How could the Digital Services Act affect the digital economy in Ireland?

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What is the Digital Services Act?

The European Commission is planning to update, clarify and harmonise the existing e-Commerce Directive (ECD). The new regulation, known as the Digital Services Act (DSA), will set the rules for trade in online services within the EU.[1] It has the potential to harmonise the single market for digital services, protect consumers and provide smaller businesses with legal clarity and a level playing field. However, if it creates imbalanced incentives, overextends the regulatory scope, or is unclear, the DSA could result in unintended consequences that harm businesses, consumers and wider society.

Scope: what is included?

The scope is expected to be wider than for the existing ECD, covering all digital services, including online platforms (e.g. social platforms and marketplaces), search engines, Internet service providers, cloud services, content delivery networks, domain name services, collaborative economy platforms, online advertising services, and services built on electronic contracts and distributed ledger technologies. It is likely to cover content, algorithms, data, and potentially business models. In addition, it may categorise services in scope on the basis of their market status—e.g. introducing a threshold based on the scale, scope, or reach of a service.

Intermediary liability and content moderation

Digital service providers in the EU are currently exempt from intermediary liability, as long as they have no knowledge of illegal content on their services. Policymakers are considering changing this. Proposed changes could range from extensive liability (meaning the provider must undertake moderation of all content and products offered), to obligations requiring certain processes be in place (such as notify-and-act mechanisms) in order for the provider to benefit from 'Safe Harbour' protection. Other proposals involve creating greater incentives for digital services to apply pro-active measures against illegal and harmful content (e.g. self- and co-regulatory moderation) while still exempting them from broad liability.

General monitoring

Until now there has been a 'no general monitoring obligation' on digital firms; however, the DSA could include changes to this. It may become mandatory to conduct upload checks and filtering, on top of due diligence obligations such as 'Know your business customer', as seen in financial services. Alternatively, there could be provisions governing algorithms for automated filtering technologies or mandatory external audits of such algorithms.

Country of origin principle

The ECD introduced this principle for selected areas of law. Where applicable, this means that EU digital services need only comply with the rules of the member state in which they are established. The DSA provides an opportunity to extend the scope of this principle to include consumer protection, commercial communications and contract law. This avoids EU digital services having to comply with 27 different legal regimes. However, digital services from outside the EU may face new regulation if the DSA extends the scope of the ECD to include services from third countries.

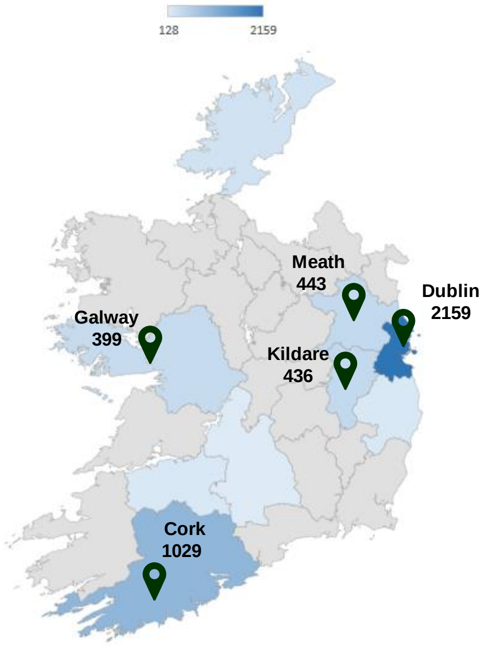
Introduction of a regulator

The DSA could introduce a spectrum of regulatory oversight: from an authority with wide-reaching powers to set ex ante regulation (e.g. mandatory audits of algorithms and codes of conduct or access to data), to a less strict system of rules covering transparency, guidance and oversight for service providers regarding adherence to their responsibility.

The importance of startups in Ireland

22,774 startups were registered in Ireland in **2019**, up by 1.2% on the previous year.[2] **Professional services** accounted for the majority of startups, at **21%**. Many of these are located in large cities (e.g. **Dublin and Cork**), but a large number are spread around the country.

Figure 1 Startup businesses registered in Q1 2020



Source: CRIF Vision-Net (2020), Business Barometer, New Company Startups, Breakdown by Area.

A vibrant startup community is good for economic growth in Ireland. The average startup **employs 14.5 people** and plans to **create 8.2 more jobs** within a year.[3]

Digital economy and platforms

The digital economy is critical to businesses in Ireland, both as a route to market and as a facilitator for new business models.

- **34% of turnover** of all non-financial enterprises **came through e-commerce** channels in 2019—up from 24% in 2010.[4]
- In 2016, **gig economy** employment accounted for **8–9% of total employment and is expected to account for 10% in 2025**.[5]
- In 2016, **collaborative economy** platforms generated a **market of €153m** and **employed 2,880** people.[6]
- 71% of enterprises **use social media**—up from 60% in 2014.[7]

Digital engagement

Millions of people across the country engage with platforms as both consumers and providers of content, goods, and services.

- **3.2m** people are **active on social media**, equivalent to two-thirds of the population.[8]
- **67%** of individuals **order** goods or services **online**.[9]
- **34%** of people **use online peer-to-peer transactions for accommodation**—up from 21% in 2017—**and 26% for transport**—up from 17% in 2017.[10]

Sources:

[1] European Commission (2020), 'New EU rules on e-commerce', https://ec.europa.eu/digital-single-market/en/new-eu-rules-e-commerce

[2] CRIF (2020), 'Ireland's economy remains strong despite Brexit uncertainty: 2019 marks third record-breaking year for new company registration', January, https://www.crif.ie/news-and-events/news/2020/january/ireland-s-economy-remains-strong-despite-brexit-uncertainty-2019-marks-third-record-breaking-year-for-new-company-registrations/

[3] EU Startup Monitor (2018), 'European Startup Ecosystem Country Overviews', http://startupmonitor.eu/EUSM_Country-overviews.pdf

[4] Enterprises with fewer than ten employees are excluded from the sample. The financial sector is not included. Eurostat (2020), 'Share of enterprises' turnover on e-commerce - %', http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=tin00110&lang=en

[5] Given that the gig economy generally describes employment within the labour market that is non-permanent in nature, we have used here 'contingent employment' as a proxy for the size of the gig economy. McGuinness, S., Bergin, A., Keane, C. and Delaney, J. (2018), 'Measuring contingent employment in Ireland', ESRI Research Series 74, Economic & Social Research Institute, August, https://www.esri.ie/publications/measuring-contingent-employment-in-ireland

[6] Director-General for Internal Market, industry, Entrepreneurship and SMEs (EU Commission), Technopolis, Trinomics and VVA Consulting (2018), 'Study to monitor the economic development of the collaborative economy at sector level in the 28 EU Member States', Final report – Study, June, https://op.europa.eu/en/publication-detail/-/publication/0cc9aab6-7501-11e8-9483-01aa75ed71a1/language-en/format-PDF/source-72448580

[7] The percentage refers to 2019. Eurostat (2020), 'One in two EU enterprises use social media', February, https://ec.europa.eu/eurostat/en/web/products-eurostat-news/-/DDN-20200224-1

[8] Hootsuite (2019), 'Digital 2019 – Ireland', https://hootsuite.com/resources/digital-2020

[9] The percentage refers to 2019. Digital Agenda (2019), 'Country profiles, the relative position against all other European countries', eCommerce, https://digital-agenda-data.eu/charts/country-profiles-the-relative-position-against-all-other-european-countries#chart={%22indicator-group%22:%22ecommerce%22,%22ref-area%22:%22IE%22,%22time-period%22:%222019%22}

[10] The percentage refers to 2019. Eurostat (2020), 'Are you part of the collaborative economy?', February, https://ec.europa.eu/eurostat/web/products-eurostat-news/-/DDN-20200205-1