

The DSM mid-term Platform Proposals

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The European Commission published the mid-term review of its Digital Single Market strategy today. The report reviews the development of the strategy over the last two years, and announces a number of new initiatives, including initiatives relating to important areas where action is needed to address digitization, including: (i) the free flow and accessibility of data, (ii) alignment and strengthening of cybersecurity strategy and standards, and (iii) online platform practices and co-ordination.

Of particular note are the proposals to regulate online platforms in connection with unfair clauses and practices in platform-to-business relationships. The Commission notes that, while online platforms drive innovation and growth in the digital economy across the board, they are especially important for SMEs (citing Eurobarometer survey results showing that almost half of SMEs use online marketplaces to sell their products and services). However, the preliminary results of the Commission's fact-finding on platform-to-business trading practices identify certain "unfair trading practices" (including delisting of products or services without due notice or possibility to appeal, platforms favoring their own products or services, and discrimination between suppliers). Lack of transparency in terms of ranking or search results was also identified as a key issue. Moreover, it was noted that a significant proportion of disagreements arising with online platform operators remain unresolved.

In its efforts to ensure a fair and innovation-friendly platform economy, the Commission has proposed to address the issues of potentially unfair contractual clauses and trading practices by the end of this year, considering dispute resolution, fair practices criteria and transparency. This could lead to the proposal of legislative instruments, following an Impact Assessment and Member State and industry structured dialogues. Whether legislative action will be taken is unclear, however, with today's Commission's Communication and official Q&As taking apparently slightly different positions on the issue, (the former saying the Commission "could" propose legislation, the latter that it "will", subject to the usual Impact Assessment and other procedures referred to above).

The proposals put forward today are likely to lead to changes in dispute resolution mechanisms and contract terms, and increase transparency. Whether additional obligations are added later in the year remains to be seen.

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