THE UBIQUOUS DIGITAL SINGLE MARKET

The digital single market boosts the economy, decreases environmental impacts and improves quality of life through e-commerce and e-government. Market and government services are evolving from fixed to mobile platforms and becoming increasingly ubiquitous. These developments call for an EU regulatory framework to develop cloud computing, cross-border access to content and borderless mobile data connectivity, while safeguarding privacy, personal data and cybersecurity. The European digital single market has played an essential role in maintaining the EU economy and assisting people in the EU during the COVID-19 crisis. The Digital Services Act and Digital Markets Act are two files that are set to revolutionise the digital single market in the coming years.

LEGAL BASIS

Articles 4(2)(a), 26, 27, 114 and 115 of the Treaty on the Functioning of the European Union (TFEU).

OBJECTIVES

The digital single market is essentially about removing national barriers to transactions that take place online. It builds on the concept of the common market, intended to eliminate trade barriers between Member States with the aim of increasing economic prosperity and contributing to ‘an ever closer union among the peoples of Europe’, and further developed into the concept of the internal market, defined as ‘an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured’. Following on from the Lisbon strategy[1], the Europe 2020 strategy introduced the Digital Agenda for Europe[2] as one of seven flagship initiatives, recognising the key enabling role that the use of information and communication technologies (ICT) will have to play if the EU wants to succeed in its ambitions for 2020 (2.4.3). The digital single market has been recognised as a priority by the Commission in its digital single market (DSM) strategy (COM(2015)0192) and recently in the President of the Commission’s agenda for Europe for 2019-2024[3].

The digital single market has the potential to improve access to information, to bring efficiency gains in terms of reduced transaction costs, dematerialised consumption

[1]The Lisbon strategy aimed to make the EU ‘the most competitive and dynamic knowledge-based economy in the world capable of sustainable economic growth with more and better jobs and greater social cohesion’.
and reduced environmental footprint, and to introduce improved business and administrative models[4]. The growth of e-commerce is generating tangible benefits for consumers, such as rapidly evolving new products, lower prices, more choice and better quality goods and services, as it is leading to a rise in cross-border trade and making it easier to compare offers. Moreover, the increase in e-government services is facilitating online compliance, access to jobs and business opportunities for both EU residents and businesses.

ACHIEVEMENTS

Given that the full potential of the internal market remains unexploited, Parliament, the Council and the Commission have made efforts to relaunch it, and to put the public, consumers and small and medium-sized enterprises (SMEs) at the centre of the single market policy[5]. The digital single market has a central role to play in these efforts. In its communication entitled ‘Europe 2020 - A strategy for smart, sustainable and inclusive growth’ (COM(2010)2020), the Commission presented seven flagship initiatives - including the Digital Agenda - intended to ‘turn the EU into a smart, sustainable and inclusive economy delivering high levels of employment, productivity and social cohesion’.

These Commission communications, and Parliament’s resolution of 20 May 2010 on delivering a single market to consumers and citizens, prepared the ground for a communication entitled ‘Towards a Single Market Act’ (COM(2010)0608) in which the Commission presented a series of measures designed to boost the EU economy and create jobs. In October 2012, the Commission put forward a second set of proposals - the Single Market Act II (COM(2012)0573) - comprising 12 key actions focused on four main drivers of growth, employment and confidence: integrated networks, cross-border mobility of citizens and businesses, the digital economy, and actions that strengthen cohesion and consumer benefits.

On 6 May 2015, the Commission adopted the DSM strategy, composed of three pillars: (1) better access for consumers and businesses to digital goods and services across the EU, (2) creating the right conditions and a level playing field for digital networks and innovative services to flourish, and (3) maximising the growth potential of the digital economy. Since the publication of the strategy, the Commission has tabled a number of legislative proposals aimed at achieving a digital single market. New legislative proposals have aimed to address issues such as unjustified geo-blocking (COM(2016)0289), cross-border parcel delivery (COM(2016)0285), cross-border portability of online content services (COM(2015)0627), a revision of the Consumer Protection Cooperation Regulation (COM(2016)0283), audiovisual media services (COM(2016)0287), contracts for online and other distance sales of goods (COM(2015)0635), and contracts for the supply of digital content (COM(2015)0634).


The Commission has also published communications explaining future policy approaches, e.g. to online platforms (COM(2016)0288).

In 2018, the Commission presented its strategy on artificial intelligence for Europe (COM(2018)0237) and agreed a coordinated plan with the Member States[6]. In April 2019, the High-Level Expert Group on Artificial Intelligence presented its ‘Ethics Guidelines for Trustworthy AI’, while in February 2020, the Commission presented its white paper entitled ‘Artificial Intelligence - A European approach to excellence and trust’ (COM(2020)0065) and its communications on Shaping Europe’s Digital Future (COM(2020)0067) and a European strategy for data (COM(2020)0066).

On 8 April 2020, the Commission issued a recommendation on a common EU toolbox for the use of technology and data to combat and exit from the COVID-19 crisis.

In May 2020, the Commission announced in its communication entitled ‘Europe’s moment: Repair and Prepare for the Next Generation’ (COM(2020)0456) that the digital single market would be a pillar of the EU’s COVID-19 recovery plan. It will focus on: (1) investment in better connectivity, (2) a stronger industrial and technological presence in strategic parts of the supply chain (for example AI, cybersecurity, 5G, cloud infrastructure), (3) a real data economy and European data spaces, and (4) fairer and simpler business environments.

ROLE OF THE EUROPEAN PARLIAMENT

Parliament has played a leading role in the relaunch of the internal market, and is a keen promoter and agenda setter for the digital single market.

Its resolution of 20 April 2012 entitled ‘A competitive digital single market - e-government as a spearhead’ pointed out the need for a clear and coherent legal framework for the mutual recognition of electronic authentication, identification and signatures, which is necessary to enable cross-border administrative services to operate throughout the EU. On 11 December 2012, Parliament adopted two non-legislative resolutions relating to the internal market, one on ‘completing the digital single market’, and the other on a ‘digital freedom strategy in EU foreign policy’.

Furthermore, Parliament adopted a resolution on 4 July 2013 on completing the digital single market, focusing on tapping the full potential of the digital single market, addressing the skills gap, improving security, building trust and consumer confidence, creating an attractive and legal supply of digital content, and building mobility services and the international dimension.

In response to the DSM strategy, Parliament adopted a resolution on 19 January 2016 entitled ‘Towards a Digital Single Market Act’, which called on the Commission to end unjustified geo-blocking practices, improve EU consumers’ access to goods and services, and ensure equivalent and future-proof consumer protection (regardless of whether digital content is purchased online or offline). It also called for the identification of innovative solutions to cross-border parcel delivery in order to improve services and lower costs, remove barriers for SMEs, start-ups and scale-ups, and seize the opportunities arising from new ICT technologies, such as big data, cloud computing,

the Internet of Things and 3D printing. Parliament argued that an innovation-friendly policy towards online platforms (e.g. search engines and app stores) that facilitates market entry should be maintained, and favoured a review of the e-Privacy Directive to ensure the consistency of its provisions with the new EU data protection rules.


Preparatory work by the Digital Single Market Working Group has laid the groundwork for Parliament’s achievements in the digital area with the support of research[7] and scientific evidence. Research carried out for Parliament shows the significant potential of the digital single market[8], in particular in reducing costs and barriers[9] in the EU for consumers and businesses and making the EU economy greener[10] and more social[11]. In the EU, a significant part of this potential can be achieved through the development of e-government and related services[12] such as e-health.

As for the data protection package, Regulation (EU) 2016/679 and Directive (EU) 2016/680 guarantee easier access to one’s own data and information on how the data is processed, a right to data portability, a clarified ‘right to be forgotten’, and the right to know when one’s data has been hacked. The regulation entered into force on 25 May 2018. Member States were required to transpose the directive into their national law by 6 May 2018. On 20 June 2019, Parliament and the Council adopted Regulation (EU) 2019/1150 on promoting fairness and transparency for business users of online intermediation services. On 18 December 2019, Parliament adopted a

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Parliament’s legislative achievements in the field of the digital single market contribute EUR 177 billion to economic growth in the EU annually. According to a study[13] published in 2019, the most important gains from EU legislation are in such areas as EU electronic communications and services (EUR 86.1 billion), data flows and artificial intelligence (EUR 51.6 billion), the single digital gateway (EUR 20 billion), the Geo-Blocking Regulation and provisions on online platforms (EUR 14 billion). In its resolution of 17 April 2020 on EU coordinated action to combat the COVID-19 pandemic and its consequences, Parliament indicated that the recovery and reconstruction package after the COVID-19 pandemic will have at its core the digital transformation in order to kick-start the economy.

Ahead of the Commission proposal on AI that was published in April 2021 (COM(2021)0206), Parliament set up a Special Committee on Artificial Intelligence in a Digital Age in order to analyse the impact of artificial intelligence on the EU economy. On 20 October 2020, it adopted three resolutions outlining how the EU can best regulate AI while preserving intellectual property, ethical standards and civil liability. Parliament’s activities in the area of artificial intelligence are also supported by scientific research[14].

On 21 April 2022, Parliament’s committees on the Internal Market and Consumer Protection (IMCO) and on Civil Liberties, Justice and Home Affairs (LIBE) held a joint public hearing on the proposal for an Artificial Intelligence Act, aiming to address the main issues around the Commission’s proposal. To that end, a draft report has already been published and amendments have been tabled: the final IMCO/LIBE Committee vote is expected in October 2022 and the plenary vote is due to take place at the first November session in Strasbourg.

Access to information on laws and regulations in the Member States is vital for the smooth functioning of the digital single market. At the request of the IMCO Committee, Parliament’s Policy Department for Economic, Scientific and Quality of Life Policies published a study[15] entitled ‘Legal obstacles in Member States to Single Market rules’ in November 2020. The research found that many of the obstacles that prevent the digital single market from achieving its potential are not specific to digital services. However, dozens of legislative measures enacted as part of the DSM strategy sought to address impediments to cross-border online sales. A lack of reliable information on laws and regulations in Member States is also a problem, but the single digital gateway (Regulation (EU) 2018/1724) will help to remedy this when it becomes fully available by the end of 2023. In addition to this, a study[16] for the IMCO Committee published

in October 2020 examined Points of Single Contact and other information services. It found a need for improved monitoring and enforcement alongside the provisions of the forthcoming Single Digital Gateway Regulation.

In order to further accelerate the successful establishment of the digital single market, Parliament adopted an own-initiative report on the Digital Services Act on 20 October 2020, recommending that the proposed package strengthens the internal market while guaranteeing consumer protection, ensures the equal treatment of offline and online activities, ensures transparency, respects fundamental rights and freedoms, and covers the activities of entities established in non-EU countries where their activities are related to consumers in the EU. The resolution was informed by scientific research delivered through a workshop\[17\] and a series of studies commissioned by the IMCO Committee.

On 15 December 2020, the Commission submitted its proposed Digital Services Act package to Parliament and the Council under the codecision procedure. The package comprises two legislative initiatives: the Digital Services Act (DSA) and Digital Markets Act (DMA). Its main goals are to create a safer digital space in which the fundamental rights of users of digital services are protected, and to establish a level playing field to foster innovation, growth and competitiveness in the European single market and globally. On 16 May 2022, the IMCO Committee voted on the DMA and adopted the provisional political agreement. On 16 June 2022, IMCO endorsed the provisional political agreement on the DSA. The final vote in plenary for both acts took place in July 2022. Once formally adopted by the EU co-legislators, the regulations will be published in the Official Journal of the EU and will enter into force 20 days after their publication, with the rules kicking in 15 months later.

Of relevance for the DSA and DMA proposals was a study\[18\] specifically examining the effects of targeted advertising on consumers and the advertising market. Further academic and market insights were obtained through a workshop\[19\] that explored the implications and deficiencies of the proposals in their current form, as well as through a hearing with Facebook whistle-blower Frances Haugen, who elucidated some of the malpractices of Big Tech. The fact that the proposals for both the DSA and DMA incorporated much of the text from IMCO’s own-initiative report of October 2020 demonstrated that Parliament can help to set the legislative agenda, despite being devoid of a direct right of initiative.

A study\[20\] on the impact of influencers on advertising and consumer protection in the single market published in February 2022 investigates the extent to which influencers are responsible for spreading misleading information and promoting unsafe products.

The insights from this study will likely influence future legislation on the issue in the second half of the legislative term. The influencer marketing industry, which has grown significantly in recent years, often employs misleading messages to approach vulnerable consumers. The DSA and DMA, for their part, will focus on increasing transparency and regulating online platform gatekeepers – two sensitive areas in influencers’ sphere of activity.

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