



2016/2276(INI)

8.5.2017

OPINION

of the Committee on Legal Affairs

for the Committee on Industry, Research and Energy and the Committee on the Internal Market and Consumer Protection

on online platforms and the Digital Single Market
(2016/2276(INI))

Rapporteur: Constance Le Grip

SUGGESTIONS

The Committee on Legal Affairs calls on the Committee on Industry, Research and Energy and the Committee on the Internal Market and Consumer Protection, as the committees responsible, to incorporate the following suggestions into their motion for a resolution:

- A. whereas online platforms (hereinafter ‘platforms’) are a type of information society service provider playing a role of intermediation within a given digital ecosystem and covering a wide range of actors involved in numerous economic activities, including e-commerce, media, search engines, the collaborative economy, not-for-profit activities, distribution of cultural content and social networks, and are therefore not subject to any clear or precise definition, the formulation of which is difficult because of their perpetually evolving nature; whereas the distinction between commercial and non-commercial platforms should be taken into account;
- B. whereas in the digital economy the intermediaries of yesterday have become today’s providers of content and play an essential role in terms of access to content; whereas more clarification is therefore needed in this fast-changing platform ecosystem as to what constitutes an active or passive nature of platforms, in the sense of the e-commerce directive, as a first step towards subjecting them to a regulatory framework that would enhance their liability and the reliability of their services, in order to allow them to offer more opportunities, fair conditions and legal certainty to consumers, whose rights must always be protected;
- C. whereas a suitable and balanced regulatory framework for the digital economy could help further sustainable development and scaling-up of the platform business model in the European Union;
- D. whereas online platforms have dramatically changed the digital economy over the last two decades, resulting in numerous benefits for today’s digital society and playing a prominent role in the creation of ‘digital value’ that underpins future economic growth in the EU, being of major importance for the effective functioning of the digital single market;
- E. whereas the emergence of platforms, by fostering the relationship between service providers, workers and consumers, presents opportunities and challenges and results in the shaping of both new and existing markets, which may at times have a disruptive effect on the economic value of such markets;
- F. whereas a level playing field should exist for platforms and for businesses using their services, in order to ensure that the same substantial rules apply to services having a substitute character and to stimulate innovation and prosperity;
- G. whereas some platforms provide services considered substitutes for those offered in the traditional manner, and could therefore be in a position to compete with operators who are subject to specific regulatory constraints without themselves being formally governed by such constraints; whereas this is because of the specific nature of the services they provide or because such rules are inapplicable or unenforceable in an online environment;
- H. whereas the digitalisation of the economy entails an important tax-base erosion; whereas platforms’ revenues should be taxed where profits are realised;

- I. whereas in order to put an end to the copyright-related ambiguity between active user-uploaded content platforms and those having an activity of mere intermediaries, it is necessary to clarify that the limited liability provided by Article 14 of the e-commerce directive is only applicable to platforms having a passive intermediary role, that is to say without intervening in the organisation, optimisation or promotion of the content;
 - J. whereas the liability regime laid down in the e-commerce directive, which represents a fundamental aspect of it, is applicable to online service providers only under specific conditions and in any case cannot exempt them from their substantial obligations and responsibilities related to their own activities and businesses;
 - K. whereas many platforms facilitate access to consumers not only for retailers but also for potential infringers of intellectual property rights (IPRs), and in that context may allow a substantial number of infringements to take place, ultimately leading to an uneven and unfair sharing of value all along the supply chain;
 - L. whereas despite the fact that more creative content is being consumed today than ever before, via services such as user-uploaded content platforms and content aggregation services, the creative sectors have not seen a comparable increase in revenue from this increase in consumption; whereas one of the main reasons is what is referred to as a transfer of value that has emerged due to the lack of clarity regarding the status of such online services under copyright and e-commerce law; whereas an unfair market has been created, threatening the development of the Digital Single Market and its main players, namely the cultural and creative industries;
 - M. whereas responsibility, fairness, trust and transparency should be key guiding principles for platforms, as for any other economic activity and business, in building trust with their consumers and with their business partners;
 - N. whereas the insufficient clarity and transparency of the different aspects of data collection by platforms contributes to increased legal uncertainty and lack of consumer confidence in them;
 - O. whereas platforms can have double roles, as intermediaries but also as competitors, which can potentially lead to abuse;
 - P. whereas a duty of care should be imposed under certain conditions on online service providers obliging them to detect and prevent illegal activities on platforms by any technically reliable means;
 - Q. whereas online counterfeiting is becoming increasingly sought after by criminal organisations, as it is more profitable and carries less risk of incurring criminal penalties than racketeering or drug trafficking;
1. Welcomes the Commission communication on platforms and all action taken so far; recalls that a certain number of issues are still open and need to be addressed;
 2. Supports the need to increase the responsibility and cooperation of some platforms which correspond to the high public profile they have achieved and their importance in terms of economic and bargaining power, leading to potential market abuse; calls, therefore, on the

Commission to clearly define liability for platforms and to take appropriate action to ensure that platforms do not abuse their dominant market position to the detriment of businesses and consumers;

3. Welcomes the Commission's announcement concerning maintaining the existing intermediary liability provisions enshrined in the e-commerce directive, which are future-proof and technologically neutral and are vital for the development of European platforms; stresses at the same time the need for clarification of the status of platforms that play an active role in public communication and the reproduction of protected works, and highlights in that context that the liability exceptions enshrined in the e-commerce directive should only apply to genuinely neutral and passive online providers, and not to services that play an active role in distributing, promoting and monetising content at the expense of creators;
4. Believes that differing national or local rules for online platforms create uncertainty for economic operators, limit access to digital services, and generate confusion for users and businesses;
5. Emphasises the importance of establishing a suitable and balanced regulatory framework for online platforms in the digital single market, that could help generate a climate of trust for both businesses and the general public, enabling them to engage confidently with online platforms, given the need to adopt flexible and sustainable policymaking and regulatory approaches that respond directly to challenges arising;
6. Calls for an appropriate and proportionate regulatory framework that would guarantee responsibility, fairness, trust and transparency in platforms' processes in order to avoid discrimination and arbitrariness towards business partners, consumers, users and workers in relation to, inter alia, access to the service, appropriate and fair referencing, search results, or the functioning of relevant application programming interfaces, on the basis of interoperability and compliance principles applicable to platforms;
7. Calls on platforms to take appropriate measures to ensure the proper functioning of contractual agreements concluded with rightholders for the use of copyright-protected works, such as the installation of effective content recognition technologies where appropriate;
8. Calls for a regulatory framework that would guarantee, inter alia, a level playing field for comparable digital services, online platforms that perform responsibly, and measures to maintain and develop open and non-discriminatory markets, so as to foster a data-driven economy, promoting a climate of trust and transparency and ensuring fairness in the EU;
9. Calls for the introduction of dispute resolution mechanisms for improving redress for business partners and users of platforms;
10. Calls on the Commission to promote enforcement mechanisms which would help Member States take steps towards better forms of law enforcement applicable to platforms, in order to ensure the implementation of relevant social, fiscal and sectorial policies;
11. Considers that digital platforms are means of providing wider access to cultural and creative works and offer great opportunities for the cultural and creative industries to

develop new business models; stresses that consideration must be given to how this process can function with greater legal certainty and respect for rightholders; underlines the importance of transparency and of ensuring a fair level playing field; considers in this regard that protection of rightholders within the copyright and intellectual property framework is necessary to ensure recognition of values and stimulation of innovation, creativity, investment and content production;

12. Urges the Commission to examine whether potential issues related to online platforms could be resolved by proper and full implementation of existing legislation and effective enforcement of EU competition law, in order to ensure a level playing field and fair and effective competition between online platforms and avoid the creation of monopolies; calls on the Commission to maintain an innovation-friendly policy towards online platforms that facilitates market entry and fosters innovation; considers that transparency, non-discrimination, facilitation of switching between platforms or online services enabling consumer choice, access to platforms, and identifying and addressing barriers to the emergence and scale-up of platforms should be priorities;
13. Considers that platform operators should provide the consumer with fair, clear and transparent information concerning:
 - the general terms and conditions of use of the service; and
 - the procedures for referencing, classifying and dereferencing content, goods or services online;
14. Considers that when providing an interface for businesses and consumers, platform operators should provide businesses with a space enabling them to communicate to consumers all mandatory and necessary information relating to contracts concluded at a distance and to contracts for the supply of digital content, for example those relating to the right of withdrawal and the right of remedy;
15. Considers that platforms on which a significant volume of protected works are stored and made available to the public should conclude licence agreements with relevant rightholders, unless they are not active and thus covered by the exemption foreseen in Article 14 of the e-commerce directive, with a view to a fair profit-sharing with authors, creators and relevant rightholders; underlines that such license agreements and their implementation must respect users' exercise of their fundamental rights;
16. Considers that platforms which are making available works protected by copyright should take appropriate measures for the effective removal of illegally placed content, and calls on the Commission to come forward with a legislative proposal to clarify the procedures for notice-and-action applicable to platforms, which could enhance responsible behaviour and increase user confidence;
17. Points out the crucial importance of clarifying the methods by which decisions based on algorithms are taken and promoting transparency in the use of those algorithms; calls on the Commission and the Member States, therefore, to examine the potential for error and bias in the use of algorithms in order to prevent any kind of discrimination or unfair practice or breach of privacy;
18. Calls on the Commission and the Member States to take the necessary measures to ensure

full respect for citizens' rights to privacy and to protection of their personal data in the digital environment; emphasises the importance of the correct application of the General Data Protection Regulation, including full respect for the principle of 'privacy by design and by default'; notes the increasing importance of clarifying data access and liability issues that are giving rise to concern, and calls on the Commission to review the current regulatory framework with regard to those issues; calls on the Commission, in the framework of implementing the General Data Protection Regulation (GDPR), to clarify and define requirements with regard to data gathered at the workplace;

19. Underlines the importance of ensuring data portability for all users, and in particular for the employees of online platforms, and of guaranteeing the transferability and accumulation of their ratings and reviews across different online platforms, on a basis of respect for the EU data protection rules already in place and for the privacy of other parties involved;
20. Stresses in addition, and while recognising the opportunities offered by platforms, the fact that they pose certain challenges with regard to employment demands, working conditions and workers' rights, in particular in non-standard employment relationships, and highlights the need to ensure full respect for employment rights, including the right to collective bargaining and action, as well as adequate social security coverage in the digital sphere; believes it is necessary to involve social partners in the debate on and definition of European and national initiatives on online platforms;
21. Emphasises the need to restore a balance in the sharing of value for intellectual property, in particular on platforms distributing protected audiovisual content;
22. Calls for further cooperation between platforms and rightholders in order to ensure proper clearance of rights and fight the infringement of intellectual property rights online; recalls that such infringements can constitute a real issue, not only for companies but also for the health and safety of consumers, who must be made aware of the reality of the illicit trade in fake products; reiterates, therefore, its call for the application of the 'follow the money' approach with relevant payment services, in order to deprive counterfeiters of means of pursuing their economic activity; underlines that a revision of the intellectual property rights enforcement directive (IPRED) could be an appropriate means of ensuring a high level of cooperation between platforms, users and all other economic actors, together with a correct application of the e-commerce directive;
23. Calls for the same tax rules to be applied for all companies providing comparable services, regardless of whether they offer them online or offline; calls for action to ensure that all companies, including digital companies, pay their taxes in the place where they make their profits;
24. Calls on the Commission to monitor and take action against the increasing presence of violent and/or discriminatory messages on online platforms; stresses the importance of protecting vulnerable people and children, as well as of fighting all forms of racism, sexism, incitement to terrorism and bullying also in the digital sphere; urges platforms' liability to be strengthened on these issues, including in the framework of the revision of the audiovisual media services (AVMS) directive;
25. Calls on the Commission to further promote the platform that has been launched for

settling disputes involving purchases made online among consumers, to improve its user-friendliness, and to monitor compliance by traders with their obligation to put a link to that platform on their website, in order to further address the increasing number of complaints against several online platforms;

26. Calls on the Commission to consider establishing a harmonised approach to the right of rectification, the right to counterstatement and the right to forbearance for users of platforms;
27. Calls on the Commission to create a level playing field with regard to claims for damages against platforms arising from the circulation of disparaging facts which create persistent harm for the user.

INFORMATION ON ADOPTION IN COMMITTEE ASKED FOR OPINION

Date adopted	4.5.2017
Result of final vote	+: 20 -: 2 0: 1
Members present for the final vote	Max Andersson, Joëlle Bergeron, Marie-Christine Boutonnet, Kostas Chrysogonos, Therese Comodini Cachia, Rosa Estaràs Ferragut, Enrico Gasbarra, Lidia Joanna Geringer de Oedenberg, Sylvia-Yvonne Kaufmann, Gilles Lebreton, António Marinho e Pinto, Emil Radev, Julia Reda, Pavel Svoboda, Axel Voss, Tadeusz Zwiefka
Substitutes present for the final vote	Isabella Adinolfi, Sergio Gaetano Cofferati, Angel Dzhambazki, Jytte Guteland, Constance Le Grip, Jens Rohde, Virginie Rozière, Tiemo Wölken, Kosma Złotowski

FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

20	+
ALDE	António Marinho e Pinto, Jens Rohde
ECR	Angel Dzhambazki, Kosma Zlotowski
EFDD	Joëlle Bergeron
ENF	Marie-Christine Boutonnet, Gilles Lebreton
GUE/NGL	Kostas Chrysogonos
PPE	Rosa Estaràs Ferragut, Constance Le Grip, Emil Radev, Pavel Svoboda, Axel Voss, Tadeusz Zwiefka
S&D	Sergio Gaetano Cofferati, Enrico Gasbarra,, Lidia Joanna Geringer de Oedenberg, Sylvia-Yvonne Kaufmann, Virginie Rozière, Tiemo Wölken

2	-
VERTS/ALE	Max Andersson, Julia Reda

1	0
EFDD	Isabella Adinolfi

Key to symbols:

+ : in favour

- : against

0 : abstention