Towards a European Regulatory Framework for Online Intermediary Platforms

Prof. Dr. Christoph Busch
University of Osnabrück, Germany

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II. Recent regulatory activities in Europe

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   1. Transparency of contractual roles
   2. Liability of platform operators
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Recent regulatory activities in Europe

- **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
  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
- 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

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“

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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Prof. Dr. Christoph Busch
University of Osnabrück, Germany

E-Mail: christoph.busch@uos.de
Web: busch.jura.uos.de
SSRN: ssrn.com/author=1392394
Twitter: @christophbusch