European Union media and platform regulations, the autonomy of Member States and the Brussels Effect

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I. Introduction

The Member States of the European Union (EU) have necessarily given up part of their autonomy and sovereignty. This was done within the limits set by the Treaties establishing the Union, of the free will of the Member States that signed the Treaties. But these treaties are necessarily general in their wording, so in line with the EU aim that is enshrined in the Treaties ('Ever closer union'), the European Commission and the European Parliament has in recent years constantly sought to extend its powers, to the detriment of the Member States. This is also true in the area of media and platform regulation. These bodies have argued that further and further legislative steps can be considered as derivable from the Treaties. Thus, over the last few years, fundamental changes have taken place in these areas, with the adoption of the Digital Services Act[1] (DSA), Digital Markets Act[2] (DMA) and European Media Freedom Act[3] (EMFA) regulations, the future impact of which cannot yet be measured.

This paper examines the question of whether the EU had the power to adopt these regulations in all cases, what room for maneuver was left to the Member States after the adoption of these regulations, and whether the regulations are capable of indirectly influencing the legislation of other non-EU states (the so-called 'Brussels effect'). In section II, the adoption, legal basis and

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[1] Regulation (EU) 2022/2065 on a single market for digital services and amending Directive 2000/31/EC.
[2] Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act).
[3] Regulation (EU) 2024/1083 of the European Parliament and of the Council of 11 April 2024 establishing a common framework for media services in the internal market and amending Directive 2010/13/EU.

effects of the new European media regulation, the EMFA Regulation, are examined. In section III, the new element of platform regulation, the DSA Regulation, will be examined from the perspective of how far it excludes national legislation outside EU law. In Section IV, we consider the potential Brussels effect of the DSA and the DMA regulations, which is a competition regulation also in the field of platform regulation. This is also a key issue for US-based platforms. On the issue of the Brussels effect, there is already experience with the previously adopted General Data Protection Regulation[4] (GDPR) on data protection, the global impact of which is also reviewed in this section.

II. The European Union's competence to create comprehensive European media regulations

The EMFA is a milestone in the history of media regulations in the European Union (EU). The law, promulgated in April 2024, aims to strengthen media freedom and pluralism at the EU level, and to provide a unified framework for Member States to protect these principles, creating a comprehensive regulatory system within the EU. The EMFA represents a significant change from the EU's previous system of media regulations, which had created legislation through various directives and which focused almost exclusively on the audiovisual sector. The EMFA is thus not merely the next logical step in the EU's media policy, in line with previous measures, but instead it will transform the relationship between EU and Member State media regulations by applying a completely new regulatory tool in the field.

Given the significance of this development, this article will consider whether the EU had the authorization and legislative competence to adopt the EMFA. Answering this also

[4] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC.

necessitates examining issues that are only partly or only indirectly related to the confusion arising in connection with the division of competences.

A. Reasons for and overview of the adoption of the EMFA

The independence, diversity and freedom of the media are among the main indicators of democracy, and their state-guaranteed protection is a legitimate expectation. The creation of the EMFA aimed to meet this need, and from a socio-political perspective there are logical explanations as to why a democratically committed international organization with legislative competence would undertake such a task.

Journalists in several European countries face threats and harassment, and some have even been murdered. Journalists play a vital role in ensuring transparency in democratic states and therefore need protection. The independence of media outlets is also a vital issue; they cannot be viewed merely as commercial enterprises.[5] In this context, a study commissioned by the European Parliament in July 2023 highlighted that media market concentration poses a risk to democratic debate by potentially limiting the plurality of opinions offered by the market. The transparency of media ownership is crucial for assessing market concentration and uncovering the interests of media owners and potential biases in the editorial direction of media outlets.[6]

Another justification for the creation of the EMFA may also lie in the fact that various EU legislative measures indirectly affecting media pluralism – such as regulations on digital platforms, transparency requirements for online platforms and initiatives to combat online

[5] State of the Union 2021, Ursula von der Leyen, European Commission (September 15, 2021), https://state-of-the-union.ec.europa.eu/document/download/4a3da7a3-477d-4948-b1c2-c0ca58cdf909_en?filename=2021_soteu_brochure_en.pdf.

[6] Elda Brogi et al., *The European Media Freedom Act: Media freedom, freedom of expression and pluralism*, European Union (2023), https://cadmus.eui.eu/bitstream/handle/1814/75938/IPOL_STU%282023%29747930_EN.pdf?sequence=1&isAllowed=y, at 11–12.

disinformation – did not adequately address the fundamental challenges related to media diversity and independence.[7]

The EU aims to strengthen the protection of media freedom and pluralism by supporting the internal market of the media sector, particularly by emphasizing that the production, distribution, and consumption of media content are increasingly digital and cross-border in nature. Therefore, the creation of the EMFA allows for internal market considerations – the law aims to eliminate barriers to the cross-border provision of media services. In other words, the regulatory goal is to support the internal market of the media sector, and the regulatory consequence of this is the protection of media freedom and pluralism.

The EU discussed the proposed legislation under the ordinary legislative procedure, and it was finally adopted on 11 April 2024. The EMFA covers the following areas in the field of media regulation:

- the rights of the audience and the rights and duties of media service providers (Articles 3–4, 6);
- safeguards for the independent functioning of public service media providers (Article 5);
- renewing the framework for the collaboration and operation of national regulatory authorities and the EU organizational system (Articles 7–17);
- ensuring the provision of and access to media services in the digital environment (Articles 18–20);
- provisions on the transparency of media ownership and in the concentration of media ownership (Articles 6, 21–23);
- transparency of audience measurement and the allocation of state advertising (Articles 24–25).

[7] *Id.*

B. Theoretical concerns raised regarding the regulations

Despite the fact that the EMFA was ultimately adopted with the objective of strengthening the rule of law, it raises several rule of law-related issues, particularly in terms of legal certainty, clarity of norms, and enforceability. The concurrently applicable regulatory rules and the European Commission's power of interpretation and recommendation related to these rules can override national regulations which were adopted based on the Audiovisual Media Services Directive (AVMS Directive)[8], a situation which can also create legal uncertainty.

The European Parliament itself criticized the clarity of norms of the proposed regulation. The main thrust of this criticism was that, despite one of the regulation's goals being the promotion of pluralism, there is no consensus on what is actually meant by pluralism. Media pluralism can have many different meanings, involving such considerations as the diversity of sources, content, consumption, or viewpoints. It is indeed a multifaceted and complex concept, the interpretation of which can vary by research field. Thus, strengthening and protecting media pluralism in practice can be achieved through various approaches, but it remains unclear what type and degree of diversity would be sufficient to preserve media pluralism in a normative sense.[9]

Several Member States have expressed critical views on the EMFA. France, Belgium, and Denmark[10] argued that the regulation violated the principle of subsidiarity and did not meet the legislative obligation to respect the competences of Member States (particularly the requirements for press regulation and public service media financing). Nevertheless, all three

[8] Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services.
[9] Brogi, *supra* note 3 at 13.
[10] *See* https://secure.ipex.eu/IPEXL-WEB/document/COM-2022-0457/frass, https://secure.ipex.eu/IPEXL-WEB/document/COM-2022-457/dkfol.

Member States emphasized that they fundamentally support stronger EU action in the field of the media.[11] Alongside other Member States,[12] Germany also criticized the draft legal act, particularly citing concerns related to subsidiarity. It argued that regional authorities are better suited to regulating media systems than EU institutions. Germany agreed that media independence and pluralism must be ensured and maintained in Europe, but added that a legitimate goal alone does not provide sufficient authorization for such a far-reaching intervention by the EU.[13]

The market also criticized the draft. Around 400 EU publishers, newspapers, magazines and associations – including the German Newspaper Publishers and Digital Publishers Association (BDZV) and the German Free Press Media Association (MVFP) – expressed their concerns about the EMFA in an open letter to the EU legislator, arguing that it is counterproductive to the protection of media freedom. They claimed that the legislator has ignored established national frameworks and constitutionally protected procedures, arguing that media freedom and pluralism cannot be achieved by harmonizing media regulations across Europe.[14]

Some non-governmental organizations and journalists have expressed optimism about the EMFA, however.[15] For example, the international human rights NGO Article 19 fundamentally supported the adoption of the legal act, while also pointing out that the regulation lays down

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[11] Lennart Lünemann, *Why EU Member States with low risks to media pluralism are so reluctant to support the European Media Freedom Act*, Centre for Media Pluralism and Media Freedom (8 September, 2023), https://cmpf.eui.eu/why-eu-member-states-with-low-risks-to-media-pluralism-are-so-reluctant-to-support-the-european-media-freedom-act.

[12] *See* https://secure.ipex.eu/IPEXL-WEB/document/COM-2022-0457/huors; https://secure.ipex.eu/IPEXL-WEB/document/COM-2022-0457/czpos.

[13] *See* https://secure.ipex.eu/IPEXL-WEB/document/COM-2022-0457/debra.

[14] Michael Hanfeld, *400 BVerlage und Verbände kritisieren Medienfreiheitsgesetz*, Neue Zürcher Zeitung (June 27, 2023), https://www.faz.net/aktuell/feuilleton/medien/400-verlage-und-verbaende-kritisieren-medienfreiheitsgesetz-18994078.html.

[15] European Media Freedom Act: Striking the right balance, European Broadcasting Union (September 16, 2022), https://www.ebu.ch/news/2022/09/european-media-freedom-act; Damian Tambini, *The Democratic Fightback has Begun: The European Commission's new European, Media Freedom Act*, Inforrm (2 October, 2022), https://inforrm.org/2022/10/02/the-democratic-fightback-has-begun-the-european-commissions-new-european-media-freedom-act-damian-tambini.

only the most basic norms for the protection of pluralistic media and journalists' rights, hence stricter safeguards need to be introduced by the Member States.[16]

C. Assessment of the legal basis of the EMFA from the perspective of the allocation of competences.

The legislative debate on media freedom and pluralism undoubtedly centers on the allocation of competences and responsibilities between the EU and the Member States.[17] The following section examines the extent to which the adoption of the EMFA aligns with the legislative provisions and practices of EU law.

1. General issues concerning the EU legal basis for audiovisual and media policy

The EU's legislative possibilities are fundamentally determined by the exclusive, shared, or supporting competences established in the Treaty on the Functioning of the European Union (TFEU) and the three principles enshrined in Article 5 of the Treaty on European Union (TEU) – the principles of conferral, subsidiarity and proportionality. Although the free operation of the media is a fundamental value of the Union, and hence the EU has already adopted a considerable number of legal acts for its regulation, it is important to recognize that the treaties do not provide direct competence for the Union in the field of audiovisual and media policy, nor do they name the media among the EU policy areas, thus the EU's legal instruments

[16] Call for Effective Implementation of European Media Freedom Act, Article 19 (13 March, 2024), https://www.article19.org/resources/eu-call-for-effective-implementation-of-european-media-freedom-act.
[17] Brogi, *supra* note 3 at 17.

in this area are limited. The competence for audiovisual and media policy can be derived, rather, from various articles of the TFEU.[18]

According to the case law of the Court of Justice of the European Union (CJEU), the legal basis of a legal act must be chosen in light of its main regulatory objective.[19] The EMFA was adopted by the EU legislators based on the regulatory legal basis ensuring the harmonization of the internal market, namely Article 114 of the TFEU, which states that "the European Parliament and the Council shall, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee, adopt the measures for the approximation of the provisions laid down by law, regulation or administrative action in Member States which have as their object the establishment and functioning of the internal market."

The legal basis cited above is explained in Recital (2) of the EMFA, stating that media freedom and pluralism are two main pillars of democracy and the rule of law, and their protection is an essential feature of a well-functioning internal market for media services. Recital (4) highlights that divergent national regulations, particularly concerning media pluralism and editorial independence, insufficient cooperation between national regulatory authorities, and the opaque and unfair allocation of public and private economic resources restrict free movement within the internal market and create an uneven playing field. Recital (5) is even more specific, stating that the divergent nature of national provisions and procedures of the Member States and the lack of coordination between them can lead to legal uncertainty and entail additional costs for media enterprises wishing to enter new markets. Discriminatory or protectionist measures by Member State affecting the operation of media undertakings

[18] Fact Sheets on the European Union: Audiovisual and media policy, European Parliament, https://www.europarl.europa.eu/factsheets/en/sheet/138/audiovisual-and-media-policy.
[19] C-155/91 Commission of the European Communities v. Council of the European Communities [ECLI:EU:C:1993:98], paras 19–21.

disincentivize cross-border investment in the media sector and, in some cases, could even force media undertakings that are already operating in a given market to exit it.[20]

2. Assessment of the internal market legal basis

Several concerns of a legal or professional nature, which go beyond political and theoretical criticisms, have arisen regarding the legal basis of the EMFA, questioning whether Article 114 of the TFEU, aimed at achieving the internal market, is sufficient on its own to provide a sufficient legal basis for the adoption of the EMFA. The legislative basis provided in the article can generally be described as granting the EU legislator a functionally limited scope of action. The framework for its application has been shaped by the case law of the CJEU, which encourages the effective realization of market integration.

This in turn raises the question of whether the EMFA supports the effective realization of market integration, and whether the adoption of the regulation is truly necessary for the proper functioning of the internal market, or if the reference to Article 114 of the TFEU merely serves as a pretext for extensive EU-level regulation of the media. To answer this question, it is essential to examine the scope of the legal act. According to Article 1 of the EMFA, the material scope of the EMFA extends to media services, which – without a restrictive provision to this effect – include not only cross-border media services but also services operating at the local or regional levels, such as local radio stations and local and regional press, and which are thus not particularly relevant to the internal market. The EMFA does not clarify why divergent national legal regulations would create legal uncertainty for media service providers which

[20] Regulation (EU) 2024/1083 of the European Parliament and of the Council of 11 April 2024 establishing a common framework for media services in the internal market and amending Directive 2010/13/EU.

operate exclusively within national market frameworks. In this regard, Article 114 of the TFEU certainly cannot be applied as a legal basis.[21]

A related issue is the fact that media services include social media platforms classified as online platforms, audiovisual media, video-sharing platform services, radio broadcasting and the press. The EMFA would impose the definition of a "common internal media market" on all these media, regardless of the fact that these services do not compete in the same market at either the EU or at the national level, while their economic characteristics – primarily depending on their type and audience – differ significantly. Consequently, it is not possible to regulate such a wide range of media simultaneously – beyond ensuring constitutional fundamental rights – at the general EU level.

Nevertheless, the market regulation of a narrower range of media services could, in principle, be justified as a measure taken to protect the internal market. However, taking an approach whereby any economic aspect could serve as a sufficient reason for adopting a legal act solely based on Article 114 of the TFEU would essentially nullify the principle of exclusive powers. From this perspective, any legal act regulating enterprises as market participants could extend to many other related areas, including those where the EU does not actually have legislative competence.[22]

The fact that the production, distribution, and consumption of media content has become increasingly digital and cross-border is insufficient to explain why the problems raised in the justification of the EMFA – such as the decline in editorial independence, difficulties in protecting journalistic sources and unfair market operators – could not be addressed at the national level. Furthermore, according to the case law of the CJEU, the mere fact that there are

[21] Rupprecht Podszun, News Ecosystems: Tackling unfinished business, 12(2) Journal of Antitrust Enforcement 314 (2024).
[22] Mark D. Cole & Christina Etteldorf, Research for CULT Committee – European Media Freedom Act – Background analysis, European Parliament (April 7, 2023), https://www.europarl.europa.eu/RegData/etudes/STUD/2023/733129/IPOL_STU(2023)733129_EN.pdf.

different rules in the various Member States does not hinder the internal market. There are thus, apparently, no obstacles to the functioning of the internal market that could justify legislation under Article 114 of the TFEU.

The unlimited application of legal harmonization provided by Article 114 would also be contrary to the limited political nature of the EU, which essentially means that it can only contribute to the common economic, social and political objectives assigned to it by the Member States within the designated policy areas and within the limits of the competences conferred on it. In response to this, a legal interpretation has emerged in judicial practice that prohibits the EU legislator from adopting general (economic) regulatory acts based on Article 114.[23]

3. Assessment of the cultural legal basis

When regulating the media sector, it is essential to consider not only economic but also cultural aspects.[24] This is particularly true in the regulation of public service media. Organizations that produce, create and simultaneously disseminate content protected by copyright can generally be regarded as representatives of culture and cultural values. Consequently, it may be wondered whether Article 114 of the TFEU – which does not explicitly recognize a cultural exception – can provide the authority to create culturally relevant harmonization measures.

The EMFA explicitly refers to culture in several places, for example, Recital (8) describes media services as carriers of cultural expression. Article 6 of the TFEU states that the "Union shall have competence to carry out actions to support, coordinate or supplement the

[23] Case C-376/98 Federal Republic of Germany v. European Parliament and Council of the European Union [ECLI:EU:C:2000:324], para. 82.
[24] Cole & Etteldorf, *supra* note 21 at 7.

actions of the Member States" including actions in the field of culture at the European level. Article 167 of the TFEU practically confirms that the Union is entitled to support and supplement the action of Member States, and promote cooperation between them in the field of culture. Given that the article also includes the audiovisual sector within the scope of culture, the EU is entitled to support and supplement the actions of the Member States also in this area.

Based on the treaties, the regulation of culture – which includes the audiovisual sector – can be classified under supporting competences. However, essentially this only ensures that the EU coordinates and supplements the actions of the Member States without replacing their authority and does not allow for the harmonization of national measures (national media laws and regulations).[25]

Article 167 of the TFEU does not provide the EU with independent competence in the field of culture, which can be inferred from the wording of the article, as it focuses on the culture of the Member States, and does not suggest creating a unified cultural community. The legal text explicitly states that the EU shall contribute to the flowering of the cultures of the Member States while respecting their national and regional diversity, and Paragraph (5) of the article clearly excludes any harmonization of the laws, regulations and administrative provisions of the Member States. Thus, in cultural matters, the EU's competence is also limited by the protection of national and regional diversity and the prohibition of harmonization in this field. Consequently, the article implicitly entrusts the regulation of the cultural sector primarily to the Member States, meaning that the EU can only act to support national initiatives in this area.

However, it should be noted that in the aforementioned German opinion on the EMFA, the Bundesrat emphasized the fundamental importance of the cultural sovereignty of the Member States, which is exercised by the Länder in Germany. According to this opinion, the Commission neither adequately considered cultural sovereignty under Article 167 of the TFEU

[25] Brogi, *supra* note 3 at 17–18.

– including the Member States' competence in media regulation – nor did it strike the correct balance between cultural and economic regulatory aspects. Additionally, it was established at plenary session 1032 that a significant part of the EMFA falls under the cultural sovereignty of the EU Member States.[26]

The adoption of the EMFA in the form of a regulation has also been subject to criticism linked to its cultural legal basis. Article 296 of the TFEU states that if the treaties do not specify the type of legal act to be adopted – as was the case with the EMFA – the institutions shall select the type of act in accordance with the principle of proportionality. However, Article 5(4) of the TEU makes it clear that in such cases, it is necessary to choose a legal act that is appropriate in terms of content and form to achieve the objectives set by the legislator. Thus, in certain cases, the adoption of a directive or even a non-binding legal act may be justified instead of a regulation. This is relevant for EU policies where the harmonization of the laws, regulations, or administrative provisions of the Member States is excluded, and where the legal basis in the treaty authorizes the Council to issue recommendations. This includes Article 167(5) of the TFEU which, in the field of culture, explicitly excludes the harmonization of national provisions and only authorizes the EU legislative institutions to adopt incentive measures and recommendations, as noted above.

III. The Digital Services Act and the remaining margin of appreciation available to Member States

In November 2022, two key regulations came into effect in the EU, significantly transforming and expanding the regulatory framework for digital markets and the service

[26] See the German reasoned opinion on the Commission's proposal, *supra* note 10; Bundesrat 1032nd plenary session: contribution, addressing the European Commission (March 31, 2023), https://secure.ipex.eu/IPEXL-WEB/document/COM-2022-457/debra.

providers that are active in them. Several factors can be identified behind the adoption of the DSA. On the one hand, since the adoption in 2000 of the Directive on electronic commerce, which defines the legal framework for services related to the information society, several new types of online services and operational models have emerged, that have become part of the everyday lives of the EU's citizens.[27] On the other hand, the changed service environment prompted individual Member States to adopt their own national legislation, which the EU legislative bodies – considering the cross-border nature of the services in question – regarded as an unfavorable process from the perspective of the single internal market.[28]

The regulation raised the question of how much latitude it leaves for national legislators. Below, we will explore this issue by presenting the relevant provisions of the regulation, as well as the relevant practices of the European Commission and the CJEU. The DSA establishes rules for intermediary service providers and, within this framework, sets out the conditions for exemption from liability for these service providers, as well as the due diligence obligations for certain categories of intermediary service providers.

A. Brief overview of the regulation

Intermediary services encompass a wide range of services related to the information society, including providers of information transmission, caching and hosting services. In practice, this category includes, but is not limited to, internet access providers, domain name registrars, cloud and other internet hosting services, application stores, social media and other content-sharing platforms, as well as various online commercial platforms and marketplaces.

[27] Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC, Recital (1); 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.
[28] DSA, Recital (2).

Regarding due diligence obligations, the DSA is structured in a pyramidical manner. At the base of the pyramid, the regulation first contains provisions applicable to all intermediary service providers. At the next level it then separately specifies the obligations for intermediary service providers that qualify as hosting service providers, hosting service providers that qualify as online platforms, and finally, very large online platforms and very large online search engines.[29] The section which is applicable to all intermediary service providers contains obligations related to the designation of a contact point and legal representative, terms and conditions (information, application considering fundamental rights), and transparency reporting.[30] The DSA, in relation to hosting service providers, also includes provisions on the mechanisms for reporting and acting on illegal content, the obligation to provide clarifications to users of the services, and the obligation to report in case of suspected crimes.[31]

For online platforms, the DSA sets out requirements to maintain an internal complaint-handling system, the possibilities for out-of-court dispute resolution available to users of the services, provisions related to trusted flaggers, and measures that can be taken against abuses. This section of the DSA also includes the independent transparency reporting obligations of online platforms, the prohibition on manipulative or deceptive design of online interfaces, transparency requirements for online advertisements and recommender systems, and provisions for the protection of minors (appropriate and proportionate measures to ensure a high level of privacy and safety for minors and prohibition of advertisements based on profiling). Within the category of online platforms, specific provisions apply to online marketplaces (traceability of traders, additional requirements related to information to consumers).[32]

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[29] The Digital Services Act: Ensuring a safe and accountable online environment, European Commission, https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/europe-fit-digital-age/digital-services-act_en.
[30] DSA, Chapter III, Section I.
[31] DSA, Chapter III, Section II.
[32] DSA, Chapter III, Sections III–IV.

The regulation establishes further specific obligations for very large online platforms and very large online search engines (services actively used by at least 45 million users in the EU on average per month, designated by the Commission), given their particular importance. These include risk assessment and mitigation obligations related to systemic risks arising from the design, operation and use of such services. The legislation identifies actual or foreseeable negative impacts on minors as one of these risks.[33] Besides due diligence obligations, it is also worth noting the provision related to the liability of intermediary service providers, which excludes a general monitoring or active fact-finding obligation on the providers.[34]

B. Jurisdictional limitations

In terms of the regulation of online services, the main constraint on the discretion of Member States is posed by the jurisdictional rules related to information society services. Article 3 of the Directive on electronic commerce provides guidance on this matter. According to Paragraph (1), "each Member State shall ensure that the services provided by a service provider established in its territory comply with the national provisions applicable in the Member State in question", while Paragraph (2) states that "Member States may not, for reasons falling within the coordinated field, restrict the freedom to provide information society services from another Member State." The jurisdiction over established providers and the prohibition on restricting the freedom to provide services together define the country of origin principle. This principle also applies to the regulation of video-sharing platform service providers under the

[33] DSA, Chapter III, Section V.
[34] DSA, Article 8.

AVMS Directive, as these services form a subcategory of information society services and thus fall within the scope of the Directive on electronic commerce.[35]

With regard to the jurisdictional framework defining the discretion of Member States in platform regulation, the CJEU made significant findings in the case of *Google and Others v KommAustria*.[36] The Court had to decide whether the obligations imposed on domestic and foreign providers by the Austrian federal law on measures to protect users of communication platforms (Kommunikationsplattformen-Gesetz, hereinafter as: KoPl-G) constituted measures against "a given information society service" within the meaning of Article 3(4) Directive on electronic commerce.[37]

The significance of the question lies in the fact that the cited paragraph defines the conditions for derogation from the country of origin principle. According to Article 3(4), Member States have the possibility to derogate if it is necessary and proportionate to adopt measures to achieve certain specified objectives (such as the protection of consumers). The Austrian Supreme Administrative Court, which initiated the preliminary ruling, sought guidance on whether this could be interpreted to mean that the general and abstract provisions of the KoPl-G, applicable in the absence of specific and concrete acts, could also be considered to be such measures.

The Court stated that interpreting the concept of measures in such a way that "Member States may adopt measures of a general and abstract nature applying without distinction to any provider of a category of information society services" would undermine the country of origin principle, thereby fundamentally contradicting the objective of the Directive on electronic

[35] Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) in view of changing market realities, Recital (44).
[36] Case C-376/22 Google Ireland Limited, Meta Platforms Ireland Limited, Tik Tok Technology Limited v Kommunikationsbehörde Austria (KommAustria) [ECLI:EU:C:2023:835].
[37] *Id*. paras 24 and 25.

commerce.[38] Recital (5) of the Directive identifies regulatory differences between Member States and the resulting lack of legal certainty (which national rules must be complied with) as obstacles to the development of information society services, and derives the legitimacy of the freedom to provide services and the country of origin principle from this. The Court also confirmed its conclusion based on the grammatical interpretation of the conditions set out in Paragraph (4), stating that the Directive on electronic commerce allows for specific, individual measures, rather than establishing more general principles.[39]

Based on this interpretation, Member States cannot rely on Article 3(4) Directive on electronic commerce to justify derogation from the country of origin principle when introducing abstract and general measures, that is, laws. In such cases, it is not even necessary to examine the fulfilment of the conditions of necessity and proportionality.[40] The Commission also drew the attention of Member States to the jurisdictional limitations defined in the Directive on electronic commerce during the notification procedures concerning the legislative proposals of France and Germany, as both Member States attempted to bring under the scope of regulation providers which, although providing services within the territory of the respective state, are not established within that state.[41]

C. The limitations arising from the material scope of the DSA

When considering the regulatory discretion of Member States in relation to online platforms, the starting point is that the EU achieves legal harmonization in the context of intermediary services through the DSA by means of a regulation, rather than a directive. By

[38] *Id*. paras 39–60.
[39] *Id*. paras 30–38.
[40] *Id*. paras 60–63.
[41] Notification 2023/632/FR, https://europa.eu/webtools/rest/html2m/output/html2m-1735993288-dpcxv.pdf, at 3; Notification 2024/188/DE, https://technical-regulation-information-system.ec.europa.eu/en/notification/25746/message/108751/EN, at 4–5.

definition, and as stipulated in Article 288 of the TFEU, a regulation is a legal act with general applicability that is entirely binding and directly applicable (that is, it does not require implementing measures), leaving little room for national legislation serving the objectives defined therein. As a result, the DSA establishes so-called maximum harmonization. In this regard, Recital (9) states that the DSA "fully harmonizes the rules applicable to intermediary services in the internal market" and emphasizes, therefore, that "Member States should not adopt or maintain additional national requirements relating to the matters falling within the scope of this Regulation" as this would conflict with the "direct and uniform application" of the rules.

The regulation specifies two general exceptions to these strict requirements.[42] Firstly, an exception applies in cases where the regulation explicitly requires Member States to adopt or maintain national requirements with regard to a specific provision. Examples include decisions or orders concerning the actions of intermediary service providers in relation to illegal content or the provision of information. In this context, the regulation refers to the "harmonization of minimum specific conditions" while allowing national law to prescribe additional conditions. Similarly, provisions on sanctions stipulate that "Member States shall lay down the rules on penalties applicable to infringements of this Regulation by providers of intermediary services within their competence."[43] Secondly, according to the Regulation's Preamble, maximum harmonization "should not preclude the possibility of applying other national legislation applicable to providers of intermediary services", provided it is consistent with EU law – including the country of origin principle mentioned in relation to jurisdiction – which must "pursue other legitimate public interest objectives than those pursued by" the DSA.[44]

[42] DSA, Recital (9).
[43] DSA, Recitals (31) and (32), Article 52.
[44] DSA, Recital (9).

The reference to “other legitimate public interest objectives” actually reinforces a strict interpretation for Member States. It implies that they must refrain not only from repeating the specific provisions of the DSA or introducing additional or supplementary rules but, presumably, also from taking any legislative measures aimed at regulatory objectives identified by the DSA concerning intermediary service providers.

The European Commission has interpreted the limits imposed by the material scope of the DSA in several notification procedures related to Member State legislation, including the amendment of the Irish electoral reform law. The Irish legislation sought to impose certain obligations on platforms regarding misinformation. However, during the notification procedure, the Commission drew the attention of the Member State in question to Recital (9) of the DSA Preamble. According to this recital, the regulation addresses “the dissemination of illegal content online and the societal risks that the dissemination of disinformation or other content may generate, and within which fundamental rights enshrined in the Charter are effectively protected”. The Commission reiterated its position that the DSA, as a regulation, does not permit the introduction of additional national requirements unless explicitly provided for within the regulation itself.[45]

When attempting to define the material scope of the DSA and the compatibility of national legislation, the issue of age verification implemented for child protection purposes is particularly noteworthy, as the European Commission appears to have adopted a seemingly more permissive stance on this specific matter than might be expected under the principles outlined above. Several EU Member States, including France and Germany, have introduced legislation on age verification, for which the Commission issued detailed opinions at the conclusion of the notification procedures. From the detailed opinion issued by the Commission in January 2024 concerning the French proposal, it became apparent that Article 28 of the DSA,

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[45] Notification 2024/0374/IE, https://technical-regulation-information-system.ec.europa.eu/en/notification/26037/message/109650/EN, at 3–4.

addressing the obligations of online platforms concerning the protection of minors, should be interpreted to include the implementation of age verification tools as part of "appropriate and proportionate measures by providers".[46] Furthermore, in both the French and German notification procedures, the Commission referred to Articles 34 and 35 of the DSA, which require service providers operating very large online platforms and very large online search engines to conduct risk assessments and management. Notably, Article 35(j) explicitly includes age verification tools among the specific measures for protecting children's rights.[47]

In the detailed opinion it provided in January 2024, the Commission objected to a provision in the French bill stipulating that "influencers" may not upload pornographic content to platforms lacking age verification tools. The Commission determined that this indirectly imposes obligations on online platforms, as the requirement would compel them to utilize such tools. The Commission highlighted that, given that the aforementioned provisions of the DSA encompass the obligation for online platforms to introduce age verification tools, such national requirements merely duplicate the provisions of the regulation. This opinion of the Commission is significant because it demonstrates that national legislation which establishes obligations indirectly affecting entities outside the direct scope of the DSA may also be incompatible with the Regulation.[48]

Conversely, in the opinion it issued in October 2023 regarding the German and French proposals, the Commission supported the temporary imposition of age verification obligations by Member States on video-sharing platforms and publishers of online public communication services under editorial responsibility within their jurisdiction. In these cases, the national legislator is permitted to introduce such measures temporarily because the Commission recognized that no EU-wide solution for verifying users' age currently exists. However, the

[46] *See* also Notification 2023/632/FR, *supra* note 39 at 6.
[47] DSA, Article 35(1)(j); Notification 2024/188/DE, *supra* note 39 at 6.; Notification 2024/461/FR, https://technical-regulation-information-system.ec.europa.eu/en/notification/24221/message/105804/EN at 5.
[48] Notification 2023/632/FR *supra* note 39 at 6–7.

Commission emphasized that legislators must adopt regulations allowing for the repeal of these national measures once a unified technical solution is implemented at the European level.[49]

Although the Commission has not resolved the apparent contradiction in its views on the implementation of age verification tools, it is conceivable that the differing approaches identified above stem from the fact that the proposals sought to impose the obligation on distinct entities (online platforms *versus* video-sharing platforms and publishers of editorially responsible online public communication services). Nevertheless, the Commission's reliance on Articles 28 and 35 of the DSA in both procedures adds to the confusion, as Article 28 applies to online platforms, while Article 35 establishes obligations for very large online platforms.

As previously noted, video-sharing platforms are classified as intermediary services and are thus subject to the rules of the DSA in addition to the AVMS Directive. The relationship between the Regulation and the Directive is explicitly addressed within the DSA, which states that it shall be without prejudice to "Directive 2010/13/EU of the European Parliament and of the Council, including the provisions thereof regarding video-sharing platforms".[50] The Member States' regulations for video-sharing platforms, referring to the AVMS Directive, include both what can be regarded as successful and unsuccessful attempts to conform with this.

In the case of the German proposal referring to the AVMS Directive, which also mandated self-monitoring by platforms, the Commission concluded that its provisions were incompatible with the DSA. This was because, despite the aforementioned provision, the regulation fully harmonized certain obligations for online intermediary services, including prescribing investigative duties for video-sharing platforms.[51] By contrast, in October 2024, the

[49] Notification 2024/461/FR *supra* note 45 at 6; Loi n° 2024-449 du 21 mai 2024 visant à sécuriser et à réguler l'espace numérique, Article 1; 2 Notification 2024/188/DE, *supra* note 45 at 6; Sixth State Treaty on the amendment of state treaties on media law, 5a, 18–19. §.
[50] DSA, Recital (10), Article 2(4).
[51] Notification 2024/188/DE, *supra* note 39 at 8.

Commission raised no concerns about the violation of maximum harmonization in the Online Safety Code issued by the Irish media authority (Coimisiún na Meán), which also referred to the AVMS Directive. The Code mandates – among other obligations – the implementation of age verification and parental control tools for video-sharing platforms under Irish jurisdiction, as designated by the media authority. Due to Ireland's unique circumstances, these platforms include Facebook, Instagram and YouTube.

IV. The potential global impact of the GDPR, the DSA and the DMA

The issues that EU platform regulation aims to address – such as disinformation, the protection of freedom of speech, action against harmful content, and the market dominance of large platform providers – are not, of course, limited to the EU. This is one of the reasons why questions may arise regarding the international impact of the two pieces of legislation. Globally identifiable models of internet regulation – for instance, stricter content moderation in China or Russia, and more lenient principles in the United States (US) – make the EU law a realistic reference point for other countries, potentially leading to the emergence of a "Brussels Effect" in these areas.

A. Approaches to the Brussels Effect in the literature

The Brussels Effect phenomenon was described by Finnish-American law professor Anu Bradford in a 2012 study,[52] building on the California Effect[53] developed earlier by David Vogel. Bradford's 2020 book *The Brussels Effect* illustrates the theory with examples,

[52] Anu Bradford, The Brussels Effect, 107(1) Northwestern University Law Review 1–68 (2012).
[53] *See,* for example, David Vogel, Environmental Regulation and Economic Integration (1999), https://www.iatp.org/sites/default/files/Environmental_Regulation_and_Economic_Integrat.pdf, at 10–13.

demonstrating the international reach of EU legislation.[54] The theory concerns the EU's global regulatory role, whereby, through the Brussels Effect, the EU exerts unilateral, one-sided global market regulatory influence: it creates legislation that can influence the manufacturing of products, the provision of services, or the general operations of businesses worldwide. No international institutional framework is required for this, nor does the EU need to apply any coercion, as in many cases market forces turn its regulations into global standards.

An EU regulation can have a global impact in two ways: either its provisions are adopted by the legislators of other countries (*de jure* Brussels Effect), or private companies adjust their products or services to the stricter EU requirements, even outside markets on EU territory (*de facto* Brussels Effect). Bradford emphasizes that the Brussels Effect could also be called the Washington or Beijing Effect, as under certain conditions, the legal provisions of other countries or political entities could also trigger similar global responses.[55] Five conditions must be met for a jurisdiction's legislation to exert a *de facto* Brussels Effect:

1) the jurisdiction's market must be of significant size,
2) there must be significant regulatory capacity,
3) the regulations must be stricter compared to those of other countries,
4) the regulated market must be inflexible, and
5) the production of the product or the operation of the company must be indivisible.

Joanne Scott points out that the EU often provides incentives to ensure that compliance with its legislation extends as broadly as possible, to cover entire countries rather than just individual transactions or companies. A key benefit of the nationwide application of legislation is that compliance makes trade smoother, incentivizing broad compliance as EU institutions

[54] Anu Bradford, *The Brussels Effect: How the European Union rules the world*. New York, Oxford University Press, 2020.
[55] *Id*. at 64.

place fewer demands on companies from third countries during individual transactions.[56] Scott highlights that the EU's style of unilateral law-making differs from similar activities in the US, as the EU is able to offer more flexibility in enforcing its legislation. EU institutions are more willing to compromise with third countries, often establishing equivalence, meaning that third countries can enter the internal market successfully by aligning their own laws with relevant aspects rather than fully adopting EU legislation. According to Scott, EU regulation is characterized by respect for international standards: European legislation adopts these standards in several areas and, in the event that international treaties are concluded, the EU may amend or suspend European requirements.

Bradford's five conditions are primarily necessary to achieve the *de facto* Brussels Effect, whereby companies worldwide adapt to legislation – in our case, to EU legislation. In contrast, Bradford primarily accounts for the *de jure* Brussels Effect by referring to the quality of EU law, its ease of transposition, and its translation into multiple languages. Bradford, also emphasizes, however, that a transposed piece of legislation, or one that is inspired by EU legislation does not necessarily produce an effect similar to that of EU law[57]. The Brussels Effect can only emerge in areas where access to the market can be restricted or conditioned by the relevant country, or in this case, by the EU.

B. The Brussels Effect illustrated through the example of the GDPR

[56] Joanne Scott, Extraterritoriality and Territorial Extension in EU Law, 62(1) The American Journal of Comparative Law 87, 105–113 (2014).
[57] Bradford, *supra* note 52 at 95.

The Brussels Effect is well illustrated by the international implementation of EU data protection regulations, more specifically the GDPR. In this context, European Commissioner Vera Jourova stated in 2018, "If we can export this [the GDPR] to the world, I will be happy."[58]

The Regulation aims to protect the personal data of individuals within the European Economic Area and to unify the fragmented European data protection regulation landscape. However, its practical impact goes far beyond the EEA. The legislative proposal was adopted by the European Parliament and the Council in 2016, and it became mandatory for Member States to implement from 2018.[59] The GDPR places significant responsibility on companies that handle the personal data of individuals, in the interest of data security. This responsibility falls especially on digital and media companies, as these often come into possession of personal data during individuals' online activities. The global impact of the GDPR is particularly evident in these sectors – it applies to companies that provide websites or services to citizens within the EEA, even if they are registered in countries outside this region.[60] Two areas can be identified in which the GDPR has had a global impact. One field that can be examined is the laws of third countries, while another area covers the activities of companies outside the EU. The impacts of the GDPR on both of these areas are discussed below.

1. The adaptation of third-country laws: *de jure* Brussels Effect

The European Commission determines which third-country data protection laws provide adequate protection for consumers through its so-called adequacy decisions. These laws are

[58] Adam Satariano, G.D.P.R., a New Privacy Law, Makes Europe World's Leading Tech Watchdog, The New York Times (May 24, 2018), https://www.nytimes.com/2018/05/24/technology/europe-gdpr-privacy.html.
[59] The History of the General Data Protection Regulation, European Data Protection Supervisor, https://www.edps.europa.eu/data-protection/data-protection/legislation/history-general-data-protection-regulation_en.
[60] Everything you need to know about GDPR compliance, GDPR.EU, https://gdpr.eu/compliance.

therefore considered, at least partially, to be equivalent to the GDPR.[61] The Commission periodically reviews these decisions, and in parallel, the respective countries must submit reports to the EU to account for any changes in their data protection laws.[62]

The countries and territories whose laws in this area are currently deemed adequate by the Commission include: Andorra, Argentina, Canada, the Faroe Islands, Guernsey, Israel, the Isle of Man, Japan, Jersey, New Zealand, South Korea, Switzerland, the United Kingdom, the United States and Uruguay.[63] For eleven countries and territories (Andorra, Argentina, Canada, the Faroe Islands, Guernsey, the Isle of Man, Israel, Jersey, Switzerland, Uruguay, New Zealand), the Commission confirmed their compliance with previous EU data protection laws before the entry into force of GDPR regulations, as of January 2024.[64]

From 2000 to 2015, the International Safe Harbor Privacy Principles, then from 2016 to 2020, the EU–US Privacy Shield, and from 2022, the Trans-Atlantic Data Privacy Framework (DPF) set the requirements for transactions involving the flow of personal data between the EU and the US.[65] The Commission's adequacy decision applies to the US companies involved in this framework, essentially validating that the organization complies with the requirements set by the DPF.[66]

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[61] Adequacy decisions, European Commission, https://commission.europa.eu/law/law-topic/data-protection/international-dimension-data-protection/adequacy-decisions_en.

[62] *See* for example Sixth Update Report on Developments in Data Protection Law in Canada: Report to the European Commission December 2019, https://ised-isde.canada.ca/site/plans-reports/en/sixth-update-report-developments-data-protection-law-canada; Periodic Update Report on Developments in Data Protection Law in New Zealand (January–June 2024), https://privacy.org.nz/assets/New-order/Resources-/Publications/Reports-to-Parliament-and-Government-/EU-adequacy/070824-19th-Supplementary-Report-to-EC-Jan-June-2024-A994309.pdf.

[63] As at 21 June 2024.

[64] Report on the first review of the functioning of the adequacy decisions adopted pursuant to Article 25(6) of Directive 95/46/EC, European Commission, https://commission.europa.eu/document/f62d70a4-39e3-4372-9d49-e59dc0fda3df_en; Dan Cooper & Laura Somaini, European Commission Retains Adequacy Decisions for Data Transfers to Eleven Countries. Inside Privacy, Covington (January 17, 2024), https://www.insideprivacy.com/cross-border-transfers/european-commission-retains-adequacy-decisions-for-data-transfers-to-eleven-countries.

[65] European Commission and United States Joint Statement on Trans-Atlantic Data Privacy Framework, European Commission (May 25, 2022), https://ec.europa.eu/commission/presscorner/detail/en/ip_22_2087.

[66] Data Privacy Framework Program, Overview, https://www.dataprivacyframework.gov/Program-Overview.

The Brussels Effect can be observed in several countries. However, a direct causal relationship is not always demonstrable – it remains unclear whether a country deliberately sought to copy European data protection regulations or whether, independently, it enacted laws that happened to be compatible with the GDPR and thus received adequacy status from the Commission. It is worth noting that some adequacy decisions were made in parallel with, or linked to, trade agreements – as the Commission itself highlighted in the case of South Korea: the dismantling of barriers to data flows is an integral part of the EU–South Korea free trade agreement.[67] Such cases, however, may themselves also reinforce the Brussels Effect explanation.

2. The adaptation of market and corporate actors: *de facto* Brussels Effect

The adequacy decision regarding the US is a clear demonstration that its validity depends on the decisions of individual companies. This illustrates the mechanism by which companies operating outside the EU or which operate globally voluntarily subject themselves to EU legislation. Thus, compliance with the GDPR can be achieved not because the jurisdiction of a given third country imposes requirements on corporate actors similar to those of the EU but because the companies themselves choose to adapt to it, because they wish to remain active in the EU markets without risking any fines or sanctions. The extraterritorial scope of the GDPR can, therefore, be interpreted as both an incentive and a form of coercion, especially when American technology companies are compelled to comply with the GDPR to gain access to European consumers.[68]

[67] Data Protection: European Commission launches the process towards adoption of the adequacy decision for the Republic of Korea. European Commission (June 16, 2021), https://ec.europa.eu/commission/presscorner/detail/en/ip_21_2964.
[68] Satariano, *supra* note 57.

The reasons for such decisions are mostly economic in nature. The opportunity to operate on the EU market can provide a strong incentive for a company to voluntarily align its activities with the requirements set by the GDPR. This is particularly true for digital companies, such as websites and social media platforms, as their services can fundamentally be accessed from any country. Such companies can either decide to comply with the GDPR or be compelled to actively exclude consumers from those countries where the GDPR provisions apply. Adaptation to the GDPR can also be explained by the desire of a globally operating company to standardize its data processing workflows. By doing so, it can reduce its own administrative burdens by ensuring compliance with the strictest regulations across all the countries or regions it operates in – just as one of the legislative goals behind the creation of the GDPR was to unify divergent European regulations.

A global IT technology company, IBM, for instance, provides a detailed account of how the implementation of GDPR-compliant data protection protocols within the company is designed to mitigate the risk associated with potential non-compliance with varying data protection requirements imposed by different jurisdictions around the world.[69] To address this challenge, it may be beneficial for a company to align its global operations with the strictest – in this case, GDPR – requirements. Similarly, since 25 May 2018, Microsoft has extended to all its customers worldwide the rights that are applicable to European residents under the GDPR.[70]

In terms of global reach, it is also worth noting that the GDPR has also had a significant impact in economic terms, as it strictly regulates the collection of consumer data, influencing numerous economic mechanisms, such as the effectiveness of online advertising and e-commerce. A recent study found a statistically significant negative impact on the revenue and

[69] Mukta Singh, How IBM Transformed Its Global Data Privacy Framework, IBM (October 25, 2021), https://www.ibm.com/think/insights/how-to-establish-a-global-data-privacy-framework-2.
[70] Microsoft's GDPR Commitments to Customers of our Generally Available Enterprise Software Products. Microsoft, https://learn.microsoft.com/en-us/legal/gdpr.

profit-generating capacity of companies affected by the GDPR – identifying an average decline of 2.2 per cent in revenue and 8.1 per cent in profit-generating ability.[71] Therefore, the potential effects of the GDPR also have serious competitive implications.

C. The DSA and the Brussels Effect

The potential *de facto* Brussels Effect of the DSA as a legislative measure can be analyzed by considering the five aspects mentioned above. An analysis of the regulation along these lines has already been conducted by Markéta Šonková.[72] At the conclusion of the present analysis, we will present the findings drawn by her and other contributors.

1. The criteria for the *de facto* Brussels Effect in the context of the DSA

The first two criteria pertain to the legislator, which in this case is the EU. The first requirement is that the jurisdiction's market must be of significant size. As multiple studies have highlighted, the opportunity to access the European single market is a crucial factor for non-EU entities when adopting European standards.[73] Bradford emphasizes that the EU's market constitutes the most significant export market for major US tech companies, many of which are subject to the DSA's regulations within the EU.

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[71] Giorgio Presidente & Carl B. Frey, The GDPR Effect: How data privacy regulation shaped firm performance globally. Centre for Economic Policy Research (March 10, 2022), https://cepr.org/voxeu/columns/gdpr-effect-how-data-privacy-regulation-shaped-firm-performance-globally.

[72] Markéta Šonková, *Brussels Effect Reloaded? The European Union's Digital Services Act and the Artificial Intelligence Act.* EU Diplomacy Papers (2024), https://www.coleurope.eu/sites/default/files/research-paper/EDP_4_24 Sonkova_0.pdf.

[73] *See* for example Bradford, *supra* note 52; Scott, *supra* note 54; Daniel W. Drezner, Globalization, harmonization, and competition: the different pathways to policy convergence, 12(5) Journal of European Public Policy 841–859 (2005); Anke Kennis & Xiyin Liu, The European Union's regulatory power: Refining and illustrating the Concept with the case of the transfer of EU geographical indication rules to Japan, 62(6) Journal of Common Market Studies 1578–1593 (2024).

Since the DSA clearly delineates the providers of very large online platforms and very large online search engines, subjecting them to stricter regulations, it is worth examining the proportion of users in the single market for the respective platforms and services. For instance, in 2023, Meta generated $31.2 billion, accounting for 23.1 per cent of its total revenue, from the European continent. In December 2023, its platforms had 408 million active users in Europe, representing 13.3 per cent of all active users globally. This demonstrates that EU users contribute more revenue to these platforms than the global average.[74]

The second criterion for the Brussels Effect on jurisdiction is regulatory capacity: it is not enough for states to adopt the legislation; its successful implementation is also necessary for international dissemination. To facilitate this, the EU has established competences for both the European Commission and the competent authorities of Member States. In the area of judicial sanctions, amounts have been established that rise in line with the total global turnover of the affected company, which can help incentivize compliance with the legislation. For example, Meta, in its 2023 annual report, characterized the potential fines for non-compliance with the DSA as significant.[75] However, blocking the platforms' access to European users as a potential sanction – which would be equivalent to complete exclusion from the market – is not included in the legislation.

The next three criteria pertain to the specific legislation itself. If we interpret the stringency criterion necessary for the emergence of the *de facto* Brussels Effect narrowly – that is, by asserting that the examined regulation must be the strictest in existence – problems arise. For instance, the United Kingdom's (UK) Online Safety Act (OSA), following its enactment, imposes content moderation requirements on regulated online platforms that are at least as

[74] Meta Platforms's Annual Report for 2023, pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934, https://d18rn0p25nwr6d.cloudfront.net/CIK-0001326801/c7318154-f6ae-4866-89fa-f0c589f2ee3d.pdf, at 68 and 103. Alphabet, Google's parent company, does not disclose separate economic data for Europe, instead aggregating it with figures from the Middle East and Africa (EMEA region), and X, being a private company since 2022, is not obligated to disclose economic data.
[75] *Id*. at 11.

strict, if not stricter in certain cases, than the EU's regulations. While the DSA mandates the removal of content deemed illegal under Member State or European law (Article 9),[76] the OSA not only imposes similar requirements but also sets forth provisions concerning harmful yet non-illegal content for children.

The DSA establishes that providers are not obliged to actively detect evidence indicating illegal activities in the transmitted and stored information, but are only expected to remove such content upon notification.[77] In contrast, the OSA formulates a duty of care and mandates that platforms remove any content that may be deemed illegal based on the information available to them. Furthermore, the UK's media authority, Ofcom, can demand, in certain cases, automated content moderation and even algorithmic removal of illegal content (for example, child pornography) by platform providers.

The scope of the DSA extends to providers offering services to users located in the EU, regardless of where the providers are established.[78] Accordingly, the inflexibility requirement is met, as platforms cannot escape the regulation's scope without losing access to the EU market.

In the case of internet services, the issue of indivisibility should be examined as it relates to several areas. The question of legal indivisibility arises, for example, when modifications to a platform's terms of use are the result of compliance with the DSA. If the platform also makes these modifications for users outside the EU, then this can be regarded as an instance of the Brussels Effect.

As Bradford points out,[79] in the case of the introduction of the GDPR, Facebook, despite extending its new, stricter data protection procedures worldwide, transferred a large portion of its users from several continents from its company registered in Ireland to the legal structure of

[76] DSA, Article 9.
[77] DSA, Articles 8–9.
[78] DSA, Article 2(1).
[79] Bradford, *supra* note 52 at 57.

its US company, as a result of which only European users can exercise the complaint options provided by the GDPR.

Similar measures could be taken in connection to the DSA's requirements, so legal indivisibility is not always an obstacle in the digital space. If the DSA persuades platforms to modify their global terms of use, this could be considered a *de facto* Brussels Effect. In the case of legal obligations to remove illegal content, the scope may become questionable: Do platforms make such content inaccessible only to users in the regulated market, or to everyone?

Technical indivisibility could also lead to the Brussels Effect. This may occur if the DSA were to impose requirements on tech companies that, for technical reasons, could not be tailored exclusively to European users in the operation of the platforms. In practice, however, it appears that large social media platforms are capable of separating their services.[80] Such modifications have been made by Meta, which, due to the regulations on targeted advertising in the DMA, altered the legal basis for profiling-based advertising in the EU, EEA countries, and Switzerland, as well as introducing an ad-free subscription option in these countries.[81]

Besides the effortless feasibility of differentiation, the DSA's transparency rules, such as the expectation of platforms to share information about the functioning of their algorithms,[82] may even better incentivize companies to develop separate EU-specific algorithms. At the same time, it could also be argued that if the DSA creates new user demands through certain provisions, such as the ability to switch between recommendation algorithms, companies may subsequently extend EU solutions to new markets.

Economic indivisibility, as the most common cause of the *de facto* Brussels Effect, refers to the situation where it is more cost-effective for companies to apply a standard across

[80] Claire Pershan et al., Euroviews: EU's platform accountability rules are not having a 'Brussels effect' – Should they? Euronews (January 31, 2024), https://www.euronews.com/my-europe/2024/01/31/eus-platform-accountability-rules-are-not-having-a-brussels-effect-should-they.
[81] Meta Platforms's Annual Report for 2023, *supra* note 73 at 41.
[82] DSA, Article 40(3).

broader regions rather than maintaining different services or products for different markets. Economic indivisibility may arise in the case of platforms if such broader adaptation saves costs or does not incur significant additional costs or revenue loss.

In its 2023 report, Meta highlighted that regulations such as the DSA and the DMA entail additional adaptation costs.[83] Moreover, several regulations, particularly those affecting advertisements, could negatively impact the company's financial performance and revenues. Accordingly, it is likely that companies acting rationally will, when possible, choose to differentiate their services rather than adopting the regulations globally.

2. Can the DSA become a global regulation?

It can be stated that when the *de facto* Brussels Effect occurs, the extent of the regulated market reaches the necessary level, and the EU has sufficient regulatory capacity to enforce compliance with the DSA. In contrast, the criteria for the legislation present a mixed picture: in many cases, the British OSA sets stricter expectations for platforms than the DSA. Nevertheless, it is conceivable that the DSA could become a global regulation if digital platform providers find the OSA's provisions to be too strict, or if the UK market and regulatory capacity prove to be inadequate, while the EU and the DSA succeed in meeting similar criteria.

The regulation clearly affects an inflexible market, as the DSA explicitly aims to regulate services offered to EU users, regardless of the providers' place of establishment. It is sufficient for one of the three criteria of indivisibility to be met for the DSA regulations to also affect the operations of companies outside the EU.

Based on the experience with the adoption of previous EU regulations, it can be concluded that legal indivisibility does not exist: in the case of the GDPR, users outside EU

[83] Meta Platforms's Annual Report for 2023, *supra* note 73, at 11.

were removed from under Facebook's Irish subsidiary, which means that they have no recourse to its complaint mechanisms. Meta has only adapted to the advertising-related legal changes in the EU and EEA member states, as well as in Switzerland.

As regards technical indivisibility, it appears that larger platforms, when faced with situations where compliance with stricter regulations would entail higher costs or revenue losses, strive to differentiate their services to comply with the requirements of varying jurisdictions. In this respect, Meta's response to the EU's regulation of profiling-based advertising, by introducing an ad-free, paid option exclusively for users under the DSA's scope, seems to be a successful experiment.

In terms of economic indivisibility, it seems that in most cases, large platforms are interested in differentiating their operations in the more strictly regulated markets, as they consider the revenue loss and adaptation costs in those territories to be greater than the potential benefits of standardizing services.

Accordingly, it is likely that the DSA will find it more challenging to generate a widespread *de facto* Brussels Effect. Additional reasons for this may include that while the successful GDPR was created in a regulatory "vacuum"; by the time the DSA was developed, several countries had already created or were working on their own regulations affecting online platforms. These include, for example, the German Network Enforcement Act (Netzwerkdurchsetzungsgesetz) and the UK's OSA. In other words, with the development of the DSA, the EU entered a regulatory "competition".

In relation to the DSA, it would be most appropriate to primarily speak of a corporate-level Brussels Effect if it prompted service providers to change their globally applicable terms of use. In several cases, companies have already met some of its criteria, so it is not possible to detect a significant impact. However, in previous cases, there has clearly been a *de facto* Brussels Effect concerning content moderation: in 2016, the EU adopted a voluntary code of

conduct on countering illegal online hate speech, which was first joined by Facebook, Microsoft, Twitter and Google. These companies adopted community guidelines on hate speech in line with the code and also enforced them in their content moderation practices outside the EU.[84]

There have been several examples of platforms differentiating their services between the EU and other countries. With the entry into force of the DSA, for example, Meta began archiving ads targeting EU users in its advertising database and introduced chronological content recommendation options for EU Facebook and Instagram users. TikTok and Snapchat also made the use of their algorithms optional for European users.[85] The X platform (formerly Twitter), on the other hand, renders some of its features unavailable in the EU.[86]

The *de jure* Brussels Effect, that is, whether the DSA's rules will be adopted by legislators in other countries, can primarily be analyzed through examining practical examples. Since the DSA was created in a global regulatory competition, several other alternative regulatory solutions have also emerged, and is the DSA cannot be evaluated as the strictest among them. Therefore, it may prove to be a less obvious choice for other countries preparing for legislation than was the case with the GDPR.

Several authors and sources emphasize that there was an exchange of views between British and EU stakeholders during the development of the OSA.[87] This also raises the possibility that in the future, instead of a purely *de jure* effect, regulations in other countries may draw inspiration from the DSA or adopt some of its tools.

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[84] Dawn C. Nunziato, *The Digital Services Act and the Brussels Effect on Platform Content Moderation*. GW Legal Studies Research Paper (2023), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4425793, at 9.
[85] Emma Roth, The EU's Digital Services Act goes into effect today: Here's what that means, The Verge (August 25, 2023), https://www.theverge.com/23845672/eu-digital-services-act-explained.
[86] Trends Recommendations, X, https://help.x.com/en/resources/recommender-systems/trends-recommendations; Accounts Recommendations, X https://help.x.com/en/resources/recommender-systems/account-recommendations.
[87] Anu Bradford, *Digital Empires: The Global Battle to regulate Technology*, New York, Oxford University Press, 2023, at 342; Šonková, *supra* note 71 at 20.

3. Academic views on the global impact of the DSA

Several researchers have examined whether the DSA could trigger a Brussels Effect. These authors mostly claim that a moderate Brussels Effect can be expected, which will not reach the level observed with the GDPR. Moreover, most of these claims were made with knowledge of the rules but without experience of their application in practice. Šonková examined the likelihood of certain EU regulations, specifically the Artificial Intelligence Act[88] and the DSA, exerting a Brussels Effect within the framework laid out by Bradford. According to her, an impact similar to that of the GDPR cannot be expected, but while the DSA may not necessarily be the strictest regulation, it represents a new level of transparency for platforms. She believes that companies around the world may take steps to promote transparency and data collection in their activities in anticipation of similar requests from other jurisdictions. Šonková highlights that the strength of the DSA is that it is founded on over twenty years of member state and EU experience and drawing on feedback from multiple stakeholders, making it an inspiration for other legislators, particularly in terms of risk assessments and the imposition of systemic obligations. She suggests that the *de facto* Brussels Effect of the DSA could even cause conflicts in other legal systems, such as the US. In terms of the *de jure* impact, an important point is that the EU engaged in bi- and multilateral coordination with legislators from other countries, including the UK and Australia.[89]

Martin Husovec and Jennifer Urban argue that the most ambitious provisions of the DSA are unlikely to have an international impact.[90] They believe that perhaps the content

[88] Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence and amending Regulations (EC) No 300/2008, (EU) No 167/2013, (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144 and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828.
[89] Šonková, *supra* note 71 at 20, 26–29.
[90] Martin Husovec & Jennifer Urban, Will the DSA have the Brussels Effect? Verfassungsblog (February 21, 2024), https://verfassungsblog.de/will-the-dsa-have-the-brussels-effect.

moderation rules and the data access system could be its most successful elements, but for numerous reasons, the international effects of the regulation cannot be assessed in the short term. Dawn Nunziato suggests that the significant fines that can be imposed to enforce the DSA may encourage platforms to align their content moderation practices with EU guidelines, indicating the presence of a substantial Brussels Effect. She points out that in the case of the code of conduct on countering illegal online hate speech, platforms chose global implementation, and the DSA's notice and take down system could achieve similar results.[91]

In her 2023 book *Digital Empires*, Bradford reflects on the DSA regulation. She emphasizes that it will be more challenging for major platforms to maintain services that grant greater rights exclusively to EU users, even if differentiation based on DSA rules becomes technically and economically feasible. The transparency-focused rules of the DSA may encourage companies to standardize their activities globally, while the norms aimed at preparing for systemic risks could influence the global compliance and risk management strategies of the affected companies. According to Bradford, in the case of the *de jure* Brussels Effect, the DSA could serve as a template for other governments.[92]

D. The DMA and the Brussels Effect

The DMA does not directly target the regulation of user content; its aim instead is to ensure freer competition in EU digital markets by preventing large platforms from abusing their market power and enabling new entrants to enter the market.

1. Brief overview of the DMA

[91] Nunziato, *supra* note 83 at 5–7.
[92] Bradford, *supra* note 86 at 340–342.

The DMA allows the Commission to designate a company as a gatekeeper if it meets certain objective criteria. Three linked conditions must be met: the company must have a significant impact on the internal market, provide a core platform service that serves as a gateway for business users to reach end users, and enjoy an entrenched and durable position, or it must be expected to obtain such a position in the near future.[93]

The DMA provisions also provide specific content to flesh out these criteria. A company is considered to have significant market power if its annual turnover reached €7.5 billion in each of the last three years, or its average market capitalization or fair market value was at least €75 billion in the last financial year, and it provides the same core platform service in at least three Member States. A company provides a core platform service if it had at least 45 million active end users per month in the EU in the last financial year, and at least ten thousand active business users established in the EU per year. A company has an entrenched and durable market position if these user number requirements were met in each of the last three financial years.[94]

Since the DMA came into force, the Commission has designated six companies (Amazon, Apple, Booking, ByteDance, Meta and Microsoft) as gatekeepers, operating 24 different core platform services (such as TikTok, Facebook, Instagram, YouTube and Google Play).[95] The gatekeeper designation imposes several additional obligations on the designated platforms and the core platform services mentioned in the designation decision. For example, the gatekeeper must allow its users to easily remove software applications from their devices and change certain default settings of the service. Additionally, the gatekeeper must also ensure that users are allowed and able to use third-party applications and app stores.[96]

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[93] Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828.
[94] DMA, Article 3(2).
[95] Gatekeepers, European Commission, https://digital-markets-act.ec.europa.eu/gatekeepers_en; DMA, Article 6(1).
[96] DMA, Articles 6(3)–6(4).

The Commission has exclusive competence to enforce the rules laid down in the Regulation, but it closely cooperates with Member States in enforcing its provisions. As such, Member States may authorize their national competition authorities to investigate certain breaches of obligations under the DMA.[97]

2. The criteria for the *de facto* Brussels Effect in the context of the DMA

In relation to the first two criteria, it can also be stated in the case of the DMA that, due to the EU's large consumer base with significant purchasing power, it represents a substantial market for multinational companies. For the five American (Alphabet, Amazon, Apple, Meta and Microsoft) and one Chinese (ByteDance) technology companies that are designated as gatekeepers by the Commission, the importance of the EU's market size becomes evident if one considers their revenues. As mentioned above in connection with the DSA, nearly a quarter of Meta's 2023 revenue came from the EU, despite EU citizens making up just over 10 per cent of its service users. Of Apple's $391 billion net revenue in 2024, $101 billion came from the EU, making it the second most profitable region for the corporation after America.[98]

In terms of jurisdiction, competition regulation is one of the most well-established areas of EU-level competences. The legislation grants significant enforcement powers to the European Commission, allowing it to act even without involving other institutions. Similar to those provided for in the DSA, the sanctions in the DMA are aligned with the global revenues of companies, encouraging them to cooperate with regulatory authorities.

Meta's 2023 annual report emphasized that the DMA has caused and may continue to cause significant compliance costs for the firm, potentially leading to modifications in both

[97] DMA, Recital (91), Articles 37–38.
[98] Apple's Annual Report for the fiscal year ended September 28, 2024, pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934, https://s2.q4cdn.com/470004039/files/doc_earnings/2024/q4/filing/10-Q4-2024-As-Filed.pdf, at 22.

their products and business practices.[99] Microsoft's report for the 2024 fiscal year also highlighted that the engineering developments required to comply with the DMA, among other regulations, will entail substantial costs and resource reallocations.[100]

In her books, Bradford also asserts that the EU's competition regulation is considered to be the strictest globally. The DMA prescribes significant sanctions for gatekeeper companies that fail to comply with or which violate the provisions of the legislation. If a company repeatedly – at least three times in eight years – fails to meet the DMA's rules, the European Commission may impose even more severe sanctions.

Apple could be the first gatekeeper company to be fined under the DMA for its practices related to online music streaming services in the App Store. The allegation laid against Apple is that it prohibited developers from informing users about cheaper payment methods available outside the App Store. Based on Apple's 2023 revenue data, the fine for this anti-competitive practice could be as high as $38 billion.[101]

The inflexibility requirement is also met here, similarly to the DSA, as the DMA applies to companies with more than 45 million active end users and over ten thousand active business users annually in the EU.[102] Due to the inflexibility of the market to be regulated, it is not possible for gatekeeper companies to fall under a more lenient regulatory regime outside the Union's jurisdiction while maintaining their position in the EU.

Regarding the last condition identified by Bradford, it involves criteria of legal, technical and economic indivisibility. For these to be met, the strict rules of the DMA must affect a company's operations and services not only within the EU but also outside it. Legal

[99] Meta Platforms's Annual Report for 2023, *supra* note 73 at 11.
[100] Microsoft's Annual Report for the fiscal year ended June 30, 2024, pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934, https://microsoft.gcs-web.com/static-files/1c864583-06f7-40cc-a94d-d11400c83cc8, at 29.
[101] Emma Roth, Apple reportedly facing first-ever EU fine over App Store rules, The Verge, (October 5, 2024), https://www.theverge.com/2024/11/5/24289067/apple-eu-fine-digital-markets-act-app-store.
[102] DMA, Article 3(2)(b).

indivisibility is clearly evident, for example, in the DMA's provisions on structural corrective measures and on the prohibition of corporate acquisitions. These aim to prevent gatekeepers from engaging in practices that could harm competition, consumers and the market itself. For instance, the EU can prohibit a gatekeeper company from selling parts of its business under structural corrective measures, and the prohibition of acquisitions can prevent gatekeeper companies from gaining undue market advantages over their competitors. In both cases, the global nature of control may arise, resulting in a Brussels Effect.

When it comes to technical indivisibility, companies appear to be able to differentiate their services if they make changes that affect only the areas and consumers subject to the DMA's jurisdiction. This is suggested, for example, by Meta's modification of the legal basis for behavioral advertising from the category of "legitimate interest" to "consent" in the Facebook and Instagram services within the EU, EEA countries and Switzerland, as well as the introduction of a subscription for ad-free use for users from November 2023.[103]

Signs of economic indivisibility have not yet emerged, which may be due to the significant costs of complying with the DMA for platforms, which outweigh the benefits of economies of scale that might derive from global changes. Thus, it is highly likely that these will not be introduced to countries or regions outside the territorial scope of the legislation until similar laws are adopted by other countries.

3. Can the DMA become a global regulation?

The DMA clearly meets the requirements of the *de facto* Brussels Effect in terms of the market regulated by it and its regulatory capacity. This means that both the market's size and significance, as well as the established legal and institutional framework, serve to enforce

[103] Meta Platforms's Annual Report for 2023, *supra* note 73 at 20.

compliance with the regulation. In terms of regulatory strictness, the European Commission is considered one of the strictest competition authorities in the world, thus also fulfilling this requirement. Furthermore, the DMA regulates an inflexible market, aiming to ensure – among other objectives – consumer protection for EU citizens and to regulate the services offered to them. Of the three types of indivisibility, only legal indivisibility can be demonstrated in the case of the DMA, for example, through the regulation of corporate acquisitions and mergers. Regarding the other two types, technical and economic indivisibility, it can be concluded that, so far, differentiating their services has been the rational decision for companies.

Overall, based on the examined aspects, the DMA is more likely to trigger a global *de facto* Brussels Effect than the DSA. It is important to emphasize, however, that the Brussels Effect only exists if, for example, an antitrust remedy imposed on a technology company is enforced not only at the EU level but also globally. The UK's Digital Markets, Competition and Consumers Act, adopted in May 2024, resembles the DMA in some respects.[104] The law would require technology companies with strategic market status to open their data to rival search engines and to restructure their app stores. The Act also aims to reduce the dominance of certain tech companies over consumers and businesses.

4. Academic views on the global impact of the DMA

Bradford argues that it is worthwhile for companies to implement the remedies expected or imposed by the EU on a global scale as otherwise competition authorities in other countries may also initiate investigations or demand similar measures. She cites a case related to Google's Android operating system, in which the European Commission imposed a $5 billion fine in 2018, which probably encouraged other jurisdictions, such as Russia, Brazil, Turkey,

[104] Bill Echikson & Maria Hadjicosta, Europe's DMA Goes Global, CEPA (March 4, 2024), https://cepa.org/article/europes-dma-goes-global.

South Korea and Japan, to initiate similar proceedings.[105] According to Bradford, it may be beneficial for other jurisdictions to harmonies their competition regulations with the DMA, particularly due to the aforementioned imitative litigation, which can save valuable time for authorities and counterbalance their lack of technical expertise and other resources.

Arthur Sadami and his co-authors argue in their study that the Brussels Effect is not suitable for fully describing the regulation of platforms in countries of the global South, such as Brazil. They also point out that China's advancements in regulating technological sectors, the challenges posed by globalization and international multilateral institutions, and economic geo-fragmentation collectively may restrain the Brussels Effect. They suggest that the crisis which the EU trade bloc is undergoing – especially after Brexit – could also be a factor that weakens the Brussels Effect by destabilizing the economic foundations of the block.[106] Nonetheless, Sadami and his colleagues acknowledge that the recent development of EU competition regulatory mechanisms has initiated a new wave of institutional transformations in other legal systems, primarily focusing on the regulation of digital platforms. This culminated in the adoption of the DMA, which has influenced not only the competition policies of EU Member States but has also convinced other legislators worldwide that their existing competition laws are not adequate to address the challenges facing them in this field.[107]

V. Conclusions

The article of the EMFA that establishes internal market harmonization has raised several concerns, particularly in connection with its provisions on cultural matters. Additionally, the legislator has not sufficiently justified the legal basis it opted for.

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[105] Bradford *supra* note 86 at 99.
[106] Arthur Sadami, Lucas Víspico & Mateus Bernardes, Is there a Brussels effect in Brazil? The case of digital platforms regulation, 10 North East Law Review 134–152 (2024) at 137.
[107] *Id*. at 142.

Nevertheless, according to academic opinion, there is no significant practical limitation on internal market harmonization. The relevant provisions of the EU treaties and the case law of the CJEU interpreting them indicate that if any issue or regulatory need related to market integration arises during the creation of a legal act, the legislator can legitimately and lawfully invoke Article 114 of the TFEU as its legal basis. However, this may conflict with the limited political role assigned to the EU by the Member States, as it is only entitled to act within the powers conferred upon it.

The case law is consistent in the sense that if a legal act pursues dual objectives or consists of two components, and one of these can be identified as the primary or decisive element, the legal act must be based on a single legal basis required by the primary or decisive objective or component. However, if the objectives of the legislation are inseparably linked and neither is obviously secondary or indirect relative to the other, such a legal act must, exceptionally, be based on the various relevant legal bases. In this light, even if we accept internal market harmonization as one of the objectives designated by the EMFA, an equally important – if not more prominent – objective of the regulation concerns cultural matters, for which Article 114 of the TFEU cannot be invoked under any circumstances.

Another issue is that in most of the disputed provisions, the cross-border nature of the regulation does not arise at all, and regulatory differences that do not concern market integration cannot be addressed through the instrument of internal market harmonization. According to case law, if regulatory objectives must be achieved using other (primary) legal bases provided by the treaties, the legal basis of internal market harmonization cannot be applied. This is precisely the situation in this case, therefore legal harmonization of the market can only arise as a secondary effect in relation to most provisions. Additionally, the creation of the EMFA – particularly due to its key provisions – has opened up the possibility of withdrawing Member

State competences. Competence withdrawal can be established based on the treaties and their interpretation, with the CJEU being the final interpreter.

When it comes to the regulation of online platforms, despite the creation of the DSA, the principle of the country of origin introduced by the Directive on electronic commerce for information society services continues to limit Member State regulation. This principle restricts the jurisdiction of Member States within the EU to service providers established in their territory. The case law of the CJEU has made it clear that the exceptional measures provided by the Directive on electronic commerce, which can override the country of origin principle, cannot be interpreted to include taking abstract and general measures, that is, passing legislation. At the same time, the principle of the country of origin is not violated in the case of national regulations on online services that apply to entities not covered by the Directive on electronic commerce, such as electronic communications service providers. However, even in such cases, a contrary interpretation by the European Commission or the CJEU cannot be excluded.

Following the creation of the DSA, Member States can only enact national regulations for intermediary service providers within a very narrow scope. This follows from the regulatory nature of the DSA, with the Commission regularly emphasizing that it does not require national legislation to implement it, due to its direct applicability. The maximum harmonization nature emphasized by the Commission excludes not only supplementary or additional regulations related to specific DSA provisions but also national legislation affecting the explicit policy objectives of the DSA. A somewhat contradictory and special issue that allows some leeway for national legislation is that of age verification, where the Commission supported Germany and France in adopting national provisions on a transitional basis. However, the Commission has not exhibited full openness regarding age verification: it did not support the French

legislation's provision, which it believed would have indirectly required online platforms to introduce age verification.

Also on the topic of the DSA, it is worth mentioning the regulation of video-sharing platforms, which, in connection with the specific provisions of the AVMS Directive, still allows for Member State regulation. However, the Commission, depending on the national-level legal requirements, as shown by the example of Germany, may choose an interpretation that demonstrates a violation of the DSA's maximum harmonization.

When attempting to assess the potential global impact of the EU's platform regulation, it is necessary to emphasize that the *de jure* or *de facto* international extension of an EU regulation rarely fully materializes. The jurisdictions of third countries and international companies do not necessarily adopt or start applying 100 per cent of an EU regulation – it should be viewed as a toolkit, and its potential international impacts should be assessed in this light: some elements are more likely to have a global influence than others.

The GDPR is a particularly good example of the Brussels Effect, and as a policy area, it is closely related to the DSA and the DMA. Regarding the *de jure* effect, it is important to note that even in the case of adequacy decisions that are particularly useful for this evaluation, a direct causal relationship can only be supposed. Thus, it is possible to determine the similarity of the laws of other countries to the GDPR – for example, this can be demonstrated through an adequacy decision – but it is more difficult to answer whether the third country has actually shaped its laws in this way under some actual form of influence. There are cases where the EU's impact on third countries' data protection laws is much more certain, such as when a free trade agreement has been concluded, which required the harmonization of data protection rules. Ultimately, this can also be traced back to the EU's potential economic or political dominant role.

While the DSA and the DMA differ in content, their goals and impacts are closely related. Neither the DSA nor the DMA can be definitively said to exert a full Brussels Effect internationally. Both contain elements that are more likely to have a global impact, but in certain regards, companies may be able to operate in a differentiated manner, that is, by limiting compliance with the regulations to a narrow geographical region. For example, platforms have generally implemented stricter measures globally for content moderation, but regarding advertisements, Meta was able to quickly differentiate its services by introducing a payment-based alternative within the EU.