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Research Paper

Digital Platforms Liability for Data Governance in Data-Driven Society

Panel 4
Law, Regulations, and Governance Against Disinformation and on Content Moderation in Indonesia

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Abstract

The development of the digital economy in the past years has led to the significantly growing role of data and the transformation of digital platforms from their initial function as intermediaries to trend and price setters, decision-makers that define the part of parties involved in businesses conducted on their platforms, or following certain conditions under the Digital Markets Act in the European Union, gatekeepers. Moreover, the various activities on digital platforms impact the relationship between parties*, i.e.* their rights and obligations. One of the advances in information and communication technology (ICT) is algorithmic decision-making (ADM), which uses algorithms based on input data to produce an assessment or choice to make a decision. The use of ADM brings many advantages, including efficiency, the ability to avoid human biases, a quick decision-making process, the ability to make decisions on complex matters, and the ability to overcome manipulative maneuvers that are difficult for humans to handle. However, using ADM also risks fundamental principles, such as equality, privacy, user autonomy, and free will. A number of these risks can be in the form of risks to individuals with the potential for discrimination through ADM, for example, automation to eliminate the rights of certain groups of society, such as blocking individuals with particular socio-political views. The fast pace of digital technology development poses risks to every party involved. Among other concerning issues is the increasing misuse of technology for disinformation practices in various forms. A question arises regarding defining digital platform liability, especially in self-generated content where users create and post content. This paper argues for an accountable approach to determine the liability of digital platforms for data governance, which includes steps such as identification of the digital platform activities, sectors, the use of data, actors involved, source of revenue, level of control, and source of liability. This approach is necessary to avoid a one-size-fits-all approach that would be impractical and unfair and defeat the legal certainty purposes of law-making.

Keywords: *data governance, digital platform, liability*

Background

The digital economy can be understood as economic activities that include an increasingly growing role of information and communications technology (ICT) in economic activities. In other words, the digital economy is a socio-political and economic system that has the characteristics of (1) the use of ICT, (2) e-commerce activities, (3) digital distribution of goods and services, and (4) sales support using the Internet.

The rapid development of the digital economy with the Industrial Revolution 4.0 makes it possible to carry out various innovations in the market. Competition law must, therefore, be able to accommodate these developments in its analysis. For this reason, competition law analysis cannot be carried out rigidly. Still, it must be carried out casuistically because the investigation is carried out in a constantly moving market (dynamic). This approach also applies in determining the relevant need.

One of the prominent developments in the digital economy is the use of multi-sided platform business models. However, this does not mean that multi-sided platforms are the only developments that need to be scrutinized and given special attention in competition law analysis. Specific discussions regarding determining the relevant market in a multi-sided platform are based more on considerations regarding the level of complexity. Meanwhile, other significant developments in the digital economy include the market for interlinked products. Examples are the hardware product market, the software product market, the operating system market, and the smartphone application market.

The two interconnected markets are traditionally in two different markets, but they can influence each other in their development. The market strength of one product can increase the market strength of other products. For example, the market power of Google in the Android operating system market influences the application market that can be installed on smartphones that use the Android operating system.[2]

The next thing that also needs to be considered is determining the relevant market in competition for the market (not in the market) for cases of disruptive innovation.[3] This problem regarding patents is typical in the pharmaceutical and technology sectors.

A product ecosystem is a differentiated product or service offered through a platform in several market segments, regardless of whether these services are provided on a single application or across multiple applications.[4] This kind of product ecosystem needs to be considered, as it can have the following

[2] Vasil Stoynov, "Bringing the EU Competition Rules in the Digital Market – the Commission Decision in the Google Android Case," SCRIPT-Ed 16, no. 1 (2019), https://doi.org/10.2966/scrip.160119.49.
[3] Josef Drexl, "Anticompetitive Stumbling Stones on the Way to a Cleaner World: Protecting Competition in Innovation without a Market," *Journal of Competition Law and Economics* 8, no. 3 (2012), https://doi.org/10.1093/joclec/nhs019.
[4] CCCS, "E-Commerce Platforms Market Study – Finding and Recommendations" (Singapore, 2020).

implications: (1) increasing barriers and limiting the ability to compete for platforms that only operate in one market segment to compete effectively because competing platforms may only provide a similar range of produced services the same as the product ecosystem and (2) may engage in tying and bundling to exploit its position in its market segment or ecosystem.[5]

The product ecosystem concept is an extension of the market definition approach when different products can be included in the relevant market due to several considerations: (1) sellers sell these products together, and (2) effectively considering complementarity on the supply side, taking into account synergies on the demand side, especially consumption synergies, so that the product ecosystem concept can be applied more generally to all types of products and services, and is not limited to digital platforms.[6] Markets with product ecosystems consist of a mix or range of effects, or which complementary in and or supply is vital.[7] It is necessary to consider quite strong common synergies can indicate a focus on forming a product ecosystem consisting of different services sold by the platform sales study in Singapore as a comparison, it was observed that there is a tendency for digital platforms to develop into ecosystems where the platform enters several lateral markets and provides many services.[8]

In the EU, the adoption of the Digital Market Act (hereafter DMA) can be looked into to get a broader understanding of the development of the digital market and how policy and regulation respond to it. The DMA was initially proposed in December 2020[9] , and it was officially adopted following a final vote in the European Parliament on July 5 2022.

Under the DMA, certain practices by large platforms acting as 'gatekeepers 'will be prohibited, and the European Commission will be enabled to conduct market investigations and sanction non-compliant behaviour.[10] The DMA targets digital platforms' so-called 'core platform services' prone to anti-competitiveness, mostly social networks and search engines, with a market capital of at least 75 billion euros or an annual turnover of EUR 7.5 billion, under Article 3 par. (1) and (2) of the DMA, the notion of 'gatekeepers' refers to companies that meet specific criteria. Firstly, the company has a significant impact on the internal market. This criterion is presumptively met if the company has an annual turnover of≥ EUR 7.5 billion in the last three financial years (or average market capital equivalent to a fair market value of EUR 75 billion), and the CPS is provided in at least three Member States. Secondly, the company offers CPS, an essential gateway for business users to reach end users. This criterion is presumptively met if monthly active end users in the EU are≥ 45 million and yearly active business users in the EU were≥ 10.000 in the last financial year. Thirdly, the company enjoys an entrenched and durable position, which is foreseeable soon. This criterion is

[5] CCCS.
[6] CCCS.
[7] CCCS.
[8] CCCS.
[9] Rupprecht Podszun, "From Competition Law to Platform Regulation - Regulatory Choices for the Digital Markets Act," *Economics* 17, no. 1 (2023), https://doi.org/10.1515/econ-2022-0037.
[10] European Parliament, "Deal on Digital Markets Act: EU Rules to Ensure Fair Competition and More Choice for Users," March 24, 2022.

presumptively met if the user thresholds under the second criterion were met in the last three financial years.

The DMA does not explicitly address the use of algorithms to facilitate anti-competition. However, it lists prohibitions of conduct, among which is prone to be enabled by algorithms. Examples of the prohibitions are anti-steering provisions (Article 5 par. (4)), using data of business users to compete against them (Article 6 par. (2)), sideloading restrictions (Article 6 par. (4)), self-preferencing in ranking (Article 6 par. (5)), and applying less favourable general access conditions ranking (Article 6 par. (12)).[11]

An approach used in the EU under the DMA to regulate the digital gatekeepers (European Parliament, 2020) can be considered, especially considering the ICC study 2019 that shows the trend toward a growing concern of abuse of market power by large digital platforms. That study shares similarities with the background of adopting the DMA in the EU to some extent. Thus, adopting ex-post and ex-ante regulation can be used to address anti-competitive using algorithms.

The study attempts to respond to the question of which factors should be considered to define the liability of digital platforms.

Identification of Factors to Define Liability of Digital Platforms

Identifying relevant factors contributing to the type, scope, and depth is necessary to define digital platform liability. This paper addresses five crucial characteristics of digital platforms, among other traits: network effect, services with zero prices, the increasing role of data, the use of big data, and the blurring of territorial boundaries.

Network Effects

Network effects occur when a product is more valuable to users if more users use the same or compatible product. Indirect network effects influence pricing mechanisms and interactions within the market.[12] Economists call this phenomenon network externalities. [13]

Network effects can be a source of rapid growth for a platform to become a valuable company quickly. The way the network effect works is straightforward. For example, when a company launches a new application that someone then uses, that person feels happy with the application and then recommends it to four colleagues. Four colleagues also feel satisfied with the new application and recommend it to others.

[11] Natalia Moreno Belloso, "The EU Digital Markets Act (DMA): A Summary," *SSRN Electronic Journal*, 2022, https://doi.org/10.2139/ssrn.4109299.
[12] Lapo Filistrucchi, "Market Definition in Multi-Sided Markets," 2018.
[13] Directorate-General for Competition (European Commission), "Glossary of Terms Used in EU Competition Policy: Antitrust and Control of Concentrations" (Directorate-General for Competition (European Commission), January 29, 2003).

Applications of network effects can also occur on search and social media platforms. At least three types of network effects show that the increasing number of users of platforms will attract more advertisers on the platform. First, an increase in the number of users increases the number of users who will read or view an advertisement, increasing the advertiser's revenue and profits.

Second, advertisers may be charged set-up costs for using specific advertising platforms and may even be charged additional fees to obtain certain advertising facilities according to priority, duration, and broadcast frequency. If more users or visitors are on the platform, the average fixed cost per unit visitor paid by the advertising company will be negligible (total cost per visitor). For this reason, companies that will place advertisements tend to prefer platforms with many visitors rather than those with few visitors. Thus, the platform must get the number of visitors to attract advertisers. This visitor market is often also called the audience market.

Third, a platform with more users has access to more data, which can increase the relevance of the ads served to users. Advertisers will choose a larger venue because the ads they serve have the potential to target more precise visitors who are interested in the ad and are expected to ultimately make a transaction rather than choosing a platform with fewer visitors. The deciding point is to acquire more detailed data about individual users to carry out targeted advertising.

Indirect network effects occur when the value of the product/service received by users fluctuates (either positively or negatively) with variations in the number of users of the product/service. Indirect network effects occur when a platform or service relies on the interaction of two or more user groups, such as producers and consumers, buyers and sellers, or users and developers.

Services with Zero Prices

A zero-price service platform has dynamic considerations[14] as an integral part of maximizing profit by offering users a product without monetary payment (zero-price). Here, the ng network effects can be seen as the network effect that connects market segments.[15] The platform allows groups of users on a specific

[14] Noel and Evans, "Analyzing Market Definition and Power in Multi-Sided Platform Markets"; Thomas Nachbar, "Anticompetitive Effects and Market Definition in Platform (and Non-Platform) Markets," SSRN Electronic Journal, 2021, https://doi.org/10.2139/ssrn.3903643; Rhonda L. Smith and Arlen Duke, "Platform Businesses and Market Definition," European Competition Journal 17, no. 1 (2021), https://doi.org/10.1080/17441056.2020.1851477; Franck and Peitz, "Market Definition in the Platform Economy."

[15] Jerrold Nadler and David N. Cicilline, "Investigation of Competition in Digital Markets. Majority Staff Report and Recommendations," U.S. House of Representatives. Subcommittee on Antitrust, Commercial and Administrative Law of the Committee on the Judiciary, 2020; Tad Lipsky, "The Investigation of Competition in Digital Markets: Looking in the Wrong Forest?," SSRN Electronic Journal, 2021, https://doi.org/10.2139/ssrn.3815834; Sangkyu Rhee, "Implications of U.S. Antitrust Subcommittee's Report "Investigation of Competition in Digital Markets"," The Korean Journal of Industrial Organization 30, no. 4 (2022), https://doi.org/10.36354/kjio.30.4.2; Marco Botta and Klaus Wiedemann, "The Interaction of EU Competition, Consumer, and Data Protection Law in the Digital

side to minimize transaction costs that they would otherwise incur when carrying out activities on one side of the platform, for example, searching on a search engine platform.[16] Each side of the platform can be charged a different price. However, this pricing structure by charging different fees on different platforms is not to be interpreted as price discrimination.

In services like this, the platform usually focuses on obtaining information about its users and user visits on the platform to be offered advertising impressions (views or audience market).[17]

Data Governance with the Increasing Role of Data

In the digital economy, business actors can provide zero-price services[18]. The payment is non-monetary when using these services by providing their data in return.[19] Some aspects that need to be considered when considering data governance are as follows:

Types of data and data as input: data in the context of the digital economy includes a variety of data, including personal data, company data, and data protected by intellectual property rights (IPR). However, the role of personal data is very prominent in the development of the digital economy because of its use in business, among other things, to produce new or better services. For example, with a large user personal database and sound data analysis, it will be possible to carry out user profiling, which can be produced at the next level. Hence, data acts as input to provide relevant services to users and advertisers.

User personal data as an intermediary product: user data is not a traded product; user personal data is not a commodity. Even though it is treated as an asset, it has different properties from other assets. Furthermore, there is no market for users' data. Thus, no assessment can be made of the substitutability of user data, and no relevant market can be identified based on the personal data of its users. The availability of users' data is seen more as a side effect or by-product of platform use than as the supply of a product by users in exchange for being able to use a service, such as a search function or social networking.

Critical mass: Referring to the network effects explained in the previous section, to attract customers on the other side of the platform, the customer base on one side of the platform must reach critical mass, reaching a specific volume. Therefore, multi-sided platforms must attract customers to reach this critical mass before they can operate well.

Economy: The Regulatory Dilemma in the Facebook Odyssey," Antitrust Bulletin 64, no. 3 (2019), https://doi.org/10.1177/0003603X19863590.

[16] Ritam Arora, "E-Commerce, (Big) Data and Competition Law- Need for New Framework for the Application of Competition Law to Online Platforms," *Semantic Scholar*, 2018.

[17] Franck and Peitz, "Market Definition in the Platform Economy."

[18] David S Evans and Richard Schmalensee, "NBER WORKING PAPER SERIES THE ANTITRUST ANALYSIS OF MULTI-SIDED PLATFORM BUSINESSES The Antitrust Analysis of Multi-Sided Platform Businesses," *University of Chicago Coase-Sandor Institute for Law & Economics Research Paper Series* 263 (2013); David S. Evans, "Attention Rivalry among Online Platforms," *Journal of Competition Law and Economics* 9, no. 2 (2013), https://doi.org/10.1093/joclec/nht014.

[19] Unclassified, "Implications of E - Commerce for Competition Policy," *Organisation for Economic Co-Operation and Development*, no. 2018 (2019).

Data and market power: relating to users personal data and market power, it is necessary to understand that what is essential is not just the amount and quality of the data but, more importantly, the ability to monetize the information being collected, for example, revenue obtained from licensing, the ability to provide targeted advertising services, or offering other paid products to customers using user data as input to produce the product. Thus, the power of business actors to deploy resources and technological capacity are other factors that must be considered. Meanwhile, to calculate market share, instead of using a user database, the total turnover obtained by business actors active in a potential market can be used using a specific type of data. Although 'winner take all' may not occur, the multi-sided nature of platforms increases the potential for a successful online platform to gain market power or even become dominant.

Access, lock-in problems, data portability, and refusal to grant access to user data: access, therefore, plays a vital role for businesses, especially multi-sided platforms. Access to user data is expressly subject to separate regulations regarding personal data protection, which require consent from the data subject, and this does not fall within the realm of competition law. However, access becomes relevant in competition law because allowing users to use multiple platforms or switch platforms will help avoid lock-in problems by enabling customers to have choices. In this case, access is needed, and interoperability becomes important in competition law to prevent market entry barriers. One of them is through implementing data portability. In this context, refusal to grant access – of course, which meets the requirements for protecting personal data (consent) – could be a case of 'refusal to deal' under the application of the essential facility doctrine. In practice in the European Union, this case requires two things, namely, a dominant position and indispensability.

Furthermore, regarding user personal data and market power, it is essential to understand that what counts is not just the amount and quality of the data but the ability to monetize the information being collected, for example, revenue obtained from licensing, the ability to provide targeted advertising services or offer other paid products to customers using user data as input to produce those products. Thus, the power of business actors to deploy resources and technological capacity are other factors that must be considered. Meanwhile, to calculate market share, instead of using a user database, the total turnover obtained by business actors active in a potential market can be used using a particular type of data.

The Use of Big Data

Big data is often discussed in the same breath as personal data. However, both are different things. Big data can contain personal data but covers a broader meaning than personal data. Therefore, big data should be analyzed separately from personal data, even though big data may include personal data. Big data is

'information *assets* characterized by volume, velocity, and variety, requiring certain technologies and analytical methods to transform them into value.'[20]

The importance of big data is shown in the following components of big data:[21]

- **Information:** the content of big data is information. As explained above, the information in big data covers a large volume, can move at high speed, and has high diversity.
- **Technology:** the prerequisite for big data is technology. Therefore, as in the analysis of user data, in this case, what is essential is the ability of business actors in terms of technology and resources to monetize data and not data itself.
- **Method:** Data and data in large capacities have value when processed appropriately and structured well. Big data processing methods are, therefore, also a crucial element in evaluating the ability of business actors to use big data to produce a product that has selling value.
- **Impact:** big data affects all aspects of life, and the impact on business is just one of them. With (big) data, companies can build better business models and strategies. [22] Companies can grow and progress into intelligent companies, quickly increasing productivity and competitiveness in the market and thereby optimizing information from various sources that have been processed.[23] Big data also helps companies in e-commerce identify the event history or previous shopping behaviour of each consumer and provide products or services according to the consumer data.[24]
- **The use of big data** can help match buyers with sellers and consumers with content, and analysis assisted by artificial intelligence can match buyers and sellers on online platforms. With data in the form of browsing patterns, interaction duration, and the nature of interactions with certain features collected, companies can personalize and recommend products using algorithms. Furthermore, big data has a big role as input for artificial intelligence to make meaningful decisions.

Combined with the development of algorithmic decision-making ADM, big data further complicates problems in the digital economy. ADM is a process using algorithms based on input data to produce an assessment or choice to make a decision. Meanwhile, an algorithm consists of instructions to achieve a specific goal. Computer programs carry out this process, while the role of humans in this process varies at various levels. With the development of machine learning, human intervention is no longer required.

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[20] Andrea De Mauro, Marco Greco, and Michele Grimaldi, "A Formal Definition of Big Data Based on Its Essential Features," *Library Review*, 2016, https://doi.org/10.1108/LR-06-2015-0061.
[21] De Mauro, Greco, and Grimaldi.
[22] Avinash BM and Akarsha BM, "Big Data Analytics for E-Commerce-Its Impact on Value Creation," *International Journal of Advanced Research in Computer and Communication Engineering ISO* 6, no. 12 (2007).
[23] Avinash BM and Akarsha BM.
[24] Avinash BM and Akarsha BM; Sachin S Deshmukh, "Big Data - an Opportunity and Challenge for E-Commerce," *International Journal of Scientific & Engineering Research* 4 (2013); Shahriar Akter and Samuel Fosso Wamba, "Big Data Analytics in E-Commerce: A Systematic Review and Agenda for Future Research," *Electronic Markets* 26, no. 2 (2016), https://doi.org/10.1007/s12525-016-0219-0; "Discussion on the Development Opportunities and Challenges of E-Commerce in the Big Data Era," *International Journal of Science and Engineering Applications*, 2023, https://doi.org/10.7753/ijsea1206.1033.

The use of ADM brings many advantages, such as efficiency, the ability to avoid human biases, a quick decision-making process, the ability to make decisions on complex matters and the ability to overcome manipulative manoeuvres that are difficult for humans to handle ADM. It can also improve the quality of service with its ability to produce intelligent and targeted predictions, such as in profiling activities. From the user's personal data input, the machine can learn the user's preferences and qualifications to carry out profiling to make decisions about that user. One implementation is its use for a credit scoring system.[25]

However, using ADM also risks certain fundamental principles, such as equality, privacy, user autonomy and free will. A number of these risks can be in the form of risks to individuals with the potential for discrimination through ADM, for example, automation to eliminate the rights of certain groups of society, such as blocking individuals with particular socio-political views.[26] Another risk is in the form of fraudulent practices. For example, this is in the form of self-preferencing by a business actor who gives preferential treatment to his own company so that users do not get accurate options according to their needs.

The most fundamental risk is the loss of individual autonomy when it no longer has the opportunity to make decisions for itself and, therefore, to determine its own destiny.[27] Another risk is that the use of ADM is not transparent. Meanwhile, this technology is also not immune to the risk of bias, for example, due to low-quality data input, weaknesses in terms defined in programming, and lack of contextual understanding, which can result in wrong decisions overall.[28]

In the era of big data, ADM-related problems arise because of the availability of vast amounts of data on the Internet, which anyone with Internet access can easily access. One of the issues that arises is also to what extent the use of personal data in big data can be justified and whether, even in this case, the data subject's consent is still required.

The Blurring of Territorial Boundaries

The use of digital platforms often blurs boundaries between countries. This tendency brings legal challenges, such as law enforcement, and in specific law fields, it also challenges the basis of the existing legal analysis, such as the definition of the relevant market that becomes the basis of competition law analysis. For instance, difficulties often arise in defining geographic markets in competition law cases that involve global players.[29]

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[25] Rita Gsenger and Toma Strle, "Trust, Automation Bias and Aversion: Algorithmic Decision-Making in the Context of Credit Scoring," *Interdisciplinary Description of Complex Systems* 19, no. 4 (2021), https://doi.org/10.7906/indecs.19.4.7.

[26] Omer Tene and Jules Polonetsky, *Big Data for All: Privacy and User Control in The*, *Northwestern Journal of Technology and Intellectual Property*, vol. 11, 2013.

[27] European Parliamentary Research Service (EPRS), "Liability of Online Platforms" (Brussels, February 2021).

[28] Osonde Osoba, William Welser, and Rand Corporation, *An Intelligence in Our Image : The Risks of Bias and Errors in Artificial Intelligence*, n.d.

[29] European Commission, Google Shopping Case Summary of Commission Decision (June 27, 2017); Viktoria H.S.E. Robertson, "Antitrust Market Definition for Digital Ecosystems," *Concurrences*, no. 2

Freedom of Speech Vs Content Moderation

Freedom of speech has been long recognized as one of the fundamental rights. While the Internet enables the exercise of freedom of speech, it also poses society with the risk of disinformation, as shown in the increasing cases of fake news and hostile practices such as hate speech and cyberbullying. These risks call for actions in the form of regulation and law enforcement.

The problem is that law and policy responses to eliminate or at least control those risks might conflict with the freedom of speech. For instance, this problem can be seen in the attempt to regulate content moderation by placing the responsibility on digital platforms. This attempt is also immediately hindered by technical issues such as the increasing user-generated content that makes moderation hardly possible. The next issue is that content moderation by digital platforms can be abused against network neutrality for the wrong reason, such as to eliminate competitors from the market.

Self-regulation has benefits over state regulations to rule the relations between parties in the market. However, it also has disadvantages and concerns about whether self-regulation would be sufficient to protect public interests. Moreover, public interest is difficult to define.

However, one of the problems with self-regulation is that it is built on contracts often drafted by the online platform provider with little to no room left for users to negotiate. Thus, the commitment of the parties that are not involved in designing the contract is induced by the lack of options; that is, due to high market concentration or the homogeneity of contracts used by the rivals of the online platform provider.

Based on the analysis above, as proposed by the EPRS[30], the liability of digital platforms shall be determined based on the following factors:

- the activities of the digital platforms, for instance, whether a digital platform operates as a search engine, social media, networking and discussion forum, online media sharing provider, messaging platform, matchmaking and transaction e-commerce platform (subcategory: collaborative platforms), other matchmaking platforms, file storage and sharing provider, or online advertising platform;
- its sectors, such as e-commerce, fintech, transportation, accommodation, personal services, advertising, sews and media, electronic communication, or health care;
- its use of data, whether it is data-enabled or data-enhanced;
- the involved actors, for example, online platforms, users, advertisers or targeters, economically interested third parties, or collaterally affected third parties;
- its source of revenue and
- the level of control.

(2021); Pierre Larouche, "Platforms, Disruptive Innovation and Competition on the Market," *SSRN Electronic Journal*, 2021, https://doi.org/10.2139/ssrn.3837085; Andres Caro, "Leveraging Market Power Online: The Google Shopping Case," *Competition Law Journal* 17, no. 1 (2018), https://doi.org/10.4337/clj.2018.01.06.

[30] European Parliamentary Research Service (EPRS), "Liability of Online Platforms."

Upon identifying the factors mentioned earlier, the next step is to identify the source of liability. This source of liability can encompass various fields, such as baseline (all types of illegal content), media law, online piracy, IPR infringement, child protection, illegal hate speech, disinformation and voting manipulation, terrorism-related content (provocation to commit a terrorist offence), product liability, contractual liability, and data protection. Further, the liability can be formulated in a legislative framework, soft law or relevant initiatives, and self- and co-regulation. Such frameworks should consist of the intended target and measures to achieve the target.[31]

The Way Forward

This paper proposes to define the liability of digital platforms based on the following considerations:

- avoid one-size-fits-all approach;
- digital platform liability is required: details define the extent to which the liability can be formulated;
- accountability-based approach
- mapping for the following is needed: types of DP and business models, risks: Types of cases or otherwise potential cases, incl. impact on the market, i.e. competition in the market, sources of liability, the scope of regulation, target, measures, the existing regulations, what is lacking, and the needs for regulation, such as the scope and types;
- the use of a human-centric approach in policy and law-making; and
- the legislation process must be agile, inclusive, transparent, and comprehensive.

[31] European Parliamentary Research Service (EPRS).

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