



Ministry of Infrastructure

# Clarify European rules for digital services and ensure appropriate responsibility for platforms – Sweden’s input to a Digital Services Act

## Introduction

In a fast-evolving economy, the revision of the e-commerce Directive and the introduction of a Digital Services Act is an opportunity to safeguard consumers’ rights and offer business a sustainable and evidence-based legal framework fit for the digital age. Sweden welcomes the initiative by the European Commission and offers this paper to highlight certain aspects that need to be taken into consideration.

Online platforms provide great value and are crucial for much of our daily lives. But more needs to be done to keep illegal content away from platforms. Otherwise, trust in such platforms and their usability will erode. A digital services act package therefore needs to ensure that online platforms take appropriate responsibility for removing and keeping out illegal content. To strike a balance, regulation should concern content that is manifestly illegal under national or EU law, and not harmful content.

To seize the opportunity and deliver a sustainable framework for the Digital Single Market, new rules on digital services need to be centred around the main principles of the e-commerce directive, such as the country of origin principle, so as to allow SMEs to scale up across borders and grow. These principles should therefore be strengthened and clarified.

## Starting point

- Sweden welcomes the plans presented by the Commission on a package for the regulation of digital services, including a review of the rules of the e-commerce directive. The revision should be based on a robust impact assessment that ensures an evidence-based regulatory framework.

## Digital Services Act

### *Preserve and develop the main principles*

- EU harmonisation is necessary and may need to be enhanced, in order to enable a digital single market.
- In order to create a sustainable legal framework, fit for the digital age, the main principles of the e-commerce directive need to be preserved but should be developed and clarified. For example, this should apply for the principle on mere conduit as well the prohibition on Member States imposing general obligations on providers to monitor their services.
- The country of origin principle should be preserved and if possible strengthened.

### *Notice, takedown and stay down*

- New rules on digital services should, as a starting point, concern content that is manifestly illegal under national law or EU law.
- Online platforms need to take more responsibility for removing and keeping out manifestly illegal content, as well as content that enables the sale of illegal, dangerous and counterfeit goods from their platforms (hereafter *illegal content*).
- At the same time, a balance is needed which, among other things, ensures respect for human rights including freedom of expression and the principle of non-discrimination, and does not disincentivise online businesses to grow and innovate. Also, increasing online

platforms' responsibility for removing illegal content should be done so as to not make it more difficult to fight crime or conduct market surveillance.

- The process of notifying and removing illegal content on online platforms should be clarified and harmonized. EU rules should not disincentivise platforms from taking more proactive measures in order to take down illegal content, and make sure it stays down. This could be done through a principle such as "The Good Samaritan".
- Online platforms should have user-friendly mechanisms where users can notify the presence of illegal content and get information on how the notification is processed.
- Such rules should also entail that online platforms with significant power take greater responsibility. A risk-based approach could be appropriate. For example, platforms with different types of content may need to have more comprehensive measures in place, than platforms that are focused on conveying only a certain type of content that may be less problematic from a legal perspective.

#### *Know your business customer*

- There may be reason to consider whether providers of information society services should be required to verify the correct identity and other up-to-date information on their business customers in order to ensure transparency between a user and a contracting party for example in the area of product safety or consumer law.

#### *Regulation with the right scope that works as intended*

- Regulation of e-commerce providers established in third countries, for example in terms of product safety requirements, must be compatible with international trade rules (i.e. WTO law).
- In order to provide further clarity as to the scope of the *Digital Services Act*, the concept of *information society services* should be reviewed, and a detailed definition of *online platforms* included in the new act. The aim of such a review should be to update and where

possible simplify the legal definitions and concepts to better fit the digital age.

- Finally, in order to make the Digital Service Act work in practice and as intended, cooperation between competent national authorities in the EU should be strengthened.

### **Ex ante regulation of online platforms**

- Sweden shares the Commission's view that competition problems in the platform economy need to be further examined.
- For that reason, Sweden welcomes the Commission's review into whether sector-specific ex ante regulation may be needed to ensure competition in the light of some online platforms that act as gatekeepers.
- The impact assessment should take into account, inter alia, how a proposal relates to the review of EU competition law, the rules of the EU Platform-to-Business Regulation and its evaluation process.
- Careful consideration is needed of how to define significant power (or a similar concept), and of how to avoid any negative incentives for growth.
- Threshold effects need to be avoided, and technologies or business practices should not be artificially promoted. A number of criteria for the definition of significant power (or a similar concept) beside market size need to be considered such as control over data and network effects.