



# The Digital Services Act Should Not Have Unintended Effects on Research

## Science Europe Response to European Commission's Inception Impact Assessment

Science Europe welcomes that the European Commission (EC) consults stakeholders on its Inception Impact Assessment for the 'Digital Services Act package'. Science Europe Member Organisations, major national research funding and performing organisations, have a vast experience as users and producers of data. Science Europe believes that the collective knowledge of its members will enhance the capacity and efficiency of the European Research and Innovation (R&I) system and will serve society at large.

## Potential Impact of the Digital Services Act on Research and Innovation

Updating EU legislation on digital services and platforms is essential given the rapid development of online platforms and services. Science Europe welcomes the EC's objectives to i) harmonise legislation on the responsibilities and obligations of the wide spectrum of digital services and online platforms to protect all users of digital services, and ii) to define ex ante rules to ensure that markets characterised by large platforms with significant network effects acting as gatekeepers, remain fair and contestable for innovators, businesses, and new market entrants.

The R&I sector also progressively relies on digital means as research institutions host large platforms storing research data, and researchers increasingly access, use, share, and re-use online content such as data, publications, and software. Therefore, the public R&I sector is likely to be impacted by any legislation on online services.

However, the foreseen scope of the new legislation is not entirely explicit in the Inception Impact Assessment. The suggested initiative seems to target primarily the business sector. Recent legislative acts, such as the Directive on Copyright in the Digital Single Market, have shown that legislation aimed at large commercial entities can have unintended effects on other sectors if the scope of the legislation is not clearly defined. Large commercial entities differ greatly from publicly funded research as regards, for example, the data types used and shared, the data usage, and their purposes.

## Take into Account Research and Innovation Sectoral Particularities

The public research sector plays a special role in generating, using, and sharing online content such as data. Data sharing and usage among researchers (engaged in publicly funded research activities or in public-private ones) is not done for commercial aims, but to advance R&I in the public interest.

Many public research organisations offer not-for-profit services to their researchers to facilitate their data usage, data storage, and data-sharing. Researchers use both publicly financed and commercial digital platforms to share and access their research results. Often, researchers and their host research performing institutions, or research funders, establish public-private partnerships for specific research projects or programmes.

Science Europe asks the EC to consider such sectoral particularities when developing the Digital Services Act. Previous legislative acts have acknowledged the special role of public research organisations: the most prominent examples are the research derogation in the General Data Protection Regulation (GDPR) or the text and data mining (TDM) exception for public research organisations in the Directive on Copyright in the Digital Single Market.

The glossary that accompanies the roadmap contains broad definitions that, in our view, apply to the research sector. The following examples illustrate how actors from the research sector would fall under these definitions used in the Digital Services Act.

### Examples: How does research fall under the EC’s current definitions?

	<b>EC definition</b>	<b>Example impact on R&amp;I</b>
<i>Content provider</i>	<i>‘a user who has submitted information that is, or that has been, stored at his or her request by a hosting service provider’</i>	Researchers increasingly share their research results to allow verification and re-use by other researchers by storing them in both publicly funded and commercial data storage repositories. According to the EC definition, researchers would be ‘content providers.’
<i>User</i>	<i>‘any natural or legal person who is the recipient of a digital service’</i>	Publicly funded researchers that deposit, use, share, and re-use their research outputs via online platforms or cloud services are recipients of digital services and fall under the definition of ‘users.’ According to the EC definition so do their institutions (public research performing organisations) and their potential partners in public-private research partnerships.
<i>Hosting services provider</i>	<i>‘a provider of information society services consisting of the storage of information provided by the recipient of the service at her request [...] Examples include [...] file sharing and other cloud services [...]’</i>	Publicly funded and commercial research data repositories and research data infrastructures/e-infrastructures provide storage services for researchers to make their data accessible for other researchers. According to the EC definition they are thus classified as ‘hosting services providers.’ A well-known example the CERN-operated repository Zenodo. It allows researchers to deposit data sets, research software, reports, and other research outputs.
<i>Online platforms</i>	<i>‘a variety of ‘hosting service providers’ such as [...] content-</i>	As research data repositories and research data infrastructures/e-infrastructures fall under

*sharing platforms. Such services are generally characterised by their intermediate role between different sides of the market – such as [...] content providers – and oftentimes intermediate access of user-generated content.'*

the definition of hosting services providers, they are by default classified as 'online platforms'.

*Online platform ecosystems*

*'group of online platforms operated by the same or closely related corporate entity/entities. Since the present consultation itself inquires about the distinctive features, the impact and the potential measures, which need to be taken in relation to such online platform ecosystems, this definition should be understood more as a description of possible features that identify online platform ecosystems.'*

The European Open Science Cloud (EOSC), that is currently being set up by the EC in collaboration with member states and research stakeholders, will link online platforms/e-Infrastructures together. EOSC will play an intermediate role between the different content providers (researchers and their institutions) to provide access to user-generated content. While the platforms linked via EOSC will not be operated by the same entity, many of the operating entities will be represented in the EOSC Association. Members of the EOSC Association will contribute to policy making and standard setting for data sharing and re-use in the R&I sector. In this sense, the EOSC would fall under the definition of an 'online platform ecosystem.'

Based upon these examples, Science Europe calls for a clear exclusion of data users and usage for the purposes of research from the scope of the Digital Services Act, to ensure that unintended effects on research activity are avoided. A legislative act that aims to address the selling of illegal content on large commercial platforms could have side effects on sectors of public interest unless proper exceptions are introduced. For example, if very strict rules unintentionally apply to scientific data storages, then research results cannot be shared. In this case, there is a risk that research platforms have to cease offering specific services, thus hindering access to data needed in the public interest of research.

Science Europe would be happy to collaborate with the relevant EC services to ensure that the scope of the Digital Services Act does not include R&I aspects when this is not intended.

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