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Master's Thesis

Evolution of digital markets' lawmaking

Skaitmeninių rinkų teisėkūros raida

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ABSTRACT AND KEYWORDS

This master's thesis analyses the process of development of European Union's digital market legislation. The study shows how the rules on the electronic commerce, data privacy and online services evolved alongside the technological development and the rise of online platforms. The study also shows the development of the existing enforcement mechanisms into a more centralized. Finally, it evaluates the global impact of European Union's digital legislation, focusing on the "Brussels effect" and the role of the European Union as a digital market's standard setter.

Keywords: digital markets, E-commerce, online platforms, Digital Markets Act, Digital Services Act, regulatory framework.

SANTRAUKA IR RAKTINIAI ŽODŽIAI

Šiame magistro darbe analizuojamas Europos Sąjungos skaitmeninės rinkos teisėkūros procesas. Tyrime parodoma, kaip elektroninės komercijos, duomenų privatumo ir internetinių paslaugų taisyklės vystėsi kartu su technologine pažanga ir internetinių platformų augimu. Taip pat aptariama esamų vykdymo užtikrinimo mechanizmų raida, pereinant prie labiau centralizuoto modelio. Galiausiai įvertinamas pasaulinis Europos Sąjungos skaitmeninės teisėkūros poveikis, daugiausia dėmesio skiriant „Briuselio efektui" ir Europos Sąjungos, kaip skaitmeninės rinkos standartų kūrėjos, vaidmeniui.

Raktiniai žodžiai: skaitmeninės rinkos, elektroninė prekyba, internetinės platformos, Skaitmeninių rinkų įstatymas, Skaitmeninių paslaugų įstatymas, reguliavimo sistema

CONTENTS:

INTRODUCTION

The digital transformation of the global economy has reshaped the way of modern market's functioning. Technological innovation, rapid development of the digital platforms, data driven business models, have changed traditional customers' and business' behavioural patterns, how goods and services are provided, and how the competition in the global market operates. Market dynamics have evolved, with global online platforms playing crucial role in it. Such changes have led to the adoption of regulatory instruments which aim to ensure fair competition, consumer protection, and the protection of business owners rights in the online trading area. In this context, the European Union has emerged as the pioneer and global rule maker, constructing the innovative legal regulation regime which can govern digital markets and associated spheres, such as data protection, electronic commerce, online services delivery, or using electronic measures during the trading. The evolution of digital markets in European Union pictures the response to technological and economical changes throughout the years, along with the ambition to set global standards in digital area.

The relevance of this topic is defined by the ongoing technological changes, the challenges in the legal are created by the increasing power of digital platforms. As digital platforms gain economic and social dominance, traditional legal instruments struggle to regulate their usage effectively and need to develop new working tools and enhance the existing ones. Issues related to the functioning of online digital markets, data privacy, competition rules, are becoming increasingly complex, directly affecting legal and economic system of European countries, especially in Lithuania as a European Union Member state. Therefore, it is relevant to understand the importance and impact of the regulation on the digital markets, how the law has evolved alongside technological progress, how legal norms and standards are spreading across the jurisdictions and how effective they are in regulating rapidly developing digital economy.

The aim of this master's thesis is to analyse the evolution of digital markets legislation within the European Union, from the early stages of internet regulation to the establishment of the Digital Single Market strategy. The objectives are to analyse EU regulatory instruments have adapted to technological changes, how new regulatory framework is functioning within a globalised economy and how it interacts with other jurisdictions, and to identify the challenges and drawbacks of law enforcement as well as suggest possible ways for future harmonisation. By addressing these objectives, the thesis will answer the questions about how digital regulatory framework had evolved, what impact did it have on a global legal order, and which challenges in governing specified issues are still present. The object of this research is the regulation on digital markets within the European Union. It specifically focuses on the evolutional process of the legal framework, its implementation and extraterritorial influence of key EU legal instruments and its role in global digital governance. The thesis aims to answer the questions:

- How has the European Union's digital regulatory framework evolved from early stages to the recent stage?
- How has the enforcement transformation of the digital market's legislation evolved over time?
- How does the European Union digital market's framework impact other jurisdictions and how has it evolved to that point?

The thesis employs the combination of qualitative research method, as well as the comparative method. The aim of qualitative research is to interpret the development of legal norms and legislative acts by an in-depth understanding of the underlying legal reasoning and regulatory objectives, as well as to trace the chronological development of digital legislation and examine how digital market regulation interacts with broader EU legal frameworks along with other jurisdictions. The comparative method is applied to assess differences and similarities between the EU's approach and those of other jurisdictions. The following research methods were also used in this work:

- Doctrinal Legal Research (a close examination of the relevant legislation, particularly the E-Commerce Directive (2000/31/EC), the General Data Protection Regulation (GDPR), the Digital Single Market Strategy (2015), the Digital Services Act (2022), and the Digital Markets Act (2022).

The originality of this Master's thesis lies in its integrated and interdisciplinary analysis of the evolution, global reach, and effectiveness of the EU's digital market regulation. This thesis combines those issues to approach global regulatory dynamics. It contributes to the academic discourse by examining how the European Union's digital market legislation not only regulates internal market relations but also extends its influence beyond EU borders, by linking the historical analysis of the EU digital markets regulation, along with the ways that has led to it, accessing the practical challenges of applying EU digital market rules and comparing it to the other jurisdiction's regulations.

The research is based on the wide range of sources, containing the legislative acts such as: the E-Commerce Directive (2000/31/EC), the General Data Protection Regulation (GDPR), the Digital Single Market Strategy (2015), the Digital Services Act (2022), and the Digital Markets Act (2022), scholarly monographs, policy papers, and academic articles authored by leading researchers in the field of digital market law. Those sources provide the analytical basis for evaluating the EU's approach in a comparative and historical perspective.

1. CHAPTER 1. HISTORICAL EVOLUTION OF EU DIGITAL MARKET REGULATION

1.1.DEFINITION AND THE CONCEPT OF DIGITAL MARKETS

When addressing the matter of digital markets lawmaking, it is important to define the meaning of "digital markets". Understanding the concept provides foundational framework, as it defines the scope of legal framework related to the digital market's development. As was stated in the Market Definition Notice, "Market definition is a tool to identify and define the boundaries of competition between firms. It serves to establish the framework within which competition policy is applied by the Commission."[1]

Generally, the market itself, "as a concept of competition law, should be understood as consisting of transactions between two or more parties, of which at least one acts for economic purposes."[2] Digital markets, however, have some differences with regards to physical markets. As was pointed out by Ozili Peterson "the distinguishing feature of digital markets is that the market participants meet on a digital platform, the market infrastructure is entirely digital, and price determination is done on digital transactional platforms enabled by the internet."[3]

As for the definition of the digital platforms, they are considered to be "online intermediaries that bring together at least two distinct user groups (e.g. buyers and sellers) between whom indirect network effects exist."[4] The key characteristics of the digital platforms are multi-sidedness of platforms allows them to pursue a special business model, where one user group (typically the end consumers) does not pay a monetary price for using the platform, vertical integration, allowing them to operate both as intermediary and as business users.[5] One of the other significant characteristics is the market power as the ability of a company to be independent of other market participants and ability to facilitate a beneficial interaction between economic actors of different groups.[6]

Digital markets are often defined digital platforms or digital ecosystems that enable the buying and selling of physical or digital goods and services over the internet.[7] Digital Markets itself also include several components, such as the digital transactional platform, the digital device, the ICT infrastructure, embedded add-on services, internet access, digital public infrastructure, and finally, efficient regulation.[8] Apart from that, another crucial characteristics of digital markets are algorithms together with data, and AI element presence. As mentioned by Maria Ioannidou and Bingwan Xiong

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[1] Commission Notice on the definition of relevant market (Market Definition Notice), OJ C 372/5, 1997.
[2] **CERRE (2020). Digital Markets and Online Platforms: New Perspectives on Regulation and Competition Law.**P.34
[3] Ozili, Peterson K. (2025). *Digital Markets: ... DMA*. *Digital Policy, Regulation and Governance* P.5
[4] **CERRE (2020). Digital Markets and Online Platforms: New Perspectives on Regulation and Competition Law.**P.13
[5] Ibidem, p.13
[6] **Funta, Rastislav. Economic and Legal Features of Digital Markets. DANUBE.**).p.179
[7] Smith, Michael D.; Bailey, Joseph; Brynjolfsson, Erik (2000). In: Understanding the Digital Economy. MIT Press
[8] Ozili, Peterson K. (2025). *Digital Markets: ... DMA*. *Digital Policy, Regulation and Governance* p. 9

"Of particular importance in the digital economy is access to individual-level data since powerful platforms (e.g. search engines and social media) rely on targeted advertising".[9] As for the Artificial intelligence, its presence can be visible within many major online platforms, in data-analysis, searching or recommendations, machine learning in the commercial practices.[10]

It is necessary to define the concept of digital markets to ensure the conceptual coherence and trace the evolutionary process of its development. Without the definition, the framework remains divergent and fragmented, which doesn't provide for the effective functioning of technological innovations and fundamental rights protection.

Therefore, we can make a conclusion, that digital markets represent multidimensional ecosystem, which is rapidly evolving. Digital Markets extend far beyond online transactions, but include also complex interactions between data, algorithms, artificial intelligence, and regulatory mechanisms. Such complex nature of digital markets lawmaking requires a complex approach as well, as a framework that governs their operation rather than through isolated legal instruments. To ensure the proper functioning of digital markets and the effective performance of platforms enabling digital trade, it is essential to address interrelated multiple fields of law, which are data governance, competition law, consumer protection, and electronic commerce regulation. Only through such an integrated approach can the EU's digital regulatory environment remain coherent, adaptive, and capable of fostering innovation while maintaining fairness and contestability in the digital economy. Thus, when analysing the matter of digital market's lawmaking we need to address the issue complexly, accessing the development of different pieces of legislation leading to the establishment of a strong and coherent legal system.

1.2.EARLY EU DIGITAL MARKET INITIATIVES: ECOMMERCE DIRECTIVE AND BEYOND

As viewed chronologically, European Union's digital regulation has evolved throughout several phases. The first phase, from 1990s to 2000s, was characterised by minimal interference and focused on market integration. The second phase, starting from 2000s and developing up to 2015, addressed consumer rights and data protection, and established the development of online markets legislation, though on a fragmented level. The third phase, however, reflects a shift in the policy making, which involved the acknowledgement of digital market's posed threats and adopting an approach meant to unite the framework and create more coherent rules.

[9] Ioannidou, Maria; Xiong, Bingwan (2025). Technological, Economic, and Architectural Characteristics of Digital Markets. In: Competition Law and Policy in Digital Markets. Oxford Academic.
[10] Ibidem

Since the beginning of the 21st century, society with its business models, informational infrastructure and global cooperation, has undergone a rapid transformation. The expansion of digital technologies, as well as the informatization of society and its individual processes and businesses, facilitated the rapid development of digital platforms, e-commerce and the transformation of certain sectors of the economy in many countries, which also caused significant changes in consumer and business behaviour. In the light of such rapid changes legal framework cannot remain static and needs to adapt quickly, adjusting to the changing online cross-border environment and creating a new field of regulations.

The Internet and informatization have altered social behaviour, business practices, as well as the structure of markets. Thus, the active development of technologies largely included the economic development of digital markets and electronic platforms. As noted by Manganelli and Nicita, within the digital market society, especially with the increasing use of mobile internet, all interactions, transactions, consumption, and production have become an unlimited source of data, which has turned into an economic key asset and productive factor.[11] Therefore, digital markets became the drivers of economic growth, and therefore the drivers of significant changes in the legal system.

The first stages of European Union's online market lawmaking could be characterised as having the creation of a European market for e-commerce as their primary motivation, reflecting "digital liberalism," and elevating the market-driven ideals above strong rights protections.[12]

With the rise of e-commerce development, a wide spectrum of new activities has begun to evolve, including the development of a range of new businesses, ways of selling goods and services, connecting buyers and sellers, new functions and new revenue streams for e-commerce. Online commerce rapidly escalated, from enabling low-cost purchase opportunities for consumers to generating new employment and business opportunities for business owners. Therefore, the need for a legal instrument to regulate those developments was rapidly forming within the EU. That need has led to the adoption of several foundational regulatory measures: first the Directive 95/46/EC (Data Protection Directive) in 1995[13], then the Directive 1999/93/EC (Electronic Signatures Directive)[14] in 1999, and the Directive 2000/31/EC (E-Commerce Directive)[15] in 2000. Later measures, such as the

[11] Manganelli, Antonio; Nicita, Antonio (2023). Regulating Digital Markets: The European Approach. Springer. p. 5.
[12] Bradford, Anu (2023). Digital Empires: The Global Battle to Regulate Technology. Oxford Academic.
[13] Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data. Official Journal of the European Communities, L 281, 31–50.
[14] Directive 1999/93/EC of the European Parliament and of the Council of 13 December 1999 on a Community framework for electronic signatures [1999] OJ L13/12.
[15] Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce) [2000] OJ L178/1.

Directive 2011/83/EU (Consumer Rights Directive)[16] as well as the Regulation (EU) 2022/2065 (Digital Services Act)[17] and the Regulation (EU) 2022/1925 (Digital Markets Act)[18] followed.

DATA PROTECTION DIRECTIVE (DIRECTIVE 95/46/EC)

The rapid growth of digital markets and free trade with the use of various internet resources also raised a question of privacy protection. As we see it nowadays, privacy has become an essential human right, the regulation of which has been mostly introduced at the end of 20th - beginning of 21st century. However, before that the regulations regarding privacy were slightly diverse and not unified within the EU. The need for unified privacy rules grew with the evolution of online services and digital markets, the use of which is strongly connected to the processing of data from both sellers and buyers' sides.

The whole e-commerce is centred around collecting data, calling for the creation of a unified framework which covers the issues regarding legitimate use of data in online market operation, its transparency and confidentiality, the restrictions and the data subject participation. In particular, the Data Protection Directive of 1995 sought to harmonise divergent national rules on data processing and to facilitate the free movement of personal data within the European internal market. That was needed to facilitate free trade between the EU Member states, specifically in terms of trade through the online platforms which started to develop quickly.

The Directive was based on the OECD Guidelines[19] and Convention for the Protection of Individuals regarding Automatic Processing of Personal Data of the Council of Europe[20], however it also contained some new provisions. The Convention and the Guidelines themselves had several limitations like the lack of consistency; specifically it was mentioned by some of the researchers that some Member States were late in implementing Convention 108, and those who did so arrived at rather different outcomes.[21] As such, it required the development of a new legal instrument, the Directive, which therefore had a sufficient effect on European harmonised framework for data protection principles, specifying the basic principles of data protection, as set out in Convention for

[16] Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council, Text with EEA relevance [2011] OJ L304/64.
[17] Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services and amending Directive 2000/31/EC (Digital Services Act) (Text with EEA relevance) [2022] OJ L277/1.
[18] Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act) (Text with EEA relevance) [2022] OJ L265/1.
[19] OECD, *Guidelines for Multinational Enterprises on Responsible Business Conduct* (Organisation for Economic Co-operation and Development, 2011).
[20] Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, Strasbourg, 28 January 1981
[21] Hustinx P., *EU Data Protection Law: The Review of Directive 95/46/EC and the Proposed General Data Protection Regulation*, European Data Protection Supervisor, 2013.

the Protection of Individuals with regard to Automatic Processing of Personal Data and supplementing them with further requirements and conditions.

Apart from imposing the core principles of fairness and lawfulness of data collection, the collection of data for explicit and legitimate purposes, prohibition of special data categories collection, the Directive also provided a possibility of the transfer to a third country of personal data if the third country provided an adequate level of protection, with some derogations, including the consent, the necessity to perform a contract, public interest grounds, or protection of the interests of the data subject.

One of the main achievements of the Directive was obviously the fact that it required Member states neither restrict nor prohibit the free flow of personal data between Member States for reasons connected with the protection afforded. Considering the beginning of growing globalisation and Internet platforms evolution, such provision had a major influence on the development of the data flow between digital markets and therefore provided a background for the later E-commerce Directive and enabled the cross-border trade.[22]

The Directive also imposed an obligation on the controller of the data to provide the data subject with adequate information and allowed to regulate the questions concerning the processing of personal information in the Internet and major databases– specifically the data flow through websites, search engines, social networks and modern advertising technologies.

One of the other novelties that the Directive provided was the establishment of an advisory authority, which is Working Party on the Protection of Individuals regarding the Processing of Personal Data. In its 2009 Report[23], the Working Party stated that the Directive formed the main block for data protection law within the EU and a general framework for data protection. However, it also had several shortcomings which later required renewal.

However, the instrument also had its drawbacks. One of them is the mere fact that it was established in a form of a directive, rather than a regulation, which required implementation into national law by each member state. This demonstrates that even though the Directive attempted harmonisation, it still resulted in uneven enforcement among the Member States. Even though the Directive set general principles and rules on the data transfer, each Member State still implemented data protection legislation through their own legislative processes. This has led to the slight difference of the privacy

[22] Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data. Official Journal of the European Communities, L 281, 31–50.
[23] Art. 29 Working Party. The future of privacy, adopted on 1 December 2009

laws across the European Union, specifically the differences between the procedural enforcement requirements.

The rapid development of newer technologies has led to the emergence of new types of data, which, in turn, required newer mechanisms for processing, more developed legal safeguards, and would be more technologically adapted. As pointed out by P. Hustinx, when the Directive was adopted, the Internet barely existed, whereas we now live in a world where data processing has become ubiquitous, so that we also need stronger safeguards that deliver acceptable results in practice.[24]

Overall, the Data Protection Directive was a fundamental step towards the creation of coherent legal framework for digital markets in Europe. It directly supported the growth of digital platforms by harmonising rules and enabling free flow of personal data in a digital area. It established key principles for international data transfer, which remain central to digital market operations, and laid the foundation for subsequent EU digital markets legislation. However, the Directive still demonstrates the low importance and economic centrality of data-driven processes at the early Internet development stages. For that reason it was later replaced with the General Data Protection Regulation, which provided for higher standards in the privacy protection considering newer types of technologies emerging and was designed to be more time-appropriate for the emerging data involving mechanisms in digital markets.

THE E-COMMERCE DIRECTIVE (DIRECTIVE 2000/31/EC)

After the adoption of the Data Protection Directive, the process of the E-commerce Directive preparation has begun. One of the driving forces behind the adoption of the E-commerce Directive was first, the telecommunications liberalisation in the European Union from 1 January 1998, which rapidly increased the Internet usage. At the same time, the negotiations on WTO Agreement on Basic Telecommunications contributed to the emergence of marketplaces by promoting competition and market access in telecommunications services.[25]

External international factors also played a significant role in shaping the digital environment. In particular, the adoption of WTO Ministerial Declaration on Trade in Information Technology Products (ITA) that cut customs duties on computer and telecommunications products beginning on 1 July 1997 and eliminated them by the year 2000.[26] It was emphasised that fewer barriers would lead

[24] Hustinx P., EU Data Protection Law: The Review of Directive 95/46/EC and the Proposed General Data Protection Regulation, European Data Protection Supervisor, 2013

[25] **European Commission. 1997.** *A European Initiative in the sector of Electronic Commerce*, COM(97) 157 final, 18 April 1997. Not published in the Official Journal.

[26] **World Trade Organization (WTO). 1997.** Elimination of tariffs on computer products by year 2000 agreed. **WTO FOCUS**, No. 17, March 1997, pp. [pagination if known]. Geneva: WTO.

to the spread of technology that is so critical to the development of members of the WTO, supporting innovation and economic growth in the twenty-first century.[27]

Within this evolving context, the EU sought to build an efficient e-commerce legal framework. It aimed to establish a framework that will be based on single market freedoms, ensure full access to internal market under harmonised rules, so that the legislation is the same in all the Member states, ensure data security and privacy, establish appropriate protection for intellectual property rights and create a favourable environment for business while raising awareness among enterprises of the opportunities and challenges of electronic commerce.[28]

The E-commerce Directive developed as one of the cornerstone documents, shaping the legislative grounds of European Union's digital markets and electronic commerce. According to the European Commission, the E-Commerce Directive became the baseline regime which is complemented by stricter rules applicable either to specific types or sizes of platforms or to specific types of online illegal content or products.[29] It made a significant effect on how the online platforms are functioning across the European Union. The E-Commerce Directive was aimed to cover the development of online platforms, while at the same time protecting the users of those platforms, harmonizing user protection rules and promoting regulatory rules. The Directive also addressed the challenge of cross-border trading in Europe and set common rules for online services used for commercial purposes.

The Directive established the freedom to provide online services across the EU, as well as the freedom of information within those online services. It also harmonised the requirements for online service providers and introduced rules on contractual obligations and the liability of intermediary service providers. Together, the provisions concerning liability of Intermediary Service Providers, significantly enhanced the cross-border services delivery and strengthened the foundations of Europe’s digital economy.

The E-commerce Directive introduced new transparency and security requirements for intermediation and search services as well as tackled the distribution of illegal content on online platforms. The Directive also introduced established mechanisms for consumer protection, data protection, and the free movement of online services, forming an essential legal infrastructure for digital single market.

Apart from this, a particularly significant innovation was the introduction of the "country of origin" principle. The principle implies that only the Member State where the service provider is established

[27] **World Trade Organization (WTO). 1997.** *Elimination of tariffs on computer products by year 2000 agreed*. **WTO FOCUS**, No. 17, March 1997, pp. [pagination if known]. Geneva: WTO.
[28] **European Commission. 1997.** *A European Initiative in the sector of Electronic Commerce*, COM(97) 157 final, 18 April 1997. Not published in the Official Journal.
[29] European Parliament, The E-Commerce Directive: Overview, Implementation and Future Perspectives (2020) PE 652.715

holds the primary responsibility for regulating its activities. Therefore, the principle plays a key regulatory role for information society services by assigning regulatory authority to the provider's home country and obliging each Member State to monitor and enforce rules on service providers based within its territory, while also upholding the right of providers from other EU countries to offer services freely across borders. However, the "country of origin" principle is not absolute, because according to the Article 3(4), it can be restricted for protection of public health, public security, consumer protection. Although the "country of origin" principle and the Directive itself do not establish additional rules on private international law, its establishment was considered a great success and proposed to extend it to the forthcoming Digital Services Act. [30]

The E-Commerce Directive established a foundation for the broader digital market's regulatory framework of the European Union. By defining key principles of cross-border service provision, intermediary liability, it influenced later instruments, such as Digital Services Act and Digital Markets Act and established gradual transition to regulate the market power of online services. However, it was later acknowledged by the European Commission[31], that the e-commerce directive was designed in a period where the role of online platforms was very different from today, requiring more changes to be made. This demonstrates the reason for the needed update of the E-commerce Directive by the Digital Services Act later. Since the E-commerce Directive wasn't fully tackling the current realities of the digital services, the Digital Services Act was built on its principles, clarifying and harmonising European Union's legal framework.

THE DIRECTIVE ON ELECTRONIC SIGNATURES

The successful development of digital markets depends not only on data protection or electronic commerce legislation but also on several complementary areas requiring regulation, such as commercial practices, consumer protection, and electronic identification, which can facilitate and ensure safe cross-border trade. Following the adoption of Data Protection and E-commerce Directive, the European Commission proposed a European Parliament and Council Directive on a common framework for electronic signatures (COM (1998) 297 final), which was adopted later in 1999. It was created to establish a legal framework for electronic signatures, a crucial element for establishing reliability in the digital economy.

The Directive didn't seek to alter the substantive contractual rules in Member States. Instead, its purpose was to ensure the cross-border recognition of electronic signatures and build a legal framework for secure electronic transactions. By defining the legal effect of electronic signatures and

[30] European Parliament, The E-Commerce Directive: Overview, Implementation and Future Perspectives (2020) PE 652.715

[31] **European Commission. 1997.** *A European Initiative in the sector of Electronic Commerce*, COM(97) 157 final, 18 April 1997.

setting harmonised conditions for their validity, the Directive contributed to the integration and functionality of digital markets, increasing the movement within the internal market and building the trust in digital services.

The Directive facilitated the development of the internal market by removing technical and legal barriers to the use of electronic signatures in cross-border communications and setting rules for certification-service providers, promoting interoperability and security, ensuring that advanced electronic signatures created with qualified certificates are legally equivalent to handwritten signatures, and allowing cross-border use without prior authorization. The Directive also encouraged voluntary accreditation schemes for certification-service providers, promoting self-regulation which required compliance with data protection and enabled the use of electronic signatures in public and private sectors while respecting national laws on contract and evidence.

The significance of the Electronic signature Directive for digital markets lies in its role in building trust and legal certainty in electronic transactions, enabling secure cross-border e-commerce, e-government services, and digital communication. By harmonizing rules across Member States, it reduced market fragmentation, lowered barriers to entry for digital service providers, supported the growth of online business, and fostered a more integrated and competitive digital economy.

In essence, the Electronic signature Directive provided the legal and technical foundation for secure electronic transactions, which is a cornerstone for the functioning and expansion of digital markets. It was also a step towards more comprehensive legal framework, which established trust and security standards, facilitated cross-border electronic transactions and created the necessary conditions for the development of secure digital markets.

THE E-PRIVACY DIRECTIVE 2002

The rapid growth of digital platforms at the beginning of the new century has quickly encouraged the trade of not only goods but also services as a matter of a globalised economy. The primary objective was to promote internal competition and facilitate market entry by new providers. Therefore, to encourage a competitive market and an economical growth, the European Union adopted a set of Directives regulating the electronic communications sector, a so called "Telecommunications regulatory package", aimed to liberalise the market. Among these were the Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services[32], Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic

[32] Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive) [2002] OJ L108/51.

communications networks and services[33], Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (which supplemented the Data Protection Directive 95/46/EC).[34]

With the rapidly developing Internet environment, the Data Protection Directive wasn't enough to tackle the emerging challenges. Adopted on 12 July 2002, the E-privacy Directive supplemented the Data Protection Directive (Directive 95/46/EC) by addressing the challenges posed by emerging electronic communications technologies. The Directive was created as a complementary tool for the Data Protection Directive, regulating different matters. The main purpose of the Directive was to grant the adequate level of privacy protection in the rapidly expanding telecommunications and Internet sectors to allow safe development of online markets. The e-Privacy Directive sought to address evolving challenges with regards to data and privacy protection in the developing digital society, safeguard user's fundamental rights and foster the development of digital markets. Among its key provisions, the e-Privacy Directive established the norms on confidentiality of communications, unsolicited communications, the use of cookies and data retention. It also introduced provisions on the processing of location data and storing information on users devises.[35] The E-privacy Directive complemented the broader regulatory framework of the 2002 Telecommunications Package by introducing privacy-by-design principles into the digital communications sector. With the rapid development of mobile networks and the Internet market structures, the Directive provided harmonisation of rules across European member States and facilitated cross-border electronic communication services development. It established the grounds for the safe data processing, the use of location data and the protection for businesses and consumers, extended several data protection principles and introduced some specific new provisions. By strengthening data protection in telecommunications, the E-privacy Directive provided legal infrastructure for the secure exchange of digital information.

However, the E-privacy Directive also had several weaknesses. As put out by the Deloitte report, although the E-privacy Directive has contributed to enable more trust and confidence in the market, its effectiveness has not been fully achieved.[36] It didn't fully ensure the security of services, the confidentiality of communications as well as the related traffic data and other location data and ensure

[33] Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive) [2002] OJ L108, 24 April 2002, 33–50.
[34] Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on Privacy and Electronic Communications) [2002] OJ L201, 31 July 2002, 37–47.
[35] Ibidem. arts 9-13
[36] Deloitte, *Evaluation and Review of Directive 2002/58/EC on Privacy and the Electronic Communication Sector: Final Report* (European Commission, DG CONNECT 2017). P.200

the protection against unsolicited communications. Despite such shortcomings, it is still considered to be relevant, especially in terms of the Digital Single Market Strategy.[37] As mentioned by the Deloitte report, the E-privacy Directive is relevant today with a view to both achieving the DSM and strengthening the right to the protection of confidentiality of communications and personal data.[38]

In general, the E-privacy Directive has paved the way for the more effective privacy rules application across the Union, eliminating internal barriers and enabling European Union businesses grow globally. It also served as an efficient tool to complete the Data protection framework, which will then expand with the adoption of the General Data Protection Regulation.

THE UNIVERSAL SERVICES DIRECTIVE

The development of the European Union's regulatory framework for electronic communications required not only addressing privacy and data protection but also ensuring the access to the essential communication services. As a part of 2002 Telecommunications Regulatory package, the Universal Services Directive (Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive)[39] was adopted to guarantee an access to affordable electronic communication services for all the users across the European Union. The Directive formed part of the 2002 Telecommunications Regulatory Package, which sought to modernise and harmonise the rules governing electronic communications across the internal market. The Services provided for in the Directive were established as "universal", regardless of their location, establishing several service standards. Such standards included access to the public telephone network, directory enquiry services, public pay telephones, and emergency call services.[40]

The Directive also facilitated market liberalisation by providing transparency of contractual terms, enhancing competition in the telecommunication sector, along with protecting users' rights.[41] It significantly liberalised market but also granted consumer protection in the field of telecommunication services, granting universal access to several electronic communication services and enhancing consumer rights and transparency. However, the Directive couldn't adapt to the rapid

[37] Deloitte, *Evaluation and Review of Directive 2002/58/EC on Privacy and the Electronic Communication Sector: Final Report* (European Commission, DG CONNECT 2017). P.219
[38] Deloitte, *Evaluation and Review of Directive 2002/58/EC on Privacy and the Electronic Communication Sector: Final Report* (European Commission, DG CONNECT 2017).
[39] Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive)
[40] Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive)
art 5.
[41] Ibidem art.8

technological changes, specifically the broadband connection, providing legal mechanisms for outdated services.

Overall, while the Directive contributed to harmonisation of telecommunications services and consumer protection in the area, its limitations led to its replacement by the European Electronic Communications Code in 2018, which provided modernised rules, sufficient for the telecommunications development.

THE FRAMEWORK DIRECTIVE

Among the other legal acts adopted as a part of 2002 regulatory package was the Framework Directive (Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive))[42], which established the general rules governing electronic communications networks and services across the European Union, enhancing fair and effective competition along with the consumer rights protection. It aimed to ensure fair and effective competition promote consumer protection and guarantee the interoperability of networks and services within the internal market. Along with that, it guaranteed fair access to networks, distinguishing between network regulation and content, promoting mechanisms for resolving disputes. It ensured the consistent application of rules among European Member States and enabled the growth of digital market.

However, given the changing Internet environment all the Directives in the 2002 package were subject to a review during 2009. Such need for the changes happened because of the development in the communication channels, as well as the changes in the technologies used for the e-commerce functioning and the growth of online services. As a result, new infrastructures, services, business opportunities and market competitors have evolved, requiring the digital legislation to keep up with changing user needs. Thus, over the years the existing regulatory approaches needed to be significantly altered.

THE E-IDAS Regulation

An important aspect of the effective functioning of electronic markets lies in the secure identification and authentication of users and service providers. Thus, in 2014, another step was taken towards the full unification of the electronic market, namely by the adoption of Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC (eIDAS)[43]. The importance of the Regulation lays in the fact that

[42] Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive) [2002] OJ L108, 24 April 2002, 33–50.
[43] Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market (eIDAS Regulation) [2014] OJ L257, 28 August 2014, 73–114.

it created a legal framework for secure electronic identification and trust services across the EU, helping to eliminate obstacles to cross-border trade and access to online services. The Regulation aimed to ensure an access to cross-border online services offered by secure electronic identification and authentication is possible. Moreover, it strengthened trust in digital transactions by setting out common standards for electronic signatures, seals, time stamps, and authentication mechanisms, guaranteeing their security and legal validity.[44] Thus, the document ensured the recognition of the electronic identification system and the creation of a legal framework that supports secure, trusted, and convenient online interactions, important for the establishment of cross-border trade and the functioning of the single market. The adoption of this Directive has significantly contributed to the functioning of secure and trusted digital interactions within the digital market and the creation of legally regulated conditions for the use of electronic services in international transactions.

THE PAYMENT SERVICES DIRECTIVE II (PSD2)

As described previously, digital markets, as well as the market itself, cannot function without the clear payment system, especially when it comes to a cross-border trade. Complementing the eIDAS framework, Directive (EU) 2015/2366 on payment services in the internal market (PSD II) came into force on 13 January 2016 to regulate online payment systems and enhance consumer protection.[45]

According to Mary Donnelly "the facilitation of online payments is essential for the development of e-commerce within the European Union".[46] Indeed, the functioning of digital markets relies on the existence of reliable and transparent payment systems, as this forms the ground for the transaction between the seller and the buyer, i.e. all parties to the online platforms. PSD2 aimed to remove regulatory and technical barriers to e-commerce, enhance payment security through strong customer authentication, and ensure that users have access to efficient complaint and dispute resolution mechanisms.[47] According to the provisions of the Directive, namely Articles 101, 102, 99, Member States must establish the possibility for customers to file complaints, as well as adequate means of resolving disputes, including methods of alternative dispute resolution[48]. According to Article 2 (1) of the Directive, it applies only to payment services provided within the Union. Thus, this rule does

[44] Ibidem arts 3-4
[45] European Union. 2015. Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC (Text with EEA relevance).
[46] Donnelly, M. 2016. 'Payments in the digital market: Evaluating the contribution of Payment Services Directive II'. *Computer Law & Security Review*, 32(6), pp. 827-839. doi: 10.1016/j.clsr.2016.07.003.
[47] European Union. 2015. Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC (Text with EEA relevance).arts 97, 99-102.
[48] European Union. 2015. *Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November* 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC (Text with EEA relevance). Official Journal of the European Union*, L 337, 35–127. Available at: https://eur-lex.europa.eu/eli/dir/2015/2366/oj*

not extend the Directive beyond the borders of the European Union and narrows down the usage of the Directive.[49] By the means of Article 97, it also requires Member States to ensure the proper authentication, providing the necessary standards for such procedure[50]. Therefore, the Directive overall fostered consumer confidence, encouraged innovation in the fintech sector, and strengthened the regulatory environment for cross-border payments and financial technologies, which significantly helped in achieving goals regarding digital market development.

THE GENERAL DATA PROTECTION REGULATION

In light of the changing technological progress, the 1995 Data Protection Directive which was adopted at a time when the internet was in its infancy, was replaced by the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation)**.** One cannot deny the importance of data in the economy functioning, especially its importance in data driven digital markets, which collect, process, and use data generated information.

In general, the GDPR provided for the change in European Union's data protection landscape. Among the most important changes, it introduced the requirements for data collection and processing, introduced the broader scope of application not only to the entities established in the European Union, but also to the entities established outside the EU where their processing activities relate to the functioning in the European market. It also introduced additional obligations for data controllers, strengthened the protection of individuals against possible negative effects of profiling and expanded the rights of individuals. With such changes introduced, the GDPR have significantly affected the scope of legal entities' activities, their products and services. In terms of digital markets impact, it first brought more coherence into the regulatory system, establishing a single legal framework. As noted by some researchers, it also provided more protection for the consumers and offered reasonable protection for the fundamental right to data protection.[51] Such approach specifically helps GDPR to foster the digital markets development by ensuring privacy and transparency, as well as building trust with customers. Apart from that, with the introduction of new innovative concepts such as data

[49] European Union. 2015. *Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC (Text with EEA relevance)*. *Official Journal of the European Union*, L 337, 35–127. Available at: https://eur-lex.europa.eu/eli/dir/2015/2366/oj

[50] European Union. 2015. *Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC (Text with EEA relevance)*. *Official Journal of the European Union*, L 337, 35–127. Available at: https://eur-lex.europa.eu/eli/dir/2015/2366/oj

[51] **Albrecht J P**, 'How the GDPR Will Change the World: Special Issue – The General Data Protection Regulation: Foreword' (2016) *International Data Privacy Law*.

portability and data protection by design, the regulation fostered new opportunities, innovation and competition in the internal market.[52]

The adoption of the General Data Protection Regulation was one of the major steps towards the creation of a coherent single market framework, where the rules governing different aspects of the digital markets functioning are interconnected and thoroughly applicable throughout the Union. It also represents a fundamental shift in European Union's regulatory policy and demonstrates the movement from the directive to regulation adoption, which allowed European Union to secure less fragmented national approaches to the legislation implementation and introduce more effective enforcement approaches. By accepting the importance of data and the establishment of data driven markets, the GDPR also laid the foundation for the later successful digital market's regulations.

Overall, the early stages of EU digital market legislation were characterised by the development of legal tools governing different aspects of the digital markets, such as the electronic commerce, the data protection, electronic identification and telecommunication services. Although the early legislative initiatives laid the ground rules, they still lacked effectiveness in shaping a coherent and competitive digital ecosystem. Each instrument addressed sector specific challenges, which left significant gaps and led to divergent national implementation rules.

During the beginning of its development, the framework didn't provide a comprehensive and coherent approach, however it still built a foundation for the future harmonisation, formation of digital economy and expansion. Early European Union policy documents show that the framework lacked coherence and conceptualised "digital markets" strategy. The framework development has gone in a fragmented manner, where regulatory changes targeted diverse socio-economic changes, rather than tackling the online market as a single whole.

Over the years we can trace the gradual harmonisation of various legal areas, such as data protection, electronic commerce, telecommunications, expanding to electronic identification and online payment systems. The Framework Directive (2002/21/EC) ensured the creation of a consistent regulatory environment for communication networks; the Universal Services Directive (2002/22/EC) and Privacy and Electronic Communications Directive (2002/58/EC) extended this protection to consumers and their data; the eIDAS Regulation (910/2014) introduced trust and security mechanisms for cross-border electronic identification; and the PSD2 Directive (2015/2366) created the regulatory basis for secure digital payments. Although those acts represent a working tool of its time, with the development of new technological solutions some of them became outdated and called

[52] **Albrecht J P**, 'How the GDPR Will Change the World: Special Issue – The General Data Protection Regulation: Foreword' (2016) *International Data Privacy Law*.

for replacement and more coherent integration with other legal acts, to eliminate the fragmentation and ensure the functioning of a digital single market.

Aforementioned acts, especially the E-commerce Directive, moved the European Union towards the adoption of a more coherent framework, and became the cornerstones for the future Digital Single Market strategy, which was adopted on 6 May 2015 as one of the European Commission's 10 political priorities. The Digital Single Market Strategy aimed to eliminate the barriers in online services usage and ease the businesses and users access to digitalization. However, as Digital markets evolved, new challenges emerged. This exposed certain limitations of the previously adopted legislative acts and lead to the introduction of two major legislative instruments – the Digital Services Act and the Digital Markets Act. Only after the adoption of a Digital Single Market Strategy the European Union's approach shifted towards acknowledgement of digital markets as a powerful and unified mechanism, which required more coherent and unified conceptual approach. The next chapter will therefore explore the adoption, scope, and implications of the Digital Services Act and Digital Markets Act, analysing how these instruments reshape the governance of digital markets in line with the principles of fairness, transparency, and accountability, and how they led to the elimination of internal legal fragmentation and the development of unified framework.

1.3. ADOPTION OF THE DIGITAL MARKETS ACT (DMA) AND DIGITAL SERVICES ACT (DSA)

Over the past two decades, the role of digital platforms within European Union economy has grown significantly, becoming a driver for transformation. Such giant platforms as Google, Facebook, or Amazon became undeniable parts of everyday life, causing the development of new business players, new business mechanisms, and market tools. The changes like this cannot remain aside from socio-economic processes of the European Union, expanding the cross-border trade, the usage of new technology and the expansion of internal market.

This expansion led to the adoption of the Digital Single Market Strategy, which aimed to create a market with free movement of goods, services and people, eliminating the obstacles for the development of EU cross-border e-commerce. The Strategy's objective was to harmonize the fragmented European market, force the evolution of an e-commerce and facilitate the interaction between businesses and individuals in a fair and trustful environment.

As was pointed out by M. Chiarella: "Legal harmonisation makes the fight against illegal activities and the protection of citizens' fundamental rights more effective while normative fragmentation makes it easy to distort competition to the detriment of the evolution of new innovative services in

the internal market."[53] This demonstrates, how previously fragmented rules weaken the protection of fundamental rights and fair competition. For this reason, the development of Digital Single Market Strategy was crucial to ensure both the development of new technologies and their safe operation across the Union. Therefore, by tackling fragmentation the Digital Single Market Strategy aimed to ensure the protection of citizen's rights, not lose it to the rapidly emerging technologies, and at the same time ensure the functioning of a fair and innovation friendly digital environment.

The Digital Single Market strategy outlined several main goals: establishing clear conditions for the digital services and networks to operate effectively, defining consistent regulatory standards for online platforms, providing a better access for both consumers and businesses to online goods and services trade and maximizing the growth of the digital economy by eliminating geographical and legal barriers. Eventually, Digital Single Market Strategy aimed to gradually bring down the remaining obstacles and move from 28 national markets to one.[54]

From the outset, the Digital Single Market Strategy consisted of both legislative and non-legislative initiatives, blending policy reforms with regulatory action to create conditions for digital networks and end the fragmentation on European market. [55] The European Commission estimated that probable efficiency gain of the Digital Single Market strategy could be in the range of 415 to 500 billion euro per year. The assessment also showed that the potential pros of introducing Digital Single Market strategy would involve higher productivity of digital platforms, structural changes in the EU economy, greater efficiency and reduced transaction costs in traditional sectors.[56] According to European Commission's point of view, the Digital Market strategy could also benefit the consumers, by making their access to online services, goods, and platforms far easier, as well as the creative sector and smaller businesses, by creating new audiences and business opportunities, eliminating piracy and intellectual property rights violations, adapting media rules for digital age and lowering costs for parcels and cross-border growth.[57]

Since the adoption of an E-commerce Directive in the year 2000, the technological landscape and societal behaviour have changed significantly, transforming into a what many scholars refer to as digital revolution. Whilst such shift brought new opportunities for market players, it also introduced new risks and challenges. The recognition of those challenges has encouraged the European

[53] CHIARELLA, Maria Luisa (2022). Digital Markets Act (DMA) and Digital Services Act (DSA): New Rules for the EU Digital Environment. Athens Journal of Law [online], 9(1), 33–58. P.36
[54] Szczepański, M. (2015) *Tracking European Commission priority initiatives in 2015 – Number 3. A Digital Single Market Strategy for Europe.* European Parliamentary Research Service (EPRS) Briefing, PE 568.325.
[55] European Parliamentary Research Service (2015) *Mapping the cost of non-Europe*, 3rd edn. European Added Value Unit, European Parliament, PE 536.364.
[56] Ibidem.
[57] European Commission (2015) *Memo: Questions and answers – Digital Single Market Strategy*, 6 May. Brussels. Available at: https://ec.europa.eu/commission/presscorner/detail/en/memo_15_4920

Commission to adopt the proposal for new regulations: Digital Single Act Package was then introduced, consisting of a Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services (Digital Service Act)[58] and Regulation (EU) 2022/1925 on contestable and fair markets in the digital sector (Digital Market Act).[59]

THE DIGITAL SERVICES ACT

The Digital Services Act, adopted in November 2022 and applicable to all platforms from 2024, modernized the EU's digital regulatory framework while maintaining core principles of the earlier E-Commerce Directive. As put out by A. Bradford, "The DSA was likewise motivated by the need to enhance transparency and accountability over tech companies' content moderation decisions, but also to prevent fragmentation that was emerging as individual member states began adopting conflicting hate speech laws and enforcing them extraterritorially, thus undermining the functioning of the single European market."[60] It demonstrates, that the Digital Services Act posed not only a response to growing platform responsibility, but also was a necessary measure for tackling the increasing divergence among Member States. National policies of the Member States did not tackle the digital development systematically, focusing on specific aspects, which did not develop the lawmaking, but just extended the existing approaches. By updating the E-commerce Directive rules, the Digital Services Act aimed to enhance innovative approach, ensure coherence, consistent standards, and prevent the growing fragmentation of internal market.

The Digital Services Act was designed to expand and update the E-commerce Directive principles and create the rules for providers of intermediary services, specifically the liability rules, to introduce the appropriate risk management tools, and an instrumental for the protection of fundamental rights in the digital environment. The provisions of the Digital Services Act also aimed to enhance the transparency and accountability for the intermediary service providers, tackle illegal content and overall improve the functioning of the EU Single Market. All in all, it was needed to set the digital framework in the European Union, define the scope of responsibilities of intermediary services, and complement the existing sectoral legislation, basically applying as a lex specialis. This demonstrates a regulatory change to an active governance model, in which platforms are central actors in a digital ecosystem.

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[58] Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services and amending Directive 2000/31/EC (Digital Services Act) [2022] OJ L277, 27 October 2022, 1–102.
[59] Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act) [2022] OJ L265, 12 October 2022, 1–66.
[60] Bradford, Anu, *Digital Empires: The Global Battle to Regulate Technology* (New York, 2023; online edn, Oxford Academic, 21 Sept. 2023), https://doi.org/10.1093/oso/9780197649268.001.0001, accessed 31 Oct. 2025.

Strictly saying, Digital Services Act governs "intermediary services", which, according to the Article 3 (g) of Digital Services Act, include those who transmit and store user generated content.[61] As compared to the E-commerce Directive, it provides more categories of "intermediary services". While the E-commerce Directive contained the definitions of "mere conduit" services, "caching" services and "hosting" services, the Digital Services Act also added the categories of "online platforms" and "online search engines". It significantly extended the scope of digital regulation application, compared to how it was regulated previously by the E-commerce Directive. Such expansion of categories shows the update to match the real digital market's structure and close previously existing gaps.

The Digital Services Act also maintains the exemption from the liability, which was established in the E-commerce Directive, making additional clarifications to it. However, it also introduced novelty to the intermediary liability regime set out in the E-Commerce Directive by providing the possibility for intermediary service providers to carry out voluntary own-initiative investigations and legal compliance and not be deemed ineligible for the exemptions from liability, which also puts another layer of protection for the business owners.[62] Such rule is also known as a "good samaritan principle", which aimed to provide more legal certainty and encourage the activities against illegal content. It appears to have a positive effect on the protection of the providers' fundamental rights and freedoms. In general, the rules in the Digital Services Act tend to place less burden on those who conduct a business, while at the same time still protecting the users of the digital websites and content, who were harmed by the illegal content exchanged through the services.

Among the other achievements, the Digital Services Act promoted responsible moderation among the online platforms, introducing additional obligations for the intermediary service providers, mainly concerning the content moderation activities. Such obligations aimed to deal with illegal content, ensure transparency, and manage system risks. The adoption of such measures has led to the recognition of the platform's role in moderating and tackling the illegal content. Through Article 16 the Digital Services Act also introduced the new "notice and action" mechanism, which allowed anyone to notify of the presence of illegal content. Therefore, it imposed on the providers obligations to implement mechanisms for reporting. By introducing such mechanism, the Digital Services Act increased procedural fairness for users.

The Digital Services Act was also one of the first legal instruments to recognise the crucial role of the platforms internal terms and conditions in moderating the content, therefore imposing

[61] European Union. Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services and amending Directive 2000/31/EC (Digital Services Act) (Text with EEA relevance). PE/30/2022/REV/1. Official Journal of the European Union, L 277, 27 October 2022, pp. 1–102, Article 3 (g)
[62] Ibidem. Art. 7

safeguarding procedural instruments on the platforms. Such tools can be an effective method of protecting the fundamental rights of the users and limiting the power of large service providers.

Another significant achievement of the Digital Services Act in terms of platform content moderation was the fact that it obliged platforms to provide reports on their transparency, therefore imposing transparency obligations and safeguards for users. While the Articles 15 and 24 do not require platforms to provide detailed information, they still need to report on their content moderation, the measures taken that affect information availability, the number of disputes submitted to the out-of-court dispute settlement bodies, the number of complaints received and any use made of automated means for the purpose of content moderation. Such novelties ensure the platforms operate more openly and still improve accountability, helping users to better understand how the information is managed.

The Digital Services Act also modernised the approach towards the responsibility's differentiation. With regards to the types of service providers, the Digital Services Act divided them into several categories, which are: intermediary services, hosting services, online platforms, very large online platforms and very large online search engines.[63] Very large online platforms, designated by the European Commission, include Google play, Amazon Store, Booking, while very large online search engines include Google search, Bing.[64] Since every type of the service providers plays different role in the society and in the market, all of the obligations, imposed on them by the Digital Services Act, are proportional to its role and impact, as stated in the recital 144[65]. Therefore, very large online platforms and very large online search engines are subject to stricter rules because their functioning poses a greater risk of illegal content and other types of harm, according to the recital 75[66]. However, such approach does not mean, that smaller businesses will not be held liable for the violations, it simply imposes liability commensurate with the effect they have in the society[67]. Thus, the rules, by imposing obligations according to the size and influence of online service providers, are fair to all business participants, leaving the opportunity for smaller businesses to develop and operate in the market.

Among some of the obligations imposed on very large online platforms and very large online search engines there are the responsibility to ensure the protection for minors, which includes both privacy, security and safety protection, responsibilities with regards to risk assessment, transparency reports,

[63] European Union. Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services and amending Directive 2000/31/EC (Digital Services Act)
[64] European Commission, 'Digital Services Act: Commission Designates First Set of Very Large Online Platforms and Search Engines' (Press Release, Brussels, 25 April 2023)
[65] European Union. Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services and amending Directive 2000/31/EC (Digital Services Act) recital 144
[66] Ibidem recital 75
[67] ***Digital Services Act: Ensuring a Safe and Accountable Online Environment*. The Hague: EUJUST_2, 2024. Print.**

stricter content moderation and establishment for the mechanism allowing users to report illegal content, expressed in the Articles 33-43.[68]

As for the obligations imposed on the hosts of online platforms, they include obligations regarding traceability of traders, compliance by design, and right to information. The hosts of the online platforms are obliged to access the information about the traders, if such online platforms allow users to conclude contracts with the traders[69]. They should also design the platforms in such a way that the traders can comply with the obligations regarding pre-contractual information, compliance and product safety information[70]. At the same time, the Digital Services Act also provided for the possibility to B2C (business to consumers) marketplaces, allowing the consumers to conclude distance contracts with traders while using online platforms.[71]

The approach of imposing differentiated obligations illustrates the shift in a regulatory model and reflects the acknowledgement that systemic platforms pose risks that cannot be addressed through previously existing general rules. By assigning stricter duties to the large online platforms, the Digital Services Act recognises their systematic and profound impact on the commercial activities, as well as their ability to shape the digital discourse. Generally, this has a positive effect and ensures that responsibilities are aligned based on the operational functions of the service providers. It also demonstrates how the regulation seeks to find balance and strengthen users' protection but also strengthen market integrity and enhance innovative technologies. It shows the risk-proportionate approach, which makes the Digital Services Act a valuable tool for creating safe, transparent and competitive digital environment.

Although the Digital Services Act is an innovative piece of legislation, introducing provisions that have never been addressed before, it still has its challenges. Particularly, the challenges lie in the are of enforcement and implementation of the act. While the Digital Services Act grants much power to the European Commission, it will also necessitate coordination and collaboration between national Coordinators, the European Board of Digital Services, and the Commission. By means of Articles 58 and 60 the Digital Services Acts establishes foundations for such cooperation, however, this process will require effort to implement its effective functioning.

Overall, the Digital Services Act held the new approach towards the services moderation within the European Union, acknowledging the challenges posed by modern platforms and seeking balance between safeguarding the rights and freedoms of users and businesses, while at the same time tackling

[68] European Union. Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services and amending Directive 2000/31/EC (Digital Services Act) arts 33-43
[69] Ibidem Article 30
[70] ibidem Article 31
[71] Ibidem arts 29-32

efficient platform operation. It significantly expands the E-Commerce Directive scope of application with regards to the newly emerged technologies. The Digital Services Act also acknowledges the role of online platforms in effective enforcement of digital regulations and provides a framework for platform operation. It addressed the challenges posed by the development of large service providers and effectively provide risk management tools. Despite the challenges, the Digital Services Act created more legal certainty among both businesses and users, as well as among the whole internal market overall.

THE DIGITAL MARKETS ACT

As was stated by Simone, Cristina, and Antonio Laudando, "according to a policy-first approach, the EU aims to be a pioneer in the regulation of digital markets and digital transformation, setting a model for best practices at the global level.".[72] The adoption of Digital Markets Act is fully consistent with such approach. The author's observation shows, how the adoption of the Digital Markets Act is consistent with the European Union's approach to lead global digital regulation. It demonstrates that European Union's approach falls within the category of proactive, seeking to shape the digital landscape and set the standard for digital markets lawmaking.

The Digital Markets Act in some ways, as well as the Digital Services Act, complements certain areas of previous legislation. In certain cases, the Digital Markets Act strengthens the General Data Protection Regulation and expands Regulation (EU) 2019/1150 of the European Parliament and of the Council of 20 June 2019 on promoting fairness and transparency for business users of online intermediation services (Platform-to-Business (P2B) Regulation of 2019) with regards to transparency of business platforms in relation to their users. In general, the Digital Markets Act was designed to create fairer and more transparent digital marketplace, as well as prevent giant companies from using their powers for market and consumer abuse.

While the DSA focuses on transparency and user safety, the Digital Markets Act (DMA)—adopted concurrently in November 2022—targets such market players known as "gatekeepers." As H. Schweitzer and J. Crémer put it: "control over the devices allows a platform to become a gatekeeper in terms of access to consumer data and capacity to deliver content and services".[73] Gatekeepers can thus be understood as large digital intermediaries that control key market access points, such as app stores, search engines, or social networks, thereby shaping how consumers and businesses interact in the digital ecosystem. A gatekeeper's economic power is a recent concept in the European legislation,

[72] **Simone, Cristina, and Antonio Laudando.** "Principles and Obligations of the Digital Markets Act in Regulating the Economic Power of Gatekeepers: Positive, Negative or Trade-Off Effects?" *Electronic Markets*, vol. 35, no. 1, 2025, pp. 1–27

[73] **CRÉMER, Jacques; DE MONTJOYE, Yves-Alexandre; and SCHWEITZER, Heike** (2019). *Competition Policy for the Digital Era.* Luxembourg: Publications Office of the European Union.p.48

which can be defined as an intermediary that can control digital platforms, imposing its rules, preventing other people from using those platforms. The introduction of gatekeeps concept makes a change in the European Union's regulatory policy, taking it on a more proactive level, and establishing a framework for keeping digital markets fair, open, and competitive.

According to some researchers, it is evident that Digital Markets Act is a gatekeeper-specific legal act.[74] Unlike the Digital Services Act, which governs online intermediary services in general, Digital Markets Act tends to focus specifically on a distinct subset of powerful digital platforms within the EU's broader digital regulatory architecture. The connection between two legal documents – the Digital Services Act and the Digital markets Act illustrate European Union's regulatory policy which tries to reduce the risks associated with online platforms. By regulating both content related area and competition related area, European Union fully addresses the challenges posed by the emerging technological development of large online platforms.

The Digital Markets act is not considered to be a part of the competition law; however, its objectives are complementary to the competition law. According to the Report prepared by the European Commission, it combines ex-ante regulatory provisions with tools that are associated with competition policy, such as acquisitions, market investigations and access to internal platform information. It by-passes relevant market and dominance considerations and directly addresses entry barriers in very large digital markets.[75] Such approach shows that Digital Markets Act is designed to address problems which couldn't be addressed effectively enough by the competition law. A key motivation for the DMA policy initiative is to speed up the implementation of remedies for anticompetitive behaviour by gatekeeper platforms.[76] This is achieved by imposing ex ante obligations on gatekeepers' platforms to avoid slow interventions and create a favourable environment for achieving the objectives. As pointed out by some researchers, with the DMA, the European Union takes a step into this kind of regulation for the digital sphere, subjecting certain platform services to a much more detailed governmental steering.[77] It demonstrates that Digital Markets Act fills the gaps left by traditional competition law rules, which are often not enough to address the rapidly developing technologies. By shifting to ex ante obligations, the European Union is moving from reacting to preventing the harm and establishing a more proactive regulatory approach. Another significance of such shift lies in the fact that before the Digital Markets Act came into force, ex ante regulation of online platforms aimed at preventing anti-competitive behaviour, which would have helped avoid lengthy and costly antitrust investigations, was not applied.Such shift

[74] Podszun, Rupprecht (2023). "From Competition Law to Platform Regulation…" Economics e-Journal, 17(1).
[75] Luís Cabral and others, *The EU Digital Markets Act: A Report from a Panel of Economic Experts* (2021).p.9
[76] Ibidem p.10
[77] Podszun, Rupprecht (2023). "From Competition Law to Platform Regulation…" Economics e-Journal, 17(1).

could be explained by the active role of the government in the economic activities, and it determines the novelty of the Digital Markets Act on a procedural level. Imposing ex ante obligations tends to be a preventive tool to the expected undesirable behavior of gatekeepers, which protects competition and leads to increased innovation in digital markets.

In case of digital platforms, some of the gatekeepers control access to content, products and/or services, and the others control access to its users by third-party firms. If the company is designated as a gatekeeper, it is obliged to follow the rules laid out in the Articles 5,6,7 of the Digital Markets Act, such as banning self-preferencing, ensuring data portability, mandating interoperability, and requiring transparent advertising practices. These obligations show that Digital markets Act aims to limit structural advantages that gatekeeper's access and ensure openness and transparency for internal market. According to the designation of the European Commission, we can define several examples of gatekeepers, such as Alphabet, Amazon, Apple, ByteDance, Meta, Microsoft.[78] As for percentage of gatekeepers, according to the European commission, European Market includes more than 10,000 platforms, 90% of which are small and medium sized enterprises, which makes it clear that gatekeepers comprise a minority on a digital market, however still needed to be regulated so as not to allow the abuse of economic power and protect European Union businesses in the digital race. [79]. Together, these factors show that Digital Markets Act is designed to regulate the areas, where concentrated powers risk destroying competition. By doing so the Regulations aims to safeguard the competitiveness of smaller businesses.

The Digital Markets Act established core principles - contestability of digital services, fairness of the commercial relationships between the providers of such services, and innovativeness of market operators, as set out in the recital 31[80]. The Digital Markets Act defines contestability as "the ability of undertakings to effectively overcome barriers to entry and expansion and challenge the gatekeeper on the merits of their products and services"[81]. At the same time, unfairness means "an imbalance between the rights and obligations of business users where the gatekeeper obtains a disproportionate advantage", therefore the Regulations aims to eliminate such imbalance[82]. Since both contestability and fairness are connected between each other, with the principle of innovativeness being complimentary to both, one cannot be guaranteed without the other. Regarding digital markets,

[78] **EUROPEAN COMMISSION** (2023). *Commission sets out strengthened enforcement and enhanced transparency under the Digital Services Act: Vice-President Vestager and Commissioner Breton present first ideas for improved implementation.* Press release, Brussels, 25 April 2023. [online].
[79] **European Commission.** "Europe Fit for the Digital Age: New Online Rules for Platforms." *European Commission*, 2022
[80] European Parliament and Council. 2022. Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act). Official Journal of the European Union, L 265, 1–66, recital 31
[81] Ibidem, recital 32
[82] Ibidem, recital 33.

contestability here promotes open market access by reducing barriers and enabling competition, while fairness maintains relationships between gatekeepers and business users. Since both elements depend on each other, Digital Markets Act ensures effectiveness by maintaining their systematic approach to secure fair digital ecosystem. Such approach demonstrates reshaping digital market's conditions as a whole and ensures the innovation enhancement.

In general, the obligations are aimed at ensuring prevention of the anti-competitive use of the gatekeeper's market advantage; access for business users to the online platform and to consumer data; choice and autonomy in the use of the online platform's core services; transparency in the creation of online advertising value. The DMA is distinguished by its novelty due to the asymmetric ex ante regulation of the activities of large online platforms, the definition of competitiveness and fairness of digital markets as the regulatory objective, and the self-enforcing nature of the regulatory regime.

The strengths of the Digital Markets Act lie in the legal certainty that it provides, speed, and systemic focus. By clearly listing the obligations, the Regulation establishes a predictable framework for gatekeepers conduct. Another strength of the Digital Markets Act lies in the fact that it was adopted in the form of Regulation, which makes it directly applicable in Member States and preventing internal market from fragmentation, as it establishes the coherent and consistent application of the rules in the digital cross-border economy.

Overall, the Digital Markets Act is designed to enhance the business environment in the European Union by eliminate unfair practices and imposing an efficient regulatory framework for digital platforms. It is expected to provide the higher degree of protection for consumers, businesses, and end users, while restricting the gatekeeper's powers. The DMA ensures the compliance of the gatekeepers with the obligations regarding fair market operation and contestability, thereby allowing smaller businesses have the same opportunities to compete with the other player in the digital market's arena. The Digital markets Act keeps EU legislation up to date with the fast-paced development of the digital economy and evolving large platforms by ensuring fair business environment not only for giant market players but also for smaller entities and consumers.

In regulatory terms, the Digital Markets Act represents a change from traditional European Union competition law enforcement. It introduces new kinds of ex ante obligations, which apply directly to designated gatekeepers. This model is designed to address challenges posed by the emergence of giant companies. The advantages of the obligations enshrined in the DMA are increased legal certainty and predictability, easier compliance with legal requirements and control by regulatory authorities, reduced need for legal proceedings and risks of discrepancies in the interpretation and implementation of obligations.

Taken together, the Digital Services Act and the Digital Markets Act represent a turning point in an evolutionary process of European Union digital Market's lawmaking. They replace the horizontal governing and ex post competition enforcement with sector specific ex ante obligations, establishing a clear digital markets framework in the Union. Together, they modernise an outdated framework and create mechanisms for addressing risks that neither national rules nor traditional competition law could resolve. By adopting such instruments European Union seeks to ensure openness, contestability and competitiveness of digital markets, at the same time safeguarding users rights. The Digital Services Act and Digital Markets Act established a unified regulatory framework that positions European Union as a global leader and standard setter.

1.4. THE EMERGENCE OF AN INTEGRATED DIGITAL REGULATORY FRAMEWORK

Over the past few decades the European Union's digital market's legislative policy has moved from fragmented approach towards the establishment of coherent and integrated legal framework, which can be traced by A. Bradford observation that "the EU's digital regulation seeks to integrate the common European market and hence foster free trade across member states.".[83] While the early stages of EU digital market's lawmaking could be characterised as distinct legal instruments addressing different policy areas, such as electronic commerce, data protection, telecommunications, the recent legislative changes form a systematic governance model. The adoption of the Digital Services Act (DSA) and the Digital Markets Act (DMA) in 2022, as well as the European declaration on digital rights and principles and General Data protection regulation, established the fundamental element of the new Digital Single Market. The digital issues are no longer treated as isolated sectoral problems, but as a part of unified digital framework, which is aimed to enhance economic integration and fundamental rights protection.

In general, such policy is often defined by the term "European digital constitution." As put out by A. Bradford: "As a result, this overarching policy objective—advancing European integration by creating a digital single market—is directly woven into Europe's digital constitution." This fact proves the European Union's desire to centralize digital legislation in its goal of creating a digital single market, subordinating it to digital rights and principles for a human-centred digital transformation to protect human rights in the digital platform environment and develop digital cross-border trade in online markets.

The interdependence between digital market's legislative acts can be observed based on Digital Services Act and General Data Protection Regulation. As it was stated by the European Data protection Board "a number of provisions of the DSA specifically refer to the protection of personal

[83] Bradford, Anu, *Digital Empires: The Global Battle to Regulate Technology* (New York, 2023; online edn, Oxford Academic, 21 Sept. 2023), https://doi.org/10.1093/oso/9780197649268.001.0001.

data as well as definitions and concepts under the GDPR, such as 'profiling' and 'special categories of data', though in the context and for the purpose of the implementation of the specific DSA regulatory objectives under the oversight of competent authorities under the DSA".[84] This ensures the platform governance and data protection operating within a coherent legal framework.

The European Data protection Board has also underlined that both legal acts pursue different roles, and although they are complimentary to each other, for example they both may cover the issues of processing of the information by the same entities, particularly some of the intermediary services providers - Very Large Online Platforms (VLOPs) and Very Large Online Search Engines (VLOSEs), they do not establish priority over each other because they are of the same hierarchical value and should be applied in a compatible manner.[85] When applying both laws, it should be considered that it is important not to lower the fundamental right to privacy established in primary and secondary EU law.[86] Such approach demonstrates the shift from adopting distinct legal instruments to the establishment of a single integrated framework. Such equal and complementary status ensures there are no inconsistencies between privacy and platform governance rules, which allows to strengthen overall user protection.

Moreover, an integration of the digital market's framework doesn't only involve legislative consistency, but also the cooperation between the enforcement authorities, the creation of new institutional mechanisms to ensure harmonised enforcement. The Digital Services Act provides for the Member States to designate one or more competent authorities to be responsible for the supervision of providers of intermediary services and enforcement of this Regulation.[87] The Digital Services Act also provides that the European Commission shall have exclusive powers of supervision and enforcement regarding the providers of Very Large Online Platforms (VLOPs) and Very Large Online Search Engines (VLOSEs)..[88] However, neither the GDPR nor the DSA provide for rules on cooperation between authorities established under the DSA and data protection supervisory authorities established under GDPR. Nevertheless, it is specified by the European Data Protection Board, that they should consult and cooperate sincerely with the national data protection supervisory authorities concerned or with the lead data protection supervisory authority.[89] According to the European Data protection Board, such cooperation would improve legal certainty, eliminate

[84] **EUROPEAN DATA PROTECTION BOARD (EDPB).** (2025). *Guidelines 3/2025 on the interplay between the Digital Services Act (DSA) and the General Data Protection Regulation (GDPR).* Version 1.1. Brussels: European Data Protection Board.

[85] ibidem

[86] ibidem

[87] Article 49 (1) European Union. Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services and amending Directive 2000/31/EC (Digital Services Act)

[88] Article 56 (2) European Union. Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services and amending Directive 2000/31/EC (Digital Services Act)

[89] **EUROPEAN DATA PROTECTION BOARD (EDPB).** (2025). *Guidelines 3/2025 on the interplay between the Digital Services Act (DSA) and the General Data Protection Regulation (GDPR).* Version 1.1. Brussels: European Data Protection Board

regulatory inconsistency with regard to the supervision of intermediary services providers, and ensure the lack of infringement of the non bis in idem principle.[90] Taken together, these factors demonstrate that European Union is establishing an integrated framework not only by creating legal acts, but also by developing the efficient enforcement system through the creation of working mechanisms of cooperation between the national and European authorities.

An example of the development of an integrated legislative framework can also be the complementary nature of the Digital Markets Act. As mentioned by Viktoria H S E Robertson "the Digital Markets Act and the EU antitrust rules are intended to complement each other and generate synergies in their enforcement".[91] More specifically, it is stated in the Digital Markets Act recitals, that its provisions are complementary to the provisions of Treaty on the Functioning of the European Union.[92] It concerns Articles 101 and 102 of the Treaty on the Functioning of the European Union. However, the Digital Markets Act aims to complement the enforcement of competition law, it should apply without prejudice to Articles 101 and 102 TFEU.[93]

Both Digital Market Act and Articles 101 and 102 of the Treaty on the functioning of the European Union aim to enhance market integration. The Digital Market Act aims to maintain fair digital market, while the Treaty on the functioning of the European Union aims to maintain competition and further consumer welfare. Unlike Digital markets Act, which is applicable ex ante, is based on the gatekeeper's designation and can be enforced only by the European Commission with national authorities having investigatory powers, the provisions of Treaty on the Functioning of the European Union are applicable ex post, apply in all sectors and can be directly applied by the European Commission and national authorities, national courts.

Accordingly, when such happens that "the European Commission has designated a company as a gatekeeper according to the DMA, and where said gatekeeper engages in market conduct that is blacklisted by the DMA, the Commission will—as mentioned above—now have the choice to pursue such conduct as an infringement of the DMA or as an abuse of dominance under Article 102 TFEU, or possibly even both"[94]. Therefore, the Digital Markets Act complements European Union's competition law provisions, creating new procedural interconnections between several legislative acts in digital market's functioning.

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[90] **EUROPEAN DATA PROTECTION BOARD (EDPB).** (2025). *Guidelines 3/2025 on the interplay between the Digital Services Act (DSA) and the General Data Protection Regulation (GDPR).* Version 1.1. Brussels: European Data Protection Board

[91] Viktoria H S E Robertson, The complementary nature of the Digital Markets Act and the EU antitrust rules, *Journal of Antitrust Enforcement*, Volume 12, Issue 2, July 2024, Pages 325–330, https://doi.org/10.1093/jaenfo/jnae013

[92] Consolidated Version of the Treaty on the Functioning of the European Union (TFEU) [2016] OJ C202/47.

[93] Regulation (EU) 2022/1925 (Digital Markets Act). OJ L 265, 2022, pp. 1–66. Recital 10

[94] Viktoria H S E Robertson, The complementary nature of the Digital Markets Act and the EU antitrust rules, *Journal of Antitrust Enforcement*, Volume 12, Issue 2, July 2024, Pages 325–330, https://doi.org/10.1093/jaenfo/jnae013

Overall, the integration between Digital Services Act, Digital markets Act and other European Union's legislative acts shows from separate and fragmented rules to a single, coordinated system for regulating the digital market. This indicates the development of a fundamental layer of legislation that forms a single legislative system for managing digital markets, the elements of which are integrated and interconnected. In particular, the Digital Markets Act is built on and integrated with competition law rules, adding new tools governing digital platforms functioning, whereas Digital Services Act complements the rules concerning data operation online. Together, these laws create a consistent and interconnected framework that protects users, ensures fair competition, and strengthens trust in the digital economy.

2. CHAPTER 2 THE ENFORCEMENT EVOLUTION WITHIN THE EU'S DIGITAL LAWMAKING PROCESS

2.1. THE EVOLUTION OF DIGITAL LEGISLATION'S ENFORCEMENT MECHANISMS

There is no legislation that exists in a vacuum – every legislative step comes with a reform of an enforcement mechanism. Therefore, the evolution of digital markets lawmaking cannot be understood solely through the adoption of the legislative acts, such as the E-Commerce Directive, the Digital Markets Act or the Digital Services Act. Every major reform has been accompanied by transformation in the enforcement framework that enables effective functioning of those legal acts. Thus, the enforcement mechanisms are of the same importance for the determining the evolutionary development process of the European Union's lawmaking.

Enforcement has always been a cornerstone of the effective functioning of the European Union's legal framework. However, in the field of digital markets, enforcement presents specific challenges due to the European Union's multi-level governance structure and the coexistence of diverse national approaches. Enforcement is not a technical process, but a dynamic one, which can be altered over the years due to the changing legal and societal environment.

Traditionally, the enforcement mechanism can be seen in three models: the decentralised model based on the 'country of origin' principle, where each state has its own supervisory operators, the decentralised "country of destination" approach, where each state exercises the rules enforcement within its territory, and the centralised model, where the European Commission hold the central power. Each approach has its own advantages and limitations. The challenge in the digital market area, however, lies in the fact that online platforms operate across multiple jurisdictions simultaneously, therefore there is often an overlap of powers and ambiguity in the cooperation of regulatory acts with each other.

Another complication lies in the fact that digital markets are a complex issue, the regulation of which is dealt with in many areas, such as data protection, artificial intelligence, digital services, which involves the establishment and coordination of many legal acts in different areas.

The expansion of the European Union's Digital Regulatory Framework illustrates the institutional evolution of enforcement, which aims to achieve consensus on the implementation of the legislation among Member States. However, the existence of different legal regimes and different institutional structures across the European Union complicates the implementation of the legislation.

Over the time, European Union has moved from a fragmented enforcement landscape towards a hybrid governance model. As stated by some researchers, the EU now combines mechanisms of public or centralised enforcement, on the one hand, with private or decentralised enforcement, on the other. It has also evolved in the last 20 years to find alternative and complementary enforcement tools.[95] However, with the increasing power of online platforms, there are different trends and new approaches in the legal enforcement tools that are being established. There are doubts as to how to apply the existing regulatory framework and competition law rules to novel market phenomena such as online platforms. Apart from the existing system of enforcement, the growing importance and the complexity of online market platforms required new tools for the establishment of working and functioning mechanisms. With regards to the development of digital markets framework, and more specifically to the establishment of an efficient enforcement framework, there are several categories of a so-called innovation facilitators existing. There are two categories, which are innovation hubs and regulatory sandboxes.

As for the innovation hubs, they are established to provide a dedicated point of contact for firms to raise enquiries with competent authorities on FinTech-related issues and to seek non-binding guidance on the conformity of innovative financial products, financial services or business models with licensing or registration requirements and regulatory and supervisory expectations.[96] According to the FinTech report, the first innovation hubs were established in 2014. However, the majority became operational in 2016 and 2017.[97] Such rise signal of a shift towards more proactive approach, which helps to connect technologically evolving businesses and legislative mechanisms.

[95] Best, E. (2021) *Making European Policies Work: Evolving Challenges and New Approaches in EU Law Enforcement*. Maastricht: European Institute of Public Administration (EIPA). Available at: https://www.eipa.eu/wp-content/uploads/2025/03/Edward-Best_Making_European_Policies_Work_Evolving_Challenges.pdf

[96] **European Supervisory Authorities (EBA, EIOPA and ESMA)** (2019). *Joint Report on Regulatory Sandboxes and Innovation Hubs* (JC 2018 74). Paris: European Securities and Markets Authority. Available at: https://www.esma.europa.eu/sites/default/files/library/jc_2018_74_joint_report_on_regulatory_sandboxes_and_innovation_hubs.pdf

[97] **Ibidem**

As for the regulatory sandboxes, according to the European Supervisory Authorities (the ESAs), regulatory sandboxes 'provide a scheme to enable firms to test, pursuant to a specific testing plan agreed and monitored by a dedicated function of the competent authority, innovative financial products, financial services or business models.

According to the EIPA, the regulatory sandbox as an enforcement model was first developed in the 'fintech' domain.[98] Thus, the regulatory sandboxes were established as a tool for competent authorities understanding of the newly arriving digitalisation features and for the creation of better functioning application mechanisms within the EU framework.

As put out by the EIPA, the European Commission has been encouraged to consider the use of experimentation clauses while drafting or reviewing legislation and to facilitate the exchange of good practices concerning regulatory sandboxes between Member States, thus effectively promoting the dissemination of sandboxes as an enforcement model.[99] This trend shows, that European Union's approach is shifting towards more flexible and adaptive model of enforcement, that is essential for regulating technologies which are developing in a high pace. By encouraging experimentation, the European Union is acknowledging the need for regulatory agility and adaptation in terms of effective digital markets development.

Therefore, with the rapidly developing digital area, the European Union has also begun to apply modern tools to increase the efficiency of its regulations and its enforcement mechanisms. The evolution of European Union digital market enforcement tools demonstrates that modern digital regulation is defined not only by mere legal rules but also by the mechanisms that support them. In this regard, the European Union has progressively built an enforcement ecosystem, addressing challenges posed by cross-border economy. All in all, the enforcement system has become a part of European Union Digital Market's framework and has developed from fragmented national approaches to hybrid governance.

2.2. THE ESTABLISHMENT OF THE DIGITAL'S LEGISLATION ENFORCEMENT FRAMEWORK

Understanding the institutional framework of enforcement is essential to assess the development process and the effectiveness of the EU's digital regulation. Enforcement structures show not only how rules operate in practice, but also whether the goals they are aimed at can be achieved. It shows how the responsibilities were distributed over the years, where the distribution came nowadays, and how different levels of coordination work. Over the years, the European Union's digital framework

[98] Best, E. (2021) *Making European Policies Work: Evolving Challenges and New Approaches in EU Law Enforcement*. Maastricht: European Institute of Public Administration (EIPA). Available at: https://www.eipa.eu/wp-content/uploads/2025/03/Edward-Best_Making_European_Policies_Work_Evolving_Challenges.pdf
[99] Ibidem

has moved from decentralized enforcement mechanism to hybrid and centralised models under the DSA and DMA. This shows the gradual change in European Union's digital governance, from relying on national authorities to establishing working mechanisms across the Union.

In general, when it comes to the rules regulating enforcement procedures, the Regulations 1/2003 came into effect on May 1, 2004, to modernize the enforcement of European Union (EU) antitrust rules, particularly Articles 101 and 102 TFEU. It replaced the former centralised enforcement system, stating that centralised scheme no longer secures a balance within the Union. It formed a decentralised system, giving National Competition Authorities (NCAs) and courts a more active role alongside the Commission. However, with the development and rising power of online platforms the applicable enforcement mechanisms became insufficient and began to change, especially after the adoption of the Digital Markets Act and Digital Services Act.

According to the P.J. Loewenthal, C. Sjödin, F. Wilman, "The Digital Services Package was not adopted in a regulatory vacuum. Both prior to and since the adoption of the DSA and the DMA, the EU legislature adopted several acts of more limited application regulating the provision of digital services in the EU."[100] Therefore, all the legislative acts needed to be applied concurrently and coherently for the effective implementation of them.

Since the DMA is enforced by the European Commission, and the DSA shares the duty of enforcement between the European Commission and the Digital Service Coordinators, they both represent the example of centralised supervision and enforcement, while the previous legislative acts such as GDPR[101], Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive)[102], the P2B Regulation[103] tend to put the enforcement on the national competent authorities. However, the DSA and the DMA may also be privately enforced in the courts of the Member States. While the Audiovisual Media Services Directive, the Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related

[100] Loewenthal, P. J., Sjödin, C., & Wilman, F. (2025). *Europe's Digital Revolution: The DSA, the DMA, and Complementary Regimes – Topic II – General Introduction.* Report prepared for FIDE (European Forum of Independent Experts)

[101] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (OJ L 119, 4.5.2016, p. 1).

[102] Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) in view of changing market realities. OJ L 303, 28.11.2018, pp. 69-92.

[103] Regulation (EU) 2019/1150 of the European Parliament and of the Council of 20 June 2019 on promoting fairness and transparency for business users of online intermediation services (Text with EEA relevance). *Official Journal of the European Union*, L 186, 11.7.2019, pp. 57–79.

rights in the Digital Single Market, the P2B Regulation, are examples of EU legislative acts that addressed in a more targeted manner several of the societal and competitive harms that the DSA and the DMA were designed to address comprehensively.[104] The significant feature of the Digital Services Act is that it also contains complementary provisions with regards to other legal acts, such as the GDPR.

As pointed out by some researchers, there are certain similarities between the provisions on the enforcement of Treaty on functioning of the European Union and the DSA and DMA enforcement provisions. [105] However, there are also certain differences, but all in all - the Digital Markets Act has enhanced the Commission's procedural powers. The mentioned acts centralised regulatory authority at European Union level, demonstrating the move towards more integrated enforcement system.

The Digital Services Act and the Digital Markets Act also contain some novelties with regards to the enforcement mechanisms, specifically the empowerment of the Commission "the necessary actions to monitor the effective implementation and compliance with this Regulation".[106] Another difference between the Digital Markets act and the Digital Services Act and the Regulation 1/2003 on the other hand is the access to documents procedure, meant to ensure maximum access, while protecting third-party rights and fulfilling the Commission's obligation to protect confidential information..[107]

It was stated by the European Commission in its 2024 Commission Staff Working Document: Evaluation of Regulations 1/2003 and 773/2004 that overall, that there are certain inconsistencies of the Regulation 1/2003 and the Digital Markets Act on the other side. [108] Thus, achieving full coherence across the European Union will require more adjustments and integration.

Overall, the establishment of the European Union's digital legislation enforcement framework reflects shift from decentralized system to a centralized model under the supervision of European Commission. This shift demonstrates the recognition of the limitations of decentralised enforcement in addressing complex digital markets issues. Through legislative instruments such as Digital Markets Act and Digital Services Act European Union has created a coherent enforcement framework, which combines vertical coordination and horizontal coherence with other legislative acts. By enhancing the Commission's procedural powers and ensuring complementarity with existing legislation the

[104] Loewenthal, P. J., Sjödin, C., & Wilman, F. (2025). *Europe's Digital Revolution: The DSA, the DMA, and Complementary Regimes – Topic II – General Introduction.* Report prepared for FIDE (European Forum of Independent Experts)
[105] Ibidem
[106] Art. 72 DSA and Art. 26 DMA.
[107] Loewenthal, P. J., Sjödin, C., & Wilman, F. (2025). *Europe's Digital Revolution: The DSA, the DMA, and Complementary Regimes – Topic II – General Introduction.* Report prepared for FIDE (European Forum of Independent Experts)
[108] **European Commission** (2024) *Commission Staff Working Document: Evaluation of Regulations 1/2003 and 773/2004* {SWD(2024) 217 final}. Brussels: European Commission.

European Union has strengthened the effectiveness of enforcement. The creation of an enforcement framework within the European Union not only enhances the effectiveness of internal digital regulation but also establishes a foundation for the Union's external influence in global governance, which is becoming increasingly popular with regards to the digital markets area.

2.3. ENFORCEMENT EFFECTIVENESS IN THE INTERNATIONAL DIMENSION

The enforcement of European Union's digital regulatory framework extends beyond its borders. In a global economy, where online markets play a significant role and digital service providers operate transnationally, the effectiveness of the regulatory framework depends not only on internal factors but also on the ability to shape global regulatory landscape.

Beyond the mere influence within the internal market, European Union has also engaged in cooperation with international regulators, especially in data protection and consumer protection areas.

With regards to consumer protection, it is already stated in the E-commerce Directive, specifically in Article 19, that Member States should cooperate to implement the Directive effectively.[109] Apart from that, in the matters of cross-border cooperation the recommendations of Organisation for Economic Co-operation and Development are also used actively.

According to OECD, as a result of legislative reforms after the adoption of the Cross-border Fraud Recommendation on a consumer protection[110], some countries reported an increased ability to co-operate with foreign authorities in cross-border cases.[111] Such recommendation is of the consumer protection area, however, there is also a recommendation on data protection enforcement in a cross-border environment.[112]

As put out by the OECD, the survey on consumer protection enforcement shows that respondents have been active in cross-border enforcement cooperation.[113] The cooperation takes place in several forms. One of them is the establishment of international and regional co-operation networks, such as The International Consumer Protection Enforcement Network, The Global Privacy Enforcement

[109] Directive 2000/31/EC of the European Parliament and of the Council, 8 June 2000, *on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce)*. *OJ* L 178, 2000, pp. 1–16

[110] Organisation for Economic Co-operation and Development (OECD) (2003) *Recommendation of the Council concerning Guidelines for Protecting Consumers from Fraudulent and Deceptive Commercial Practices across Borders.* OECD Legal Instruments, OECD/LEGAL/0308. Paris: OECD Publishing.

[111] OECD (2021). *Consumer Protection and Enforcement in E-Commerce.* OECD Digital Economy Papers No. 312.

[112] Organisation for Economic Co-operation and Development (OECD) (2007) *Recommendation of the Council on Cross-border Co-operation in the Enforcement of Laws Protecting Privacy.* OECD Legal Instruments, OECD/LEGAL/0361. Paris: OECD Publishing.

[113] Organisation for Economic Co-operation and Development (OECD) (2003) *Recommendation of the Council concerning Guidelines for Protecting Consumers from Fraudulent and Deceptive Commercial Practices across Borders.* OECD Legal Instruments, OECD/LEGAL/0308. Paris: OECD Publishing

Network and Unsolicited Communications Enforcement Network. Several countries also maintain international enforcement co-operation arrangements for consumer protection by signing international agreements of memoranda of understanding. Another option applied on a Union's level is adopting a Consumer Protection Cooperation Regulation.[114] Under the Consumer Protection Cooperation regulation, participating countries are obliged to provide mutual assistance, specifically in the information requests, requests for enforcement measures and information sharing. According to the OECD report, the respondents participating in the Consumer Protection Cooperation network reported that they can send notification about the possible infringement to the competent authority of another member state where a foreign business is established and ask the competent authority to act against the possible infringement.[115]

With regards to the cross-border privacy enforcement, the OECD recommends to ensure that Privacy Enforcement Authorities have the necessary authority to prevent and act in a timely manner against violations of Laws Protecting Privacy, review the framework appliable to privacy protection, and consider how, in cases of mutual concern, their own Privacy Enforcement Authorities might use evidence, judgments, and enforceable orders obtained by a Privacy Enforcement Authority in another country.[116]

Overall, the enforcement framework compliments the internal evolution of European Union's digital regulatory framework. Through instruments such as the adoption of Consumer Protection Cooperation and global cooperation networks European Union has extended the enforcement of digital regulatory framework beyond its border, specifically in privacy and consumer protection. Such international reach strengthens practical implementation of digital legislation and plays a role in the European Union's becoming a global standard-setter.

3. CHAPTER III - THE EVOLUTION OF EU DIGITAL MARKET LAWMAKING IN A GLOBAL CONTEXT

3.1.COMPARATIVE EVOLUTION OF GLOBAL DIGITAL MARKET REGULATION

The evolution of digital markets regulation cannot be fully understood without placing it within the broader context. In the modern world, it is becoming increasingly clear that digital markets are embedded in our everyday lives and are gaining more importance in modern economy. The

[114] Regulation (EU) 2017/2394 of the European Parliament and of the Council of 12 December 2017 on cooperation between national authorities responsible for the enforcement of consumer protection laws and repealing Regulation (EC) No 2006/2004 (Text with EEA relevance). *Official Journal of the European Union*, L 345, 27.12.2017, pp. 1–26.
[115] OECD (2021). *Consumer Protection and Enforcement in E-Commerce.* OECD Digital Economy Papers No. 312
[116] Organisation for Economic Co-operation and Development (OECD) (2007) *Recommendation of the Council on Cross-border Co-operation in the Enforcement of Laws Protecting Privacy.* OECD Legal Instruments, OECD/LEGAL/0361. Paris: OECD Publishing.

emergence of large digital platforms has not only transformed economic activity, but has also reshaped how states operate digital sovereignty, fundamental rights and competition in online environment. Digital market's platforms are rarely situated within national borders. On the contrary, they have international nature, are created and incorporated by large multinational corporations whose activities spread to many countries and continents. Given the global nature of such market platforms, the legislation governing digital markets cannot be solely national but calls for the establishment of a regulatory framework beyond the national borders, which could have an extraterritorial effect and efficiently regulate the development of online platforms and their usage. However leading jurisdictions in the digital economy have established different regulatory models, creating a different response to technological challenges of the recent years. To analyse the development of European Union market regulation, we need to compare the evolutionary processes of digital market legislation in the world.

The leading powers in the digital economy, along with the European Union, are the USA and China. Therefore, these jurisdictions face similar challenges in the development of digital markets legislation as the European Union. A comparative perspective makes it possible to identify which elements in European Union framework reflect broader trends and which are a matter of deliberate choice. By comparing different jurisdictions, it becomes clear how European Union's framework has developed and what were the motives for that.

An important difference between the European approach, as opposed to the Chinese or American, is its pro-regulatory nature and rejection of the techno-libertarian idea of a "lawless" internet, instead firmly linking the rule of law and digital transformation. According to A. Bradford, this approach reflects the European view that governments play a key role in safeguarding competition in the digital marketplace.[117] This approach is explained by several factors at once, namely, less division between political currents and greater cohesion around the idea of a regulated market economy, as well as the absence of giant European technology corporations. According to some researchers, the active pro-regulatory approach of the European Union is also explained by resentment towards the US's dominance of the tech sector.[118] However, reducing the European approach to the reaction against foreign dominance would be unfair, because such policy vector can be also explained by traditional socio-economic internal policies applied in a technological context.

Unlike the European Union approach, the American approach was characterized by a significant influence of the centralization of technological development and the creation of leading tech giants, as well as the refusal of representatives of the technical sector to recognize the need for regulation of

[117] Bradford, Anu, *Digital Empires: The Global Battle to Regulate Technology* (New York, 2023; online edn, Oxford Academic, 21 Sept. 2023), https://doi.org/10.1093/oso/9780197649268.001.0001, accessed 31 Oct. 2025.
[118] Ibidem

digital technologies. According to the opinion expressed by A. Bradford, "The market-driven regulatory model rests on an idea that even if governments had the ability and the legal authority to regulate, they should take a backseat and make space for self-regulation".[119] Such an approach, in the opinion of many, created the most favourable conditions for the development of technologies and the digital sphere in general. Thus, the regulation of digital markets is recognized not as a solution to the problem, but rather the opposite, and focuses on the protection of freedom of speech on the Internet. By prioritising innovation and freedom of speech, the United States tolerated the emergence of the "gatekeepers" platforms and generated the dependence on them, which illustrates that American approach can be defined as insufficient to address the systemic risks posed by large digital platforms.

As for China, unlike the European model, aimed at protecting the rights and freedoms of citizens in the field of digital markets, and the American model, aimed at protecting freedom of speech and market-oriented towards faster and more intensive development of technological giants, the Chinese model aims to establish government control as opposed to protecting individual freedom. The Chinese model is largely aimed at developing domestic technologies and limiting foreign innovation, which is possible by enhancing the country's technological capabilities while reducing its dependencies on foreign technologies. As A. Bradford noted, the Chinese government's goal is to achieve a status of a "manufacturing powerhouse" featuring a "world-leading technology system and industrial system. This model represents a different approach from both European Union and the United States. The digital markets are viewed not as tools for private economic interaction, but as a strategic infrastructure that needs to be aligned with broader policy. Therefore, the interventions in the digital sector are about ensuring political control and managing information flows. For the European Union, Chinese example shows the importance of ensuring the rule of law and individual rights while maintaining technological competitiveness.

Thus, European digital legislation has developed largely against the background of two other leading jurisdictions, namely China and America, which pursued their goals - to preserve domestic technological and market development and, conversely, to give space for not only domestic but also global expansion of tech giants. This illustrates that regulatory design and political economy of each jurisdiction are interconnected. The United States tolerance of digital platforms expansion was explained and facilitated by the presence of competitive firms, while China's interventionist approach reflects an existing system in which digital infrastructure is an instrument of national strategy. On the contrary, the European absence on giant tech firms combined with the commitment to fundamental rights has resulted in the existing regulatory framework. The European Union's desire to maintain its approach to digital lawmaking oriented towards compliance with human rights and freedoms declared

[119] Bradford, Anu, *Digital Empires: The Global Battle to Regulate Technology* (New York, 2023; online edn, Oxford Academic, 21 Sept. 2023), https://doi.org/10.1093/oso/9780197649268.001.0001, accessed 31 Oct. 2025.

by the European Union and to strengthen regulation of the digital market sphere is aimed at maintaining the course towards market integration and strengthening control. This explains the European Union's desire to adopt such instruments as the Digital Service Act and Digital Markets Act.

According to A. Bradford, "despite the many benefits associated with technological innovations, digital transformation has ushered in an excessively concentrated economy where a few large tech companies control vast economic wealth and political power."[120]As a result, in the current conditions, we can see that American companies are at the forefront of technical development, but the European Union, on the other hand, is at the forefront of issues of regulating their activities and exercising control over compliance with norms and rules, and also prevent the abuse of power and influence of giant platforms.

This is what provided the basis for the active development of European digital market legislation, and for its spread to foreign jurisdictions, making the European Union a leading actor in the political arena and establishing the so-called digital sovereignty by the mechanisms of extraterritorial expansion and a so-called "Brussels effect". Taken together, the contrasting approaches highlight that the evolutionary process of European lawmaking development cannot be understood in an isolation from global regulatory environment. The European model can be described as a third way between the United States' and Chinese model, seeking to combine innovation with fundamental rights and competition facilitation.

3.2.MECHANISMS OF EXTRATERRITORIAL EXPANSION AND EXTRATERRITORIAL IMPACT OF THE EU'S DIGITAL MARKET'S LEGISLATION

Since the digital platforms hold extraterritorial effect, the growing reach of European Union's digital market legislation needs to be assessed through the lens of international application. Such measures as the Digital Services Act, Digital Markets Act and General Data Protection Regulation often have effect beyond the territory of the European Union, shaping the behaviour of foreign states. This phenomenon can be often described as an "extraterritorial" impact of European Union's law. From the very beginning of the digital era, the European Union has been actively developing barrier-free internal market adapted to the needs of a digital area.[121] Although the Internet itself is borderless and cannot be regulated, its use – in areas such as data protection, electronic commerce, consumer protection, online service use, - can be subject to guidelines. Such guidance plays a crucial role in the

[120] Bradford, Anu, Europe's Digital Constitution (September 01, 2023). Virginia Journal of International Law, Vol. 64, No. 1, 2023, Available at SSRN: https://ssrn.com/abstract=4599308

[121] Scott, Joanne, and Marise Cremona, eds. *EU Law beyond EU Borders : The Extraterritorial Reach of EU Law*. First edition. Oxford: Oxford University Press, 2019. Print. (3 The Internet and the Global Reach of EU Law , Christopher Kuner)

maintenance of cross-border trade and establishing trust in digital services within and beyond the European Union.

Given the international, one might even say transnational, nature of digital markets, regulation can no longer remain purely national. The borderless structure and shared market's interoperability of online platforms, especially those which have risen during the last decade, requires mechanisms that coordinate the activities of digital service providers across different jurisdictions. This interdependence has prompted the establishment of a new regulatory step for the European Union digital market's lawmaking – development of instruments that extend their relevance and influence beyond the Union. These instruments do not often operate through classic public international law techniques, but rely on a combination of market conditions, standard setting and indirect incentives. Strictly saying, European norms become binding on third countries because the non-compliance would lead to reputational or monetary risks.

The significant part of enhancing digital trade between the EU and other jurisdictions is to create a regulatory alignment system, therefore, to ensure the laws of different countries outside the EU cooperate with each other. Because of its pro-regulatory approach towards digital legislation the European Union has become a global rule setter, by adopting GDPR, DMA, DSA, the E-commerce Directive, it mainly sets the standard for many countries, especially neighbouring and those which are on their way to access the EU. The European Union's ability to act as a global standard setter is explained by its size and attractiveness of internal market. Since the access to the European market is significant to many businesses, third countries and private entities outside the European Union tend to align their domestic legislation and corporate practices with European rules for participation in cross-border trade. At the same time the existence of internal coherence reduces compliance costs for the third countries.

There are several ways in which the European Union's standards are adopted in other countries by the development of regulatory rules for digital markets and related areas. Some may be also described as a "Europeanisation" of the internet and digital market's legislation. [122]

The first way can be defined as adoption by the neighbouring states' accession. Generally, some of the countries, that are in the process of EU accession, tend to follow the model of adopting like EU standards on their national legislation and harmonising their laws with EU standards.

One example is the Ukrainian legislation which provides a clear illustration of the active adoption of European rules set out in directives and regulations on the protection of digital rights of the citizens.

[122] Kowalik-Bańczyk and Pollicino, 'Migration of European Judicial Ideas concerning Jurisdiction over Google on Withdrawal of Information', 17 *German Law Journal* (2016) 315, at 335.

For example, in the digital sphere, on the path to joining the European Union, Ukraine adopted the Law on Electronic Identification and Electronic Trust Services (No. 2155-VIII (2017)), which mirrors the standards declared by Regulation (EU) No. 910/2014 (eIDAS)[123] (in 2022, amendments were made to the law regarding the possibility in Ukraine to recognize the status of European qualified electronic signature providers, the status of qualified electronic signature means or seals used by European qualified providers when providing electronic trust services), which will significantly simplify interaction with representatives of European business.

Also, to integrate with the European internal market at the regulatory level, the Law of Ukraine "On Payment Services" No. 1591-IX (2021)[124] was adopted, which was harmonized with PSD2 (EU Directive 2015/2366)[125]. This law created the conditions for the transition of the Ukrainian payment infrastructure to the international payment message exchange standard ISO 20022, which is the basis for the functioning of European payment systems. This example illustrates how the prospect of closer economic and political integration facilitates the convergence with European legislation. By transposing European Union Directives and Regulations into domestic legal system the third countries reduce legal uncertainty for cross-border trade. In turn, this process externalises European legislation, originally designed for internal market. This also indicates that countries on the path to joining the EU are following European standards and making changes to their legislation to better integrate business, as well as to simplify the conditions for the functioning of the market, especially regarding the digital market and the sale of electronic goods and services on the Internet. These reforms not only accelerate the process of harmonisation legislation with EU legislation but also allow the European Union to expand its influence in the political and economic areas more quickly through improved conditions for market interaction between private and public companies.

A second channel for extraterritorial influence is influence on international organisations and global norms. In certain areas, specifically when it comes to the digital market's area and the regulation of the Internet and related issues such as data protection, European Union plays as a role model for adopting and developing their policies and guidelines. Not only is it applicable to countries, but also to international organisations such as the United Nations High Commissioner for Refugees

[123] European Parliament and Council (2014) *Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC. Official Journal of the European Union*, L 257, 28.8.2014, pp. 73–114. Available at: https://eur-lex.europa.eu/eli/reg/2014/910/oj

[124] Verkhovna Rada of Ukraine (2021) *Zakon Ukrainy "Pro platizhni posluhy"* [Law of Ukraine "On Payment Services"], No. 1591-IX, adopted 30 June 2021. *Vidomosti Verkhovnoi Rady Ukrainy*, 2021, No. 39. Available at: https://zakon.rada.gov.ua/laws/show/1591-20

[125] European Parliament and Council (2015) *Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC (Text with EEA relevance). Official Journal of the European Union*, L 337, 23.12.2015, pp. 35–127. Available at: https://eur-lex.europa.eu/eli/dir/2015/2366/oj

(UNHCR), the International Committee of the Red Cross (ICRC), etc in adopting their policies and rules, for example throughout the Handbook on Data Protection in Humanitarian Action[126], written by the ICRC and the Brussels Privacy Hub. The handbook mostly influences non-governmental organisations in their operation in the field of data protection in digital area, ensuring the protection of human rights in the internet sphere. By incorporating concepts, principles and safeguards, actors such as ICRC or UN agencies help to diffuse European approaches across diverse institutional settings. This indicates that the European Union influences not only individual jurisdictions, but also non-state organizations, thereby gradually moving international law in general towards harmonization with European standards, both in the field of protection of fundamental human rights and in other areas.

Another way of applying European legislation in different jurisdiction can be the private sector compliance and market pressure. As Christopher Kuner notes "EU legal standards have also influenced private sector practices in third countries and international organizations, as can be seen in the example of data protection"[127].

Since the main players in digital markets are representatives of the private sector, such as private companies, representatives of small and medium-sized businesses, they can often adapt a European approach to conducting their activities, to deepen cooperation with partners in the European market and distribute their services throughout the Union. Thus, a situation arises when, to expand their activities into the market, and specifically into the growing borderless digital market of the European Union and its customers, businesses choose to adhere to established practices and standards set by the European Commission. This may concern compliance with the GDPR rules in the field of data protection when operating websites and various online markets, since according to the Article 3, GDPR rules apply not only to those located directly in the European Union, but also to those organizations and individuals who distribute their services to European consumers or the European market.[128]This provision creates a powerful compliance pull, since companies that are oriented on European customers cannot avoid the application of European Union standards. As a result, many companies find it cost-efficient to adopt GDPR standards, rather than stick to different regimes. Thus, the private sector transforms regional instrument into an international standard for data protection.

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[126] **INTERNATIONAL COMMITTEE OF THE RED CROSS (ICRC).** (2020). *Data Protection in Humanitarian Action: A Handbook.* Geneva: International Committee of the Red Cross. Available at: https://www.icrc.org/en/data-protection-humanitarian-action-handbook (Accessed 30 October 2025).

[127] Scott, Joanne, and Marise Cremona, eds. *EU Law beyond EU Borders : The Extraterritorial Reach of EU Law*. First edition. Oxford: Oxford University Press, 2019. Print.

[128] European Union. 2016. Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation). Official Journal of the European Union, L 119, 1–88

The European Commission also promotes external convergence through conditional recognition mechanisms. Another way to encourage non-EU countries to adopt regulatory acts like those of the EU is to set EU conditions through a kind of permissive policy, i.e. providing benefits for establishing a positive compliance regime with European policy. For example, this applies to decisions by the European Commission on an adequate level of data protection. According to the European Commission from 2025, Andorra, Argentina, Canada (commercial organisations), Faroe Islands, Guernsey, Israel, Isle of Man, Japan, Jersey, New Zealand, Republic of Korea, Switzerland, the United Kingdom under the GDPR and the LED, the United States (commercial organisations participating in the EU-US Data Privacy Framework), Uruguay and the European Parent Organisation were recognized as providing adequate protection.[129] The method of issuing adequacy decisions by the European Commission is defined by Christopher Kuner as 'carrot and stick' method, where "'carrot' is the offer of extending preferential status to third countries once their data protection standards, and 'stick' is the fact that EU law permits the free flow of data to third countries only when they adopt EU standards.[130] Thus, the European Union, through indirect methods and political influence, extends the effect of the standards approved by it to foreign jurisdictions.

Overall, such approaches offer a significant help for market integration and expansion not only the regulatory influence of the European Union, but also its economic influence, involving more private businesses and jurisdictions in cooperation and controlling their activities using their legislative instruments. These mechanisms allow EU digital legislation to exercise an extraterritorial impact often without formal jurisdictional authority, by shaping legal framework and incentives.

This once again illustrates the importance of the Internet is in the modern world and how much the Internet controls the activities of society and affects activities in almost every area. Such methods of influencing the adaptation of legislative standards in the field of digital markets have become widespread largely because the regulation of the Internet, online platforms and related areas cannot be limited to one or a few countries, but must develop in a global context, since online activities, including economic ones, are borderless and include interaction between business representatives and customers often from different jurisdictions. This process illustrates the transformation of the European Union from a regional regulator into a global regulatory power. Digital legislation, or rather European standards in the field of digital legislation, are spreading to other jurisdictions at such a

[129] **European Commission (n.d.)** 'Adequacy decisions: How the EU determines if a non-EU country has an adequate level of data protection', *European Commission – Data protection (international dimension)*. Available at: https://commission.europa.eu/law/law-topic/data-protection/international-dimension-data-protection/adequacy-decisions_en

[130] Scott, Joanne, and Marise Cremona, eds. *EU Law beyond EU Borders : The Extraterritorial Reach of EU Law*. First edition. Oxford: Oxford University Press, 2019. Print

pace due to the need of online economic activities regulation, leading to a common denominator in the form of harmonization of principles and standards of regulatory regulation of the digital sphere.

The analysis of these mechanisms that extraterritorial effect of European Union's digital legislation is the result of interaction between legal design and economic incentives. Creating conditions for European Union accession, the diffusion of standards and market driven compliance contribute to extending European Union's rules beyond its borders, turning it into global shaper of digital norms.

3.3. THE EU AS A GLOBAL DIGITAL RULE-MAKER: THE "BRUSSELS EFFECT" AS AN EVOLUTIONARY STAGE

In the digital domain, powerful jurisdictions often shape global norms through the unilateral rulemaking. The European Union's digital governance strategy also functions as a form of structural power, and positions European Union not merely as a regional market but as a global normative centre. The European union has emerged as a key actor on the global stage, playing a crucial role in shaping international law. Over the years, European law has developed and significantly influenced foreign legal systems and international standards. Through its regulatory instruments, the European Union has actively promoted and spread its values, interests and policies beyond its borders.

This phenomenon was first mentioned by Ian Manners in 2002 as a "normative power" of EU.[131] Ian Manners argued, that the constitution of the EU as a political entity has largely formed through an elite-driven, treaty based, legal order, its constitutional norms represent crucial constitutive factors determining its international identity.[132] Consequently, the European Union acts in a normative way in an international area, aiming to reshape global legislative norms and integrate its standards into an international system.

This effect can be seen not only through the European Union's goal of market integration and the creation of a barrier-free zone, but also through its contribution to the development of international law. The European Union effectively extends its standards and rules through international policy and reaches foreign legal regimes by its own regime and applying its own constitutional norms.

In recent years this phenomenon has become more widespread and has found expression under the name "Brussels effect". As it was stated by the A. Bradford, "the Brussels effect is European Union's unilateral ability to regulate the global marketplace[133]. In essence, this phenomenon refers to the way European Union regulations are spread to both market participants and regulators in other

[131] Manners, 'Normative Power Europe: A Contradiction in Terms?', 20 Journal of Common Market Studies (2002) 235.
[132] Ibidem
[133] Bradford, Anu. *The Brussels Effect: How the European Union Rules the World*. 1st ed. New York: Oxford University Press, 2020. Web.

jurisdictions, while they don't have any specific obligation to do so. [134] The Brussels effect can also be described as an ability to enact its own law and to enforce it within its territory and beyond and to be the normative model, setting standards across the international community. This concept aligns with the European Union's digital regulation, which often impose obligations irrespective of geographical origin as long as they apply to European users. The Brussels effect has become a strategic instrument of European Union's digital sovereignty.

From the beginning, European Union have integrated the common market by adopting common standards through the legislative instruments, since it was primarily European goal, to pursue integration and create a harmonised regulatory environment. Although a so-called Brussels-effect wasn't the main goal of the regulatory integration, however, over the years it happened to become a powerful tool in European Union's policy making.

A well-functioning digital market depends on an integrated and harmonised internal market. Therefore, the harmonised standards in terms of data protection, consumer protection, the functioning digital markets and electronic commerce is the key tool to ensure safe environment and consistent product standards in a cross-border trade. The adoption of the directives and regulations on the EU level has always served the aim to integrate the market and ensure free movement of goods and services across the Union, applied as well to the digital services and its cross-border movement. However, the flexibility of the EU's legislative acts, which allows member states to exercise freedom in the decision on how to achieve the goals best, is also preserved.[135] The flexibility of Directives and the direct applicability of Regulations create a system that balances harmonisation with national discretion.

Thus, the growing number of legislative acts adopted by the European Commission, as well as its role in the European Union, increases the weight of the so-called "Brussels effect", strengthening the global standards set by the European Union, and in turn also strengthening the influence of these standards on both internal politics between EU member states and foreign policy involving jurisdictions outside the EU.

A. Bradford identifies five elements, which are crucial for the "Brussels effect" to function, which are – market size, regulatory capacity, stringent standards, inelastic targets, non-divisibility.[136]

[134] Bradford, Anu. *The Brussels Effect: How the European Union Rules the World*. 1st ed. New York: Oxford University Press, 2020. Web.

[135] Ibidem
[136] Ibidem

The first important factor is market size. The reason why European Union is a large player that it can develop pioneering digital regulations and serve as a standard setter in the regulatory field is because of the size and the level of development of an integrated single market.

However, the presence of the Brussels effect is not explained only by the size of the market, but also by other aspects necessary for establishing dominance in the political and legal area. The presence of regulatory power and the ability to create institutions is also important, along with the ability of these institutions to make informed decisions, new regulatory rules, and ensure their effective implementation. Since the goal of the European Union is to create a single market, its institutions are empowered to make decisions concerning various aspects of the functioning of this market. The unification of the European Union's decisions is no less important. Since the creation of the European Community, thanks to the EU Treaties and the interpretations of the European Court of Justice, the role and level of authority of the European institutions have increased significantly, starting with issues of ecology and consumer protection, eventually reaching social policy, transport, privacy, etc. Due to the growing legislative power of the European Parliament and the European Commission, they have significantly contributed to the growth of the strength of European regulatory acts and the active dissemination of European standards to other jurisdictions.

In addition, it is also necessary to consider the possibility of a jurisdiction to set stringent rules. As for inelastic targets, they refer to products or producers that are non-responsive to regulatory change and hence tied to a certain regulatory regime.[137] This also applies to legislation in the field of digital markets, data protection, competition, etc. Such rules are based on the principle of "as far as it concerns the European market - this legislative act applies", which extends the effect of many instruments regardless of the jurisdiction of individuals or legal entities.

For the "Brussels effect" to work, it is necessary that other jurisdictions or corporations apply European standards worldwide. It is also necessary that the principle of non-divisibility be observed, which means the indivisibility of standards, policies and market behaviour of companies and states. Thus, when a state or corporation decides to apply the necessary European standards as the main ones and not to divide products, policies, etc., in relation to different jurisdictions, that is, now when the market for applying such a standard becomes the most profitable and leading, which allows companies not to divide their products for different markets, but to unify them under single requirements.

[137] Bradford, Anu. *The Brussels Effect: How the European Union Rules the World*. 1st ed. New York: Oxford University Press, 2020. Web

Thus, often the application of the principle of non-divisibility and the dissemination of European standards occurs due to the reluctance of companies to face compliance and reputational risks, even in the absence of a legal requirement to apply EU regulations.

Overall, the "Brussels effect" has become widespread precisely due to the growing power of the European Union, not only in terms of legislative powers, but also in terms of the growing power of the European economy and influence on foreign markets and jurisdictions. This is especially evident in the field of digital regulation, since this area concerns large corporations that benefit from operating in the European Union and, therefore, must adapt to the rules. Thus, the "Brussels effect" is a kind of indirect force of influence of the European Union on both private companies and foreign jurisdictions, which contributes both to the achievement of the European Union's goals - the creation of a common market - and to the further expansion of its international influence.

The Brussels effect represents an evolutionary stage in European Union integration, transforming a mechanism of harmonisation into an external regulatory power. Its impact is clearly visible in the digital area, as digital technologies become central to economic and political life.

CONCLUSION

The evolution of the European Union's digital market's lawmaking shows a gradual development from fragmented rules towards a comprehensive and integrated regulatory framework. It demonstrates how law has adapted to technological changes, as well as societal and economic transformation. From the early stages, the European Union has established foundations for the digital market's framework by adopting the Data Protection Directive, the E-commerce Directive. Such legislative acts were necessary to facilitate online cross-border trade and ensure the free movement of goods across the Member States.

However, the technological progress and the increasing power of online markets called for the establishment of more dynamic regulatory instruments, which led to the adoption of Digital Markets Act and the Digital Services Act. They established a part of a coherent legislative framework that provides for protection of fundamental rights in a digital sphere, enhance cross-border trade and cooperation between the users and online services providers. The establishment of the Digital Markets Act and the Digital Services Act has been the turning point in constructing coherent and unified digital framework. By adopting such legal acts, the European Union has moved from fragmented and sector specific approach towards an integrated and systemic digital regulatory framework. The evolution in the digital market's lawmaking reflects the changes that happened in the social, economical and digital area, and it also demonstrates the changes in the European Union's priorities. While the first legislative acts, such as the Data Protection Directive, the E-Commerce Directive, the telecommunications package, the e-Signature and eIDAS frameworks, PSD2 Directive have laid foundations for the establishment of digital market's framework, the GDPR, Digital Markets Act and Digital Services Act provided innovative approaches and finally reduced fragmentation in the regulatory framework, becoming a central pillar of new regime.

Over the years not only the mere regulatory rules have changed, but also the process of enforcement. The enforcement mechanisms have moved from the decentralized model to a centralized one, giving more power to the European Commission, enhancing the role of new cross-border cooperation tools and enhancing the use of modern enforcement mechanisms, such as regulatory sandboxes. Such evolution imposes a significant effect on the legal certainty and increases the impact European Union's legislation both domestically and internationally. Together, the established mechanisms seek to overcome the enforcement challenges and provide balance and provide clarity in the legal implementation.

In a global context, the European approach towards digital markets lawmaking differs from the ones of the United States and China. While the United States model remain market driven and Chinese

model is tied to the state control, the European model relies on ex ante regulation and seeks to protect fundamental rights and freedoms. Generally, because of the rapid online platform development and the pioneering role in the sector's regulation, the European Union's legislation has gained extraterritorial effect, making European Union a global standard-setter through several mechanisms, which can be described as a "Brussels effect". The newest digital markets legislative acts influence foreign legislative systems and harmonise international regulatory practices through an indirect influence. This proves that over the years European Union has gained a leading role in the governance of the digital economy.

Taken together, these findings allow us to answer the questions posed at the beginning. First, the European Union's digital markets framework has evolved from fragmented and sector specific towards a coherent and integrated that addressed digital market's challenges systematically. Second, enforcement has undergone a parallel transformation, becoming more centralised and involving more sophisticated tools and mechanisms to address rapidly developing technologies. Finally, such internal changes have enabled the European Union to become a global standard setter and exercise significant external influence.

However, despite the development of a coherent legal framework, the risks of fragmentation haven't disappeared. They lie in overlapping instruments, the enforcement challenges, and political disagreements.

In conclusion, the Thesis argues that the European Union has transformed its digital markets regulation from fragmented sectoral measures to a coherent and influential framework that shapes not only an internal market but also exercises extraterritorial effect and poses European Union as a digital rule's maker.

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SUMMARY

This thesis analyses the evolution of digital market legislation in the European Union from the early development of regulatory instruments to the establishing of a solid legislative framework in the recent years. The rapid growth of the technologies has influenced the development of online platforms, demanding to adapt legal architecture to technological progress and the expanding role of Internet in modern economic and social systems.

The first part of the thesis presents the evolutionary process of European Union digital market regulation, specifically the stages of development of certain legal acts. Particularly, it focuses on the early stages of the European Union's digital initiatives, which established a foundation for further lawmaking development by adopting the E-commerce Directive, the Data Privacy Directive, and other tools to safeguard the functioning of digital cross-border market. The legislative acts adopted at this stage laid a foundation for cross-border digital trade. The chapter presents a transition towards the Digital Single Market strategy and the adoption of the Digital Services Act and Digital Markets Act.

The second part of the thesis examines the institutional and procedural evolution of enforcement mechanisms, tracing the development from decentralised enforcement model to hybrid and centralised models applied. The chapter discusses modern mechanisms applied for more efficient law enforcement, cross-border cooperation tools, and how European Union interacts with international cooperation networks.

The third part of the thesis presents European Union’s digital legislation in a global context, comparing the evolutionary development of European, American, and Chinese approaches and demonstrating their differences. The chapter focuses on the extraterritorial impact of European Union’s rules, specifically the mechanisms through which digital legislation influences global practice.

Overall, the thesis concludes that the European Union has transformed its digital regulatory framework into a coherent system that aims to protect fundamental rights around cross-border digital market functioning. The thesis traces the development of European Union digital markets legislation from the early stages to the point where it shaped global regulatory trends, making the European Union a global standard-setter.