

# E-commerce rules, fit for the digital age

The [full Workshop Proceedings](#)<sup>1</sup> summarise the discussion that took place at the workshop on "E-commerce rules, fit for the digital age". The E-commerce directive was elaborated twenty years ago and has been key in regulating online services. However, the role of the internet has drastically evolved over the last two decades. The Chair of IMCO Committee Prof. Dr Petra de Sutter and the Rapporteur for the Digital Services Act (DSA) Mr Alex Agius Saliba co-chaired this workshop in order to discuss which areas of the E-commerce directive are no longer fit for purpose and need reforming in the DSA.

## Background



The workshop began with the Chair of IMCO Committee Prof. Dr Petra de Sutter, Member of the European Parliament (MEP), introducing the topic and presenting the speakers. The Chair of IMCO Committee explained that the working methods of the European Parliament have shifted towards an evidence-based decision-making process by integrating independent experts and scientists into the law-making process and into the democratic debate. The aim of this new method is to reinforce legitimacy and accountability of European legislation.

The second part of the introduction was given by the IMCO Rapporteur for the Digital Services Act, Mr Alex Agius Saliba Member of the European Parliament (MEP), who recalled that platform economy has changed during the past two decades. It is therefore important to rethink provisions to address the current gaps in the legislation and to provide for a better consumer protection. The Rapporteur also explained that the Digital Market reform is an opportunity for the EU to become a global leader in the digital sector by promoting its rules worldwide. He concluded the introduction by insisting on the need to protect EU values and principles whilst legislating.

The workshop brought together Members of the European Parliament, numerous experts and stakeholders, including online platform services, the European Brands Association, EuroISPA and BEUC. The panels and discussions focused on the challenges of the digital age and on the elaboration of the Digital Services Act.

## Key findings

Opening the first panel, Prof. Dr Alexandre de Streel (University of Namur and Centre on Regulation in Europe - CERRE) emphasised the need to reform liability exemptions of the E-commerce directive as well as the importance of putting in place a **strong system of enforcement**. In the light of new European and national laws, the expert also argued that the EU should focus on ensuring **coherence between different legislations**.

Subsequently, Prof. Dr Hans Schulte-Nölke (Osnabrueck University) reiterated the major changes in platform economy and the importance of reforming platform liability in the DSA. The expert advised to tackle these issues by giving precisions on the role of platforms and by implementing transparency obligations. He also favoured a **mixture of**

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**legislations, standardisation and monitoring** by the EU and MS organisations to help update the legal framework for the digital economy. The expert also pointed out that the social dimension of platforms could be an opportunity for the DSA to take into account sustainability issues.

Dr Felice Simonelli (CEPS) closed the first panel by giving suggestions which could help remove barriers to cross-border E-commerce. The expert argued that implementing **stronger enforcement measures, reviewing EU copyright** to deal with territoriality, **introducing a digital tax** and **increasing liability and transparency** between businesses and consumers could help tackle market abuse and remove cross-border barriers to the Digital Market.

The speakers of the second panel discussed how the DSA could improve the current level playing field for European businesses to the benefit of consumers.

The panel was opened by Prof. Dr Jan Bernd Nordemann (Humboldt University Berlin), who spoke about the difficulty of sanctioning internet infringements and pointed out that the rules establishing liability are very partly harmonised in the EU. The expert insisted on the need to **adapt duties of care to the digital era** to fight against violations. He also argued that a "**know your business customer**" principle would be efficient to ensure that illegal websites are not served by EU providers.

Prof Dr Dino Pedreschi's presentation (University of Pisa) focused on innovations brought by Artificial Intelligence and the risks associated to them. He explained that ensuring data is of good quality and trustworthy is key to limit the drawbacks of AI and to guarantee effective human and machine collaboration. The second part of his presentation focused on the social dimension of AI. The expert criticised the fact that AI is too often applied on an advertising logic, thus increasing polarisation and threatening pluralism. He thus encouraged the EU to **strive for diversity on online platforms** as it is key for social, cultural and economic bonds.

Dr Melanie Smith's presentation (Cardiff University) focused on the importance of putting in place a **strong regulatory framework** in order to enforce rules efficiently. She insisted on the need to tackle **horizontal processes and internal structures** of platforms rather than external effects as this adds complexity and leads to counterproductivity. Dr Smith stressed that a **public law framework for the DSA** would protect European values and insisted on the importance of cooperation between Member States.

The fourth presentation was made by Prof. Dr Giovanni Sartor (European University Institute in Florence), who explained the risks of AI such as excessive data collection and unfair algorithm decisions. He then listed different measures which would limit the drifts of AI such as **developing fundamental rights and providing for ethical and legal norms** on the use of AI by public and private organisations. The expert also pointed out that current norms and principles could be used to fight against the risks of AI and that these should mainly be implemented via soft law.

Mr Nick Sohnmann (Future Candy) concluded the panel by giving an overview of the evolution of digital services in the next ten years. The expert emphasised that Europe should develop an appetite for digital leadership and that it could start doing so by building a **European Cloud**, setting up an **EU backed AI venture programme** and having a visionary digital ten-year plan.

In the third part of the workshop, the European Commission representative Mr Prabhad Agarwal explained that the DSA aimed to upgrade safety rules and to complete the Digital Single Market. He stated that the new regulation would also focus on the **diversity of platforms** in order to help smaller ones reach their full creative potential. Mr Prabhad Agarwal also agreed on the need to put in place a stronger system of enforcement and to favour a **public value framework for the DSA**.

The European Commission presentation was followed by a roundtable of stakeholders, who all emphasised that the DSA should tackle unsafe products online as these are increasingly present online and threaten consumers.

Mr Razvan George Antemir (European Brands Association) explained that illegal content should be dealt with by installing a framework which encourages **proactive engagement from platforms** to ensure that dangerous goods do not reach consumers. He also argued that **know-you-business-users policies** and sharing data with brand holders to get to the source would be useful in tracking illegal content.

According to Ms Maryant Fernandez Perez (BEUC), the DSA should tackle unsafe products firstly by making the distinction between the sale of products and other types of activities. She explained that she is in favour of maintaining

the country of origin principle, **implementing robust seller authentication and verification processes and increasing harmonisation for notice and action procedure**. The expert also asked for online marketplaces liability to exist in certain situation.

Mr Stefan Naumann (Zalando) recommended implementing a **duty of care** which would only allow legitimate sellers to operate on the marketplace. Mr Naumann also explained that different liabilities and monitoring options reflecting different platforms should be put in place. Harmonisation should be increased to ensure a uniform application of regulations across Member States.

Airbnb representative Mr Patrick Robinson explained that the E-commerce directive does not provide enough clarity about the impacts of platforms' steps on the liability for other things users do. This leads to certain platforms avoiding measure to avoid burdens and should thus be reformed. Mr Robinson argued that the DSA should focus on creating a less fragmented Digital Market where roles, responsibilities and accountabilities are clear for everyone. He also recommended to **strengthen notice and take down harmonisation**.

Mr Malcom Hutty (EuroISPA) explained that the limited exemption liability should be preserved and that it is within the legislator's power to accompany it with **enforcement mechanisms** and **sanctions for non-compliance**. Mr Hutty also recommended recognising and **identifying a new category of online platforms** as the current ones in the E-commerce directive are no longer adapted. Thirdly, he encouraged the EU to **create a tailored extension for liability protection** to enable providers to be more proactive in seeking for unlawful content. The EU should also focus on **procedural protections** to preserve fundamental rights.

Google representative Mr Milan Zubicek reiterated that laws should be harmonised, that the country of origin and the notice and take down system should be kept and that fundamental rights should be protected in the DSA. He explained that the notice and take down could be reinforced by **introducing notice formalities** and that the liability regime should only focus on illegal content. Mr Zubicek also agreed with other speakers that a distinction should be made between online service activities and that a framework which empowers all types of platforms should be implemented. He also favoured the Good Samaritan protection.

The workshop was concluded by the Chair of IMCO Committee Prof. Dr Petra de Sutter, and the IMCO Rapporteur for the Digital Services Act Mr Alex Agius Saliba.



<sup>1</sup> [https://www.europarl.europa.eu/RegData/etudes/IDAN/2020/648798/IPOL\\_IDA\(2020\)648798\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/IDAN/2020/648798/IPOL_IDA(2020)648798_EN.pdf).

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Administrators responsible: Mariusz MACIEJEWSKI, Christina RATCLIFF; Editorial assistant: Roberto BIANCHINI

Contact: [Poldep-Economy-Science@ep.europa.eu](mailto:Poldep-Economy-Science@ep.europa.eu)

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