

EGMONT POLICY BRIEF 280

– JUNE 2022 –

Beyond the Brussels Effect: Supporting the International Case for a Value-based Digital Market

Susanna M. Sprague

Building a strong European Single Market represents a major effort and challenge to the European Union. It must encompass and respond to the dramatic ways in which digital technologies are changing our businesses, societies, and behaviors. The EU is not alone in its need to grapple with issues such as privacy, misinformation, consumer protection, and anti-competitive practices online while protecting fundamental rights. However, the EU also has an important and unique position as a major market, with many international partners. It is determined to ensure its economy will be based on its values as reflected in its laws.

The EU's digital agenda includes proposed regulations on [artificial intelligence](#), [data management and sharing](#), and [cybersecurity](#) practices. In late April 2022, the European Parliament and the Council of the European Union announced a [political agreement](#) for the final text of the Digital Services Act (DSA). Just a month earlier, in March 2022, legislators had reached an [agreement](#) for its sister legislation, the Digital Markets Act (DMA). Respectively, the DMA and DSA are aimed at updating and adapting the fundamentals of competition law and the structure of the Single Market to the challenges of today and tomorrow. The DSA and DMA will reinforce the EU's effort to regulate how digital technologies will affect business and society. These significant policy actions from a much-watched and respected international actor will require complementary diplomatic and institutional efforts to ensure their success.

ABOUT THE DMA AND DSA

First proposed in December 2020, the DSA and DMA bring significant updates to the Single Market. The DSA obliges platforms, designated by their size and function, to conduct regular risk assessments, design clearer notice and action procedures, and provide operational data for third-party research and audits. These requirements, and more, are intended to place clearer responsibilities on platforms that have broad social and market power in the EU. While the DSA will update the 2000 eCommerce Directive, the DMA brings a new approach to EU competition law. The DMA will institute "ex-ante" regulations on the largest market gatekeepers, in contrast to traditional competition law in this sector which relies on "ex-post" market intervention in view of how a business has already affected the market. By setting out obligations and prohibitions on specific business practices and technical requirements, it aims to make the digital sector a fairer, more open and contestable market. [The DMA will, among other things](#), limit self-preferencing techniques, in which a large firm uses its dominance in one field to promote its other services; require that more communication services are interoperable; and allow users and businesses on the platforms to conduct transactions off-platform.

The two new regulations are considered "flagship" components of the European Commission's ambition to shape "A Europe Fit for the Digital Age," as outlined in President von der Leyen's 2019 political agenda. The DSA and the DMA are [expected to be formally adopted](#) in the European Parliament plenary session in July 2022, at the earliest. This will officially start the implementation

process and the countdown until the provisions go into effect. For the DSA, this is projected to be [first quarter of 2024](#), while the DMA will enter into force in [spring 2023](#).

THE MEASURE OF SUCCESS

With the anticipated launch of major legislation, which has been the subject of extensive lobbying efforts and policy discussion in Brussels and beyond, expectations are high, and critics and proponents alike will be watching closely. Observers include not only businesses, NGOs, and member state governments, but also the EU's international partners. Anticipating the scrutiny that the DSA and DMA will receive during implementation, there are a few ways to assess their success.

One notable metric of EU regulatory success is its normative power to shape business practices beyond its jurisdiction. It does this through the “Brussels Effect,” as coined by Anu Bradford, a Columbia University professor and trade law expert, who describes how the EU “[shapes the world in its image](#)” when businesses voluntarily adopt the Single Market’s standards as their global baseline. The DSA and DMA will necessitate that companies operating in the EU modify their business practices to remain in compliance. If companies decide to apply changes universally across their business, and not solely for operations in the EU’s jurisdiction, the DSA and DMA could be the next examples of the Brussels Effect. Indeed, when the European Commission proposed the DSA and DMA in December 2020, policy discussions, including from [Bradford](#) and [others](#), were quick to address the impending Brussels Effect.

The Brussels Effect is an important mechanism that underlines both the economic power of the European Single Market and the importance of the EU’s values and vision in global affairs. While the extent of the Brussels Effect may not become apparent until the end of the DSA’s and DMA’s implementation periods, or indeed, until monitoring and enforcement enter full swing, de facto projection of normative power is not the only measure of success.

The DSA’s and DMA’s success will also be judged on their

ability to achieve the stated goals and shape the Single Market. The process of implementation, monitoring, and enforcement is critical to turning hundreds of pages of text into action. In time, surveys, statistics and other research should demonstrate how the DSA and DMA have effected more open, fairer, and contestable markets and more transparency and accountability in the adherence to the laws and fundamental rights of the Single Market. For example, as the DSA sets out mandatory Know Your Business Customer diligence to identify third-party sellers on marketplaces, reports of fraud and counterfeit products in major online marketplaces should decline. As online platforms institute more uniform policies for the notice and action process on illegal content, [public opinion surveys](#) may show an improvement in levels of trust and a reduction in the incidence of misinformation and disinformation online. In a long list of objectives, these are two possible indications that the DSA is, indeed, making “what is illegal offline, illegal online.” As for the DMA, data may show shifts in consumer preferences toward newer options and services that will be able to enter the market more easily. These are a few indicators of the DSA’s and DMA’s regulatory impact on the Single Market.

While the Brussels Effect has been front and center and sometimes seems to be considered a guaranteed aspect of EU tech policy, it is imperative to examine both the possible drawbacks of the Brussels Effect as well as the other political tools the EU can use to ensure the DSA and DMA are successful. Considering the different metrics for success, the European Commission and member states can undertake several efforts to buttress these important and singular new regulations.

THE VALUE AND THE LIMITS OF THE BRUSSELS EFFECT

The Brussels Effect has been an influential concept in understanding the EU as a global market actor. Since the EU prides itself on advancing policies that address salient and enduring issues, the enactment of similar regulations and principles outside of the EU is a testament to the EU’s ability to craft legislation that balances difficult trade-



offs following widely accepted principals. Following the implementation of a market regulation within the EU, signs of a Brussels Effect may indicate that the business cost-benefits of adopting the policy universally have come out in favor of the legislation's approach.

Businesses providing digital goods and services in the EU will need to make initial changes and investments in order to meet the new regulations. However, it is preferable that businesses ultimately establish policies and services that work in both EU and non-EU markets. Otherwise, diverging policies and principles may yield a "splinternet," multiple conceptions of the internet that lack shared objectives, principles, and functionality. Widespread adoption of EU standards could foreclose the risk of a splinternet in the long term, even though the EU's DSA and DMA regulation may present barriers to entry or administrative burden. A strong Brussels Effect, in concert with other political and industrial outreach, will encourage voluntary regulatory harmonization. This is particularly important because digital transformation will be a driver of economic growth.

In her book, Professor Bradford cites another EU digital policy, the General Data Protection Regulation (GDPR), as an example of an EU law that has standardized data protection far beyond the EU's borders. While GDPR did affect business standards for data protection outside the EU, it has also experienced issues in [enforcement](#), which have [captured the attention](#) of the European Data Protection Supervisor.

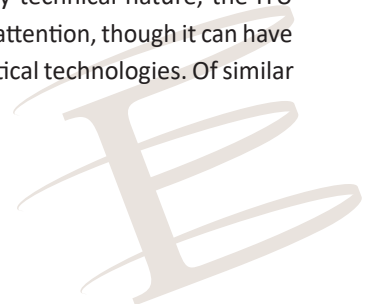
While the GDPR may have shown a Brussels Effect in the business community, it has had mixed results convincing partner countries that it is the right method for achieving data protection goals. While some [countries have borrowed](#) structures or terminology from the GDPR, others remain unconvinced. Four years after full GDPR implementation, Politico reports that United States government officials do not view GDPR as a model for American privacy rules. This demonstrates the limits of the Brussels Effect. Although EU standards can significantly and directly influence the business community, the EU needs to actively demonstrate and promote the merits

of its policy to other national governments to lead the way in global trade and partnerships. It is not possible to have every detail right on the sweeping overhauls the EU is undertaking. However, the DSA and DMA can derive lessons from the GDPR on the drafting of the legislation and the design of enforcement mechanisms as well as on the long-term management of public perception. Particularly, a robust public diplomacy and press strategy outside the EU could enhance international perception and acceptance of the two regulations. Overall, the EU's success on this campaign will help ease regulatory gaps between trading partners and hone a shared vision for the future of the internet and the international economy.

DIPLOMACY FOR THE DIGITAL ECONOMY

Clear venues already exist where the EU can continue to promote its approach to the digital economy and garner international support for the DSA and DMA. [The Declaration on the Future of the Internet](#), announced in April 2022, is a clear message of the shared values of the EU member states and thirty-three other signatory countries, from the US and Canada to Peru and Kenya. As more signatories join, governments will benefit from enhanced political and diplomatic understanding as they grapple with the challenges of new digital technologies. The EU and its member states, in promoting the vision of the Declaration to potential signatories, have an opportunity to concurrently present EU digital regulation as a guide for how other states can achieve their own legislative and regulatory goals.

Though the Declaration on the Future of the Internet is a promising new effort, there are also longstanding and influential forums on internet and telecommunication standards. The [International Telecommunication Union](#) (ITU), a UN specialized agency, is responsible for technical recommendations and standardization of fundamental technologies, and the international management of radiocommunications. It also works to bring new technologies and technical skills to developing countries. Perhaps because of its highly technical nature, the ITU does not receive great public attention, though it can have global effect on the use of critical technologies. Of similar



ilk is the [International Organization on Standardization](#) (ISO), the international body that convenes standard-setting organizations from 167 countries to develop voluntary standards.

The EU and its member states should continue to closely observe the work of the ITU and the ISO. In the [Standardization Strategy](#) presented in February 2022, the Commission proposed establishing an “EU Excellence Hub on Standards,” which will “monitor relevant international standardization activities,” including in the ITU and the ISO. This coordinating hub, composed of standardization experts across the Commission, EU agencies, and Joint Undertakings, will be led by a chief standardization officer. The swift establishment and launch of this hub are critical. The ITU will elect a new Secretary-General this fall, and the EU must be ready to leverage its network and experts to monitor the agency’s new agenda. The Hub on Standards would be one component in a broader [Digital Diplomacy Strategy](#), recently proposed by fellows at the European Council on Foreign Relations.

In addition to this international political outreach, the EU should consider developing channels to engage with digital industry within Europe. This would serve multiple purposes. It would help the Commission gather and understand viewpoints on the shared and regional conditions that businesses face across Europe. This would include feedback and dialogue on the policies and effects of the DSA, DMA, and other relevant regulations. The Commission would also be able to monitor longer-term developments in the digital economy. The EU has put itself at the forefront of regulation for the digital age. A forum to provide the added insight of industry would be an advantage as the Commission continues to strengthen and improve the Single Market. Feedback could be considered in eventual updates to the delegated acts of the DSA and DMA, which the Commission will be responsible for reviewing and updating, and it could also serve as an early warning system should the DSA and DMA create undue burdens or pose issues of compliance or legal uncertainty. The benefits would not be limited to the DSA and DMA; the result would be more informed policy and decision-making that could better balance short- and

long-term exigencies for the digital economy.

One model for an EU Digital Economy Forum is the UK [Digital Economy Council](#), which was devised following the 2017 publication of the country’s Digital Strategy. Chaired by the Secretary of State for the Department for Digital, Culture, Media, and Sport, it gathers individuals to “harness the expertise of industry and the wider tech community to develop a world-leading digital economy that works for everyone.” It convenes three times a year and may also form advisory groups to address specific topics. An EU version of the UK Digital Economy Council, which currently has twenty-seven members, would likely need to be much larger to ensure a fair sample size of the EU digital economy. Alternatively, an EU Digital Economy Forum could operate with an emphasis on working groups organized by technology type, regional group, or policy field, for instance, to create a standing mechanism for the Commission for gathering information on changes in the digital economy.

Establishing an EU Digital Economy Forum will be critical not only because the EU’s ambitious digital strategy will introduce many more regulations on data and digital technology, but also because the EU wants to lead as a global pioneer who can trailblaze for the many states that are just beginning to address issues of disinformation, consumer protection, platform monopolies, and the many other challenges that the digital transformation of the economy presents. To maintain its position as a standard bearer, the EU must do everything in its power to facilitate the understanding and regulatory and political acceptance of the DSA, the DMA, and their underlying values.

Susanna M. Sprague is a 2021-2022 Fulbright-Schuman research fellow in the European Affairs program of the Egmont Institute, focusing on the political economy of the EU’s digital agenda. She holds an MA in European Studies and International Economics from Johns Hopkins SAIS.





The opinions expressed in this Publication are those of the author(s) alone, and they do not necessarily reflect the views of the Egmont Institute. Founded in 1947, EGMONT – Royal Institute for International Relations is an independent and non-profit Brussels-based think tank dedicated to interdisciplinary research.

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise without the permission of the publishers.

www.egmontinstitute.be

© Egmont Institute, June 2022

© Author(s), June 2022