AT A GLANCE

Requested by the IMCO committee

Study in Focus

European Parliament

The Digital Services Act and the Digital Markets Act - A forward-looking and consumer-centred perspective

Workshop Proceedings

The original full proceedings[1] summarise the presentations and discussions that took place during the IMCO online workshop on the Digital Services Act (DSA) and the Digital Markets Act (DMA), which was held on 26 May 2021. The workshop was structured in two panels, each consisting of three presentations and two Q&A sessions. The first panel focused on the DSA. The second panel was devoted to the DMA.

Check out the original full study by scanning this QR code!

Background

The European Commission (EC) put forward two proposals, the DSA and the DMA, to improve the governance of digital services and markets in the European Union (EU). The proposals aim to create a safe environment for consumers when using digital services and to foster innovation and competition by creating a level playing field in digital markets. This workshop was organised to explore possible conclusions and recommendations on the DSA and DMA proposals and gather evidence on the expected effects of the regulation of online intermediaries. The aim of the first panel was to explore in more depth some of the issues covered by the DSA proposal, namely the fragmentation of the single market for services, the responsibilities of intermediaries and problems faced by consumers when using online platforms and digital services or accessing illegal services or products, as well as issues related to supervision and enforcement. The aim of the second panel was to explore some of the issues covered by the DMA proposal, namely the role that a few online platforms play in the digital economy and the need to ensure a fair and contestable online platform environment to the benefit of consumers.

Key findings

The **first panel, on the DSA,** included presentations from Prof. Joris VAN HOBOKEN (Vrije Universiteit Brussel & University of Amsterdam), Prof. Teresa RODRÍGUEZ DE LAS HERAS BALLEL (University Carlos III of Madrid) and Prof. Daphne KELLER (Stanford Cyber Policy Center). The experts each focused on different issues raised in the DSA proposal. Prof. VAN HOBOKEN argued that there were some gaps in the proposals. Specifically, he asked for the inclusion of search-engine specific rules to Articles 3-5 and to ensure that infrastructural cloud services are covered under the provisions relating to "due diligence". Interpersonal communications services currently do not fall under the scope of the DSA, but should in his view be included for the purposes of safe harbour and due diligence obligations in cases where they are actively moderated. In the context of online advertising, Prof. VAN HOBOKEN noted that current expectations from regulators and politicians with respect to user-facing transparency are too high, and proposed that

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more funding should be provided for researchers and journalists to ensure that transparency is converted into accountability.

In her presentation, which focused on enforcement, Prof. RODRÍGUEZ DE LAS HERAS BALLEL noted that platforms were self-regulating environments, which determine their own policies and internal rules. She noted that automation was often used to manage these environments, but it was not clear to which extent automation was permitted and what were the legal effects (e.g. in relation to complaint handling). Finally, she addressed the question of whether there should be a new European Union agency in charge of enforcement or whether the European Commission should take sole responsibility for enforcement. Prof. Daphne KELLER considered that United States (US) law was not as well developed as the EU regimes concerning intermediary liability. In her view, the DSA's notice-and-action provisions do an excellent job in protecting user rights, but some obligations could distort competition between large platforms and smaller platforms. Moreover, Prof. KELLER recommended that it should be made clear that the DSA would not weaken protections for encryption and the security of commercial and private communications by e.g. introducing backdoors. On the issue of transparency, the experts noted that the DSA proposals were positive, but that there was a need to define which information was most important. The experts also noted that current expectations from regulators and politicians with respect to user-facing transparency were too high and that it is important to create a meaningful choice for consumers, but also to make clear how they can make their choice freely instead of being exposed to targeted advertising and potentially misled. On the question of clear personal identification in online transactions, the experts strongly argued against more extreme measures going beyond existing legislation.

The **second panel, on the DMA,** consisted of the experts Prof. Carmelo CENNAMO (Copenhagen Business School), Prof. Heike SCHWEITZER (Humboldt University Berlin) and Prof. Fiona M. SCOTT MORTON (Yale University). The experts provided their perspectives on different issues related to the DMA proposal. Prof. CENNAMO highlighted the role that platforms play as "collective organisations" which orchestrate value creation within their ecosystems. In his view, it was important to support this role as a source of innovation. He recommended that: 1) Promoting innovation should be included as objective, not only as a by-product of contestability; 2) regulators should acknowledge the orchestrator role of platforms and allow legitimate orchestration; and 3) obligations should be linked to specific objectives, as obligations for one objective might undermine another. Focusing on enforcement and institutional mechanisms, Prof. Heike SCHWEITZER argued that the tool of 'market investigations' could be widened and improved even further. She recommended that the Commission should be able to identify new core platform services to the Article 2 list, without involving the legislator. She also suggested that it should be possible to make use of the market investigation regime to apply tailored remedies. She warned about the potential negative effects of a centralised enforcement model due to a case overload and recommended a more decentralised enforcement mechanism in which national authorities could take action in parallel. Furthermore, she noted that the DMA does not make reference to private enforcement, and proposed to clarify that this remains an option. Finally, Prof. SCHWEITZER noted that, especially if there is parallel enforcement, it could be useful to establish a central expert resource that could be relied upon by the Commission as well as national authorities. Prof. Fiona M. SCOTT MORTON considered that there was currently no comprehensive digital regulatory framework in the US. There was thus, in her view, a unique opportunity for the EU to be a thought-leader in this domain. She recommended highlighting the principles underlying the prohibitions and obligations, to enable other regulatory regimes to adopt the concept, while tailoring the solutions to their specific context. She also noted that contestability is important for economists, and recommended that there should be a more general requirement for interoperability and non-discrimination.

[1] Wiewiorra, L. and Godlovitch, I., 2021, *The Digital Services Act and the Digital Markets Act - A forward-looking and consumer-centred perspective - Workshop Proceedings*, Publication for the committee on the Internal Market and Consumer Protection, Policy Department for Economic, Scientific and Quality of Life Policies, European Parliament, Luxembourg. Available at: http://www.europarl.europa.eu/RegData/etudes/IDAN/2021/662930/IPOL_IDA(2021)662930_EN.pdf.

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