users, individuals and associations of intermediaries believe that the concept should not apply to hosting. They consider the manner in which the concept is currently applied in European countries "creates tremendous legal uncertainty, deterring investment in the very platforms most valued by users". They maintain the need to clarify the scope of the exemption to ensure that future innovation, growth and competition on the Internet are not hampered by start-ups only relying on the exemption for "the kinds of bare bones hosting platforms that existed fifteen years ago".

Notice-providers and right-holders' associations believe that it should apply to hosting, arguing that this is how the CJEU has interpreted the concept through a number of decisions. They assert that some national courts have interpreted the concept too broadly allowing some services to benefit from exemptions when they are actually engaging in acts that should be subject to right-holders' authorisation e.g. structurally infringing linking or Bittorrent sites, and some UGC platforms now actively engaged with content.

4.2.3. The need for further categories of intermediary services

Just over half of the respondents believe there is a need to establish further categories of intermediary services besides conduit/caching/hosting, and/or to clarify existing categories e.g. the majority of notice-providers, researchers, right-holders, and civil society associations. The majority of content-providers, individual users, intermediaries and their associations do not see that need.

A number of respondents suggest that the liability exemption should explicitly cover new services by creating new categories for search engines, linking, active hosting, cloud computing, indexing, domain name services, Wikipedia-like services, and operators of audio-visual platforms. Other respondents argue that the existing liability exemption in the E-Commerce Directive covers new business models. They assert it is "flexible enough", "future-proof", "resilient", "forward-looking" or "technologically neutral.

4.3. On the "Notice"

4.3.1. Different treatment for different types of illegal content

70% of respondents believe that different categories of illegal content require different policy approaches as regards notice-and-action procedures: almost all individuals, civil society organisations and the overwhelming majority of right-holders. Intermediaries and content-providers were slightly more divided with just less than half of content-providers contending that different approaches are not necessary.

70% of respondents maintain that the "infringement of intellectual property rights e.g. copyright and related rights, trademarks" warrants a specific approach; 30% believe that "child abuse content" and "illegal offer of goods and services e.g. illegal arms, fake medicines, dangerous products, unauthorised gambling services etc." call for specific approaches. Over a quarter of respondents agree that "terrorism-related content", "racist and xenophobic speech" and "homophobic and other kinds of hate speech" require specific policy approaches as regards notice-and-action procedures.

Many respondents do not want to see total abandonment of the notice and take-down system, but rather a differentiated approach and adjustments to the practice of take-down.

They argued that a differentiated approach is desirable as it takes into account the necessary speed of the take-down and the nature of the content[8].

Respondents split over intellectual property rights. Part of them focuses on why they should benefit from stay-down, others - on why non-expedited take-down is suited for intellectual property infringements that are not always demonstrably illegal.

A significant number state that the right criterion for instituting different treatment of content should be its "imminent harmfulness", "public interest" or "obvious/manifest illegality". Child sexual abuse material and the sale of dangerous products were considered clear examples of illegal and imminently harmful content. The majority favoured streamlined and quicker take-down procedures for that type of content. A number of respondents stressed that in absence of urgency some content should be taken down on judicial order. Opinions vary on whether this should apply to all content or to specific types e.g. defamation, intellectual property infringements.

Some argued for greater legal harmonization and standardization of practices, advocating for pan-European legal requirements for notice.

4.3.2. The counter-notice procedure

Over 80% of respondents assert that content-providers should be able give their views to the hosting service on the alleged illegality of the content through a "counter-notice" procedure. The greatest support for this proposal came from content-providers, individual users, citizens and civil society associations; right-holders and intermediaries were less united.

The three most cited reasons for introducing a counter-notice procedure were that 1) such an obligation helps prevent abuses of notice and take-down procedures, 2) it is a precondition of a fair trial in online disputes as the affected party can be heard, 3) it is crucial for freedom of expression on the Internet.

Respondents often cited possible applicability of fair use (US) or exceptions and limitations (EU) in the copyright law. Many respondents stressed that intermediaries are not the right arbiters for more complicated disputes and that they tend to take down material in order to avoid legal risks.

Notice-providers and right-holders associations favoured content-providers being able to give their views to hosting services if it occurred after the take-down. They stressed that any counter-notice procedure should not prolong take-down reactions, particularly for obviously illegal infringements. Several respondents argued that counter-notice after take-down should only apply to obviously illegal content or content notification of which could frustrate law enforcement efforts e.g. for child abuse material.

Respondents who opposed the counter-notice procedure claim it would slow down take-down, and hamper law enforcement or investigations. A minority of these respondents maintained that it would incentivize surveillance of users, and force intermediaries into taking decisions they are ill-suited to make.

[8] For instance in live streaming websites a take-down taking place within several hours is too slow

4.4. On the "Action"

4.4.1. Take-down and stay-down principle

Over half of the respondents believe that action taken by hosting service-providers should not remain effective over time i.e. they opposed the "take-down and stay-down" principle; about 40% were in its favour. The majority of intermediaries, over half of the content-providers and a vast majority of individual users opposed the "take-down and stay-down" principle. All notice-providers and a majority of right-holders favoured it.

The main opposing arguments were that it is disproportionate, raises barriers to entry, is not technically feasible, and undermines the fundamental rights to freedom of expression. Several respondents argued that it would lead to general monitoring, impairing access to the public domain and be very costly for intermediaries. They maintained that the principle would not distinguish nuances like legal uses of copyrighted material. A number of respondents noted that whilst they disagree with the stay-down principle, if such a measure were implemented it would have to incorporate effective “put-back mechanisms” including the right to appeal or combat false penalties and wrong accusations.

Respondents favouring the principle claim that it would be effective and cheaper for notice-providers. They find the current process of notice and take-down ineffective in addressing large-scale online piracy as most service-providers remove only specific URL links notified in the takedown notice, not thousands of URL links to or copies of the same infringing title online. They called for a harmonised and effective notice-and-action EU procedure, effective repeat infringer policies, and the maintenance and enforcement of intermediaries' own terms of service.

4.4.2. Voluntary or proactive measures by intermediaries

Over half of the online intermediaries described voluntary measures to remove certain categories of illegal content from their systems including: filtering technologies e.g. PhotoDNA hashing technology for child abuse material, fingerprinting for music files in course of upload, blocking e.g. URL blocking based on black-list of Internet Watch Foundation, moderating content by algorithms, staff or community e.g. manually checking algorithmically flagged comments in discussion forums, enforcing termination policy e.g. toward users who repeatedly infringed rights, implementing terms of service or community guidelines e.g. quality standards for customers, improved notice submission systems e.g. to allow direct removal of counterfeit offers, degrading service to users or customers and voluntary agreements in the industry e.g. Memoranda of Understanding for anti-counterfeiting.

According to the intermediaries, most of these voluntary measures are targeting intellectual property infringements, child sexual abuse material, hate-speech, defamation, privacy and public safety (e.g. fraud in payment sector).

Many of the respondents stated that it was impossible or very difficult to estimate the financial costs of running these measures. Their estimates range from 5-10% of operation costs or several thousand to million euros per year.

Most intermediaries claimed that the costs and legal risks of introducing these measures hold them back. Small businesses say the technical conditions needed to introduce voluntary measures are too expensive. Some respondents highlight that the more expensive the enforcement measures, the higher the barriers to entry for new start-ups. Numerous

respondents focused on the technical impossibility of introducing voluntary measures to remove categories of illegal content from their systems, as they struggle to distinguish legal from illegal content. A number of intermediaries say they abstain from introducing voluntary measures. Doing so would prevent them from relying on the liability exemption as they would no longer be seen as neutral, passive and technical.

4.5. Duties of care for online intermediaries

4.5.1. Need to impose specific duties of care

Over half of the respondents believe there is no need to impose specific duties of care on online intermediaries for certain categories of illegal content; one third is in favour. Over half of the intermediaries and individual users do not believe there is a need for duties of care; the majority of notice-providers and right-holders favor specific duties-of-care.

Duty-of-care is not understood uniformly. For some it means an obligation to act upon notice, others interpret it as more proactive actions akin to stay-down.

The respondents who reject the duty-of-care argue that it would be too costly, vague, technically impossible, raises entry barriers, and would lead to abuse. A number of respondents believe it would run against Art. 15 of the E-Commerce Directive. Many individual users and intermediaries feel it would amplify the problem of intermediaries not being the right arbiter for such disputes.

Many intermediaries prefer that duty-of-care remains voluntary. They argue that they are already expected to take action when notified, which is a type of duty-of-care, and that the Commission should foster the voluntary adoption and improvement of notice and action mechanisms already implemented by EU intermediaries.

Respondents in favour of duties-of-care support it in order to protect intellectual property rights[9]. Other content categories respondents believe that require specific duties-of-care include “child abuse content”, “illegal offer of goods and services e.g. illegal arms, fake medicines, dangerous products, unauthorised gambling services etc.” and “racist and xenophobic speech”.

Respondents claim that actions such as filtering (e.g. of keywords, infringing content), blocking (e.g. of websites, URLs, customers), internal policies against infringements (e.g. review mechanisms), and removals could be covered by specific duties-of-care. Others assert that some actions relating to existing "notice-and-action" mechanisms such as improving notice submissions by allowing automated or fast-track submission of notices, could be covered by such an obligation.

4.5.2. Transparency

Over 70% of respondents (the majority of all stakeholder groups except intermediaries) believe there is need for more transparency on the intermediaries' content restriction policies and practices (including the number of notices received, their main content and the results of the actions taken following the notices). Three quarters of respondents do not believe that

[9] As one respondent explained, “we assert that a business that creates a risk of harm to rights holders must take reasonable steps to prevent such harm. Our response pertains to copyright protected content and we advocate for a duty of care to be imposed on online intermediaries where they are not neutral in relation to the content, pursue a business model that is “structurally infringing”, or create and control a disproportionate source of infringement risks for rights holders".

this obligation should be limited to hosting service-providers who receive a sizeable amount of notices per year.

4.5.3. Contact point

The respondents were almost equally divided on the issue of whether online intermediaries should have a service to facilitate contact with national authorities for fast notice and removal of illegal content that is a threat to public security or fight against terrorism.

The vast majority of notice-providers and right-holders favour such a service; the majority of intermediaries, content-providers and individual users oppose it.

4.6. OpenMedia campaign

OpenMedia replied to the question whether "they 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". It rephrased it to: "Do you agree that sharing content owned by others (pictures, videos, and blogs) should NOT be governed by the same rules that we use to punish extremism, hate speech, and abuse online. Why or why not?"

Self-identified individual users answered: 4695 respondents replied "yes"; 5904 said "no"; 4325 respondents replied to the open question. From them roughly 50% come from the US, 24% from Canada, and 25% from UK, 1% from the rest of Europe. Several individuals raised concerns about the wording of the question which they perceived as biased, with not enough detailed clarification of terms and rules, thereby influencing and distorting the answers.

Key themes emerging from the answers:

– Nearly all respondents agree that different types of illegal content are separate issues falling under separate jurisdiction. Malicious intent should be handled differently from non-malicious intent. Combining all types of illegal content under the same framework would lead to disproportionate measures. Copyright should remain distinctly in the civil domain - tort law - whereby economic damages are recovered.

– Existing laws provide a delicate balance between free expression and legal speech. They inhibit abusive behaviour, not free expression of opinion; protect free speech with largely effective checks and balances to protect individual and corporate rights whilst allowing a society to discuss, learn, create and expand. The legislation addressing extremism, hate speech, abuse, libel, revenge, porn, etc. gives guidelines for adequate protection. It requires better enforcement.

– Sharing content online is considered to be a cornerstone of “freedom of speech.”, and to promote a more informed and inclusive world. A fair amount of replies advocate separate laws on free speech and copyright to avoid undue influence of commercial interests. It is often stated that content sharing should be allowed with the notion of 'fair use' (specific to US). As long as an individual does not economically benefit from content that does not belong to them, sharing content should be free.

– What is considered hate speech in one country is acceptable in another; the freedom of the internet should be protected, not its content.

– Monitoring should be a last-resort mechanism. Intermediaries would not be qualified to act as judges. This concern links to automated systems and their inability to detect context, thus potentially unfairly censoring legal speech and expression.

– Several replies advocate self-regulation of platforms, pointing out that the current policies and practices of big content platforms reflect the values of society.

5. COLLABORATIVE ECONOMY

5.1. Overview of respondents

Over 330 individuals and organisations replied to the consultation on the collaborative economy. Almost half of all responses came from citizens or their representatives; almost a third from service-providers or their associations; further responses coming from platforms, public authorities and think tanks. Responses were received from all EU countries except Estonia and Cyprus, in particular from Germany, the UK, France and Belgium (possibly due to Brussels-based European associations).

5.2. Consultation topics

5.2.1. Questions for all respondents

5.2.1.1.Risks and challenges for the collaborative economy

Consumers, providers and public authorities identified uncertainty over rights and obligations for users and providers respectively as the potential obstacles to the growth of the collaborative economy. Collaborative economy and traditional providers rated this uncertainty as the second biggest potential obstacle, just behind concerns about an insufficiently adapted regulatory framework.

Platforms were most concerned about how opposition from traditional providers and the availability of funding will affect the future of their sector, and less concerned about the rights and obligations of those involved in the collaborative economy.

5.2.1.2. Impact on employment

A large majority considered that the impact on the economy depended on various factors and was not overwhelmingly positive or negative.

In the "other" impact, most businesses or business associations considered that non-payment of taxes and insurance has a negative impact. Some referred to the need to apply current legislation. A few referred to the negative impact that collaborative economy has on traditional providers and their employment. Some had problems with the definition of collaborative economy.

Citizens referred to consumer protection, the potential for new business models to increase competition and to the need to respect current rules and regulations.

National authorities noted that a regulatory framework that is too rigid creates obstacles; the absence of regulation entails unfair competition.

Other respondents referred to the difficulty of assessing the employment status of providers, and the difficulties in assessing the overall impact at this point.

5.2.1.3. Obstacles to cross-border development

All respondent categories emphasised the same issues: fragmented markets, overly strict or unsuitable regulation and favouring incumbents were the most mentioned barriers to the development of the collaborative economy. Respondents saw the impact of fragmented regulation as a greater barrier to the development of the collaborative economy, compared to other aspects, as regulatory action was taking place at local and national level.

Fragmented regulation was seen as a barrier to business development in Europe. It also contributed to the lack of venture capital financing compared to the US due to the effect of lowering the potential for business growth. Business growth was seen as a critical issue given the nature of digital platforms which have the ability to achieve a dominant position through the first-mover advantage. Language and cultural barriers within the EU are also seen as an obstacle to business development compared to the US.

Other respondents emphasised the lack of legal clarity on the rights of providers and consumers as a restraining factor. Uncertainty about the employment status i.e. whether providers are self-employed or employees, was also noted.

There was concern that public authorities do not have sufficient technical competence to understand the collaborative economy. With respect to other obstacles, insufficient competition amongst mobile providers, and insufficient internet access and skills amongst the EU public were also noted. One respondent noted that EU legislation did not cover the establishment of social enterprises, thus obstructing the development of the social collaborative economy.

Citizens emphasised language barriers compared to other respondents. Businesses noted all the factors in the summary in the large number of responses. Lack of clarity over employment status was given particular emphasis.

Online platforms and other respondents emphasised fragmented regulation, lack of funding, and opposition/lobbying from market incumbents as particularly important obstacles. They made the point that collaborative businesses face the same issues as other businesses, in particular e-commerce retailers.

Out of the relatively few responses from public authorities, legal uncertainty, particularly surrounding consumer-to-consumer relationships was highlighted.

The position papers that were received separately contained many of the same concerns, including the need for regulatory certainty, appropriate and clear rules and a level playing-field.

5.2.1.4. Promotion at European level

The majority of respondents considered necessary European action promoting the collaborative economy. Most respondents indicated all sectors as targets, with transport getting specific mentions. Concerning the action desired, a clear regulatory environment adapted to the collaborative economy and support for innovation and entrepreneurship were mentioned most often.

Businesses and business associations clearly favoured a level playing-field, removing barriers and having proportionate obligations. Support for start-ups, entrepreneurship and innovation were often mentioned.

Consumers and their associations focused on removing protectionist rules or for the EU to keep out of the field altogether. Other mentions concerned standards and access to finance. The replying public authorities were evenly divided on the need for promotional action.

A clear majority of online platforms saw the need to promote the collaborative economy with a focus on clearer and harmonised current rules. Further liberalisation was also mentioned several times.

Think tanks referred to promoting collaborative economy in general, in particular collaborative social economy enterprises.

5.2.1.5. Action on the current EU regulatory environment

A clear majority considered that some action is necessary on the collaborative economy. Collaborative economy providers showed slight preference for more guidance and better information on the application of the existing rules, with platforms and public authorities strongly agreeing. Traditional providers favoured new rules for the collaborative economy over guidance and information. The majority of consumer respondents stated they did not know the current rules and couldn't answer.

Common themes in the position papers received were the need to future-proof any regulatory action for a continually evolving environment, and the need to target sectors and business models rather than seek one generic solution for platforms. Several Member States emphasised that as collaborative economy is a relatively new phenomenon, there is no rush to regulate; the numerous business models meant that one approach would not fit all cases.

5.2.2. Questions for collaborative economy providers

One issue which emerged in the position papers from public authorities and business associations was the need to establish when collaborative economy providers are self-employed or employed by the platform, and identify mechanisms to ensure social security, tax, pensions, health and safety. Respondents who had a clear view on providers' employment status viewed them as self-employed, and welcomed the flexible work.

5.2.2.1. Basic information and applicable rules

A large majority of respondents did not answer many questions under this heading. Most did not indicate how many people they employed; those who did included both large and small providers.

Transport was the sector in which most respondents were active, professional services being the second most popular. Other sectors mentioned were: creative industries, IT services including software and cloud computing, telecommunications, and trade and business associations.

Almost half of those who defined themselves as collaborative economy providers did not provide information on rules they should comply with. Of those who did respond, a majority said that they had to comply with all listed requirements except chamber membership and fixed tariffs, although this is not a major burden for smaller providers.

A slim majority of collaborative economy provider respondents thought smaller providers should not have lighter rules applied to them. Those who did think so, held differing views on what the threshold for activity should be. Whereas some respondents advocated different

thresholds by sector and activity, others advocated a single threshold based on revenue or number of employees.

Although some associations stressed that when the economic activity is the same, the same rules and obligations should apply, several associations and providers advocated lighter rules for "genuine sharers" e.g. those offering a room in their own lodging or "occasional/ad hoc providers" i.e. those who do not derive regular income from the activity. One association of SMEs suggested that if a two-tier system would not be feasible, all activity should be deregulated to the lower level.

5.2.2.2. Requirements imposed by online platforms

Almost half those who defined themselves as collaborative economy providers did not answer this question. A slim majority of those replying stated that the online platform they used imposed specific requirements on providers.

5.2.2.3. Availability of insurance

From the limited number of responses, problematic areas in obtaining the right insurance included: lack of knowledge on part of insurers; indiscriminate risk premiums (not adapted to local circumstances); lack of EU regulation on employment and liability insurance specific to the collaborative economy.

5.2.3. Questions for traditional providers and their associations

One association of SMEs questioned the distinction between traditional and collaborative economy providers, pointing out that even traditional providers were using more and more platforms. E.g. many traditional hotels offer rooms though collaborative economy platforms.

5.2.3.1. Basic information on respondents

Transport and professional services were the most frequently mentioned sectors where the responding traditional providers were active. The “other” category included associations, wider hospitality sector firms and media.

The majority of traditional providers indicated that the emergence of online platforms had reduced their turnover; the most commonly indicated percentage was between 6% and 15%.

5.2.3.2. Use of collaborative economy platforms

A large majority of traditional providers who expressed their views indicated that they also used collaborative platforms. The reasons included higher revenue or profits and the preservation of market share. In some cases the impact was considered small, unclear or there was no distinction between traditional and other providers. Also the potential for lower profits was mentioned.

5.2.3.3. Ensuring a level playing-field

The most quoted action to ensure a level playing-field was better enforcement of existing legislation for platforms and providers in the collaborative economy. Some respondents state that adapting the current policy framework and better enforcement must go hand-in-hand. Many others commented that policy action must prevent the development of a two-track economy.

The majority of position papers from associations, public authorities and think tanks confirmed that markets were changing, and argued that action should be taken to ensure a level playing-field for all business models. One platform noted that the concept of a level playing-field is meaningless when the business models are different.

5.2.4. Questions for platforms and their associations

One consumer association suggested that the differences between Member States' legislation were one reason why the collaborative economy was less developed in Europe compared to the USA, with entrepreneurs being put off by the complex regulation. Other associations suggested that action is needed on this to promote innovation.

5.2.4.1. Basic information on respondents

Respondents are from all sectors, comprising an even mix of large and small platforms: the largest groups being transport and professional services. "Other" sectors included music, software, and business associations. The majority of platform respondents stated that they provided peer-to-peer, business-to-consumer and business-to-business transactions.

5.2.4.2. Impact on revenue/turnover

The majority of respondents did not wish to reveal their revenue or turnover growth. The majority of those who provided further revenue information stated that this business represents the minority of their revenue.

5.2.4.3. Prior authorisation requirements

The majority of the platform surveyed offer services and products in countries other than their own. Most platforms surveyed chose not to answer whether establishment requirements applied to them, or answered that they did not know. The majority of platform respondents said they do not face specific authorisation requirements for the provision of cross-border services.

5.2.4.4. Tax collection

The majority of platform respondents were not involved in tax collection, but there were cases where the accommodation platforms collected at least the tourist or accommodation tax. For some platforms, this was not common practice, but limited to a few cities.

5.2.4.5. Insurance provision

About half of the platforms indicated that they provide insurance, accommodation platforms being most active. One platform indicated that it has host protection insurance and host guarantee, plus a guest refund policy. Another platform offers additional vehicle insurance. Other platform respondents indicated that they provide limited cancellation insurance, car rental insurance or fraud guarantee.

5.2.4.6. Information about legal obligations and compliance

The majority of platform respondents stated that they inform providers of their legal obligations, but many could not ensure providers' compliance with specific legislation applying to them.

5.2.5. Questions for public authorities

5.2.5.1. Specific regulatory and enforcement issues

The majority of public authorities believe the collaborative economy raises regulatory and enforcement issues. Respondents find that the regulatory system is not suited to new business models, and that it is difficult for public authorities to collect evidence in the fast-moving environment.

5.2.5.2. Self-regulation as an option

The majority of public authorities do not believe self-regulation is sufficient for the collaborative economy, many citing consumer protection requirements. One professional services association echoes this in its position paper, fearing that unregulated provision of professional services via collaborative economy platforms risks creating an unfair, unsafe two-tier system where lower-income consumers would access online legal services with lower ethical and quality standards.

5.2.5.3. Ensuring social protection is applied

The few responses emphasise compliance with national law, and that public authorities must ensure that social contributions are collected from providers in the collaborative economy.

5.2.5.4. Commercial activity and private individuals

Responses were limited. The issues included lack of clarity of the concept of 'trader' under Article 2 in the Unfair Commercial Practices Directive 2005/29/EC. According to it, a trader means any natural or legal person who, in commercial practices covered by this Directive, is acting for purposes relating to his trade, business, craft or profession and anyone acting in the name of or on behalf of a trader.

One response indicated that activities could be distinguished by examining the type of professional activity and its regularity, types of agents (e.g. natural person, freelancer, or company), the products offered, the target market, the terms and conditions of the transaction, and the remuneration. Regular checks and monitoring would help distinguish the type of activity.

Another respondent emphasised that it was becoming more difficult and even unnecessary to differentiate between commercial activity and the activity of individuals. Therefore, market regulation should only address market failures and not be concerned with the frequency and regularity of the activity or number of hours worked by an individual. The respondent pointed out that digital platforms were establishing trust in the marketplace based on platform reviews rather than on legal standing or the frequency of economic activity.

5.2.5.5. Taxation

Although two answers raised the potential for undeclared activity, other respondents pointed out that the electronic nature of the transactions allows easy traceability. The collection of hotel and occupation taxes in many cities was cited as an example. Current tax systems should not become barriers to entry or to tax compliance.

There was no support for a specific tax regime for the collaborative economy. One comment noted that even though there is no need for a specific regime, the authorities should use the

opportunities for simplification offered by new business models. The administrative burden should be proportionate to the taxable activities.

5.2.6. Questions for users and consumer associations

Several position papers remarked upon the increased transparency, choice, price and quality benefits of the collaborative economy for consumers stemming from more efficient market functioning and competition.

5.2.6.1. Characteristics of use

Two-thirds of consumer respondents had used a collaborative economy platform. Of those, half had used it in the past month. A significant majority of consumer respondents using the collaborative economy paid for the services they received.

5.2.6.2. Sectors used

The most popular sector with consumers was accommodation, although some had used all sectors listed. Many use several collaborative economy sectors.

5.2.6.3. Availability of information on the provider

The majority of consumers felt well informed about providers on the collaborative economy, their offer, consumer and statutory rights. Those who didn't cited inconsistent levels of information between platforms; the inability to request further information; difficulties finding out how to cancel orders or memberships; and the format of the information not being user-friendly.

A major hotel group noted that consumers often assumed that accommodation booked via collaborative economy platforms would be safe although there was no obligation to carry out safety checks. They noted that the potential consequences of not observing health and safety rules do not relate to the frequency with which accommodation is used, and that a risk-based approach should be adopted.

5.2.6.4. Importance of reputation/rating systems

A clear majority of consumer respondents felt that reputation or rating systems were very important in facilitating transactions on collaborative economy platforms. One professional services association echoed this saying that consumer reviews might be a useful tool in maintaining high standards in online service provision.

One association of business service providers raised the issue of review portability, suggesting that in collaborative economy business models a provider's business is dependent on consumers' ability to access past reviews, and thus dependent on the platform where the reviews were posted.

5.2.6.5. Other factors in decision-making

Consumers relied most on the reputation of the collaborative economy platform when deciding to use a service or asset. Recommendations within a social group were an important factor. One association for business services providers advocated looking into ways to strengthen consumer confidence through awareness-raising or further comparison tools.