MASTER THESIS

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„The Digital Services Act Regulation 2022/2065: Did the European legislator enhance consumer protection by creating accountability for digital service providers?"

verfasst von / submitted by

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Summary of the Master Thesis:

This paper deals with the question whether the new liability and due diligence obligations on intermediary services, provided for in the Digital Services Act Regulation enhances consumer protection in the online services environment. To find an answer to this question, the paper firstly puts the new Regulation into the context of the previously existing legal framework on digital services providers. Afterwards, the purpose and objectives of the DSA are elaborated. Subsequently, the division of the legal provisions and their context will be presented. The implications of the new provisions for the different categories of intermediaries are being discussed thereafter. To reach the topic of consumer protection, the next chapter offers definitions and context explanations of the European consumer rights framework and makes a connection with the DSA Regulation. In addition, the issue of Disinformation and the fundamental right of freedom of speech are contrasted to highlight the different facets of consumer protection. Lastly, potential issues created by the DSA, in relation to consumer rights are being discussed and implications for future developments are being offered. The conclusion of the thesis entails the deduction that the DSA did enhance certain consumer protection rights by codifying and harmonising liability and due diligence obligations for intermediary services providers. Even though, the Regulation did not reach completely new standards of consumer protection, it does pave the way for a more regulated digital services environment, in which providers have to account for their services' activities.

Zusammenfassung der Masterarbeit:

In diesem Beitrag geht es um die Frage, ob die in der Digital Services Act-Verordnung vorgesehenen neuen Haftungs- und Sorgfaltspflichten für Vermittlungsdienste, den Verbraucherschutz im Online-Dienstleistungsumfeld verbessern. Um eine Antwort auf diese Frage zu finden, stellt das Papier die neue Verordnung zunächst in den Kontext des bisher bestehenden Rechtsrahmens für Anbieter digitaler Dienste. Anschließend werden Zweck und Ziele des DSA erläutert. Ferner wird die Aufteilung der Rechtsvorschriften und deren Kontext dargestellt. Danach werden die Auswirkungen der neuen Bestimmungen auf die verschiedenen Kategorien von Vermittlern erörtert. Um zum Thema Verbraucherschutz zu gelangen, bietet das nächste Kapitel Definitionen und Kontexterklärungen des europäischen Verbraucherrechtsrahmens und stellt eine Verbindung zur DSA-Verordnung her. Darüber hinaus werden das Thema Desinformation und das Grundrecht der Meinungsfreiheit gegenübergestellt, um die unterschiedlichen Facetten des Verbraucherschutzes hervorzuheben. Schließlich werden potenzielle Probleme, die durch die DSA in Bezug auf Verbraucherrechte entstehen, diskutiert und Implikationen für zukünftige Entwicklungen dargelegt. Das Fazit der Dissertation führt zu der Schlussfolgerung, dass das DSA bestimmte Verbraucherschutzrechte durch die Kodifizierung und Harmonisierung von Haftungs- und Sorgfaltspflichten für Anbieter von Vermittlungsdiensten gestärkt hat. Auch wenn mit der Verordnung keine völlig neuen Verbraucherschutzstandards erreicht wurden, ebnet sie doch den Weg für ein stärker reguliertes Umfeld für digitale Dienste, in dem Anbieter über die Aktivitäten ihrer Dienste Rechenschaft ablegen müssen.

I. List of Abbreviations

Abbreviation	Definition
AVMSD	The Audiovisual Media Services Directive
CJEU	Court of Justice of the European Union
DSA (Regulation)	Digital Services Act (Regulation)
DSM (Regulation)	Digital Services Market (Regulation)
ECHR	European Convention on Human Rights of the Council of Europe
EU	European Union
The Board	European Board for Digital Services
TERREG	The Regulation on preventing the dissemination of terrorist content online
VLOP	Very large online platform
VLOSE	Very large online search engine

II. Introduction

The big tech social media platform Twitter was founded less than 20 years ago, yet it reportedly made 5.1 billion U.S. dollars in 2022.[1] The most influential European Union legislation dealing with the conduct of digital service providers, the e-Commerce Directive, was introduced in 2000, six years before the establishment of one of the largest social networks of today's world.[2] As a result of the ever-growing importance of digital services providers, the European legislator decided to adopt modernized provisions on the conduct of intermediary service providers providing services within the Union.

On December 15, 2020, the European Commission proposed the Digital Services Act Package, which consisted of two draft proposals for the Digital Markets Act Regulation (DMA) and the Digital Services Act Regulation (DSA). This proposal indicated a modern shift in the European Union's strategy on accountability in the digital environment.[3]

The emergence of new and modern legislation on intermediary liability has been the result of a long-standing development in case law. The European Court of Justice as well as the national courts of the Member States offered new principles in their judgements on digital service providers and their accountability. In addition, discussions about content dissemination and the protection of digital services users developed over the last 20 years, since the adoption of the e-Commerce Directive. Finally, the European legislator came up with an answer to the rapidly changing digital environment for consumers with the adoption of the DSA Regulation.

The core issues dealt with in the DSA create a framework on accountability of digital services providers, with the aim to increasingly regulate online content. Therefore, this paper will focus on the new liability and transparency obligations imposed by the DSA Regulation and its impact on consumer protection.

As the new Digital Services Act Regulation creates accountability for digital service providers and the third-party content on their online platforms the following research question

[1] *Forbes*, Twitter Profile (*Forbes*, 1 January 2023) <https://www.forbes.com/companies/twitter/?sh=7e9df7a222a3> accessed 2 August 2023.

[2] 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 2 178/01.

[3] *Quinn*, Regulating Big Tech: The Digital Markets Act and the Digital Services Act (2021) 2 Dublin L & Pol Rev 2, 2.

arises: Did the European legislator enhance consumer protection by creating accountability for digital service providers?

To find an answer to this question, this paper will start with discussing the reasoning behind the usage of certain methodological tools. Furthermore, the research structure will be presented. The first chapter will contain the legislative developments of the DSA Regulation. This includes the transformation from the e-commerce directive to the legislative framework of the DSA Regulation as well as a walk-through of the legislative process in the years upcoming to the adoption of the DSA. The next chapter will serve as an introductory and explanatory one for the legislative text itself. The different provisions within the Regulation will all be explained on the basis of the DSA text as such. Afterwards, the implications the new legislation has put forward for digital service providers will be discussed. A focus will be put on what rules Big Tech providers such as Twitter or Meta for instance will have to abide by. Subsequently, the topic of consumer protection will be introduced and placed into context with the DSA Regulation. A crucial part of the paper can be found in the next chapter, which will deal with an analysis of all the before mentioned parts, in the context of the main research question. Furthermore, possible future implications will be discussed. Finally, a conclusion of the paper will be included.

II.1 Methodology

This paper will take an analytical and comparative approach in analysing the Digital services Act Regulation and its relevant provisions. To find an answer to the research question, the paper will conduct an in-depth analysis of the DSA Regulation, while comparing the new specific rules introduced to previous legislation and the most common consumer protection issues.

This research paper focuses on analysing the scope of enhanced consumer protection provisions provided for by the DSA Regulation to determine if these adequately tackle the issue of consumer rights in the digital services market. Furthermore, as the Regulation aims at harmonising the regulatory rules of digital economy standards, a comparison to previous legislation will be made to establish whether the consumer acquis was enhanced by the adoption of the DSA.[4]

[4] *Chiarella*, Digital Markets Act (DMA) and Digital Services Act (DSA): New Rules for the EU Digital Environment (2023) 9 Athens JL 33, 34.

II.2 Research structure

The structure of the research will be conducted in three major categories. The first few chapters will deal with the introduction and explanation of the developments of the Digital Services Act Regulation and its legislative text. The second part will consist of discussing the possible issues that result from the introduction of the DSA in practice, especially the implications it holds for digital service providers. Lastly, the third category will be dealing with the final analysis of the discussed issues in the context of the main research question. For this purpose, a comparison between the various consumer protection provisions will be conducted.

III. Legislative Developments

The Communication 'Online Platforms and the Digital Single Market Opportunities and Challenges for Europe' was approved by the European Commission in 2016 in an attempt to highlight the growing relevance of online platforms for the digital European single market.[5] In the course of this notion, the Commission elaborated on the four main principles it considered crucial in the response to online platforms related issues: equal opportunities and obligations for equivalent digital service providers; reasonable conduct of providers, which protects important values; an online environment in which users can rely on transparency and fairness; markets which involve high amounts of data shall be open and equal.[6]

Built up on these principles, the Commission agreed on the Communication 'Shaping Europe's Digital Future' in 2020.[7] This Communication included the introduction of three major pillars for the development of the European digital market: "*(i) technology that works for the people; (ii) a fair and competitive digital economy; (iii) an open, democratic, and sustainable society.*"[8] Furthermore, the Commission pledged to introduce updated horizontal rules defining the obligations and mandatory requirements of digital service providers.[9]

In 2021, the Commission also approved the Communication '2030 Digital Compass: The European way for the Digital Decades', which was part of the Policy Programme "Path to the Digital Decade" and laid down rules to achieve a digital transition within the European Union.[10] This notion further specified the objectives set out in the Communication of 2020. Finally in 2022, the Commission issued a proposal to aim at transitioning the digital environment to a user and customer friendly space by including the principles and objectives set out in the process before.[11]

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[5] *Chiarella*, 'Digital Markets Act (DMA) and Digital Services Act (DSA), 34.
[6] *Chiarella*, 'Digital Markets Act (DMA) and Digital Services Act (DSA), 34.
[7] *Chiarella*, 'Digital Markets Act (DMA) and Digital Services Act (DSA), 34.
[8] *Chiarella*, 'Digital Markets Act (DMA) and Digital Services Act (DSA), 34.
[9] *Chiarella*, 'Digital Markets Act (DMA) and Digital Services Act (DSA), 35.
[10] *Chiarella*, 'Digital Markets Act (DMA) and Digital Services Act (DSA), 35.
[11] *Chiarella*, 'Digital Markets Act (DMA) and Digital Services Act (DSA), 35.

III.1 The E-Commerce Directive

To achieve an understanding of why the EU Commission decided to overhaul the previous legislation on online services by identifying and codifying the previously mentioned modern principles, it is essential to analyse E-Commerce Directive, in particular.

The Directive 2000/31/EC on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce'), was adopted by the European Parliament and Commission to establish a principle based harmonised legal framework for the European digital single market.[12] At the time, the main purpose of the Directive included the destruction of legal obstacles to digital commerce by implementing the free movement principles into the digital services and platforms space. The goal was to achieve harmonisation on legal certainty for consumers and providers as well as enhancing an environment for smaller companies within the digital market. Liability rules included not only service provider but extended to online intermediaries, which deal with facilitating goods and services. The E-Commerce Directive established a widely applicable legal framework covering various digital service platforms.[13]

However, the Directive included a liability exemption notion, which led to multiple inadequacies concerning the practical harmonisation of liability rules in the different Member States. Articles 12 to 15 of the E-Commerce Directive laid down the "Safe Harbour" rules, which allowed for liability exemption under certain conditions.[14] These rules were implanted differently into the domestic legal frameworks by the Member States, which led to non-harmonised case law and eventually legal uncertainty of the concrete liability exemption rules. The development of these divergencies is a result of the varying degrees of interests Member States placed on issues such as business interests and consumer rights. Additionally, the European Court of Justice (CJEU) failed in providing specific interpretations and guidelines on the liability exemption mechanism and to therefore harmonise the application of these rules.[15]

[12] 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 2 178/01.
[13] *Hoffmann/Sagar*, Intermediary Liability in the EU Digital Common Market – from the E-Commerce Directive to the Digital Services Act (2021) 34 Innovation and Development Policy 1, 3.
[14] 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 2 178/01, art 12-15; *Hoffmann/Sagar*, Intermediary Liability in the EU Digital Common Market, 3.
[15] *Hoffmann/Sagar*, Intermediary Liability in the EU Digital Common Market, 3.

The CJEU case *L'Oreal v eBay* can illustrate this argument, as it dealt with unlawful content uploaded on the platform eBay by users.[16] The Court of Justice ruled that no liability exemption applies for eBay as they were or should have been cognisant that the content was illegal and should therefore have taken action to remove it. This was a result of eBay being considered an 'active' platform by the Court. This led to the conclusion, that online marketplaces had to either increase their budget to contest unlawful content on their websites or to become less 'active' to be able to rely on the exemption rules. Moreover, the Court ruled that active online marketplaces have additional due diligence in monitoring the content on their websites regarding their lawfulness.[17] However, article 15 of the E-Commerce Directive exempted intermediary providers from such monitoring obligations.[18] Furthermore, French national courts called for due diligence obligations for online service providers in opposing copyright infringements. This led to additional legal uncertainty for internet service providers operating in multiple Member States, as the liability rules were further fragmented within the single market.[19]

Even though, case law development called for the establishment of a harmonised system for digital service providers to monitor and take down unlawful content, the Directive did not offer any guidelines on how to approach the issue. As a result, Member States developed their own mechanisms for dealing with platforms taking down content. These practices differed immensely from State to State, with some Member States establishing national regulatory bodies to monitor the mechanism, which led to further discrepancies in the practical application of the take-down system.[20]

While the *L'Oreal v eBay* judgement mirrored the developing changes in perception on how liability and due diligence obligations of digital service providers, and specifically intermediaries, should be increased, the text of the E-Commerce Directive did not provide for sufficient guidance on this matter.[21]

[16] C-324/09 *L'Oréal v eBay* [2011] EU:C:2011:474.
[17] C-324/09 *L'Oréal v eBay* [2011] EU:C:2011:474; *Hoffmann/Sagar*, Intermediary Liability in the EU Digital Common Market, 3.
[18] 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 L178/01, art 15.
[19] *Hoffmann/Sagar*, Intermediary Liability in the EU Digital Common Market, 3.
[20] *Hoffmann/Sagar*, Intermediary Liability in the EU Digital Common Market, 3.
[21] *Hoffmann/Sagar*, Intermediary Liability in the EU Digital Common Market, 3.

III.2 Other Relevant Applicable Legislation

In addition to the E-Commerce Directive, some additional relevant legal framework on cross-border online content should be examined. An important role play the rules on fundamental rights and freedoms, which are laid down in the European Convention on Human Rights of the Council of Europe (ECHR) and in the European Union Charter of Fundamental Rights.[22] First and foremost, the right to human dignity is an absolute right, that has to be protected in the online environment to the same degree as outside the digital world.[23] The violation of this right online can appear in many different forms, including the upload of audiovisual content degrading or bodily harming any individual. Furthermore, the protection of minors is another fundamental right, which must be preserved in the digital media environment. The protection of minors online consists of two dimensions. Firstly, access to harmful content by users which are minors must be regulated and limited. This includes protecting minors from predators. Secondly, the depiction of minors online must be closely monitored, including removing any content that portrays children in damaging ways, to ensure their safety. This requires the establishment of monitoring bodies and obligations on digital platforms.[24]

However, other fundamental rights include the freedom of expression information.[25] This right in addition to commercial interests' rights, have to be protected within the digital single market as well. Therefore, it is crucial for lawmakers to ensure that the rules on regulating the content online which are established to protect certain fundamental rights do not result in the infringement of other rights.[26] This can be illustrated with the example of the fundamental rights of human dignity and the freedom of expression. Both rights require States to actively prevent their breach, including by actions conducted by their own State bodies. Nevertheless, these two rights can collide in numerous situations, particularly online. If State bodies request

[22] Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR); Council of the European Union, *Charter of Fundamental Rights of the European Union* (2007/C 303/01), 14 December 2007, C 303/1; *Cole/Etteldorf/Ullrich*, Updating the rules for online content dissemination: legislative options of the European Union and the Digital Services Act proposal (2021), 81.
[23] Council of the European Union, Charter of Fundamental Rights of the European Union (2007/C 303/01), 14 December 2007, C 303/1, art 1; *Cole/Etteldorf/Ullrich*, Updating the rules for online content dissemination (2021), 81.
[24] *Cole/Etteldorf/Ullrich*, Updating the rules for online content dissemination (2021), 82.
[25] Council of the European Union, Charter of Fundamental Rights of the European Union (2007/C 303/01), 14 December 2007, C 303/1, art 11.
[26] *Cole/Etteldorf/Ullrich*, Updating the rules for online content dissemination (2021), 82.

the removal of content online to protect one right, it is crucial to evaluate beforehand whether the removal of it will breach the other right.[27]

Therefore, any action being taken, which results in an interference with fundamental rights must be weighed upon between the conflicting interests. The proportionality principle plays a crucial role in the regulation of the online environment. As intermediary service providers are more likely to experience such conflicts on their platforms, their inclusion in EU legislation on regulating content online is vital.[28]

Lastly, other important regulations concerning in particular the removal of online content include: The Audiovisual Media Services Directive (AVMSD), the P2B Regulation, the Directive on copyright and related rights in the Digital Single Market (DSM Regulation) and the Regulation on preventing the dissemination of terrorist content online (TERREG).[29] The AVMSD provides for basic rights and rules of online platforms as well as for their precise definitions. It sets out minimum obligations for media services and guidelines for Member States.[30] The P2B Regulation contains obligations for intermediary providers to ensure transparency and fairness. Specifically, this regulation is aimed at guaranteeing these rights to business users of intermediaries.[31] The DSM Regulation offers rules on content removal concerning copyright infringements. It aims at ensuring proper financial compensation for copyright owners and the destruction of copyright exploitation online.[32] Finally, the intention of the TERREG regulation entails hindering the spread of online content, which is to be considered of terrorist nature.[33]

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[27] *Cole/Etteldorf/Ullrich*, Updating the rules for online content dissemination (2021), 82.
[28] *Cole/Etteldorf/Ullrich*, Updating the rules for online content dissemination (2021), 83.
[29] *Cole/Etteldorf/Ullrich*, Updating the rules for online content dissemination (2021), 91; Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 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) (Codified version) [2010] OJ L95/01; 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 [2019] OJ L186/57; Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC [2019] OJ L130/92; Regulation (EU) 2021/784 of the European Parliament and of the Council of 29 April 2021 on addressing the dissemination of terrorist content online [2021] OJ L172/79.
[30] *Cole/Etteldorf/Ullrich*, Updating the rules for online content dissemination (2021), 91.
[31] *Cole/Etteldorf/Ullrich*, Updating the rules for online content dissemination (2021), 96.
[32] *Cole/Etteldorf/Ullrich*, Updating the rules for online content dissemination (2021), 94.
[33] *Cole/Etteldorf/Ullrich*, Updating the rules for online content dissemination (2021), 91.

Concludingly, the removal of online content is a complex and wide-reaching issue, which cannot be regulated by one regulation but rather needs to be analysed by taking into account various different legislative areas and issues.

III.3 Formation of the DSA Regulation

Due to the complexity of the regulatory developments surrounding content dissemination and digital service provider liability, the Commission proposed the new Digital Services Act Regulation in December 2020. Subsequently, the regulation was subjected to the European Union's ordinary legislative procedure. The EU Parliament and the European Council had the option to propose amendments and therefore to develop their own positions. In November 2021, the Council adopted the General Approach, containing various changes to the Commission's proposal. The Parliament followed shortly after. Once the three institutions adopted their respective positions, the 'trilogue' negotiations started.[34]

In early 2022, the Parliament had published its position report, which exhibited general support for the proposal. However, at first the Parliament wanted to make severe changes of the legal text, in particular more specific obligations for service providers to increase consumer protection. During the positioning process the Parliament cut down on the size of their proposed amendments with the most notable one aiming at banning targeted advertising. Eventually, it demanded for the ban of targeted advertising towards minors instead. Nevertheless, the Parliament adopted various proposed changes amending almost every provision of the Regulation, which resulted in a lengthy negotiation phase until the final version was approved.[35] In April 2022, a first agreement has been reached by the three bodies, however in the months thereafter further discussions erupted which prolonged the regulation further.

Finally, on 5 July 2022 the Digital Services Act was approved by the European legislator. Together with the Digital Markets Act Regulation (DMA), the DSA is part of the Digital Services Act package. The DSA rules entered into force in November 2022, however the final

[34] *Couneson*, European Parliament pushes the Digital Services Act forward to the trilogues (*Linklaters*, 4th February 2022) <https://www.linklaters.com/en/insights/blogs/digilinks/2022/february/eu-european-parliament-pushes-the-digital-services-act-forward-to-the-trilogues> accessed 2 August 2023; The 'trilogue' is the negotiation phase between the European Parliament, Commission and the EU Council, which is part of the ordinary legislative procedure.

[35] *Couneson*, European Parliament pushes the Digital Services Act forward to the trilogues <https://www.linklaters.com/en/insights/blogs/digilinks/2022/february/eu-european-parliament-pushes-the-digital-services-act-forward-to-the-trilogues> accessed 2 August 2023.

deadline for Member States to establish digital services coordinators will be in February 2024. From then on, all DSA rules will apply to each regulated entity.[36]

[36] European commission, 'The Digital Services Act package' (European Commission, 6 June 2023) <https://digital-strategy.ec.europa.eu/en/policies/digital-services-act-package> accessed 2 August 2023.

IV. The Purpose of the Digital Services Act Regulation

After understanding the background of the regulation and its content, it is crucial to analyse the scope and application of the legislative text as well as the main purpose and objectives behind it.

Article 114 of the Treaty on the Functioning of the European Union (TFEU) served as the legal basis for the establishment of the DSA.[37] It allows for the creation of legislation ensuring the functioning of the internal market.[38] Accordingly, the DSA regulation is a horizontal approach to harmonise and modernise the legal framework for online service providers as set out in the previously mentioned e-commerce directive.[39] While aiming at overhauling the rules already established in the e-commerce Directive and replacing it, the DSA does not repeal but rather builds up on the former law.[40] The main focus of the DSA is set on regulating liability of online intermediaries, protecting online users and to lay down due diligence obligations for various online service providers. While doing so, the regulation falls under the subsidiarity and proportionality principles. Furthermore, the DSA does not affect existing EU legislation regulating features of the online environment but rather compliments them.[41] Examples of such laws can be found in the previously discussed chapter. Finally, the regulation does not define unlawful content or services. These definitions are set out in the European Union or domestic legislative frameworks.[42]

IV.1 Objectives of the Regulation

The purpose of the DSA is to harmonise the legal framework of cross-border digital services rules across the European Union. However, it's objectives are numerous and diverse.

First and foremost, it aims at creating a safe digital space in which users are effectively protected by their fundamental rights.[43] The DSA wants to achieve this by ensuring

[37] *Chiarella*, 'Digital Markets Act (DMA) and Digital Services Act (DSA), 37; Consolidated version of the Treaty on the Functioning of the European Union [2012] OJ C326/47, art 114.
[38] *Chiarella*, 'Digital Markets Act (DMA) and Digital Services Act (DSA), 37; Consolidated version of the Treaty on the Functioning of the European Union [2012] OJ C326/47, art 114.
[39] *Chiarella*, 'Digital Markets Act (DMA) and Digital Services Act (DSA), 43.
[40] *Turillazzi/Taddeoa/Floridi/Casolari*, The digital services act: an analysis of its ethical, legal, and social implications [2023] 15(1) Law, Innovation and Technology 83, 85.
[41] *Chiarella*, 'Digital Markets Act (DMA) and Digital Services Act (DSA), 44.
[42] *Chiarella*, 'Digital Markets Act (DMA) and Digital Services Act (DSA), 44.
[43] *Chiarella*, 'Digital Markets Act (DMA) and Digital Services Act (DSA), 36.

accountability for digital service providers, which will lead to an enhancement in fairness and transparency for users. The main regulatory tool used is the obligation for platforms to remove unlawful content and making them liable for content uploaded by third parties. Moreover, the DSA sets out rules for intermediaries to launch notice and takedown mechanisms, which allow users to flag and therefore notify providers about illegal content. These systems are required to be user-friendly in its application and usage. Lastly, another example on how the regulation aims at achieving enhanced user protection, is the notification requirement online platforms have to adhere to. This means that users must receive a notification about why they are being shown certain advertisements, to attain an understanding of how their data is used.[44]

Another objective of the DSA entails abolishing hinderances to innovation and execution of cross-border digital services, while strengthening national cooperation of supervisory bodies, which ultimately empowers the internal market. The rationale behind this objective can be explained by the previously fragmented application of content dissemination and intermediary liability rules in the different Member States and the national courts. It also serves as an explanation of why the European lawmakers decided to use the regulation format for the DSA. Unlike Directives, regulations are directly applicable in each Member State, which eliminates the threat of asymmetric transformations of the provisions into the domestic legal frameworks.[45]

The focus of the European legislator to harmonise the application of online service provider rules becomes increasingly relevant when taking a look at the Digital Economy Development Index.[46] While certain EU Member States rank high scores of established digital economies, such as the Nordic countries, other MS do not. Especially, Southeastern EU Member States show decreased levels of productivity due to less developed digital economies. This fragmentation, in addition to the uneven application of digital service provider rules, leads to legal uncertainty and high costs within the single market.[47]

To conclude, the objectives of the DSA regulation reach from enhancing consumer protection by ensuring to uphold fundamental rights and creating accountability for online platforms to supporting internal market growth by harmonising the application and enforcement of its provisions within the Union. Consequently, the DSA does not only focus on the

[44] *Quinn*, Regulating Big Tech: The Digital Markets Act and the Digital Services Act, 3.
[45] *Chiarella*, 'Digital Markets Act (DMA) and Digital Services Act (DSA), 36.
[46] *Turillazzi/Taddeoa/Floridi/Casolari*, The digital services act, 85; European Commission, ‘Digital Economy and Society Index (DESI)’ (European Commission 2022) <https://digital-strategy.ec.europa.eu/en/policies/desi > accessed 2 August 2023.
[47] *Turillazzi/Taddeoa/Floridi/Casolari*, The digital services act, 85.

establishment of a practical set of rules but moreover aims at advancing the areas of fundamental rights and freedoms as well as the European economic sphere within the online environment.

IV.2 The Objectives in light of CJEU Case law

The liability of online platforms for the content published on their websites remains to be one of the most crucial issues for the DSA in light of CJEU case law. The need of harmonisation of the liability rules emerged largely from the fragmented developments in European case law, since the adoption of the e-commerce Directive in 2000. As already established, the purpose of the DSA entails the preservation of the intermediary liability framework of the e-commerce Directive, while elaborating on the specific condition and exemption rules. However, the CJEU case law on this matter heavily influenced the overhauled liability regime of the DSA and its new provisions.[48] Therefore, the changes made by the regulation must be analysed in conjunction with the EU Court of Justice's rulings on intermediary liability.

Firstly, the concrete definitions of what intermediary services are as described in the DSA, did not change at all from the ones set out in the e-Commerce Directive. Similarly, an explanation on the non-existence of positive bases for liability can be found in Recital 17 DSA, which follows a CJEU judgement of the 2010 Case *Google France*.[49] Additionally, the DSA clarifies that liability exemptions do not differentiate between types of liability and unlawful content. This interpretation has never been contested before and therefore remains as part of a continuous approach by the DSA.[50] These continuations serve as examples of consistent application by the DSA on the basis of the e-Commerce Directive and CJEU case law.

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[48] *Wilman*, Between preservation and clarification: The evolution of the DSA's liability rules in light of the CJEU's case law (Verfassungsblog, 2nd November 2022) <https://verfassungsblog.de/dsa-preservation-clarification/> accessed 2 August 2023.

[49] C-237/08 *Google France* [2010] EU:C:2010:159; 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 L277/01, recital 17; *Wilman*, Between preservation and clarification <https://verfassungsblog.de/dsa-preservation-clarification/> accessed 2 August 2023.

[50] *Wilman*, Between preservation and clarification <https://verfassungsblog.de/dsa-preservation-clarification/> accessed 2 August 2023.

However, the DSA did not solely rely on prior case law in its rendition of intermediary liability rules. Article 6 DSA, contains a rule creating liability for online platforms, which are to be considered business to consumer marketplaces, thus enhancing consumer protection.[51]

These examples help with understanding in which ways the DSA relied on case law and the e-Commerce legislative text to create a new liability framework, while also proposing new concepts. This process can be further illustrated on the important issue of the activity rule.[52]

The DSA liability framework contains a provision allowing for liability exemption, if intermediaries fall under the category of a neutral service provider (Art 6).[53] This issue has been discussed by the CJEU in multiple judgements, including the cases *Google France* and *L'Oréal v eBay*, which highlights the importance of this matter.[54] The CJEU created the crucial criterion for intermediaries to fall under the liability exemption rule: Service providers must be efficiently neutral in their role as a platform, in so far as they cannot take an active approach towards the user's content, which could indicate that they have information or control over it.[55] The CJEU judgement *Google France* was based on an explanation in the e-commerce Directive, in which the requirement of passivity was mentioned for the liability exemption rule.[56] As the wording implicates that intermediaries needed to perform utter passivity in order to fall under the exemption, its application in the judgement became largely controversial. In contrast, for the *L'Oréal v eBay* case the Court did not refer to the passivity wording, which is why it is safe to assume that the DSA provision refers to this judgement rather than the *Google France* ruling.[57] Moreover, the DSA text explains that intermediaries can be active to the extent that it can ban presumed that they still do not have knowledge or control over the user's content.[58]

[51] *Wilman*, Between preservation and clarification <https://verfassungsblog.de/dsa-preservation-clarification/> accessed 2 August 2023.
[52] *Wilman*, Between preservation and clarification <https://verfassungsblog.de/dsa-preservation-clarification/> accessed 2 August 2023.
[53] *Wilman*, Between preservation and clarification <https://verfassungsblog.de/dsa-preservation-clarification/> accessed 2 August 2023.
[54] C-237/08 *Google France* [2010] EU:C:2010:159; C-324/09 *L'Oréal v eBay* [2011] EU:C:2011:474.
[55] *Wilman*, Between preservation and clarification <https://verfassungsblog.de/dsa-preservation-clarification/> accessed 2 August 2023.
[56] C-237/08 *Google France* [2010] EU:C:2010:159; *Wilman*, Between preservation and clarification <https://verfassungsblog.de/dsa-preservation-clarification/> accessed 2 August 2023.
[57] C-237/08 *Google France* [2010] EU:C:2010:159; C-324/09 *L'Oréal v eBay* [2011] EU:C:2011:474; *Wilman*, Between preservation and clarification <https://verfassungsblog.de/dsa-preservation-clarification/> accessed 2 August 2023.
[58] *Wilman*, Between preservation and clarification <https://verfassungsblog.de/dsa-preservation-clarification/> accessed 2 August 2023.

Whilst, the mentioned case law decisions are disputed, the activity criterion has now been codified by the DSA.[59]

To summarise, the DSA picked up on certain controversial issues surrounding intermediary liability and clarified their application, while maintaining many significant provisions from the e-commerce Directive and CJEU case law.[60] The DSA provisions will be explained in the following chapters.

[59] *Wilman*, Between preservation and clarification <https://verfassungsblog.de/dsa-preservation-clarification/> accessed 2 August 2023.
[60] *Wilman*, Between preservation and clarification <https://verfassungsblog.de/dsa-preservation-clarification/> accessed 2 August 2023.

V. Scope and Application of the DSA

The DSA consists of an extensive legal text, which is structured into five chapters and 93 Articles.[61] Chapter one contains the general provisions which describe the key terms used in the Regulation as well as laying down the rules defining the scope.[62] Article 1 defines the subject matter and aim of the Regulation, which can be found in the harmonization of rules in the internal market on the role of intermediary services in the online environment. In particular, paragraph 2 establishes: That the DSA contains specific rules on due diligence obligations for the respective intermediary service providers, a unified framework of liability exemption provisions as well as implementation and enforcement rules, which shall enhance the cooperation and coordination between the European and domestic authorities.[63]

Furthermore, article 2 sets out the rules defining the scope of the regulation. It applies to intermediary service providers which target consumers who are located in the EU (Art 2 para 1). The place of establishment of the intermediaries does not matter when determining if they are covered by this regulation. Therefore, large U.S. American service providers, for instance Twitter or Facebook will have to adhere to the rules laid out in the DSA, as long as they offer their services to European Union consumers. The last article within the first chapter defines various terms relevant for the regulation e.g., 'intermediary services' and 'online platform' (Art 3).

V.1 Chapter II of the DSA

Chapter II is concerned with the *ex-post* liability rules of intermediary service providers.[64] The first three articles contain the conditions under which mere conduit, caching and hosting service providers are exempt from liability for the third-party content they are storing and transmitting (Art 4-8).[65] This includes the neutrality requirement as explained above, which requires intermediaries to remain neutral towards their users content to fall under the exemption rule (Art 6 para 1).

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[61] 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 L277/01.
[62] *Chiarella*, 'Digital Markets Act (DMA) and Digital Services Act (DSA), 44.
[63] *Chiarella*, 'Digital Markets Act (DMA) and Digital Services Act (DSA), 44.
[64] *Buiten*, The Digital Services Act from Intermediary Liability to Platform Regulation (2021) 12 J Intell Prop Info Tech & Elec Com L 361, 366.
[65] *Chiarella*, 'Digital Markets Act (DMA) and Digital Services Act (DSA), 45.

The next article offers an exception to the neutrality rule, by exempting otherwise inactive platforms from any activity that involves voluntary initiative on removing and monitoring harmful content, as long as is it is being conducted in good faith (Art 7). This provision is also known as the ‘Good Samaritan’ rule.[66]

While article 8 explains that no positive obligation to monitor content applies, the following article contains a novelty provision, which orders intermediary service providers to act against illegal content after notification. Specifically, after they have received an order to act against illegal content by the relevant domestic body, an answer has to be transmitted containing information on if and when action has been taken against the content (Art 9 para 1). The order to act must contain a minimum set of specific elements, which shall be ensured by the Member States (Art 9 para 2). Subsequently, if providers receive an official order by EU or domestic authorities, they must provide the information requested (Art 10).

V.2 Chapter III of the DSA

The next chapter consists of the due diligence obligations for the various online platforms and is further divided into six sections. While the first section entails provisions concerning all types of intermediaries, the following offer additional provisions for only certain categories of intermediaries: online platforms, hosting services and very large online platforms (VLOPs).

Articles 11 and 12 require service providers to appoint specific contact points for EU and State authorities as well as for users. Especially, the contact points for consumers have to be user friendly, easy to access and its information has to be publicly available (Art 12 para 2). Intermediary service providers, which are not established in an EU member State but offer services within its territory must appoint either a legal or natural person situated in the EU to act as their representative (Art 13). Furthermore, all intermediaries have to provide a provision in their terms and conditions on the restrictions they can potentially impose on users in relation to information they have received from the customers (Art 14). Lastly, any content moderation performed by the providers has to be reported at least once a year and made publicly available (Art 15).

[66] *Wilman*, Between preservation and clarification <https://verfassungsblog.de/dsa-preservation-clarification/> accessed 2 August 2023.

Section 2 of chapter 3, focuses on additional provisions applicable to hosting service providers, including online platforms. Article 16, requires the defined hosting service providers to establish mechanisms for users to be able to notify the platforms of any potential illegal content. It must be possible to conduct these notifications electronically and the mechanisms have to be user-friendly and easy to access. Subsequently, hosting services have to notify and provide statement of reasons to users who have been restricted by the platform (Art 17 para 1). These statements must contain a list of minimum information, as described in paragraph three of the article. Finally, hosting service providers are obliged to contact and notify national law enforcement or judicial authorities, if they become aware of any possible criminal offences taking place, having been or might be conducted and posing a safety threat to anyone (Art 18).

V.2.1 <u>Section 3 of Chapter III</u>

This section provides additional provisions applicable to online platform providers. The first article in this section excludes small and micro platforms from having to comply with the provisions of section three (Art 19). However, all other online platforms are obliged to create internal complaint-handling systems, for users who wish to appeal restrictive decisions taken by the platforms against them or their content, in accordance with the previous DSA articles (Art 20 para 1). The complaint process has to be free of charge for the users and made available electronically (Art 20 para 3). Furthermore, users have to be notified about the final decision and made aware of the option of alternative dispute settlement (Art 20 para 5). The rules concerning alternative dispute resolution options are set out in article 21. Users have the right to choose any authorised form of dispute settlement to contest their claim. This also includes the option to bring the claim before an applicable court. Claims can also be brought forward by the service users, if the issue has not been resolved by the respective internal complaint-handling system (Art 22 para 2).

The DSA introduced the system of trusted flaggers in article 22. An entity can apply to the Digital Services Coordinator of the Member State in which the entity is situated to become a trusted flagger. If the applicant meets the conditions, such as particular expertise in the respective area and independence from online platforms, it will be appointed a trusted flagger (Art 22 para 2). If trusted flaggers notify online platforms of illegal content, their submissions have to be processed quickly and increasingly thorough (Art 22 para 1).

To protect the notice and takedown system from misuse, platforms are obliged to suspend users from taking advantage of their services, if they frequently submit unfounded notices (Art 23 para 2). Equally, users who recurrently upload illegal content must be suspended as well (Art 23 para 1).

Article 24, refers to the obligation set out in article 15 that online platforms have to regularly publish reports about the removal of illegal content. To ensure transparency on the dissemination of content, platforms have to provide information about alternative dispute settlement cases and the number of suspensions they imposed on users (Art 24 para 1). The information has to be made publicly available and the platforms have to report to the national Digital Service Coordinators or the European Commission on request (Art 24 para 3).

Online platforms are banned from designing their platforms in a way that could manipulate users in so far as they are not able to make free and informed choices concerning the services anymore (Art 25 para 1). Furthermore, online platforms which portray advertisement on their sites have to follow and adhere to additional rules. The advertisement must be clearly stated as such, the entity behind the ad must be made clear as well as potentially the natural or legal person which paid for it and information must be made available to the users explaining the reasoning behind why they are being shown the specific advertisements (Art 26 para 1). Additionally, platforms that use recommender systems must explain its functioning in clear language in the terms and conditions. Furthermore, users must be made aware of any options which would allow for the modification of their personal parameters (Art 27 para 1).

The final article of section three and therefore the last additional provision applying to online platforms only, concerns the protection of minors (Art 28). If the platform is accessible to minors, providers must take increased caution in protecting their high levels of privacy, safety and security on their websites (Art 28 para 1). Moreover, the targeted advertisement towards minors is fully prohibited by this provision (Art 28 para 2). However, this does not put an obligation on platform providers to process an increased amount of personal data to evaluate whether the user is a minor (Art 28 para 3).

V.2.2 <u>Section 4 of Chapter III</u>

This section lays down additional rules applicable to specifically online platforms, which allow consumers to conclude distance contracts with trader. Once again, micro and small enterprises are excluded from the additional provisions of this section (Art 29).

Online platform providers allowing consumers to conclude distance contracts with traders have to ensure that they have obtained a list of information about the trader before they are allowed to conclude contracts with users in the European Union (Art 30 para 1). After having received this information, platform providers are obliged to verify the information with the help of online available data bases. This is to guarantee the traceability of traders (Art 30 para 2). Additionally, platforms have to be designed in way which enables traders to meet their obligations (Art 31). Lastly, platform providers must inform consumers of the illegality of purchased items, when they become aware of it (Art 32).

V.2.3 <u>Section 5 of Chapter III</u>

Section 5 introduces additional provisions applicable to very large online platforms (VLOPs) and very large online search engines (VLOSEs). Article 33 defines VLOPs and VLOEs as service providers with on average more than 45 million monthly users in the European Union. These providers have to conduct regular risk assessments on possible threats emerging from their services, impacting users within the Union (Art 34). If any risks are identified, providers are obliged to take appropriate measures. These solutions have to be proportionate and should not breach fundamental rights (Art 35). Subsequently, a crisis response mechanism has been introduced by the DSA, which grants the Commission the right to order VLOPs and VLOEs to take specific actions. As described in article 36 paragraph 1, the Commission could adopt a decision to require the defined service providers to take one or multiple of the following actions:"

(a) *assess whether, and if so to what extent and how, the functioning and use of their services significantly contribute to a serious threat as referred to in paragraph 2, or are likely to do so;*

(b) *identify and apply specific, effective and proportionate measures, such as any of those provided for in Article 35(1) or Article 48(2), to prevent, eliminate or limit any such contribution to the serious threat identified pursuant to point (a) of this paragraph;*

(c) *report to the Commission by a certain date or at regular intervals specified in the decision, on the assessments referred to in point (a), on the precise content, implementation and qualitative and quantitative impact of the specific measures taken pursuant to point (b) and on any other issue related to those assessments or those measures, as specified in the decision.*"[67]

The Commission has to ensure that the crisis falls under the definition laid down in paragraph 2 of the article and that the required actions are appropriate, proportional and necessary (Art 36 paras 2 and 3).

Once a year and at their own expense, VLOPs and VLOSEs are subject to an independent audit, in which the compliance with multiple laid down rules is to be assessed (Art 37). In addition to article 27 DSA, applicable platforms that use recommender systems have to provide for at least one selection that is not based on profiling (Art 38). Building up on the advertising transparency rules for online platforms, VLOPs and VLOSEs have to publish and portray additional information about their advertisement mechanisms, following stricter formalities (Art 39). Furthermore, if requested very large online platforms and online search engines are to provide the Digital Services Coordinator or the Commission with data that is necessary to monitor compliance with the DSA (Art 40).

Another new obligation is the establishment of a compliance function, which consists of at least one compliance officer (Art 41 para1). The compliance function must be separated from the other operations within the company to ensure independence of the qualified compliance officers (Art 41 para 2). Lastly, additional provisions apply to VLOPs and VLOSEs concerning the publication of transparency reports in accordance with article 15 (Art 42). The Commission may also charge the platforms an annual supervisory fee to cover the costs of assessing compliance with this Regulation (Art 43).

[67] 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 L277/01, art 36 para 1.

V.2.4 Section 6 of Chapter III

The last section of this chapter lays down due diligence obligations for the supervisory entities, the Commission and the Board. These provisions include, the promotion of standard developments and voluntary codes of conducts (Art 44 and 45). To ensure proper application of the DSA regulations, the Commission shall encourage the creation of codes of conducts for online advertising and accessibility (Art 46 and 47). Furthermore, the Board can recommend that the Commission initiates proposals for voluntary crisis protocols (Art 48).

V.3 Chapter IV and V of the DSA

Chapter IV sets out provisions regulating implementation and enforcement as well as cooperation and sanctions. Section 1 provides for the rules on establishing competent authorities and Digital Services Coordinators (Art 49). Digital Services Coordinators must be implemented in every Member State and are designated with carrying out tasks as described in the DSA (Art 49 and 50). Moreover, Member States have to ensure complete independency of the designated authorities to guarantee autonomous decision-makings (Art 50 para 2). In this regard, the Digital Services Coordinators are vested with specific powers concerning the investigation and enforcement of rules on intermediaries and their actions (Art 51). Member States are to set out penalty rules for infringement of the Regulation by intermediary services (Art 52). If authorities determine any infringements, the respective service providers have a right to formally lodge a complaint with the Digital Services Coordinators (Art 53). However, if any intermediaries are to be found guilty of breaching the applicable provisions, affected users can seek compensation for any endured damages or losses (Art 54). Similar to intermediary providers, Digital Services Coordinators are obliged to write annual reports about their activities, including the number of complaints they have received and what actions were taken subsequently (Art 55).

Section 2 of chapter IV regulates the competency provisions. Whilst the Member States have exclusive jurisdiction over any intermediaries that are situated within their territory, the Commission enjoys exclusive powers to assess the conduct of very large online platforms and very large online search engines, in accordance with Section 5 of Chapter III (Art 56 paras 1 and 2). The following articles deal aim at ensuring close cooperation between the Digital Services Coordinators of each Member State. Digital Services Coordinators are obliged to assist authorities from other Member States with any information requested (Art 57). Moreover, if States suspect any breaches of the Regulation by intermediaries that are situated in other MSs, their authorities may request an investigation of said intermediary (Art 58 para1). The receiving authorities have to inform the requesting Digital Services Coordinators of the result of any investigatory measures within a period of two months (Art 58 para 5). In case of conflict or if the receiving authority did not adhere to article 58 paragraph 5, the requesting Digital Services Coordinator may refer the issue to the Commission (Art 59). It is also possible for Digital Services Coordinators to launch joint investigations, if an alleged infringement has occurred by an intermediary provider in multiple Member States (Art 60 para 1).

The DSA established a European Board for Digital Services (the Board) in Section 3. The Board serves as an independent advisory group of Digital Services Coordinators on the issue of supervision intermediary service providers (Art 61). It is comprised by appointed Digital Services Coordinators from different Member States and chaired by the Commission (Art 62 paras 1 and 2). Some of the main tasks involve the coordination of joint investigations, the issuance of recommendations and the promotion of the implementation of guidelines and standards according to the DSA (Art 63).

Section 4 provides additional provisions on the supervision, investigation, enforcement and monitoring of VLOPs and VLOSEs. As prescribed previously, the Commission has exclusive jurisdiction over very large online platform and online search engine providers (Art 56 para 2). To be able to carry out the tasks of supervising and monitoring these service providers, the Commission must develop sufficient expertise and capabilities in conjunction with the Digital Services Coordinators and the Board (Art 64). To ensure proper enforcement of this Regulation, the Commission may exercise its investigatory powers, as described in this section, even before launching official investigations (Art 65 para 1). Subsequently, if the Commission decides to initiate proceedings, it has to notify the Board and all Digital Services Coordinators of it (Art 66 para 2). If needed, the Commission may also request support from the national authorities to enhance the investigatory cooperation process (Art 66 para 3). When requesting information from affected intermediary providers, the Commission shall state the legal basis and purpose of the request as well as the option to have the decision legally revied by the CJEU (Art 67 para 3). In addition, the Commission is vested with the power to conduct interviews and inspections (Art 68 and 69). Interviews may be taken with any consenting legal or natural person for the purpose of collecting information (Art 68 para 1). The power to conduct inspections entails the option to search the business premises, records, IT-systems and to question staff (Art 69 para 2). If the Commission expects a breach of the regulatory provisions during the proceedings, it may issue interim measures to protect users from any possible harm (Art 70 para 2). Intermediary providers may also commit to ensure further compliance with the applicable provisions during the investigatory process (Art 71 para 1). If the Commission decides to make these commitments binding for the provider, the proceedings may be closed until reason emerges to reopen the investigations (Art 71 para 2). To monitor databases and algorithms effectively, the Commission may assign external experts and auditors with evaluating the content (Art 72). If the Commission finds an intermediary provider guilty of breaching either DSA provisions, interim measures or binding commitments, it shall issue a non-compliance decision (Art 73 para 1). As a result, the relevant intermediaries may be fined up to 6% of its total worldwide annual turnover (Art 74 para 1). Article 75 DSA lays down rules the Commission has to follow, when adopting a non-compliance decision. It stresses that the opinion of the Board must be taken into account and be considered before making the decision (Art 75 para 1). Furthermore, the authorities must establish an action plan for the fined intermediary provider, introducing necessary measures to end the infringement (Art 75 para 2). The imposition of fines and enforcement of decisions taken in accordance with articles 75 and 76 are limited to a time period of five years after the decision became final (Art 77 and 78). Any relevant decision must be published by the Commission, including the party names and the breached content information (Art 80). Before the imposition of fines or any action plans, the respective intermediary service provider has the right to access its files and issue a statement to the Commission (Art 79). However, if the Commission has already imposed penalties, the service providers may refer to the Court of Justice of the European Union for a review (Art 81). If the Commission exhausted all available remedies and the infringement persists, it may request the respective Digital Services Coordinator to act in accordance with article 51 (Art 82). Lastly, concerning the Commission intervention acts covered by this Section, the Commission can adopt implementing acts to account for the practical arrangements (Art 83).

Section 5 offers additional provisions on obligations for the Commission during the enforcement of the Regulation. Every competent European and national authority involved, including any individual working with these authorities are bound by the obligation of professional secrecy (Art 84). For this purpose, the Commission shall establish a secure information sharing system that can be used for communication, relating to the enforcement of this Regulation, between Digital Services Coordinators, the Commission and the Board (Art 85 para 1). Finally, consumers of intermediary services have the right to appoint a non-profit organisation to exercise users' rights conferred upon them by the DSA, on their behalf (Art 86).

While Section 6 of Chapter IV, deals with the exercise of delegation rights, Chapter V provides for the final provisions of the Regulation, governing the formalities (Art 87). The DSA amends the e-Commerce Directive and the Directive on representative actions for the protection of the collective interests of consumers (Art 89 and 90).[68] The Regulation shall be reviewed in February 2027, on the basis of its effects on numerous applicable issues (Art 91). Furthermore, while certain provisions are applicable from 16 November 2022, the complete Regulation will be applied from 17 February 2024 onwards (Art 93).

To conclude, the DSA offers rules on intermediary liability and its exemptions, targeted due diligence obligations for the respective categories of intermediaries and implementation and enforcement rules with a focus on cooperation.[69]

[68] 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 2 178/01; Directive (EU) 2020/1828 of the European Parliament and of the Council of 25 November 2020 on representative actions for the protection of the collective interests of consumers and repealing Directive 2009/22/EC [2020] OJ L409/01.
[69] *Chiarella*, 'Digital Markets Act (DMA) and Digital Services Act (DSA), 52.

VI. The Implications of the New Rules for Digital Service Providers

After the presentation of the new DSA provisions, it becomes important to understand the specific implications the Regulation has for intermediary service providers. The proposal claimed that the clarification of the guidelines by the CJEU as laid down in the e-Commerce Directive led to legal certainty and eventually to the emergence of new services within the single market.[70] As a result, the DSA aimed at preserving the general e-commerce framework, to enhance these developments.[71] Nevertheless, many new provisions were introduced and pose new implications on digital service providers.

One crucial introduction by the DSA, is the categorisation of intermediary service providers into four groups. The first category involves a general description of intermediary services, which are those offering network infrastructure. A specific category of intermediary services is hosting services, which supply external services through cloud spaces. Online platforms are another category established by the DSA. These types of intermediary service providers typically define social media platforms. Finally, the last differentiation of intermediaries applies to very large online platforms and online search engines.[72] This category is mainly based on the size of intermediary services, as they hold an important role in the digital market.

Additionally, the new DSA provisions entail obligations for all intermediary services providers, irrespective of their place of establishment as long as they offer services to consumers in the European Union.[73] This means that very large intermediaries such as Meta, Twitter or Google have to adhere to the DSA rules as well.

To better protect consumers within the digital market, the DSA achieved higher standards for intermediary providers to follow. In particular, the introduction of the due diligence, transparency and liability rules for intermediaries results in an increasing level of accountability for digital services providers.[74] Respective businesses will have to spend more time and budget on meeting their obligations.[75] While the DSA does not significantly increase

[70] *Buiten*, The Digital Services Act from Intermediary Liability to Platform Regulation, 369.
[71] *Buiten*, The Digital Services Act from Intermediary Liability to Platform Regulation, 370.
[72] *Turillazzi/Taddeoa/Floridi/Casolari*, The digital services act, 95.
[73] *Chiarella*, 'Digital Markets Act (DMA) and Digital Services Act (DSA), 39.
[74] *Chiarella*, 'Digital Markets Act (DMA) and Digital Services Act (DSA), 52.
[75] *Buiten*, The Digital Services Act from Intermediary Liability to Platform Regulation, 369.

the liability standards for hosting services providers, it does provide for additional due diligence obligations for online platforms.[76]

VI.1 Hosting Services Providers

The most notable addition of new rules for hosting providers is the introduction of the notice and takedown system, as explained in section 2 of chapter III. The DSA does not refer to the previously applicable takedown aspect but rather proposes a notice and action system. This also refers to the fact that for hosting providers to fall under the liability exemption rule, utter passivity in relation to the users' content is not required anymore. Nevertheless, these provisions on the liability regime for hosting services do not entail great changes. Moreover, the DSA harmonised the previously largely applicable liability exemption rules for hosting providers.[77]

While the Regulation does require hosting providers to implement user-friendly notice and action mechanisms, ensuring the protection of consumers fundamental rights, there is no obligation for providers to actively prevent the reappearance of illegal content. CJEU case law did provide for an obligation of hosting services to prevent infringements, however the DSA merely requires the temporary blockage of users, who repeatedly breach the law. Therefore, the active approach obligations for hosting services are rather lenient.[78]

Furthermore, providers have to adhere to certain standards and criteria in carrying out their notice and takedown obligations. They have to request defined information from users who report illegal content and are only allowed to eliminate that specific content. Subsequently, any removal of content must be reported to the respective user and justified in a written statement.[79]

VI.2 Online Platforms

The additional provisions for online platforms as laid down in chapter III section 3 are more extensive than the previous ones. Whilst small or micro enterprises are excluded, other online platforms are obliged to create a user-friendly complaint system, which allows users to request

[76] *Buiten*, The Digital Services Act from Intermediary Liability to Platform Regulation, 374.
[77] *Buiten*, The Digital Services Act from Intermediary Liability to Platform Regulation, 374.
[78] *Buiten*, The Digital Services Act from Intermediary Liability to Platform Regulation, 375.
[79] *Buiten*, The Digital Services Act from Intermediary Liability to Platform Regulation, 375.

a review of a decision taken to remove their content. As such decisions are not to be taken automatically, online platform providers have to employ staff and provide for manually driven systems. The obligation to notify law enforcement authorities in specific cases further adds on the accountability requirements, providers have to meet.[80]

Furthermore, the DSA aims at ensuring that consumers know about the possibility of resorting to alternative dispute resolution options, instead of referring to a court.[81] This might be disfavoured by platform providers as they have the means and experience to successfully come out of trial, in contrast to many consumers.[82]

New transparency obligations will lead to further costs for online platform providers. They must ensure that they acquire detailed information from the data traders they are working with. This is due to the DSA allowing users to request information about what their data has been used for and who holds information about it.[83]

VI.3 Very Large Online Platforms (VLOP) and Very Large Online Search Engines (VLOSEs)

Specifically, VLOPs hold large amounts of influence in the digital market, which increasingly leads to disadvantages for both smaller businesses and consumers. Consequently, the DSA Regulation aimed at introducing a framework for very large online platforms and search engines that prevents the abuse of power and supports fair competition as well as enhanced consumer protection.[84] Therefore, chapter III section 5 DSA created additional obligations for VLOPs and VLOSEs, besides the general provisions for all intermediaries.[85]

These additional provisions focus on due diligence specifically. One crucial adjustment is the introduction of the systemic risk management obligation. Very large platforms have to establish risk assessment systems to discover and mitigate any threats to consumers due to their services. The mechanisms must follow strictly defined criteria and consequently hold VLOPs to a high accountability standard.[86] On top of regulating their own assessments, VLOPs are also

[80] *Buiten*, The Digital Services Act from Intermediary Liability to Platform Regulation, 375.
[81] *Buiten*, The Digital Services Act from Intermediary Liability to Platform Regulation, 376.
[82] *Turillazzi/Taddeoa/Floridi/Casolari*, The digital services act, 98.
[83] *Buiten*, The Digital Services Act from Intermediary Liability to Platform Regulation, 376.
[84] *Buiten*, The Digital Services Act from Intermediary Liability to Platform Regulation, 376.
[85] *Chiarella*, 'Digital Markets Act (DMA) and Digital Services Act (DSA), 48.
[86] *Buiten*, The Digital Services Act from Intermediary Liability to Platform Regulation, 376.

required to submit to external evaluations conducted by the European Commission for which they have to pay additional fees as well.[87]

Furthermore, transparency obligations such as the disclosure of data used for recommender systems add to the responsibility requirements. To meet these obligations, businesses have to appoint compliance officers and develop compliance monitoring mechanisms.[88] All of these additional provisions lead to enhanced legal burdens on very large online platforms, for which they have to increase their monetary spendings to avert the risk of breaching their duties.

Concludingly, due to the strong influences VLOPs have on the digital market and in particular the public discourse, the DSA introduced the severest accountability, compliance and risk monitoring obligations on very large online platforms.[89]

[87] *Chiarella*, 'Digital Markets Act (DMA) and Digital Services Act (DSA), 47.
[88] *Chiarella*, 'Digital Markets Act (DMA) and Digital Services Act (DSA), 48.
[89] *Buiten*, The Digital Services Act from Intermediary Liability to Platform Regulation, 377.

VII. Consumer Protection

The European lawmakers aimed at placing consumers rights at the centre of the DSA Regulation. Enhancing the protection of fundamental European values and rights as enshrined in previous EU legislation was supposed to serve as the main motivation behind this Regulation. Moreover, guaranteeing fair competition in the digital market shall lead to even better protection of consumers interests.[90] However, as this paper aims at answering the question whether the DSA Regulation will enhance consumer protection in practice, the issue behind this topic will have to be elaborated on and analysed.

European consumer law is widely grounded in the harmonisation of national consumer protection laws. The Treaty on the Functioning of the European Union (Until 1 December 2009 EC Treaty) did not entail a foundation for consumer protection provisions until 1992. Today, article 114 TFEU serves as the legal foundation for the adoption of consumer law Directives.[91] European legislation on consumer protection rights have always been enacted in the form of Directives. As a result, provisions have to be transformed into domestic law and Member States are responsible for an effective adaptation. Moreover, most consumer rights Directive were based on the minimum harmonisation principle, which led to Member States potentially adopting stricter consumer protection laws than the ones provided for by the European lawmaker. Subsequently, the European legal landscape on consumer protection rights became fractured and decreasingly harmonised. Therefore, the Commission commenced with the *Acquis* review, which is a practice of analysing the current state of EU consumer law. The Commission identified various issues relating to consumer protection laws in the EU. Most notable were the differences in the wording of the domestic consumer laws, resulting in incoherent and ambiguous laws and the emergence of national laws filling the regulator gaps left by the Directives.[92] After years of discussions, the EU legislator adopted the Consumer Rights Directive 2011/83/EU, which aimed at modernising and harmonising the consumer rights legal framework.[93] For the first time, a consumer protection Directive also included contracts involving digital content, which were not supplied on a physical medium.[94] In the

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[90] *Turillazzi/Taddeoa/Floridi/Casolari*, The digital services act, 90.
[91] *Chiarella*, 'Digital Markets Act (DMA) and Digital Services Act (DSA), 48.
[92] *Reich*, Consumer protection strategies and mechanisms in the EU, in: Devenney and Kenney (eds), European consumer protection: theory and practice (2012), 6.
[93] *Jaroszek*, European Online Marketplace - New Measures for Consumer Protection against Old Conflict of Laws Rules (2015) 9 Masaryk U JL & Tech 21, 28.
[94] *Jaroszek*, European Online Marketplace, 28.

course of this chapter, the Consumer Rights Directive will be elaborated on and used for the comparative purpose of analysing if the DSA Regulation introduced new provisions protecting consumers.

VII.1 The Means of Consumer Protection by the DSA Regulation

The e-Commerce Directive was largely based on the presumption that intermediaries were neutral platform providers. However, since the adoption of the Directive in 2000 digital services providers have evolved into active players, influencing public debates and shaping opinions. Therefore, the need for a legal framework regulating obligations on accountable and responsible online platforms emerged. The DSA picked up on this development and codified the idea that instead of focusing on the behaviour of individuals online, the platforms should be held accountable for illegal third-party content. This is because online platforms hold more knowledge about their services and can therefore spot and remove illegal content easily and they have the financial means to establish such mechanisms. In contrast, the Consumer Rights Directive focused on traders and their obligations to follow transparency and information provisions. The burden of accountability was placed on traders to inform consumers about their rights. The shift to hold intermediary services provider and specifically very large online platforms accountable for upholding consumer rights, has been introduced by the DSA.[95]

While it has been established that the DSA Regulation aims at enhancing consumer protection, it must be explained which precise obligations and rights will achieve this goal. Applicable to all intermediary service providers, is the obligation to create contact points for consumers (Art 12). This provision creates accessibility for consumers, to be able to reach out to service providers. Moreover, the EU legislator wants to make sure that consumers can easily find all necessary information about the services they are using in the terms and conditions (Art 14).

The establishment of notice and takedown mechanisms for hosting providers serves as a mean to protect certain fundamental rights such as human dignity. These mechanisms are aimed at limiting unrestricted sharing of illegal and potentially harmful content (Art 16).

[95] *Lattanzi*, Average Consumers Navigating the New Digital Food Chain:
Influencers, Online Reviews and Rankings (2022) 33(7) European Business Law Review 1041, 1052.

Online platforms are burdened with increased numbers of obligations relating to the protection of consumer rights. For instance, they are required to develop internal complaint handling systems to allow consumers to appeal against removal decisions taken by the providers (Art 20). This provision exists because of European consumer protection standards. The DSA wants to avoid unjustified or unproportionate removals of content to increase, which is why users have the option to appeal any such decisions. This notion is also based on the protection of European fundamental rights e.g., the right to freedom of expression. Freedom of expression is not absolute in the EU and can be limited if it breaches other rights, however an assessment must always be made whether the dissemination of content is proportionate based on the right to freedom of expression.[96] The recommender system transparency requirement involves the issue of data privacy and consumer protection (Art 27). Data privacy is a sensitive topic and not easy to grasp for many consumers. As a result, the DSA wants consumers to have the option to receive information about how their data is being used by large platforms. In addition, the right to information about traders is based on the need to ensure full knowledge for consumers as well (Art 32). Finally, to protect consumers from falling victim to false perception about services, the strategy of compliance by design is strictly prohibited by the DSA (Art 31).

Very large online platforms and online search engines have to fulfil the strictest obligations, also in regard to consumer protection.[97] Transparency rules on online advertisement require platforms to publish information on the system behind showing advertisements to users (Art 39). This provision may allow consumers to understand what perceived data the provider attained and how it is being used to influence them. The obligatory risk assessment requirement shall also create a safer online environment for consumers, in so far as the goal is to prematurely disseminate any harmful threats to users or the public (Art 34).

Consequently, the DSA Regulation shifts the responsibility of ensuring consumer protection in the online environment to the intermediary providers themselves. The obligations on establishment of secure content removal, internal complaint and risk assessment mechanisms contribute to the upholding of consumer protection standards in the digital services environment.[98] However, whilst the introduction of all of these obligations for intermediaries pursue the aim of enhanced consumer protection, it needs to be assessed how far consumer rights were protected before the DSA adoption.

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[96] Council of the European Union, Charter of Fundamental Rights of the European Union (2007/C 303/01), 14 December 2007, C 303/1, art 11.

[97] *Lattanzi*, Average Consumers Navigating the New Digital Food Chain, 1051.

[98] *Lattanzi*, Average Consumers Navigating the New Digital Food Chain, 1051.

VII.2 Consumer Protection under Previous EU Legislation

While the Consumer Rights Directive and the Directive on Unfair Commercial Practices (UCPD) provide for general consumer protection provisions, the e-Commerce Directive and the DSA Regulation deal with consumer rights in the context of the digital services space.[99] To adequately determine the scale of enhanced consumer protection through the DSA introduction, the consumer rights provisions of all four EU laws will have to be compared and analysed.

The three major changes found in the DSA in comparison to the previous legislation with respect to consumer rights are: 1) The obligation on platforms to retrieve information from traders and to disclose it to consumers, 2) The need to verify such information and lastly 3) The absence of any obligation to immediately disclose the information after retrieval, unless ordered by public authorities.[100] These changes are based on the different approaches on consumer and business relationship and the accountability shift by the legal provisions. As the purpose of the DSA was to amend and overhaul the e-Commerce framework, changes on consumer rights provisions were to be expected. Nevertheless, it could be argued that the DSAs consumer protection efforts are inconsistent with the UCPD and Consumer Rights Directive.[101]

The Consumer Rights Directive emphases on the trader and consumer relationship in the e-commerce context, while the DSA focuses on intermediary responsibility. This means that according to the Consumer Rights Directive, traders using external online marketplaces to sell their services or products must disclose the obligatory information to the consumers directly. Even though traders might use the services of the online marketplaces to disclose such information, the online platforms are not responsible for the trader's information. However, in addition to online marketplaces, social media platforms increasingly offer traders and consumers to connect through their services. The Consumer Rights Directive obligates these

[99] 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 [2011] OJ L304/64; 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 2 178/01; 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 L277/01; Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive') [2005] OJ L149/22.

[100] *Cauffman/Goanta*,A New Order: The Digital Services Act and Consumer Protection (2021) 12 European Journal of Risk Regulation 758, 760.

[101] *Cauffman/Goanta*,A New Order: The Digital Services Act and Consumer Protection, 761.

platforms that serve as online marketplaces to disclose to the consumer whether the seller is considered a trader based on the information provided for by the businesses themselves.[102] Whilst the mandatory information disclosure provision by traders might be limited in scope, it could be argued that according to the Consumer Rights Directive online platforms already have an obligation to disclose trader information to customers, in their function as intermediaries.[103]

Additionally, the UCPD considers the non-disclosure of the identity of trader in the e-commerce practice as an unfair commercial practice. In particular, the disclosure of information on whether a third-party seller can be considered a trader might be used to determine if consumers have fallen victim to the unfair commercial practice of misleading omissions.[104]

These examples indicate that the European consumer protection framework already established many disclosure obligations on online platforms before the adoption of the DSA, even though the focus was traditionally set on transparency obligations for traders. The Regulation attempts to add to the already existing consumer acquis, by emphasising intermediary liability instead. Whilst the main aim of increasing transparency for consumers stayed the same, it remains to be seen how the differentiating provisions on online platform and trader accountability will cohere in practice.[105]

VII.3 Enhancing Consumer Trust

Consumer protection in the digital world leads inter alia to increased consumer trust. The European legislator wants its citizens to have trust in the formers ability to effectively protect consumers in the online environment. In addition, companies conducting business with

[102] 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 [2011] OJ L304/64, art 6; *Cauffman/Goanta*,A New Order: The Digital Services Act and Consumer Protection, 761.

[103] *Cauffman/Goanta*,A New Order: The Digital Services Act and Consumer Protection, 761.
[104] Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive') [2005] OJ L149/22, art 7; *Cauffman/Goanta*,A New Order: The Digital Services Act and Consumer Protection, 762.
[105] *Cauffman/Goanta*,A New Order: The Digital Services Act and Consumer Protection, 762.

consumers online might also wish for an enhancement of consumer trust, to increase their willingness to use their digital services.

One crucial topic the DSA needs to address to ultimately achieve increased consumer trust is the issue of data surveillance.[106] Over the years, many news headlines on data surveillance politicised the publics opinion on digital services providers.[107] To effectively combat the misuse of EU citizens data, the DSA introduced transparency obligations on the usage of recommender systems and online advertising.[108] While it is questionable in how far these disclosure provision will help in achieving a decrease in data misuse, they might enhance the general consumer trust, by platforms transparently revealing their advertisement mechanisms. These actions could encourage public discussions about data privacy and inspire further developments of regulatory frameworks.[109]

Additionally, public values such as the protection of minors must be coherently protected by the DSA provisions to receive consumer support. The Regulation achieved this by introducing a ban on targeted advertisement towards minors.[110] However, as discussed earlier the parliament proposed a ban on targeted advertisement in general, which was not included in the DSA. Such a provision could have immensely increased consumer protection and henceforth consumer trust.

Another aspect of the DSA that aims at enhancing consumer trust, is the introduction of clear enforcement rules of the Regulation. As described above, in the past enforcement rules on the liability regime of digital services providers have been fractured in the various Member States. This led to legal uncertainty for businesses but also for consumers as cross-border contracts were engaged in frequently. The harmonisation of the investigation and enforcement rules, could achieve increased confidence in the common European Union consumer protection framework.

Fair competition in the digital services landscape might influence consumer trust as well. The dominant position of few very large digital service providers and the EUs seeming

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[106] 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 L277/01, art 17.
[107] An example: DW, 'EU fines Meta €12 billion over data transfers to US' (*DW-Made for Minds*, 22 Mai 2023) <https://www.dw.com/en/eu-fines-meta-12-billion-over-data-transfers-to-us/a-65695990> accessed 2 August 2023.
[108] *Turillazzi/Taddeoa/Floridi/Casolari*, The digital services act, 96.
[109] *Turillazzi/Taddeoa/Floridi/Casolari*, The digital services act, 97.
[110] 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 L277/01.

incompetence in implementing fair competition principles into the online environment influenced consumers opinions negatively.[111] As a result, the DSA introduced a specific section with additional obligational for these dominant and very large online platforms and search engines.[112]

Concludingly, the DSA Regulation introduced a number of provisions that might influence consumer trust in the digital services market, whilst the specific impact on consumer protection will need to be constantly re-evaluated after the full adoption of the DSA Regulation.

[111] *Turillazzi/Taddeoa/Floridi/Casolari*, The digital services act, 97.
[112] 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 L277/01.

VIII. An analysis of the fundamental issues created by the DSA Regulation and implications for the future

Lastly, this chapter deals with an analysis of issues that could potentially arise as a result of the DSA adoption. Whilst the EU legislators tried to create a clear and forward legal framework on digital services providers, it is a long and compound Regulation with many provisions. As a result, the application of the DSA will give rise to many discussions and court cases.[113]

One risk that the European Union faces due to the enhanced legal obligations for online service providers, is that the European digital market may become decreasingly attractive for foreign companies.[114] The intermediary liability and transparency rules obligations put great financial duties on companies, if they want to offer services to EU customers and therefore have to abide by the DSA rules.

Especially, very large intermediaries that are established in the USA such as Meta or Twitter prefer the US regulatory system, which puts less strict obligations on them. In addition, the adoption of the DSA next to the DMA is creating an increasingly large rift between the comparability of the US and EU digital environment regulatory frameworks.[115] While this doesn't affect the consumers directly yet, the uneven standards for large digital services providers all around the world can lead to companies potentially leaving markets or changing their services in a disadvantageous way for users.[116]

Another issue resulting from the DSA adoption can be found in the application and enforcement of technical standards in the Member States. As discussed in a previous chapter, the EU Member States have different capabilities when it comes applying technical standards and enforcement structures. It remains to be seen, whether all States will be able to sufficiently and effectively enforce the DSA provisions[117]

[113] *Cauffman/Goanta*,A New Order: The Digital Services Act and Consumer Protection, 759.
[114] *Turillazzi/Taddeoa/Floridi/Casolari*, The digital services act, 86.
[115] *Quinn*, Regulating Big Tech: The Digital Markets Act and the Digital Services Act, 3.
[116] *Quinn*, Regulating Big Tech: The Digital Markets Act and the Digital Services Act, 4.
[117] *Cauffman/Goanta*,A New Order: The Digital Services Act and Consumer Protection, 759.

VIII.1 Enhancement of Consumer Protection in the future?

All of these previously discussed issues contribute to finding an answer to the research question: The adoption of the DSA Regulation enhanced consumer protection. On the one hand, the application of the DSA provisions protects consumers directly online as well as enhancing the protection of fundamental rights in general. Moreover, the opportunity for individuals to actively participate in safeguarding fundamental rights and EU law by being able to report content increases consumer trust and may lead to an advanced consumer understanding of the digital services space.

While at this point it is yet unclear, whether the DSA provisions offer enough consumer protection, constant re-evaluations are necessary to achieve an updated legal framework that matches the technological developments at the same time.

The application and enforcement of the DSA provisions might take some time to become sufficiently efficient. This is due to multiple factors such as differing national technical standards or the technical competencies of the digital services providers. However, as the goal of the DSA was to harmonise the legal framework across the single market, it is highly likely that the now created legal certainty will lead to a constant and unified development in applying and enforcing the Regulation. Consumer Protection in the online environment has many facets and cannot be fully achieved by adopting one Regulation. Nevertheless, the DSA guided the way to a safer and more clear digital space for European consumers.

IX. Conclusion

In Conclusion, this paper started with introducing the topic of the DSA Regulation and its impact on consumer protection. The first discussion evolved around the legislative developments of the DSA and other relevant consumer protection and e-commerce laws. The Online Platforms Communication was introduced and with it the fundamental principles, the European Commission wants to uphold in the digital environment: Equal competition rights, open markets, transparency and fairness.

Furthermore, the e-Commerce Directive was discussed in detail and inconsistencies in the legal framework were highlighted by analysing CJEU case law. The need for updated regulations was emphasised. By analysing a few other relevant legislative texts, it became clear that the online environment must protect fundamental rights and freedoms as well as special protection standards for minors.

The DSA Regulation underwent the ordinary EU legislative procedure, which involved a long trilogue procedure between the Commission, Parliament and Council, with the Parliament in particular submitting diverging amendments. The paper discussed the long legislative journey to the point of final adoption of the Regulation. The chapter outlined the necessity for a comprehensive legal framework on regulating the digital services sector.

Subsequently, the scope and application of the DSA was elaborated. Based on article 114 TFEU the DSA is aimed at harmonizing and modernizing the rules for digital services providers, while still maintaining the basic principles from the e-Commerce Directive. The DSA enhances liability and accountability for intermediary providers and requests increased transparency from the providers as well. Furthermore, the Regulation is aiming at boosting the single market growth by creating legal certainty, which in turn supports more innovations. CJEU case law influenced the DSAs' liability regime which codifies key concepts while introducing new provisions, such as the activity criterion. The paper explained in this chapter the importance of creating new legal frameworks, while relying on proven principles.

An important part of the research consisted of elaborating the different articles in the Regulation. The paper discussed the decision by the EU legislator to include varying provisions for different types of intermediaries. The different chapters within the DSA were highlighted and explained.

Furthermore, this paper drew conclusions from the previously discussed provisions on possible implications, these have for digital services providers. One important novelty was the introduction of the categorisation of very large online platforms. VLOPs and VLOSEs are deemed more powerful in the online environment, which is why they are subject to specialised provisions for which the Commission will monitor compliance.

Another important introduction is the mandatory implementation of notice and takedown mechanisms for hosting service providers, while removing the passivity requirement for liability exemption.

In summary, the complex implications of the DSA for various types of digital service providers were established. The Regulation introduced new obligations, enhancing transparency, and promoting user protection. The aim of balancing the safeguarding of fundamental rights and ensuring fair competition within the digital single market became clear by analysing the provisions and its' implications.

Subsequently, the paper connected the topic of consumer protection with the Digital Services Act Regulation. While the legislative intention behind the adoption of the DSA was to enhance consumer protection, the paper examined whether the provisions actually achieved this aim.

The introduction of measures such as contact points, transparency obligations, notice and takedown systems, and due diligence for intermediaries and platforms strengthened protection aims which in turn enhances consumer trust.

While the last chapter dealt with potential issues the DSA has created, it also offered a final conclusion on the research question. Legal certainty, the protection of fundamental rights and freedoms as well as increased transparency are all factors that lead to the conclusion that the adoption of the DSA led to an enhancement of consumer protection.

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