

European Law Blog

States as platforms under new EU (online platforms') law

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Published on: Jul 04, 2022

DOI: <https://doi.org/10.21428/9885764c.a456e2dd>

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The recent [political agreement](#) on the [Digital Services Act](#) (the “DSA”) means that, once officially released, it will formally introduce into EU law the term “online platforms”: These (according to the Commission’s original proposal, at least) are meant to be “*a provider of a hosting service which, at the request of a recipient of the service, stores and disseminates to the public information*” (art. 2, point (h) of the DSA), whereby a hosting service, in turn, “*consists of the storage of information provided by, and at the request of, a recipient of the service*” (point f). Therefore, between the DSA and the [Digital Markets Act](#) (the “DMA”), [that has also been recently finalised](#), a comprehensive framework for the regulation of online platforms is introduced in EU law, [the first of its kind both in Europe and internationally](#).

What if, however, this framework was applied to states themselves? What if states fell within the definition of an online platform within this context?

1. What is an online platform (in EU law)?

Platforms is a term that only recently entered forcefully not only the EU legislator’s but also general vocabulary: indicatively, [Google trends](#) indicate that interest was fairly low from 2004 until 2014 but has spiked since.

There is some repetition in the Commission’s definition: as seen, a “*hosting service*” is already defined in point (f), there is therefore no need to repeat “*which, at the request of a recipient of the service, stores*”. Accordingly, the “*recipient of a service*” is “*any natural or legal person who uses the relevant intermediary service*” (point (b)). Consequently, leaving aside the part of the definition of an explanatory nature (“*unless that activity is a minor and purely ancillary feature of another service and, for objective and technical reasons cannot be used without that other service, and the integration of the feature into the other service is not a means to circumvent the applicability of this Regulation*”), the definition should read: online platforms store and disseminate to the public information at the request of their users. The digital, online environment is implied.

2. The regulation of platforms

The EU’s first attempt to regulate online platforms came through the nick-named (since it does not constitute an “[eponymous](#)” EU act), “P2B Regulation” (Platforms-to-Business relations Regulation, [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](#)). In the [Commission’s words](#), the P2B Regulation is the “*first ever set of rules for creating a fair, transparent and predictable business environment for smaller businesses and traders on online platforms*”.

The P2B Regulation does not refer expressly to online platforms in its text (preferring the, timid, step of only mentioning the “*online platform economy*”). Instead, it uses the term “online intermediation service” to denote information society services that allow business users to offer goods or services to consumers (art. 2, point (2)).

In spite of the potential mix-up between the P2B and the DSA approaches (the DSA using the term “intermediary service” in an entirely different manner, to refer to “mere conduit”, “caching” and “hosting” services, art. 2 point (f)), the fact remains that, to the Commission’s eyes at least, online platforms are indeed regulated by the P2B Regulation, at least as regards their relationships with their business users. In effect, the DSA is expected to govern the other side of the spectrum, namely the relationships between online platforms and their users or consumers (although, admittedly, it also covers business users too).

3. Platform-specific rights

The EU legislator regulates online platforms in order to impose certain obligations upon them (much less to help them develop further or warrant their continued existence). From a B2B point of view, in the P2B Regulation the purposes of “*fairness, transparency and predictability*” are served through, indicatively, the requirement that online platforms communicate their rules and regulations in a plain and understandable manner, that if these rules change an appropriate notice period is observed, that any adverse actions taken by the platform (e.g. restriction, suspension or termination of an account) are justified and contestable, or that differentiated treatment is generally to be avoided.

A much more detailed and comprehensive protective framework is constructed by the combined forces of the DSA and the DMA, particularly for the largest online platforms, that are, aptly named, gatekeepers. This is to be expected, because in this case it is users (individuals) that are the beneficiaries of such beneficial treatment. In short, among others, the treatment of information found on online platforms needs to be carefully planned (in the sense that online platforms need to install takedown mechanisms, accompanied also by appropriate procedures so that affected parties can object to such takedown actions see Chapter III, Sections 1-3 of the DSA), and also risks need to be minimized (through risk assessments, or even crisis protocols, developed by online platforms or through the installation of compliance officers within their internal organisations, see Chapter III, Section 4 of the DSA).

From its part, the DMA discourages “practices that limit contestability or are unfair” (in its Chapter III). The list of what exactly such practices comprise is exhaustive, however a few among them stand out: for example, exclusivity (in the sense of locking-in users to specific platforms) or preferential treatment (as in ranking or access to “query, click and view data”) are discouraged, while interoperability (allowing other providers to access and work with the gatekeepers’ proprietary systems) is encouraged; also, users/individuals need to at all times be able to port their data to the platform of a competitor.

4. States as platforms

Could states be perceived as platforms? First of all, one could easily take away the digital part of online platforms: Although critical for the DSA/DMA purposes, the definition given in the DSA to online platforms may well apply in the real world too: platforms store and disseminate to the public information at the request of

their users. The user could be a citizen (or an individual, depending) and the public could be the whole wide world, both digital and natural.

A state viewed as a platform would then be the intermediary in an information flow from its citizens (users, individuals) to everybody else. Its role would be twofold: First, it would store information and, second, it would make them available to anyone interested. As such, its intermediation is critical, if not necessary: individuals have no means to store their information in some repository, at least in a secure and possibly permanent manner. Similarly, dissemination cannot be done by themselves, at least not effectively.

Both roles are critical to our lives. Information on our births, various personal or family statuses or deaths need to be somewhere stored for societies to function in the first place. Once safely stored, this information, enhanced with information on our employment, residence, taxes etc. needs to be transmittable, again for societies to function in any meaningful manner.

Accordingly, both roles are nuanced. Depending on the type of societies each one of us is (lucky or unlucky) to be living in, control of storage and dissemination of this information lies to a larger or lesser extent with the state concerned. In other words, what information is stored on the platform and how and when it can be re-used depends on the (democratic or not) society one lives in. The state-run platform may apply larger or smaller restrictions.

While this blog post [cannot constitute a political philosophy analysis on the various roles of the state over human history](#), it does invite a new perspective, enhanced by the digital. Online circumstances, and the primacy of the role of information (within the “[data is the new oil](#)” context) means that the role of the state perhaps needs to be reviewed (also) under this lens.

Is there any difference between (contemporary) online platforms, as perceived and regulated by the DSA and the DMA, and states? Yes, at least one that is of paramount importance, that of validation of the information concerned. States practically operate as platforms already: they already store, for example, our birth certificates and disseminate them to third parties at our own request. Essentially the only difference between that and what Facebook or Instagram do, that let us share, for example, our photos with our friends, is validation: States validate the information that they store prior to its dissemination while online platforms today (mostly) passively store and disseminate it. For example, my birth certificate is validated by the Greek state to whomever I wish it transmitted, whereas I may tag my photo on Facebook but Facebook has no other option than to accept my word that it is actually me appearing on it. (It is a different story, and discussion, whether the states basically own this information, because it is within their existence that it was created in the first place).

5. OK, so what if states are viewed as platforms?

What practical consequences can be drawn if states are viewed as platforms? While this is a preliminary analysis, a number of issues immediately come to mind. In essence, the whole discussion on platforms and

platformisation needs to be transferred from the market to the polis (political philosophy).

Evidently, the Commission's initiatives are predicated upon market logic. Specifically, the online platform economy and the dominance of online gatekeepers have imposed a protective regulatory approach whereby the market needs to remain contestable. Equating the state to a market would carry grave consequences to this understanding. The state does not need to be contestable, neither should its monopoly in relation to the provision of services to its residents be overthrown – at least, to this author's preferences. This is why the aforementioned regulatory initiatives by the Commission may serve as hints or insights as to a possible new role of the state, but cannot possibly constitute the end result of such thinking themselves. They open up new perspectives but do not provide final solutions. In other words, automatic substitution of online platforms in the texts of the DMA and the DSA by the state would be unthinkable.

Regardless of this new perspective, the role of a state as a, basically, service provider is not questioned. States, in one way or another (especially under the social contract theory), are basically a service provider to their citizens. A democratic state, for example, provides first and foremost safety and security, and then warrants all other basic individual rights. A developed state adds to the mix public infrastructures (roads, ports, airports), health and education. The list can get long (or short, depending on politics), however the fact remains that states basically provide services to their citizens.

Storage and dissemination of information is also a service. As said, it is a basic one performed inherently in any state ([see, for example, the “informational state” of Bourdieu, p.213](#)), therefore if there ever was a classification among services and types of states this would probably fall in the root category. However, what changes now, after some 3500 years of recorded human history other than, perhaps, the perspective, is the online environment.

Consequently, if states were viewed as platforms a basic proposition would be to apply whatever the EU legislator requires of online platforms to states as well. To a large extent this is already done: Accountability runs deep, at least in democratic states, through [separation of powers](#) and rule of law. There are, however, other rights that may be more disputed: The right to portability (meaning that anybody can change a platform/state at will) and thus abolition of exclusivity or the right to interoperability (meaning that states should enable other states to parallel administrative procedures) are perhaps harder for states to swallow. They therefore merit further analysis.

In addition, new developments may bring the role of states as platforms to the fore. Until today states merely digitise the off-line lives of their citizens, through e-government or similar applications. In essence, they strive to abolish the need for physical presence to perform administrative tasks, and thus increase productivity. At some point, however, this task will have been completed. If by then, assisted by technology and digital lifestyle, states start operating a digital space where their citizens could live in, their roles as platforms will forcefully come to the fore.

6. Some concluding thoughts

States as platforms is a development determined by the internet. While their role as intermediaries in information sharing has accompanied them since the [development of writing \(which, after all, it was developed for similar purposes in the first place\)](#), it is the internet that may transform the states' role in this regard. Particularly their relationship with their subjects/users/citizens may be affected. To begin with, one can start wondering which of the rights afforded to him/her by the EU legislator as imposed on Facebook or Instagram, he/she would also like to see imposed on their own state(s). The increased pace of digital transformation of our lives will unavoidably broaden this discussion even further.