

ERASMUS - INTENSIVE COURSES

"Fundamental rights, data management and online platforms' regulation: the new EU Digital Services Act (DSA)"

PROGRAM

1 week (2h/day: 11am-13am)

October 24-28 2022

1st Day

Offline and Online Digital Content regulation: what, why, how?

The EU Digital Services Act: an overview – liability of providers; due diligence obligation; and enforcement.

2nd Day

Fundamental/Human Rights and online regulation: normative conflicts emerging from horizontal relations and positive obligations in special

The scope and essential legal notions of online regulation: intermediary service providers; online platforms, consumers, traders, illegal content; content moderation and terms&conditions.

3rd Day

Liability of online service providers: general framework and exemptions;
The EU DSA divide between illegal content and harmful (and not illegal) content;
specific problems regarding privacy and freedom of expression (especially:
disinformation and hate speech)
Self-regulation, regulated-self regulation (co-regulation) and due diligence
obligations.

4th Day

Special regime for hosting providers: notice and action mechanisms;
Special regime for online platforms: internal complaint-handling system and
(out-of-court) conflict resolution;
Special regime for online platforms: trusted flaggers, traceability of traders, and
transparency obligations.

5th Day

National digital services coordinators, penalties and complaints;
VLOP (very large online platforms): systemic risks, recommender systems, data
access; compliance officers, transparency and enforcement.

A. Objectives

Some of the most important personal and professional activities in everyday
life are performed online through online service providers or are, at least,
supported in any way through online services. This has led to new legal
problems based on old legal structures such as liability, duties and rights.

Many countries are beginning to consider how such activities should be regulated. Is it a matter for the law of private relations between service providers and consumers? Is it a matter for the administrative law of the regulation of services of general interest? Or is it something hybrid? The European Union, through its Digital Strategy, has taken up the regulation of online services through the Digital Markets Act, dealing with a new generation of competition law, and the Digital Services Act, dealing with regulation of online service providers, framed by the EU Charter of Fundamental Rights, as previously it had done with the GDPR, concerning the processing of personal data. The EU DSA updates and profoundly revises the e-Commerce Directive. It is set to be the key law on regulating everyday use of online platforms and will undoubtedly set a standard for the rest of the world.

The course thus aims at providing:

1. a comprehensive approach to the new EU legal framework for the regulation of online service providers, after the Digital Services Act that will enter into force on January, 1, 2024.
2. an intensive, in-depth knowledge of the main legal issues addressed by the DSA.
3. a critical analysis of the most important legal procedures and rules adopted by the DSA to regulate online service providers and the relations between them and their users.

B. Methodology

1. An analytical approach is privileged. The Digital Services act will be read conjointly and chosen legal provisions will be analysed, both autonomously and systematically in order to understand the regulatory options of the normative authority and allow adequate interpretation and optimal norm retrieving.
2. Preparatory works, administrative agencies guidance and opinions, case law and specialised literature will be used to illuminate and foster the discussion on specific problems brought about by the provisions and their norms. CJEU and ECtHR case law will have a preponderant role where applicable.

C. List of Required Materials

1. Legal texts
 - a) The Digital Services Act (Regulation in final stages of approval; to be disclosed)
 - b) The e-Commerce Directive (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'))
2. Case-Law
 - 2.1. ECtHR

- a) Delfi AS v. Estonia, App. No. 64569/09, 16.06.15;
- b) Standard Verlagsgesellschaft MBH c. Áustria (n.º 3), App 39378/15, 07.12.21.

2.2. CJEU

- a) Case C-131/12, Google Spain SL and Google Inc. v Agencia Española de Protección de Datos (AEPD) and Mario Costeja González, 13 May 2014, ECLI:EU:C:2014:317;
- b) Case C-507/17, Google LLC c. CNIL, 24 September 2019 ECLI:EU:C:2019:77;
- c) Case C-18/18, Eva Glawischnig-Piesczek c. Facebook Ireland Limited, 3 October 2019, ECLI:EU:C:2019:821

3. Reports and other Documents

- a) European Parliament resolution of 20 October 2020 on the Digital Services Act and fundamental rights issues posed (2020/2022(INI))

4. Literature

- a) Essential reading:

EIFERT, MARTIN; METZGER, AXEL; SCHWEITZER, HEIKE; WAGNER, GERHARD, “Taming the Giants: the DMA/DSA Package”, Common Market Law Review, 58, 2021, pp. 987-1028.

FARINHO, DOMINGOS SOARES, “[Fundamental rights and conflict resolution in the Digital Services Act Proposal: a first approach](#)” in e-Pública, Vol. 9, n.º 1, pp. 75-103.

KLONICK, KATE, “The New Governors: the people, rules and processes governing online speech”, *Harvard Law Review*, Vol. 131, 2018, pp. 1598-1670;

D. Recommended Readings

BASSINI, MARCO, “Fundamental rights and private enforcement in the digital age”, *European Law Journal*, no. 25, 2019, p. 182-197.

BOYD, Danah M. and ELLISON, Nicole B., “Social Network Sites: Definition, History, and Scholarship”, *Journal of Computer-Mediated Communication*, 13, 2008, pp. 210-230.

CALLAMARD, AGNES, “Are courts re-inventing Internet regulation?”, *International Review of Law, Computers & Technology*, 31, no. 3, 2017, pp. 323-339.

DIJCK, JOSÉ VAN, POELL, THOMAS and de WAAL, MARTIN, “The Platform Society – Public Values in a Connective World”, Oxford, Oxford University Press, 2018

EIDENMÜLLER, HORST e ENGEL, MARTIN, “Against False Settlement: Designing Efficient Consumer Rights Enforcement Systems in Europe”, *Ohio State Journal on Dispute Resolution*, Vol. 29, N. 2, 2014, pp. 261-298.

EECKE, PATRICK VAN, “Online Service Providers and Liability: A Plea for a Balanced Approach”, *Common Market Law Review*, 48, 5, 2011, pp. 1455-1502.

ELKIN-KOREN, Niva and PEREL, Maayan, “Guarding the guardians: content moderation by online intermediaries and the rule of law in FROSIO, GIANCARLO (ed.) “The Oxford Handbook of Online Intermediary Liability”, Oxford, Oxford University Press, 2020, pp. 669-678

GEIGER, CHRISTOPHE and IZYUMENKO, ELENA, “Blocking orders: assessing tensions with Human Rights” in FROSIO, GIANCARLO (ed.) “The Oxford

Handbook of Online Intermediary Liability”, Oxford, Oxford University Press, 2020 pp. 566-585.

GEIGER Christopher; FROSIO, Giancarlo; and IZYUMENKO, Elena, “Intermediary liability and fundamental rights” in FROSIO, GIANCARLO (ed.) “The Oxford Handbook of Online Intermediary Liability”, Oxford, Oxford University Press, 2020, pp. 138-152.

GREGORIO, GIOVANNI DE, “Democratising online content moderation: A constitutional framework”, Computer Law & Security Review, 36, 2020, pp 1-17.

JØRGENSEN, RIKKE FRANK, “What Platforms Mean When They Talk About Human Rights”, Policy & Internet, vol. 9, N. 3, 2017, pp. 280-296

JØRGENSEN, RIKKE FRANK and PEDERSEN ANJA MØLLER, “Online Service Providers as Human Rights Arbiters” in Mariarosaria Taddeo and Luciano Floridi (ed.), The Responsibilities of Online Service Providers, Cham, Springer, 2017, pp. 179-200.

KELLER, CLARA IGLESIAS, “Policy by judicialisation: the institutional framework for intermediary liability in Brazil”, International Review of Law, Computers & Technology, vol. 35, no. 3, 2021, pp. 185-203

KLONICK, KATE, “The Facebook Oversight Board: Creating an Independent Institution to Adjudicate Online Free Expression”, Yale Law Journal, 129, 2020, pp. 2418-2499.

KOSSEFF, JEFF, “The Gradual Erosion of the Law that Shaped the Internet: Section 230’s Evolution Over Two Decades”, Columbia Science & Technology Law Review, Vol. 18, No. 1, 2016, pp. 1-41

LAIDLAW, EMILY, “Regulating Speech in Cyberspace Gatekeepers, Human Rights and Corporate Responsibility”, Cambridge, Cambridge University Press, 2015

LOUVEN, CLAIRE, “‘Verticalised’ cases before the European Court of Human Rights unravelled: An analysis of their characteristic and the Court’s approach to them”, Netherlands Quarterly of Human Rights, Vol. 38, N. 4, 2020, pp. 246-263

MARONI, MARTA, "The liability of internet intermediaries and the European Court of Human Rights", in Bilyana Petkova and Tuomas Ojanen (ed.), *Fundamental Rights Protection Online - The Future Regulation of Intermediaries*, Cheltenham, Edward Elgar, 2020, pp. 255-278

MCGONAGLE, TARLACH, "The Council of Europe and Internet Intermediaries: A Case Study of Tentative Posturing" in Rikke Frank Jørgensen (ed.), *"Human Rights in the Age of Platforms"*, Cambridge, Massachusetts, MIT Press, 2019, pp. 227-254.

"The changing geometry of European regulation" in FROSIO, GIANCARLO (ed.) *"The Oxford Handbook of Online Intermediary Liability"*, Oxford, Oxford University Press, 2020, pp. 467-485.

SAVIN, ANDREJ, "Regulating internet platforms in the EU - The emergence of the 'Level playing Field'", *Computer Law & Security Review*, 34, 2018, pp. 1215-1231.

STALLA-BOURDILLON, SOPHIE, "Internet Intermediaries as Responsible Actors? Why It Is Time to Rethink the E-Commerce Directive as Well", in Mariarosaria Taddeo and Luciano Floridi (ed.), *The Responsibilities of Online Service Providers*, Cham, Springer, 2017, pp. 275-.294

STALLA-BOURDILLON, SOPHIE and THORBURN Robert, "The scandal of the intermediary: acknowledging the both/and dispensation for regulating hybrid actors" in BILYANA PETKOVA and TUOMAS OJANEN (ed.), *Fundamental Rights Protection Online - The Future Regulation of Intermediaries*, Cheltenham, Edward Elgar, 2020, pp. 141-174.

STARCK, CHRISTIAN, "Human Rights and Private Law in German Constitutional Development and in the Jurisdiction of the Federal Constitutional Court" in in Daniel Friedmann and Daphne Barak-Erez, *"Human Rights in Private Law"*, Oxford, Hart Publishing, 2001, pp. 97

TADDEO, MARIAROSARIA and FLORIDI, LUCIANO, “New Civic Responsibilities for Online Service Providers” in Mariarosaria Taddeo and Luciano Floridi (ed.), *The Responsibilities of Online Service Providers*, Cham, Springer, 2017, pp. 1-12

“The Moral Responsibilities of Online Service Providers” in Mariarosaria Taddeo and Luciano Floridi (ed.), *The Responsibilities of Online Service Providers*, Cham, Springer, 2017, pp. 13-42

VENTURINI, JAMILA *et alii*, “Terms of Service and Human Rights: an Analysis of Online Platform Contracts”, Rio de Janeiro, Editora Revan, 2016

TAMBINI, DAMIEN; LEONARDI, DANILO; AND MARSDEN, CHRIS, “Codifying Cyberspace - Communications self-regulation in the age of Internet Governance”, London, Routledge, 2008

THOMAS WISCHMEYER, “‘What is illegal offline is also illegal online’: the German Network Enforcement Act 2017” in Bilyana Petkova and Tuomas Ojanen (ed.), *Fundamental Rights Protection Online - The Future Regulation of Intermediaries*, Cheltenham, Edward Elgar, 2020, pp. 28-56

WAGNER, GERHARD, “Private Law Enforcement Through ADR: Wonder Drug or Snake Oil”, *Common Law Market Law Review*, 51, 2014, pp. 165-194

WIMMERS, JÖRG, “The Out-of-court dispute settlement mechanism in the Digital Services Act - A disservice to its own goals”, *JIPITEC*, 12, 2021, pp. 421-441

YANNOPOULOS, GEORGIOS N., “The immunity of Internet Intermediaries Reconsidered?” in Mariarosaria Taddeo and Luciano Floridi (ed.), *The Responsibilities of Online Service Providers*, Cham, Springer, 2017, pp. 43-60.

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