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Platforms : an uncharted territory

On 26 April, the European Commission released its proposal to regulate **Platforms-to-business relations**. This piece of legislation adds to a growing list of EU initiatives adopted pursuant to its 2016 Strategy on online platforms, aiming at tackling their disruptive effects on the economy. This list includes **sector-specific legislation** reviews (audiovisual, telecoms, copyright) and problem-driven interventions (fake news, digital taxation), always with the aim to ensure a **level-playing field** with **brick-and-mortar industries**.

This new proposal tries to address the raising concerns of unbalanced relations between platforms, which are both providers of new business opportunities and **gatekeepers** to online consumers, and their increasingly dependent **business users**. In order to provide the latter with safeguards and rights of redress for the sake of a fair, predictable, trustful and innovation-friendly **online platform economy**. The text covers all providers of **online intermediation services** (e-commerce market places, software application stores and social media) as well as **search engines** offering their activities to consumers in the EU, even when they are not established there. While the rationale behind the regulation of the former comes from in-depth assessments on B2B and contractual relations in the platforms' ecosystem, the last-minute inclusion of the latter in the scope was inspired by the **EU competition law** agenda and the Commission's decision in June 2017 to fine Google €2.42 billion for abusing its dominance as a **search engine**. By opening such a front line, the European Commission boldly brings its competition law battle onto the regulatory field, yet without asking for the unbundling of search engines from other commercial services as requested back in 2014 by the European Parliament. No wonder that this specific last-minute change will be a heated point of the legislative discussions.

However, online search engines are not yet concerned by all the obligations foreseen, as their relations with business users (mainly "corporate website uses") are mainly informal. They are only concerned by the obligation to publicly and clearly display the **main parameters** determining the **ranking** of all indexed websites. Behind this, the sensitive issue of the **algorithm**, protected by trade secret rules. As a complementary self-regulatory provision, they will be encouraged to adopt Codes of Conduct, directly or via their representative associations.

In parallel, the platforms which contractually offer intermediation services to business users would be compelled to clearly and unambiguously disclose their **Terms and Conditions**, the reasons of **suspension and termination** of their services, the **ranking parameters** and the possibility to influence them against remuneration. For example, a broker will have to indicate when it chooses to give to a service **a treatment that differs** from the one originally given by the business user. To ensure full respect of these principles, intermediation services providers will also be encouraged to adopt self-regulatory Codes of conduct, to implement an **internal complaint -handling system** and to identify a **mediator of reference**, for time-saving out-of-court dispute resolution.

Last but not least, the text gives the right to organisations representing business users to bring actions in case of **non-compliance**, under strict conditions. This novelty echoes the **recent collective redress proposal** presented by the European Commission as part of its Consumers package. Interestingly enough, this provision concerns any prejudice caused by intermediation services providers as well as by online search engines.

Now that the text is on the table, the (ordinary) legislative procedure can start but it may be overshadowed by the recent multiannual financial proposals and the upcoming Summer break. The objective to adopt it before the EU elections in May 2019 seems ambitious, not to mention the political sensitiveness of the topic, not only because it targets uncharted territory but also because most of the stakeholders concerned are US-based. It could be seen as adding fuel to the fire among rumours of a trade war.

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Same rules for corporate taxation? The common consolidated tax base

On 15 March, by more than 430 votes the European Parliament plenary adopted two reports on the draft directives for a common corporate tax base (CCTB) and a common consolidated corporate tax base (CCCTB). Their objective: **set up a single set of rules to calculate companies' taxable profits in the EU**, while fixing the rates would remain a national competence.

Common consolidated taxation rules are an old idea. In 2001, the Commission exposed its view of a market without fiscal barriers. In 2004, it supported the creation of an expert group. Three years later, it detailed the steps it would take until the publication, in March 2011, of a draft directive. However, many Member States could not agree on the consolidation part. **The many tax scandals** (LuxLeaks, Panama and Paradise Papers) **renewed momentum** and pushed the Juncker Commission to withdraw the 2011 proposal and to publish the CCTB and CCCTB draft directives in October 2016.

The CCTB defines the tax base as all revenues and applies to companies with a consolidated turnover exceeding €750 million (it is optional for smaller ones). It includes a new fiscal incentive for R&D: a deduction of R&D costs from the profits. When they spend up to €20 million in R&D, the Commission proposes to give **a 50% deduction for companies and a super deduction of 100% for start-ups.**

The CCCTB suggests sharing the consolidated taxable profits of a multinational company between the Member States in which it is active through an apportionment formula.

The Parliament extended the CCTB to all companies within seven years. **It replaced the tax deduction for R&D costs by a tax credit**. It restricted it to 10% of the charges related to research staff costs up to €20 million. It asked to define real R&D costs to avoid any deduction abuse. The Commission is against tax credits because they affect the fiscal base, and some Member States may also disagree with this idea because they have more flexible R&D incentives. In order to tax companies who are not physically present in a Member State, **the Parliament added the notion of "digital permanent establishment"** (any digital business model based on processing data for commercial purposes) and **included a "data factor" in the apportionment formula**.

The Council, the only legislator in cases of taxation (the Parliament is simply consulted), decided to discuss the common base proposal before the consolidation one. Yet Member States must work quickly to make this tax one of the new resources of the multiannual EU budget, as President Juncker announced on 2nd May.

EU public consultations*

Development	Evaluation of the European Union's Policy Coherence for Development	31.05.2018
Digital economy and society	Measures to further improve the effectiveness of the fight against illegal content online	25.06.2018
Aircraft	Technical standards for drones as a product and conditions for drone operations	09.07.2018

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