The rise of the platform economy has created many opportunities but also challenges disrupting the economy, businesses, societies and our daily lives in a way not seen since the industrial revolution. These trends have been accelerated by the COVID-19 pandemic. With Amazon recording a USD 108.5 million turnover in Q1 2021 from USD 74.7 in 2020 and Alibaba over USD 1000 billion in business volume in 2020, there is a need to redress the balance.

Current EU rules on digital services have remained largely unchanged since the e-Commerce Directive of 2000, while recent developments such as the spread of illegal and harmful products (e.g. counterfeit goods) and content (e.g. hate speech, disinformation and misinformation) have come to dominate the debate over online platform regulation in the EU.

The Digital Services Act (DSA) and the Digital Markets Act (DMA) are the EU answer to updating rules for digital services. Both legislative proposals aim at fostering Europe’s key political objective of digital sovereignty through unleashing the potential of our Digital Single Market and ensuring safe, fair, open and accountable digital services according to the European values.
The DSA-DMA is a long-awaited legislative package which:

- safeguards a fair, innovation-friendly business environment while protecting the end users;
- effectively addresses the issue of level playing field for European and global online operators in the EU internal market by covering online operators irrespective of their place of establishment;
- prevents multiplying national legislation from fragmenting the internal market through maximum harmonisation.

On DSA

The EESC Employer’s group supports the balance achieved in maintaining the key principles of the e-commerce directive (liability exemption for technical intermediaries and prohibition of general monitoring obligations) and, at the same time, gradually reinforcing obligations of transparency and diligence depending on the type of intermediary service.

The country-of-origin principle enhanced by better coordination of Member States supervisory authorities must remain a core tenet of the legislation.

Our internal market was built on the mutual recognition of national legal frameworks which implies the trust that all Member States protect European consumers in different but equivalent ways. This trust explains the possibility of relying on the country-of-origin principle and, therefore, the opportunity for a company to grow in a single market on the basis of a single framework.

In parallel, as a means to further regulatory convergence in the internal market and avoid forum shopping for the optimal regulatory framework by certain economic operators, a further harmonisation effort of basic rules between Member States must continue as well as mutual cooperation and assistance, in particular between the country of origin where the service intermediary is established and the country of destination. To help in this direction, it could be proposed that the DSA includes the cooperation mechanisms that have been developed since 2000, such as the e-commerce expert group, the cooperation network for consumer protection and the use of the information system in the internal market.

On DMA

It ensures the right balance in terms of flexibility and legal security on the basis of the following four axes: i. a closed list of core services; ii. combination of cumulative qualitative and quantitative criteria to designate gatekeepers; iii. a set of immediately applicable obligations combined with some obligations requiring regular dialogues; iv. a specific tool (market investigations) to identify new gatekeepers, services or practices.

The cumulative approach in qualifying an online platform as a “gatekeeper” on the basis of three criteria: size, dependence of end users and durable position in the market must be maintained. Gatekeepers are platforms that have a significant impact on the internal market serving as an important gateway for business users to reach their customers.

The cumulative approach is essential as it safeguards the initial objective of the DMA which is to regulate only the handful of huge platforms that effectively call the shots on the internet. It is equally fundamental in order not to hamper through over-regulation the innovative potential and the consumer choice offered by nearly 10.000 smaller European online platforms which greatly contribute to Europe’s technological sovereignty.

TO GO FURTHER:

The DSA/DMA package has opened the way towards a level playing field for online operators but in order to fulfil this ambitious objective it is key:

- to ensure consistency of DSA and DMA with the rest of EU digital legislation, such as the General Data Protection Regulation, the Data Governance Act, the Platform to business Regulation, Copyright in the Digital Single Market and Audiovisual Services;
- to adapt the entire EU legal framework to modern digital challenges. Working conditions, taxation, customs duties, competition rules, consumers’ rights and circular economy legislation – a long list of EU rules have to be adjusted to the new online business models and activities.
- to establish the possibility of an SME Impact assessment in 2-3 years’ time after the adoption of the DMA and DSA in order to evaluate their effects on small and medium-sized companies.

TO BE AVOIDED:

- Any attempt to challenge or water down the country of origin principle will call into question the very foundation of our Internal Market. It will create strong legal uncertainty for many business operators and involve very substantial costs making the legislation even impracticable for SMEs.
- Going back on this principle would mean that any online operator marketing in several EU countries would have to comply with all national regulations (which are not sufficiently harmonized) as well as the rules of the country of destination. Thus, an online operator would have to monitor 27 national legal regimes in addition to complying with national rules.