

# Digital Services Act & Digital Markets 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 (IMCO) noted that the digital single market is affected by increasing fragmentation in tackling illegal content online, difficulties regarding market entry, concerns over consumer welfare, and ineffectiveness of enforcement and cooperation between Member States.

As a result, and in anticipation of a new Digital Services Act (DSA), which was proposed in the [Commission's 2020 Work Programme](#), the IMCO committee took the initiative to prepare a legislative own-initiative report with recommendations on a DSA that would improve the functioning of the single market (Rapporteur: MEP Alex Agius Saliba). According to the [IMCO report](#), the **DSA should work along two pillars**. Pillar one was set out to **ensure trust and safety online by increasing responsibilities, obligations, and liabilities for digital services**. Pillar two, on the other hand, should bring *ex ante* regulation for big platforms, so-called 'gate-keepers'. These *ex ante* measures were **aimed at preventing market failures** caused by gate-keepers' anti-competitive behaviour. Next to IMCO's report, the JURI committee similarly drafted a [legislative own-initiative report](#) on the DSA, while the LIBE committee issued a [non-legislative own-initiative report](#) on the same topic.

The Commission incorporated much of what was proposed by the IMCO committee and split the reform of the digital single market into two legislative packages that were reflective of the **two pillar-logic** and officially proposed on 15 December 2020: the [Digital Services Act](#) and the [Digital Markets Act](#). The IMCO committee was in the lead for both proposals with MEP Christel Schaldemose as Rapporteur for the DSA and MEP Andreas Schwab as Rapporteur for the DMA. The [DSA](#) and the [DMA](#) reports were then successfully voted on in the plenary of the European Parliament on 20 January 2022 and 15 December 2021, respectively. At the time of publication, the reports were under negotiation with the French Presidency of the Council.

This collection of studies presents expert studies and workshop proceedings related to relevant topics of the DSA and the DMA. They result from the ongoing interest of the IMCO committee in improving the functioning of the digital single market and **developing e-commerce rules based on scientific evidence and expertise**.



## The impact of influencers on advertising and consumer protection in the Single Market (February 2022)

The importance of influencer marketing on the advertising industry and its effect on purchasing decisions has grown in recent years, compounded by the COVID-19 pandemic which contributed to increasing the time spent online further. This study sets out by delivering a comprehensive definition of influencers. Afterwards, the study analyses the relevance of these market actors in the Internal Market from a business and consumer perspective, which includes a discussion on illegal or ill-intentioned practices by influencers and how these are harmful to consumers.



The study also demonstrates that while there is horizontal legislation that applies to influencers on the EU level, there is no specific legislation focussing on influencers exclusively. The DSA aims to fill this legislative void, but as the study recommends, further improvements need to be made in the ongoing negotiations to tackle such harmful practices more profoundly.

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## Workshop Proceedings - “The Digital Services Act and the Digital Markets Act - a forward-looking and consumer-centred perspective” (June 2021)

This workshop saw some of the most renowned academics in their respective fields invited to talk about the limitations and **weaknesses of the DSA and DMA** proposals, while also making suggestions on how to improve specific articles. For the DSA, the experts criticised the **unclear scope** of the existing rules and the fact that infrastructural cloud services were not considered “online platforms”, therefore, evading due diligence obligations. Furthermore, the panel thematised the question of whether or not there should be **a new EU agency in charge of enforcing** the DSA.



For the DMA, the scholars proposed a new perspective on platforms as “new collective organisations” rather than as utilities, called for effective and decentralised enforcement, and articulated how the proposals **do not sufficiently articulate interoperability** and hence are deficient for increasing contestability and market fairness.

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## Online advertising: the impact of targeted advertising on advertisers, market access and consumer choice (June 2021)

Targeted online advertising is a point of contention in the public and political arena. On the one hand, targeted advertising practices raise important questions regarding the intentionally murky design of consent-forms for data collection (so-called “**dark patterns**”), the **abuse of (highly) sensitive private data**, and the **lack of redress** when it comes to such unlawful abuses, as well as the harmful misuse of such tailored ads to **mislead and discriminate EU citizens**. On the other hand, targeted advertising allows to expose users to relevant information only and **can help to protect certain consumers**, for example, by banning ads unsuitable for minors. This study outlines the current shortcomings in EU legislation concerning online advertising and formulates how the DSA should be amended in order to address these. Importantly, however, this study does **not focus on political advertising** which has been one of the most contentious issues when it comes to targeted advertising.



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## Online platforms' moderation of illegal content online - Law, practices and options for reform (June 2020)

Not only does existing **self-regulation often fall short** of delivering the desired results, the fragmented nature of content-moderation laws in the Member States further exacerbates the **inefficient removal of illegal content**. The functioning of the Internal Market and the design of a safer online environment necessitate more **streamlined moderation practices**. This study compares the moderation practices in six Member States and delivers a series of recommendations on how the DSA may contribute to creating more harmonised sets of rules, as well as the effective enforcement of these.



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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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## 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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## 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, in 2020, the share was 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 attaining the digital single market's full potential.

In order to reap the benefits of the digital single market, the study emphasises 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 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.



This study aims 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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## The E-Commerce Directive as the cornerstone of the Internal Market – Assessment and options for reform (May 2020)

The E-Commerce Directive 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. 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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