Digital Regulation
The EU Approach

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ITS Webinar, 22 November 2021
1. European Digital Strategy: 2030 Digital Compass

- European way for the Digital Decade COM(2021)118

<table>
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<th></th>
<th>Regulation</th>
<th>Investment and skills</th>
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<td><strong>Digital platforms</strong></td>
<td>- Digital Markets Act</td>
<td>- Infrastructures for telecom networks, computing power, micro-chips</td>
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<td>- Digital Services Act</td>
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<td><strong>Data</strong></td>
<td>- Data Governance Act</td>
<td>- Infrastructures for hosting, processing and using data</td>
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<td>- Data Act</td>
<td>- Interoperability</td>
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<td><strong>AI</strong></td>
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<td>- Partnership with Member States</td>
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<td>- Partnership with firms</td>
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2. Digital Platforms

A Declaration of the Independence of Cyberspace
By John Perry Barlow
Towards an EU Online Platforms Law

<table>
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<th>EU Law</th>
<th>Scope</th>
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<tr>
<td>Copyright Digital Single Market Directive (2019/790)</td>
<td>Content-sharing service</td>
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<tr>
<td>Platforms-to-Business Regulation (2019/1150)</td>
<td>Intermediation services such as marketplaces (Amazon) or app stores</td>
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Digital Markets Act

- Digital Markets contestability (and innovation)
  - B2B fairness
  - Internal market

 Biggest online platforms

Digital Services Act

- Safe, predictable and trusted online environment
- Protection fundamental rights
- Internal market

All platforms hosting content (social networks) and material (ecommerce)
DMA: Digital Gatekeepers

- Specific digital intermediation services: ‘Core Platforms Services’
  - Marketplaces, app stores, search, social networks, video-sharing, communication app, OS, cloud, ad tech

- Specific firms: Gatekeepers
  - 3 criteria: impact + gateway + durable
  - Quick: Presumption based on size (financial and users)
  - Not dirty: Can be rebutted with economic indicators: multi-homing, entry barriers, vertical integration
Tables of the Law 2.0

- **Prohibitions**
  - Self-preferencing (Google Search)
  - Conflict of interests (Amazon Marketplace)

- **Access**
  - Interoperability (Facebook)
  - App store (Apple)
  - Data (Google Search)

- **Missing pieces?**
  - M&A: Start-ups acquisitions (all serial acquirers)
  - Structural separation?
DMA: Oversight and enforcement

• Centralised at the **European Commission**

• In bi-lateral (adversarial) dialogue with platforms

• Little role for **national regulators**

• No clear role for **other stakeholders**: business and end-users, complementor and substitutors, civil society
DSA: Liability exemption

- Two cornerstones of the E-Commerce Directive are maintained
  - Liability exemption for intermediary services is maintained
  - Prohibition of general monitoring

- But complemented
  - Good Samaritan clause
  - Due diligence obligations

Donald J. Trump
@realDonaldTrump

REPEAL SECTION 230!!!

12:08 PM · Oct 6, 2020 · Twitter for iPhone

2.3K Retweets 228 Quote Tweets 7.3K Likes
DSA: Due diligence obligations

Intermediary services
- Identification and clear T&C
- Transparency

Hosting services (such as cloud)
- Notice and action

Online platforms (such as social network, market places, sharing economy)
- KYBC
- Online ad transparency

Very Large Platforms
- Systemic risks assessment
- Internal compliance mechanism
DSA: Oversight and enforcement

• **Semi-centralised** institutional design

  • National **Digital Service Coordinator**
    • Member State where the platform is established

  • **European Board** for Digital Services (EBDS)
    • Mutual learning and consistency application of EU law

• **European Commission**
  • For Very Large Online Platforms
DSA: Ecosystem of enforcement

Internal tools of platforms (risk assessments and compliance officers)

Delegated oversight (independent auditors/trustees)

Platforms

Business users

End-users

Empowered and pro-active users, civil society, trusted flaggers

General /individual guidance
Codes of conduct
3. Data

• European Commission Data Strategy of Feb 2020, COM(2020)66

• Regulation to stimulate more data sharing
  • Cross-sectoral governance framework for data access and use
  • Common European data spaces in strategic sectors and of public interest

• Investments to strengthen Europe’s capabilities
  • Infrastructures for hosting, processing and using data
  • Interoperability
  • Skills: Empowering individuals and SMEs
4. Artificial Intelligence

- Commission AI European Approach of April 2021, COM(2021)205

- Ecosystem of trust: Regulation
  - AI Act
    - 3 prong risks-based approach: prohibition (such as social scoring), regulated high risks (such as credit scoring), others
    - Transparency
    - Innovation

- Ecosystem of excellence: Investment & skills
  - Partnership with Member States
  - Partnership with firms
5. Will the EU Strategy delivers?

• Which will be the **conditions of success** and will they be achieved?
• Will European be able to develop an successful **industrial policy**?
• Will the regulators be able to **change their culture**?
• Will the lawmakers and regulators **learn from their** (inevitable) **mistakes**?

• How the different emerging regional digital laws could be **coordinated at the global level**