TOOL BOX

for a renewed E-Commerce Directive for the 21st century

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Introduction

The E-Commerce Directive (ECD) was adopted exactly 20 years ago. At a time when the rapid and dynamic development of online services was not yet foreseeable. The most significant change since then is the constant access to different means of communication such as the smart phone – e.g. the iPhone, which was only introduced in 2007 – with app-based Internet solutions as well as the possibility of quickly processing large amounts of data or of transferring them globally. Considering the fact, that a product which changed not only the means for accessing Internet technology and solutions but also our societal needs permanently, was introduced roughly ten years after this Directive, one needs to keep in mind that this Directive indeed was not state-of-the-art then and is less so now. Digitalization ultimately changes the nature of products, the type of production and the place of production. It transforms traditional mass production into local micro-productions, turns consumers into producers at the same time and leads to oligopolies and monopolies in the platform economy, which dominate local markets and cause outflows of value added from the internal market through comparatively high fees. A Directive regulating the commerce of digital goods and services must take account of these fundamental developments. It must respond to this technological innovations and to the new concept of interaction between suppliers and consumers with appropriate regulation. The free movement of online goods and services must in any case be safeguarded, but should not be at the expense of the functioning of the internal market and the ability of public authorities to control it, as well as of the functioning of public services of general interest and of the possibility of the emergence of European companies in this area.

Especially in times of crisis, as we are currently experiencing due to the SARS-CoV-2 virus, above all local shops, restaurants, vendors, etc. are hardly able to provide goods and services for consumers. In times when those affected enterprises and companies are often heavily reliant on platforms as their only means of business, there is a need for regulation that assures the survival of EU-based small and medium-sized enterprises (SMEs). Thus, the establishing of thresholds for providers that further allows a differentiation in size needs to be considered, to make sure that the playing field is levelled in a way that SMEs have the opportunity to compete fairly.

Due to the operation of digital platforms, it is necessary to create a legal framework at EU level that takes digital service providers into account, in conjunction with a wide variety of legal matters, and establishes a fair competitive market. Platforms are in many cases no longer pure intermediary platforms (“provision of an IT program” with corresponding technical functionality), but independent players who exert structural influence on the supply and demand sides both through their “data power” (readability of large amounts of data, preparation of this data, etc.) and through their market power (high market shares,

acquisition of complementary providers, etc.). Thus, they exercise a controlling power over the market. At the same time, major platforms focus on achieving singular market dominance by reaching out to venture capitalists in different segments that support the creation or acquisition of market segments in the long term. So that in this segment the achievement of goals, as defined in business economics, is completely subordinate.

For further understanding this paper is structured as followed:

First a problem within a specific field of this Directive is outlined and commented. In order to solve this problem a possible solution is provided in comparison with the current phrasing in the E-Commerce Directive (2000/31/EC). Amendments on existing articles in the current version of the ECD are marked in *italic and red lettering*. Additions to the current version of the ECD are marked in **bold and red lettering**. Other comments and remarks found under Approach is marked in *italic lettering*. Possible solutions include proposals, amendments and other approaches.

Obligation to cooperate between Member States
Principles of country of origin vs. country of destination

What is the problem?

The legal provisions of the state of establishment are decisive, if information society services are provided (=Country-of-origin principle). The areas listed in the Annex to the Directive are explicitly excluded from the scope of this principle. A deviation from the country-of-origin principle and a restriction of the free movement of information society services is permitted under Art. 3 (4) in case of a serious and concrete risk of impairment.

The Cooperation of member states for prosecution/enforcement reasons of other member states has to be established – for example: a Dutch based platform is in breach of Austrian, but not Dutch, rules. For prosecution/enforcement Austria in some cases needs Dutch permission. Thus, digital companies currently tend to use the principle of country of origin to opt for those Member States where conditions are optimal for them in terms of regulations, taxation or the entire legal system. Negative consequences for the effective fulfillment of public tasks are the result. Adequate and robust cooperation between the country of origin and the country of destination is needed. This can be achieved by strengthening the country of destination in terms of digital companies complying with the public interest in the member state operating in. In case of conflict between these two principles the national provisions of the state in which the service provider offers information society services should apply.

Proposal to exclude from the coordinated field certain requirements for accessing or engaging in the activity of service providers. This would mean that the notification procedure in Article 3(4) should not apply to measures that affect such excluded requirements.

Approach

Article 3(1) and Article 3(1) (a) (new) regarding Internal Market

Current phrasing in the ECD (2000/31/EC)	Proposed phrasing
1. Each Member State shall ensure that the information society services provided by a service provider established on its territory comply with the national provisions applicable in the Member State in question which fall within the coordinated field.	1. Each Member State *should* ensure that the information society services provided by a service provider established on its territory comply with the national provisions applicable in *a* Member State which fall within the coordinated field *and should support the enforcement of national provisions and compliance with the public*

	interest in the member state operating in. **(a) To the extent that there are conflicts in the interpretation of applicable case law under the terms of Article 3 (1), the national provisions of the state in which the service provider offers information society services should apply.**

Article 19(2) regarding Cooperation

Current phrasing in the ECD (2000/31/EC)	Proposed phrasing
2. Member States shall cooperate with other Member States; they shall, to that end, appoint one or several contact points, whose details they shall communicate to the other Member States and to the Commission.	2. Member States *should* cooperate with other Member States *and should ensure that the competent authorities receive all relevant information and data required for the fulfilment of public tasks*; they should, to that end, appoint one or several contact points, whose details they should communicate to the other Member States and to the Commission.

Deviating from the current country of origin principle in sensitive areas

What is the problem?

While Article 3(4) is defining where deviations from the country of origin principle and restrictions of the free movement of information society services are possible, the Annex of the Directive is outlining areas, where the whole Directive doesn't apply. It's crucial to extend these areas to better reflect the issues the public sector is dealing with and to provide it with the necessary tools to protect its reasonable public interests. The regional and municipal levels are mostly challenged in this context. The challenges facing cities and municipalities through platforms are particularly evident in the areas of short-term rentals, taxes and levies, and mobility. In the area of short-term rentals, a structurally induced increase in housing shortages and an increase in rents can be observed in many European cities, i.e.

developments that are partly caused by the emergence of accommodation platforms. Taking a closer look at the accommodation sector for example, we observe, that around 2.000 apartments in Vienna are already permanently withdrawn from the housing market due to short-term rentals. Even though this seems not high, short-term rental platforms offers are highly concentrated in touristic areas and in districts, where rents and housing demand are already high, while in the most inhabited districts there are few. The principle of "live-like-a-local" is therefore not given and results in a crowding-out effect. If these platforms growth of recent years is to continue at the same pace in the coming years, more than 40,000 apartments would already be permanently offered in 2022. Additionally, there is a huge discrepancy regarding the share of income. The top 20 percent of accommodation providers receive around two-thirds of the total monthly income. 6.5% of the total income goes to the lower 50 percent.

Furthermore, the procedure that is needed to take place in order to constitute exceptions from the country of origin principle within the ECD is rather complex and ineffective. First, the request of a Member State to the Member State of origin to adopt measures must be unsuccessful. Second, the Member State concerned must notify the European Commission and the Member State of origin of its intention to adopt measures.

The *Directive 2015/1535 of the European Parliament and of the Council laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services* shall now be taken into account. This Directive requires Member States in Article 5(1) to immediately communicate to the Commission any draft technical regulation and Article 6(1) that requires Member States to postpone the adaption of a draft technical regulation for several months. This hinders a adequate response to certain negative externalities regarding national regulation as mentioned above. However, Article 7(1)(a) states that both Article 5 and Article 6 shall not apply to laws, regulations and provisions of Member States, by which Member States, i.a. comply to binding Union acts, which result in the adaption of technical specification or rules on services. Therefore, Member States shall inform the Commission when resorting to exceptional measures but shall not prevented from the immediate adaption of said measures

Approach

Article 2(k) (new) regarding Definitions

Current phrasing in the ECD (2000/31/EC)	Proposed phrasing
	(k) "overriding reasons relating to the public interest": reasons recognized as

	such in the case law of the Court of Justice, including the following grounds: public policy; public security; public safety; public health; preserving the financial equilibrium of the social security system; the protection of consumers, recipients of services and workers; fairness of trade transactions; combating fraud; the protection of the environment and the urban environment; the health of animals; intellectual property; the conservation of the national historic and artistic heritage; social policy objectives and cultural policy objectives; housing.

Article 3(4)(a)(i) and Article 3(5) (new) regarding Internal Market

Current phrasing in the ECD (2000/31/EC)	Proposed phrasing
4. Member States may take measures to derogate from paragraph 2 in respect of a given information society service if the following conditions are fulfilled: (a) the measures shall be: (i) necessary for one of the following reasons: (…) - the protection of consumer, including investors; (ii) taken against a given information society service which prejudices the objectives referred to in point (i) or which presents a serious and grave risk of prejudice to those objectives;	4. Member States may take measures to derogate from paragraph 2 in respect of a given information society service if the following conditions are fulfilled: (a) the measures *should* be: (i) necessary *to prevent serious harm to and ensure an effective protection of public interest objectives, in particular*: (…) - the protection of consumer, including investors; - *the protection of public interest,* - *the protection of services of general interest,* - *the protection of affordable housing,* - *the prevention of distortions of competition,*

(…)	- *the safeguarding of the necessary performance of public administration* - *the protection of public spaces* (ii) taken against a given information society service which prejudices the objectives referred to in point (i) or which presents a serious and grave risk of prejudice to those objectives; (…) **5. When resorting to such exceptional measures, the Member State concerned shall inform the Commission. Such notification shall not prevent Member States from adopting the provisions in question. Within a period of [3 months] from the date of receipt of the notification, the Commission shall examine the compatibility of the measure with Community law on a 'case-by-case' basis and, where appropriate, shall ask the Member State in question to refrain from taking any proposed measures or put an end to the measures in question.**

Annex regarding Derogations from Article 3 regarding Internal Market

Current phrasing in the ECD (2000/31/EC)	**Proposed phrasing**
As provided for in Article 3(3), Article 3(1) and (2) do not apply to: − copyright, neighbouring rights, rights referred to in Directive 87/54/EEC(1) and Directive 96/9/EC(2) as well as industrial property rights, (…)	As provided for in Article 3(3), Article 3(1) and (2) do not apply to: − *large providers* − *consumer protection* − *liability of platforms,* − *enforcement of rights and legislation,* − *data exchange,* − *housing,*

− the permissibility of unsolicited commercial communications by electronic mail.	− *measures to attain a competitive balance,* − *employment contracts, where workers fil permanent job needs but are denied permanent employment rights, such as short-term contracts or independent contractors* − copyright, neighbouring rights, rights referred to in Directive 87/54/EEC(1) and Directive 96/9/EC(2) as well as industrial property rights, (…) − the permissibility of unsolicited commercial communications by electronic mail.

Considering establishing thresholds within the Directive

What is the problem?

In general one idea would be to detach any thresholds from a purely financial measure and to link them to tangible entities on the target region. The reason for this is that, in view of the sharing economy, purely financial thresholds are not necessarily decisive. If one could somehow quantify the impact of a service like a short-term rental platform on the city, e.g. percentage of (social) housing compared to hotels, one would have strong reasons to affirm a public interest in the processing of personal data by the state. However, financial thresholds would certainly be easier to determine. Here too, however, one could think of a kind of 'crowding-out' measure. How much tax, social expenditure etc. in the target country is "crowded out" by the service? How have the thresholds been determined for value added tax, where above a certain threshold the tax rate of the destination country applies?

Regarding the characterisation of a services provider with significant digital presence a differentiation in influence and revenue needs to be achieved with thresholds, in order to establish a level playing field between digital and analogue (STHV vs hotel) and to promote fairness between competitors of different sizes within the single market.

Approach

Article 2(l) (new) regarding Definitions

Current phrasing in the ECD (2000/31/EC)	Proposed phrasing
	(l) Following the definition of the Council Directive laying down rules relating to the corporate taxation of a significant digital presence, the following thresholds should be defined: **(a) total revenues obtained in at least five Member States in that tax period exceeds EUR 7 000 000;** **(b) the number of users of one or more of those digital services who are located in at least five Member States in that tax period exceeds 100 000;** **(c) the global revenue within that tax period exceeds EUR 1 000 000 000.** **Considering those thresholds three categories should be named in the following. Providers that fulfil at least two of those criteria should be considered as "large providers". Providers that fulfil one of those criteria should be considered as "medium providers". Providers that fulfil none of the criteria above should be considered as "small providers".**

Responsibility to search and block illegal information

What is the problem?

In order to prevent and restrict unlawful behaviour, service provider need to be held accountable when it comes to illegal information or activities. Those information or activities include hate speech and activities regarding short term rentals and listings. Therefore, the provider should give certainty that he implements an effective infrastructure for the detection

of illegal information or activities and is to be held reliable if he does not comply within a certain period of time after a Member State's notification of the existence of illegal information or activities.

Approach

Article 14(1)(a) (new) and Article 14(4) (new) regarding Hosting

Current phrasing in the ECD (2000/31/EC)	Proposed phrasing
1. Where an information society service is provided that consists of the storage of information provided by a recipient of the service, Member States shall ensure that the service provider is not liable for the information stored at the request of a recipient of the service, on condition that:	1. Where an information society service is provided that *exclusively* consists of the storage of information provided by a recipient of the service, Member States shall ensure that the service provider is not liable for the information stored at the request of a recipient of the service, on condition that:
(a) the provider does not have actual knowledge of illegal activity or information and, as regards claims for damages, is not aware of facts or circumstances from which the illegal activity or information is apparent; or	**(a) the provider has implemented an effective infrastructure allowing for the detection of illegal information or activities and, in particular, shares with Member States the information necessary for this purpose in accordance with Article 15(1);**
(b) the provider, upon obtaining such knowledge or awareness, acts expeditiously to remove or to disable access to the information.	*(b)* the provider does not have actual knowledge of illegal activity or information and, as regards claims for damages, is not aware of facts or circumstances from which the illegal activity or information is apparent; or
(…)	*(c)* the provider, upon obtaining such knowledge or awareness, acts expeditiously to remove or to disable access to the information.
	(…)
	4. Without prejudice to each Member

	States judicial or administrative requirements and rights of appeal, in case a public authority formally notifies the provider of the existence of illegal activities on its platform, the provider must act promptly to remove such an activity from its platform no later than 48 hours upon receiving such notification. **In case the provider does not proceed with such expeditious removal, it may be subject to administrative fines and be responsible for any criminal, civil, administrative or other infringements stemming from the illegal activities conducted on the platform.**

Article 15(2) (new), Article 15(4) (new) and Article 15(5) (new) regarding No general obligation to monitor

Current phrasing in the ECD (2000/31/EC)	Proposed phrasing
2. Member States may establish obligations for information society service providers promptly to inform the competent public authorities of alleged illegal activities undertaken or information provided by recipients of their service or obligations to communicate to the competent authorities, at their request, information enabling the identification of recipients of their service with whom they have storage agreements.	**2. Without prejudice to paragraph 1, providers shall actively share with Member States the information necessary for detecting illegal data posted or illegal activities undertaken by recipients of their service. To this end, providers shall inform service recipients of the possibility of certain information being shared with the competent authorities, in particular information enabling the identification, attribution, location and features of the activity undertaken or information shared on the platform.** *3*. Member States may establish obligations

	for information society service providers promptly to inform the competent public authorities of alleged illegal activities undertaken or information provided by recipients of their service or obligations to communicate to the competent authorities, at their request, information enabling the identification of recipients of their service with whom they have storage agreements. **4. The service provider should be responsible (upon an injunction) for searching and blocking substantially identical illegal information or activities regarding activities that are (I) not in line with the objectives of the Treaty of Lisbon , and are (II) not in line with law. This should include information and activities regarding:** **(a) public speech that expresses hate or encourages violence towards a person or group based on grounds such as:** **(i) race;** **(ii) nationality;** **(iii) religion;** **(iv) sex;** **(v) sexual orientation;** **(b) short term rentals and listings** **5. The responsibility for searching and blocking substantially identical illegal information or activities should apply to service providers, as defined in Article 2(l), for:**

	(a) large providers within 48 hours **(b) medium providers within 7 days** **(c) small providers are exempted from this responsibility.**

Access to data, data structure and enforcing law

What is the problem?

A central problem of the digital economy from the point of view of regions, cities and municipalities is the often lacking access to data. In principle, data play a key role in being able to act effectively and administratively efficient in terms of the use of public resources. Without a suitable data basis, the mandates defined in laws by legislative bodies to regulate markets cannot be implemented, which means that laws are not enforceable. Data should be used by the competent authorities (or legally entrusted supervisory bodies) exclusively for the procurement of legal orders, but must be made available by platforms via clearly defined electronic interfaces and in corresponding data quality.

Data is the key for public administration to act effectively and efficiently with regard to the allocation of public resources. Without appropriate data, it is impossible to perform activities defined in regulations adopted by legislative bodies. The competent authorities should use data exclusively for fulfilling tasks defined by law, but this requires that there is a sufficient cooperation between the country of origin and the country of destination. Complying with the public interest is crucial and having access to essential data that is needed to fulfil these public tasks.

In view of the agreement the European Commission reached with four large booking platforms (Airbnb, Booking, Expedia and Tripadvisor) on the access of data for the aggregation and processing via EUROSTAT, it needs to be addressed that the kind of aggregated data agreed upon is insufficient for law enforcement on European and national level. Generally speaking, aggregated data are collective data, i.e. in the tourism segment the total number of overnight stays or the number of guests in a certain period for a defined location. Aggregated data can be used to map market developments, for example. Without individual data, the following legal regulations, among others, that are valid in the EU cannot be implemented or can only be implemented inadequately: Regulations in the area of taxes and duties (local municipal tax), regulations in the area of tourism statistics, regulations in the area of building regulation, regulations in the area of regional planning, regulations in the area of registration, regulations in the area of the standardized omission of short-term rental in social housing.

Nevertheless, about the provision of data, the service provider shall not be held liable, if any action or measure is taken voluntarily in good faith to restrict access to or availability of material that the provider considers to be illegal.

Approach

Article 3(4)(c) (new) regarding Internal Market

Current phrasing in the ECD (2000/31/EC)	Proposed phrasing
	(c) Each competent authority in the Member State in which the service provider is established should take all appropriate measures to reply to a request of another supervisory authority from the country of destination without undue delay and no later than one month after receiving the request. Such measures may include, in particular, the transmission of relevant information on the conduct of an investigation.

Article 5(3) (new) and Article 5(4) (new) regarding General information to be provided

Current phrasing in the ECD (2000/31/EC)	Proposed phrasing
	3. In addition to other information requirements as defined by the country of destination, Member States should ensure, that upon request, the service provider supplies to the competent authorities of the country of destination all the data required for public administration to fulfil tasks needed to enforce law. **4. The service provider should be obliged to cooperate in fulfilling the information obligations pursuant to Article 5. In particular, the service**

	provider should meet this duty to cooperate by disclosing the information required in a complete and accurate manner.

Article 18(3) (new) and Article 18(4) (new) regarding Court Actions

Current phrasing in the ECD (2000/31/EC)	Proposed phrasing
	3. Furthermore, the Member States should ensure that the public prosecutors offices provide for an efficient procedure for executing an efficient procedure for executing an appropriate legal title within a period of twelve months. **4. The Member States should also ensure that their administrative authorities comprehensively cooperate with the administrative authorities of other Member States during the enforcement of an appropriate legal title.**

Recital (new)

Current phrasing in the ECD (2000/31/EC)	Proposed phrasing
	Taking into account the final report by the High-Level Expert Group on Business-to-Government Data Sharing it is necessary that B2G data sharing needs to be ruled by governing principles on the European level in order to avoid the risk of fragmentation stemming from ad hoc voluntary collaborations and to not distort the internal market. EU-wide public-interest purposes such as environmental protection, cross-border emergencies, statistics or the delivery of

	public services therefore need trustworthy and stable channels for cooperation. Respecting the herein laid down governing principles Members States may introduce national or regional registration schemes where such schemes are necessary for the delivery of public services and may demand relevant data by the concerned online platforms.

Definition of hosting provider

What is the problem?

According to the current Directive a “service provider” bears the meaning of “any natural or legal person providing and information society service”. An “information society service” is considered to be “any service normally provided for remuneration, at a distance, by electronic means and at the individual request of a recipient of a service”.

As two rulings by the European Court of Justice (ECJ) in the cases of Uber (C-434/15) and Airbnb (C-390/18) have shown in the past, there needs to be a further differentiation between a “hosting provider” and a “service provider”, as it is now.

In the case of Uber the ECJ ruled that the kind of services Uber provides must be regardad as being inherently linked to a transport service and hence must be classified as “a service in the field of transport”. This means, that such a service is to be excluded from the E-Commerce Directive.

In the case of Airbnb, on the other hand, the ECJ ruled that due to ancillary services (e.g. a format for setting out the content of their offer, civil liability insurance, a tool for estimating their rental price or payment services for the provision of those services) beyond the provision of accommodation, it is not justified to depart from the classification of that intermediation service as an “information society service”. This means, that Directive 2000/31 applies.

As per Article 14 “Hosting” of this Directive, a provider of an information society service, which consists of the storage of information provided by a recipient of the service, is not liable for the information stored, on certain conditions.

Hence why, with regards to liability and clarification, there needs to be a further differentiation between a “service provider” and a “hosting provider”.

Approach

Article 2(j) (new) regarding Definitions

Current phrasing in the ECD (2000/31/EC)	Proposed phrasing
For the purpose of this Directive, the following terms shall bear the following meanings: (a) "information society services": services within the meaning of Article 1(2) of Directive 98/34/EC as amended by Directive 98/48/EC; (b) "service provider": any natural or legal person providing an information society service; (…)	For the purpose of this Directive, the following terms shall bear the following meanings: (a) "information society services": services within the meaning of Article 1(2) of Directive 98/34/EC as amended by Directive 98/48/EC; (b) "service provider": any natural or legal person providing an information society service; (…) **(j) "hosting provider": IT service provider making only available a pool of remote internet-based IT resources to persons and companies for hosting their websites, which excludes providers, who offer additional services which amount to different forms of intermediary activities;**

Article 14(1) regarding Hosting

Current phrasing in the ECD (2000/31/EC)	Proposed phrasing
1. Where an information society service is provided that consists of the storage of information provided by a recipient of the service, Member States shall ensure that the service provider is not liable for the in-formation stored at the request of a recipient of the service, on condition that: (…)	1. Where an information society service is provided that *exclusively* consists of the storage of information provided by a recipient of the service, Member States shall ensure that the service provider is not liable for the in-formation stored at the request of a recipient of the service, on condition that: (…)

Dispute settlement mechanism

What is the problem?

To enforce rules of the Directive there needs to be a clear and comprehensive understanding of the institutions and their roles at play. In some cases implementing the objectives of the Directive is filled with many obstacles. To ensure the enforcement of the directive, the implementation of a dispute settlement mechanism should be established, that acts when national courts or authorities “fail” to comply or act in a timely manner. This can take form as an arbitration court, or a common European agency or any other form of authority on European level.

Approach

Article 17(4) (new) regarding Out-of-court settlement

Current phrasing in the ECD (2000/31/EC)	Proposed phrasing
	4. In the case of a dispute between a Member State and (a) an information society service provider or (b) another Member State, a dispute settlement mechanism/authority should take place to provide adequate procedural guarantees for the parties concerned.

Dealing with high market concentration – supporting EU-based platforms

What is the problem?

The highest rated companies in the world come from the digital economy. Those companies outperform the market average. Technology, media and telecommunications companies generate more economic profit than any other sector of the global economy - more than the combined economic profit of aerospace and defence, automotive components and food products companies. The new Internet platforms are increasingly attempting to expand their business areas to cover all areas of life (from housing, health to finance) and thus push corporate concentration even further and secure their supremacy in competition. Therefore the regulatory framework has to ensure, that new emerging platforms (also from Europe) can benefit from the Internal Market. The EU must regulate accordingly platforms which develop

business capabilities in the internal market from outside the internal market, so that the principle of a neutral level playing field is also maintained.

Approach

This Directive is to ensure that European Digital Platforms take greater advantage of the Internal Market and expand their activities. This is to be achieved in line with existing competition law.

This Directive should take precedence. Any parallel WTO-level negotiations of the Commission on this issue should not counteract against and should comply with the provisions of this Directive.

Uniform interface across Member States

What is the problem?

Efforts should be focussed on increasing the strength of the destination principle and making sure that destination out rules origin when those are in conflict. Especially “large” and “medium providers”, as defined above in this working paper, should be taken into account.

However as internet services should not be linked to a place since internet is not a place; there should also not be a distinction between internet users in Germany and Austria for example.

Approach

Directive 2018/0072 (CNS)

The Council Directive laying down rules relating to the corporate taxation of a significant digital presence can be used as an example:

A 'significant digital presence' should be considered to exist in a Member State if the business carried on through it consists wholly or partly of the supply of digital services through a digital interface and if one or more of the following conditions is met with respect to the supply of those services by the entity carrying on that business, taken together with the supply of any such services through a digital interface by each of that entity's associated enterprises in aggregate: (a) the proportion of total revenues obtained in that tax period and resulting from the supply of those digital services to users located in that Member State in that tax period exceeds EUR 7 000 000; (b) the number of users of one or more of those digital services who are located in that Member State in that tax period exceeds 100 000; (c)

the number of business contracts for the supply of any such digital service that are concluded in that tax period by users located in that Member State exceeds 3 000.

With respect to using digital services, a user should be deemed to be located in a Member State in a tax period if the user uses a device in that Member State in that tax period to access the digital interface through which the digital services are supplied.

Platform work

What is the problem?

There are few figures on the overall impact of the platform economy on employment. Analogous to the distorting of the boundaries between producers and consumers, the question of the boundaries between independent and dependent work arises with regard to employment. Flexible employment opportunities can lead to false self-employment and precarious working conditions. It is a question of protection against dismissal, minimum wages, occupational health and safety and working time regulations. Without an appropriate regulatory framework, the social security system can be severely impaired. Any future legislation proposed must also protect the growing numbers of platform workers in Europe.