

Digital Services Act:

Opportunities and Challenges for the Digital Single Market and Consumer Protection



While the E-Commerce Directive has been the cornerstone of the Internal Market for the last twenty years, Members of the European Parliament's Internal Market and Consumer Protection committee noted that the Digital Single Market is affected by increasing fragmentation in tackling illegal content online, difficulties to promote market entry and consumer welfare, and ineffectiveness of enforcement and cooperation between Member States.

In order to improve functioning of the Single Market, IMCO committee took the initiative to prepare a legislative report with recommendations to the Commission on a Digital Services Act (Rapporteur: MEP Alex Agius Saliba) and organised a workshop on "E-Commerce rules, fit for the digital age" during which MEPs discussed with experts, stakeholders and consumer protection organisations possibilities of efficient reforms of regulation and consumer protection on online marketplaces in the European Union.

This collection of studies presents workshop proceedings and expert studies resulting from the ongoing interest of the **committee on the Internal Market and Consumer Protection** in improving the functioning of the Digital Single Market and developing E-Commerce rules based on scientific evidence and expertise.

Workshop Proceedings - "E-Commerce Rules, fit for the Digital Age" (March 2020)

The Chair of IMCO committee Prof Dr Petra de Sutter (MEP), opened the workshop by indicating that the European Parliament became a leader in an evidence-based decision-making process by integrating independent experts and scientists into the law-making process and into the democratic debate. The aim of this method is to reinforce legitimacy and accountability of European legislation. IMCO Rapporteur for the Digital Services Act Mr Alex Agius Saliba (MEP) recalled that platform economy has changed during the past two decades and there is a need to rethink EU provisions to address the current gaps in the legislation and to provide for a better consumer protection.



Mr Agius Saliba (MEP) explained that the Digital Single Market reform is an opportunity for the EU to become a global leader in the digital sector by promoting its rules worldwide and that it is necessary to protect EU values and principles whilst legislating.

During the workshop, academic and industry experts, stakeholders and consumer organisations were invited to express their views on reforms to be implemented through the Digital Services Act to adapt the E-Commerce legal framework to the current digital economy. Such reforms are necessary to protect consumers and to allow all actors of our society to benefit from the Digital Single Market's full potential and to develop the EU's prosperity for the future.

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The E-Commerce Directive as the Cornerstone of the Internal Market – Assessment and Options for Reform (May 2020)

The E-Commerce Directive adopted in 2000 covers any service provided at a distance by electronic means at the individual request of a recipient. Although the scope of the Directive is very broad, it was adopted in 2000 at a time when **online platforms were in their infancy** and when many technologies and applications currently used did not exist. There is therefore a strong need to adapt the E-Commerce legal framework to the current platform economy.



The study aims to explain the objectives and **the pillars of the E-Commerce Directive** and to **review the main legislative and judicial developments** that took place since 2000. It also analyses the effects of the E-Commerce Directive on the internal market and proposes recommendations to adapt the Directive to the current digital economy.

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The Legal Framework for E-Commerce in the Internal Market – State of Play, Remaining Obstacles to the Free Movement of Digital Services and Ways to Improve the Current Situation (May 2020)

The E-Commerce Directive has proven to be one of the **most successful pieces of EU legislation** over the past twenty years. The **technological advancements** that have taken place since its adoption have however **redefined the economic and societal circumstances** in which the E-Commerce Directive functions.

The aim of this report is to give an **overview of the environment** in which the provisions of the E-Commerce Directive function at present. It offers a glance at the current EU legislative scheme that complements the E-Commerce Directive. It also **presents the most significant technology-driven market changes** that have taken place during the last twenty years, such as artificial intelligence and the societal consequences of technological advancements and of the digital revolution. Against this background, the analysis **identifies the areas that are prone to an effective legislative intervention** that would address the **most pressing market failures**.



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How to Fully Reap the Benefits of the Internal Market for E-Commerce? New economic opportunities and challenges for digital services 20 years after the adoption of the e Commerce Directive (May 2020)

The E-Commerce sector is estimated to account for 8.8% of total retail sales in the EU, a growing share compared with previous years. Nevertheless, the share is still smaller compared with other markets. In the US, for instance, the share of online retail sales out of total retail sales was estimated at 16% in 2019. To fully reap these additional benefits, a **number of barriers still need to be removed** in order to support the growth of cross-border E-Commerce. These include **high costs of delivering or returning products**, difficulties in dealing with **complaints** and **restrictions to online sales** established by commercial partners. Limitations related to cross-border access to **copyrighted content** are an additional hurdle to attain the digital single market's full potential.



In order to reap the benefits of the digital single market, the study emphasizes the need to **ensure proper and timely implementation of existing EU legislation**, to **remove the existing regulatory barriers** and to take actions to make E-Commerce platforms more **sustainable**.

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The Functioning of the Internal Market for Digital Services: Responsibilities and Duties of Care of Providers of Digital Services – Challenges and Opportunities (May 2020)

The E-Commerce Directive established in 2000 only provides for **limitations on liability** and does **not establish liability for intermediary service providers**. This considerably impacts on third party infringements and on the rise of unsafe products online.



The study argues that this should be reformed in the DSA by implementing a **responsibility and duties of care** for online intermediary service providers. This would **limit the source of danger** whilst enabling intermediary service providers to become **hubs of trust for the future**.

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Artificial Intelligence (AI): New Developments and Innovations applied to E-Commerce – Challenges to the Functioning of the Internal Market (May 2020)

Artificial intelligence has a **significant potential to contribute to the digital single market** and to enhance the development of online platforms and marketplaces. However, many aspects of AI such as **reasoning, adaptation to human environment and human-machine interaction are still lagging behind** and can create risks for businesses and consumers. These range from **discrimination and manipulation** to **polarisation** of users' tastes (e.g.: through targeted ads and job offers).



In order to limit these drawbacks, the study emphasises the importance of developing **trustworthy, explainable** and **societal-aware AI**.

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Enforcement and Cooperation between Member States – E-Commerce and the Future Digital Services Act (April 2020)

The EU legislator **selected self-regulation** alongside a **liability shield** as the main components of regulating platforms in the E-Commerce Directive. This has now proved **unfit for purpose** given the development of online platforms. It is imperative that any future DSA does not replicate this model, especially if enforcement and cooperation between Member States is a genuine priority.



For this reason, the study argues that the DSA should **concentrate on a few key horizontal rules** that apply to the internal structures and operations of platforms. A **public law framework** should also be favoured to preserve European values and standards.

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New Aspects and Challenges in Consumer Protection – Digital Services and Artificial Intelligence (April 2020)

Online consumers often find themselves in an **unbalanced relation to service providers** and traders. A range of powerful intermediaries delivering key services such as online search, content sharing, cloud computing, and online payments has emerged. Machine learning has enabled traders to grasp correlations between consumer data (purchases, websites visited, likes on social networks) and possible responses to ads. The **ability to predict consumers' reactions** could morph into **manipulation** as consumers' responses could be based on irrational aspects of their psychology or a lack of information.



Even though the risks that AI poses to consumers are significant, no less important are the opportunities opened up by AI. AI can support citizens and their organizations so that they may not only make better use of the opportunities available in the market, but may also resist and respond to unfair and unlawful behaviour by AI-powered companies. Consumer-empowering AI technologies can support consumers in protecting themselves from unwanted ads and spam; they can enable consumers to identify cases where unnecessary or excessive data is being collected or where fake and untrustworthy information is provided. Automated AI based services, such as [Claudette](#), can support consumers and their organisations in [detecting unlawful contractual clauses](#) and [monitor data protection compliance](#). AI based systems can detect violations of the law, assess compliance, and, if accompanied by legislative measures, obtain consumer redress in an automated way.

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New Developments in Digital Services – Short- (2021), Medium- (2025) and Long-Term (2030) Perspectives and the Implications for the Digital Services Act (May 2020)

The next two decades will be the most dynamic in human history due to the further digitisation of all sectors of the economy. By 2030, **fully digitised and customisable services** and solutions will allow consumers to create products that perfectly fit their needs. Technologies will enter the next generation with new scientific findings to increase their efficiency and sustainability. Everything that we know now will be more customised to **fit each individual's needs**. Current issues, such as the climate crisis, will be dealt with to create a liveable future for the next generations.



By providing a visionary outlook into the next ten years, the report aims to inspire MEPs to reach thoughtful, ground-breaking, and sophisticated decisions in the legislative process for the Digital Services Act.

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Administrators responsible: Mariusz MACIEJEWSKI, Christina RATCLIFF; Editorial assistant: Irene VERNACOTOLA

Contact: Poldep-Economy-Science@ep.europa.eu

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