

Emerging EU Regulatory Framework for Digital Platforms

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1. Juncker Commission (2014-2019)

Number of antitrust cases and report

- Number of **abuse of dominance cases**
 - *Amazon* e-book (2017): MFN
 - *Google* Shopping (2017): Self-preferencing
 - *Google* Android (2018): Tying and defensive leveraging
 - *Google* AdSense (2019): Exclusivity
- **Sector enquiry**
 - E-Commerce (2016-2017)
- High level **expert Report** (2019) *Competition Policy for the Digital Era*

Platform-to-Business Regulation 2019/1150

- **Symmetric law**
- **Transparency obligations and Procedural fairness**
 - T&C, suspension/termination, ranking, differentiated treatment, data
- **Soft enforcement mechanisms**
 - **Dispute Resolution:** Internal compliant mechanism, mediation
 - **Judicial**
 - **Co and self regulation**

Moderation of illegal content online

| | Hard-law | Soft-law | Co and Self-regulation |
|---|--|--|--|
| BASELINE All types of hosting platforms and all types of illegal content online | - Directive 2000/31 on e-Commerce | - Commission Recommendation 2018/334 on measures to effectively tackle illegal content online, Ch. II | |
| ADDITIONAL RULES Hate speech | - Council Framework Decision 2008/913 on combating certain forms and expressions of racism and xenophobia | | - Code of Conduct on illegal hate speech online (2016) |
| Child sexual abuse material | - Directive 2011/93 on combating the sexual abuse and sexual exploitation of children and child pornography | | - Alliance to Better Protect Minors Online (2017) |
| Terrorist content | - Directive 2017/541 on combating Terrorism - Regulation 2021/784 on addressing the dissemination of terrorist content online | - Commission Recommendation 2018/334 on measures to effectively tackle illegal content online, Ch. III | - EU Internet Forum (2015) |

EU Observatory on the Online Platform Economy

- **Monitors and analyses** the online platform economy, supporting the Commission in policy-making
- **Indicators**
- **Expert group Workstreams**
 - 1. Online advertising
 - 2. Infrastructural Power of Platforms
 - 3. Innovation workshop series
 - 4. Platform Governance
 - 5. Algorithmic Discrimination in Platform Economy
 - 6. Use of platforms technologies (big data and AI) in autocratic countries
 - 7. oversight and enforcement
 - 8. Contribution to Evaluation of P2B Regulation

2. von der Leyen Commission (2019-2024)

Number of antitrust cases and report

- Number of **abuse of dominance cases**
 - *Amazon* (2022): use of third party data, prominence in Buy Box
 - *Google*: online ad
 - *Meta*: use of data, tying FB Marketplace
 - *Apple*: access to NFC, access to app store
- **Sector enquiry**
 - Internet of Things (2020-2022)

Digital Markets Act 2022/1925

- **Digital Gatekeepers**
- Specific **digital intermediation services**: *‘Core Platforms Services’*
 - Marketplaces, app stores, search, social networks, video-sharing, communication app, OS, cloud, ad tech
 - Virtual assistants, web browsers
- Specific **firms**: *Gatekeepers*
 - **3 criteria**: impact + gateway + durable
 - **Quick: Presumption** based on size
 - Turnover > €7.5bn or market cap > €75 bn
 - End users > 45m – business users > 10.000
 - **Not dirty**: Can be **rebutted** with economic indicators
 - multi-homing, entry barriers, vertical integration

Prohibitions and Obligations

- **Transparency** in ad intermediation
- **Prevention of anti-competitive leverage**
 - Tying - *Google Android*
 - Internal discrimination/Self-preferencing - *Google Search*
- **Facilitate switching and multi-homing**
 - Ban MFN - *Amazon E-book*
 - Allow un-installing, no restriction switching and Anti-steering-disintermediation - *Apple App Store, Pay*
 - Data portability
 - No disproportionate conditions to terminate service
- **Access to platforms and data**
 - Vertical interoperability, incl. side-loading: *Apple App Store*
 - Horizontal interoperability for communications app
 - FRAND access to some app store, social network, search

 - Data access for business users
 - Search data search



Digital Services Act 2022/2065

- **Liability exemption**
- **Two cornerstones of the E-Commerce regimes across the world** are maintained
 - **Liability exemption** for intermediary services is maintained
 - Prohibition of **general monitoring**
- **But complemented**
 - **Good Samaritan** clause
 - **Due diligence** obligations

Cullen Cheat Sheet

Digital Services Act

This cheat sheet on the Digital Services Act ([Tracker](#)) provides an overview of the different tiers of obligations for online services available to users in the European Union to counter the dissemination of illegal content and (for very large online platforms and very large search engines) to deal with societal harms.



Participatory enforcement

Internal tools of **platforms**

- Compliance report
- Compliance function
- Protected whistleblowers

National
Authorities

Business
users

Platforms

Complaint
Consultation on specification
design

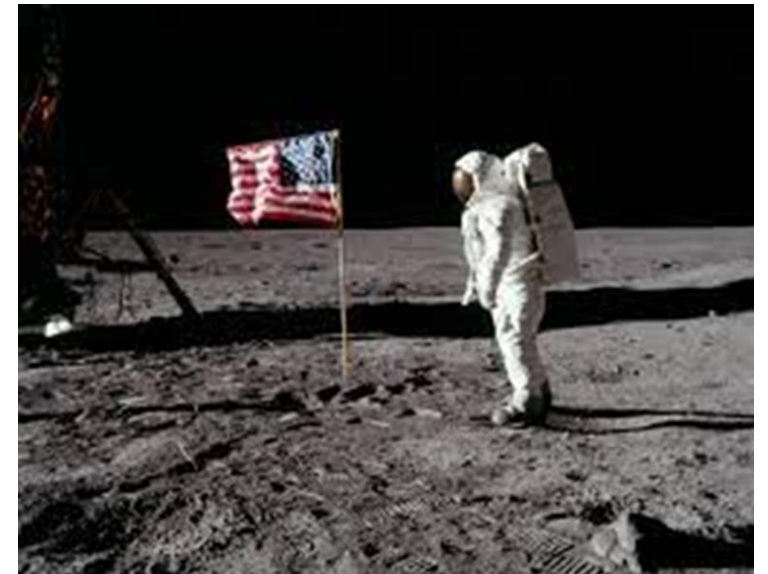
End-
users



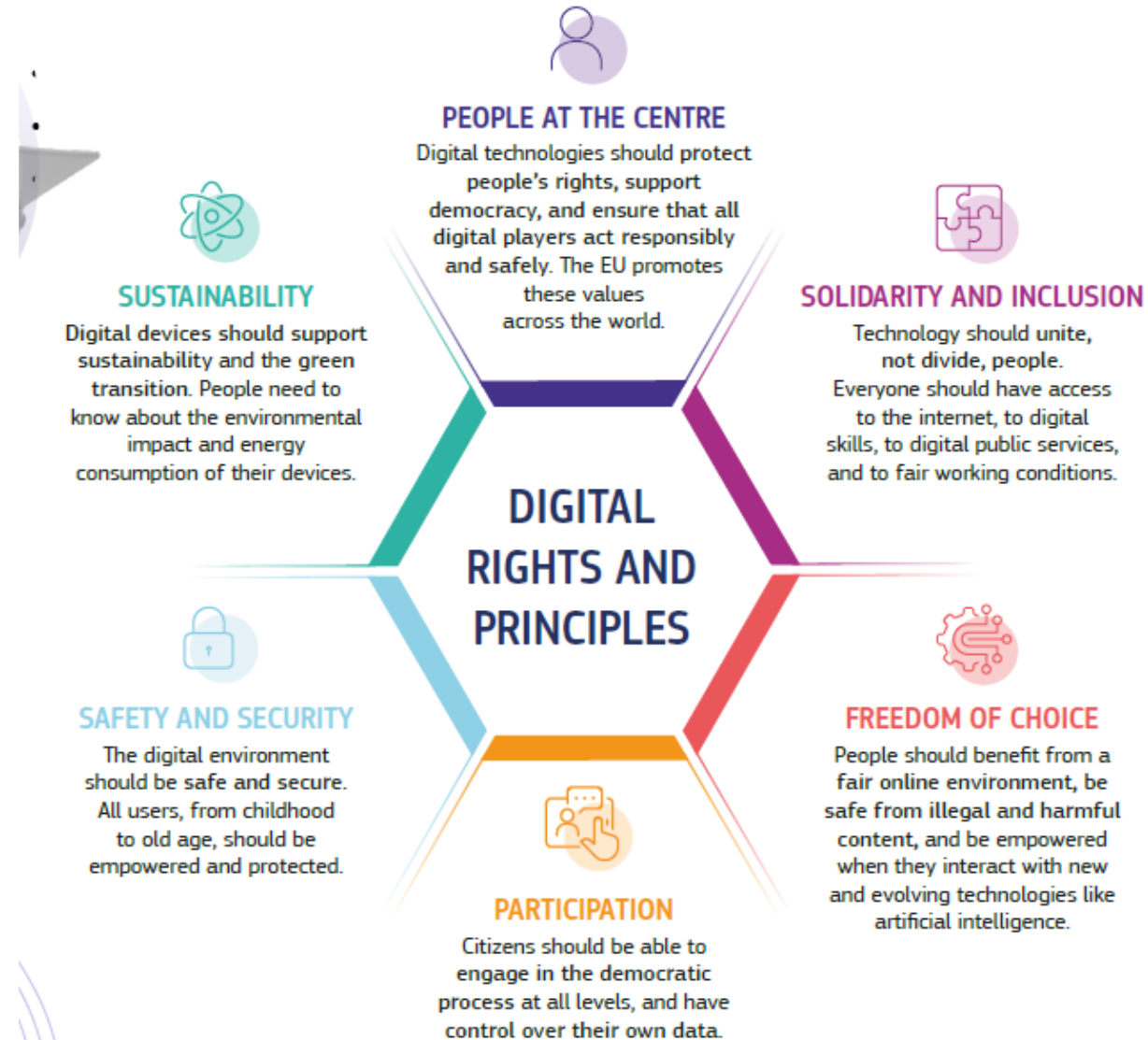
Federal Big Tech Regulator
Guidance: general /individual

3. Indicators of success

- **2022 International Declaration on the Future of the Internet**
 - *Internet that includes all partners who actively support a future for the Internet that is **open, free, global, interoperable, reliable, and secure***
- **Regulation and market structure**
 - **Disintermediate** the global intermediaries
 - Is it possible? Is it efficient?



European Declaration of Dec 2022 on Digital Rights and Principles for the Digital Decade



Useful links

- **Europe Digital Decade**

- <https://digital-strategy.ec.europa.eu/en/policies/europes-digital-decade>

- **Digital Markets Act and Digital Services Act**

- <https://digital-strategy.ec.europa.eu/en/policies/digital-services-act-package>

- **EU Observatory on the Online Platform Economy**

- <https://digital-strategy.ec.europa.eu/en/policies/eu-observatory-online-platform-economy>