



The new EU rulebook for online platforms: How to get it right, who will it impact and what else is needed?

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Abstract

Online platforms are drivers of innovation, growth, employment, creativity and information exchange. But new advantages can also bring new risks, or further entrench existing issues. Europe's current rules have enabled the birth and growth of these companies, and of the free and open Internet as we know it. But they have not been designed to anticipate the challenges brought about by the growth of the digital economy, such as the spread of disinformation, and they are not fully adapted to the nature of competition in the digital markets. As the heart of its ambitious digital agenda, the EU is proposing new regulatory frameworks to maintain and improve its competitiveness, innovation and growth. This approach aims to protect its market from the side effects of digital markets dominated by large non-EU tech companies which, in some respects, are shielded from the rules of the game that the EU wants to set. It also aims to protect citizens and democracy. This is clearly a time to act, and a time to reform. It is also a time to strengthen its position: the EU has other battles and priorities that it must face along the way.

Keywords

Platforms, Social media, Digital markets, Technology, Competitiveness, Online content, DSA, DMA

Introduction

The global coronavirus (COVID-19) pandemic has brought to light the ways in which society and the economy increasingly depend on the digital economy. Many companies have had to accelerate the transition of their resources and organisational processes from

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paper-based to digital solutions. People have moved most of their activities online. Through this transformation, many new opportunities and benefits have emerged. But so too have many challenges, some new, others exacerbated. The right policies can help to protect the economy and society, while continuing to support prosperity in this new reality.

This article explores some of the issues which the EU aims to tackle through its digital agenda, arguing that it is necessary to update the rules of the road for actors in the online economy. The article will particularly discuss some of the motives behind two policy proposals, namely the Digital Services Act (DSA) and the Digital Markets Act (DMA). It will explore some of the issues that these acts aim to solve, including illegal online content and disruptions to competition in the digital markets, as well as what they mean for citizens and democracy. In light of the changes these reforms would lead to for companies and citizens, the article will then outline a number of areas which require careful consideration by policymakers, and elements that they must avoid or address to ensure the EU's future competitiveness in the digital economy.

A time to act

Digital platforms such as social media networks and online marketplaces have driven significant innovation in Europe. They have created jobs and growth by providing services to hundreds of thousands of businesses and millions of consumers. E-commerce accounts for an increasing proportion of enterprise turnover, having reached 20% by 2020 across the EU27 (Eurostat 2021b). Sixty-three per cent of individuals across the bloc made online purchases in 2019, up from 43% in 2013 (Eurostat 2021a). The COVID-19 pandemic has accelerated these trends. And while measuring the reach of the digital economy is not straightforward, sectors with high digital intensity generally make substantial contributions to employment growth across advanced economies. Social media platforms connect many people worldwide and facilitate the global exchange of information and goods by businesses and people. The pandemic has shown how critical the role of online companies is, and also how much societies and businesses rely on them. Digital platforms and technologies have become part of the collective effort to tackle health and economic crises and support new working and living realities. Such exceptional circumstances accelerated the use of digital or digitally enabled products and services by companies by seven years in Europe (*McKinsey Global Survey 2020*).

But this growing dependence on online companies, which helped to keep the economy afloat and daily lives bearable for many during the worst of the pandemic, has also shed more light on their negative externalities. Social networks have become one of the main vehicles for disinformation (European Commission 2018). The business models of some of these platforms, and the technologies they use, tend to reinforce the spread of disinformation, including through content personalisation and micro-targeting. Algorithms value time spent online and engagement (measured by comments, shares, 'likes' and clicks)—and content that inspires fear and anger often tends to attract attention and provoke more reactions. This amplifies exposure to potentially divisive and

emotionally charged debates, or in contrast, limits exposure to pluralism and diverse opinions (Lilkov 2019).

It is also important to acknowledge the concerns raised about digital markets. Competition must be effective and fair in the digital age, too. Currently, and even more so since their value and reach have increased during the pandemic, a set of large tech companies structure the online environment by controlling the flow of and access to information. In some cases, the market dominance of these platforms has led to issues such as unfair contract terms for business users (e.g. giving the platform the unilateral right to interpret any term in the contract it has signed with its business users) or self-listing ahead of competitors in search rankings.

Dominant tech companies also have a record of acquiring potential competitors at an early stage. While this so-called exit strategy is sometimes desired by start-ups, acquisitions should not happen at the expense of the entry and growth of a broader diversity of new players, large or small, in the market (Fletcher 2021).

Where competition is lacking, where technology fails to prevent the selling of dangerous goods or where it magnifies the spread of illegal speech, the few large companies that control those technologies and those platforms merit closer scrutiny.

A time to reform

In Europe, the rules for competition and online content were adopted before the emergence and growth of the digital economy. They have enabled more transparency and fairness, which are key to competition. An example of this is the Platform-to-Business (P2B) Regulation, which aims to address concerns about the behaviour of large online platforms towards their business users, and requires the former to conform to specific standards when operating in the EU (European Commission 2021c). The European Commission has sanctioned large online companies for abuse of their dominant positions and continues to conduct investigations. But fines are just not enough to solve this problem, and there is a pressing need to go further by bringing more transparency, more fairness, new rights and more predictability to digital services. Indeed, while large online platforms still face competition in some markets, in the digital economy the success of many companies mainly depends on their ability to scale: consumers who make use of these platforms tend to derive additional value through the expansion of user networks. As a result, the most competitive businesses are those that can harness these ‘network effects’ (Gawer and Srnicek 2021). This has led to the growing dominance of a few platforms, pressing regulators to increase their scrutiny of the behaviour to which this dominance and market concentration could lead. Distortions to competition typically include unfair and anti-competitive practices such as predatory prices or exclusivity clauses.

Regarding online content, the EU’s e-Commerce Directive, which came into force in 2000, created rules that protect online companies from being unfairly targeted for what their users post or share on their platforms (European Commission 2021a). For instance,

travel-booking and shopping sites cannot be held liable for user reviews. This standard has enabled the growth of online platforms, along with the benefits that consumers have gained through their services. It has enabled the Internet to become an open place where there are many opportunities. But the growth of platforms and online information sharing has also been accompanied by the growth of illegal content, such as footage of real or simulated violence and child sexual abuse; materials that promote terrorism, radicalisation or hate towards groups or individuals based on religion, race, or sexual preference; and the sale of dangerous goods through marketplaces. Despite their progress and efforts, platforms have failed to prevent such content and products from appearing on their sites and, due to the sheer volume, such content has proven difficult to remove.

Given how fast the online environment has changed and still is changing, it is fitting that the EU and other countries such as the US are determined to update and strengthen their existing frameworks to address these challenges. The Digital Services Act (DSA) and the Digital Markets Act (DMA), proposed by the European Commission in December 2020, are currently being discussed and examined by the European Parliament and the Council (European Commission 2021d). These proposals reflect a consensus that ‘with size and power comes responsibility’. Both proposals are an opportunity to shape the digital economy in Europe, as they aim to ensure that platforms behave fairly and provide a safe environment for their consumers and business users.

The DSA aims to clarify the responsibilities of online platforms when it comes to policing the Internet, and to govern their content-management practices. In particular, the DSA will limit platforms’ exemption from liability for third-party or user content which they store and transmit, improve content moderation on social media to address issues such as online harassment and introduce transparency obligations for online platforms to combat disinformation. Its core principle is ‘What is illegal offline should be illegal online’.

The DMA aims to set specialised competition rules for large platform companies (called ‘gatekeepers’), target the disruptions to and lack of competition in the digital markets, and curb the power of these platforms by establishing a set of obligations and prohibitions to prevent them from imposing unfair conditions on the market (Madiega 2021a; Madiega 2021b; Anderson and Mariniello 2021; Broadbent 2020; Blankertz and Jaurisch 2021; One Policy Place 2021).

These proposals can ensure that the EU sets the standards for fair access and competition for all companies, including its small and medium-sized enterprises (SMEs). They can guarantee more transparency for users; improved consumer welfare; more protection, safety and choice for consumers; and more legal certainty for businesses. They can foster a safer and more open Internet for European citizens, a digital ecosystem which protects fundamental rights and democratic institutions.

But the EU must get these rules right. Many small companies and innovators in Europe are relying more and more on these large online platforms. Indeed, these

platforms may not be European, but they do support European businesses in a variety of ways, such as by enabling them to gain an immediate online presence, providing access to crowdfunding, and connecting developers with more users and sellers with more buyers.

These new digital rules will have to strike a very delicate balance. The challenge for regulators is to understand how platforms work and the (unforeseen) consequences of both legislation and the platforms' dominance. All this must be done without creating disproportionate burdens for smaller businesses, because they form the backbone of the European economy. Over-regulation and costly bureaucratic red tape would hamper technological development and put small firms at a competitive disadvantage. In addition, the new frameworks should seek to harmonise and unify regulations on digital services in order to address regulatory fragmentation across the EU. Uncoordinated measures would fuel legal uncertainty for businesses that cannot afford higher compliance costs.

While requirements and objectives such as more transparency are desirable, these should be meaningful, and should not come at the expense of companies' legitimate business secrets. In addition, regulation of illegal online content should safeguard freedom of expression, and achieving this is not always as straightforward as it sounds. For example, ordering online platforms to remove such content within a very strict deadline might be a difficult demand to meet in practice. Indeed this often requires a range of resources which small online platforms are unlikely to have, such as teams of online moderators and technology tools to filter content automatically. To ensure compliance, companies might err on the side of caution and remove content that may be lawful. It is also worth mentioning that automated filters remain quite rudimentary, and many are prone to errors (De Streel et al. 2020).

What does this mean for citizens?

Along with how these new online regulatory proposals may affect corporate actors and freedom of expression, it is worth assessing their impact on citizens more broadly. The DSA and the DMA seek to improve the protection of fair markets and consumer welfare, which interplay with the key tenets of democracy and democratic governance, particularly in terms of popular control, online self-determination and individual choice.

Indeed, a key principle of democracy is about conveying power to the people. One ramification of this is that—in the digital era—people should have some degree of control over the personal information they share online and what happens to it, and some control over the way in which they use Internet-based services and an understanding of the consequences of such use. The EU's current frameworks provide tools to address this, but lack effective accountability and oversight mechanisms, and speed. Today, online platforms play an important role in setting rules and influencing standards. The power the platforms have over the markets may ultimately equate to the power they have over their consumers, thus impacting citizens' digital rights. Through greater and more

efficient oversight by public authorities, the implementation of the DSA and the DMA will provide an opportunity to enhance popular and institutional control and ensure the exercise of freedoms online.

In addition, these proposals may ensure consumers have more of a say about the choices platforms make on their behalf. For instance, the DMA would facilitate data portability for users, meaning that users would be able to switch more easily from one platform to another (OECD 2021). Not all may be interested in the new options that the EU proposals would create, but the idea is that users would be able to choose for themselves. At the same time, it is important to consider the impact that some of these rules would have on the convenience and user-friendliness of online services. These are key aspects of consumer welfare which must remain a core objective of EU policies.

Conversations on the impact of these proposals on democracy and on citizens may be overlooked, but they are necessary.

A time to strengthen the EU's position

To achieve the goals of its digital agenda, the EU must also address problems other than the dominance of large tech companies. Policymakers should always discuss digital policies with a view not only to producing rules, but also to creating an enabling and coherent digital environment for European companies to flourish and grow in—while staying in Europe. The EU lacks indigenous global digital platforms of significant size, and has not been able to create more successful digital business models. Of the world's top 100 technology companies by market capitalisation, Europe is home to only 8 such firms, compared to 74 in the US and 6 in China (*CompaniesMarketCap.com* 2021). And while Europe has more than 10,000 platforms, 90% remain SMEs (European Commission 2021b). This is, in part, due to the lack of a truly harmonised digital single market.

In addition, competitiveness in the digital economy requires policies that encourage entrepreneurship and risk-taking. The EU also needs policies that incentivise more public funding and private-sector investment directed towards strategic emerging technologies. The completion of Europe's capital markets union is important in this respect. In Europe, venture capital investments as a share of GDP are 10 times lower than in the US; as a result, European firms are more likely to be acquired by US-based companies, particularly in the tech sector (Demertzis et al. 2021). The EU must strengthen public support for fundamental research and innovation. It has already committed unprecedented and ambitious investments, including the €7.5 billion Digital Europe Programme to support investment in artificial intelligence, supercomputing and data platforms. But these efforts are dwarfed by those of its competitors. For instance, of the €25 billion total investment in artificial intelligence and blockchain each year, the US and China account for more than 80%, while the EU's share amounts to only 7% or about €1.75 billion (Verbeek and Lundqvist 2021).

While it is home to a sophisticated workforce, the EU is faced with challenges relating to talent attraction and retention, and has yet to equip its population with digital skills and digital literacy. Both of these are essential for the EU to ensure employment in the digital economy, succeed in implementing its policies and, therefore, achieve economic and societal prosperity. In 2019, only 56% of EU citizens were equipped with basic digital skills, which most jobs now require (European Court of Auditors 2021). Digital literacy will be critical to ensure citizens embrace the opportunities of digital technologies, become data-savvy actors, have greater awareness of and control over their data, have knowledge of big data applications and data governance, and understand their digital environment and its risks.

Furthermore, a stronger and more sustainable digital infrastructure is a precondition for supporting the emergence of new technologies, delivering sound data governance, facilitating access to higher-quality data and ensuring better connectivity for all. Policies should create an environment of trust in which companies, public administrations and consumers will want to adopt digital solutions.

Finally, broader geopolitical factors are also at stake, as the EU and others, such as the US but also more recently China, aim to erode the dominance of large platforms. The EU has adopted the concept of ‘open strategic autonomy’, which aims to gain more control over these companies and achieve greater independence in the digital and technological spheres (Fleming 2021).

Changes to EU laws aimed at ensuring a level playing field for European SMEs and start-ups, and the larger quest for greater autonomy, should not, however, result in protectionist measures directed at non-European firms. To build a strong European digital economy, open strategic autonomy should mean establishing a level playing field for global trade and adding tools to ensure fair treatment for businesses in the marketplace, both at home and abroad. It means capacity: having the resources and ability to act independently—both for and within a common agenda, alongside our partners. As such, open strategic autonomy is not about trade barriers or disengaging from globalisation; it is about reducing dependencies, strengthening the EU’s ability to act on a legislative basis fit for the twenty-first century and integrating less-developed actors into global markets (European People’s Party 2021).

The DSA, the DMA and the other frameworks of the EU’s digital agenda offer opportunities for Europe to lead, but the bloc also needs to collaborate with its partners in areas where it is mutually beneficial to do so.

Conclusion

COVID-19 has demonstrated the value of online platforms for consumers, and platforms will play a key role in supporting the EU’s green and digital transition. The DSA and the DMA have been drafted for the benefit of both companies and individuals, but they

should also be drafted with them, and factor in the impact they are bound to have on them.

Undeniably, the challenges the EU faces due to the growing digital economy, further exacerbated by the pandemic, require new responses and updated rules. The scale and speed of information sharing have made illegal online content more difficult to prevent and remove, and the entrenched market position of a few large, non-EU companies has led to growing concerns over how this may leave little space for smaller, European firms to join, establish themselves in the market and grow. At the same time, certain rules, their lack of harmonisation and the compliance burden they could entail may impact the very companies they aim to protect and promote. Furthermore, while more oversight could benefit citizens and would seek to remedy a troubling power shift, it could also inadvertently impact certain fundamental rights, freedoms and consumer interests. In addition, approaches to make the EU ‘fit for the digital age’ and more autonomous in the technological sphere will also need to address challenges beyond illegal online content and unfair competition.

The digital economy and its transformations are not going to slow down; hence, the work to seize their benefits and tackle their challenges can only be sped up. The European People’s Party is committed to helping to advance the passage of the DSA and the DMA constructively with its members and family, keeping in mind as the ultimate objectives and overarching principles the benefits for European companies and citizens, and the protection of democracy and fundamental rights. The possibilities for economic growth and societal prosperity in Europe in the digital economy are endless—if regulation is implemented correctly.

References

- Anderson, J., & Mariniello, M. (2021). Regulating big tech: The Digital Markets Act. *Bruegel*, 16 February. <https://www.bruegel.org/2021/02/regulating-big-tech-the-digital-markets-act/>. Accessed 27 August 2021.
- Blankertz, A., & Jaursch, J. (2021). What the European DSA and DMA proposals mean for online platforms. *Brookings, TechStream*, 14 January. <https://www.brookings.edu/techstream/what-the-european-dsa-and-dma-proposals-mean-for-online-platforms/>. Accessed 27 August 2021.
- Broadbent, M. (2020). *The Digital Services Act, the Digital Markets Act, and the new competition tool*. Center for Strategic and International Studies, 10 November. <https://www.csis.org/analysis/digital-services-act-digital-markets-act-and-new-competition-tool>. Accessed 27 August 2021.
- CompaniesMarketCap.com*. (2021). Largest tech companies by market cap. <https://companies-marketcap.com/tech/largest-tech-companies-by-market-cap/>. Accessed 27 July 2021.
- Demertzis, M., Domínguez-Jiménez, M., & Guetta-Jeanrenaud, L. (2021). *Europe should not neglect its capital markets union*. *Bruegel, Policy Contribution 13/2021*, June. <https://www.bruegel.org/wp-content/uploads/2021/06/PC-CMU.pdf>. Accessed 27 August 2021.
- De Streeel, A., Defreyne, E., Jacquemin, H., Ledger, M., Michel, A., Innessi, A., Goubet, M., & Ustowski, D. (2020). *Online platforms’ moderation of illegal content online: Law, practices and options for reform*. European Parliament, Directorate-General for Internal Policies, Policy Department for Economic, Scientific and Quality of Life Policies, June. <https://www>.

- europarl.europa.eu/RegData/etudes/STUD/2020/652718/IPOL_STU(2020)652718_EN.pdf. Accessed 27 August 2021.
- European Commission. (2018). *A multi-dimensional approach to disinformation: Report of the independent high level group on fake news and online disinformation*. Luxembourg: Publications Office of the European Union. <https://digital-strategy.ec.europa.eu/en/library/final-report-high-level-expert-group-fake-news-and-online-disinformation>. Accessed 27 August 2021.
- European Commission. (2021a). e-Commerce Directive. 10 June. <https://digital-strategy.ec.europa.eu/en/policies/e-commerce-directive>. Accessed 27 August 2021.
- European Commission. (2021b). Europe fit for the digital age: New online rules for platforms. https://ec.europa.eu/info/strategy/priorities-2019-2024/europe-fit-digital-age/digital-services-act-ensuring-safe-and-accountable-online-environment/europe-fit-digital-age-new-online-rules-platforms_en. Accessed 27 August 2021.
- European Commission. (2021c). Platform-to-business trading practices. 9 June. <https://digital-strategy.ec.europa.eu/en/policies/platform-business-trading-practices>. Accessed 27 August 2021.
- European Commission. (2021d). The Digital Services Act package. 26 April. <https://digital-strategy.ec.europa.eu/en/policies/digital-services-act-package>. Accessed 27 August 2021.
- European Court of Auditors. (2021). *EU actions to address low digital skills*. Luxembourg. https://www.eca.europa.eu/Lists/ECADocuments/RW21_02/RW_Digital_skills_EN.pdf. Accessed 27 August 2021.
- European People's Party. (2021). *Position paper – For a powerful, targeted EU global trade policy*. June. <https://www.epp.eu/papers/for-a-powerful-targeted-eu-global-trade-policy>. Accessed 27 August 2021.
- Eurostat. (2021a). Internet purchases by individuals (until 2019) [isoc_ec_ibuy], INDIC_IS: Last online purchase: in the 12 months. <https://appsso.eurostat.ec.europa.eu/nui/submitViewTableAction.do>. Accessed 10 September 2021.
- Eurostat. (2021b). Value of e-commerce sales. [isoc_ec_evaln2], INDIC_IS: Enterprises' total turnover from e-commerce sales, UNIT: Percentage of turnover, SIZEN_R2: All enterprises, without financial sector (10 persons employed or more). <https://appsso.eurostat.ec.europa.eu/nui/submitViewTableAction.do>. Accessed 10 September 2021.
- Fleming, S. (2021). What is digital sovereignty and why is Europe so interested in it? *World Economic Forum*, March. <https://www.weforum.org/agenda/2021/03/europe-digital-sovereignty/>. Accessed 27 August 2021.
- Fletcher, A. (2021). Big tech: How can we promote competition in digital platform markets? *Economics Observatory*, June. <https://www.economicsobservatory.com/big-tech-how-can-we-promote-competition-in-digital-platform-markets>. Accessed 27 August 2021.
- Fletcher, R. (2020). The truth behind filter bubbles: Bursting some myths. *Reuters Institute*, 25 January. <https://reutersinstitute.politics.ox.ac.uk/risj-review/truth-behind-filter-bubbles-bursting-some-myths>. Accessed 27 August 2021.
- Gawer, A., & Srnicek, N. (2021). *Online platforms: Economic and societal effects*. European Parliamentary Research Service, PE 656.336, March. [https://www.europarl.europa.eu/think-tank/en/document.html?reference=EPRS_STU\(2021\)656336](https://www.europarl.europa.eu/think-tank/en/document.html?reference=EPRS_STU(2021)656336). Accessed 27 August 2021.
- Lilkov, D. (2019). *European Parliament elections: The disinformation challenge*. Wilfried Martens Centre for European Studies, In Brief. Brussels, May. <https://www.martenscentre.eu/wp-content/uploads/2020/06/european-elections-disinformation.pdf>. Accessed 27 August 2021.

- Madiega, T. (2021a). *Digital Services Act*. European Parliamentary Research Service, Briefing PE 689.357, March. [https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/689357/EPRS_BRI\(2021\)689357_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/689357/EPRS_BRI(2021)689357_EN.pdf). Accessed 27 August 2021.
- Madiega, T. (2021b). *Digital Markets Act*. European Parliamentary Research Service, Members' Research Service, Briefing PE 690.589, May. [https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/690589/EPRS_BRI\(2021\)690589_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/690589/EPRS_BRI(2021)690589_EN.pdf). Accessed 27 August 2021.
- McKinsey Global Survey. (2020). How COVID-19 has pushed companies over the technology tipping point—and transformed business forever. 5 October. <https://www.mckinsey.com/business-functions/strategy-and-corporate-finance/our-insights/how-covid-19-has-pushed-companies-over-the-technology-tipping-point-and-transformed-business-forever>. Accessed 27 August 2021.
- OECD. (2021). *Data portability, interoperability and digital platform competition*. OECD Competition Committee Discussion Paper. <https://www.oecd.org/daf/competition/data-portability-interoperability-and-digital-platform-competition-2021.pdf>. Accessed 27 August 2021.
- One Policy Place. (@OPPEUDigital). (2021). Twitter post. 18 February, 4.01 pm. <https://twitter.com/OPPEUDigital/status/1362416910349008896?s=20>. Accessed 27 August 2021.
- Verbeek, A., & Lundqvist, M. (2021). *Artificial intelligence, blockchain and the future of Europe*. European Investment Bank, Innovation Finance Advisory, June. <https://www.eib.org/fr/publications/artificial-intelligence-blockchain-and-the-future-of-europe-report.htm>. Accessed 27 August 2021.

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