

The Legal Framework for E-commerce in the Internal Market

State of play, remaining obstacles to the free movement of digital services and ways to improve the current situation

The [original full study](#)¹ presents the current legal framework for e-commerce in the Internal Market. While analysing already existing legal acts, it points out the challenges and opportunities for the future legislation. With a view on the upcoming Digital Services Act (DSA), it puts a special emphasis on the current market situation regarding technical as well as societal developments, thereby elaborating on areas especially prone to improving the present market condition.

Background

The profound changes that have taken place since the adoption of the E-commerce Directive were induced primarily by the unprecedented technological advancements of this period, which have redefined not only the market organisation and functioning, but also the needs and expectations of society.

The most fundamental change from the point of view of market organisation is perhaps the technology-driven new concept of the platform economy. It changed the typical structure of a contract concluded in a digital environment from bilateral to a triangle, in which platforms became gatekeepers and standard setters of the market. Similarly, the ever-expanding use of Artificial Intelligence (AI) in all market sectors has changed the way in which contractual relations are established and executed.



The societal consequences of the rapid technological advancements of the last two decades are equally intense. On the one hand, the number of information society services (as defined by the E-commerce Directive) has increased significantly, and on the other the content of the information society services has undergone a deep evolution. Taking a broader perspective, access to the internet and information society services has become

necessary for people who want to function normally in modern society. While the dehumanisation of contacts between people can be useful for society (as clearly proven in the times of the COVID-19 pandemic), it also brings about potentially very negative consequences. Contacts between people are carried out either without direct contact between humans, or even without any human involvement (when bots are employed). It creates a danger of human affairs being handled without considering that there is a human being on the other end of the internet connection.

Another fundamental change that has been recognised as important recently by both European citizens and the European Union is the need to build the EU market in a sustainable manner. As all future actions of EU must endeavour to build sustainability into the design of the proposed legislative solutions, the same must also be the case for the Digital Single Market legislative scheme.

Check out the [original full study](#) by scanning this QR code!



Key findings

While the E-commerce Directive is undoubtedly one of the most successful pieces of EU legislation, the aims for which it was enacted have either been met, or they need to be redefined in the new socio-economic reality. It is, therefore, clear that the Commission's plans to propose a DSA that will address the market challenges in a new perspective should be applauded. However, since the E-commerce Directive has so far proven its ability to effectively address such challenges, there should be a careful review of which of the directive's current rules could be used in any future legislation, and which phenomena require new legislative impulses that would address the market failures. This study advocated the following:

First, it is critical from the point of view of the effectiveness of the future regulation that any future instrument will concur with the already existing legal schemes. In addition, considering the speed at which technological progress is happening, as well as its unpredictability, it is important that the future DSA is constructed and formulated in a way that is as futureproof as possible.

Second, the DSA should consider that information society services presently have the potential to deeply impact the personal lives of EU citizens. The rules, therefore, should not approach the information society services from a primarily commercial perspective, but should adopt a human-centric approach. Other issues to consider are the increasing commercialisation of human life, and the potential negative consequences of dehumanising contacts between people.

Third, the DSA should openly and appropriately address the consequences of global enterprises gaining unprecedented law-making capabilities for the markets they organise. The European Union should be able to set market standards (including safety and quality) for the European digital market.

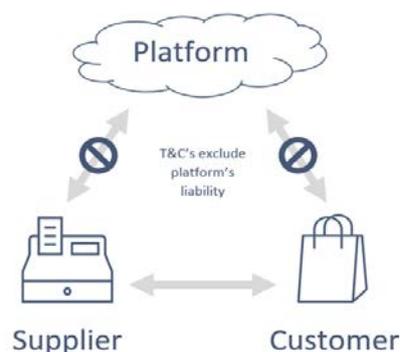
Fourth, EU standards for content moderation on platforms should be drafted so that they are capable of becoming a global standard for online spaces, balancing human rights as well as political, economic and societal interests.

Specific legislative solutions should deal with the question of what kind of content should be removed by the host-providers, to ensure an adequate and transparent take-down procedure (the introduction of notice-and-action rules). In addition, statistical take-down information should be available and automatic filtering technologies should be made subject to monitoring. While maintaining the Internal Market clause and rethinking the safe-harbour principle, the DSA should introduce rules to address the liability of platform operators for damage when they do not perform their obligations, as well as for the non-performance of a contract concluded via the platform, in specific situations.

The legal framework on AI should adopt a human-centric approach, counteracting – as far as possible – the inevitable dehumanisation of the approach brought about by technology. It should set up a legal scheme ensuring that AI functions in a trustworthy, explainable manner, that it not be created on the basis of an in-built (or hereditary) discrimination, and that it not be used as a tool of manipulation. It should not be limited to AI transparency standards.

Effective and swift enforcement is a tool to reinforce trust in the EU market. In the context of the Digital Single Market, the enforcement measures should reflect the pan-national character of the digital market, as well as the global context in which the platforms operate (EU level coordination). In addition, the introduction of automatic protection measures, including in the form of self-executing rights, should be considered for carefully identified market sectors.

While sustainability does not strike as a subject of primary importance in the context of the Digital Single Market, the expected increase of the e-commerce share in the entire market will require businesses to rethink their market strategies in light of the expected increase in market sustainability. The sustainability impact of the future regulation should, therefore, not be overlooked.



¹ [https://www.europarl.europa.eu/RegData/etudes/STUD/2020/652707/IPOL_STU\(2020\)652707_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2020/652707/IPOL_STU(2020)652707_EN.pdf).

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