

ANNEX I – Interview Questionnaire (Model)



UNIVERSITY OF
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RUL | RESEARCH UNIT
IN LAW

FACULTY OF LAW, ECONOMICS AND FINANCE

SURVEY SHEET

*INTERVIEWS WITH EU MARKET SURVEILLANCE
AUTHORITIES*

PHD THESIS ON THE EU LEGAL FRAMEWORK FOR
ONLINE INTERMEDIARY LIABILITY
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INTRODUCTION - context

This interview is part of a doctoral thesis in Law conducted at the University of Luxembourg, Faculty of Law, Economics and Finance. This doctoral research project is part of a wider multidisciplinary doctoral research programme at the University of Luxembourg, which focuses on the way enforcement in multi-level regulatory systems functions.

The research context is the current EU regulatory environment of online intermediaries (ISPs), with a focus on liability for unlawful content or activity, as per the Ecommerce Directive 2000/31 ("ECD"), Articles 12 - 15.

The following commonly voiced critical statements of the current ISP liability framework will be explored:

- 1) The division between "active" and "passive" hosts is increasingly blurred by new types of ISPs and technological advances (e.g. social media, collaborative platforms, the use of big data and content management and recognition technologies). It will be explored whether this is adequate and if yes how this affects the concept of ISPs "actual knowledge" of unlawful content or activity.
- 2) The growth and sophistication of ISPs may call for a review of the current liability exemptions for internet intermediaries. The dissertation will explore whether more far-reaching proactive duties of care with regards to infringement prevention are justified.
- 3) Current legislative proposals focus on complementing the ECD with sector specific rules (e.g. copyright or hate speech) and they promote largely self-regulatory solutions. The thesis will critically explore the suitability of self and co-regulatory solutions for a reformed content liability framework by drawing on experience from internet market surveillance in specific areas of product regulation.

What does this survey want to achieve?

As part of this PhD research, a number of product sectors and market authorities have been identified who are engaging in more proactive internet surveillance of unlawful products. These activities have so far been little discussed academically in the context of the above ISP liability framework.

This survey aims to analyse the surveillance and enforcement activities of selected market authorities (MSAs) in the EU in the areas of non-food consumer products and food products sold online. The objective is to understand how MSAs detect and prevent unlawful content on platforms, how and if they work together with ISPs and which national and EU legal basis

they use for their activities. In addition, the survey tries to establish the level of regulatory cooperation which exists between national surveillance authorities at different levels (national, local, EU, international) and whether that cooperation has led to more formalised policy or regulatory initiatives.

The results of these survey will help to establish whether these activities bear characteristics of co-regulatory mechanisms, by which state actors and economic operators (in this case ISPs) define practices, (technical) standards and policies of infringement prevention and enforcement. The results of the survey will help to establish whether more proactive duties of care for removing and preventing unlawful content/products can be imposed on ISPs.

Nature of the surveys

The survey will be conducted as qualitative, structured interviews by conducting meetings with policy officers at selected market surveillance authorities in Europe. The length of the meetings varies depending on the breadth of product areas covered. However, they are envisaged to last 2 - 3 hours with possible follow-up questions by telephone or email as needed. Although the style of the interview style will be conversational, the same survey questions will be asked to all interviewees to ensure comparability of results.

The results of this survey and the discussion will be used for the academic research purposes indicated above only. If you have any questions or concerns please contact carsten.ullrich@uni.lu directly.

A. Market surveillance and enforcement

A.1.	When was your authority founded?
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Please state first year of operation

A.2.	In which product area(s) does your authority conduct market surveillance of unlawful products or sellers on the internet.
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Please name all:

A.3.	Which national, EU or other laws specific to your product sector are the basis for your surveillance and/or enforcement activity.
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Please name the national laws and where applicable corresponding EU legislation. For example, in the area of food several EU Regulations or Directives may apply according to which market surveillance authorities monitor for compliance (such as for example the Regulation on food labelling²⁰⁶⁶ or the Food controls Regulation Organic Food Regulation²⁰⁶⁷)

A.4.	Have you enforced based on any of the above-mentioned legal provisions against information service providers (online platforms)?
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1. ☐ Yes
2. ☐ No

If you have answered yes, please state, which laws mentioned in the previous question:

If you have answered no, have you enforced against ISPs on the basis of other legal provisions? If yes, which?

A.5.	Which kind of online intermediaries do you surveil typically?
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²⁰⁶⁶ Regulation (EU) No 1169/2011 of the European Parliament and of the Council of 25 October 2011 on the provision of food information to consumers 2011

²⁰⁶⁷ Regulation (EU) 2017/625 of the European Parliament and of the Council of 15 March 2017 on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products,

Please rank the below ISPs according to the most frequently surveilled (most frequent = 1, second most frequent = 2, etc.).

ISP Category	Rank
E-Commerce Platform (e.g. eBay, Amazon)	
Social Network (e.g. Facebook, Twitter)	
User generated content platforms (e.g. YouTube, SoundCloud, Flickr)	
Over The Top Communication Services (e.g. WhatsApp, Skype)	
Search engines (e.g. Google, Bing)	
Meta search engine/aggregators (price comparison sites), (e.g. Booking.com, Shopzilla,)	
Others, please specify	

A.6.	What are the main surveillance and enforcement methods used by you.
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Multiple choice possible.

1. ☐ Issuing takedown notices
2. ☐ Conducting test purchases
3. ☐ Searching the website for unlawful products/content manually
4. ☐ Searching the website for non-compliant sellers manually
5. ☐ Searching the website for unlawful products/content with software
6. ☐ Searching the website for non-compliant sellers with software
7. ☐ Product/content Information requests
8. ☐ Information requests about sellers
9. ☐ Other, please specify:

A.7.	If you use software please state whether it is:
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Multiple choice possible.

1. ☐ Self-developed
2. ☐ Purchased or rented from a specialist provider
3. ☐ Developed in cooperation with service provider.

Please share further detail on the provider and the type of software, if possible:

A.8.	Apart from any annual reports, do you publish any other activity reports or information to the public?
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1. ☐ Yes
2. ☐ No

If yes, please share the URL.

Are there any non-public activity reports or data? If possible, please share detail on the kind of information shared and with who.

A.9.	Please state the year in which you started online market surveillance.
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A.10.	How many people in your institution are currently engaged in internet market surveillance? How many people work overall in your authority?
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Market surveillance: _____
Total – authority: _____

A.11.	Has this number changed over the last five years?
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1. ☐ Increased
2. ☐ Stayed the same
3. ☐ Decreased

A.12.	Do you employ private sector subcontractors for this work?
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1. ☐ Yes
2. ☐ No
3. ☐ Sensitive information, cannot disclose.

A.13.	If you answered <i>Yes</i> above, since when do you employ them?
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Pease state the year when started.

A.14.	If you answered the above, what exact activity / service do they perform for you?
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Multiple choice possible.

1. ☐ Surveillance software provider
2. ☐ Platform surveillance by contractors
3. ☐ Issuing Notice and take down requests
4. ☐ Reporting of enforcement and surveillance activity
5. ☐ Other, please specify:
6. ☐ Sensitive information, cannot disclose.

B. Enforcement activity and the E-Commerce Directive

B.1.	The E-Commerce Directive (2000/31/EC) has put in place conditions for the liability for unlawful content or activity hosted or transmitted by information service providers (ISPs). These are regulated in Articles 12 – 15. Has your authority enforced against ISPs based on these provisions or the equivalent (transposed) national legislation?
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1. ☐ Yes
2. ☐ No
3. ☐ I am not sure.

B.2.	If you have answered <i>Yes</i> above: do you have any specific problems with these provisions?
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1. ☐ Yes
2. ☐ No

B.3.	If you have answered <i>Yes</i> above: which of the below statements reflect your view best?
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1. ☐ The liability exemptions are too broad and general to be applied effectively.
2. ☐ They are adequate and effective for my work.
3. ☐ They are too restrictive and put an unjustly high burden on ISPs/internet platforms.
4. ☐ The liability exemptions are outdated.
5. ☐ I do not want to comment.

B.4.	To your knowledge, are the liability conditions of Articles 12 - 15 ECD (or its national implementations) relevant for the enforcement of product sector specific laws mentioned in A.3.)?
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1. ☐ Yes
2. ☐ No
3. ☐ I am not sure.

If yes, please share further detail.

C. Cooperation with information service providers

C.1.	Is your authority working with online marketplaces, online platforms, internet access providers or other intermediaries (ISPs) in activities other than the surveillance measures mentioned in A.6?
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1. ☐ Yes
2. ☐ No

If you have answered *Yes* above, can you give detail about the nature of this activity?

Examples of such activities could be:

- *Defining policies. (technical) criteria and standards for preventing unlawful products, content and sellers*
- *Taking part in workshops and trainings organized by the platforms/ISPs.*
- *Workshops and trainings organized by your authority for platforms/ISPs.*
- *Organizing and attend policy meetings together with platforms/ISPs*
- *Others:*

C.2.	If you have answered <i>Yes</i> above, would you say that these activities have brought success?
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1. ☐ Yes, it has helped significantly
2. ☐ Yes, somewhat.

3. ☐ No, there is no difference to before.
4. ☐ On the contrary, it is now more difficult to surveil and enforce.

Please provide more detail if possible:

C.3.	What are the main obstacles that you face in your surveillance and enforcement work?
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1. ☐ Platforms are not willing or do not see any legal obligation to cooperate.
2. ☐ Platforms have no time/resources to cooperate.
3. ☐ Lack of resources on the side of my authority.
4. ☐ The platforms are outside of our national jurisdictional reach.
5. ☐ The platforms are outside of EU jurisdictional reach.
6. ☐ Other, please specify:

C.4.	In your view, do e-commerce platforms have specific supply chain responsibilities which could qualify them as economic operators or food businesses under EU food law?
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1. ☐ Yes
2. ☐ No
3. ☐ I am not sure

Please provide further explanation, if possible:

D. Regulatory Cooperation

D.1.	Are there any other authorities in your country, which work in your area of activity, for example at regional or local level or in a neighbouring product sector?
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4. ☐ Yes

5. ☐ No

Please name these authorities.

D.2.	If you have answered <i>Yes</i> above, do you coordinate your activities with these authorities from your country?
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Please share further detail on the kind of cooperation (e.g. frequency, kind of co-operation, which authority, etc.).

D.3.	Do you coordinate your activities with enforcement authorities from other EU Member States or non-EU countries
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1. ☐ Yes

2. ☐ No

D.4.	If you answered yes above, please state with which authorities in which Member States you are working together. Include any EU agencies and authorities.
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D.5.	What is the nature of this cooperation?
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Multiple choice possible.

1. ☐ Sharing or creation of statistics
2. ☐ Sharing best practice
3. ☐ Setting common surveillance and enforcement criteria and standards
4. ☐ Conducting joint surveillance & enforcement activities
5. ☐ Proposing new or amending EU legislation (EU Policy initiatives)
6. ☐ Other, please specify:

E. Additional data (not part of the interview)

D.6.	How would you say has the frequency and level of international cooperation changed over the last 5 years?
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1. ☐ It has intensified significantly
2. ☐ It has intensified somewhat
3. ☐ It has remained unchanged
4. ☐ It has decreased
5. ☐ It has decreased significantly
6. ☐ I am not sure/no comment

Please share further detail you may have:

D.7.	If applicable, which have been the most notable policy initiatives resulting from this international cooperation?
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For example, EU legislation (incl. draft proposals), standard setting, best practice, codes of conduct, trust certification, etc.

D.8.	If applicable, do any of the above initiatives include participation by private sector actors, such as platforms or industry associations?
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1. ☐ Yes
2. ☐ No

If yes, please share further detail.

E. Additional data (not part of the interview)

E.1.	Date and location of interview (completed by interviewer).
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E.2.	Interview conducted with (names and position) - (completed by interviewer).
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