A BRIEF ANALYSIS OF THE DIGITAL SERVICES PACKAGES DSA&DMA

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Foreword

This report is intended to analyze the two legislative proposals called “Digital Services Act” and “Digital Markets Act”, submitted in December 2020 from the European Commission to the European Parliament. For the first time ever, a common set of rules on obligations and liabilities of intermediaries within the Single Market will open new opportunities for the provision of cross-border digital services, while ensuring a high level of protection for all users, regardless of their residence within the European Union. In particular, the report tries to shed a light on the everyday relevance of this new regulation for digital users, also by analyzing some previous cases, such as Google and Amazon.

Introduction to the DSA&DMA

What is the Digital Package? What are DSA and DMA? Did one day the European Commission, Parliament wake up to the desire to revolutionize the services of the Community digital market? NO. Digital Services Act and the Digital Markets Act are currently just draft regulations with one single scope "ensure that we, as users, have access to a wide range of safe online products and services. And that companies operating in Europe can compete online in a free and fair way, just as they do offline", said in a statement Margrethe Vestager, the EU Commissioner who leads the charge on technological issues.

In the light of the socio-economic developments which have affected not only Europe, but the whole planet, and which have made it possible to create an interconnected world where everyone is part of the same rule system, the European Parliament, on 20 October 2020, adopted two legislative initiative reports and a resolution calling on the Commission to address regulatory gaps in relation to the online environment and to provide rules that can somehow withstand future developments in digital services, including online platforms and markets, as well as a binding mechanism through which users can report illegal online content.

Therefore, the European Commission, on 15 December 2020, has provided two legislative proposals which, before becoming directly applicable throughout the EU territory, have to be discussed by Parliament and by the Member States according to the ordinary legislative procedure.

The ordinary legislative procedure envisaged, possibly, for the approval and entry into force of the DSA and DMA requires the joint adoption of the bill by the European Parliament and the Council on a proposal from the Commission.

This procedure, which has its legal basis in art. 294 TFEU and **can take months, even years, depending on the amendments and the consensus generated by this legislative proposal**, consists of (at least) 4 steps:

- The European Commission submits a proposal to the Council and the European Parliament.
- The Council and the Parliament adopt a legislative proposal either at the first reading or at the second reading.
- If the two institutions do not reach an agreement after the second reading a conciliation committee is convened.
- If the text agreed by the conciliation committee is acceptable to both institutions at the third reading, the legislative act is adopted.

The approval process also requires the European Commission to seek the advisory opinion of the EDPS authority where a legislative proposal "an impact on the protection of the rights and freedoms of natural persons in relation to the processing of personal data."

On 10 February 2021, EDPS published two opinions on the European Commission's proposals for a Digital Services Act and a Digital Markets Act with the aim of helping EU legislators to shape a digital future rooted in EU values, including the protection of fundamental human rights, such as the right to data protection.

In its opinion on the Digital Services Act the EDPS welcomes the proposal for a Digital Services Act which seeks to promote a transparent and secure online environment.

But who is the EDPS? The European Data Protection Supervisor is the independent data protection authority of the European Union. Its task is to ensure that the fundamental right to the protection of personal information is respected in all European institutions and in all agencies across the continent. It performs both the eu pa's control function of the processing of personal data, advises EU institutions and bodies, cooperates with national administrations, oversees the interference of new data protection technologies.

Nowadays, the EDPS is Wojciech Wiewiórowski who on 10 February 2021 expressed himself as follows: regarding the DSA "We note that the proposal does not impose a general obligation of monitoring, confirms reasonable exemptions of liability and integrates them with a pan-European system of warning and action rules, so far missing."
Similarly, in its opinion on the Digital Markets Act, EDPS welcomes the European Commission's proposal to promote fair and open digital markets and fair processing of personal data by regulating large online platforms that act as guardians.
Wojciech Wiewiórowski said: "Competition, consumer protection and data protection law are three inextricably linked areas in the context of the online platform economy. Therefore, the relationship between these three areas should be of complementarity, not of friction".

The structure

Let's go in depth and see how they are structured
The Digital Services Act and the Digital Market Act, even distinct, are a single Package of legislation and it can be said that fall within the same scope and are expression of the same values.
Generally, there is clear evidence that the European Commission is essentially trying to protect the consumer in the Digital era: the core values of consumer protection, together with antitrust legislation, are the basis of the Package.
However, the Package is meant to go beyond mere consumer protection: it wants to ensure a friendly digital environment for every player, be it consumer or business user. Moreover, it aims at strengthening the European Single Market in its digital dimension, fostering competition and innovation.
In order to do so, the focus must be on the large platforms that host the digital market and the giants which provide digital services.
On one hand, indeed, in the explanatory memorandum of the Digital Market Act proposal it is explained how most of the digital economy's value is captured by few large platforms that are durably entrenched in their position and *de facto* control access to the digital market. These platforms, if meet a series of conditions, are called gatekeepers and are the ones that allow the meeting of end-users (i.e. consumers, demand) and business-users (i.e. supply) in the cyberspace.
On the other hand, in the Digital Services Act proposal the European Commission calls for transparency, fairness and accountability "for digital services' content moderation process" in light of human rights. Moreover, the digital services' providers, especially online platforms such as social media and marketplaces, are requested to implement illegal-addressing mechanisms which can be challenged, rules on (algorithmically targeted) advertising and enable the use and development of smart contracts.
The Digital Services Act (DSA) and the Digital Markets Act (DMA) are two European legislative proposals and they are two complementary parts of the same project regarding the European digital market.

Digital Markets Act

[WHY] Avoid monopolistic positions that can lead to consumer's hurt.
The DMA targets "gatekeepers": these are companies (Large Online Platforms) that own a platform which acts as a nexus, a link between two or more groups of users (take, for instance, buyers and sellers), facilitating their interaction. Therefore, the platform is crucial to the meeting of demand and supply since both sides have to follow its routes to meet one another.
A gatekeeper is a platform operating in digital services in at least three EU countries and:
1. Has a significant impact on the internal market (i.e., an annual turnover of 6.5bln or mkt cap. of 65bln)
2. Acts as a gateway for business users to reach consumers (45mln end-users monthly and 10k business users yearly)

3. Enjoys an entrenched and durable position (i.e., meets the previous criteria over three consecutive years)

This kind of platform is labelled as gatekeeper. However, the Commission would be free to move these thresholds following technological development and could also label other platforms as gatekeeper on the basis of a qualitative assessment.

Digital hubs are controlled by a handful of global players, which implies that digital markets are characterized by high concentration of users. This might become a problem in terms of competition of the market, which translates into efficiency of the market itself. Success is not forbidden, but locking it in might become a problem. This is especially true after a long period of primacy of the same tech giants, which translates into incredible bargaining power against regulators, making consumers vulnerable.

The DMA addresses two problems: barriers to entry and unfair or anticompetitive practices put in place by gatekeepers.

The DMA intends to prohibit, among others, self-preferencing (raking the gatekeeper's products over others), spying on business consumers' data to compete with them and combining end-users' data from different sources without their consent. It also includes some kind of regulation regarding mergers, which is not very clear at the moment.

DMA is suited for intervention BEFORE any damage, not after. Therefore, the DMA represents an *ex ante* approach based on obligations imposed on gatekeepers which could be a complement to competition rules.

The Digital Marketplace Act establishes a set of objective and very precise criteria to define large online platforms that exercise an access control, i.e. gatekeeper, function. This allows it to focus on the problems posed by large systemic platforms. The new rules set out obligations and prohibitions that these platforms will have to respect in their daily activities.

Gatekeepers will have to: make their services interoperable for third parties in specific situations; allow commercial users to access the data they generate using the platform; provide companies advertising on the platform with the necessary tools and information to allow advertisers and publishers to carry out independent audits of the advertisements hosted by the platform; allow commercial users to promote their offer and conclude contracts with customers outside the platform.

Violation of the rules in the DMA would lead to the payment of fines of up to 10% of the company's total annual worldwide turnover, with periodic penalty payments of up to 5% of the average daily turnover. In the case of systematic breaches of obligations, additional remedies may be imposed on platforms following a market investigation. These remedies should be proportionate to the infringement committed. Additional remedies may include behavioural and structural remedies, such as an obligation to sell an asset or parts of it.

Digital Services Act

The Digital Services Act targets unlawful content on online platforms owned by companies that provide intermediary digital services, imposing obligations depending on their size, role and impact on the online ecosystem.

The law aims at removing illegal content from online platforms and protecting the users' fundamental rights, especially their freedom of speech.

Concretely, this target would be achieved through different mechanisms:

Users would be able to flag illegal content; platforms should comply with new standards of traceability of business users; transparency measures for platforms would be introduced, including on algorithms used for recommendation of content and ads; risk management (r?)evolution; right to understand why some content has been blocked or removed, with the right to contest the decision.

Regarding algorithms that select recommended content and ads, indeed, the problem is that at the time of writing they could select content and ads based not only on subjective preferences, but also depending on how much the platform can earn by promoting that specific content or ad. Therefore,

the platforms would have to explain exactly the reasons why a specific content is shown and why they're shown to that specific user. This directly translates into revealing who influences end-users and why.
Among the key points of the Digital Services Act, the proposed regulation published by the European Commission and aimed at creating a European digital single market, are new systems for removing illegal content and new rules for online advertising. One of the main objectives declared by the Commission is to guarantee users of digital platforms greater choice and greater security, as well as to limit the emergence and spread of abusive market-distorting behaviour.
In the DSA we can find: *The tools of the Digital Services Act against network illegality; Measures to limit the spread of illegal content online; Measures to combat the sale of counterfeit products online; Obligations for online advertising.*
The rules of the Digital Services Act apply within the EU single market without limitation, and also apply to all online intermediaries established outside the EU who offer their services in the single market.
The companies which will benefit from "*a modern, clear and transparent framework to ensure that rights are respected, and obligations enforced*". It should be easy for the firms report illegal activities carried out on digital platforms to their detriment, or prevent the wrongful removal of their content, including through specific internal and external redress mechanisms.
For defaulting companies, the Commission has provided for the application of sanctions of up to 6% of the global turnover. In the event of repeated failure to comply with the obligations laid down, with the implementation of conduct that may jeopardize the rights and safety of individuals, it will also be possible to request the temporary suspension of the service offered by the platform.

Case study

Google's abuse of dominant position

In 2010 and 2015 three separate antitrust investigations were launched by the European Commission against Google, due to its alleged violation of EU's competition laws, made possible due to its dominant position in the market.
These three cases regarded three different services provided by Google: GoogleAdSense, Google Shopping and the Android operating system.
GoogleAdSense is a technology through which Google serves to its end users targeted advertisement in the interest of AdSense-enrolled webmasters, who pay this Google advertisement system depending on several different factors.
Google Shopping is a service which allows end users to search for products online and to compare the prices between different vendors.
Android is, instead, an open-source mobile operating system, whose original developer was bought by Google in 2005.
Regarding the first two services, the Commission launched an investigation on November 30th, 2010 (European Commission, 2010), alleging a possible violation of Article 102 TFEU (on the abuse of dominant position). In particular:

1. Regarding GoogleAdSense, the EC investigated whether Google's search engine imposed exclusivity obligations on its advertising partners, preventing them from placing some or all kinds of ads on their web sites at the scope of cutting out competing search tools.
2. Regarding Google Shopping, the EC focused on the advantages given by the Google search engine to the Google Shopping service.

First of all, the Commission concluded that restrictions on advertising from Google competitors imposed by Google on third party websites concealed the protection and entrenchment of Google's dominant position in online search advertising and resulted in preventing potential competitors from entering and growing in this sector.
In particular, the Commission was worried about Google's abuse of leverage: the tech giant imposed third parties not to source search ads from Google's competitors (EXCLUSIVITY CLAUSE), to ask Google's approval to authorise competing ads (AUTHORISING EQUIVALENT ADS CLAUSE), to take a minimum number of search ads from Google putting them in a prestigious position in their websites (PREMIUM PLACEMENT AND MINIMUM GOOGLE ADS CLAUSE). This behaviour hindered competition and, therefore, was fined with €1.6 billion
In second place, the Commission recognized that Google gave systematic favourable treatment and prominent placement to its comparison shopping product, which is Google Shopping, diverting online traffic from rival comparison shopping services. At the same time, the EC launched a new investigation regarding the Android operating system.
In 2017, Google was fined €2.42 billion due to its abuse of dominance for giving illegal advantage to its Google Shopping service and for demoting rival comparison shopping services through its search engine. As a result, end users were unlikely to click on rival comparison shopping services but very likely to click on Google Shopping results, generating big sources of income for Google Shopping and, ultimately, for Google itself. This was considered to be hindering competition and damaging end users, so that Google was fined
Last but not least, the third investigation, regarding Google Android, was launched by the Commission in 2015 due to alleged anticompetitive behaviour in the field of operating systems and applications for smart mobile devices.
Android is an open-source system: it can be used and developed by anyone. Most of the smart devices' manufacturers use the Android system together with a range of Google services and applications. In order to install Google's apps on the devices, the manufactures get in touch with Google to obtain the right to do so.

In 2016, the Commission found that Google had implemented a strategy on mobile devices to preserve and strengthen its dominance in general internet search. Indeed, it was noted that:

1. Google imposed manufactures to pre-install its Google Search, setting it as default search engine, as a condition to license certain Google's apps. It did the same with the Google Chrome browser.
2. Prevented manufacturers from selling mobile devices with an operating system different from but based on Android (so called Anti-fragmentation agreement)
3. Gave financial incentives to manufacturers and mobile network operators after they agreed on pre-installing Google Search (Exclusivity)

Thanks to these practices, Google cemented its dominance in the field of search engines. The Commission, therefore, fined Google for a total amount of euros 4.3 bln.

UE vs Amazon

The 10th November of 2020, the European commission sends statement of objection to Amazon for the use of non-public independent seller data and opens second investigation into its e-commerce business practice. The multinational company has allegedly violated European antitrust law in France and Germany, distorting competition on the online market. According to Margrethe Vestager (vice-president of the European commission), Jeff Bezos' giant would give preferential treatment to companies that rely on its logistics services for shipping and delivery, for example by offering them greater visibility.

Amazon would have exploited its infrastructure, misusing the data of those selling on the platform to favour its own products to the detriment of those of its competitors. The epicenter of the question are the data which are the "oil" of the 21st century. According to the Commission, once aggregated, this big data is processed to calibrate investments and promotions in an automated way. The losers are the third parties that have contributed to generating that critical mass and continue to sell in the same virtual megastore where they are 'spied on'. If confirmed, the abuse would be an infringement of Article 102 of the Treaty on the Functioning of the European Union (TFEU) that prohibits the abuse of a dominant market position.

This is not the first time that the president of the commission of antirtrust try to fine Amazon. Also in July, 2019. Executive Vice-President Margrethe Vestager, in charge of competition policy, said: "*We must ensure that dual role platforms with market power, such as Amazon, do not distort competition. Data on the activity of third party sellers should not be used to the benefit of Amazon when it acts as a competitor to these sellers. The conditions of competition on the Amazon platform must also be fair. Its rules should not artificially favour Amazon's own retail offers or advantage the*

offers of retailers using Amazon's logistics and delivery services. With e-commerce booming, and Amazon being the leading e-commerce platform, a fair and undistorted access to consumers online is important for all sellers."

In addition, the Commission opened a second antitrust investigation into Amazon's business practices that might artificially favour its own retail offers and offers of marketplace sellers that use Amazon's logistics and delivery services (the so-called "fulfilment by Amazon or FBA sellers").

In particular, the Commission will investigate whether the criteria that Amazon sets to select the winner of the "Buy Box" and to enable sellers to offer products to Prime users, under Amazon's Prime loyalty programme, lead to preferential treatment of Amazon's retail business or of the sellers that use Amazon's logistics and delivery services.

It is not certain that the European procedure will lead to a prohibitive fine (rumoured to be up to 10% of a turnover of 720 billion euros in the old continent). In the past, Vestager has spoken out against excessively onerous sanctions, which she considers ineffective. Also because the collection rate of fines is not very encouraging.

On the horizon is the introduction of a Digital Market Act which will modernise the Eurozone's antitrust system. Brussels is driven by a desire to defend European consumers. A feat that one nation alone could not attempt with the same firepower as a bloc of 27 states. And the counteroffensive has only just begun.

Historical excursus

The Digital Services Act (DSA) and the Digital Markets Act (DMA) are two European legislative proposals, and they are two complementary parts of the same project regarding the European digital market.
The main goal of the DSA is to provide *new obligations and responsibilities for digital intermediaries and online platforms*, with a particular focus on the content they host, in order to affect those illegal matters which encourage hate, violence, terrorism and similar.
Instead, the purpose of DMA essentially results in regulating the relationships between big tech and their users to avoid unfair behavior.
Is this the first time that such regulatory instruments have been envisaged? NO.
So, a question naturally arises: *now, what does regulate business behaviors and protect final consumers?*
There is a specific regulation at European level that was born at the beginning of the 21st century and is undergoing a rapid and constant evolution, due to the development of technological innovations and especially the social context, and it has reached, so far at least, its climax in the two proposals that are being analyzed.

2014

• Regulation eIDAS (UE) n. 910/2014. The purpose of which is to ensure a good functioning of the internal market while pursuing an adequate level of security for electronic identification means and fiduciary services. It lays down the conditions under which Member States shall recognize the means of electronic identification of natural and legal persons covered by a notified electronic identification scheme of another Member State, and establish a legal framework for electronic signatures, electronic seals, electronic time validations, electronic documents, certified electronic delivery services and services related to website authentication certificates.

2015

• EU Directive 2015/849 "Fourth AMLD Directive". It introduced provisions to optimize the use of anti-money laundering and terrorist financing instruments.

2016

• Directive (UE) 2016/1148 " Directive NIS". It shall establish measures to achieve a common high level of network and information system security in the Union in order to improve the functioning of the internal market.
• Regulation 2016/679/UE, General Regulation on the Protection of Personal Data (GDPR). It lays down rules on the protection of individuals with regard to the processing of personal data and on the free movement of such data. It protects the fundamental rights and freedoms of natural persons, in particular the right to the protection of personal data. The free movement of personal data within the Union may not be restricted or prohibited on grounds relating to the protection of individuals with regard to the processing of personal data

2017

• E-Privacy regulation. It sets rules on the protection of the fundamental rights and freedoms of natural and legal persons with regard to the provision and use of electronic communications services, in particular the right to respect for privacy and communications and the protection of individuals with regard to the processing of personal data. In addition, it shall ensure the free movement of electronic communications data and electronic communications services in the Union, which are not restricted or prohibited on grounds relating to the respect for the privacy and communications of natural and legal persons and the protection of natural persons with regard to the processing of personal data.

2018

• Regulation (UE) 2018/302 “Geoblocking regulation”. It contains measures to prevent unjustified geographical blockages and other forms of discrimination based on nationality, place of residence or place of establishment of customers within the internal market.

2019

• EU cybersecurity regulation 2019/881 (Cybersecurity Act). In order to ensure the smooth functioning of the internal market while pursuing a high level of cyber-security, cyber-security and trust within the Union, this Regulation lays down: the objectives, tasks and organizational aspects of ENISA, ('European Union Cyber Security Agency and a framework for the introduction of European Cyber Security Certification Schemes to ensure an adequate level of cyber security for ICT products, ICT services and ICT processes in the Union, as well as in order to avoid fragmentation of the internal market with regard to cybersecurity certification schemes in the Union.

2020

• Digital Services Act (DSA) and the Digital Markets Act (DMA)

Definition of the digital package's target

The DSA target

«The new rules are proportionate, promote innovation, growth and competitiveness and facilitate the expansion of smaller platforms, SMEs and start-ups. The responsibilities of users, platforms and public authorities are rebalanced according to European values, placing citizens at the center. Rules better protect consumers, and their fundamental rights online establish an effective and clear framework for transparency and accountability of online platforms promote innovation, growth and competitiveness within the single market».

The Digital Services Act establishes due diligence obligations applicable to all digital service providers in the European single market, including those established outside the EU without any restrictions. In the event that the service provider is not based in the EU, it will have to appoint its own representative, as is also provided for other European regulations. The obligations of different online operators correspond to their role, size and impact on the digital ecosystem.
For the sake of transparency, all brokerage service providers will be required to include in their terms and conditions any restrictions or limitations they impose in relation to the use of their services. They will also have to make known the procedures, measures and tools used for content moderation and publish clear and detailed reports on their moderation activities at least once a year.

Which suppliers are affected?
• Brokerage services that offer network infrastructure: Internet access providers, domain name registrars, including:
• Hosting services such as cloud and webhosting services, including:
• Online platforms that bring together sellers and consumers such as online marketplaces, app stores, collaborative economy platforms and social media platforms.
• Large online platforms carry particular risks for the dissemination of illegal content and damage to society. There are specific rules for platforms that reach more than 10% of Europe's 450 million consumers.

In addition to these obligations, **hosting service providers** will need to:
• implement intuitive and easy-to-access mechanisms through which users can notify the provider of the presence of illegal content;
• provide, in case of removal or disabling of the content, a statement of reasons, or a statement addressed to the user who inserted the content, where the reasons for such a measure are clearly indicated and the possibility of appeal is offered.

Online platforms (including e-marketplaces, social network sites, search engines, etc.) will be subject to additional transparency obligations, first of all to ensure that for each advertising displayed the user can clearly recognize who sponsored the ad and what parameters were used to decide to direct that content to a particular recipient.
The Digital Services Act establishes a distinction between "online platforms" and "very large online platforms", i.e. those that reach more than 45 million average monthly users. In view of the large amount of data and information they process, the influence they may have on the market and users' choices, and the systemic risks they may pose in terms of the dissemination of illegal content, additional transparency obligations apply to them.

If they use content recommendation systems (as is often the case on major e-commerce sites), the parameters used and any options for service recipients to modify or influence those parameters should be clearly stated in the platform's terms and conditions. In addition, consumers must be guaranteed the right to opt out of recommendations for profiling-based content.

Sanctions
For intermediaries who are found to be fulfilled, liability exemptions will be provided.
For defaulting companies, the Commission has provided for penalties of up to 6% of total turnover. In case of repeated failure to comply with the obligations provided, with the implementation of conduct that may endanger the rights and safety of people, it will also be possible to request the temporary suspension of the service offered by the platform.

The DMA targets – gatekeepers

The Digital Market Act targets the so-called gatekeepers. But who are they?
Gatekeepers are big online platforms which exercise control over access to the digital market. Their role is to allow the connection between end-users and business-users, which means that they act as a link between businesses and consumers.
For this reason, gatekeepers hold a great power in terms of selection of users (from both sides of the market) that can access the platform: gatekeepers could impose unfair conditions to users that demand access to the platform, causing a decrease of demand or supply and thus affecting the market and the competition.
These unfair behaviours won't be tolerated anymore and gatekeepers will have to allow
Chapter II of the DMA Proposal, Article 3, *Designation of gatekeepers*, provides the criteria to identify the gatekeepers. At first, three cumulative conditions must be met, so that the gatekeeper is the provider of core platform only if:
1) has a significant impact on the internal market (the condition is presumed to be met if the company reports an annual turnover of 6.5bln or a market capitalisation of 65bln);
2) operates a core platform services used by business-users to reach end-users (the condition is presumed to be met if the platform has 45mln end-users monthly and 10k business users yearly)
3) enjoys and entrenched and durable position that will presumably be kept in the future (the condition is presumed to be met if the first two conditions have been met for three subsequent years)
The providers that meet all the conditions have to notify it to the European Commission. In absence of notification, the Commission will be able nonetheless to label the provider as gatekeeper if the criteria are met.

Consequences DSA & DMA

It starts from a situation where there is broad consensus on the need for action to address the growing dangers in digital markets, without jeopardising the enormous benefits they have brought to the economy and consumers. The structure of the rules is simple, as there is a list of things that can be done and things that cannot be done, but there is a risk that this list can be too hard. The danger now is that the newly designed rules will end up being just sand in the gears of the digital giants' mighty machines, instead of fostering the greater competition or fairness that one would like to ensure. If so, the rules will prove both inefficient, reducing consumer welfare, and ineffective, not reducing the market power of the gatekeepers.

The measures target specific classes of recipients called "digital gatekeepers" in the DMA and "very large platforms" in the DSA, identified based on user thresholds (more than 45 million), and in the case of the DMA also of turnover or capitalization (more than EUR 6.5 billion or EUR 65 billion). This means that it is an asymmetric regulation, i.e. it applies only to the large ones, with the aim of favoring the entry of new players into the market.

The purpose of these rules for the DSA is quite clear, although not easy to achieve: a limitation of the safe harbour principle for platforms, i.e. the introduction of liability rules for the contents and products they convey and distribute. The DSA aims to significantly improve mechanisms for the removal of illegal content and for the *effective protection* of users' fundamental rights online, including freedom of speech. It also creates stronger public scrutiny of online platforms, for platforms that reach *more than 10% of the EU population*.
This means:
-Measures to counter the sale and distribution of illegal goods, services and content online, such as a mechanism to allow users to report such content and algorithms for removing illegal content that raise the issue of 'actual' knowledge on the part of the platform, obliging it to remove the content with consequent liability for inaction
-New obligations on tracking commercial users in online marketplaces, to help identify sellers of illegal goods
-Effective safeguards for users, including the possibility to challenge content moderation decisions of platforms
-Transparency measures for online platforms including the algorithms used to target commercial communications
-Obligations for very large platforms to prevent misuse of their systems through risk-based actions and independent audits of their risk management systems
-Access for researchers to key data from the largest platforms to understand how online risks evolve
As for the DMA, it must be well understood that also in this case we are dealing with a regulatory intervention, not with competition law. Margrethe Vestager explained it very effectively using the metaphor of the river: the antitrust intervenes to remove debris from the river, the DMA wants to put a filter upstream, to prevent certain debris from entering the river. But designing and building the filter is far from easy.
The DMA establishes a set of narrowly defined objective criteria to qualify a large online platform as a gatekeeper; in particular, it will be relevant whether a company:
-has a strong economic position, a significant impact on the internal market and is active in several EU countries
-has a strong intermediary position, i.e. it connects a large user base to a large number of businesses
-has (or is in the process of having) a deep-rooted and durable position in the market, meaning that it is stable over time.
In the list of what you can or cannot do, we can find:
Among the '**do's**' the platforms will have to:
-Allow third parties to interact with the gatekeeper's services in specific situations

-Allow business users to access the data they generate when using the gatekeeper's platform
-Provide advertisers on their platform with the tools and information necessary for advertisers and publishers to perform their own independent verification of their ads hosted by the gatekeeper
-Enable commercial users to promote their offer and conclude contracts with their customers outside the gatekeeper platform.

On the other hand, it shall be **forbidden**:
-Treat the services and products offered by the gatekeeper itself more favourably than similar services or products offered by third parties on the gatekeeper's platform
-Prevent consumers from connecting with companies hosted outside the gatekeeper's platforms
-Preventing users from uninstalling any pre-installed software or applications if they wish to do so.

In case of non-compliance there are fines: up to 10% of the company's total annual worldwide turnover; up to 5% of the average daily turnover; additional corrective measures in case of systematic violations of DMA obligations by gatekeepers. Such measures may include behavioral and structural remedies, e.g. divestment of (parts of) a business.

The end

Online platforms of any dimension have become central in our economy and society, especially during 2020, during which digital services played a crucial role in our world. Online services helped us to continue working, doing business, learning, staying informed, shopping, entertaining ourselves, socializing, and staying in touch with other people and friends.
Considering this, it is of central interest a renewal of the legal framework, in order to keep us up to date.

We thank B.Cyber association for the opportunity to explore this amazing topic, able to show the importance of law in a constantly evolving field.

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