



# States as platforms following the new EU regulations on online platforms

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## Abstract

The recent adoption by the European Parliament of the Digital Services Act means that, when it comes into effect, it will formally introduce into EU law the term ‘online platforms’. In effect, between the Digital Services Act and the Digital Markets Act, a comprehensive framework for the regulation of online platforms is being introduced into EU law, the first of its kind both in Europe and internationally. However, European regulatory innovation invites a different viewpoint: Could states be considered platforms? What if this new regulatory framework was applied to states themselves? This article first outlines the regulations on online platforms in EU law. Then it discusses the role of states as information brokers in order to support its main argument, that states can be viewed as (online) platforms. A discussion of the consequences of such a conclusion is included in the final part of this analysis.

## Keywords

DSA (Digital Services Act), DMA (Digital Markets Act), Online platforms, Role of the state

## Introduction

In July 2022 the European Parliament adopted the Digital Services Act (DSA) (European Commission 2020a). When it comes into effect, this legislation will formally introduce into EU law the term ‘online platforms’. Such a platform (according to the Commission’s original proposal, at least) is meant to be ‘a provider of a hosting service which, at the request of a recipient of the service, stores and disseminates to the public information’ (DSA, art. 2, h). A hosting service, in turn, ‘consists of the storage of information

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provided by, and at the request of, a recipient of the service' (DSA, art. 2, f). Therefore, between the DSA and the Digital Markets Act (DMA) (European Commission 2020b), which was simultaneously adopted as part of a single Digital Services Act package, a comprehensive framework for the regulation of online platforms is being introduced into EU law, the first of its kind both in Europe and internationally.

What are these platforms, and more specifically online platforms, that have attracted the EU legislator's attention? Platforms are in essence theoretical information structures or systems, and it is in this meaning that the term is encountered in EU law. However, in the real, non-digital world, the term denotes a 'flat raised area or structure' (Cambridge dictionary) or 'a raised level surface on which people or things can stand' (Oxford dictionary). In the real world the term is also employed metaphorically to denote sets of policies or ideas. What is common in both cases is differentiation, even exceptionalism. A platform is elevated, and each set of ideas is unique. Thus, one platform can be distinguished from others. But a platform is also interconnected with other platforms around it: a platform cannot exist in a void. Finally, platforms share basic rules that are applicable to all their participants. It is perhaps these characteristics of real-world platforms that make the word suitable to describe large information systems in the digital world.

However, European regulatory innovation in the field invites a different viewpoint: Could states themselves be considered platforms? What if this newly finalised EU regulatory framework was applied to states? What insights into the role of states could be derived from the EU regulations on online platforms?

This article expands on a recent blog post that served to launch this idea (Papakonstantinou 2022). The first part outlines the regulation of online platforms in EU law in order to provide the necessary regulatory background for the analysis that follows. Then the role of states as information brokers is discussed to support the main argument of this article, that states themselves can be viewed as (online) platforms. The final, concluding part of this analysis examines the consequences of this idea.

## **The regulation of online platforms in EU law**

The EU's first attempt to regulate online platforms came through the 'P2B Regulation' (Platforms-to-Business Regulation) (European Parliament and Council 2019). In the Commission's words, the P2B Regulation is the 'first ever set of rules for creating a fair, transparent and predictable business environment for smaller businesses and traders on online platforms' (European Commission 2019). While this regulation aims to regulate the relationship between online platforms and their business users, it is the DSA, and to a lesser extent the DMA, that are expected to govern the other side of the spectrum, namely the relationships between online platforms and their individual users or consumers.

The EU legislator regulates online platforms mostly to impose certain obligations upon them and much less to help them develop further or to justify their continued

existence. From a business-to-business point of view, online platforms are required to communicate their rules and regulations in a plain and understandable manner, to observe an appropriate notice period in the event of amendments, and to ensure that any adverse actions (e.g. restrictions on, or suspensions or terminations of accounts) are justified and contestable. The combined forces of the DSA and the DMA provide a much more detailed protective framework for the benefit of individuals (platform users), usually in connection with the largest online platforms (the ‘gatekeepers’). Among other things, online platforms are required to install takedown mechanisms complete with objection procedures, implement risk assessments and risk protocols, and have compliance officers. They must also avoid ‘practices that limit contestability or are unfair’ (DMA, Chapter III), for example exclusivity (locking in users) or preferential treatment (ranking), and encourage interoperability or the porting of users’ data to competitors’ platforms.

While the EU has taken a bold first step towards regulating online platforms, the question is whether this line of thinking can usefully be applied to states (be they member states or others). To examine this, given that online platforms are essentially information structures, first a new view of the role of states throughout human history, that of information brokers, will be elaborated.

## **The role of states as information brokers**

States, in the sense of organised societies, are first and foremost information brokers for their subjects or citizens.<sup>1</sup> While this may have become obvious only after the Information Revolution drew attention to information itself, this has been a feature of states since their inception. Immediately at birth humans are vested with state-provided information: a name<sup>2</sup> as well as a specific nationality (Hegel 1820/1991, para. 75 addition). Without these a person cannot exist. A nameless person is unthinkable in human societies. Although it is the family that provides a person with a name when he or she is born, without a specific mechanism to formally acknowledge it, such a name could function only among a very small number of people.<sup>3</sup> It is therefore a state (in the above meaning) that, in the first instance, validates a person’s name and then is responsible for its safekeeping through specific bureaucratic mechanisms (in any case, this safekeeping is in the state’s own interest). The second type of essential information provided by the state at the time of birth of any individual is nationality. Like being without a name, a stateless person is unthinkable in human societies.<sup>4</sup>

The above-mentioned two kinds of information are enriched much more within modern, bureaucratic states. Education and employment, family status, property rights, taxation and social security are all information (co-) created<sup>5</sup> by states and their citizens or subjects. For the purposes of this analysis, this type of personal information will be called ‘basic personal data’. It is after this information has been created that the most important role of states as information brokers comes into play: states safely store and further disseminate these data. This is of paramount importance to individuals. To live their lives in any meaningful manner, individuals need to have their basic personal data, first, safely stored and, second, made transmittable by their respective states. As regards

storage, individuals need to have their basic personal data safely stored for the rest of their lives and for a short period thereafter (at least until their property rights expire). If they are to be able to enter into transactions with third parties during their lives, this information cannot be lost<sup>6</sup> or tampered with. Second, individuals need to have this information disseminated to third parties through the intermediation of the state, which validates this transmission. Trust in human transactions is tacitly provided by the state, through its validation (or even direct transmission) of the personal information concerned.

Information brokerage is therefore the primary role of the state, taking precedence over all others. Nameless or stateless individuals are unthinkable. If their basic personal information is not safely stored and transmittable, individuals cannot live any sort of meaningful life. This point no political theory can gainsay. If a state ‘loses’ a birth certificate or a family record, the people concerned need to replace them immediately with the assistance of another state, unless they plan to live a life in limbo—and in great insecurity. Ultimately, the most fundamental role of a state, the provision of security, is meaningless unless its function as an information broker has been provided and remains in effect—that is, unless the state knows who to protect.<sup>7</sup> However, it is obvious that the type of life a person, equipped with his or her basic personal data, will then go on to live can proceed in any direction. Depending on the type of society involved, control over the storage and dissemination of basic personal data lies to a greater or lesser extent with the state concerned. In other words, what basic personal data is stored and how it can be used depends on the society one lives in, for example, whether it is democratic or not. The state may apply larger or smaller restrictions.

## States as platforms

Could states be perceived as platforms? First of all, one could easily remove the digital part of the definition of online platforms. Although critical for the purposes of the DSA and DMA, the DSA’s definition may well apply in the real world too: platforms store and disseminate information to the public at the request of their users. The user could be any individual (citizen or subject), and the public could be the whole world. A state viewed as a platform would then be the intermediary in a flow of information from its citizens (users, individuals) to everybody else. Viewed in this way, online platforms essentially coincide with the state as information broker, as argued above. Put differently, states have actually functioned as platforms, albeit in the real world, since the first organised societies emerged.

The thesis that states function as platforms is further supported by the unique characteristics of real-world platforms, as discussed earlier. The philosophy of state-building holds that differentiation and uniqueness are basic characteristics of the state—arguably, the acknowledgement that this is so is the reason behind the EU’s paramount principle of subsidiarity (Fabbrini 2018, 223). The interconnectedness necessary among platforms is in evidence both in bilateral state relationships and in the freedom of movement of individuals between states (whether complete, as in the EU, or restricted). Finally, a set of

basic, common rules is necessary for all platforms to operate: in the case of states these rules are their respective legal systems.

While an analysis of the role of states as platforms exceeds the limits of this article, the new EU regulations on online platforms invite a new perspective, one enhanced by the new digital conditions. Online circumstances and the primacy of the role of information—in the context of ‘data is the new oil’ (Bhageshpur 2019)—mean that the role of the state perhaps needs to be reviewed from this perspective. Arguably, the main difference between online platforms, as understood by the EU legislator, and states is validation. Through their authority states validate the information stored and disseminated by them, while online platforms today are in no position to assume this role: even for identity verification, they resort to state authority for validation of the information concerned. Here again, then, the role of states as platforms comes to the fore: that of safely storing and authoritatively disseminating the information for which they are responsible.

### **What are the consequences of viewing states as platforms?**

What practical conclusions can be drawn if states are viewed as platforms? With regard to the role of states as platforms or information brokers, a full analysis far exceeds the scope of this article. However, as regards the online environment, a number of issues immediately come to mind on the basis of the newly released EU legislation. In essence, the whole discussion on online platforms and platformisation needs to be transferred from the market to the polis.

The Commission’s initiatives are apparently predicated on market logic. To be more specific, the online platform economy and the dominance of online gatekeepers have made necessary a protective regulatory approach, fundamental to which is that the market needs to remain contestable. Equating the state to a market would have grave consequences. The state does not need to be contestable, and nor should its monopoly on providing basic information services to its residents be overturned. This is why the Commission’s regulatory initiatives may serve only to offer hints or insights as to a possible new role for the state. They open up new perspectives but do not provide final solutions. In other words, it would be unthinkable to simply replace ‘online platforms’ in the texts of the DMA and the DSA with ‘the state’.

At first glance such new insights would come to light if whatever the EU legislator requires of online platforms was made mandatory for states as well. To some extent this has already been accomplished: accountability and transparency run deep, at least in democratic states, through the separation of powers and the rule of law. There are, however, other issues that may be more disputable. For example, if applied to states, the right to the portability of data between online platforms implies the freedom of movement. Given that users are enabled and even encouraged to carry their data from platform to platform, if states were perceived as platforms, should individuals not be enabled to move freely among states too? Similarly, if an obligation of interoperability were to be imposed upon platforms, and states are also considered platforms, would this not mean

that states need to harmonise their administrative procedures to achieve a ready transferability of certificates, authorisations and administrative acts at a transnational level as well? These requirements would perhaps be harder for states to swallow because of their prerogative to act independently. Given the ‘information wants to be free’ dictum,<sup>8</sup> a states-as-platforms mentality might threaten traditional notions of state sovereignty. It is in this light that the role of constellations, in the sense of assemblies of platform-states, comes to the fore. One such constellation is the EU itself. Within such constellations, applying the requirements for platforms to states makes better sense. Within the EU, which could ultimately form a platform itself, the role of states as information brokers is achievable without loss of their informational sovereignty.

The role of states-as-platforms may carry broader consequences than those outlined in the DMA and DSA texts. As regards individuals, each becomes an ‘informational being’, a carrier of information that consists, at a minimum, of his or her basic personal data. This is different from individuals’ role as ‘data subjects’ within the EU’s personal data protection system (European Parliament and Council 2019, art. 4(1)). While the role of individuals as data subjects has been well examined within EU data protection law using the informational self-determination approach (Rouvroy and Pouillet 2009), individuals as carriers of information are distinguishable only within a states-as-platforms context. In practice, while personal data protection (like all fundamental human rights) involves placing individuals and their personal information against the state (or, if needed, other individuals),<sup>9</sup> states-as-platforms afford individuals the possibility of creating information or, more basically, of existing within human societies. This new perspective invites the creation of a different set of rights and obligations for states and individuals. There is no longer conflict but rather co-dependence. The state needs (both in the interests of individuals but also for its own self-interest) to treat this information responsibly: to preserve and protect it during the lifetime of its citizens or subjects and thereafter. For their part, individuals cannot, in a straightforward manner at least, get rid of their basic information even if they want to: they carry the burden, and privilege, of living with it for the rest of their lives—and thereafter.

Viewed from the states’ perspective, their obligation to preserve and protect information within their role as platforms carries other far-reaching implications. For example, they need to preserve the (entire) digital footprint of their citizens and subjects. The alternatives are as follows. (1) States need to take into account information continuity or even mitigate risks connected with information leakage in the event that they cease to exist, due to war or some other situation. (2) States need to provide individuals with platform-relevant tools (i.e. software) to port their information. (3) States need to provide platform-relevant tools to enhance collaboration or to improve the lives of their citizens or subjects (through education, training etc.).

In addition, future developments may bring the role of states-as-platforms to the fore. To date states have merely digitised the offline lives of their citizens, through e-government or similar applications. At some point, however, this task will have been completed. If at that juncture states, assisted by technology and a digital lifestyle, start operating a

digital space in which their citizens can live, in the form of the metaverse or in some other form, their roles as platforms will forcefully come to the fore.

## Conclusion

It is the Information Revolution that produced for states the role as platforms, in the sense of being visible information brokers. Current online circumstances have made the regulation of online platforms necessary. However the EU's ambitious engagement in the field invites questions as to whether its newly formed regulations also affect the role of states as platforms. In particular, their relationship with their subjects or citizens (i.e. platform users) may be affected or at least better substantiated. The increased pace of the digital transformation of our lives will unavoidably broaden this discussion even further.

## Notes

1. The role of states in assembling informational capital has indeed been identified, for example, by Bourdieu. However, the role that the current article assigns to states differs considerably from what Bourdieu considers a state's main task, i.e. to 'measure, count, assess, investigate' (2015, 213).
2. This is certainly true in modern, centralised bureaucratic states, but the same has arguably been the case in any organised society: an Iron Age empire, a city-state, the Roman Empire, Medieval Europe etc. (Breckenridge and Szreter 2012, 1). In other words, ever since the first organised human societies emerged, individuals have needed to be registered, if only for taxation and military service purposes (Bayly 2012, xi). In addition, the rights that in some form or another have invariably been granted to society members (see, for example, Grubbs and Parkin 2013, 9) have necessitated the identification of the people involved.
3. Herzog notes that 'for many years historians assumed that there were absolutely no rules indicating who would be called what, or guaranteeing that a person would use the same name throughout his or her life' (2012, 199). But for the purposes of this article, actual use is irrelevant. It should also be borne in mind that consistency in name giving is in the state's own interest. Whether a given person lives an extremely localised life and is therefore not in need of a formal name is beside the point.
4. See, however, Kelsen (2006, 241), who nevertheless accepts the distinction between subjects and citizens.
5. The role of the state, however, is not that of a trusted third party. The state does not simply safeguard information on its subjects that was created by the subjects themselves but instead actively participates in its creation by establishing and maintaining the institutions within which creation of this information becomes possible.
6. Consider *damnatio memoriae* in this regard.
7. Similarly, even if a different political theory holds that the primary role of the state is justice, it remains true that the state needs to know who its recipients are.
8. A phrase attributed to Steward Brand (1987, 202). This famous aphorism went on to say 'information wants to be expensive, because it's so valuable.' Perhaps the full statement makes better sense in the context of states as platforms.
9. For example, the German Federal Constitutional Court defined the right to self-determination as the 'authority of the individual to decide himself, on the basis of the idea of self-determination, when and within what limits information about his private life should be communicated to others.' Cited in Rouvroy and Pouillet (2009, 45).

## References

- Bayly, C. A. (2012). Foreword. In K. Breckenridge & S. Szreter (eds.), *Registration and recognition: Documenting the person in world history* (pp. ix–xiii), Proceedings of the British Academy 182. Oxford: Oxford University Press.
- Bhageshpur, K. (2019). Data is the new oil – And that’s a good thing. *Forbes*, 15 November. <https://www.forbes.com/sites/forbestechcouncil/2019/11/15/data-is-the-new-oil-and-thats-a-good-thing/>. Accessed 1 September 2022.
- Bourdieu, P. (2015). *On the state: Lectures at the Collège de France, 1989–1992*. Cambridge: Polity.
- Brand, S. (1987). *The media lab: Inventing the future at MIT*. Viking Penguin.
- Breckenridge, K., & Szreter, S. (2012). ‘Editors’ introduction: Recognition and registration: The infrastructure of personhood in world history’. In K. Breckenridge & S. Szreter (eds.), *Registration and recognition: Documenting the person in world history* (pp. ix–xiii), Proceedings of the British Academy 182. Oxford: Oxford University Press.
- European Commission. (2019). Digital Single Market: EU negotiators agree to set up new European rules to improve fairness of online platforms’ trading practices. Press release, 14 February. [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_19\\_1168](https://ec.europa.eu/commission/presscorner/detail/en/IP_19_1168). Accessed 1 September 2022.
- European Commission. (2020a). Proposal for a Regulation of the European Parliament and of the Council on a single market for digital services (Digital Services Act) and amending Directive 2000/31/EC. COM (2020) 825 final. 15 December.
- European Commission. (2020b). Proposal for a Regulation of the European Parliament and of the Council on contestable and fair markets in the digital sector (Digital Markets Act). COM (2020), 842 final. 15 December.
- European Parliament and Council. (2016). Regulation (EU) 2016/679 of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation). OJ L119 (4 May), 1.
- Europe Parliament and Council. (2019). Regulation (EU) 2019/1150 of 20 June 2019 on promoting fairness and transparency for business users of online intermediation services. OJ L86 (11 July), 57.
- Fabbrini, F. (2018). The principle of subsidiarity. In R. Schütze & T. Tridimas (eds.), *Oxford principles of European Union law* (pp. 221–42). Oxford: Oxford University Press.
- Grubbs, J. E., & Parkin, T. G. (2013). Introduction. In J. E. Grubbs & T. G. Parkin (eds.) *The Oxford handbook of childhood and education in the classical world*. Oxford: Oxford University Press.
- Hegel, G. W. F. (1820/1991). *Hegel: Elements of the philosophy of right*. Edited by A. W. Wood, translated by H. B. Nisbet, revised edn. Cambridge: Cambridge University Press.
- Herzog, T. (2012). Naming, identifying and authorizing movement in early modern Spain and Spanish America. In K. Breckenridge & S. Szreter (eds.), *Registration and recognition: Documenting the person in world history* (pp. 191–210), Proceedings of the British Academy 182. Oxford: Oxford University Press.
- Kelsen, H. (2006). *General theory of law and state*. New Brunswick, NJ: Transaction Publishers.
- Papakonstantinou, V. (2022). States as platforms under new EU (online platforms’) law. *European Law Blog*, 4 July. <https://europeanlawblog.eu/2022/07/04/states-as-platforms-under-new-eu-online-platforms-law/>. Accessed 1 September 2022.
- Rouvroy, A., & Poullet, Y. (2009). The right to informational self-determination and the value of self-development: Reassessing the importance of privacy for democracy. In S. Gutwirth, Y.



Pouillet, P. De Hert, C. de Terwangne & S. Nouwt (eds.), *Reinventing data protection?* (pp. 45–76). Dordrecht: Springer.

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