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 (2016-217)
- 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 policymaking
- Indicators
- Expert group Workstreams
 - 1. Online advertising
 - 2. Infrastructural Power of Platforms
 - 3. Innovation workshop series
 - 4. Platform Governance
 - <u>5. Algorithmic Discrimination in Platform Economy</u>
 - <u>6. Use of platforms technologies (big data and AI) in autocratic countries</u>
 - 7. oversight and enforcement
 - <u>8. Contribution to Evaluation of P2B Regulation</u>

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

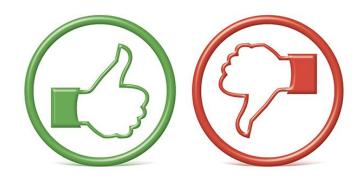
- Tying Google Android
- Internal discrimination/Self-preferencing Google Search



- 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 (<u>Tracker</u>) 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.

INAPPROPRIATE PRACTICES



Transparency of content moderation



Protect users against misleading practices and inappropriate profiling of their data for advertising and recommendation purposes

Advertising transparency and no profiling of

sensitive data to send targeted advertising

· Transparency of recommender systems

 Measures to ensure the safety of minors and no targeted advertising to be sent to



Additional obligations on advertising and recommender systems

· Advertising repositories

recommender system) which is not based on

One option (for each

profilina

ILLEGAL CONTENT



Deal with illegal items and safeguards for users against unjustified actions



Strengthened notice and counter-notice procedure



Additional obligations to fight the dissemination of illegal products



Additional measures to deal with societal harms

- Transparent and fair application of T&C
- · Annual reports



INTERMEDIARIES

- · Flagging system
- · Statement of reasons



HOSTING PROVIDERS

- Give priority to trusted flaggers
- · Suspension of misusers
- Internal complaint handling system
- Engage in good faith with out-ofcourt redress bodies



ONLINE PLATFORMS

· No dark patterns

minors

- · Trace identity of traders
- Design the interface to enable them to comply with law
- · Randomly check products
- Inform consumers who bought illegal products



MARKETPLACES

- · Risk assessment and mitigation measures
- · Crisis response mechanism



- Auditing
- Compliance officer
- Access to data



VERY LARGE PLATFORINS & VERY LARGE SERACH ENGINES

Participatory enforcement

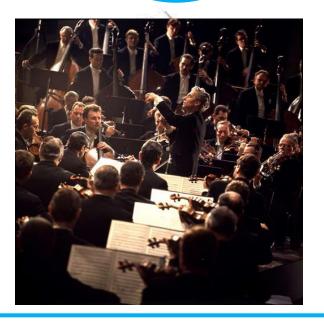
Internal tools of **platforms**

- Compliance report
- Compliance function
- Protected whistleblowers

National Authorities







Complaint
Consultation on specification design

Endusers

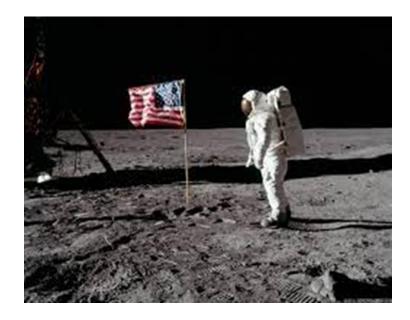
Federal Big Tech Regulator

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





SUSTAINABILITY

Digital devices should support sustainability and the green transition. People need to know about the environmental impact and energy consumption of their devices.



PEOPLE AT THE CENTRE

Digital technologies should protect people's rights, support democracy, and ensure that all digital players act responsibly and safely. The EU promotes these values across the world.

DIGITAL

RIGHTS AND

PRINCIPLES



SOLIDARITY AND INCLUSION

Technology should unite, not divide, people. Everyone should have access to the internet, to digital skills, to digital public services, and to fair working conditions.



SAFETY AND SECURITY

The digital environment should be safe and secure. All users, from childhood to old age, should be empowered and protected.

People should benefit from a fair online environment, be safe from illegal and harmful content, and be empowered when they interact with new and evolving technologies like artificial intelligence.

FREEDOM OF CHOICE



PARTICIPATION

Citizens should be able to engage in the democratic process at all levels, and have control over their own data.



Useful links

Europe Digital Decade

 https://digital-strategy.ec.europa.eu/en/policies/europes-digitaldecade

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