

Towards a European Regulatory Framework for Online Intermediary Platforms

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Agenda

I. Introduction

II. Recent regulatory activities in Europe

III. Selected topics for regulation

1. Transparency of contractual roles
2. Liability of platform operators
3. Reputation mechanisms

IV. Conclusion

Recent regulatory activities in Europe

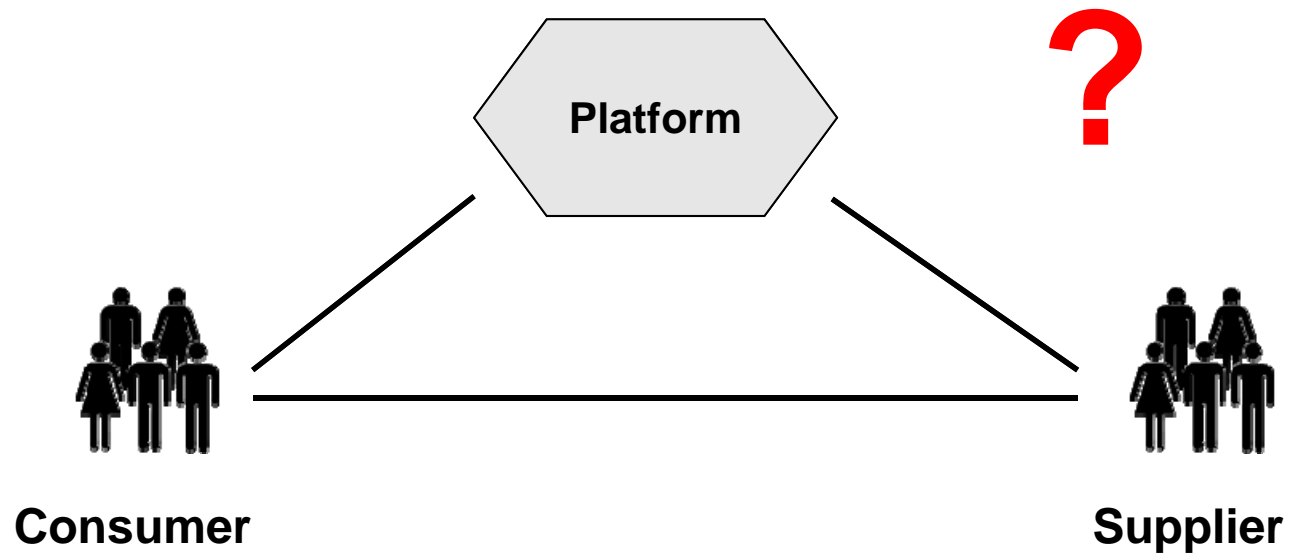
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|------------|---|
| May 2016 | Online platforms in the digital single market, COM(2016) 288 |
| June 2016 | European agenda for the collaborative economy, COM(2016) 356 |
| Dec. 2017 | CJEU, C-434/15 – Uber Spain |
| Apr. 2018 | New deal for consumers, COM(2018) 185 Proposal for a Regulation on fairness and transparency for business users of online intermediation services, COM(2018) 238 |
| Sept. 2018 | Expert group for the observatory on the platform economy |

Recent regulatory activities in Europe

- European Model Rules on Online Intermediary Platforms
- Project of the **European Law Institute** (founded in 2011, >1.400 Members)
- Working Group: 35 Researcher from 10 EU Member States
- **Discussion Draft** published in Journal of European Consumer and Market Law (EuCML) 2016, pp. 164-169
- Available at: <https://ssrn.com/abstract=2821590>



Transparency of contractual roles (1)



Transparency of contractual roles (2)

Article 11 Draft ELI Model Rules

- (1) The platform operator must inform the customer in good time before the conclusion of a supplier-platform contract that the customer **will be entering into a contact with the supplier and not with the platform operator.**
- (2) The platform operator must ensure that the supplier informs the customer whether it offers its goods or services or digital content **as a trader.**

New Deal for Consumers, COM(2018) 185, Article 4(2)

Platform operator shall inform the consumer „whether the third party offering the goods, services or digital content is a trader or not, **on the basis of the declaration of that third party to the online marketplace.**

Automated verification on the basis of available transaction data?

Liability of platform operators (1)

Article 18(2) Draft ELI Model Rules

If the customer **can reasonably rely** on the platform operator having a **predominant influence** over the supplier, the platform operator is jointly liable with the supplier for non-performance of the supplier-customer contract.

Some platform operators not only create „**marketplaces**“, but exercise **control** over suppliers.

Hybrid between „**firm**“ und „**market**“

EuGH, C-434/15 – Uber Spain

EuGH, C-390/18 – Airbnb Ireland



Busch, EuCML 2018, 172 – available at <https://ssrn.com/abstract=3231505>

Liability of platform operators (2)

Scope: What about new platform business models?

Instagram Shoppable Posts, Facebook Marketplace

Google Shopping

Voice Commerce (Amazon Echo, Google Home...)

„Conversation as a platform“

Karin Sein, Concluding Consumer Contracts via Smart Assistants: Mission Impossible under European Consumer Law?, EuCM 2018, 179-188



Instagram

facebook

Google Shopping



Reputation mechanisms

Art. 8 Draft ELI Model Rules:

- **Transparency** about collection, processing and publication of reviews
- Compliance with standards of **professional diligence**



- **Presumption of conformity** if reputation system complies with voluntary ISO/CEN standard



- **Portability** of reviews („reputational capital“)



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