



*Think-and-do-tank for the health of the media sector*

## Digital Services Act Consultation: 8 Questions to help rebalancing the media ecosystem

The Digital Services Act (DSA) will be unveiled in Q4 2020, as announced in the [EU Digital Strategy](#) adopted in February. The DSA is set to provide for an *ex ante* regulation to ensure that “the systemic role of certain online platforms and the market power they acquire will not put in danger the fairness and openness of our markets”. It would also allow the EU to harmonise the responsibility of online platforms.

With the DSA consultation soon to be kicked off at the end of March, and while the European Parliament is on track to adopt its position(s), [Fondation EURACTIV](#) outlines its main policy recommendations, expressed as questions for inclusion in the DSA questionnaire.

We call for EU policy-makers (Commission, Parliament, Council) to step up to the challenge and **use this long-awaited piece of legislation to rebalance the online ecosystem.**

In our view, the consultation questions could include the following:

- **Question 1**

**“How should online systemic platforms be defined?”**

[Rationale: defining the online platforms as “essential facilities” or public utilities is the first step to differentiate legislation. [Good signals come from the Commission](#) and from national governments (such as [the French one, which speaks of \*plateformes structurantes\*](#)).

Among others, [even Facebook’s CEO showed awareness about the hybrid nature of online \(publishing\) platforms](#). This would require the co-legislators to create a new category between telecommunications infrastructure and journalist-driven media publishers. Such a category could help the media sector recover some advertising revenues, and gain access to its users’ data, an essential part of the sector’s lifeblood].

- ❖ *Our recommendation:*

A line should be drawn between platforms purely falling in the e-commerce domain and those which host, select and promote content (notably Google, Facebook, Twitter and their subsidiaries), ultimately acting as publishers. They are systemic to democracy like banks are systemic to the economy.

For this reason, we think the platforms outlined above should be defined in a dedicated sub-category as **Systemic Publishing Platforms (SysPPEes)**.

- **Question 2**

- **“Should size be a factor in differentiated legislation?”**

[Rationale: see the first question on defining systemic platforms. Past regulation has been influenced by the “broad brush” concept of level-playing field. Actually, the field is not level, for example between a giant platform and a local NGO, nor are the risks to democracy and fair trade].

- ❖ *Our recommendation:*

Yes, size matters. The DSA should provide criteria for the main online sub-sectors, by setting thresholds below which simplified requirements apply. This is also essential to help start-ups in Europe.

- **Question 3**

- **“Can technology neutrality apply between journalist’s decision and algorithm’s decision?”**

[Rationale: see the first question, on defining systemic platforms. So far, differentiated regulation applies based on who makes the decision rather than on the type of content].

- ❖ *Our recommendation:*

Artificial Intelligence increases the added value of platforms, and can also be a semi-automated initial draft of media content: there is convergence of both types of content, and in the future convergence of the tools. Hence technology neutrality should apply. For example, algorithms (supervised by platforms) should not be less liable than journalist (publishers) for their decision.

#### **Question 4**

- **“How should the DSA leverage competition policy?”**

[Rationale: alongside a reformed regulatory framework, the role and the synergies with existing competition rules should be made clearer. An overall European strategy for the (digital) media sector as enshrined in the DSA should include a ‘smart policy mix’ made of, notably, legislation, co-regulation (not just self-regulation) and interpretation of competition rules].

- ❖ *Our recommendation:*

The DSA should be accompanied by a **competition notice** interpreting existing competition tools. This should not wait for the results of the expected sector inquiry.

#### **Question 5**

- **“How should the DSA help establish liability of platforms?”**

[Rationale: in light of defining Systemic Publishing Platforms (SysPPEes), a clear principle on liability should be established to be implemented in a revised e-commerce directive].

❖ Our recommendation:

Having established a new category between telecommunication infrastructures and media publishers, EU legislator should establish that platforms have publisher-like liability for the content they spread, creating not an obligation of results, but an obligation of 'best efforts'.

In implementation terms, this would also differentiate between illegal content (justifying an obligatory notice-and-take-down regime for user-generated content) and disinformation (which is intentionally wrong, and needs to be slowed down, while avoiding censorship, e.g. through stricter transparency and Trust Indicators, as described above)

### Question 6

● “How should the DSA support initiatives to strengthen democracy in the EU?”

[Rationale: not only the DSA, but also the Media (and Audiovisual) Action Plan and the Democracy Action Plan are planned to be released in Q4 2020, too, as announced in the EU Digital Strategy. The online ecosystem is key to upholding democracy in the EU and its neighborhood: this should be taken into account. The news media sector (essentially private) has different needs from the broadcasting world (mixed economy)].

❖ Our recommendation:

The Commission should make sure that there will be **full policy coherence and coordination between these three instruments**, anticipating the needs of the democracy infrastructure, and the impact of the media sector: this is the essence of the industrial policy expected from the Media Action Plan (not only press freedom declarations and subsidized projects).

### Question 7

● “How should the DSA help the media fight disinformation?”

[Rationale: *Item-by-item* evaluation by fact-checkers is relevant but too slow. One should assess *sources*, *not negatively* by censoring any, but *positively*: highlighting the most credible ones. Algorithms are good at generating loads of relevant advertising, they can also promote relevant content quality].

❖ Our recommendation:

**Trust Indicators** feature both in the work of the High Level Expert Group on Disinformation and in the Code of Practice. There could be space for an open market of independent Trust Indicators. Algorithms are good at generating loads of relevant advertising, they can also promote relevant content quality (e.g., see the [new synthetic and manipulated media policy implemented by Twitter at the beginning of March 2020](#), in order to “reduce the visibility of the content on Twitter and/or prevent it from being recommended”).

This concept needs not to be limited to publishing: in the real world, useful labels exist in many fields, including commerce.

#### **Question 8**

- **“How should the DSA further engage each sector, and prepare the Media Action Plan?”**

The fragmented media sector should come together and work on better convergence. Options are to be explored, such as a Commission-led structured dialogue (e.g., by setting up a European Media Forum) or more informal gatherings of the sector (e.g., off the record worksteps in the margins of key policy events).

❖ *Our recommendation:*

While this applies to other sectors, in the case of media, this should cover DSA, the Media Action Plan and the Democracy Action Plan. A good starting point could be convening once the Press and the Broadcasting sub-groups of the High-Level Expert Group on Disinformation.

We appreciate the industrial mindset of the [New Industrial Strategy for Europe](#). Industry is to be understood in the English sense, as an economic sector and not only hard goods. Indeed, the new industrial strategy frequently points to digital activities. It is therefore surprising that the media sector, a pillar of democracy and sovereignty, is not mentioned as an example. We hope the DSA will provide both concepts and processes for the Media Action Plan.

#### **\*Earlier references:**

- 1) Op-Ed [After the copyright win, what strategy for Europe's media sector?](#)
- 2) Op-Ed [Cooperation of key Commissioners needed for healthy media, democracy](#)
- 3) Open Letter to President Ursula von der Leyen and relevant Commissioners [Democracy and Digital: Trusted Media and Platform Regulation](#)
- 4) January Newsletter [“Steps towards a better media ecosystem”](#)
- 5) February Newsletter [“What is in the EU Digital Strategy for the media ecosystem?”](#)