

E-commerce rules, fit for the digital age



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Abstract

The report summarises 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.

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CONTENTS

LIST OF ABBREVIATIONS	4
EXECUTIVE SUMMARY	5
1. WELCOME AND INTRODUCTION	9
2. PANEL 1: CURRENT STATE OF PLAY AND EXPLORING POSSIBLE WAYS FOR IMPROVEMENT	10
3. PANEL 2: IMPROVING THE CURRENT LEVEL PLAYING FIELD FOR EUROPEAN BUSINESSES TO THE BENEFIT OF CONSUMERS	12
4. VIEW FROM THE EUROPEAN COMMISSION	15
5. ROUNDTABLE - VIEW FROM STAKEHOLDERS	16
6. CONCLUDING REMARKS	19
7. WORKSHOP PROGRAMME	20
8. SHORT BIOGRAPHIES OF SPEAKERS	22
9. PRESENTATIONS	27

LIST OF ABBREVIATIONS

AI	Artificial Intelligence
DSA	Digital Services Act
EU	European Union
EUIPO	European Union Intellectual Property Office
GDP	Gross Domestic Product
GDPR	General Data Protection Regulation
IMCO	Committee on the Internal Market and Consumer Protection
MEP	Member of the European Parliament
MS	Member States
OECD	The Organisation for Economic Co-operation and Development
Q&A	Questions and Answers
RAPEX	Rapid Alert System – Non-Food
SMEs	Small and Medium Enterprises
UCPD	Unfair Commercial Practices Directive
VAT	Value Added Tax

EXECUTIVE SUMMARY

The workshop began with the Chair of IMCO Committee Prof Dr Petra de Sutter (MEP), introducing the topic and presenting the speakers. She 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 (MEP). He 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. Mr Agius Saliba (MEP) 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.

The workshop was organised around four different sections. The first one concerned the current state of play of the E-commerce directive and focused on gathering opinions of academics and think tanks on possible ways of improving and addressing the current and future challenges in the DSA.

Opening the first panel, Prof Dr de Streel 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. Schulte-Nölke 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 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 Simonelli closed the first panel by giving suggestions which could help remove barriers to cross-border E-commerce. He argued that implementing stronger enforcement measures, reviewing EU copyright to deal with territoriality, introducing a digital tax and increasing liability and transparency between business 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 Nordemann, 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 Pedreschi’s presentation 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 Smith’s presentation 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 Sartor, 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.

Future Candy representative Mr Sohnemann closed 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 Prabhakar 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 Prabhakar 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.

European Brands Association Representative Mr Antemir was the first speaker to take the floor. He 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-your-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 representative, 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 situations.

The third speaker to take the floor was Mr Naumann, Head of Commercial Law at Zalando. He 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 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 measures 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.

The fifth stakeholder to take the floor was Mr Hutty, representative of EuroISPA. He firstly 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 Zubicek closed the debate by reiterating 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.

Two Q&A sessions also took place during the workshop, where speakers took questions from Members and the audience. The main issues discussed concerned online platform responsibility and the new liability system to be put in place in the DSA.

The Chair of IMCO Committee Prof Dr Petra de Sutter (MEP) and IMCO Rapporteur for the Digital Services Act Mr Alex Agius Saliba (MEP) concluded the workshop by thanking all the participants for their presentations and feedback. They highlighted that the workshop was very helpful to identify the major issues related to the E-commerce directive and to give appropriate answers to these concerns.

1. WELCOME AND INTRODUCTION

The Chair of IMCO Committee, Prof Dr Petra de Sutter (MEP) welcomed everyone and recalled that the workshop was organised by the Policy Department A at the request of the IMCO Committee. She then indicated that the European Parliament has a unique model, involving independent expertise of universities and think tanks in the legislative process. Prof Dr de Sutter (MEP) then explained that the aim of gathering experts, thus shifting towards an evidence-based decision-making process, is to guarantee that decisions are made with the best available evidence. This expertise also uses all the tools of better law-making and serves to inform the debate and reinforce accountability. She then pointed out that the current independent expertise model does not serve as a tool to replace democratic legitimacy, but as an important step to reinforce accountability and legitimacy of European legislation. It is a new way of integrating expertise and science into the democratic debate.

Prof Dr de Sutter (MEP) continued her speech by giving practical information about the workshop. She started by stating that eight leading independent experts from renowned universities and think tanks, the European Commission, stakeholders and consumer organisations were present in order to inform IMCO Members of the most important concerns regarding E-commerce and to provide for a discussion on the future of the DSA.

The Chair of IMCO Committee then explained that the workshop would be organised around four sections. It will start with two panels, the first one concentrating on the current state of play of the E-commerce directive and on possible ways for improvement. The second will reflect on improving the current level playing field for European businesses to the benefit of consumers. She stated that this will be followed by a speech from the European Commission representative, who will share its approach to the reform brought by the DSA. The workshop will end with a roundtable of stakeholders, who will stress the issues they currently encounter with the E-commerce directive and give suggestions for improvements.



IMCO Rapporteur for the Digital Services Act Mr Alex Agius Saliba (MEP) continued the introduction by emphasising the increasing role of the digital world in our social and economic life. He recalled the numerous benefits of platform economy, such as the easy access to products and to social and economic exchanges. He insisted on the necessity to put in place efficient regulations as platform economy raises new policy and regulatory challenges. These

include competition issues, market dominance, as well information and power asymmetry between platforms, businesses, citizens and regulations.

Mr Agius Saliba (MEP) highlighted that the measures in place to tackle these issues are often not enforced well enough, leading to gaps in consumer and business protection.

Indeed, the E-commerce directive was established twenty years ago at a time where the digital economy was different.

Some important platforms such as Facebook, AirBnb and Instagram did not exist, and business models as well as power dynamics have changed, meaning that certain provisions need rethinking in order to address the current gaps in legislation and provide for a better protection and safer environment for businesses and consumers. He also recalled that the E-commerce directive established the country of origin principle as well as the liability exemptions and limitations for online intermediary service providers.

Mr Agius Saliba (MEP) continued by giving examples of the numerous issues currently faced, such as unsafe products sold online, the multiplication of providers on online platforms, and explained that some Member States such as France and Germany have already taken measures concerning online platforms.

Mr Agius Saliba (MEP) stressed that the Digital Market reform is a way of shifting the EU's position from one of the main players to one of the main global leaders in the digital sector by setting up rules within the EU but also internationally, following the same lines of the GDPR.

Finally, Mr Agius Saliba (MEP) concluded by insisting on the fact that EU values and principles, based on trust and consumer protection, must always be respected and followed when legislating.

2. PANEL 1: CURRENT STATE OF PLAY AND EXPLORING POSSIBLE WAYS FOR IMPROVEMENT



In his presentation, **Prof Dr Alexander de Streel** gave his opinion on the four pillars of the E-commerce directive, explaining which areas have been successful and which areas should be improved through the DSA. According to him, the E-commerce directive has had a great effect on both the Internal Market and on rules on consumers and users. The expert therefore encouraged the EU to protect and improve these two pillars in the DSA.

On the other hand, the liability exemption for three types of services (mere conduit, caching and passive or neutral hosting) established in the E-commerce directive requires a stronger reform. Although the objectives of these exemptions were pertinent, the expert argued that the rules should be clearer as they have led to different interpretations across Member States. Furthermore, they are not necessarily adapted to the current interactive platforms.

Concerning the enforcement of the directive, Prof Dr Alexander de Streel denounced the fact measures were quite futuristic at the time by pushing codes of conduct, dispute resolution and cooperation between Member States. The expert criticised the fact that sanctions have been very weak and that the cooperation did not work as well as intended. The DSA should therefore try to improve the enforcement of rules. It should also bring Artificial Intelligence into the picture in a much clearer way.

Prof Dr de Streel continued his presentations by explaining the evolutions that have occurred the past twenty years and the fact that the E-commerce directive did not anticipate all these. The expert mentioned that platforms are bigger, more attractive, and that new technologies and AI are rising.

Prof Dr de Streel also talked about the evolution of the European legal framework, with new service directives and consumer protection rules. For these reasons, the expert stressed that more coherence is needed between the new laws and the patchwork seen in different Member States (e.g.: France, Germany).



Prof Dr de Streel's presentation was followed by **Prof Dr Hans Schulte Nölke's** analysis on the legal framework of E-commerce and Internal Market and on ways to improve the situation.

According to the expert, the DSA should include updates of the E-commerce directive and some parts of legislation should be kept in the DSA and coordinated (such as platform operator's liability). The expert explained that a major change in platform economy has occurred the past twenty years, and that the

model has shifted from a bipolar relation (buyer and seller) to a tripartite process (buyer, seller and platform operator). For him, one of the core issues to be solved in the DSA concerns platform operator liability, as well as the safe harbour provisions which shelters certain service providers from liability. The expert explained that although the latter may lead to positive outcomes, liability usually arises from elsewhere. A positive liability should therefore be created in order to be able to take action against platform operators or information society providers.

Prof Dr Schulte-Nölke also explained that sustainability issues may be taken into account in the DSA following the social dimension platforms have acquired over the past years.

The expert also listed a number of measures which should be implemented in the DSA to correspond with the current market situation, such as the need for transparency obligations, giving precision on the role of platform operators and concerning the identity of content providers and on moderation of content. Prof Dr Schulte-Nölke explained that liability issues are key and that they are currently split into two categories: internal liability towards platform users (e.g.: seller can have a claim against platform operator because of bad quality of a goods) and external effects. According to him, the key for regaining market control would be to mix instruments as codes of conducts did not turn out to be very efficient. The expert thus favoured a mixture of legislations, standardisation and monitoring by EU and MS organisations, which would help update the legal framework for the digital economy.



Dr Felice Simonelli started his presentation by recalling the benefits of the Single Market, such as consumer welfare, lower prices, social cohesion, easy accessibility to new markets and revenues for SMEs.

The expert then explained the current obstacles, namely that national E-commerce is developing much faster than cross-border E-commerce, which is still fragmented. Concerning costs, giants of the internet have a great economic impact, and provide many

services, ranging from customer service, delivery and storage to VAT and invoicing. Digital giants are also able to put in place tax planning strategy, costing large amounts to MS. They also have a strong bargaining power vis à vis businesses and consumers and are able to influence what consumers choose to buy online.

Dr Simonelli continued his presentation by explaining which measures could be put in place to remove barriers to cross-border E-commerce. According to the expert, a first step would be to make sure that previous legislations are properly enforced. EU copyright should also be reviewed in order to deal with the issue of territoriality. The expert also encouraged the EU to “be bold” and to introduce a digital tax if the OECD does not do so before the end of the year. The EU must also ensure that the market power is not abused. Dr Simonelli argued that competition law has not successfully worked in this regard and that proving dominant position is too difficult.

Enforcing liability and transparency between businesses and consumers is also extremely important to reduce information asymmetry and help consumers make better choices. The expert concluded by saying that gatekeepers of the internet should be used to create more sustainable consumption and production.

3. PANEL 2: IMPROVING THE CURRENT LEVEL PLAYING FIELD FOR EUROPEAN BUSINESSES TO THE BENEFIT OF CONSUMERS



Prof Dr Nordemann opened the second panel with a presentation on responsibility and duty of care for providers.

The expert started by recalling that the internet produces infringements on a massive scale, and that it is very difficult to go after individual users. The expert argued that it would be efficient to go after the providers for prosecution of legal violations, and that this would help maintain trust in digital services. According to him, a good solution would be to adapt the “duty of care” to the digital era to

implement a stronger duty of care for providers.

The expert continued by explaining the current legal framework concerning liability for providers, insisting on the fact that there are two types of rules that need to be distinguished: rules that establish liability for providers and rules that shield against liability for providers. The expert explained that rules establishing liability are very partly harmonised at EU level, unlike rules that shield against an already established liability. The expert pointed out that without harmonising the establishment of liability, harmonisation is not complete.

According to Prof Dr Nordemann, proposals for duties of care should be discussed. There are a wide range of duties such as the duty of care to address violations of law directly, the threefold duty of care, the usual take down duty, the stay down duty. The expert also mentioned that there could be a third duty to prevent violations that are not identical but equivalent, or a duty addressing illegal business models as these are rising.

Prof Dr Nordemann pointed out that some of these illegal websites are served by EU providers, and that a “know your business customer” should be discussed when EU providers are used, alongside a duty of care for more transparency concerning providers.



Prof Dr Pedreschi's presentation focused on the new development and innovations brought by Artificial Intelligence and on AI's dependence on data quality.

The expert started by explaining that AI has many benefits, such as the ability to deal with unsolved problems, understanding natural language and recognising image content. However, reasoning, adaptation to human environments and human machine interaction are still underdeveloped.

The expert recalled that the quality of AI is totally dependent on the quality of the data learnt from. There are therefore current risks with AI, such as learning from biased data, which could cause bugs harmful for safety or discrimination for vulnerable groups (e.g.: through predictive justice).

Professor Pedreschi also explained that it is essential to make sure that AI is explainable and trustworthy to ensure effective

human and machine collaboration.

The second part of the presentation focused on the social dimension of AI. As a collective intelligence, AI discovers patterns from the experience of people. The expert criticised the fact that on platforms, this is applied to individuals on an advertising logic target aimed at maximising purchases, and that it leads to abolishing diversity as these adverts can increase polarisation and radicalise users' tastes. The expert stressed that this threatens pluralism, debates and democracy. In order to avoid this, Professor Pedreschi argued that the EU should strive for diversity on online platforms and marketplaces, as it is key for Europe on a social, cultural and economic level. Professor Pedreschi emphasised that relying on a mechanism that strives for conformity rather than diversity is very dangerous not only for consumers but at societal level in terms of reductions of diversity. The expert recommended that the EU pushes towards AI power to embrace diversity, to promote connections between viewpoints and complex controversial issues, to break borders and lead to a more integrated Europe.



Dr Smith's presentation focused on the need to revise the E-commerce directive in the DSA. She emphasised the importance of putting in place a strong regulatory framework and of cooperation between Member States.

The expert started by pointing out that the E-commerce directive is no longer fit for purpose. According to her, it is essential that the DSA moves from a commercial law approach to a public value approach. Dr Smith argued that public value framework does not prioritise free speech over other fundamental rights and values, which is the case of the E-commerce directive. Indeed, the expert stated that the approach in the E-commerce directive is the American approach to free speech, which was weaponised so that it could offer a shield for liability.

Secondly, Dr Smith explained that the DSA should focus on horizontal processes and internal structures of platforms. This would narrow the scope of the DSA for it to apply across all platform types and business models rather than trying to tackle everything in an aspirational way, which is the case when focusing on external effects of platforms. The DSA should have coherent goals and values to protect, links with the creation of trust and legitimacy in the system of regulation and should not try to solve issues as this adds complexity and is thus counterproductive.

Concerning the design of the DSA, Dr Smith argued that it should be between the GDPR and consumer protection regulations, as the GDPR would bring a public law values framework and consumer protection would bring robust cooperation mechanisms between and across Member States. The expert also favoured adding another element of EU regulation which would have supplementary powers.

In order to reemphasise the need for a horizontal framework, Dr Smith concluded by stating that there is no point in having rules if there is no efficient system to enforce them.



Prof Dr Giovanni Sartor's presentation focused on challenges in the field of consumer protection relating to AI. After recalling the potential benefits of AI, the expert explained that there are many risks linked to its use. These include the fact that marketing done through AI uses our weaknesses, carries out excessive data collection, unfair algorithm decisions and the limitations on consumer autonomy. The expert stressed his worry concerning the fact that suppliers know consumers much better than consumers know suppliers, meaning that platforms can for example put in place price discrimination. Prof Dr. Sartor also mentioned discrimination generated from algorithms (e.g.: job offers for certain genders, targeted advertising).

In the second part of his presentation, Prof Dr Sartor listed different solutions to tackle the drawbacks of AI. These measures included making the power of AI available to citizens and to the civil society, developing fundamental principles, providing for ethical and legal norms on the use of AI by private and public organisations, and promoting awareness of opportunities and risks, as well as academic, political and civil debate. The expert argued that there should be support, promotion and finance initiatives to use AI to enable active citizenship and effective control.

Prof Dr Sartor then pointed out that there are many current regulations relevant to AI and consumers, such as laws concerning data protection (GDPR, ePrivacy directive), consumer protection (eCommerce, UCPD), commerce, copyright and competition law. The expert also added that there are some valuable norms and principles to tackle the drifts of AI and that the key is guidance to apply these to new challenges. These should be implemented mainly through soft law, but also through hard law with due care in certain situations. Indeed, AI development requires very quick implementation so hard law may be required not to cause problems to European companies and competitiveness in the global economy.



Mr Nick Sohnemann's presentation focused on the development of digital services. The expert's overview of the evolution of these services was split into three periods: the near future (2020), the prognostics for 2025, and the developments expected for 2030.

Firstly, Mr Sohnemann explained that in the near future, 5G and fast communications will exist, with robots working in different fields such as restaurants and constructions. Facial recognition for payments is already available in China so is also expected to be used in Europe soon.

In five years' time, Mr Sohnemann stressed that robots will be part of our everyday routine, for instance through smartphones tracking our calorie intakes, digital pets and intelligent cars.

By 2030, the expert predicted that 6G will exist, meaning that there will be self-driving cars, hyper-personalised products based on DNA (e.g.: DNA-based travel, food delivery) and that

many mechanisms will advise citizens on what to do in their daily lives. This means that digital services will be seamless, hyper personalised and sustainable.

According to Mr Sohnemann, Europe has to develop an appetite for digital leadership. It should do so by building a European Cloud (and thus block off American services unless they follow European rules), setting up an EU backed AI venture programme, and having a visionary digital ten years plan (such as an agenda).

4. VIEW FROM THE EUROPEAN COMMISSION

The European Commission representative, Mr Prabhad Agarwal, Acting Head of Unit at DG CNECT, started his presentation by giving some introductory words, reiterating the benefits of the Single Market and explaining that European citizens too often take it for granted. The expert also recalled that it is thanks to the Internal Market clause of the E-commerce directive that Europeans have seamless access to services across borders.

Mr Prabhad Agarwal then went into the heart of the subject by explaining the focuses of the Commission when legislating the DSA, which are the upgrade of liability and safety rules for platforms and the completion of the Digital Single Market. The expert also explained that consumer protection will be examined closely. Mr Prabhad Agarwal emphasised the importance of concentrating on the diversity of platforms, by including big and smaller platforms as the latter represent a strong creative potential and 90% of them are still in the startup phase. To allow them to be the innovative engine of the tomorrow, it is important that the DSA ensures that they can easily scale up.

The expert continued his presentation by giving a broad time framework regarding the DSA, namely that a digital strategy, a white paper on Artificial Intelligence and a communication will soon be published, covering topics discussed in the workshop. A three-month public consultation on precise issues was also planned to start in March. The aim of this was to enable interactions and discussions on how to make the Internal Market competitive for new entrances, for instance for businesses wanting to compete as a new service with some big platforms.

The expert concluded by recalling that enforcement is very important, and that the DSA should have adapted rules available for enforcement that are efficient in the digital age. The spectrum of options available in this regard will thus be examined. Mr Prabhakar Agarwal agreed with Dr Smith that the public value framework should be used, and that it is important to define rules that define our own information and space for service provision and fair competition.

5. ROUNDTABLE - VIEW FROM STAKEHOLDERS

Mr Razvan Antemir - Senior Public Affairs Manager at European Brands Association

Mr Antemir started his presentation by explaining that the issues faced by its members are mainly linked to illegal content on platforms and more specifically to the lack of sufficiently proactive engagements by platform to prevent that illegal products reach consumers. He then pointed out that counterfeit products account to 7% of imported products in the EU and have increased by 30% in the last few years (according to EUIPO and OECD), which is a cost both for consumers and to the European economy.

Mr Antemir then spoke about issues relating to RAPEX, the European alert system where dangerous goods are notified. He explained that 90% of the goods on RAPEX are dangerous and that the main issue is that nobody is responsible for the harm they cause. Furthermore, only marketplaces have control over this flow as they are involved in most steps of the process, usually as retailers, cloud providers, transport agents and fulfilment agents.

In order to tackle this, Mr Antemir argued that the EU should install a framework which encourages proactive engagement, ensuring that these goods do not get presented to consumers.

He ended his presentation by explaining that the main goal should be that all the players are compliant by design to address the issues. Mr Antemir also stressed that know-your-business-users policies, cutting the loopholes, and sharing data with brand holders to get to the sources rather than catching individual infringements would help tackle illegal content.

Ms. Maryant Fernandez Perez – Senior Digital Policy Officer at the European Consumer Organisation (BEUC)

Ms Fernandez Perez, BEUC representative, focused her presentation on unsafe products sold online, whether on Amazon or other websites. According to her, the sale and promotion of unsafe products should be a main focus in the DSA. In order to do so, she stated that the DSA should make the distinction between the sale of products and other types of activities. Ms Fernandez Perez also explained that it is essential that the country of origin principle remains. Other recommendations of the BEUC included having robust seller authentication and verification processes, increasing harmonisation for notice and action procedures, adding transparency and design obligations, including for advertising (advertisers are rarely known by the consumer), sharing relevant data with competitive authorities and researchers. The expert also stressed that she favours liability for online marketplaces as voluntary actions have not been efficient.

Ms Fernandez Perez asked for online marketplace liability to exist in the following scenarios: failure to inform about the supplier of goods and services, providing misleading information, guarantees or statements, or when the platform has predominant influence over suppliers. The expert ended her presentation by reiterating that rules cannot be effective without solid enforcement rules, and that the DSA must upgrade online liability and safety rules.

Dr Stefan Naumann - Head of Commercial Law at Zalando

Mr Naumann started by pointing out that Zalando only selects trustworthy products for its hybrid platform. He stated that consumers expect a trustworthy and safe shopping experience but that the E-commerce is no longer adapted to tackle all the infringements and counterfeit products online.

According to him, there are two pillars which could help fight against these issues: duty of care and harmonisation.

Concerning the duty of care, he explained that platforms should take time to verify products before merchandising them. Mr Naumann gave an example of a duty of care proposed in Germany in March from which the EU should inspire itself. The German duty keeps general exceptions of monitoring and liability and imposes an obligation only to allow legitimate sellers operating on the marketplace. If this criteria is not met, there is platform liability.

Mr Naumann also argued that the DSA should focus on differentiated notice and take down actions as platforms operating the take down model will not usually require the same process for online take down as big and old platforms do. Therefore, different liabilities and monitoring options reflecting different platform should be implemented via the DSA.

Concerning harmonisation, the issue with the E-commerce directive is that it was translated into national laws, which led to it being applied differently depending on the Member State. This adds a challenge to comply with local rules when entering a new market and causes indirect discrimination when platforms operate more intensively in a country with weaker legal requirements. For this reason, Mr Naumann stated that harmonisation would help solve this issue.

Mr Naumann concluded by asking the EU to consider safe harbor models as a possible solution, as well as to consider flexibility for different platform models to achieve a balanced law. He also asked for the DSA to be a regulation and not a directive.

Mr Patrick Robinson – Director of Airbnb’s Innovative Global Business and Human Rights Programme

After recalling the role of the Airbnb platform, **Mr Robinson** pointed out the benefits of the E-commerce directive, in particular the country of origin principle, which has helped Airbnb grow in Europe. He explained that Airbnb has implemented a wide range of frameworks in different cities and regions across the EU, addressing issues such as housing, tourism management, safety and local taxes. He also stated that combining offline and online regulation is feasible but difficult, especially in a fragmented market.

Mr Robinson continued his presentation by giving advice on how to incentivise platforms to take actions in the consumers’ interests. He explained that Airbnb implements extensive protection for its users and ensures safety and quality via insurances, secure payments, and deployment methods to assess risks to users.

According to him, the E-commerce directive does not provide enough clarity about how the steps platforms take might affect liability for other things users might do. This can lead to platforms avoiding trust building measures in order to avoid burdens (e.g.: handling money in Italy makes Airbnb liable for calculating and collecting income tax on their hosts).

Mr Robinson concluded by indicating that the DSA could reflect many measures that are already efficient. This could lead to a less fragmented Digital Market where roles, responsibilities and accountabilities are clear for everyone. He also favoured a stronger harmonisation of notice and take down actions.

Mr. Malcolm Huty - Chair of the Intermediary Liability Committee (EuroISPA)

During his presentation, **Mr Huty** set out proposals recommended by EuroISPA.

Firstly, he argued that the limited exemption from liability should be preserved as it has proved to be effective. He stressed that it is within the legislator's power to impose statutory obligations on members to take more action where the public interest demands it, and within the legislative power to accompany that with enforcement mechanisms and sanctions for non-compliance. Mr Huty therefore disagreed with other speakers who wish to create a liability for platforms regarding content published.

The second proposal consists in recognising and identifying a new category of online platforms for which appropriate regulations of the interventions that can be expected of them can be targeted against. Indeed, Mr Huty pointed out that the current categories of protection that exist in the E-commerce directive (mere congress, cashing services, hosting providers) are inefficient as platforms have new characteristics that were not fully envisaged at the time the E-commerce directive was written.

The third proposal consists in creating as part of the DSA a carefully tailored extension for liability protection. This would enable providers to be more proactive in seeking for unlawful content and more effective at good faith mechanisms to ensure fair treatment of users and to safeguard fundamental rights. A new obligation to preserve fundamental rights could be introduced, focusing on procedural protections such as transparency, the right to appeal, and the right to be notified. Mr Huty stated that the reason for this proposal is that the Good Samaritan clause has not "stood the test of time". The actual knowledge test in the hosting safe harbor is difficult to implement as it entails being proactively looking for unlawful content. It therefore makes it impossible for most providers to uphold the content as being lawful against the complaint, because they take the risk themselves of full liability.

Mr Milan Zubicek - Public Policy and Government Relations Manager at Google

Mr Zubicek started his speech by recalling all actions Google has put in place, such as sharing its principles for smart regulation for illegal content and engaging with policy makers to discuss new rules.

According to Mr Zubicek, the challenges of the digital age must be addressed by shared responsibility between the government, law enforcement, companies, users and the civil society.

He explained that Google is in favour of harmonising laws across the EU, keeping the country of origin principle, supporting innovation, and preserving the notice and take down system. Mr Zubicek added that the DSA could be an opportunity to clarify some of these systems and that the EU should insist on protecting fundamental rights, especially by prohibiting the imposition of monitoring requirements on platforms.

The second part of his presentation focused on Google's recommendations for the DSA.

Firstly, he reiterated that effective notice and take down rules are essential, and that there should be no liability without positive knowledge on an infringement. He stated that the current system could be strengthened by introducing notice formalities that would help review teams, process information more efficiently and more quickly and also incentivize against abuse of those notices.

The liability regime should only focus on illegal content and this same illegal content should be treated separately from free expression and access to information.

A distinction should also be made between online service activities, as all platforms do not necessarily have the same needs, and respect must be shown concerning the use of privacy.

Mr Zubicek pointed out that it is important to discuss ways of introducing a framework which supports and empowers all types of platforms, particularly the smaller ones. Governments are encouraged to offer greater resources for small platforms and big companies need to help SMEs too (e.g.: by sharing databases).

Finally, he pointed out that Google favours the Good Samaritan protection as the principle incentivises companies to do their utmost to detect and remove content. The risk of liability incentivises companies to either refrain from taking actions or to remove content in the course of moderating.

6. CONCLUDING REMARKS

After the presentations of the stakeholders, the Chair of IMCO Committee Prof Dr Petra de Sutter (MEP), and the IMCO Rapporteur for the Digital Services Act Mr Alex Agius Saliba (MEP) took the opportunity to thank all the participants for their presentations and interventions. They pointed out that gaining feedback was very helpful to identify the major issues related to the current E-commerce directive in order to give appropriate answers via the DSA.

7. WORKSHOP PROGRAMME

INTERNAL MARKET AND CONSUMER PROTECTION (IMCO)

WORKSHOP AGENDA

E-commerce rules, fit for the digital age

Chairs: Ms Petra DESUTTER (Chair of the IMCO Committee) and Mr Alex AGIUS SALIBA (Rapporteur for the Digital Services Act: improving the functioning of the Single Market)

18 February 2020, 16.00 - 18.30
Altiero Spinelli Building (Brussels) - Room: 3G-3

16.00-16.10 Welcome and introduction by the Chairs

PART 1

16.10-16.35 Analysing the current state of play and exploring possible ways for improvement

- The e-commerce directive as one of the cornerstones of the Internal Market - **Prof Dr Alexandre de Streel** (University of Namur and Centre on Regulation in Europe - CERRE)
- 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 **Prof Dr Hans Schulte-Noelke** (Osnabrueck University)
- How to fully reap all the benefits of the Internal Market for e-commerce? New economic opportunities and challenges for digital services 20 years after the adoption of the e-commerce Directive - **Dr Felice Simonelli** (CEPS)

PART 2

16.35-17.10 How to improve the current level playing field for European businesses to the benefit of consumers

- The functioning of the Internal Market for digital services: Responsibility and duty of care of providers of digital services. Challenges and opportunities - **Prof Dr Jan Nordemann** (Humboldt University Berlin)
- New developments and innovations brought by Artificial Intelligence applied to e-commerce: challenges to the functioning of the Internal Market - **Prof Dr Dino Pedreschi** (University of Pisa)
- Enforcement and cooperation between Member States - **Dr Melanie Smith** (Cardiff University)
- Possible new aspects and challenges in the field of consumer protection - **Prof Dr Giovanni Sartor** (visiolink with the European University Institute in Florence)
- New developments of digital services - **Mr Nick Sohnemann** (FutureCandy)

PART 3

- 17.10-17.25 View from the European Commission - Mr Prabhat Agarwal, Acting Head of Unit, Unit E-commerce & Platforms, DG CNECT, European Commission**
- 17.25-17.45 Exchange of views with Members**
- 17.45-18.15 Roundtable with participation of stakeholders: Mr Razvan Antemir, Senior Public Affairs Manager, European Brands Association; Ms Maryant Fernández Pérez, Senior Digital Policy Officer, BEUC; Dr Stefan Naumann, Head of Commercial Law, Zalando; Mr Patrick Robinson, Director of Public Policy for EMEA - Airbnb; Mr Malcolm Hutton, the Chair of the Intermediary Liability Committee, EuroISPA; Mr Milan Zubicek, EU Public Policy Manager, Google**
- 18.15-18.25 General discussion with Members**
- 18.25-18.30 Conclusion and closing remarks by the Chairs**

8. SHORT BIOGRAPHIES OF SPEAKERS

Prof Dr Alexandre de Streel



Prof Dr Alexandre de Streel is Professor of European law at the University of Namur (Belgium) where he is the Director of the Research Centre for Information, Law and Society (CRIDS) and Board member of the Namur Digital Institute (NADI). He is also a joint-academic director at the Centre on Regulation in Europe (CERRE) and assessor at the Belgian Competition Authority. His main areas of research are the regulation and the application of competition policy to the digital economy as well as the legal issues raised by the development of Artificial Intelligence. Previously, Prof de Streel worked for the Belgian Deputy Prime Minister, the Belgian Permanent Representation to the European Union and the European Commission (DG CONNECT). He holds a Ph.D. in Law from the European University Institute and a Master Degree in Economics from the University of Louvain.

Prof Hans Schulte-Nölke (Osnabrück University)



Prof Dr. Hans Schulte-Nölke is Chair of Civil Law, European Private and Commercial Law, Comparative Law and European Legal History, Director of the European Legal Studies Institute - Department for European Legal History and European Union Private Law at the Osnabrück University. Prof Schulte-Nölke was a co-ordinator and co-founder of the European Research Group on Existing EC Private Law (Acquis Group) and a co-ordinator of the „Common Principle of European Contract Law (CoPECL)" Network; Advisor of the European Parliament Committee for Internal Market and Consumer Protection, and Member of the European Commission's Expert Group on Contract Law (since 2010). He specializes in European and international commercial law, European harmonisation, European Union private law, comparative law, contract law in practice, sales and consumer law.

Dr Felice Simonelli (CEPS)



Dr Felice Simonelli is a Senior Research Fellow at CEPS and he heads the Policy Evaluation Programme and the Project Development Team. Since 2009 Dr Felice Simonelli has been working for research centres and acting as a freelance consultant to public institutions, trade associations, and companies. His research and consultancy activities focus on better regulation, digital economy, industrial policy, competition policy, business strategy & competitiveness and energy-intensive industries.

Prof Dr Jan Nordemann



Prof Nordemann has specialised in several areas of intellectual property and is today a recognised leading expert in these fields. Furthermore, he teaches intellectual property law. He was declared as Honorary Professor at the Humboldt University Berlin. He is the chair of the Copyright Committee of the International Association for the Protection of Intellectual Property (AIPPI).

Prof Nordemann is co-editor of "Fromm/Nordemann", a leading copyright law commentary. JUVÉ Lawyers' Handbook named him again a leading copyright lawyer in Germany. At the Humboldt University Berlin, he gives lectures on copyright law.

Prof Dr Dino. Pedreschi



Prof Dr Pedreschi is a Professor of Computer Science at the University of Pisa, and a pioneering scientist in mobility data mining, social network mining and privacy-preserving data mining. He co-leads with Fosca Giannotti the Pisa KOO Lab - Knowledge Discovery and Data Mining Laboratory, a joint research initiative of the University of Pisa and the Information Science and Technology Institute of the Italian National Research Council, one of the earliest research lab centered on data mining. His research focus is on big data analytics and mining and their impact on society. He is a founder of the Business Informatics MSc program at Univ. Pisa, a course targeted at the education of interdisciplinary data scientists. Prof Dr Pedreschi has been a visiting scientist at Barabasi Lab (Center for Complex Network Research) of Northeastern University, Boston (2009-2010), and earlier at the University of Texas at Austin (1989-90), at CWI Amsterdam (1993) and at UCLA (1995). In 2009, Dino received a Google Research Award for his research on privacy-preserving data mining.

Dr Melanie Smith



Dr Smith is a Professor at Cardiff University. She has a Ph.D in European Law from the University of Edinburgh and a postgraduate certificate from the University Teaching and Learning at Cardiff University. Dr Smith is a Reader at Cardiff Law School, and was previously a lecturer. She focuses on legitimacy and accountability, particularly in relation to enforcement of European Law.

Prof Dr Giovanni Sartor



Prof Dr Sartor is a part-time Professor at Faculty of Law at the University of Bologna and at the EUI. Prof Dr Giovanni Sartor is currently Principal Investigator for the ERC (European Research Council) Advanced project COMPULAW, started on 1 November 2019, to be completed on 31 October 2024. He is part-time Professor in legal informatics at the University of Bologna and part-time Professor in Legal informatics and Legal Theory at the European University Institute.

Mr Nick Sohnemann



Mr Sohnemann is one of the leading European innovation consultants helping medium-sized and large corporations to innovate successfully. Born in Hamburg, Nick is always traveling the globe in search of state-of-the-art methods and tools for innovation. He is driven by the belief that real innovators start innovating themselves by accepting and using new technologies and innovation. Mr Sohnemann is a keynote speaker inspiring the audience about new tech, future trends and innovation topics.

Dr Razvan Antemir



Dr Antemir is Senior Manager for Government Affairs at AIM since March 2018. Razvan focuses on the consumer, Internal Market, digital and B2B and competition issues. Dr Antemir represented previously the EU federal institutions for online sellers (Director, 2010-2018) and direct marketers (Policy Officer, 2008-2010), gaining a detailed understanding of the eCommerce and the issues around the digital space (including Telecoms Package, Consumer Rights Directive, General Data Protection Regulation, Geo-blocking Regulation, Platform to Business Regulation, Postal Directives and Regulation, ePrivacy Regulation).

Dr Antemir studied political sciences at the University of Bucharest (2002-2006, BA) and European Public Affairs in Maastricht (2007-2008, MA).

Dr Maryant Fernandez Pérez



Dr Fernandez Pérez is a lawyer and a Senior Digital Policy Officer at the European Consumer Organisation (BEUC), an association of 45 national consumer organisations from 32 countries. At BEUC, she represents and defends consumer interests in the fields of telecommunications, online platforms and E-commerce, digital trade and data flows, privacy and data protection. She is also an Advisory Board member of the Data Protection on The Ground Chair at the Vrije Universiteit Brussel and a member of the Steering Group of the NetCompetition Alliance. Dr Fernandez Pérez previously worked as a Senior Policy Advisor at European Digital Rights (EDRI) and was a member of the European

Commission's Expert Group on Trade Agreements. Ms Maryant is the author of several publications and speaker at multiple conferences in Europe and around the world.

Dr Stefan Naumann



Dr Stefan Naumann is Head of Commercial Law at Zalando since 2015. He oversees legal topics related to national and international business law, consumer law and IP law relevant to the 17 European markets where Zalando operates. Prior to this, he was Vice President Legal for Air Berlin, the airline company where he started his private sector career in 2006.

Dr Stefan Naumann holds a Doctorate in Law from the University of Cologne. He is a member of the Legal Committee of the German Chamber of Industry and Commerce (DIHK).

Mr. Patrick Robinson



Based in London, Mr Robinson leads a team of public affairs professionals who work with cities across EMEA to open the door for new forms of tourism and educate policymakers about the huge potential of the "collaborative economy" for sustainable economic and cultural growth.

Mr Robinson joined Airbnb after several years at Yahoo, most recently as Director of the company's innovative global business and human rights programme, which leads the company's efforts to protect and promote online free expression and privacy for its 800 million users worldwide.

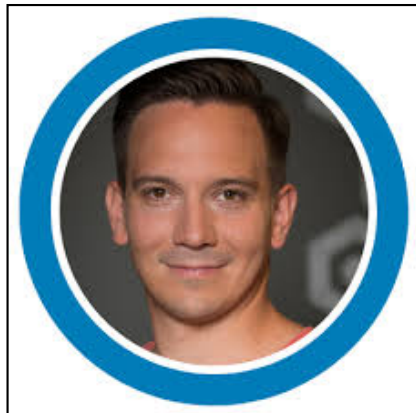
He has previously had senior roles with the Virgin Group's UK television business and the British Broadcasting Corporation, including two-and-a-half years living and working in Sarajevo on a project to establish public service broadcasting in post-conflict Bosnia and Herzegovina.

Mr. Malcom Huty



Malcolm Huty is the Chair of the Intermediary Liability Committee and former President of EuroISPA, the European Association of Internet Service Providers. In this capacity, he is leading internal discussions on the upcoming Digital Services Act. Furthermore, he is the Head of Public Affairs at LINX, the London Internet Exchange. His role involves liaising with government and regulatory authorities on behalf of the LINX membership, representing the interests of members to government and briefing members on regulatory developments. In addition, he acts as Regulatory Affairs spokesman for Euro-IX, the European association of Internet Exchanges.

Mr. Milan Zubicek



Mr Zubicek works as the public policy and government relations manager at Google in Brussels, where he covers topics related to platforms' content liability, disinformation and violent extremism. Before moving to Brussels in September 2018, he worked for two years at Google's Central and Eastern European public policy team, coordinating data governance in the region and being responsible for government relations in the Czech Republic and Slovakia. Previously he was the program manager at the Aspen Institute Central Europe and a public affairs consultant at an international agency Grayling.

9. PRESENTATIONS

1. **E-commerce directive, cornerstone of the Internal Market**, by Professor Alexander de Streel
2. **The legal framework for E-commerce in the Internal Market**, by Professor Hans Schulte-Nölke
3. **How to fully reap all the benefits of the Internal Market for E-commerce?**, by Professor Felice Simonelli and Nadina Iacob
4. **The functioning of the Internal Market for digital services: responsibility and duty of care of providers of digital services. Challenges and opportunities**, by Professor Jan Bernd Nordemann
5. **The human & social dimension of AI, Impact of AI on online platforms and marketplaces**, by Professor Dino Pedreschi
6. **E-Commerce and enforcement, options for enforcement and cooperation between Member States**, by Dr Melanie Smith
7. **Artificial Intelligence & consumer protection: impact of AI on consumers' interests and rights**, by Professor Giovanni Sartor
8. **New developments in digital services**, by Mr Nick Sohnemann
9. **Towards a successful Digital Services Act**, by Ms Maryant Fernandez Perez
10. **Brands & the Digital Service Act**, by Mr Antemir

ACCESS THE FULL CONTENT OF THE PRESENTATION HERE:

<https://www.europarl.europa.eu/committees/nl/e-commerce-rules-fit-for-the-digital-age/product-details/20200203WKS02721>

The report summarises 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.

This document was provided by the Policy Department for Economic, Scientific and Quality of Life Policies for the committee on Internal Market and Consumer Protection (IMCO).
