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The European Union's Regulation of Online Platforms: Inter-institutional Preference Convergence and Path Dependency

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BALDES

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Abstract

Even though countries such as the United States attempted to regulate digital markets, with the enactment of the Digital Services Act (DSA) and Digital Markets Act (DMA) in early 2022, the European Union (EU) became a global first mover to regulate online platforms. To explain how the EU regulated online platforms, this dissertation makes a twofold argument. First, the inter-institutional preference convergence of the European Commission, European Parliament, and Council of the EU enabled the regulation of the digital sector. The three legislative institutions broadly agreed on the risks posed by online platforms for EU citizens and the EU Digital Single Market. Second, the regulation of online platforms continued the path initiated by early internet governance in the 2000s that developed into the Digital Single Market strategy of 2015 and resulted in the Digital Decade 2020 with the DSA and DMA regulations. Theoretically, this dissertation combines a preference-based bargaining analysis with a temporal dimension based on path dependency. The dissertation's theoretical innovation consists in analysing all three key phases of the EU's legislative procedure: agenda-setting, intra-institutional, and inter-institutional bargaining or trilogues. Moreover, it expands intergovernmental preference analysis, such as from liberal intergovernmentalism, by including the European Commission as agenda setter as well as the European Parliament and the Council of the EU as bicameral legislators. On the other hand, the temporal dimension limits the availability of policy options for institutional change in the bargaining due to the mechanism of path dependency, which is derived from historical institutionalism. Empirically, the dissertation makes three contributions. First, it investigates the complete package of the EU's regulation of online platforms, the DSA and the DMA. Second, the dissertation provides a complete overview of the legislative process with a detailed timetable of the negotiations. Third, it presents the development of key positions held by the EU institutions and the outcome of the regulations. Methodologically, evidence for the two case studies on the DSA and DMA is based on extensive primary sources from official EU publications and news outlets, such as Agence Europe. Twenty-one semi-structured interviews with stahekolders from the three involved EU institutions, digital sector representatives, and civil society organisations complement the evidence base and validate the findings.

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List of Abbreviations

AI	Artificial Intelligence
Art.	Article
BQE	Bulletin Quotidien Europe [from Agence Europe S.A.]
CEPS	Centre for European Policy Studies
CERRE	Center on Regulation in Europe
COREPER	The Permanent Representatives Committee [of the EU]
Council	The Council of the European Union
CPS	Core Platform Services [EU term]
DG	Directorate-General [of the European Commission]
DG CNECT	Directorate-General for Communications Networks, Content and Technology
DG COMP	Directorate-General for Competition
DG JUST	Directorate-General for Justice and Consumers
DMA	Digital Markets Act [of the European Commission]
DSA	Digital Services Act [of the European Commission]
DSC	Digital Services Coordinator [under the Digital Services Act]
DSM	Digital Single Market [of the European Union]
e.g.	exempli gratia (lat.) [for example]
EC	European Commission
ECJ	European Court of Justice
ECON	Committee for Economic and Monetary Affairs [of the European Parliament]
EDPS	European Data Protection Supervisor
EEA	European Economic Area
EESC	European Economic and Social Committee
EP	European Parliament
EPC	European Policy Centre
EPP	European People's Party [in the European Parliament]

EU	European Union
GAFAM	Google (Alphabet Inc.), Amazon, Facebook, Apple, Microsoft
GAMMA	Google (Alphabet Inc.), Amazon, Meta (parent company of Facebook), Apple, Microsoft
GBER	General Block Exemption Regulation [of the European Union]
GDP	Gross domestic product
GDPR	General Data Protection Regulation [of the European Union]
HI	Historical Institutionalism
ICT	Information and Communication Technologies
IMCO	Committee on the Internal Market and Consumer Protection [of the European Parliament]
ITRE	Committee for Industry, Research and Energy [of the European Parliament]
JURI	Committee for Legal Affairs Committee [of the European Parliament]
LI	Liberal Intergovernmentalism
LIBE	Committee on Civil Liberties, Justice and Home Affairs [of the European Parliament]
MEP	Member of the European Parliament
MoA	Method of Agreement
MoD	Method of Difference
n.a.	not applicable
NCA	National Competent Authority [in the EU Member State]
NetzDG	Gesetz zur Verbesserung der Rechtsdurchsetzung in sozialen Netzwerken (Netzwerkdurchsetzungsgesetz) [Germany]
NGO	Non-governmental organisation
P2B	Platform to Business Regulation [of the EU]
QCA	Qualitative Comparative Analysis
QMV	Qualified majority voting [in the Council of the EU]
QR code	Quick Response code
RCI	Rational Choice Institutionalism

Rec.	Recital
Renew	Renew Europe Group [in the European Parliament]
RSB	Regulatory Scrutiny Board
S&D	Group of the Progressive Alliance of Socialists and Democrats [in the European Parliament]
SEO	Search Engine Optimisation
SI	Sociological Institutionalism
SME	Small and Medium Enterprise
TFEU	Treaty on the functioning of the European Union
US	United States [of America]
Verts/ALE	Group of the Greens/European Free Alliance [in the European Parliament]
VLOPs	Very Large Online Platforms [under the EU Digital Services Act]
VLOSEs	Very Large Online Search Engines [under the EU Digital Services Act]

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1 INTRODUCTION

> *"Many online platforms have come to play a central role in the lives of our citizens and businesses, and even our society and democracy at large."*
>
> Thierry Breton, EU Commissioner for the Internal Market
>
> (European Commission, 2020d)

Several countries have carried-out investigations into digital markets and attempted to regulate the digital sector over the past years. For example, the United States (US) thus far attempted to regulate the digital sector with the investigation into competition in digital markets in 2020 (United States House of Representatives, 2020). This resulted in bipartisan support for bills (Godwin, 2021) but the legislative texts never saw daylight and ended in gridlock. Another attempt was made by Australia when it commissioned a digital platforms inquiry in 2017 (Australian Competition & Consumer Commission (ACCC), 2024b). These efforts continue with an investigation into digital platform services until 2025 (Australian Competition & Consumer Commission (ACCC), 2024a). But so far, resulting legislation in Australia covers only limited domains, such as media compensation in respect to online search engines or online safety issues (Flannery, 2024). In contrast, the EU was a global first mover to regulate the digital sector comprehensively by enacting regulation of the largest and most powerful online platforms with the Digital Services Act (DSA) and Digital Markets Act (DMA) in 2022 (DSA, 2022, DMA, 2022).

To explain the EU's regulation of online platforms, this dissertation argues that inter-institutional preference convergence among the European Commission (EC/Commission), the European Parliament (EP/Parliament), and the Council of the EU (Council) coalesces with path dependency in regulating digital markets. This dissertation uses extensive primary sources from official EU publications and news outlets, such as Agence Europe. Twenty-one semi-structured interviews with stahekolders from the three involved EU institutions, digital sector representatives, and civil society organisations complement the evidence base and validate the findings.

The motivation to regulate online platforms in the EU stems from the challenges of digital transformation. With the rise of online platforms, also concerns about the 'digital dominance' of the largest and most powerful online platforms in our societies and economies grew (Khan, 2018, Moore and Tambini, 2018, p. 4ff). These platforms are coined Big Tech, Big Five or GAMMA, which stands for Alphabet/Google, Apple, Microsoft, Meta/Facebook and Amazon. In short, these are key players of the digital sector that often provide complete ecosystems.

The challenge for regulators is to account for the advancements of the digital sector over the past twenty-five years that are apparent to all of us. We have been catapulted from dial-in

modems to always-connected smartphones and cloud-based services. Online platforms enable us to communicate instantly through text, voice, or video with friends and family across the globe. We can reach an unprecedented number of people simultaneously via messenger services and social media. We have goods delivered same day to our doorsteps from online shops. We check local information on online map services and use online search engines to keep up with the news. However, this technological advance came with downsides, such as monopolistic markets with few online platforms in market-dominating positions (Khan, 2018). Besides the economic challenges, the Cambridge Analytica scandal revealed the vulnerability of users and their data (Confessore, 2018). Additionally, incidents of election interference have demonstrated that online platforms can also be used to undermine our democratic institutions (Shahbaz and Funk, 2020). These issues raised global concerns in two key regulatory dimensions: user protection and market correction.

To address these issues, the DSA and the DMA introduce new governance mechanisms to regulate online platforms in the EU. The DSA redefines the liabilities for online intermediaries and safety rules for digital markets by finding a European approach to balance innovation, freedom of speech and the protection of citizens. It is based on the fundamental principles of the eCommerce Directive of the year 2000 (eCommerce Directive, 2000). The first principle is ‘limited liability’, a risk assurance for online intermediaries that protects from liabilities which derive from hosting third party content or the intermediation of services and products on online marketplaces. This helped grow digital markets and spur innovation, as it allowed online platforms to go by the Silicon Valley motto ‘move fast and break things’ without much worry about accountability for what happens on the platforms (cf. Taneja, 2019). Second, the ‘country-of-origin’ principle reduces compliance costs for firms operating in the EU Single Market by limiting compliance to only one set of national rules in order to gain access to the bloc’s market. Third, the no ‘general monitoring obligation’ for online intermediaries protects the individual freedom rights of users while reducing the obligations for platforms. The DSA redefines these three principles and introduces multiple obligations for online platforms to reduce risks and improve transparency (DSA, Chapter III). While it is important to stress that the DSA does not define what is illegal, it offers detailed aspects on how to achieve these goals of the regulation. The obligations from Chapter III of the DSA encompass, for example, increased transparency on how recommender systems work that provide product suggestions on websites. In relation to this, the European Center for Algorithmic Transparency was launched in 2023 to support the enforcement of algorithmic aspects of the DSA (European Commission, 2023e). Another element is the introduction of mandatory complaints handling systems for users that want to appeal a decision of platforms, such as in the case of a blocked account. Moreover, there are out-of-court dispute settlement options that allow for simple litigation and conflict resolution outside of courts. Additionally,

there are restrictions on online interface design, particularly the use of so-called 'dark patterns'. These designs can mislead users to buy articles or provide personal information and is a related practice to what users experience when confronted with the choice about cookies on websites, where the rejection button is less visible or hidden (Verbraucherzentrale, 2023). Another example of misleading online interface design is a relative easy sign-up for a subscription service, but a cancellation that requires users to navigate through layers of clicking (Verbraucherzentrale, 2023). Furthermore, there is the introduction of 'trusted flaggers' for online content moderation that can report illegitimate content to the platforms. These content moderation decisions are documented in a publicly available database administered by the Commission, as required under the DSA (European Commission, 2024f)[1]. With the introduction of risk management and audit system obligations, the regulation aims to reduce risks caused by platforms. In case of non-compliance with the DSA, online platforms can get fines up to 6% of their worldwide annual turnover (DSA, Art. 74).

While the DSA is about making online services and products sold online safer, the DMA aims to achieve fairer and more contestable markets for businesses and end users (European Commission, 2023d). In contrast to the DSA, the DMA targets only the most powerful and economically most significant online platforms, so-called 'gatekeepers'. To qualify as a gatekeeper under the DMA, online platforms must reach annual turnovers of 7.5 billion € or more over the last three financial years in the EU and valuations of 75 billion € or more in the last financial year (DMA, Art. 3). Once designated as gatekeeper by the Commission, the online platforms face a set of obligations under the DMA to prevent engagement in practices that limit contestability or are considered unfair (DMA, Chapter III). The DMA (under Chapter III) limits several practices, such as the preferential treatment of products and services of the gatekeeper platform or favourable rankings in search results against business users selling on the platform, in short practices coined as self-preferencing. It also limits the influence of gatekeepers in restricting business users to market and sell their products outside of the gatekeeper platform to customers acquired previously through a gatekeeper platform. Similarly, the regulation restricts the mandatory use of identification or payment services prescribed by the gatekeeper platform for end or business users when conducting business on the gatekeeper platform. Aside from promoting competition by restricting unfair practices, the DMA requires messenger services from gatekeepers to be interoperable (DMA, Art. 7). The obligations for interoperability gradually increase over four years, starting from the designation as gatekeeper. Like very large entities under the DSA, gatekeepers under the DMA have audit and reporting obligations. The Commission coordinates enforcement of the DMA with assistance through the European Competition

[1] Citation includes link to the DSA transparency database.

Network, an intergovernmental format of the Member States' competition authorities. Under the new rules, the Commission can now conduct market investigations for designated gatekeepers, for example, in systemic non-compliance or into new services and practices (DMA, Chapter IV). The Commission has several tools available for enforcement, among them, it can issue interim measures and fines up to 10% of the annual turnover of gatekeepers (DMA, Chapter V; Art. 24; Art. 30).

Both online platform regulations of the EU, the DSA and the DMA, are embedded in a strategic policy programme that serves as framework to implement one of the six priorities of the von der Leyen Commission I (2019-2024): A Europe fit for the digital age. The policy programme is called Europe's Digital Decade (European Commission, 2021c). This term was coined by the European Commission's President Ursula von der Leyen in her State of the Union address on the 16th of September 2020, when she demanded that "We must make this Europe's Digital Decade" (von der Leyen, 2020). It underlines the ambitions of the EU in digital policymmaking (cf. von der Leyen, 2019). The Digital Decade policy programme consists of three layers to achieve the goals of EU digital policy: technology, rules and democracy. While the basis layer provides the technology, the top layer democracy provides the overarching values to the strategy. The nexus between both levels is the legislation to govern the EU's digital transformation. These rules cover six areas of digital policy: artificial intelligence, data governance, data spaces, online platforms, cybersecurity and media freedom/pluralism. The progress of the Digital Decade is governed and monitored by the 2030 Digital Compass of the Commission (European Commission, 2021a).

The keystone among these digital policy initiatives is the regulation of online platforms. Regulation of online platforms connects and draws on all six digital policy areas, such as data governance or artificial intelligence. It provides a framework for the regulation of the digital sector and digital markets. The new rules on online platforms comprise the two regulations in spotlight for this dissertation: the DSA and the DMA. Both regulations were adopted through the ordinary legislative procedure in less than 19 months since the Commission introduced the proposal in 2020 and are in force since late 2022. The regulations reached complete application in early 2024. Both regulations have the potential to change digital markets substantially as first movers (Wheeler, 2023). The DSA and DMA already inspire regulatory action against online platforms in other jurisdictions, such as India, Brazil, South Korea and the UK (Reinsch and Suominen, 2023, Wheeler, 2023, Holt, 2024, Reinsch and Suominen, 2024). The UK has followed the direction of the EU closely with the Online Safety Act of 2023 (Government of the United Kingdom (UK), 2023) and the Digital Markets, Competition and Consumers Act of 2024 (Government of the United Kingdom (UK), 2024). Hence, the EU's regulation of online platforms has the potential to set new global standards on how to govern online platforms (cf. Bradford, 2019).

The key challenge in the regulation of online platforms in the EU is a fundamental cleavage of regulation. The political trade-off is to protect citizens from the harmful effects of online platforms, ensure that safe and affordable products and services are available to consumers in the Single Market, while remaining business-friendly with digital markets that offer growth potential for firms to scale and innovate (Interview #17, 2023). To agree on online platform regulation, the preferences of the European Commission, the European Parliament and the Council of the EU converged.

Several aspects facilitated this inter-institutional preference convergence to regulate online platforms in the EU. Scandals, such as the Cambridge Analytica data scandal, in which Facebook data was used for political targeting in the 2016 Trump election campaign, increased the urgency and pressured legislators to regulate Big Tech. But social media was not only used unlawfully by political contestants, but also by third party countries. Russia actively interfered in the 2016 US election through bot networks that spread misinformation systematically on social media (United States Senate, 2020). Shortly after the European Commission published the proposals for online platform regulation in December 2020, the US Capitol insurrection occurred on the 6th of January 2021. Online platforms played a pivotal role as medium in the escalation and were under scrutiny once again. This further added to the inter-institutional preference convergence of the EU institutions (Interview #2, 2023, Interview #4, 2023, Interview #7, 2023). When the Facebook Files were leaked by whistle blower Frances Haugen later in 2021, it became evident that one of the biggest online platforms was aware about the flaws of their systems with potential harm for its users and society in general (The Wall Street Journal, 2021). The Facebook whistleblower Frances Haugen appeared twice during the EU legislative process at the European Parliament; first in a public committee hearing in November 2021 (European Parliament, 2021a) and after the provisional agreement was struck in May 2022 (Pollet, 2022).

While inter-institutional preference convergence is necessary for agreement on the DSA and DMA, the policy options available in legislative bargaining are limited by the path dependency in regulating digital markets in the EU. The Digital Decade strategy, with the DSA and DMA, is not an independent policy programme but draws on the path dependent development from the Single Market towards the Digital Single Market of the EU. The Single Market is central to European integration and advanced from the idea of free movement of services, goods and people to a sophisticated governance of the key economic activities of the bloc. To contextualise the scope of the EU Single Market at its 30th anniversary in 2023, the EU's market is about the size of the US domestic market in terms of economic contribution to global gross domestic product (GDP) with around 15% (O'Neill, 2023b, O'Neill, 2023a). However, the EU population is significantly larger with around 448 versus 335 million people in the US (European Commission, 2023i, United States Census Bureau, 2023). The EU Single

Market has around 24 million small and medium sized enterprises (SMEs), which are firms with no more than 250 employees and no more than 50 million € turnover (European Commission, 2023l, McEvoy, 2023). Respectively, in the US there are about 32 million small businesses, defined as firms with less than 500 employees by the U.S. Small Business Association (US Chamber of Commerce, 2023).

With the challenges from digitalisation and the rise of online platforms, it became evident that the EU Single Market, predominantly based on physical goods and services, lacked an equivalent for digital markets. These concerns were first systematically addressed through the Barroso Commission II in 2010 with the A Digital Agenda for Europe Communication (in short Digital Agenda) that introduced the Digital Single Market of the EU (European Commission, 2010). Following this path, the Juncker Commission introduced the EU Digital Single Market Strategy in 2015 (European Commission, 2015). Resulting in the introduction of the Digital Decade under the von der Leyen Commission I in 2020.

Since the Single Market was created, several regulatory developments have influenced today's digital policymaking in the EU. These are, most notably, the unification of existing and amended telecommunications sector regulations into the European Electronic Communications Code from 2018 (European Electronic Communications Code, 2018, European Commission, 2020g) and in data and privacy regulations, the General Data Protection Regulation (GDPR) from 2016 (GDPR, 2016). Among path dependent legislations, two predecessors to today's online platform regulations stand out. These are the previously mentioned eCommerce Directive from 2000 for the DSA and the Platform to Business regulation (P2B) from 2019 for the DMA (P2B Regulation, 2019). Additionally, the DMA had a path dependent element from a preceding but failed initiative to upgrade EU competition law, called the New Competition Tool from 2020 (European Commission, 2020k). The DMA takes on aspects of this initiative but tailored to the digital sector only, instead of overall competition law of the Single Market. The most notable aspect is the paradigm shift from an ex-post to ex-ante approach in regulating digital markets (Cini and Czulno, 2022). This shift was a lessons-learned from decades of legal procedures, for example against Microsoft's practice of bundling their browser with the operating system Windows, and court rulings against Big Tech, such as the recent 2.4 billion € fine against Google, that proved slow and inefficient to reign-in the power of Big Tech (European Commission, 2009a, European Commission, 2013, European Commission, 2017a, Interview #20, 2023). These singular initiatives on new rules for the EU Digital Single Market received increasing competition through national legislation that promised to correct market deficiencies and offer better protection for citizens, notably in Germany and in France. The German Netzwerkdurchsetzungsgesetz (NetzDG) from 2017 (Bundestag, 2017) and the French Avia Law (Assemblée nationale, 2020) address hate speech on social media. Although the French law was ruled unconstitutional by the French

Constitutional Court only weeks after it passed in 2020, both instances proved to be a powerful reminder that some EU Member States did not wait for the EU to address problems in digital markets. Similarly on competition and antitrust policy, the German competition authority was active in upgrading its digital sector rules. This is underlined by the inception of a commission to renew German competition law in 2018 (Kommission Wettbewerbsrecht 4.0) and the finalisation of the tenth iteration of the central German law on competition and antitrust in January 2021 (German Ministry for Economic Affairs and Energy, 2019, Deutscher Bundestag, 2021). It grants the German competition authority new powers to investigate Big Tech and the finalisation of this national legislation coincided with the start of the bargaining for the DMA in the Parliament and the Council. These national initiatives confronted the von der Leyen Commission I with the threat of a fragmentation of the EU Single Market (Interview #12, 2023), and the resulting DSA and DMA took on elements of the national legislations.

1.1 The Argument

To explain how the EU became a global first mover in regulating online platforms, this dissertation makes a twofold argument. First, the convergence of preferences of the three involved institutions, the European Commission, the European Parliament, and the Council of the EU to regulate online platforms facilitated agreement. This convergence was enabled by a consensus on the risks online platforms can pose for EU citizens and the EU Digital Single Market, combined with the absence of strong European digital industry players. On the one hand, potential risks for EU citizens stem from illegal services and products offered, using personal data for targeted advertisement, exposure to hate speech and, more generally, misinformation and election interference facilitated via online platforms. The EU Digital Single Market faces negative externalities from monopolistic gatekeeper platforms that can limit contestability or engage in unfair business practices (cf. European Commission, 2024c). On the other hand, these potential risks pair with low redistributive conflict that EU institutions face, as only a few big players in digital markets originate from the EU (Marinello and Martins, 2021, Hufbauer and Hogan, 2022) leading to the convergence of preferences of EU institutions to regulate online platforms.

Second, there is path dependency in regulating digital markets in the EU. Path dependency in this dissertation is understood to limit the policy options in legislative bargaining. The path started with fragmented internet governance in the early 2000s (Prodi), developed into the EU Digital Single Market with the Digital Agenda of 2010 (Barroso II) and the Digital Single Market Strategy of 2015 (Juncker), and resulted in additional legislation to regulate online platforms with the Digital Decade of 2020 (von der Leyen I). Managing this digital transformation of the EU was a priority of the von der Leyen Commission I, and regulating online platforms with the DSA and DMA is a crucial objective of its digital

policymaking. The DSA is a revision of the eCommerce Directive of the year 2000 and expands legislation to target the rise of online platforms that has occurred since. The DSA redefines three main principles from the eCommerce Directive that limit the liability of intermediaries, specify the rules to comply with to conduct business in the (Digital) Single Market and restrict the general monitoring of users. The DMA builds on the P2B regulation that regulates the platform to business segment of digital markets as well as on the NCT initiative to upgrade competition law in the EU's Single Market. The latter was unsuccessful and resulted in a compromise to adapt competition and antitrust regulation in digital markets first. Another, but shared path dependent aspect of the DSA and DMA is the experience of the EU institutions with the enforcement of the GDPR that favoured a national, decentralised enforcement scheme and resulted in significant backlogs in some Member States. In contrast, the DSA and DMA feature a centralised enforcement mechanism that can be traced back to the experiences with the GDPR. Hence, current online platform regulation follows the path dependence in regulating digital markets of the EU. In summary, inter-institutional preference convergence of the EU institutions to regulate online platforms coalesces with path dependency in regulating digital markets to explain the EU's regulation of online platforms through the DSA and DMA.

1.2 State of the Art

Current research provides us with an incomplete set of explanations to the puzzle of the EU's regulation of online platforms. Empirically, recent accounts focus on the competition and antitrust policy perspective of online platform regulation in the EU and hence the DMA (Dierx and Ilzkovitz, 2021, Monti and Rangoni, 2021, Cini and Czulno, 2022, Foster and Thelen, 2023, Foster, 2024). But this is only one side of the story of the regulation of online platforms in the EU. The other side points to how businesses and people are safeguarded online and how content moderation is organised. This is the goal of the DSA. The DMA and the DSA were initially introduced as the Digital Services Act package by the Commission and are widely seen as complementary element of the EU's new regulatory framework for online platform governance. This dissertation addresses this empirical gap by analysing both regulations and their interlinkages in legislative bargaining.

On the theoretical side, extensive work has been done in various fields applicable to this puzzle. Studies have provided explanations on further Single Market integration and the development towards a Digital Single Market of the EU (Raudla and Spendzharova, 2022, Schmidt and Krimmer, 2022). In addition to the earlier mentioned aspects on competition policy, these studies link to the role of competition policy for European integration (Billows et al., 2021). Others have provided answers to the EU's approach on digital policymaking (Newman, 2020) and the regulation of key aspects of the digital sector, such as

telecommunications, data and privacy (Kalyanpur and Newman, 2019, Jang and Newman, 2022). More broadly, research has provided us with insights into different modes of regulation (Newman and Bach, 2004, Bach and Newman, 2007, Newman and Posner, 2015, Bradford, 2023). Another strand of research investigates the power relations between online platforms, government and voters (Thelen, 2018, Busemeyer and Thelen, 2020, Culpepper and Thelen, 2020). Others draw on the role of the EU in global governance and demonstrate under which constellation EU policies can be effective globally. The authors da Conceição-Heldt and Meunier (2014) analyse the effect of cohesiveness in the EU and its external effectiveness depending on the bargaining constellation. Bradford (2019) argues in her Brussels Effect hypothesis that globally adopted EU-standards lead to increased power of the EU in global governance.

Several mechanisms introduced in the research contribute to explain policy developments in the EU. The role of path dependency and other reasons for institutional change are discussed (Hall and Thelen, 2008, Héritier, 2012, Hanrieder, 2014, Cartwright, 2021). The role of single actors in the policy process of the EU (Zeilinger, 2021). But most notably, work on the role of preferences and the bargaining process have provided us with new explanations of EU policy (da Conceição-Heldt, 2006a, da Conceição-Heldt, 2011, da Conceição-Heldt, 2017, Heldt, 2021). Therefore, this dissertation argues that inter-institutional preference convergence of the EU institutions and path dependency in regulating digital markets coalesce to explain how the EU became a global first mover to regulate online platforms.

Contrary to the global trend of increased privatisation of regulation across various policy fields demonstrated by Büthe (2010), the self-regulation of digital markets lags behind this ambition. The regulation of online platforms in the EU is a story of regulation by the state and through bureaucratic means (cf. Jang and Newman, 2022). In this regard, three strands of literature relevant to this dissertation apply to the regulation of digital markets. First, power studies that address the power relations between the actors involved that bargain for new regulation of online platforms and characterise the bargaining arena for online platform regulation. Second, studies on preference constellations that provide a micro-foundation which can be derived from liberal intergovernmentalism (LI). Third, studies that investigate the temporal dimension of institutional change which can be derived from historical institutionalism (HI). The key aspects of LI and HI are summarised in the table overleaf, while the current state of the art on power studies is presented thereafter.

Table 1: Theoretical Strands Explaining the Regulation of Digital Markets

	LIBERAL INTERGOVERNMENTALISM (LI)	HISTORICAL INSTITUTIONALISM (HI)
Preferences	Liberal preference formulation based on domestic interests	Policy determines preferences
Actors	Member States	Institutional actors
Institutions	Institutions as agents of Member States	Institutions are central actors as well as the arena for policy continuity or change
Mechanism	Bargaining among Member States	Institutions and procedures can shape policy in mainly two ways: 1) path dependency leads to continuity while 2) critical junctures lead to change
Key explanatory value for this investigation	Micro-level Effect of preference configurations and bargaining procedure on legislation	Institutional and temporal dimension Institutional aspects for policy development over time
Gap	Lack of institutional perspective that incorporates the role of institutions further than as a tool of Member States' interests	Lack of micro foundation that incorporates preference configurations and bargaining between actors

Source: Author's compilation based on Moravcsik (1993), Moravcsik (1997), Fioretos (2011), Fioretos et al. (2016).

The challenge of governing digital markets is based on its unique power constellations that leads to power transitions between private and state actors. Power studies in general, or business and platforms power approaches in specific, detail our understanding of the effect of lobbying and explain the political economy of digital markets that can shape inter-institutional preference convergence of institutional actors regulating the sector. The largest online platforms consolidate several forms of power: instrumental, structural, infrastructural and platform power in the EU. Power studies differentiate between instrumental power that stems from resources available, e.g. for lobbying activities, and structural power that stems from the position a person or entity holds in a system and a resulting dependency (Fuchs and Lederer, 2007, p. 4f, Culpepper, 2015). A special form of structural power is infrastructural power. Structural power extends to public infrastructure, e.g. the provision of telecommunication infrastructure or elements of the financial systems, resulting in a particularly powerful public-private dependency (cf. Braun, 2020). Institutional business power is a hybrid term that describes power as combination of instrumental and structural elements, most notably in the provision of public goods through private business actors (Busemeyer and Thelen, 2020). A special form of power for online platforms is called platform power that draws on network effects, dependencies among actors, popularity of services or goods provided and different roles that the actors can act-upon (Khan, 2018, Culpepper and Thelen, 2020). A duality of online platform users' roles as consumers and voters that lead to different alliances based on conflicting preference-constellations (Culpepper and Thelen, 2020). This duality can make agreements on new governance difficult or lead to gridlock. The theoretical contribution of power studies adds to the understanding of the power arena that influences the inter-institutional preference convergence of legislators and the measurement of lobbying power of Big Tech.

Platform power research derives from business power approaches. Business power is traditionally conceptualised in two variants: structural and instrumental power. Culpepper (2015) states that mutual dependencies between firms and states characterise structural power. The author classifies large firms or capital holders as central political actors in this regard. Their power stems from the ability to generate economic growth and profit for the society via investments. On the other hand, instrumental power is a more direct form of power often associated with lobbying activities and campaign-financing (Fuchs and Lederer, 2007, p. 4f).

Busemeyer and Thelen (2020) stress the importance of institutional aspects for business power in general, linking this topic to the institutionalist literature. They identify a cross-cutting third type of business power, labelled institutional business power. The specific power originates from shared responsibilities granted to firms to provide public goods. In a political economy characterised by platform firms providing public goods for the digital world, understanding the institutional factors that shape policy is key for explaining variations in governance.

Within the field of business power, a tailored strand of research accounts for the distinctive characteristics of online platform firms. It provides explanations to the sources of their unique power-position. Unlike other markets with predominantly tangible infrastructure, goods or services, digital markets differ. Business models of online platforms are often characterised by revolutionising traditional ones through alleviating consumers from inefficient market arrangements by offering lower prices or superior services (cf. Culpepper and Thelen, 2020, p. 296). While the deriving economic capabilities alone surpass those of many other sectors (Moore and Tambini, 2018), it is the combinatory effect of these network structures, matched with levels of popularity and consumer dependency that generate this particularly powerful band, called platform power (Khan, 2018, Culpepper and Thelen, 2020). Platform firms are considered critical market makers by providing three aspects: 1) services, 2) goods and 3) information (Srnicek, 2017a, Srnicek, 2017b, Zysman and Kenney, 2018, Culpepper and Thelen, 2020). Some platform firms catalyse their power by integrating combinations of these aspects to form complete ecosystems and new markets with technical infrastructure, thus reaching ‘economic scale’ and ‘technological capacity’ described as “quantity platform power” (Culpepper and Thelen, 2020, p. 290). Online platforms are no longer seen as multinational corporations but on par with states as transnational actors in the bargaining arena (Gorwa, 2019, Pladson, 2020, Williams, 2020).

Culpepper and Thelen (2020) build on these platform power approaches with a view on individual preferences based on differing role-conceptions to explain the functional dynamics in the online platform governance arena which they call ‘new permissive consensus’ (p. 300). The authors draw on ambivalent role conceptions among citizens that can translate into

different political capital for politicians and online platforms. It explains the specific power characteristics of the online platform governance arena. The framework builds on individual actors' preferences that lead to specific behaviour, which depends on their identity and role-conceptions to be considered (Holsti, 1970). In the permissive consensus of platform economies, consumers and politicians can hold different identities that play into effect (Culpepper and Thelen, 2020).

A central aspect is the question how different identities shape preferences in the regulation of online platforms. Hooghe and Marks (2009) laid the basis for the concept as permissive consensus and explained support for further European integration. Public opinion of EU-citizens towards further EU integration depended on the perceived individual benefits, mainly from an economic and an ideological perspective. Once this perception changed, obstruction to further integration grew. Culpepper and Thelen (2020) apply this logic to study platform power. Resulting in the previously introduced new permissive consensus between people and platform firms which allows companies to have the freedom to promote innovation and to grow their business in the rapidly changing environment of digital markets (Culpepper and Thelen, 2020, p. 300). The authors provide two scenarios for which consensus on the political economy can erode. First, when interests of consumers clash directly with those of platform firms. A loss in consumer trust can lead to a significant loss in political capital. Second, when political debate raises awareness for negative externalities of platform power, resulting in people to assume their identity as citizens. This process is called priming by Culpepper and Thelen (2020).

The presented approaches demonstrate that the power of online platforms reaches towards broader economic and societal influence by altering how we do business, communicate and engage with each other. Products of online platforms can be vulnerable to third party interference. They can serve as a tool to manipulate political institutions evolved over centuries, for example, in the case of the 2016 US elections, thus eroding democratic values (cf. United States Senate, 2020, p. 8ff). The immediate economic and social negative externalities that derive from this concentration of power, are manifold for the public. They reach from general market inefficiencies caused by monopolies and lower competition, resulting in higher prices or lower quality of products, to an increase in precarious employment in the longer run, such as in the transportation, delivery and logistics industry. Further questions on resource distribution, income inequality and social factors arise immediately when studying the broader effects (cf. Stiglitz and Driffill (2000: 287ff), Krugman and Obstfeld (2009, ch. 6) on the negative effects of monopolies).

On the one hand, the power of online platforms can be visualised through economic indicators, e.g., measured in roughly 4 006 billion USDs in pre-pandemic market capitalisation of Big Tech, which can be leveraged for pursuing business interests (comp. Barwise and

Watkins, 2018, Statista, 2020). Put differently, this is more than a quarter of the total GDP of the European Union or roughly a fifth in respect to the US (The World Bank, 2021). Parts of these resources directly fuel the contestation of the bargaining arena on online platform governance. Most visibly through sharply increased annual expenses for lobbying during recent years. In the US alone, these expenses have more than quadrupled in the last decade (Statista, 2021).

On the other hand, the level of platform power can also be measured from a structural perspective and through network effects via structural, instrumental, consumer dependency and popularity measures. Structural and instrumental power measures can be sourced from competition authorities (e.g. market shares; price formation aspects) and lobby registries (e.g. level of funding for representation; number of lobby staff). Dependency occurs when consumers are provided with a cost-effective alternative or superior goods or services to existing options on which they rely in their every day's life. Relevant markets are broad. They stretch from transportation and shopping to medical care or news provision. Finally, popularity can be measured through brand value statistics, e.g. the perception of brand identity, communication, awareness and customer loyalty (Statista, 2022). Additional measures can be derived from surveys, such as The Verge annual tech surveys, going back to 2016 (Newton, 2020), a recent GALLUP 2021 survey on Big Tech (Brenan, 2021) or a seoClarity survey from 2021 asking if Americans trust tech giants (Gandhi, 2021). Additionally, YouGov measures are available, for example, as featured in Culpepper and Thelen (2020). In summary, power studies have demonstrated their contribution to explain the unique power constellations in digital markets that affect online platform regulation.

1.3 Research Gap and Contribution

In the study of the EU's regulation of online platforms, current theoretical debates provide inconclusive explanations. Neither liberal intergovernmental frameworks, nor institutionalist approaches provide explanations for the variations in the governance of online platforms when applied individually, while power studies seem to have overestimated the influence online platforms can exert in legislative bargaining in the EU. More specifically, LI accounts fall short to reflect the evolution of the ordinary legislative bargaining procedure of the EU into today's procedure with two bicameral legislators, the European Parliament and the Council of the EU, as well as the increased importance of the Commission as agenda setter in the bargaining process by providing technical knowledge and its role as broker between the bicameral legislators. The EU's legislative bargaining arena is no longer just 'intergovernmental' as assumed under LI. In contrast, HI lacks the micro-foundation of LI that explains preferences and the effect of preference constellations in digital markets. Therefore, it is important to address this theoretical gap in the research on the regulation of online platforms in the EU.

The empirical accounts provided in current research have largely focussed on the competition and antitrust policy of the DMA, neglecting the DSA. This resulted in an incomplete picture of the regulation of online platforms in the EU and how both related and simultaneously negotiated pieces of legislations influenced the preference constellations in the bargaining.

Hence, this dissertation provides a theoretical and empirical contribution to explain how the EU became a global first mover to regulate online platforms. The framework contributes to the theoretical debate of EU decision-making in several ways by drawing on elements from LI and HI. LI combines the elements of liberal preference formulation with the intergovernmentalist explanations of interstate bargaining (Moravcsik, 1993, Moravcsik, 1997). HI explains the role of path dependency for institutional change (Pierson, 1996, Streeck and Thelen, 2005, Mahoney and Thelen, 2009b, Verdun, 2015). The first theoretical contribution of this dissertation is the adaptation of a preference-based framework derived from LI that accounts for all three EU institutional actors, the Commission, the Parliament and the Council. This dissertation's analysis challenges the traditional intergovernmental approach to preference analysis in the EU's legislative bargaining that focuses on Member States only (cf. Verdun, 2020). This expansion reflects today's characteristics of legislative bargaining that, in many policy fields, has outgrown its intergovernmental origins and includes all three EU institutions' preference configurations relevant to the legislative process, thereby following the approach of da Conceição-Heldt and Meunier (2014). Second, adding a micro-foundation to HI with an exogenous source of preferences allows to revisit the role of preference convergence over time and institutional constraints that limit policy options in the legislative bargaining and lead to incremental or transformative change. This expands preference analysis with a deeper time horizon that LI lacks. Third, this framework demonstrates the-importance to combine a preference-based analysis with a temporal perspective to explain institutional change in digital markets. By linking the preference-based analysis with the concept of path dependency, the theoretical framework integrates a preference-based bargaining approach with micro-foundation and the factors that explain institutional change over time. This explains transformative change without immediate critical juncture. The synthesis bridges the theoretical gaps between LI, with its preference focus, and HI, with its temporal dimension, to explain how the EU became a global first mover to regulate online platforms. These insights contribute to an improved understanding of EU policymaking in general.

The empirical contribution of this dissertation covers three areas. First, it is one of the few accounts that investigates the complete package of the EU's regulation of online platforms, the DSA and the DMA. Second, this dissertation provides a single source of information about the legislative process with a detailed timetable of the negotiations. Third, the development of the key positions held by the EU institutions and the outcome of the regulations is presented.

The empirics are embedded in an overview of the digital policies of the EU, and the dissertation provides an outlook on enforcement, including a list of the regulated online platforms as of the time of writing. The empirical depth of the empirical contribution of this dissertation provides a basis for other researchers to draw from. In summary, this dissertation increases our theoretical and empirical understanding of the EU's legislative bargaining and digital policymaking by examining how the EU became a global first mover in the regulation of online platforms.

1.4 Research Design

The dissertation features two case studies that resemble the complete universe of cases of online platform regulation in the EU. A more detailed discussion on case selection follows in a subsequent section. The cases are the Digital Services Act and the Digital Markets Act. Evidence for both case studies is derived from official negotiation documentation from the EU institutions, legal texts, and news outlets, such as Agence Europe. This analysis covers over 3000 publications that have been reviewed and which is detailed in the following section on data collection. In addition, twenty-one stakeholder interviews, covering the three involved EU institutions, civil society organisations and representatives from the digital industry, were conducted to complement the evidence base and to validate the findings. Research on digital markets and online platform governance can be approached from different angles and levels of analysis. This dissertation focuses on legislative bargaining and governance of online platform regulation in the EU. The unit of analysis is at the level of the three institutional actors in legislative bargaining: the European Commission, the European Parliament, and the Council of the EU.

1.4.1 Data Collection

The timeframe for data collection are the years from 2019 until mid-2024. This is the key period in which legislative actions occurred that includes the start of the public consultations in June 2020, covers the publication of the new legislation in October 2022 and the full application of both regulations in early 2024. The selected timeframe ensures that the EU's legislative attempts are fully covered. Moreover, the start of the period aligns with the accession of the von der Leyen Commission I in the EU. It also covers the agreed legislation until the European Parliament election in 2024. Additional aspects on the EU Digital Single Market have been sourced from the period of the Juncker Commission as this attempt was a stepping stone and framework for the current governance of online platforms in the EU. Respectively, for the eCommerce Directive, which constitutes the basis of the DSA, information has been sourced from the year 1999 onwards.

The data is collected from official negotiation documentation from the EU institutions, legal texts, and news outlets, such as Agence Europe. Official sources from the EU institutions encompass the institutional webpages of the Commission, the Parliament, and the Council. Evidence is collected from Recommendations, Directives, Regulations and the respective draft documents during the bargaining process. In the run towards the DSA and DMA proposal of 2020, the Regulatory Scrutiny Board Opinions are included. Other available negotiation documents are also considered. Regarding corresponding information gained through other sources, the Bulletin Quotidien Europe (BQE) from Agence Europe was a primary source of information for this dissertation as it provides daily updates on the actors and institutions involved in the bargaining. The following database tags have been screened: Digital, Technology, Competition, Justice, Taxation and Finance as well as variants, where tags have changed or were added over time. The targeted news research was guided by a Lexis database search and complemented with materials from EUobserver, Euractiv and Politico. In addition, a wealth of online publications by large newspapers and media outlets was also accessed to inform the cases.

The industry organisation publications from the websites of DIGITALEUROPE and DOT are also included. Furthermore, consumer organisation websites like Lobbycontrol and Corporate Observer provide a contrasting perspective. Moreover, publications by think tanks and research institutions, such as from Bruegel, the Center on Regulation in Europe (CERRE), the European Policy Centre (EPC) and the Centre for European Policy Studies (CEPS) were analysed. Where available, questionings of Tech Executives were also included in this analysis, such as the questioning of Mark Zuckerberg in front of the EU Parliament in 2018 (European Parliament, 2018). The following keywords and combinations of these words have been used as search terms for the identification of empirical materials: Digital Services Act, DSA, Digital Markets Act, DMA, Digital Single Market, DSM, eCommerce Directive, Data Governance Act, Big Tech, GAFAM, GAMMA, online platform (governance).

Some limitations are inherent to the data collection on the regulation of online platforms in the EU. The policy field is a technologically and economically sensitive matter for all negotiating parties, thereby limiting the transparency of negotiations and actors' preferences revealed within official minutes. Therefore, bargaining positions and case-information were complemented and validated with the help of interviews.

1.4.2 Analysis

This dissertation uses qualitative case study methods and process tracing for the within case analysis. The findings are complemented and validated with semi-structured interviews. The interviews were carried-out under the condition of anonymity and are addressed in more detail

in Section 1.4.2.3. Additionally, summary statistics on the stakeholder groups interviewed, the interview dates, and the questionnaire used can be found in Annex III and Annex IV.

1.4.2.1 Case Study Methods and Case Selection

The benefits of case work were underlined in the ground-breaking work from Lijphart (1975) as the potential to serve as partial generalisation towards more universally applicable theory generating. According to King et al. (2021: 44) "Case studies are essential for description, and are, therefore, fundamental to social science […]". Moreover, the authors argue for an increasing need of good descriptions of new situations. This dissertation follows this call by studying the governance of online platforms in the EU with two in-depth case studies.

The particular strengths are the focus "[…] on theory generation and on explaining large and complex outcomes at the macro level […]" (cf. Mahoney and Rueschemeyer, 2003, p. 7, from Mahoney and Thelen, 2015, p. 4). Providing an advantage for explaining empirical phenomena and political economy outcomes with particular respect to our understanding of processes and time in politics with a mechanism-focussed perspective (Mahoney and Thelen, 2015, p. 5; 12f). The method is therefore ideally suited for this study of the regulation of online platforms, in which processes and sequencing play a crucial role for policy-outcomes. Rohlfing (2012) further classifies three aims of case study research approaches that are utilised further in this dissertation: the formation, the testing and the modification of hypotheses.

Good case descriptions can lead to improved or new explanations. When drawing causal inferences, descriptions are linked with explanations. Key to this is a systematic approach to describe relevant events with high precision and to draw relations between them; an approach also coined as structured-focussed comparisons (King et al., 2021, p. 43ff). Hence, both cases in the dissertation are tested by the same procedure and towards the causal mechanism laid-out in the theoretical section.

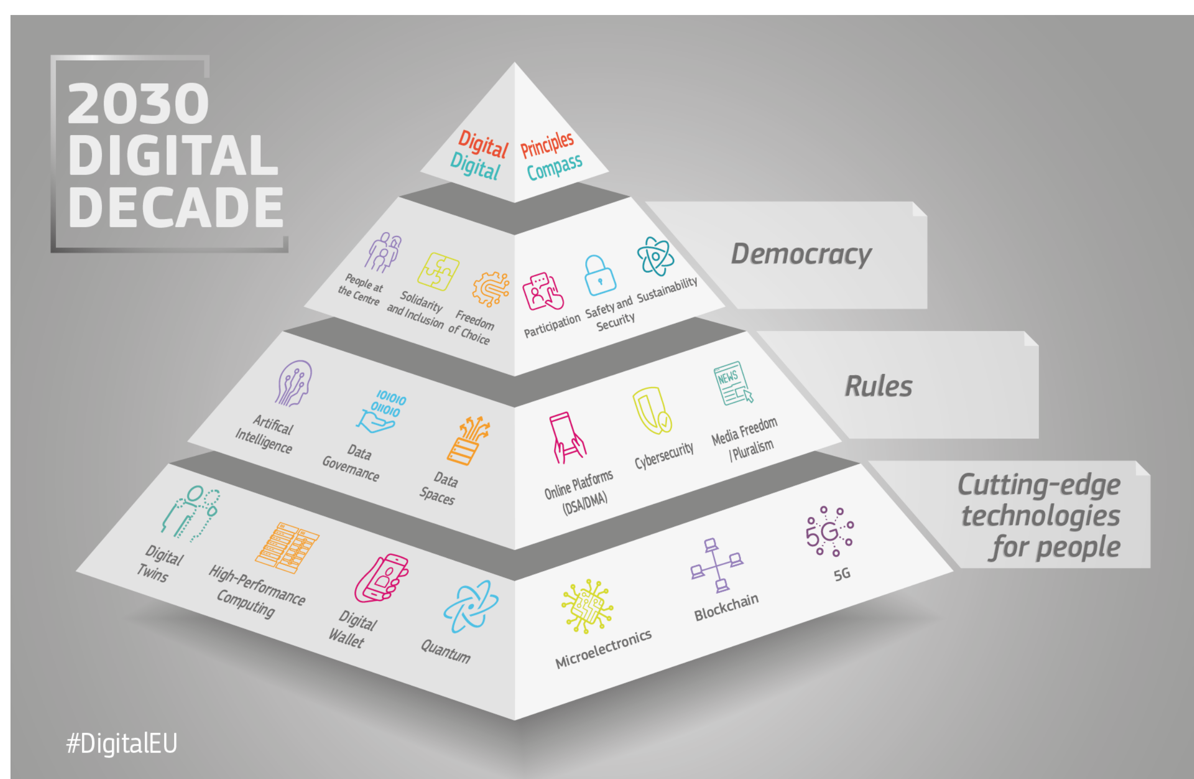
This study is a Small-N case study and encompasses the complete population of online platform regulation in the EU. A case is defined as a legislative attempt that occurred at a similar point in time in a jurisdiction and is comparable in its initial scope of governance. For Medium-N studies, the popular method of Qualitative Comparative Analysis (QCA) could have been utilised, but this was not suitable for this dissertation as the population size is smaller than the typical QCA sample-size of between 20 and 50 (Mello, 2021, p. 9) and the absolute minimum threshold of ten cases (Mello, 2013, Oana et al., 2021, p. 6). In contrast to Medium-N and particularly Large-N studies, it is crucial for Small-N study designs to carefully examine how causal inference is derived from small samples. In this regard, Mill's Method of Agreement (MoA) and Method of Difference (MoD) have been established as general logical principles for comparisons (Lieberson, 1991, Rohlfing, 2012, p. 105ff, Saylor, 2020). According to Rohlfing, for the ideal MoA, the outcomes and one cause should be similar as opposed to

differing outcomes and one different cause in the MoD with all other factors being invariant in both methodological approaches.

Hence, this dissertation's analysis is guided by the methodological principles laid-out earlier, it acknowledges the remaining inherent uncertainties from making causal interferences in cross-case comparisons. Therefore, also detailing the theoretically viable inferences as suggested by Rohlfing (2012: 114). In a next step, the level of aggregation can be reduced to turn from cross-case to within-case analysis (Mahoney, 2000).

For the case selection, a complete knowledge of the universe of cases is required to avoid selection bias. The universe of cases for this dissertation is the Digital Decade policy programme of the EU that is depicted subsequently.

Figure 1: The European Union's 2030 Digital Decade



Source: European Commission (2022h).

There are six strategic areas of the Digital Decade in which new rules for the Digital Single Market of the EU are created. First, new rules on the governance of artificial intelligence (European Commission, 2023a). Second and third, new rules to govern data and data spaces to create a European data economy and utilise public data (European Commission, 2023f, European Commission, 2023g). Fourth, the new rules on online platforms examined in this dissertation (European Commission, 2022f). Fifth, new rules for cybersecurity and digital identification (European Commission, 2023b, European Commission, 2024h). Sixth, new rules on media freedom and pluralism online (European Commission, 2023h). These key policy

initiatives and legislation are listed subsequently with an overview on their legal status and timeline.

Table 2: Key Legislation of the Digital Decade under the von der Leyen Commission I (August 2024)

Legislation	Short name	Key dates	
REGULATION (EU) 2022/868	Data Governance Act	Proposed Agreed In force	25 November 2020 30 November 2021 23 June 2022
REGULATION (EU) 2022/2065	Digital Services Act (DSA)	Proposed Agreed In force	15 December 2020 23 April 2022 16 November 2022
REGULATION (EU) 2022/1925	Digital Markets Act (DMA)	Proposed Agreed In force	15 December 2020 25 March 2022 01 November 2022
REGULATION (EU) 2024/1689	AI Act	Proposed Agreed In force	21 April 2021 08 December 2023 01 August 2024
REGULATION (EU) 2024/1183	European Digital Identity Framework (EUDI) [European Digital Identity Wallets]	Proposed Agreed In force	03 June 2021 08 November 2023 20 May 2024
REGULATION (EU) 2023/2854	Data Act	Proposed Agreed In force	23 February 2022 28 June 2023 11 January 2024
PROPOSAL COM(2022) 454 final	Cyber Resilience Act (CRA)	Proposed Agreed In force	15 September 2022 30 November 2023 [announced for 2024]
REGULATION (EU) 2024/1083	European Media Freedom Act (EMFA)	Proposed Agreed In force	16 September 2022 15 December 2023 07 May 2024
AMENDMENT COM(2023) 208 final	Cybersecurity Act [amendment]	Proposed Agreed In force	18 April 2023 06 March 2024 [n.a.]
PROPOSAL COM(2023) 209 final	Cyber Solidarity Act	Proposed Agreed In force	18 April 2023 06 March 2024 [n.a.]

Source: Author's compilation based on the respective legislative texts and publicly available information from the EU institutions. Ordered chronologically by date of first proposal.

For this research, the two acts specifically design to regulate online platforms, initially introduced as Digital Services Act package, have been selected as case studies out of the Digital Decade policy programme (European Commission, 2022e, European Commission, 2022h). The selected legislation are the DSA and the DMA, two "[…] of the centrepieces of the European digital strategy" (European Commission, 2024c). The DSA and DMA were introduced as Digital Services Act package, then split into two separate procedures. However, on a technical level during the bargaining, the picture differs. While it was speculated, that bargaining for the DSA and the DMA were re-linked in the trilogues, with Rapporteur Andreas Schwab confirming related discussions (Bertuzzi, 2022b), the different speeds in progress of both regulations during trilogues made this more difficult, according to associated committee rapporteur Stéphanie Yon-Courtin from the ECON committee (Agence Europe, 2021d, Agence Europe, 2021a). However, clear arrangements were made between the DSA and DMA legislators on where to address certain issues in the regulations (Interview #10, 2023). Hence, the case selection for this dissertation considers this relation between both acts by

addressing both, the DSA and DMA. The research design has two double affirmative or success case studies only. Resulting in a potential weakness due to the lack of variation on the dependent and independent variables. As introduced earlier, selection on the dependent variable requires the knowledge of the complete universe of cases. This knowledge is given as all digital policy legislation of the EU is known and the respective cases, the DSA and the DMA, are the two specific online platform regulations. Hence, the lack of variance on the dependent variable is therefore partly remedied and the focus allows for increased analytical depth in the two case studies. The remaining lack of variance on the independent variables, inter-institutional preference convergence and path dependency in regulating digital markets persists. The investigation was initially designed as comparative work, contrasting EU versus US regulation, but the complexity and the restrictions on data availability required a shift in focus to EU cases only. This could be addressed in future research.

1.4.2.2 Process Tracing

The process tracing method is utilised for the within-case analysis and to supplement inference in Small-N comparative analyses (Bennett and Elman, 2008, p. 506, Bennett and Checkel, 2014b, p. 19, Saylor, 2020). Process tracing in a more practical term is the "[…] search for evidence of the mechanisms that explain why the actors involved behave in ways that push the story forward along these steps, triggering one event after the other."(Gonzalez-Ocantos and LaPorte, 2021). Making these causal inferences through process tracing, relies on a connected path of evidence. This causal homogeneity in within-case studies enables drawing across-case inferences in return (Beach and Pedersen, 2018).

However, there might be instances where sensitive data is unavailable or only accessible through indirect means. Therefore, Gonzalez-Ocantos and LaPorte (2021) provide guidance on how to address missingness in process tracing. They suggest that the credibility of empirical narratives can be tuned through extensive knowledge of the setting and careful theorising. Moreover, the authors provide three practical instruments to deal with this: 1) by contextualising the data generation process; 2) by designing indirect tests; 3) by specifying the analytical status of steps in the causal chain.

Process tracing generally serves three purposes: theory-testing, theory-modification and explaining outcomes (Beach and Pedersen, 2013, p. 12). This dissertation focusses on theory-modification and to explain the outcome of the EU's regulation of online platforms. Process tracing is particularly helpful analysing causal and temporal mechanisms, which makes it ideally suited for this study of the regulation of online platforms (cf. Trampusch and Palier, 2016). The authors map two streams of process tracing approaches, the inductive for theory building and the deductive for theory testing or modification. A mix of both approaches is generally used in process tracing studies (Bennett and Checkel, 2014a, p. 17). There are a

few best practices to be considered in process-tracing (Bennett and Checkel, 2014b, p. 261). In addition to previously outlined principles for comparative and within-case research, according to the authors, it is recommended to evaluate alternative explanations careful, be cautious on potential biases, use inductive and deductive approaches and utilise a wide base of evidence. Therefore, semi-structured interviews support and evaluate this analysis in addition to cross-case comparison and process tracing.

1.4.2.3 Interviews

Case study findings are complemented by twenty-one semi-structured interviews from different stakeholder groups in the EU's regulation of online platforms. The summary statistics on the stakeholder composition as well as the dates of the interviews can be found in Annex III, followed by the interview questionnaire listed in Annex IV.

I have conducted interviews with stakeholders from all three EU institutions, the Commission, Parliament and Council. To identify relevant interview partners that were stakeholders in the two case studies of this dissertation, I contacted the European Commission's key Directorate-Generals (DGs) involved in digital governance. These are the Directorate-General for Communications Networks, Content and Technology (DG CNECT), the Directorate-General for Competition (DG COMP) and the Directorate-General for Justice and Consumers (DG JUST). In addition, the Commission has set up a new diplomatic mission in San Francisco related to recent digital governance efforts (European External Action Service, 2022, Stolton, 2022). The entity is linked to the EU representation in Washington and I have contacted both entities for interviews. Second, for the Council, the permanent representatives are the key actors. Hence, I contacted a geographically balanced selection of member states' embassies in Brussels for interviews. Third, for the Parliament, the main committee is the Committee on the Internal Market and Consumer Protection (IMCO). The committee had two lead-negotiators for the Parliament, the so-called rapporteurs. On the one hand, Christel Schaldemose from the group of Group of the Progressive Alliance of Socialists and Democrats (S&D) for the DSA and on the other hand, rapporteur Andreas Schwab from the Group of the European People's Party (EPP) for the DMA. Moreover, I contacted the associated committees for interviews. For the DSA, these are the Committee on Civil Liberties, Justice and Home Affairs (LIBE) represented by Patrick Breyer from the Group of the Greens/European Free Alliance (Verts/ALE); the Committee for Industry, Research and Energy (ITRE) represented by Henna Virkkunen (EPP); and the Legal Affairs Committee (JURI) represented by Geoffroy Didier (S&D). For the DMA, the associated committees are the Committee for Economic and Monetary Affairs (ECON) represented by Stéphanie Yon-Courtin from the Renew Europe Group (Renew) and the Committee for Industry, Research and Energy (ITRE) represented by Carlos Zorrinho (S&D).

The interviews provide a first-hand perspective on the regulation of online platforms. The benefits of the approach are twofold. First, interviews provide additional insights to complement missing or sensitive information in case study research, particularly in legislative processes that could not be derived from written information (Beyers et al., 2014). Additional remarks made off-hand by interviewees can proof extremely valuable, particularly in highly sensitive political matters (King et al., 2021, p. 43), such as online platform regulation. Interviewees can point researchers to other relevant actors with unique insights that were not visible from an outside perspective (Mosley, 2013, p. 1). Second, and most importantly, they are a vital source for the validation of theoretical assumptions and can improve our understanding of causal mechanisms. To utilise the interviewees for this dissertation, a semi-structured interview approach was followed. This allows for comparability while maintaining enough room for interaction with the interviewees to uncover new insights that could refine causal mechanisms and would have been left out in a fully standardised interview format.

Interviewees in this dissertation can be defined as expert or elite interviewee which translates to people in senior positions with strategic importance or that are part of powerful networks (Harvey, 2011). In regard to the questionnaire, Harvey (2011) suggests to use more open than closed loop ones in elite interviews. Following the author's advice, interviews spanned 45 to 60 minutes to balance detailed information gathering and being time-conscious with senior officials' resources.

A standardised interview approach ensures comparability and validity (Mosley, 2013, p. 20ff), but does not prevent internal bias through the interviewer. Beyers et al. (2014: 177ff) suggest the following measures to reduce biases: First, limiting open-ended question to fields where necessary. Second, avoiding a time lag between policy-outcome and interview time, so that interviewees' can easily draw from their memory. Ideally, these interviews are about closed cases, for example, in this dissertation's EU cases, where legislative procedures are completed or closed. Third, not to overestimate the asymmetric balance of the interviewee. Finally, the over- or underestimation of events by interviewees, as their perception of events holds information for research. The authors also suggest the reduction of biases by cross-validation of interviewees. These methodological suggestions have been followed for this dissertation.

1.5 Structure of the Dissertation

This dissertation is organised in six chapters. Following this introduction, Chapter 2 describes the dependent variable. Chapter 3 provides a theoretical explanation of the puzzle. This framework is tested on two case studies of online platform regulation in the EU. The DSA is analysed in Chapter 4 and the DMA in Chapter 5. The dissertation concludes in Chapter 6 and provides implications for further research and policymaking. Supplementary information on the cases and interviews can be found in the Annex.

2 THE EU’s REGULATION OF ONLINE PLATFORMS

The DSA and DMA were initially introduced as Digital Services Act package (European Commission, 2021b) and complement each other to create a new framework governance for the EU (Interview #9, 2023). In this regard, one interviewee referred to the DSA as “grand layer” and “table cloth” for digital policies in the EU (Interview #17, 2023). By late 2022, the EU had enacted the DSA and the DMA. The provisional agreement in inter-institutional trilogues was reached earlier that year after 19 months, while the preceding intra-institutional agreements in Council and Parliament took just one year from the initial Commission proposal. The Parliament’s final vote on both legislations occurred on the 5th of July 2022. The DSA had more dissenting votes with 539 in favour, 54 against and 30 abstentions, while the DMA passed with 588 votes in favour, 11 against and 31 abstentions (European Parliament, 2022e). In the Council, both legislation were unanimously adopted under qualified majority voting, but with a significant time delay with the DSA passing in October 2022 (Council of the European Union, 2022f) and the DMA already in July 2022 (Council of the European Union, 2022e). With the successful adoptions by the Council and the plenary of the Parliament as well as consecutive signature, the EU became a global fist mover to regulate online platforms. This results in the dependent variable for this dissertation: the EU’s regulation of online platforms.

2.1 Operationalisation of the Dependent Variable

The dependent variable, the EU’s regulation of online platforms, has several components that require operationalisation. Big Tech is loosely defined as the biggest and most powerful online platforms. Among them are the so-called called Big Five or GAMMA. These are the firms Google (Alphabet), Apple, Microsoft, Meta (parent company to Facebook and Instagram) and Amazon. In short, key players in the digital sector that often provide complete platform ecosystems. However, new EU rules also apply to online intermediaries in general, and regulatory obligations vary depending on their impact on the EU Digital Single Market. In this dissertation, the term online platform is defined broadly. It includes different sizes and types of online intermediaries, such as domain and hosting providers, search engines, online marketplaces, online news outlets, and social media. The specific types are introduced where necessary to distinguish the effect of the regulations.

First mover refers to a global power, such as the US, China or the EU, that introduces comprehensive legislation to regulate online platforms. Comprehensive is defined as legislation that provides a framework governance for other regulations to integrate with or build upon and has a broad scope. The condition of broad scope is fulfilled when governance covers not only the market dimension of platform regulation, such as competitiveness and antitrust, but also the service dimension that directly regulates how online platforms operate and interact

with their users and which affects the core business models of these firms. The DSA and DMA are the EU’s framework governance for online platform regulation, introduced initially as the Digital Services Act package.

The dependent variable EU’s regulation of online platforms has three values: attempt, failure and success. It is measured during the observation timeframe from the year 2019 until 2024. This captures the complete cycle of both legislations, starting with the preparatory phase, the provisional agreement (i.e. the political agreement), signature into force and until they became fully applicable in 2024. This ensures that all relevant activities from the von der Leyen Commission I are covered in this investigation. The three values of the variable are operationalised as follows:

I. *Attempt* is if a proposal for new governance is still pending within the legislative procedure at the end of the observation timeframe of this dissertation and holds low prospects of rejection or agreement within the near future. In contrast to the other two values, attempt is a governance proposal that has neither been rejected and therefore failed or agreed and hence passed into legislation during the observation timeframe.

II. *Failure* is if a proposal for new governance is rejected within the observation timeframe. A rejection can manifest through withdrawing a proposal, cancelling the legislation process, or voting. However, failure is not confined to these three actions, it can also constitute, if a governance proposal has been significantly watered-down or lacks specifics for implementation. Moreover, a new governance without specific re-evaluation or parliamentary oversight clauses results in a significant lack of accountability mechanisms and can also be classified as failure.

III. *Success* is a governance proposal that was agreed-upon, has not been watered-down significantly from its original position, and holds specific provisions for its implementation that can be executed. Operationalising success for a new governance is confined to this step in the policy-process. Governance outcomes that would be analysed through ex-post evaluations, with criteria such as coherence or complementarity as well as the ones provided by the OECD (OECD, 2021), do not relate to success in the sense of this investigation.

2.2 The Role of Institutional Actors in Bargaining

In contrast to directives, both acts on online platform governance are regulations binding for all Member States, underlining the importance for the EU to set clear and definitive rules in the Digital Single Market (Agence Europe, 2020f). The ordinary legislative procedure is the standard legislative process of the European Union. It was formerly known as codecision procedure until the Lisbon Treaty (Council of the European Union, 2022c). The procedure is

laid out in the articles 289 and 294 of the Treaty on the Functioning of the European Union (TFEU) (European Union, 2016). Based on an initiative made by the European Commission, the European Parliament and the Council of the EU debate in parallel as co-legislators on new economic governance (European Parliament, 2024), such as in both cases of the regulation of online platforms. Once an agreement is reached within the institutions, the so called trilogues between the Parliament, the Council and the Commission start (Council of the European Union, 2022c). The provisional agreement of this bargaining process is passed on to a plenary vote in the Parliament and a vote in the Committee of the Permanent Representatives (COREPER), then subsequently in the Council. Once adopted by the Parliament and the Council, the legislation is published and becomes EU law.

In practice, codecision means consensus-making among two veto-players in a bicameral system between Parliament and Council. However, it is an iterated game with three players, in which the EC serves as agenda-setter in the first iteration and the Parliament and the Council function as bicameral actors in the second iteration. This poses several difficulties for consensus-finding as individual utility-maximising positions must be aligned between all parties. Bilateral cooperation of two actors and therefore potentially side-lining the third actor, with additional obstacles for efficient outcomes and one that could undermine trustful bargaining and consensus-making.

In detail, the European Unions' ordinary legislative process' three main bargaining phases encompass the following: In the first phase, the Commission acts as agenda-setter and conducts a public consultation to inform the legislative proposal. Once this text is approved by the Regulatory Scrutiny Board (RSB) of the College of Commissioners, the official proposal is established. In the second phase, the Council and the Parliament conduct intra-institutional bargaining to determine their positions on the Commission proposal. At this point, the institutions decide, if the preferences of the institutions converge sufficiently to start final bargaining with the other institutions. This last phase of inter-institutional bargaining is called the trilogues, which have become the de-facto standard of legislation-making in the European Union with an average of 3-4 rounds of trilogues per legislation (Laloux, 2020, Brandsma et al., 2021). The Commission has a two folded role. One the one hand, it acts as broker that facilitates agreement between the bicameral actors, the Parliament and the Council, on the other hand, it protects its own preferences during the bargaining (Panning, 2021). After successful agreement in the trilogues, a finalisation process follows with official votes and signatures by the Council and the Parliament. Publication of the new legislation and subsequent entry into force conclude the procedure. This last part consists mainly of lawyer-linguist checks, minor refinements by the institutions and their signatures. While this dissertation analyses the bargaining until the provisional agreement that concludes the

trilogues, instances of delay or last-minute attempts to significantly alter the content of the regulations are also reported.

3 THEORETICAL FRAMEWORK: INTER-INSTITUTIONAL PREFERENCE CONVERGENCE AND PATH DEPENDENCY

This thesis argues that the inter-institutional preference convergence and path dependency facilitated the regulation of online platforms in the EU. The argument is twofold. First, the inter-institutional preference convergence of the three EU institutions, the European Commission, the Council of the EU and the European Parliament, was necessary to enable agreement on the new legislation. Second, path dependency in regulating online intermediaries in the EU limits the policy options available in legislative bargaining.

The theoretical framework is based on preference analysis in bargaining on the basis of LI. While LI focusses mainly on the EU Member States bargaining, this dissertation expands the framework to all three involved institutional actors. On the other hand, to capture the temporal dimension of the EU's regulation of online platforms, the framework draws on HI with its mechanism of path dependency. This synthesis of a preference-based and a temporal approach explains the EU's regulation of online platforms. The framework is summarised in the table below and then derived individually in the forthcoming sections.

Table 3: Framework Explaining the EU's Regulation of Online Platforms

Theoretical Framework	
Preferences	Liberal preference formulation derived from the interests of the three institutional actors of the EU
Actors	Three institutional actors: • European Commission • European Parliament • Council of the EU
Institutions	These three EU institutions are the central protagonists in the ordinary legislative procedure: • Agenda-setting by the Commission • Intra-institutional bargaining within Parliament and Council • Legislative bargaining between Parliament and Council in trilogues with Commission as 'broker'
Mechanism	• Inter-institutional preference convergence to regulate online platforms in the EU • Path dependency in regulating digital markets in the EU limits policy options in legislative bargaining
Theoretical contribution	Closing the existing theoretical gap: • Synthesis of a preference analysis of EU legislative bargaining with a temporal dimension • Linking liberal intergovernmentalism and historical institutionalism • Expansion of the liberal intergovernmentalist bargaining framework from Member States bargaining to all three institutional actors involved in legislative bargaining in the EU

Source: Author's compilation.

3.1 Inter-institutional Preference Convergence

This thesis argues that the preference convergence of the institutional actors matters. This convergence is necessary for successful agreement of new regulation in the ordinary legislative procedure. Without inter-institutional preference convergence, agreement is unlikely and can lead to the failure of a legislative proposal.

This theoretical framework is based on the assumption that preferences and bargaining, rather than the context of policy or other factors, determine the positions and behaviour of institutional actors in EU legislation-making (cf. Cini and Czulno, 2022). It is built on rational actors with interest-based preference determination. LI derives preferences from domestic interests and is based on liberal theory. Preference configurations are central for liberal theorising and in contrast with the focus on capability and institutional configurations in realist and institutionalist frameworks respectively (Moravcsik, 1997). This theoretical framework expands the preference analysis from Member States to all three EU institutions involved in the legislative process to regulate online platforms in the EU. LI is focussed on the study of bargaining among Member States that is determined by domestic interests that turn into preferences (Verdun, 2020). Hence, Member States are the central actors in LI. However, this neglects the significant importance of the other two institutional actors, the Commission and the Parliament, in the ordinary legislative process. Similarly to da Conceição-Heldt and Meunier (2014), this framework expands the study of preferences in the EU's bargaining for new online platform regulation to all three institutional actors: the Commission, the Parliament, and the Council. This framework accounts for the importance of the Commission as agenda setter and the Parliament as bicameral legislator. Blom-Hansen and Senninger (2021) demonstrate that there is now a consensus among scholars that the Commission has increased agenda-setting power over time due to the introduction of the ordinary legislative procedure. Additionally, Smeets and Beach (2020) argue in line with this dissertation's approach to expand the analysis to the three central EU institutions as the authors demonstrate that institutions-driven decision-making is an underestimated factor to explain new legislation in the EU. On the other hand, the Parliament is the bicameral actor in the EU's legislative procedure (Rasmussen, 2011). It has grown significantly in importance for EU decision-making (Héritier, 2012) and therefore requires integration into a theoretical framework on EU decision-making. In summary, this demonstrates how the three central EU institutions, the Commission, the Parliament and the Council influence EU legislative bargaining.

Starting from the works on LI, this provides a framework with a theoretical micro-foundation to analyse the EU's regulation of online platforms. The theory combines the elements of preference formulation from liberal theories with the explanation of interstate

bargaining from intergovernmentalist theories (Moravcsik, 1993, Moravcsik, 1997). The framework explains how intergovernmental regimes manage economic interdependence by policy-coordination (Moravcsik, 1993). On a mechanism-level, it distinguishes from neo-functionalist theorising by emphasising domestic coalition-building as important factor to determine outcomes, rather than spill-over effects (Moravcsik, 1993).

One key assumption of LI is that preference constellations are at the theory's core, contrasting with realists' configuration of capabilities and institutionalists' constellation of information and institutions (Moravcsik, 1997). According to Moravcsik (2018: 1651), states' preferences should be understood as a range of potential outcomes ordered by preference, rather than one ideal point. Inefficient or unsuccessful negotiations are often grounded in incompatible underlying national preferences (cf. Moravcsik, 2018). This assumption on national preference constellations allows for a bargaining analysis with Member States as central actors.

Another main assumption concerns the origin and determination of preferences that translate interests and shape institutions. Similar to LI, this dissertation assumes that preferences are exogenous and therefore given for actors (cf. da Conceição-Heldt, 2006b, da Conceição-Heldt, 2017). LI explains the role of member states in European politics (Verdun, 2020). These national preferences do not originate from a black box, but they are based on domestic interests that in return weigh costs and benefits of future legislative outcomes and therefore rely on domestic preference constellations that aggregate into a Member State policy-position (cf. Tümmler, 2022). The aggregation of policy-positions is central to understand how bargaining positions form and how they develop during negotiations.

Bargaining processes can be integrative (win-win) or distributive (zero-sum) and the constellations in the arena determine political outcomes (da Conceição-Heldt, 2006a, da Conceição-Heldt and Meunier, 2014). This bargaining arena for online platform governance is also influenced by the number of actors. More actors can lead to coordination-difficulties and higher transaction costs in bargaining that could result in less efficient policy-outcomes. On the other hand, more actors can also increase competition for policy-outcomes and could lead to better quality policies that are more inclusive from a societal standpoint.

When turning to the importance of singular actors, two kinds of interfering actors are central to bargaining arenas. These are actors with agenda setting and/or veto power. Agenda setters determine the scope of options available for the other negotiating parties, while veto-players in political bargaining affect the specific win-sets (Tsebelis and Garrett, 1996). This has been extensively discussed in the literature (Tsebelis, 1995, Tsebelis and Garrett, 1996, Tsebelis and Garrett, 2000). Building on this, da Conceição-Heldt and Mello (2017) introduced specific domestic veto-players and institutional constraints that also have to be considered. The authors stress that "[…] agents in these bargaining configurations can hold a certain

degree of autonomy in decision-making, which cannot be purely derived from their constituencies […]" da Conceição-Heldt and Mello (2017: 1). This factor is particularly relevant when analysing preference constellations on online platform governance of policymakers during the negotiations in the empirics of this dissertation. There are several indices determining veto-player power, the most common are the Garrett & Tsebelis index, the Coleman Attempt Power index and the Banzhaf index.

To better understand the origin of preferences that lead to bargaining positions, interest configurations play a role. There are two angles to consider for this theoretical framework. First, Nicolaïdis (1999: 111) argues that interest convergence can lead to larger win-sets, making agreements more likely. The author demonstrates that two types of errors incentivise negotiators towards agreement. First, type I errors are the danger of missing to strike a deal at all, and second type II errors are striking a deal that is not accepted internally within the negotiators' institutions (Nicolaïdis, 1999, p. 112). Both accounts demonstrate how preference divergence can result in failure of legislative bargaining. On the one hand, divergence can result in failure to agree a common position or legislative text. On the other hand, there can be failure based on preference constellations that are not sanctioned by the institutions of the negotiators, such as the Member States in the Council or the plenary of the Parliament. Hence, Nicolaïdis (1999) demonstrates the main principles relevant for reaching agreement in bargaining situations which are transferrable to the study of EU decision-making. Second, turning to the study of preferences, da Conceição-Heldt (2017: 219) explains how preference homogeneity of principals can lead to lower discretion for agents, as it restricts the room for adaptations during the bargaining. While this dissertation's framework is not a delegation analysis, the logic of preference homogeneity and convergence can be transferred to explain the three EU institutions' agreement on the regulation of online platforms. In this regard, da Conceição-Heldt and Meunier (2014) demonstrate that the convergence of preferences can lead to the EU speaking with a single voice externally. While current research has focussed on the role of preference configurations of the EU institutions in multilateral negotiations, for example in trade negotiations, the theoretical framework of this dissertation adapts these findings to shift the perspective from EU-external and multilateral settings to EU-internal negotiations during the legislative process of the EU. In some cases, the EU speaking with a single voice can result in decreased multilateral bargaining leverage, as pointed out by Heldt (2021), but remains a powerful advantage for the bargaining among the EU-institutions in the regulation of online platforms in the EU.

This inter-institutional preference convergence of the EU institutions to regulate online platforms does not occur in a vacuum. Domestic interests can influence the preferences of the EU institutions. During the ordinary legislative process, non-institutional actors have several opportunities to influence new regulation. However, the EU institutions are not only passive

recipients of inputs by lobbyists, but also actively manage this relationship, e.g. with the Commission in charge of the public consultation process that precedes the proposal for new regulations (Binderkrantz et al., 2021). Tümmler (2022) demonstrates the strong and blocking influence that domestic interests can have on new EU legislation which is determined by weighing costs and benefits of future outcomes.

Banking, energy, defence and digital markets are policy fields in which domestic interests are particularly strong within the EU's Single Market (Raudla and Spendzharova, 2022). To influence the regulation of online platforms, industry associations and platforms invested significant resources in the EU to avoid stricter regulation (Kergueno, 2018, Agence Europe, 2020a, Satariano and Stevis-Gridneff, 2020, Corporate Europe Observatory, 2021, Agence Europe, 2022q). Baroni et al. (2014) argue that the impact of these interests on legislators depends on four elements: membership structure, level of mobilisation, number of staff and financial resources. The influence also differs in the various EU institutions. The Commission starts a new legislation with a public consultation during which citizens and firms can submit opinions and suggestions. According to (Binderkrantz et al., 2021), the consultations are widely used in three out of four cases to prepare regulations, and the Commission actively manages the process. Blom-Hansen and Senninger (2021) argue that the Council has maintained strategic coalitions with industry actors where this is in the interest of the Member States. On the other hand, Rasmussen (2015) demonstrates that access of interest groups to the Parliament depends on business unity, low salience of the issue and that it is covered by mainstream committees in the Parliament. For within Parliament and Council, Rasmussen and Reh (2013) provide evidence that the agreements through trilogues are not biased towards party group affiliation of the negotiating rapporteur, nor the Council presidency. This finding supports analysis of legislative bargaining on the level of the EU institutions without the need to open the instutions' black boxes furter.

While Gorwa et al. (2024) provide detailed accounts on how online platforms lobbied the EU legislators in the case of the DSA, the success of these lobby strategies depends on the political economy they are executed in. The largest online platforms are of US-origin. This is one factor that undermines the level of influence these platforms can have on EU legislation from the perspective of domestic interests. Domestic impact of an online platform, from a cost and benefits perspective, can result in power. This can be operationalised from two angles. First, the effect on the domestic political economy. Online platforms can threaten to shift business elsewhere, reduce services, or cut down EU employment, resulting in potentially lower tax-returns for governments and domestic opposition. Large online platforms provide infrastructure-like digital services (Atal, 2021), but threats to reduce service availability with increasing regulatory scrutiny become less credible, given the costs associated due to the size and importance of the EU's Single Market with its revenue streams for online platforms that

are hard to forfeit. Second, the homogeneity and convergence of the preferences of online platforms towards new legislation. Homogeneous business interests among online platforms can result in a high-impact of interest groups on legislation, while heterogenous interests can undermine the power and effectiveness to influence policy (cf. Kim, 2017, cf. Cini and Czulno, 2022). To illustrate concurring platform business interests, there are two examples. First, the placement of search results in search engines which can influence how products or services are accessed and used. Listed platforms compete, for example on Google search, against the shopping, hotel or flight booking services of the platform operator Google that controls the algorithm to display search results. A black box that has resulted in the growth of a complete business sector that works on search engine optimisation, or short SEO (cf. Snyder, 2024). Second, the dominant position of app stores influences the ranking of apps and the compensation models for app developers. The latter has fuelled conflict between Spotify and Apple for years (Gürtler, 2023). These examples demonstrate how platform business interests can differ and the resulting lack of homogeneous interests can undermine the effect of lobbying on the preference formulation of the EU institutions.

Another avenue of how domestic interests can influence EU institutions' preference convergence to regulate online platforms is public opinion and the salience of issues. This framework integrates both aspects. First, indirectly via the Member States in the Council with representatives from nationally elected governments and second, directly through the Parliament with elected MEPs. Hence, the public opinion and the salience of issues can shape preferences of the EU institutions. In general, Hix (2018) characterises current EU decision-making as highly politicised bargaining with heterogeneous preferences across governments and voters. The author argues that the broader public preferences matter to some extent and that also diffuse interests can challenge concentrated ones, for example through ECJ cases.

In contrast, capture by concentrated interests can only occur if these are low salience issues (Hix, 2018). The author concludes that EU decision-making reflects governments preferences and in turn public preferences (Hix, 2018, p. 1611). In respect to the level of salience of issues, Leuffen et al. (2014) define "Salience as the intensity of interests […]". Kalyanpur and Newman (2019) argue that salience of issues is negatively related to the influence of foreign firms on EU policy, as concerns about the legitimacy of the EU institutions over foreign corporate influence can be raised. Meunier and Czesana (2019) explain variation of salience with the necessary advancements of the political economy and technology setting and the sufficient condition of the specific contents in the bargaining positions that can spark salience. Transferring this to the regulation of online platforms in the EU, the issue is both a technological advancement, while aspects such as data protection on digital platforms and consumer protection can lead to high salience of the legislation, reducing online platforms' influence on legislations further.

Related to this is the question if legislators have the capacity to govern a market. Scharpf (1997) provides an account on constraining factors, particularly on European level, when national governments’ interests do not align, and forms of arbitrage occur. Another perspective focusses on the capacity to govern by institutions and asks if legislators are prone to regulatory capture (Dal Bó, 2006, p. 203). Cohen (2016: 369) argues that the advances of the information age and the resulting changes to our political economy have also led to a shift in governance models towards more informal and network-structure based ones. According to the author, this reduces transparency and comes with higher risks of regulatory capture.

In the EU, legislative bargaining happens between the three institutional actors, the Commission, the Parliament, and the Council. The process includes three phases. First, the agenda-setting with the proposal of the Commission that often includes information sourced from a public consultation held (Binderkrantz et al., 2021). All types of stakeholders, from citizens to corporations can contribute to the proposal stage, but the Commission decides which suggestions to use. Second, after the agenda has been set by a Commission proposal for regulation, the Parliament and Council prepare their positions. Therefore, the Parliament and the Council engage in intra-institutional bargaining. In this stage, the institutions agree on a bargaining position within their institutions that is then carried into the last phase. Third, the three EU institutions enter a bargaining phase, the so-called trilogues (Brandsma et al., 2021). This is the inter-institutional bargaining between the Parliament and Council that can result in a political agreement on new regulation. The Commission takes part as so called ‘honest broker’ between the bicameral actors (Panning, 2021). In addition, Greenwood and Roederer-Rynning (2021) find evidence that there are ties between organised interests and EU institutions during trilogue negotiations, which provides another channel for domestic interests to influence the inter-institutional preference convergence of the three EU institutions during the ordinary legislative procedure. However, if agreement is reached among the bicameral legislators, the regulation will be finalised and becomes law. This legislative procedure has been modified over the past decades through treaty-reform towards the co-decision procedure which, since the Lisbon treaty in 2009, is named the ordinary legislative procedure and has seen gradually increased power of the Parliament over time (Tsebelis and Garrett, 2000, Hix and Høyland, 2011, p. 68f, Héritier and Moury, 2012, p. 645ff, Council of the European Union, 2022c).

This three-step procedure demonstrates why it is crucial to understand the convergence of preferences of all three EU institutions, not only the preferences of Member States in intergovernmental bargaining as proposed by LI, to explain the EU's regulation of online platforms. This inter-institutional preference convergence happens throughout the three phases of the legislative procedure. First, the Commission acts as agenda setter by drafting the proposal that channels the debate and influences further legislative bargaining (Blom-

Hansen and Senninger, 2021, Kudrna and Wasserfallen, 2021). Pollack (1997) differentiates two subtypes of agenda setting powers of the Commission, the formal (procedural) or informal (substantive) agenda setting power. According to the author, procedural powers stem from the role of the EC in the legislative bargaining process, while informal powers are grounded in the Commission’s expertise and institutional persistence. These informal powers are grounded in the Commission’s ability to reduce information asymmetries between the legislators and set ‘focal points’ (Pollack, 2003, p. 50ff). The powers of the Commission as informal agenda-setter are high, if there is imperfect information, high uncertainty, and the Commission is in a position to provide specific technical expertise to the legislators (Pollack, 2003, p. 51). However, not all legislative proposals of the Commission are successful. Proposals require the support of member states’ governments via the Council and the Parliament (Boranbay-Akan et al., 2017). The authors argue that the Commission’s knowledge about Council and Parliament preference constellations, within and among the institutions, is key to successful legislative proposals. This anticipation facilitates the inter-institutional preference convergence of the EU institutions. Nevertheless, the Commission does not have perfect information about the pivotal actors and this in turn leaves room for failure according to Boranbay-Akan et al. (2017). These findings suggest that the level of information about preferences of the Commission is key to determine successful legislative bargaining among the EU institutions and that the Commission proposal already incorporates positions or compromises that are based on the preference constellations of the Parliament and the Council. Overall, Osnabrügge (2015: 256) finds evidence that failure of legislative proposals are relatively rare and the Commission formally introduces about two-thirds of the proposals within an envisioned timeframe of 12-18 months.

The Parliament operates mainly on a simple majority, but higher levels of unification in the Parliament can increase its bargaining strength (Dyrhauge, 2014). To resolve this intra-institutional conflict, the Parliament rapporteur plays a central role in resolving differences among MEPs and committees, according to the author. The effect to facilitate agreement is higher, if the rapporteur is part of one of the larger fractions in the Parliament, (cf. Dyrhauge, 2014). In contrast, the Council has two principal voting rules which are QMV and unanimity. How it makes decisions is subject to considerable debate (Warntjen, 2010). Member states’ preferences are difficult to obtain from official documentation due to limited publications. Broniecki (2020) provides evidence that transparency of EU institutions in general is inversely correlated with their legislative power. Moreover, the previously introduced research by Cohen (2016) shows that reduced transparency also bears higher risks for regulatory capture. Both findings underline incentives for legislators to bear higher weight to specific interests to increase their power. However, both Council and Parliament anticipate compatible policy positions which is an additional factor for inter-institutional preference convergence as it

enables the last step of the legislative procedure, the trilogues. Scheduling trilogue negotiations requires the bicameral legislators to recognise the potential for an agreement.

The EU's decision-making procedure was reformed over time due to gridlocks in legislation-making. The reform process determines its current procedure and institutional features. The question remains, if there is fewer gridlock through co-decision among the EU institutions. Crombez and Hix (2015) argue that smaller gridlock intervals correlate with increased legislative activity. They find evidence in the EU legislative activities from 1979 to 2009 that co-decision can lead to smaller gridlock intervals, if pivotal member states are more aligned with the Parliament and the Commission. The Council's QMV and unanimity voting rules can result in a minority bloc veto by some member states (Dyrhauge, 2014). Crombez and Hix (2015) argue that qualified majority voting (QMV) leads to more legislative activity, than under unanimity voting rules. Junge et al. (2015) investigate the effect of gridlock on legislative output. The authors argue that levels of bureaucracy increase when there is a higher risk of gridlock. While this supports productivity of EU decision-making in general, it correlates with lower levels of democratic legitimacy and difficulties in interest representation by principal-agents, according to the authors.

Scholars of EU decision-making also investigate the speed and efficiency of decision-making (cf. van Gruisen, 2019). Häge (2011), for example, provides empirical evidence that the duration of Council decision-making increased significantly over time. In contrast, Héritier (2012) argues that the co-decision procedure turned legislative bargaining among the EU institutions into fast-track legislation. The author argues that reduced transaction costs and a power-based distributive bargaining with competency-maximising actors leads to an increase in the power of the Parliament, while it restrains the power of the Commission. Furthermore, Kirpsza (2022) provides a detailed causal mechanism explaining the duration to pass legislation in the EU. According to the author, the key factors are the impatience of legislators, issue linkage and the characteristics of the negotiators of the Council and the Parliament. The author provides evidence that urgency, single proposals and the advent of elections relate with faster decision-making, while package proposals or ideological distance between the actors prolongs decision-making among the EU institutions.

LI is powerful to explain the preference constellations of actors in bargaining and how these turn into policy positions and outcomes. It provides a micro-foundation based on the preferences of domestic actors. However, there are weaknesses of LI that require attention. LI focusses on Member States only in the bargaining process. This leads to the neglection of the roles of the other two relevant EU institutions, the Commission and the Parliament. Therefore, this dissertation adds to the LI literature the expansion from one institutional actor bargaining to all three EU institutional actors, the Commission, the Parliament and the Council, as the research presented demonstrates. Researcher have long established the agenda-

setting powers of the Commission (Oztas and Kreppel, 2022) and therefore this dissertation's theoretical framework accounts for it. Similarly, the Parliament is a bicameral legislator vis-à-vis the Council and thereby plays a key role in the ordinary legislative procedure (Rasmussen, 2011) that has become the norm in EU legislation-making (Kirpsza, 2022). Hence, it is necessary to reflect these characteristics of the ordinary legislative procedure and the bargaining for new policies and legislation in this theoretical framework by expanding the LI approach to all three institutional actors of the EU. The applicability of this has previously been demonstrated by da Conceição-Heldt and Meunier (2014). With the first part of the theoretical argument on inter-institutional preference convergence presented, the first hypothesis can be derived.

3.1.1 Hypothesis I

H_1: *If the preferences of the institutional actors converge in the legislative bargaining process, regulation of online platforms is more likely to be successful in the EU.*

3.2 Path Dependency in Regulating Digital Markets

This dissertation argues that path dependency matters in the EU’s regulation of online platforms because it limits the policy options available in legislative bargaining. The actors’ preference constellations are an important factor but the actors do not operate in a vacuum, but in an institutionalised environment and polity that has developed over time. Hence, key developments in the past of the EU Single Market shape today’s platform regulations. HI provides answers to these temporal effects that cannot be explained by inter-institutional preference convergence only. Historical institutionalists expect that consequential effects lead to rather incremental, than transformative change (Fioretos, 2011). However, this dissertation contributes to the theoretical discussion, demonstrating that transformative change, such as being a global first mover in online platform regulations, can take place without immediate critical juncture but based on the coalescence of inter-institutional preference convergence and path dependency.

Key to this improved understanding is the closer examination of the sources of preferences in conjunction with temporality. HI builds on the landmark works of Institutionalism from North (1990) as well as Powell and DiMaggio (1991) that shaped the discipline and influenced many following institutionalist scholars. Institutionalism in general offers a framework on how power is organised and translated into actions by formal and informal regimes (Steinmo, 2001, Steinmo, 2008, Mahoney and Thelen, 2009a, Fioretos, 2011, Fioretos et al., 2016, Fioretos, 2017). This dissertation draws on this wealth of institutionalist research. There are three traditional streams of new institutionalism (Hall and Taylor, 1996, Thelen, 1999): rational choice institutionalism (RCI), sociological institutionalism (SI) and historical institutionalism (HI).

While rational choice institutionalists base their analyses on exogenous preferences, historical institutionalists take preferences as endogenous due to institutional investments (Fioretos, 2011). This dissertation builds on HI’s key mechanism of path dependency but allows for exogenous sources of preferences and thereby integrates this perspective from RCI. This makes it compatible with the assumptions of the preference origin in LI. The origin of preferences is a key differentiation between the different subtypes of new institutionalism, mainly RCI and HI. While the source of preferences is exogenous in RCI, it is endogenous in HI (Fioretos, 2011, p. 374). This fundamental difference leads to differences in how preferences shape institutional change. RCI assumes that rational actors have preference orders and compare rather end-to-end versus point-to-point results of decisions (p. 373). This leads to a different nature of losses for rational decision-makers under both subtypes of new institutionalism (p. 375). Historical institutionalists are particularly interested in how institutional legacies shape the power distribution and the role that the adaptation of institutions plays (p.

369f). Thereby, the author provides explanations for the source of preferences and the relation between interests and institutions that shape the preference constellations.

HI provides explanations on when and how temporal processes matter (Fioretos, 2011, p. 369). It can explain the conditions for institutional change and persistence through its central mechanism of path dependency (Thelen, 1999, Pierson, 2000a, Pierson, 2000b, Pierson, 2011). HI is historical because of its focus on procedural developments over time and institutionalist due to the embeddedness of these developments in institutions (Pierson, 1996, p. 126). Historical institutionalist analysis accounts for some degree of randomness or unintentional effects that are inherent to new developments, though based on a historical trajectory (Pierson, 1996, Moravcsik, 2018). The key mechanism of HI is how path dependency influences institutional change (Fioretos, 2011). Therefore, HI offers explanations to the continuous development of the EU's Single Market. These frameworks focus on the institutional evolution and development of procedures over time to explain policy change (Thelen, 1999, Pierson, 2000a, Pierson, 2000b, Streeck and Thelen, 2005, Mahoney and Thelen, 2009b, Pierson, 2011).

HI provides specific dimensions to analyse this change (Thelen, 2004, Mahoney and Thelen, 2009a, Hanrieder, 2014). There are four dimensions (Thelen, 2004, p. 14ff, Mahoney and Thelen, 2009a, Fioretos, 2011, Hanrieder, 2014): First, the sign of institutional feedback determines if institutions either persist (positive feedback) or face change (negative feedback). Second, the origin of the force of change can be endogenous or exogenous. Third, institutions might face certain lock-in effects that prevent them from evolving and posing an erosion threat. Finally, institutions can face critical junctures, decision nodes for institutional change. According to Capoccia (2015: 148) critical junctures are nodes of uncertainty that result in political agency to implement change. These junctures are singular events with high impact on policymakers and constituencies, such as political or economic shocks. Critical junctures are exogenous factors for institutional change.

In contrast, path dependency as central mechanism can lead to lock-in effects and is associated with endogenous change. This reflects the debate in HI that circles around the question about exogenous or endogenous change. Cartwright (2021) provides a framework that demonstrates how exogenous shocks can lead to endogenous mitigation in institutions and suggests an approach to bridge the bifurcation of exogenous and endogenous change in the discipline. Newman (2017: 84) argues that exogenous sources of change provide a dynamic element to overcome the static notion of path dependency. These nodes of stability or change have also been extensively studied under the theoretical framework summarised as punctuated equilibria (Baumgartner et al., 2018, p. 55ff). However, path dependency in this dissertation is defined as "[…] a specific kind of process that is set in motion by an initial choice, decision, or event, which then becomes self-reinforcing" (Rixen and Viola, 2016, p. 12,

cf. Heldt, 2019, p. 11). This self-reinforcing trajectory then limits the policy options available in legislative bargaining due to institutional constraints. Although path dependency is related to the concept of sequencing, it differs as sequencing depends on a specific order of decisions and events and not necessarily relies on increasing returns, such as in the case of path dependency (Rixen and Viola, 2016, p. 13). Pierson (2000a) describes these increasing returns as 'self-reinforcing' or 'positive feedback' effects. According to Fioretos (2011) increasing returns and self-reinforcing institutional patterns can be a factor in institutional persistence. In this dissertation's framework it can also lead to the evolution of institutions due to a coalescence with the preference-based approach.

In respect to the regulation of digital markets and path dependency, the process starts with the further integration of the EU's Single Market. The EU has one of the largest single markets globally (European Commission, 2020f). More than thirty years after its inception, the Single Market project continues to be about harmonisation, to agree on common standards and to foster interoperability (Raudla and Spendzharova, 2022). Pelkmans (2023) argues that the Single Market is still the "strategic imperative" of the European Union. With the rise of the internet and digital markets, the logical next step for the EU was to expand the Single Market towards a Digital Single Market, which is one of the priority areas of the EU (Raudla and Spendzharova, 2022).

Digital Governance in the EU's Single Market is closely related to telecommunications and copyright regulations (Newman, 2020, p. 280ff). Another central aspect impacting digital governance is data protection and privacy regulation. In 2002, the EU issued the ePrivacy Directive 2002 to introduce rules on privacy in the digital world, which was amended in 2009 (European Commission, 2009b). With the development and introduction of the GDPR, the digital privacy debate gained new speed and a Commission proposal for the ePrivacy Regulation was published in 2017 (European Commission, 2017b). Negotiations have been lengthy and continue, as no agreement between the Parliament and the Council has since been reached (Breyer, 2024).

In the case of the regulation of online platforms, EU lawmakers were inspired by the regulation of the early digital industry in the US, particularly Section 230 of the Communications Decency Act from 1996 that exempts online intermediaries from liabilities from user generated content (United States Code, Wilman, 2021, Funk, 2023). The key starting point for regulatory activity in the digital sector of the EU was the eCommerce Directive of the year 2000, as predecessor of the DSA, as well as the Audiovisual Media Services Directive from 2010 and amended in 2018 (Audiovisual Media Services Directive, 2010, cf. Gruensteidl, 2022).

In 2010, the Barroso Commission II launched the Digital Agenda for Europe that introduced the Digital Single Market of the EU (European Commission, 2010). The main

priority was to utilise the potential of ICT in the EU in an economically sustainable and socially beneficial way. A key goal was to increase infrastructure investment for fast broadband.

In 2015, the Juncker Commission issued the Digital Single Market Strategy for Europe (European Commission, 2015). The main priority of the strategy was to increase the level of connectedness of the Digital Single Market, focusing on common European data protection rules, continued telecommunications sector reform, copyright rules that better suit a digital world and advancing consumer rules against the challenges brought by digital markets.

In 2020, Commission President von der Leyen launched the Digital Decade in her State of the Union address (von der Leyen, 2020). It is based on the Commission's digital strategy Shaping Europe's Digital Future (European Commission, 2020j) published earlier that year and translates the digital policy goals of the Commission president's agenda (von der Leyen, 2019). The Digital Decade features a comprehensive digital policy agenda complemented by a governance mechanism called the 2030 Digital Compass (European Commission, 2021a) which was finalised by the Parliament and Council decision on the Digital Decade Policy Programme 2030 (Digital Decade Policy Programme 2030, 2022). This policy programme includes the DSA and DMA.

The development of the governance of digital markets in the EU has resulted in a trajectory for the regulation of online platforms and the institutionalisation limits policy options available in legislative bargaining. With the second part of the theoretical argument on path dependency presented, the second hypothesis can be derived.

3.2.1 Hypothesis II

H2: *If there is path dependency regulating digital markets limiting the policy options available in the legislative bargaining process, regulation of online platforms is more likely to be successful in the EU.*

3.3 Coalescence of Inter-institutional Preference Convergence and Path Dependency

This dissertation argues that inter-institutional preference convergence and path dependency facilitated the regulation of online platforms in the EU. Both factors coalesce to explain how the EU became a global first mover in regulating online platforms. Inter-institutional preference convergence is necessary for agreement in legislative bargaining. Without convergence, failure of legislative proposals is likely. In the agenda setting phase, preference convergence starts the legislative procedure. During the intra-institutional phase, the bicameral legislators determine their internal bargaining positions based on strategic rationales that anticipate the co-legislator's preferences. Finally, during the inter-institutional bargaining, further preference convergence irons-out remaining conflict that enables an agreement on new legislation. Additionally, path dependency in further regulation of digital markets in the EU determines the policy options available to legislators. This limitation can support preference convergence during the three steps of the legislative bargaining. First, in the agenda-setting phase it provides building blocks for new proposals. Second, in the intra-institutional phase previous experience in digital policies can simplify finding a common position within the institutions as internal preferences are partly known, which reduces transaction costs. Third, in the trilogues path dependency supports the detailing of the specifics of the legislative text based on the trajectory of previous legislations and experiences of the institutions.

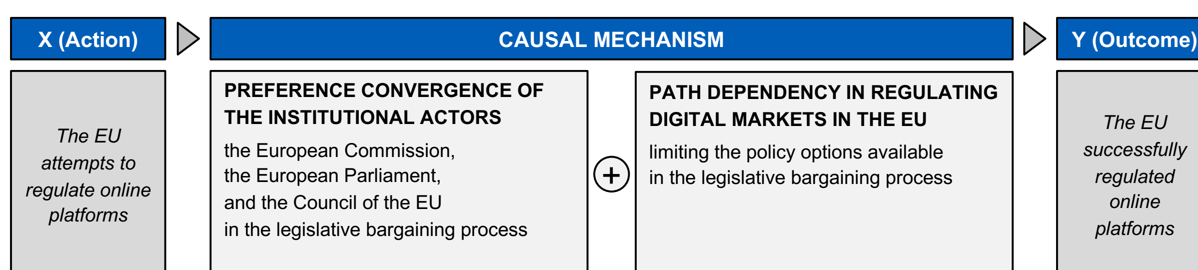
This coalescence of a preference-based analysis and temporal dimension is the first theoretical contribution of this dissertation. It combines two levels of theory to explain the outcome. LI provides a micro, while HI provides a meso-level explanation to the EU's regulation of online platforms. Moreover, it integrates LI' s ad-hoc preference orientation that lacks a deeper understanding of preferences over time (cf. Moravcsik, 2018, p. 1667) with the ability of HI to explain institutional developments and in return the effect on preferences over time. The second contribution is the expansion of the level of analysis from Member States' preferences to the preferences of all three EU institutions. This expansion allows to investigate the interplay of preferences and bargaining in the three key steps of the ordinary legislative procedure of the EU more accurately. Third, by expanding the micro-foundation of HI with an exogenous source of preferences allows to revisit the assumptions made to explain the role of temporality that leads to incremental or transformative change. This combination resolves shortcomings in the micro foundation of HI (cf. Fioretos, 2011, p. 373ff). However, while prominent scholars of LI, like Moravcsik (2018), argue that HI relies on LI for its micro-foundation, this theoretical framework explains that LI in return can benefit from HI with its central mechanism of path dependency. This provides a more balanced framework that integrates both theoretical streams. The integration of both approaches is also necessary as

researcher have identified that the role of institutions in EU decision-making is underestimated by scholars (Meunier and Vachudova, 2018). The coalescence with historical institutionalist approaches contributes this missing aspect to preference-based analyses and integrates it within this dissertation's framework.

Hence, this framework argues that the expansion of the strengths of LI with its preference-based explanations together with the temporal dimension of the mechanism of path dependency from HI, explain the EU's regulation of online platforms. Both theoretical streams applied individually to this puzzle, result in ambiguous explanations, which demonstrates the limitation of both approaches to explain the EU's regulation of online platforms. New policies cannot be understood by studying only preferences or only institutions. Both aspects are critical explanatory factors to shape policy outcomes and thereby new legislation. Hence, this integrated theoretical approach is reflected in the link of hypothesis H_1 and hypothesis H_2.

This theoretical framework of the dissertation can also be applied to explain a wider set of EU digital policies. In summary, inter-institutional preference convergence of the three EU institutions involved in the legislative bargaining process (Commission, Parliament, and Council) and the path dependency regulating digital markets that limits the policy options available, explain the EU's regulation of online platforms. This combination and the amendment of existing theoretical approaches provides a new framework that explains the EU's regulation of online platforms. The causal mechanism of the theoretical framework illustrates the relation between the attempt of the European Union to regulate online platforms (action) and the successful enactment of legislation to regulate online platforms in the Single Market (outcome).

Figure 2: The Causal Mechanism



Source: Author's compilation.

3.4 Operationalisation of the Explanatory Variables

The two explanatory variables are operationalised as follows. First, the variable inter-institutional preference convergence is derived from the interests of the EU institutions. In this dissertation, the convergence of preferences is defined as the compatibility and merging of the three EU-institutions' preferences that result in final legislation on new online platform regulation. The debate about preferences requires further differentiation of the terms used to describe preference configurations. According to da Conceição-Heldt and Meunier (2014: 966) preference 'homogeneity' is a more static description of the level of similarity of preference configurations, while preference 'cohesiveness' describes the relation between individual preferences in a preference configuration and is the result of preference convergence. The convergence among the EU's institutional actors on new online platform regulation in the EU can be operationalised by shared interests that stem from the aggregation of individual preference combinations among the actors (cf. Hansson and Grüne-Yanoff, 2022). This can be further narrowed down by policy preferences, such as the introduction of new measures or the expansion of the scope of regulators that aim to increase further integration of the Digital Single Market.

Second, the variable path dependency in regulating digital markets in the EU draws on the concepts of path dependency for institutional change (Fioretos, 2011). Existing initiatives is operationalised as previous efforts to further integrate the Single Market and the Digital Single Market. These can be initiatives of Commission presidencies or strategies and frameworks, such as the Digital Single Market Strategy or the Digital Decade. Similarly, new online platform regulation in the EU was not developed on a green field in terms of rules but builds on previous legislations. The scope of these basis legislations can be rather broad, such as the GDPR with privacy related issues that have relevance to online platform regulation, or specific rules that act as predecessors, as with the eCommerce Directive in the case of the DSA. Hence, path dependency is evident if elements of previous initiatives and legislations are carried-on in future legislation and if policy options are limited by past policy choices.

4 THE DIGITAL SERVICES ACT (DSA)

> *"For too long tech giants have benefited from an absence of rules. The digital world has developed into a Wild West, with the biggest and strongest setting the rules. But there is a new sheriff in town – the DSA. Now rules and rights will be strengthened. We are opening up the black box of algorithms so that we can have a proper look at the moneymaking machines behind these social platforms."*
>
> European Parliament Rapporteur for the DSA, Christel Schaldemose
>
> (European Parliament, 2022e)

The full name of the legislation is 'REGULATION (EU) 2022/2065 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act)'.

The DSA implements the principle "what is illegal offline should be illegal online" (Council of the European Union, 2021c) that was introduced by Executive Vice-President of the European Commission, Margrethe Vestager (European Commission, 2020d). The goal of the DSA is "[…] to prevent illegal and harmful activities online and the spread of disinformation" (European Commission, 2024d). It places the users' safety and fundamental rights of citizens at the centre and allows for innovativeness in the Single Market as well as scalability for smaller platforms (European Commission, 2024d). Since the start of internet governance, the question about innovativeness of digital markets is interwoven with granting limited liability to intermediaries and was therefore of particular importance in the development of new rules. The DSA details the liability of online intermediaries and service models that have not existed when the concept was first introduced in the EU through the eCommerce Directive of the year 2000, which was inspired by Section 230 of the Communications Decency Act of 1996 from the US (United States Code). The DSA of the EU differentiates the obligations from the new rules according to four categories of intermediaries, starting with intermediary services, to hosting services, to online platforms, and the highest obligations for very large online platforms and search engines (European Commission, 2022g, European Commission, 2024d). Generally, limited liability provisions were kept, but the risk management and reporting obligations have increased as demonstrated in the subsequent empirical sections of this dissertation. The impact on online platforms are ample: introduction of new measures to counter illegal goods, services and content; increased transparency in content moderation decisions which are centrally recorded in a transparency database of the EU; new limitations of targeted advertisement and increased measures for the protection of the most vulnerable citizens, such as children; mitigation of risks to the integrity of elections; and increased traceability of business users in marketplaces (European Commission, 2023j). In case of non-

compliance with the new rules, the Commission can levy significant fines and penalties, perform inspections and audits, and execute interim measures on online platforms in most extreme cases of risks towards citizens and the EU.

The bargaining process of the inter-institutional preference convergence of the DSA can be divided into three bargaining phases: the agenda-setting, the intra-institutional, and the inter-institutional phase (trilogues) with the provisional agreement. In addition, there is a concluding phase for the finalisation of the legal text with lawyer-linguist checks and confirmatory voting through the bicameral legislators. During the agenda-setting, the Commission is responsible for drafting the proposal for new legislation. This included a public consultation that involved multiple stakeholders, such as industry representatives, academia, civil society and the broader public. The procedure was combined for both regulations as public consultation on the Digital Services Act package and ran from the 2nd of June to 8th of September 2020 (European Commission, 2020c). The Commission issued a final summary report that details the variety of stakeholders involved and the insights provided (European Commission, 2020l), alongside the input materials on the public consultation. In a next step, it is up to the discretion of the Commission to select the insights to incorporate into the proposal for new regulations and to conduct the impact assessment. The impact assessment is required for new legislation and evaluates the potential effects of the regulations. The impact assessment for the DSA was issued on the 15th of December 2020 (European Commission, 2020b). Before the European Commission approves a legislative proposal in the final step, it requires the opinion of the Regulatory Scrutiny Board (RSB). The RSB is an advisory and quality assurance board to the College of Commissioners (European Commission, 2024i). With a positive opinion from the RSB, the proposal was finalised and the agenda-setting phase for the DSA was completed on the 6th of November 2020 (Regulatory Scrutiny Board of the College of Commissioners, 2020c). The proposal for the DSA was published on the 15th of December 2020.

Hereafter follows the intra-institutional bargaining phase. During this period the other two EU institutions, the Parliament and the Council, set their institutions' bargaining position for the trilogues. The Council agreed its position on the 25th of November 2021 and the Parliament on the 20th of January 2022. Within this intra-institutional process, the opinions of the European Data Protection Supervisor (EDPS) and the European Economic and Social Committee (EESC) have been heard and informed the bargaining of the the institutions. In the Parliament and the Council, their specialised committees led the internal bargaining process. These are respectively, the Committee on Internal Market and Consumer Protection of the Parliament (IMCO) and the Competitive Council of the Council of the EU. Other committees of the institutions have also contributed. Both negotiated positions were approved within the institutions, by vote in the Parliament and the Permanent Representatives Committee

(COREPER) of the Council. During this phase, the Commission plays a rather passive and coordinating role in line with its responsibility as executive agency.

The agreement on an official position of the institutions on the regulation marks the start of the inter-institutional phase called trilogue. The trilogues started on the 31st of January 2022 and were concluded after five iterations on the 23rd of April 2022 with the provisional agreement on the DSA between the bicameral legislators. Following the provisional agreement, the legal text is finalised in the concluding phase through lawyer-linguist checks and the institutions' approval through formal vote (European Parliament, 2012). Usually, this process is rather a formality, but in the case of the DSA a conflict arose shortly before the final vote in the Parliament in June 2022. The conflict between the Parliament and the Council circled around two aspects according to Bertuzzi (2022c), Steiner (2022a), Steiner (2022b). The first disputed section would allow providers to remove illegal content that is uploaded again, through automated means. The second disputed section introduced exclusions for the gambling industry originally not foreseen. According to Steiner (2022b) derived on accounts of Members of the Parliament, this specific exclusion for one type of online business came from the Maltese government and was channelled through the Council. After a swift re-opening of the negotiations on both disputed points, the Parliament was able to enforce the originally agreed wording and the potential changes by the Council were dropped (Steiner, 2022b).

Finally, the Parliament voted on the DSA on the 5th of July and the Council voted on the 4th of November 2022. The regulation was officially published on the 27th of October 2022, and it came into force on the 16th of November 2022. However, some rules applied 15 months after the publication, which allowed time for providers, the Commission and the NCAs in the Member States to prepare the implementation of the regulation. A summary table on the key events of the bargaining process of the DSA is presented overleaf and underlines the procedural steps of preference convergence towards successful agreement of the this regulation.

Table 4: Bargaining Process of the EU's Digital Services Act

Phase	Outcome	Step	Date	Actor(s)
Agenda-setting phase		Public consultation	2 June 2020 to 8 September 2020	EC Public
		Indicative Impact Assessment report	4 June 2020	EC
		Commission submits materials to Regulatory Scrutiny Board	8 October 2020	EC
		Regulatory Scrutiny Board (RSB) opinion Result: Positive with reservations	6 November 2020	RSB
		Impact Assessment report	15 December 2020	EC
	Initiation	**First proposal**	**15 December 2020**	**EC**
Intra-institutional phase		Opinion of the European Data Protection Supervisor (EDPS)	10 February 2021	EDPS
		Opinion of the European Economic and Social Committee (EESC)	27 April 2021	EESC
		Presidency progress report	12 May 2021	Council
		Competitive Council guidance for negotiation	27 May 2021	Council
		EP Rapporteur issued draft report	28 May 2021	EP Christel Schaldemose
		European Council conclusions	21/22 October 2021	Council
		COREPER agreement on general approach	17 November 2021	Council
	Vote	Adoption Council position	25 November 2021	Council
		EP Committee report	21 December 2021	EP IMCO
	Vote	Adoption EP position	20 January 2022	EP
Inter-institutional phase		1st trilogue	31 January 2022	Council / EP / EC
		2nd trilogue	15 February 2022	Council / EP / EC
		3rd trilogue	15 March 2022	Council / EP / EC
		4th trilogue	31 March 2022	Council / EP / EC
	Success	**Provisional agreement** 5th trilogue	**23 April 2022**	**Council / EP / EC**
Concluding phase		Argument on general monitoring obligations of platforms and carve-out of cross-border take-down of gambling operations in finalised legislative text	15 June 2022	Council / EP
	Vote	COREPER approval of provisional agreement	15 June 2022	Council
	Vote	European Parliament IMCO committee approval of provisional agreement	16 June 2022	EP IMCO
	Vote	Formal plenary vote in the European Parliament	5 July 2022	EP
	Vote	Formal vote in the Council	4 October 2022	Council
		Signed into law	19 October 2022	Council / EP
		Publication	27 October 2022	
	EU Law	Regulation came into force	16 November 2022	

Outcome	Step	Date	Actor(s)
	Regulation is applicable from	27 December 2023	
	Full application from	17 February 2024	

Source: Author's compilation based on Bertuzzi (2022c), Bertuzzi (2022a), Bertuzzi (2022d), Council of the European Union (2022b), Council of the European Union (2022d), European Commission (2022g), European Commission (2022i), European Commission (2022e), European Parliament (2022d), European Parliament (2022c), Pinsent Masons (2022), Steiner (2022a).

Nevertheless, the agreement on the DSA was reached in a relative short time from an overall perspective, with the most contested part of the negotiations, the inter-institutional bargaining between EU institutions, taking less than a quarter of a year.

However, to understand the bargaining positions and the outcome of the DSA, it is required to provide background information on the so-called eCommerce Directive from the year 2000. It serves as the basis for the path dependent DSA that follows it (European Commission, 2022i, European Commission, 2022e).

Central to the eCommerce Directive was the aim to facilitate the development of electronic commerce and boost employment (eCommerce Directive, Rec. 2). Through this, economic growth and investment should be stimulated (Rec. 2). Furthermore, the aim was to ensure that electronic commerce benefits from the internal market (Rec. 4). These goals come with the provision of free movement of information society services (Rec. 9). All goals were guided by establishing a European regulatory framework to avoid fragmentation in the internal market (Rec. 59). On the more specific side of the eCommerce Directive, it set standards for out-of-court dispute settlement and the conclusion of contracts electronically (Art. 9 (1)). A central innovation was the limitation of liabilities for intermediary service providers, such as the 'mere conduit' principle (Art. 12) that protects online intermediaries from criminal offences when data is 'just' channelled through their services as well as the rules on caching (Art. 13) and hosting (Art. 14). This agreement on a limitation of liabilities was a key element that led to the growth of European digital markets as it gave legal certainty for new business models and investments.

The DSA can be explained by inter-institutional preference convergence and the path dependency in regulating digital markets in the EU. The rapporteur of the DSA, Christel Schaldemose, "[…] considered [the DSA] to be the big digital issue of the legislature […]" which serves as a horizontal framework for the Digital Single Market and its intermediary services operating in it (Agence Europe, 2020i, Agence Europe, 2022l). This statement of the MEP is exemplary for the inter-institutional preference convergence of all EU institutions in respect to the DSA. The involved institutions wanted an ambitious DSA (Interview #10, 2023). This inter-institutional preference convergence can be traced back to the awareness of online

misinformation and hate-speech that has reached new peaks and fighting it had been prominently featured on European political agendas (European Commission, 2022a).

However, the DSA was seen as a complicated horizontal issue to negotiate, according to a diplomatic source quoted (Agence Europe, 2021a, Agence Europe, 2022j). The most contested trade-off the EU institutions faced was weighing freedom of speech and freedom to conduct business against more platform regulation (Interview #17, 2023). However, rather than resulting in conflicting fundamental arguments, the DSA had thousands of amendments on a technical level, making it one of the most amended legislative texts together with the GDPR and the AI Act (Interview #10, 2023). These technical items included changes in wording to reflect technical aspects and further operationalisations of rules, for example the requirement to specifically undergo local awareness training for human content moderators or by adding a reference to the EU's Charter of Fundamental Rights where human rights protection was emphasized in the legal text (cf. Annex I). A large amount of remaining technical items during the inter-institutional bargaining was decided in the last trilogue (Interview #8, 2023). Achieving this, underlines the EU institutions' strong inter-institutional preference convergence on the DSA.

Diverging issues that could challenge the inter-institutional preference convergence in the case of the DSA circled around limited liability, targeted advertisement and dark patterns that dominated the debate until the last trilogue (Agence Europe, 2020e, Agence Europe, 2022f, Agence Europe, 2022i). One of the key preferences of the Commission was to avoid fragmentation through different national legislation, such as on hate speech, e.g. posed by the NetzDG in Germany or the Avia Law in France that was ruled unconstitutional in 2020 (Breyer, 2020, European Digital Rights (EDRi), 2020). The Commission preferred a harmonised European approach instead. Therefore, the institution pushed for the most interventionist option feasible for the DSA proposal (Agence Europe, 2020g).

Despite that the Commission found some common ground on online anonymity rules with the Parliament, the initial Commission proposal received 2297 amendments in the IMCO committee of the Parliament (Agence Europe, 2021o, Agence Europe, 2021i). From the point of view of the Parliament, the Commission proposal had weaknesses on market place regulation and 'know your business customer' principle that were not elaborate enough (Agence Europe, 2021o). This dialogue illustrates that the intra-institutional bargaining also promoted further inter-institutional preference convergence. Moreover, the anonymity of services required balancing between the identification obligations against the protection of users from repression when expressing their opinion (Agence Europe, 2021h). In summary, the rapporteur argued for stricter rules on platforms and intermediaries (Agence Europe, 2021j). Once the position was determined, MEP Arba Kokalari (EPP, Sweden) welcomed the position of the Parliament as "[…] clear message from the Parliament on consumer protection,

welcoming businesses […]” that ends the ‘digital Wild West’ and would hold Big Tech more accountable (Agence Europe, 2021u). Other MEPs, such as Patrick Breyer, described the position of the Parliament for the trilogues as “[…] bark without a bite […]” that falls short on fulfilling the high ambitious voiced earlier towards a ground-breaking regulation and not going far enough (Agence Europe, 2021u, Agence Europe, 2022p).

The parliamentary debate was mostly about balancing consumer and services/product safety against burdens for companies, while ensuring a common approach in the Single Market (Agence Europe, 2022m). Based on the Parliament’s position reached, rapporteur Christel Schaldemose urged the EU Council to show ‘goodwill’ in interinstitutional discussions over DSA“ (Agence Europe, 2022b). Moreover, the Parliament had a series of additions that risked prolonged inter-institutional bargaining, according to another diplomatic source (Agence Europe, 2021a).

The Council position agreed upon in 2021 was described by multiple diplomatic sources as ‘very sensitive’ and with ‘narrow margin to manoeuvre’ (Agence Europe, 2021l). The volatility of the agreement reached was underlined when a diplomatic source commented on the outcome by pointing towards that some Member States could reverse their current decision (Agence Europe, 2021r). In general, the Council wanted to give more power to the NCAs of the Member States (Agence Europe, 2021s) which was only partly successful as the function of a national Digital Service Coordinator in the Member States was introduced. But also other issues such as the debate on the exemption from liability for platforms were discussed, resulting in the Council position to keep the limited liability provision and to avoid general monitoring requirements (Agence Europe, 2021k, Agence Europe, 2021n).

The preference convergence of the EU institutions on the DSA was facilitated by the absence of strong European digital industry players which reduced lobbying effectiveness. The DSA received more interest from lobbyists than the DMA. This is due to two key factors. First, the DSA regulates the core of the business models of online platforms, such as advertising. Second, the DSA covers all sizes of platforms, but differentiates the level of obligations according to the relevance of the platforms, whereas the DMA regulates only the biggest platforms, the gatekeepers. Corporate Europe Observatory (2022) reports an even higher number meetings between legislators and lobbyists than Transparency International EU, with 613 total meetings. Of these, 23 were with Google, 16 with Facebook, 15 with Amazon and 12 with Microsoft representatives (Agence Europe, 2022q). The report criticised the high number of meetings and attempts to influence decision-making in the Parliament and led to a rise of tensions in MEP discussions (Agence Europe, 2022p). The most intensively lobbied issue has been online advertising with its targeting and tracking functionalities (Agence Europe, 2022q). This is not surprising as it is a core aspect of the business models of the most successful platforms in the industry.

Online platform industry associations tried to implement a differentiation of measures between content and practices classified as 'illegal', 'dangerous' or 'harmful' which could have resulted in differentiated obligations (Agence Europe, 2020b, Agence Europe, 2020h). However, the final legislation clearly demonstrates that the push was not successful as the regulation almost exclusively uses the term 'illegal'. This is also in line with the EU institutions' aim to level the differences between online and offline actors in respect to the accountability of platforms for illegal activities and prosecution.

Industry associations affected, but mainly focussed on manufacturing industries, such as the lighting industry association of Europe, urged legislators to include product non-compliance provisions in the DSA (Agence Europe, 2021w). This is widely reflected in the regulation as it makes explicit references to Union Law on consumer protection and product safety (Art. 2 (4f), Rec. 12 "[...] ensure a safe, predictable and trustworthy online environment [...]", Rec. 24 "[...] effective protection of consumers when engaging in intermediated commercial transactions [...]" and Rec. 80 (systemic risk categories) as well as Art. 30 (Traceability of traders), Art. 31 (Compliance by design) and Art. 32 (Right to information)).

Significant concerns were raised from industry organisations prior to the institutional positions being finalised, as threats to a weakened country of origin principle manifested that would lead to increases in the compliance costs for online platforms to operate in the EU's Single Market (Agence Europe, 2021b). The regulation has kept the country of origin principle tailored into the supervisory mechanism (Council of the European Union, 2022b).

An additional concern from industry organisations was the burden on SMEs. The industry association SMEUnited, representing business interests of small- and medium-sized enterprises, welcomed the DSA proposal of the Commission (Agence Europe, 2021ac). During the formation of the positions of the EU institutions, other industry organisations called upon the Parliament to lighten the obligations for SMEs in digital markets further than the original proposal and current position of the Parliament (Agence Europe, 2021m). The regulation holds several passages that reduce the burden to smaller sized platforms (DSA, Art. 19 and 29). In addition, the Commission has to review the regulation regarding its effect on SMEs (DSA, Art. 91). However, the regulation does attribute most of the reduced burdens to the smallest firms only. In contrast, the highest burdens are only attributed to the very largest platforms with significant societal impact. The remaining firms must comply with the additional obligations as laid out in the DSA that go significantly further than the previous rules of the eCommerce Directive.

Prior to the vote of adoption in the Parliament and the Council, industry organisations voiced concerns about the 'stay down' provisions which had been reintroduced by the Council during the ironing-out of the final text (Agence Europe, 2022g, Bertuzzi, 2022c). The provisions could have opened-up the possibility for Member States to require general monitoring activities

by platforms to avoid removed content from re-appearing on the platform (Bertuzzi, 2022c). The Parliament had opposed this already during the trilogues and did not accept the first consolidated version, which led to the delayed vote of adoption through the Council in October 2022 (Bertuzzi, 2022c). In the end, the Parliament's position succeeded into the regulation.

From civil society associations, there were several demands to focus on the protection of individual freedoms and human rights in the DSA, particularly on dark patterns and targeted advertising (Agence Europe, 2022c). These issues were also of significant debate until the very end of the trilogues among the EU-institutions and targeted advertisement was coined a 'hot potato' by the EP rapporteur (Agence Europe, 2021q, Agence Europe, 2022h).

Weighing business against consumer interests was one of the critical decisions to make, such as in the case of disabling targeted advertisement by default and to provide more transparency on the algorithms used (Agence Europe, 2021q, Agence Europe, 2022d). This issue is also related to the debate about better user and consumer protection, for example by product safety rules, and privacy as well as compensation mechanisms in case of infringements (Agence Europe, 2021p, Agence Europe, 2022d, Agence Europe, 2022f). Moreover, the management of illegal content online had to balance the fine line between removing illegal content against discriminating deletion on a large scale (Agence Europe, 2021q). In contrast, on protecting the business side, the country of origin principle, the responsibilities of hosting services and the effect on SMEs were debated (Agence Europe, 2021g, Agence Europe, 2021i). In summary, this introduction to the DSA demonstrates the continuous process of inter-institutional preference convergence and path dependency that limits the policy options available in legislative bargaining. The following sections detail the evidence that supports this argument for the two explanatory variables in the case of the DSA.

4.1 Agenda Setting

This section details the proposal of the Commission from the year 2020. The step is crucial in the process of inter-institutional preference convergence as the agenda-setting powers of the Commission and the technical expertise brought-in result in a significant impact over the legislation (cf. Blom-Hansen and Senninger, 2021). The Commission sets the legislative train on track. The following aspects from the proposal demonstrate the decisions the Commission made and how this influenced the starting point for the consecutive phase of bargaining within the Parliament and Council.

The DSA proposal builds on the established principles of the eCommerce Directive on strengthening the internal market, fostering innovation, while providing legal certainty for businesses and investments through a continued and extended commitment to limited liability of providers. However, this adapted regulations to the evolvement of digital markets with large platform providers as key actors in the market. The rise of large platforms led to a significant

societal and political impact that is addressed in the Commission proposal through higher burdens for very large platforms. These platforms are defined as with 45 million recipients of services or roughly 10% of the EU citizens (European Commission, 2020i, Art. 25). The Commission proposed that the burden carried by providers should be proportionate to the impact of the platform (Rec. 39, 43, 50). In contrast, very small platforms should be exempted entirely (Rec. 39). Another exemption was proposed for comment sections of online newspapers. They should not be counted as platform per se, but as 'purely ancillary feature' (Art. 2 (h), Rec. 13). In a comparable way, information disseminated in closed groups in social media or messengers that have finite numbers of people, are not considered as public dissemination of information and therefore fall not under the obligations of this regulation in the Commission proposal (Rec. 14).

However, and despite the exemptions granted to certain service providers, the Commission also proposed to restrain the limited liability provision in cases where 'reasonably well-informed' consumers could have believed that the information was not only handled by the platform but provided or even under control of the provider. The Commission proposed that this even holds if it is de-facto not the case (Art. 5 (3); Rec. 23). Moreover, the proposal stressed the general need for providers to responsible and diligent behaviour that respects the fundamental rights of citizens (Rec. 3). In order to improve communication and hold platforms accountable, the obligations for representatives of providers were raised in the Commission proposal (Rec. 37; 59). As a result, platforms are obliged to establish a single point of contact (Art. 10; Rec. 36).

Apart from these cross-cutting issues, other key aspects of the Commission proposal can be described along eight central aims of the regulation that can be summarised as follows (European Commission, 2022g): 1) Counter illegal goods, services or content; 2) Trace business users; 3) Safeguard users; 4) Ban certain types of targeted adverts; 5) Increase transparency; 6) Set-up risk management and audits; 7) Provide access to data; 8) Implement oversight structure.

To counter illegal goods and services, the Commission proposed various obligations to prevent providers from disseminating illegal goods or services (European Commission, 2020i). Furthermore, the proposal included obligations on content moderation and allowed the use of automated tools within the limits of European laws (Art. 17, 23, 26). However, the text does not feature a general monitoring obligation (p. 1) which was seen as controversial issue among the institutions. But it can be interpreted as anticipatory move of the Commission to facilitate further preference convergence between the co-legislators. With this omission of the controversial issue, the debate was also shifted from the agenda setting phase to a much later state of the bargaining in which more informal bargaining between the bicameral actors exist and the sunk costs of a failure of the legislative procedure increased significantly for all parties.

Moreover, the concept of the so called 'trusted flaggers for content moderation was included in the Commission proposal. The flaggers will be selected by the Digital Services Coordinators (DSCs) in the NCAs of the Member States. The Commission also introduced that users of platforms who face a suspension of their accounts should be given a warning. The proposal specified that the communication has to be transparent and the terms and duration of the potential suspension should be communicated (Art. 20).

In order to trace business users, the Commission obliged providers to track the contact information of business users (Art. 22, Rec. 49). Additionally, the platforms of providers should be designed to comply with the information transparency requirements on business users and should be equipped with the functionality to monitor this (Art. 22 (4.), Rec. 49).

The Commission proposal prioritises the safeguarding of users, particularly the protection of minors (p. 12, Rec. 34) which are salient issues that all three EU institutions had on the agenda and is reflected in their bargaining positions presented later. This prioritisation is another example that demonstrates the Commission's anticipation to factor-in the co-legislators preferences which increases inter-institutional preference convergence. Therefore, broad obligations for providers to establish safeguards against unlawful content and to protect users' fundamental rights have been introduced in the proposal. These obligations, including risk management structures, cover the area of fake information (Rec. 57, 68). The use of automated tools to achieve compliance with the proposal was granted, but under high documentation and transparency obligations for providers (p. 1 ff).

A more specific aim of the Commission proposal dealt with the restriction of targeted adverts. Therefore, additional obligations on the use of personal data for these advertisements were introduced. This included a requirement to disclose information about the timing and the entity behind the advertisement (Art. 30, Rec. 52).

The general aim to increase transparency is reiterated in multiple occasions in the proposal and increasing transparency is not an issue that per se triggers controversies among EU institutions and could in return restrict further inter-institutional preference convergence. There are also many instances where transparency is indirectly addressed, e.g. by making design requirements, or is a by-product to increased monitoring and reporting. However, there are a few points in the Commission proposal that fall under the transparency aim directly. These are specific transparency obligations in respect to advertisement and recommender systems. Transparency requirements increase with the size and importance of the platform. One practical-oriented aspect introduced, is that the Commission should maintain a database that records all content moderation decisions taken by platforms (Rec. 51). Finally, the proposal introduces obligations to make out-of-court dispute settlements more transparent (Art. 18).

Related to the transparency aim of the Commission proposal are the obligations introduced for risk management and audits that also reflect the general trend other policy areas to increase accountability and monitoring (Interview #18, 2023). In general, the proposal required platforms to monitor risk in relation to their economic activities and to conduct audits on a regular basis. From this, the proposal derived an obligation for active risk-mitigation of large platforms (Rec. 35, 53). The Commission also introduced the position of compliance officers for providers in respect to the regulation (p. 15, Art. 32, Rec. 65). In case there are systemic risks, providers are obliged by the Commission proposal to include civil society organisations into the consultation process for designing their risk management and audit functions (Art. 35, 36, Rec. 59). The Commission introduced a risk assessment system with three categories. First, to assess misuse and 'dissemination of illegal content'; Second, to assess the of the platform on the 'exercise of [the] fundamental rights'; and third, to assess the 'intentional manipulation' of the platform's service with broad impacts in society (Art. 26).

Related to this is the goal of the Commission proposal to broaden the access to data of large platforms. Access should be given to researchers and regulators. One of the most important aspects of the proposal is the aim on implementing an oversight structure. The Commission introduced the possibility to penalise platforms that do not comply with the obligations of the regulation. The penalties are levelled in two steps. Failing to comply with the obligations can result in fines up to 6% of the annual income or turnover of the provider (Art. 42 (3.)). In contrast, supplying "[…] incorrect, incomplete or misleading information […]" can result in fines up to 1% in respective figures (Art. 42 (3.)). The overall maximum periodic penalty can be as high as 5% of the average daily turnover (Art. 42 (4.)). The proposal grants the Commission the powers for onsite inspections and to execute interim measures in case a platform does not comply (Art. 54, 55). For crisis times, there are special powers vested into the Commission to execute measures over platforms (Art. 37). To enforce these rules, the Commission proposal foresees regulations on cross-border cooperation between the NCAs and introduced the function of the Digital Service Coordinator as a central point of contact in NCAs. This is a balanced position between increasing the Commission's powers and keeping the Member States's sovereignty in the enforcement. With this middle ground in the proposal taken by the Commission as agenda setter, the actor mitigated opposing preferences from the Council to avoid obstacles to inter-institutional preference convergence. Moreover, the Commission proposal encourages the development of voluntary industry standards to comply with this regulation (Art. 34; Rec. 66). Finally, penalties and other aspects of the regulation can be challenged through the European Court of Justice (p. 3f, 10, Art. 61). After having established the proposal of the Commission on the DSA, the following part addresses the positions of the Parliament and the Council.

In summary, these technical aspects demonstrate the scope of the Commission's role in agenda-setting. Its decisions on the design and content of the proposed legislation lays the basis for the inter-institutional preference convergence on the DSA and specifically influences the issues that the bargaining within the Parliament and Council builds upon.

4.2 Intra-institutional Bargaining

The phase of intra-institutional bargaining is the first step in which the co-legislators work on the proposed legislative text within their institutions. While this step is about bargaining within the institutions, the step is crucial for further inter-institutional preference convergence for two reasons. First, it moderates conflict within the institutions that could hinder progress in the legislative procedure. Second, it sets the strategic bargaining position of the institution in the trilogues. To start trilogues, this bargaining position has to strike a balance between institutional preferences of the respective institution and the preferences of the co-legislator. This characteristic facilitates further inter-institutional preference convergence and can be demonstrated when examining the technical positions made.

When comparing the results of the intra-institutional bargaining positions between the co-legislators, there were many similarities between both institutions, but also differences in critical aspects. Common to both positions was shared awareness of the importance of platform regulation and the previous experiences made with digital market regulation on a technical level through the eCommerce Directive (Council of the European Union, 2021b, p. 4 II. (11.), European Parliament, 2022f, Rec. 1, 4a).

Despite the common ground on which the positions of the Parliament and the Council were placed, there were different preferences in the bargaining due to the prioritisation of issues within the institutions and the interests behind their preferences. The Council position, for example, preserved the main principles from the eCommerce Directive, such as the country-of-origin principle and the conditional liability-exemption. The Council also emphasised improved coordination between EU-institutions and NCAs. In contrast, some MEPs have strongly advocated for increased data protection and individual freedom rights of citizens (Breyer, 2022b), an issue that the Council did not elaborate on specifically. It is evident that some aspects of these basic bargaining positions can hold conflict between the bicameral actors. This can be demonstrated in the position to uphold the limited liability principle of providers which in return leads to less obligations on content moderation. This conflicts with the aim to strengthen individual freedom rights in digital markets, e.g. the respect for human dignity or for consumer protection, as laid down in the Articles 2 and 38 of the Charter of Fundamental Rights of the European Union (European Union, 2000).

The specific positions of the Parliament and the Council are presented and contrasted with the Commission proposal that serves as base line in the following. The section starts with

the issue areas in which the positions of the Parliament and the Council differed the most. Additionally, this section addresses new issue areas that were added by one or both bicameral legislators to the Commission proposal.

Intra-institutional bargaining centred around the definition of what constitutes an online platform in the DSA. Starting from the Commission proposal, ancillary features, such as comment sections in newspapers, would not fall under the regulation (European Commission, 2020i, Art. 2, Rec. 13). The Council wanted to include comment sections in the definition of online platforms, even if it is an ancillary feature (Council of the European Union, 2021b, Rec. 13). A similarly diverging point was the dissemination of information in closed groups on platforms. After the Commission had proposed to define closed groups with finite numbers as not to fall under the regulation, the Council stressed that information which can potentially be made available to an unlimited number of people, such as in open groups or channels, does fall under the regulation (Council of the European Union, 2021b, Rec. 14). The Parliament positioned itself on this subject by defining 'public' as automated accession to the group (European Parliament, 2022f, Rec. 14). Another controversial point was raised in respect to safeguarding users. The Council did not add additional legal codices that should be adhered to, while the Parliament added fundamental rights codices, such as the United Nations Convention on the Rights of the Child into their bargaining position of the DSA (Council of the European Union, 2021b, Rec. 3, European Parliament, 2022f, Rec. 3).

There were multiple differences between the resulting positions of the intra-institutional bargaining of the Parliament and the Council, for example, on technical specifications and diverging operationalisations of concepts. The Council wanted to exclude micro and small platforms from the coverage of the regulation, while the Parliament position excluded also medium providers (Council of the European Union, 2021b, European Parliament, 2022f, Art. 11 (5a), Art. 16, Rec. 2, 37). Hence, the Parliament took a more provider-friendly position towards a regulation with more exemptions and a more specific target of the regulation to larger platforms. This position came with little surprise as the Parliament has a history of advocating for Small and Medium Enterprises (SMEs) in general (cf. European Parliament and Gouardères, 2021). Another area of divergence of preferences was the position on the burden providers should carry in the new regulation. The Council favoured a system in which very large platforms would bear the highest obligations and where this obligation is proportionate to the size of their societal impact (Council of the European Union, 2021b, Rec. 54). While the Council's proposal is only focussed on the negative aspects and accounts for this with increased obligations, the Parliament proposed to consider weighing the benefits of stricter obligations against the burdens on providers in order to determine the level of obligations (European Parliament, 2022f, Rec. 43a). In regard to monitoring obligations, preferences of both institutions converged with rejecting them in general, but with the Council

leaving room for specific forms of monitoring (Council of the European Union, 2021b, Art. 7, Rec. 28, European Parliament, 2022f, Art. 7). Closely related was the debate about 'trusted flaggers' for content moderation. The Council wanted to limit the number of flaggers, while the Parliament did not opt for a limitation but expanded the role of DSCs in the management of trusted flaggers' status (Council of the European Union, 2021b, Rec. 46, European Parliament, 2022f, Rec. 46). When turning to the traceability of business users, the Council followed the Commission and requested that platforms should have an obligation to hold information on these user types (Council of the European Union, 2021b, Art. 24a). The Parliament specified this aspect and added that trademarks or logos of business users offering services or products on platforms should be visible (European Parliament, 2022f, Art. 22 (3b.)). In respect to safeguarding users, there were additional issue areas of preference divergence among the institutions. The Council wanted to specify 'fake' as misleading information, very much in line with the original Commission proposal (Council of the European Union, 2021b, Rec. 57, 68). For the Parliament the position was not specific enough and it added a labelling obligation for platforms on deep fakes (European Parliament, 2022f, Art. 30a, Rec. 63). Furthermore, on the issue of banning targeted adverts, the Council stayed with the Commission position, while the Parliament wanted to include additional provisions that explicitly restrict the use of personal data by providers for advertisement purposes (European Parliament, 2022f, Rec. 52). In the field of transparency obligations, the Parliament introduced specific obligations for the interface design of platforms, while the Council did not (European Parliament, 2022f, Art. 13a). Moreover, access to data of very large platforms was an area of preference divergence. The Council positioned itself towards that data access should be open to vetted researchers (Council of the European Union, 2021b, Art. 23, 31). On the other hand, the Parliament wanted to broaden this access to vetted not-for-profit bodies, organisations and associations (European Parliament, 2022f, Art. 31). Furthermore, in respect to oversight capabilities of the European Court of Justice, the Council positioned as a strong advocate for full capabilities of review and a restrictive role of the NCAs (Council of the European Union, 2021b, Art. 64a, Rec. 6, 8a, 28, 30 and others). The Parliament position was more modest on this part, but also stressed the importance of the ECJ (European Parliament, 2022f, Rec. 16). While centralisation was favoured in the role of the judicial powers from the Council, it favoured more executive powers for NCAs and the DSCs in respect to the enforcement of interim measures. The Parliament did also recognise that DSCs in the member states should have the power to conduct interim measures, but kept the position on a more modest and EU-wide level (European Parliament, 2022f, Rec. 77). The preferences on the role of DSCs diverged between Council and Parliament, as the Council wanted extensive rights and a detailed role associated with these functions, while the Parliament proposed that further guidelines and a specification of the role was necessary to be developed by the Commission (Council of the

European Union, 2021b, Rec. 30, 46, 74, 77 and others, European Parliament, 2022f, Rec. 9). Another area of divergence was the obligation for voluntary industry standards, that was in its basics shared by all institutions. However, the Parliament wanted a deadline of 24 months for the providers to develop such standards, before the standard-setting would be handed over to the Commission (European Parliament, 2022f, Art. 34; Rec. 66).

There was preference convergence between the Parliament and the Council in the following issue areas. Both agreed to strengthen the internal market with no additional national requirements (Council of the European Union, 2021b, Rec. 9, 10, European Parliament, 2022f, Art. 1 (2 ba)). Similar consensus was found to ensure fundamental rights in respect to terms and conditions of services (Council of the European Union, 2021b, Art. 1, 27, European Parliament, 2022f, Art. 1, 12) and on the protection of minors in general (Council of the European Union, 2021b, Art. 12, 27, Rec. 34, 38, 46, 57, 58, 67, European Parliament, 2022f, Art. 12 (1c), 13 (a), 17, 24 (1b), 27 (ba), 34 (1a), Rec. 52, 69). Moreover, preferences converged on the reduced exemption from liability of providers if the platform has control over the prices for goods and services offered (Council of the European Union, 2021b, Rec. 22a, European Parliament, 2022f, Rec. 23). In determining when a platform is considered as very large platform, the Parliament and the Council aligned and followed the Commission's proposal in their respective positions, while adding methodology on how to establish the threshold figure of 45 million users and the condition that the actual reach of the platform has to be considered (Council of the European Union, 2021b, Rec. 54, European Parliament, 2022f, Art. 25, Rec. 54). In this regard, they also specified that the legal representatives of providers will be vested with the required powers. This representative should be registered with the DSCs in the member states (Council of the European Union, 2021b, Art. 11, European Parliament, 2022f, Art. 11). In order to improve the traceability of business users on platforms, the Parliament and the Council preferences converged on the introduction of obligations for due diligence checks performed by the platforms on the information provided by business users (Council of the European Union, 2021b, Rec. 54, 84 and Chapter III, European Parliament, 2022f, Rec. 39 (b) and Chapter III). Furthermore, Parliament and Council preferences aligned in adding transparency provisions for recommender system providers (Council of the European Union, 2021b, Art. 24a, Art. 29, European Parliament, 2022f, Art. 24a). In regard to penalties, both institutions' position converged and largely kept the Commission proposal with minor changes to the units of measurement proposed (Council of the European Union, 2021b, Art. 42, European Parliament, 2022f, Art. 42). For EU-wide cooperation to investigate potential non-compliance with the regulation, the Parliament and the Council added further points on cross-border cooperation between member states as well as on reducing the administrative burden (Council of the European Union, 2021b, Rec. 86, European Parliament, 2022f, Rec. 86). Furthermore, the preferences of the Parliament and

the Council generally converged on content moderation, with the Council positioning for moderation efforts to be adapted to the level of risk (Council of the European Union, 2021b, Rec. 58, European Parliament, 2022f, Rec. 58). Moreover, the Parliament added specifics on the review of pornographic materials, which should only be conducted by specifically trained personnel (European Parliament, 2022f, Art. 24b). Both, Parliament and Council, positioned for more specific obligations on risk mitigation, such as timely and proactive measures in respect to content moderation and a risk mitigation according to the potential systemic threat of the risk (Council of the European Union, 2021b, Art. 26, European Parliament, 2022f, Art. 26).

While both institutions' preferences converged on the principle 'what is illegal offline should be illegal online' (Council of the European Union, 2021b, Rec. 12, European Parliament, 2022f, Rec. 12), there were several preferences that were completely new and which Parliament and Council or either one of them added. The list of services covered by the regulation was adapted as the Council and Parliament added an exclusion for cloud services, which the Parliament defined as infrastructure service (European Parliament, 2022f, Rec. 13, 27). Similarly, both institutions shared the understanding that search engines were part of the services to be regulated (Council of the European Union, 2021b, Rec. 5 and others, European Parliament, 2022f). Furthermore, the institutions added that offering encrypted, anonymised or confidential services should not lead to holding providers liable for illegal actions carried out via these means (Council of the European Union, 2021b, Rec. 20, European Parliament, 2022f, Art. 7 (1 b)). In respect to targeted advertisement the Parliament and the Council added provisions that providers should not use dark patters to influence the behaviour of recipients of services (Council of the European Union, 2021b, Rec. 50a, European Parliament, 2022f, Rec. 39a, 62). The Parliament stressed the position even further by specifying the obligation of providers to refrain from interfering in exploitative ways and enable users to make free and autonomous decisions (European Parliament, 2022f, Rec. 39a). In regard to oversight structure, both institutions converged on the preference that the Commission should be granted the powers to enforce and evaluate this regulation (Council of the European Union, 2021b, Art. 73, European Parliament, 2022f, Art. 73).

The Council preferred specific obligations to very large platforms and search engines to remove content within 24 hours (Agence Europe, 2021x, Council of the European Union, 2021b, Rec. 46, 58) in its bargaining position. Furthermore, it clarified that indexing of content or preference-based recommendations are not sufficient to constitute knowledge on illegal activities on platforms for providers (Council of the European Union, 2021b, Rec. 22). In respect to transparency, the Council demanded that providers make information on illegal products and services removed from their platforms accessible to the public (Council of the European Union, 2021b, Art. 24c). The Council also specified in the field of oversight that

onsite inspections can be held in cooperation between the Commission and the NCAs as well as the DSCs (Council of the European Union, 2021b, Rec. 96). On the side of providers, the Council introduced that compliance officers should directly report to management (Council of the European Union, 2021b, Rec. 65).

The Parliament preferred that recipients of services can receive compensation for damage or loss by providers (European Parliament, 2022f, Art. 2 (1na), 43, Rec. 83a). Furthermore, the Parliament added an option for recipients of services to "[…] refuse or withdraw their consent for targeted advertising purposes […]" in its bargaining position (European Parliament, 2022f, Rec. 52). The Parliament also specified that only sufficiently reliable techniques should be used, if automated controls are in place (European Parliament, 2022f, Rec. 25). Moreover, the Parliament added that transparency obligations should be introduced in case the entity or person who pays for advertisements is different than the one presenting it (European Parliament, 2022f, Art. 30, (2ba); Rec. 63). The Parliament demanded that the refusal to share personal information with the platforms, should not limit the functionality of platforms (European Parliament, 2022f, Rec. 52). Regarding risk management and audits, the Parliament added a fourth systemic risk category to the Commission proposal. It includes added protection if platforms pose a threat to public health, including the risk for addiction or being detrimental to a "[…] person's physical, mental, social and financial well-being" (European Parliament, 2022f, Art. 26 (1ca)). Moreover, the Parliament demanded that the Commission evaluates the 'implementation and effectiveness' of risk mitigation measures of very large platforms (European Parliament, 2022f, Rec. 58).

In summary, these items demonstrate the progress made on the intra-institutional preference convergence within Parliament and Council during the intra-institutional bargaining phase on the basis of the Commission proposal. Without this further convergence, the start of and successful completion of trilogues are unlikely. The converged preferences of the Parliament and the Council on the DSA presented, demonstrate that there was consensus and that agreement was possible. Hence, the following section provides a detailed analysis of the outcome of the bargaining in the trilogues that illustrates where inter-institutional preference convergence among the EU institutions resulted in the provisional agreement on the DSA.

4.3 Inter-institutional Bargaining

The final step of the inter-institutional preference convergence is the bargaining between the institutions, the trilogues. Based on the trajectory of inter-institutional preference convergence initiated by the Commission proposal, the further convergence through the bargaining within the institutions, the trilogue negotiations mitigate the last obstacles towards agreement on new legislation.

Therefore, this section provides a detailed overview on the outcome of the inter-institutional bargaining to demonstrate the respective inter-institutional preference convergence on the DSA. The outcome is an improved framework for online platform governance that accounts for the technological advances made since the eCommerce Directive. The essence of the DSA is best captured by Margrethe Vestager’s quote “[…] what is illegal offline is equally illegal online.” (European Commission, 2020d), which has become a powerful headline for the EU institutions approach on online platform regulation and is directly attributed to the governance measures of the DSA. The following are the key outcomes of the DSA according to the European Commission (2022i):

- “Measures to counter illegal content online, including illegal goods and services.”
- Introduction of measures to ‘trace sellers’
- Introduction of ‘safeguards for users’
- Obligations to take measures to increase transparency on online platforms
- Obligations to protect minors on any platform within the EU
- Obligations for the largest entities, including risk mitigation provisions on disinformation, election manipulation, cyber violence against women and harms to minors online
- A ‘crisis response mechanism’
- Ban on targeted advertisement for particularly vulnerable user groups
- Ban of ‘dark patterns' for the use in online platform interfaces
- Researcher access to data of platforms
- New user rights, such as complaint mechanisms and out-of-court settlements
- Oversight structure with the European Commission as main regulator
- Reconfirmed and updated liability rules for intermediaries

Obligations for online intermediaries vary according to their relevance for the Digital Single Market of the EU. The DSA is designed with the highest obligations for the very largest online platforms and online search engines, abbreviated as VLOPs and VLOSEs. Among these are mandatory risk assessments, mitigation measures for systemic risks, a crisis response mechanism, the introduction of a compliance function and the intermediaries are subject to independent audits and increased transparency obligations, which include data access for researchers. The very largest entities have to pay a supervisory fee to the EU. The Commission is empowered by the Member States to centrally enforce the rules. It cooperates with the NCAs and DSCs in the Member States for investigations or inspections. Based on the findings, the Commission can issue fines of up to 6% or periodic penalty payments of up to 5% of annual turnover for non-compliance by intermediaries. The Commission can also

issue decisions or interim measures against the very largest intermediaries in case of serious risks and non-compliance.

During the inter-institutional bargaining, the Parliament's and the Council's preferences converged to keep the limited liability provision under the condition that the platform provider does neither appear, or actually have control over the services and goods offered (DSA, Rec. 18 and others). Accounting for the technical developments in the digital markets over the past twenty years, they agreed to exclude cloud computing and web hosting services, when these services function as infrastructure (Rec. 13). However, search engines were explicitly included (Art. 14, 24). This is a convergence of the position proposed by the three institutions, with the Parliament's preferences of excluding infrastructure services entered in the final regulation. In respect to the coverage of the regulation, the preference of the Council was kept with the exemptions for micro and small providers (Art. 29). The Parliament's preference to add medium enterprises to the beneficiaries of exemptions against the preferences of the Commission and the Council was unsuccessful. Nevertheless, the institutions agreed on higher burdens for very large platforms, but without including the weighing mechanism between burdens and benefits that the Parliament preferred (Art. 33ff, Rec. 49, 57, 62, 73, 150). In respect to the debate about public groups, the final regulation notes that public groups and open channels can fall under the regulation. The regulation differentiates four categories of services: intermediary services, hosting services, online platforms and very large online platforms (European Commission, 2022g). Very large platforms are defined as having 45 million recipients of services, measured in average monthly exposure to the platform (Art. 33). This was another case of inter-institutional preference convergence among all three EU institutions.

In respect to the single point of contacts all proposals were combined and the final outcome went a step further by specifying that communication between contact points and recipients of services have, among others, to be direct, rapid, electronic and user-friendly (Art 12). Both co-legislators' preferences converged on generally safeguarding users and protecting fundamental rights. However, the outcome reflects that most of the Parliament's preferences on fundamental rights have been taken into account as according to the European Union's Charter on Fundamental Rights, but with the exemption of making a specific reference to other fundamental law codices (cf. Art. 1, 14 (4), 35). Furthermore, providers are held liable and non-compliance is a sanctionable offence in the regulation (cf. Art. 13, 41, 70, 73). The option for compensation of users in case of damage or loss, which was preferred by the Parliament, was agreed upon (Art. 54). The very specific obligations in respect to human review on content moderation, a converging preference of the Parliament and the Council, were accepted in the DSA with training requirements and a local awareness obligation for content reviewers of platforms (Art. 14 (1), Rec. 58). The preference of the Council on a 24-

hour reaction-time for very large platforms also entered into the DSA by referring to the adherence to the Code of conduct on countering illegal hate speech online from the year 2016 (European Commission, 2016, DSA, Rec. 87). All content moderation decisions should be monitored by the Commission (DSA, Rec. 151). The related suspension of accounts with illegal activities was generally supported by all three institutions, but remained unspecific on how to act on multiple accounts of illegal content (Art. 14, 15). The final regulation obliges that 'trusted flaggers' report in easily comprehensible ways, while no specific limitations on the number of flaggers, as originally suggested by the Council, was taken into account in the final outcome (Art. 22). In respect to the use of automated tools for content moderation, a middle ground between the more pro-automation preference of the Commission and the more sceptical position of the Parliament was found. Should automated tools and algorithmic decision-making occur, the platforms have to share this information with the public (Art. 14). Regarding the labelling of deep fakes, the Parliament was not successful in retaining its preference for a dedicated section in the DSA. The final version entails safeguards against fake information, but no active labelling obligation for deep fakes (cf. Art. 30). A general monitoring obligation, neither de jure or de facto, was not implemented into the final version and reflects the standpoints of the institutions, but the wording was kept in a more general sense than originally proposed by the Commission (Art. 8). The exemption of liability for providers which offer encrypted or other forms of anonymised services, as preferred by Parliament and Council, entered in the regulation (Rec. 20).

In respect to advertisement, the Parliament succeeded with adding that profiling, especially when based on sensitive personal data, and the exploitation of vulnerabilities of users through targeted advertisements with manipulative techniques, should be prevented (Art. 24, 35 (e), 39 (1), Rec. 52). All institutions agreed in the final text that online platforms have to be more transparent in respect to recommender systems, which includes information requirements on the utilisation of user data (Art. 27, 38, 40 (3)). Moreover, the related position of the Council and the Parliament that suggested to prohibit the use of dark patterns for providers, entered in the final text (Rec. 67). Furthermore, the Parliament was successful to insert a transparency obligation that requires providers to disclose who paid for an advertisement (Art. 26 (1c)). The Council included its position that obliges platforms to inform users when illegal products or services have been provided, the 'right to information', into the final text of the DSA (Art. 32).

In respect to risk management and audits, there was consensus that civil society organisations should be involved in case of systemic risks of very large platforms (Art. 45, 47, 48, Rec. 90, 137). Although a position shared in consensus among the institutions and already present in the original Commission proposal, the detailed positioning of the Parliament on this issue underlined that this aspect was rather important to the institution. Another aspect was

the function of the compliance officer of providers. The Council succeeded to include its preference that obliges providers that these officers should directly report to the management of platforms (Art. 41). In respect to the systemic risk categories, the Parliament's preference of four risk categories, i.e. including the public health risks section, was included in the final version (Art. 34 (1)). Granting access to researchers has been met with mixed opinions among the institutions. While all agreed that some form of data sharing is necessary, the Council's preference was access by researchers, while the Parliament preferred open access to a broader group of actors, including not-for-profit organisations. The Parliament was not able to secure these broad data-access provisions in the final text, but overall, more extensive access for researchers was granted than what was originally proposed by the Commission (Art. 40).

In the issue field of oversight, the preferences of the institutions converged on penalties for non-compliance with the regulation in the range of one to six percent of annual worldwide turnover of the provider, depending on the seriousness of offence (Art. 52, 74). The maximum periodic fine is capped at five percent of the average daily worldwide turnover or income ((Art. 76). Furthermore, the European Court of Justice was given a review-function with less rights and tasks than originally proposed by the Council (Art. 81). As introduced by the Parliament and the Council, the Commission was tasked with the supervision and enforcement of the compliance to the regulation (Art. 56ff). Moreover, the powers granted to perform interim measures were centred at the Commission (Art. 70). This is contrary to the proposal of the Commission that foresaw broader rights for interim measures to be executed in the member states. But it is a unique example where the Commission received more powers through a legislation than it initially proposed as agenda setter. However, a proposed exemption allowing the national Digital Service Coordinators to execute interim measures in case of serious harm, as suggested by the Parliament, was taken into the final text of the regulation (Art. 51 (2e)). This underlines the inter-institutional preference convergence of the three institutional actors. The enforcement process of the DSA relies on effective cross-border cooperation between the NCAs to the benefit of the Single Market and is a case of preference convergence of the EU institutions (cf. Art. 56 ff, Rec. 109). On-site inspections, as preferred by the Council, entered in the DSA (Art. 69). In respect to self-regulation of the industry as an oversight mechanism, the proposed 24-months deadline to agree voluntary industry standards, preferred by the Parliament, was not entered into the final text of the DSA (Art. 44, Rec. 102).

Finally, there were also points that emerged from the inter-institutional bargaining that had not been introduced in the positions of the institutions but emerged from the bargaining among the institutions. Two examples for this are the introduction of a supervisory fee to be determined and charged by the Commission to very large providers (Art. 43) or the encouragement to use QR codes as well as non-fungible tokens to trace products (Rec. 74). The supervisory fee does not exceed 0.05% of the platforms worldwide annual net income

and is relative to the numbers of users and aims to cover some costs associated with the new governance (DSA, Art. 43 (2), (5b,c), Taylor, 2022). In summary, the compromise found through bargaining in the trilogues on these technical items demonstrates the importance of this final stage for the inter-institutional preference convergence that made the successful agreement on the DSA possible.

4.4 Path Dependency

Path dependency is an important factor that shaped the bargaining towards the DSA. It limits policy options available in legislative bargaining for the DSA based on the trajectory of previous initiatives and rules. The DSA follows such a path dependence. Since the early EU internet, copyright, privacy and continued telecommunications governance in the 2000s under the Prodi Commission (cf. Newman, 2020, p. 280f), digital policy has continued to grow in importance. However, it took until 2010 under the second term of Barroso to issue the first comprehensive digital strategy, the Digital Agenda (European Commission, 2010). Hereafter, the focus shifted towards the integration of digital markets in the EU with the publication of the Digital Single Market Strategy of 2015 under the Juncker Commission (European Commission, 2015). When President von der Leyen took office, she announced in her State of the Union address in 2020 that “We must make this Europe's Digital Decade” (von der Leyen, 2020). This initiated the most ambitious European digital policy agenda so far (Interview #21, 2023). Both regulations, the DSA and the DMA, demonstrate this path to further integration of the Digital Single Market in the EU. They are also path dependent on specific initiatives and legislation and are integrated in the Digital Decade programme (Interview #9, 2023). However, the DSA also acts as grand layer, an “umbrella” (Interview #9, 2023) or “tablecloth” (Interview #17, 2023), for other digital regulations in the EU.

Path dependency limits the policy options available in legislative bargaining. In the specific case of the DSA are several path dependent aspects that the regulation builds on from existing initiatives and legislation and that can demonstrate the limitation of policy options. First, the DSA builds on the eCommerce Directive from the year 2000. The DSA builds on the fundamental principles of limited liability for platforms and how to conduct business in the Digital Single Market that were established by the eCommerce Directive from the year 2000 (cf. eCommerce Directive, 2000). This directive was considered a “masterpiece” of legislation because of its anticipatory scale that turned into a legislation that kept being relevant for over two decades (Interview #10, 2023). Nevertheless, after 20 years, the eCommerce directive required an adaptation to address new regulatory challenges in digital markets. Three path dependent scenarios were available to regulators to address this: making a EU Recommendation on combating illegal online content permanent, modernising the existing directive and/or the creation of a new European supervision and enforcement regime through

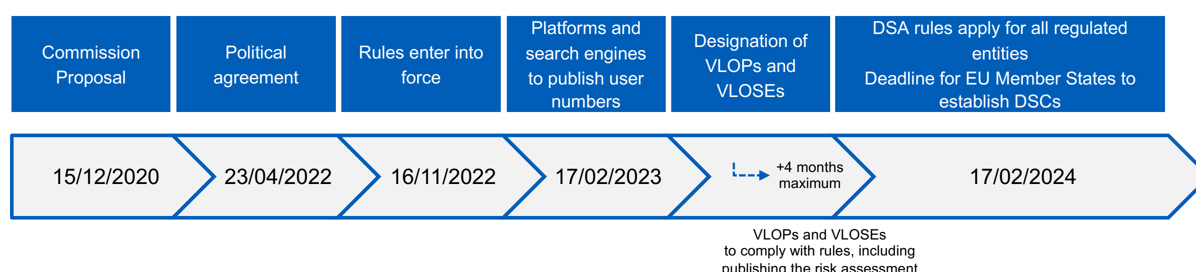
the DSA (Agence Europe, 2020c, Agence Europe, 2020d). The first two options were not adequate to regulate the scope that was intended and therefore resulted in a new regulation strongly based on the eCommerce Directive, most notably in the refinement of the three core principles of the Directive.

Apart from the direct links with the eCommerce Directive, there are several other initiatives and legislations that constitute a path dependency for the DSA in the area of content regulation and fundamental rights protection. These are the EU Code of conduct countering illegal hate speech online from 2016 and onwards (European Commission, 2016), the Communication on Tackling Illegal Content Online from 2017 (European Commission, 2017b), the 2018 Code of Practice on Disinformation from 2018 and onwards (European Commission, 2018a), a Commission Recommendation on measures to effectively tackle illegal content online from 2018 (European Commission, 2018b), the Copyright Directive for the Digital Single Market from 2019 (Directive on Copyright in the Digital Single Market, 2019), and on a broader level also the GDPR from 2016. All of these legislations have found resemblance in the DSA. The DSA also codifies these Communications and Recommendations in the form of a Regulation that is binding for all EU Member States. These examples demonstrate the path dependency that limited the policy options available in legislative bargaining for the DSA. Specifically, the existing legal patch-work on digital markets inspired the consolidation and expansion of governance in the form of the DSA.

4.5 Outcome

The entry into force of the DSA coincided with Elon Musk's take-over of the platform Twitter, now called X. After completing the transaction, he tweeted that "The bird is freed", triggering a prompt response from the EU's Commissioner Breton tweeting that "In Europe, the bird will fly by our rules." (Breton, 2022, Musk, 2022). This statement can literally be seen as the start of the implementation phase of the DSA which is visualised in the following timeline.

Figure 3: Implementation Timeline of the Digital Services Act



Note: VLOP stands for Very Large Online Platform. VLOSE stands for Very Large Online Search Engine. DSC stands for Digital Service Coordinator in the Member States of the EU.

Source: Author's compilation based on European Commission (2022d).

The inter-institutional preference convergence of the Commission, the Parliament and the Council as well as the path dependency from previous legislations made an agreement on this new regulation possible. At the end of the bargaining of the DSA, there was an element of surprise to involved stakeholders on how fast agreement was struck, given the gridlocks experienced in the telecommunications regulations in the EU Single Market (Interview #4, 2023). This degree of inter-institutional preference convergence was best described by an interviewee as "big consensus" (Interview #20, 2023) with no significant controversies (Interview #19, 2023). The convergence was based on a consensus on the risks online platforms can pose for EU citizens and the EU Digital Single Market (Interview #2, 2023, Interview #3, 2023, Interview #4, 2023, Interview #7, 2023, Interview #8, 2023, Interview #10, 2023, Interview #15, 2023, Interview #20, 2023, Interview #21, 2023), combined with the absence of strong European digital industry players. This widely shared consensus for the EU's regulation of online platforms (Interview #4, 2023) can be traced back to the awareness of the EU institutions that the digital ecosystem had a structural problem that needed to be addressed (Interview #19, 2023). The potential risks from this structural problem for EU citizens stem from illegal services and products offered, using personal data for targeted advertisement, exposure to hate speech and, more generally, misinformation and election interference facilitated via online platforms. This resulted in a common goal of the institutions to regulate online platforms and to create a level playing field (Interview #7, 2023).

In addition, "giant pressure" from Member States and the public to address the negative externalities of online platforms had mounted and contributed to this development (Interview #11, 2023). Evidently, there was a vacuum on digital regulation in the EU (Interview #16, 2023). With self-regulatory attempts of platforms seen as insufficient by legislators (Interview #14, 2023), regulatory action was the remaining path to address the issue in the EU.

The preference convergence of the EU institutions towards regulation of online platforms also originated from the faded optimism about the positive effects of social media to facilitate democratisation during the Arab spring (Interview #14, 2023). Moreover, several scandals involving Big Tech in recent years had built to a tipping point for European regulators (Interview #17, 2023). Most notably, these were the Cambridge Analytica scandal dating back to 2016, the role of online platforms in Brexit and other election interferences as well as the US Capital insurrection that occurred in January 2021 and thereby shortly after the Commission proposal was published and prior to the beginning of the intra-institutional bargaining in the Parliament and Council (cf. Mejias and Vokuev, 2017, cf. Agence Europe, 2021v, Woolley, 2022).

In a broader sense, according to Věra Jourová, the Vice-President of the European Commission in charge of Values and Transparency, the ambitions of the Commission were to hold online platforms accountable and responsible for their powers, while empowering the users with more control over their digital interactions (Agence Europe, 2021ae). These prerogatives guided the bargaining for the DSA and demonstrates the inter-institutional preference convergence.

Finally, external shocks, such as the Covid pandemic and the war in Ukraine did not play a significant role in the DSA, but mainly underlined the vulnerabilities of the EU with then absent EU regulation (Interview #6, 2023, Interview #19, 2023). In contrast to the DMA, the DSA is the only regulation that has received a special instrument in response to the war in Ukraine. A crisis response mechanism was added on the initiative of the Parliament and agreed-upon which enabled risk reporting outside the annual reporting cycle of the original proposal (DSA, Art. 36, Interview #10, 2023, Interview #14, 2023). Commissioner Thierry Breton confirmed that the war had led to the incorporation of the mechanism (Agence Europe, 2022k). The mechanism will be reviewed on its applicability in future (Agence Europe, 2022k). Apart from this, there is only minor and very general indication that shocks have contributed to an increased like-mindedness among the EU Member States during the finalisation of the regulations (cf. Agence Europe, 2021af, Interview #4, 2023).

In April 2023, the first set of Very Large Online Platforms and Online Search Engines have been identified by the Commission under the DSA. The list is continuously updated since then and depicted subsequently. Moreover, the Commission also established a DSA whistleblower tool to support enforcement activities (European Commission, 2024g)[2].

Table 5: Very Large Online Platforms and Online Search Engines under the Digital Services Act (August 2024)

Very Large Online Platforms (VLOPs)	Very Large Online Search Engines (VLOSEs)
Alibaba AliExpress	Bing
Amazon Store	Google Search
Apple AppStore	
Booking.com	
Facebook	
Google Maps	
Google Play	
Google Shopping	
Instagram	
LinkedIn	
Pinterest	
Pornhub	
Shein	
Snapchat	
Stripchat	
Temu	
TikTok	
Wikipedia	
X	
XNXX	
XVideos	
YouTube	
Zalando	

Source: Author's compilation based on European Commission (2024j).

[2] Citation includes link to DSA whistleblower tool.

4.6 Interim Conclusion

The regulation of online platforms in the EU with the DSA supports both hypotheses made in this dissertation. The analysis has shown that there was inter-institutional preference convergence based on a consensus on the risks of online platforms for the Digital Single Market and EU citizens. This inter-institutional preference convergence was facilitated by the absence of strong European digital industry players. Additionally, the DSA follows a path dependency in the regulation of digital markets in the EU, initiated by existing initiatives and legislations. The DSA is a specific revision to the eCommerce Directive and an umbrella framework to govern online platforms (European Commission, 2022i).

Inter-institutional preference convergence on the DSA faced lobbying from industry. But lobbying worked different than for other European industries and markets. There was no shortage of online platforms trying to access legislators, with interviewees reporting that Big Tech was "everywhere" lobbying (Interview #8, 2023) and that online platforms invested a lot of resources for lobbying (Interview #10, 2023). During the bargaining on the Digital Services Act package, Members of the European Parliament had 434 meetings with lobbyists from various sectors regarding the DSA and 202 meetings related to the DMA, according to Transparency International EU (Transparency International EU, 2022). However, one interviewee reported that the DSA package was deliberately split into DSA and DMA to make it more difficult for online platforms to lobby (Interview #15, 2023). Finally, the strong inter-institutional preference convergence and consensus of the EU institutions also limited entry points for lobbying on the DSA (Interview #8, 2023).

5 THE DIGITAL MARKETS ACT (DMA)

> *"We no longer accept the 'survival of the financially strongest'. The purpose of the digital single market is that Europe gets the best companies and not just the biggest. This is why we need to focus on the legislation's implementation. We need proper supervision to make sure that the regulatory dialogue works. It is only once we have a dialogue of equals that we will be able to get the respect the EU deserves; and this, we owe to our citizens and businesses."*
>
> European Parliament Rapporteur for the DMA, Andreas Schwab
>
> (European Parliament, 2022e)

The full name of the legislation is 'REGULATION (EU) 2022/1925 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act)'. The DMA is the European Union's first legislation to govern online platforms considered gatekeepers to provide fair access to digital markets (cf. DMA, 2022).

Gatekeeper according to Article 3 of the DMA are defined as online platforms with significant economic impact on the Digital Single Market (7.5 billion Euro or more turnover), have a strong intermediate position (45 million or more active users), and are established in this position since at least three years (European Commission, 2024c). The DMA limits extreme scale economies and networks, for example by restricting the use of personal data across platforms, through anti-discrimination clauses for product rankings or by introducing interoperability provisions. Gatekeepers under the DMA must make their messenger services interoperable with gradually rising provisions; from chat functions to full data exchange and video call availabilities over the next years. Non-compliance of these obligations can lead to significant fines and penalty payments. The Commission can lead market investigations, execute inspections and interim measures. In contrast to the DSA, the DMA is only about the largest online platforms at gatekeeper positions. It does not apply to the complete digital sector.

Similarly, to the DSA, the bargaining process of the DMA can be divided into three bargaining phases: the agenda-setting, the intra-institutional, and the inter-institutional phase (trilogues) with the provisional agreement. In addition, there is a concluding phase for the finalisation of the legal text. The Commission was tasked with drafting a proposal for regulation during the agenda-setting phase of the DMA. This included the previously mentioned combined public consultation with the DSA during 2020 and the impact assessment of the DMA published on the 15th of December 2020 (European Commission, 2020a). However, in contrast to the DSA, the DMA had no immediate regulatory framework or basis to build upon.

This seems to be reflected by the rejection of the first proposal version of the Commission by the RSB in December 2020 (Regulatory Scrutiny Board of the College of Commissioners, 2020a). After modifications, the adapted version was approved in a second run and inserted into the intra-institutional bargaining on the 15th of December 2020 (Regulatory Scrutiny Board of the College of Commissioners, 2020b).

Analog to the DSA, the bargaining within the institutions drew on the opinions of the EDPS and the EESC. In contrast to the DSA negotiations, the institutions' positions on the DMA were adopted faster and before the year's end, with the Council voting on the 25th of November 2021 and the Parliament on the 15th of December 2021. Closing the adoption process of the DMA before the year's end internal deadline and according to plan is an indication of lower conflict within the Parliament on this regulation than in the case of the DSA.

Bargaining among the institutions, the trilogues, took place between the 11th of January 2022 until a provisional agreement was reached among the bicameral actors on the DMA on the 25th of March 2022. Compared with the DSA, the DMA was negotiated in four, instead of five, trilogues. While both negotiations were swift, the bargaining process between the institutions on the DMA indicates that there was less contest and the original timetable was mostly adhered to.

With the approvals of the COREPER and the IMCO committee of the Parliament in May 2022 as well as the formal vote in the plenary of the European Parliament conducted on the 5th of July and in the Council on the 18th of July, the DMA was signed into law on the 14th of September 2022. The regulation entered into force on the 1st of November 2022 and the provisions became effective six months later. The DMA started to apply by May 2023. From this date onwards, platforms classified as gatekeepers must comply with the regulation. For an overview of the detailed timeline of key events in the DMA bargaining process, please refer to the overleaf presented table. This underlines the procedural steps of inter-institutional preference convergence towards successful agreement of the DMA.

Table 6: Bargaining Process of the EU's Digital Markets Act

	Outcome	Step	Date	Actor(s)
Agenda-setting phase		Public consultation	2 June 2020 to 8 September 2020	EC Public
		Indicative Impact Assessment report	4 June 2020	EC
		Commission submits materials to Regulatory Scrutiny Board	8 October 2020	EC
		Regulatory Scrutiny Board (RSB) 1st opinion Result: Negative	6 November 2020	RSB
		Commission resubmits materials to RSB	6 December 2020	EC
		RSB 2nd opinion Result: Positive with reservations	10 December 2020	RSB
		Impact Assessment report	15 December 2020	EC
	Initiation	**First proposal**	**15 December 2020**	**EC**
Intra-institutional phase		Opinion of the Data Protection Supervisor (EDPS)	10 February 2021	EDPS
		Opinion of the European Economic and Social Committee (EESC)	27 April 2021	EESC
		Presidency progress report	17 May 2021	Council
		Competitive Council guidance for negotiation	27 May 2021	Council
		EP Rapporteur issued draft report	1 June 2021	EP Andreas Schwab
		European Council conclusions	21/22 October 2021	Council
		COREPER agreement on general approach	16 November 2021	Council
	Vote	Adoption Council position	25 November	Council
		EP Committee report	30 November 2021	EP IMCO
	Vote	Adoption EP position	15 December 2021	EP
Inter-institutional phase		1st trilogue	11 January 2022	Council / EP / EC
		2nd trilogue	3 February 2022	Council / EP / EC
		3rd trilogue	1 March 2022	Council / EP / EC
	Success	**Provisional agreement** 4th trilogue	**25 March 2022**	**Council / EP / EC**
Concluding phase	Vote	COREPER approval of provisional agreement	11 May 2022	Council
	Vote	European Parliament IMCO committee approval of provisional agreement	16 May 2022	EP IMCO
	Vote	Formal plenary vote in the European Parliament	5 July 2022	EP
	Vote	Formal vote in the Council	18 July 2022	Council

Outcome	Step	Date	Actor(s)
	Signed into law	14 September 2022	Council / EP
	Publication	12 October 2022	
EU Law	Regulation came into force	1 November 2022	
	Regulation is applicable from	10 May 2023	
	Full application from	7 March 2024	

Source: Author's compilation based on Council of the European Union (2022d), Council of the European Union (2022a), European Commission (2022e), European Commission (2022c), European Commission (2022b), European Parliament (2022a), European Parliament (2022b).

The most prominent bargaining aspects of the DMA were the negotiation of the thresholds that designate an online platform as gatekeeper as well as the provisions on the interoperability of services (Agence Europe, 2022e). Gatekeepers are defined in three broad categories and indicate if a platform holds a market-dominating position (Art. 3 (2a, b, c)). These categories can be tagged as economic gatekeeper, platform gatekeeper and entrenched market position indicators. The economic indicators for a gatekeeper are measured in three ways (Art. 3 (2a)). First, market coverage of a Core Platform Service (CPS), such as online intermediary or search engine services, provided in several member states. Second, market capitalisation or an equivalent valuation measure for the fair market value of online platforms is considered. Third, the annual turnover in the European Economic Area (EEA) in several recent financial years is relevant to determine a gatekeeper position. The platform indicators providing an indication for market domination are the number of CPS offered and reaching specific user numbers in a given jurisdiction and over a number of financial years (Art. 3 (2b)). The final indicator tracks the entrenched market position of platform providers, it is more vaguely defined and leaves room for interpretation on the gatekeeper status, but in essence provides the number of financial years a platform provider should have held a market dominating position to fall under the regulation (Art. 3 (2c)).

The DMA can be explained by inter-institutional preference convergence and path dependency in regulating digital markets in the EU. The convergence of preferences to regulate online platforms under the DMA among the three institutions was based on the negative externalities of online platforms for citizens and the Digital Single Market of the EU (Interview #21, 2023). Years of lengthy court cases had proven that competition rules in the EU were not agile enough to address the specifics of online platforms (Interview #5, 2023). Additionally, some online platforms were too big to regulate with the existing tools and approaches (Interview #19, 2023). The three EU institutions preferred to speed-up enforcement (Interview #20, 2023).

The absence of strong European digital industry players facilitated the inter-institutional preference convergence in the case of the DMA in particular. In contrast to the DSA, the DMA applies only to online platforms that are gatekeepers. These are the very largest online intermediaries that provide complete platform ecosystems and the potential number of online platforms to be regulated is much smaller. The DSA also applies to all online platforms, yet to a different degree in respect to obligations, which is not the case for the DMA. This leaves only a handful of online platforms that are directly impacted by the DMA regulation, the largest and most powerful ones. However, potential beneficiaries of the regulation such as competing platforms or smaller entities as well as civil society and consumer groups lobbied in the DMA bargaining process. Specific interest groups were very vocal, such as the Media and publishers' associations that urged the Council not to adopt a version of the DMA with potential loopholes for Big Tech (Agence Europe, 2021ab, Agence Europe, 2021t). This characteristic of the preferences of the stakeholders made it easier for legislators to pursue regulation and thereby facilitated the inter-institutional preference convergence of the EU institutions.

The DMA proposal was well-received in the Parliament and the institution's position was adopted with 642 votes in favour, 8 votes against and 46 abstentions, which underlines the broad support for the DMA regulation (Agence Europe, 2021ab). However, until the final agreement could be approved by the Parliament in the IMCO committee, with only one vote against and one abstention, there were intra- and inter-institutional political differences that needed to be manoeuvred (Agence Europe, 2022n) (Agence Europe, 2021y). There was openly voiced criticism from the Parliament that the Council presidency, negotiating on behalf of the Member States, would not correspond to a significant extent to their expectations and that the Parliament would not make concessions (Agence Europe, 2022d). This was a step up from earlier comments of the Parliament that requested the Council to be modest and that the Commission should push the Member States forward on some technical issues, while arguing that the Commission has the competency to decide on technical aspects (Agence Europe, 2021h). These statements are a clear indication that the Parliament tried to side-line with the Commission in some aspects of the DMA to exercise pressure on the Council and to influence the technical debate towards a preference convergence that is closer to its own position. Nevertheless, the Parliament heavily bargained with the other EU-institutions on how to define gatekeepers and which role should be granted for NCAs in the Member States. The inter-institutional frictions on protecting SME business interests and the suggested fines for non-compliance voiced by MEPs were also debated within the Parliament (Agence Europe, 2021q). Moreover, the Parliament's rapporteur was calling for increased merger control in digital markets (Agence Europe, 2021h). This implied a more centralised approach to oversight, but the Council favoured that some responsibility remained with the Member States (Agence Europe, 2021s). The Council demanded that NCAs can still investigate DMA related

infringements (Agence Europe, 2021r). This relates to the request of NCAs that urged for a better integration into the new DMA of their entities (Agence Europe, 2021aa). One element to mitigate and facilitate better coordination between the interests of the Commission and the Member States when implementing the DMA was the introduction of the 'The high-level group' (Agence Europe, 2021z). Despite the divergence of arguments in this domain, a diplomatic source suggested that the Council was generally close to the Commission's position with broad investigative powers vested (Agence Europe, 2020j, Agence Europe, 2021a).

5.1 Agenda Setting

The agenda-setting by the Commission in the case of the DMA was an important step to set the legislative train in motion and to enable the inter-institutional preference convergence. This is demonstrated in this section. The Commission proposal for the DMA was not only a first as to propose a regulation on gatekeepers in digital markets, but also one that defined oversight not only by ex-post tools, but also by ex-ante measures that apply to gatekeepers. The most relevant aspects of the Commission proposal on the DMA can be structured along five issue-areas: 1) the threshold definition for gatekeepers, 2) obligations of gatekeepers, 3) interoperability of services, 4) oversight and enforcement, 5) coordination between the Commission and the Member States.

First, the Commission wanted online intermediaries to be designated as gatekeepers if they have at least one CPS provided in three member states. Moreover, a market capitalisation of 65 billion € or more and an annual turnover of at least 6.5 billion € in each of the last three financial years. Within the category of platform indicators, the Commission proposed thresholds of more than 45 million active end users monthly and more than 10 000 active business users within the EU and over the past three financial years.

The second issue area is about the obligations of gatekeepers (European Commission, 2020h, Art. 5). The article detailed obligations of gatekeepers that affect contestability negatively and are considered unfair practices. Core obligations were tailored to levelling the digital market between gatekeepers and end/business users, taming gatekeeper power. In this regard, the Commission proposal restricted the use and combination of personal data between CPSs and other services as well as automated sign-ins of users into other services from gatekeepers (Art. 5 (a)). For business users on the other hand, the Commission proposal opened the possibility to sell their products through other platforms or channels without gatekeepers interfering in the price-setting and conditions of sale, for example by demanding that services or products cannot be sold for a cheaper price elsewhere (Art. 5 (b)). The proposal furthermore introduced that gatekeepers cannot limit business users to engage in business through different channels with customers acquired via a gatekeeper platform (Art. 5 (c)). Providers designated as gatekeepers are furthermore restricted to prevent their

business users from raising complaints with relevant authorities (Art. 5 (d)). Moreover, providers cannot prescribe the use of their identification services for business users accessing their services (Art. 5 (e)). Both, business and end users are further protected from having to register with another CPSs provider in order to use a gatekeeper's platform, as proposed by the Commission (Art. 5 (f)). Finally, it was proposed that advertisers and publishers should be granted the right to receive detailed information about the price-levels and renumeration of their services and products by the gatekeeper and upon request (Art. 5 (g)).

The proposed obligations for gatekeepers on the third issue area of interoperability in the Commission's proposal focussed on the interaction in areas where gatekeepers are software and hardware developers and could therefore exploit this dual role (Rec. 52). The intended effect of the proposal's recital was primarily aimed to provide data access for other developers and to uphold innovation in this sector. The Commission proposal did not entail specifics on messenger interoperability.

The fourth issue area on oversight and enforcement is summarised in Chapter V of the Commission proposal (Chapter V, Art. 18-33). The proposal detailed broad oversight and enforcement powers to the Commission. The Commission could request information from entities under oversight as well as Member State authorities (Art. 19). The Commission designed various measures to execute oversight, among them, interviews and on-site inspections that could lead to interim measures adopted by the Commission in case of urgency or to prevent serious risks or irreparable damages (Art. 20-22). For the monitoring of these obligations and measures, the Commission could draw on external experts and auditors for assistance (Art. 24). Non-compliance determined by the Commission (Art. 25) could lead to fines and penalties being imposed (Art. 26-30). The level of fines could be as high as 10% of the total turnover of the preceding financial year of the gatekeeper (Art. 26) and up to 5% of the average daily turnover in the preceding financial year for periodic penalty payments (Art. 27). Applying these fines and penalties is capped at a maximum of three years for the imposition and a maximum of five years for the enforcement by the Commission (Art. 28, 29).

The fifth issue area on the coordination between the Commission and the Member States is a cross-cutting subject that is most relevant for oversight and enforcement related legal provisions, but also in the implementation and review sections of the regulation proposed. Within the oversight and enforcement coordination, the Commission proposal was very much centred around the Commission with NCAs functioning rather as information providers (Art. 19 (6)). The Commission proposal did not foresee a coordinated role to execute the oversight tasks, such as interviews or on-site inspections that could lead to interim measures, together with the respective Member States (cf. Art. 20-22). Similarly, for the monitoring of obligations and measures, in which external experts and auditors can assist the Commission, no coordination with member states was in the Commission's proposal (cf. Art. 24). Decisions

that determine non-compliance were under the Commission's responsibility with no Member State involvement designed into the proposal (cf. Art. 25). Moreover, fines and penalties are also under sole responsibility of the Commission (cf. Art. 26-30). However, there are additional means for cooperation with Member States as the Commission proposed the introduction of a Digital Markets Advisory Committee that can issue written opinions (Art. 32) and three or more Member States can request a market investigation by the Commission (Art. 33).

In summary, these technical aspects introduced by the Commission set the scene and built the basis for the intra-institutional bargaining within the co-legislators that is examined in the following section. This agenda-setting by the Commission facilitated inter-institutional preference convergence as it provided a starting point for the intra-institutional bargaining through the anticipation of the preferences of both co-legislators.

5.2 Intra-institutional Bargaining

Based on the Commission's proposal of the DMA, the intra-institutional bargaining happens within the Parliament and the Council. Similar to the DSA bargaining within the institutions, the co-legislator's intra-institutional bargaining on the DMA was crucial to pave the way towards the trilogues by setting the institutions' strategies and anticipating the preferences of the other co-legislator. The subsequent technical aspects demonstrate this further preference convergence.

During the intra-institutional phase, the institutions set their trilogue bargaining positions. The Parliament rapporteur Andreas Schwab expected complicated negotiations on the DMA within the Parliament (Agence Europe, 2021i). The preferences of the Parliament and the Council on the definition of thresholds for gatekeeper differed considerably. The Parliament had two prominent bargaining positions over time. Rapporteur Schwab officially proposed thresholds for platforms in sharp contrast to the Commission proposal in June 2021. The proposed thresholds for platforms to be considered a gatekeeper were 100 billion € or more of market capitalisation and annual turnovers of at least 10 billion € respectively. Furthermore, his proposal entailed that the number of end users and business users should be counted per CPS and not across services. Most importantly, the proposal was the only one that would have required providers to offer at least two CPSs to be considered as gatekeeper. The official position of the Parliament for the trilogue negotiations was formed later in November 2021 and entailed significantly lower thresholds, with 80 billion € or more in market capitalisation and at least 8 billion € in respect to the annual turnover. The additional requirement on counting users per CPS was retained in the final Parliament position. However, the two CPSs threshold from the Schwab proposal was dropped and the CPS and user number threshold was lowered to two, instead of the last three, financial years. Although the Parliament's final position proposed relatively high thresholds in relation to the other EU institutions, the previous Schwab proposal

from June 2021 proposed even higher thresholds. Schwab preferred a complete harmonisation, but only for the largest platforms (Agence Europe, 2021o). According to Scott (2021), the rapporteur is known to be an eager advocate for regulating Big Tech. In addition to this, the debate about the DMA was also charged with EU-US rhetoric, with the rapporteur stating, “[…] the rules are set by co-legislators, not by private companies!” and “With the DMA, we’re taking back control” (Agence Europe, 2021c, Agence Europe, 2022e).

The Council position was also formed in November 2021. It proposed a 75 billion € or more market capitalisation threshold and at least 6.5 billion € in annual turnover. In contrast to the Parliament, there were no concessions made on counting the user numbers per CPS and thresholds should be met over the last three financial years.

Aside from the definition of thresholds for gatekeepers under the DMA, the most contested remaining issues circle around obligations for gatekeepers, oversight and enforcement and the coordination between Commission and Member States as well as their roles in this issue areas. Both co-legislators added that advertisers and publishers should be provided with information about prices and renumeration free of charge by gatekeeper platforms (Council of the European Union, 2021a, Art. 5 (1g), European Parliament, 2021b, Art. 5 (1g)). However, the proposal of the Parliament requested metrics that are more detailed including real-time data and complete information about services provided to advertisers and publishers (Art. 5 (1g)). Another aspect in which the Council and Parliament positions converged were the interoperability obligations for hardware and software (Art. 6 (1c) , Art. 6 (1c)) that do not specifically include the added messenger interoperability. Both Council and Parliament detailed the obligations for gatekeepers on compliance with the proposed regulation to a further extent than the original Commission proposal by indicating the importance of effective compliance functions for the institutions (Art. 7, Art. 7). In this aspect, the Parliament position was more detailed by requesting reporting from the providers on the measures taken to increase overall transparency. The proposal entailed decision powers for the Commission to execute this technical area of compliance of gatekeepers (Art. 7 (1a)). Nevertheless, both institutions aligned on a dialogue mechanism between the Commission and gatekeepers to determine the compliance of the gatekeeper measures with the regulation (Art. 7 (2), Art. 7 (1b)). They also incorporated provisions on the re-examination of exemptions granted by the Commission to gatekeepers in public interest cases within one year after granting the exemption (Art. 9 (1a), Art. 9 (1a)). Their positions converged in adding that the Commission can only act upon these ‘in case of urgency’ (Art. 9 (3), Art. 9 (3)). In order to tackle circumvention of the rules, both institutions were determined to close remaining loopholes of the proposed rules (Art. 11, Art. 11). The Parliament added a special provision to prevent circumvention of interoperability, stressing the importance of this issue. Finally, the Council and Parliament added details that allow the Commission to open market investigations (Art.

14, Art. 14). The Parliament added that the Commission can revert to NCAs for assistance (Art. 14 (3a)).

There were bargaining positions introduced by the Parliament. This included changes to the definitions of 'web browser' and 'interoperability' (European Parliament, 2021b, Art. 2) and the provision for the Commission to develop technical standards for interconnectivity of services (Art. 10 (2a)). The Parliament position also empowers the Commission to take delegated acts (Art. 3 (5)). Moreover, the Parliament drafted several reporting and standard setting obligations for the Commission. These encompass an annual reporting obligation for the Commission on their monitoring activities with impact assessment on SMEs added (Art. 4 (3)). In regard to the development of audit standards for gatekeepers, the Parliament position requested that these standards are developed by the Commission together with the EDPS and the European Data Protection Board as well as with civil society organisations and experts (Art. 13). The Commission should be held accountable on their actions by obliging them to annually report on the state of the digital economy (Art. 30 (a)). The report should include detailed market investigations concerning the gatekeepers and their effect on businesses as well as a reporting on activities and measures conducted to supervise them. Reporting should further encompass an assessment of the audit report provisions of gatekeepers and include a social impact assessment. The Parliament requested that these activities are coordinated with the obligations detailed in the DSA. A general ability for the Commission to develop guidelines and facilitate standard setting was also added (Art. 36). During market investigations into non-compliance, the Commission should have the power to temporarily suspend any acquisition activities of gatekeepers according to the Parliament proposal (Art. 16(1a)). The Parliament also wanted the Commission to be able to execute interim measures for new services that are under investigation to become designated gatekeepers (Art. 17 (ba)). With the Parliament proposal, users would also receive the option for a complaint mechanism that empowers both, business and end users (Art. 24 (a)). Moreover, the Parliament introduced a detailed compliance function for gatekeepers. In case of non-compliance, the Parliament's position set a minimum fine of 4% and a maximum of fines up to 20%, that was in contrast to the maximum fine-level of 10% of the total worldwide turnover in the preceding financial year proposed by the Commission (Art. 26). In respect to the coordination among European bodies, the Parliament introduced a High-Level Group of Digital Regulators that should serve as advisory committee representing relevant European bodies, which includes NCAs (Art. 31 (a,b)). The Parliament also made provisions for better coordination between the Commission and the Member States that encourage cooperation and mutual assistance as well as detailed responsibilities for both entities in its position (Art. 31 (c,d)).

On the other hand, there were bargaining positions introduced by the Council. This included a calculation method for the active user metrics to determine the gatekeeper

designation (Council of the European Union, 2021a, Art. 3 (2b)). Another aspect was the restriction of providers so that terms for termination from platform services had to be proportionate to the offence that occurred (Art. 6 (1ka)). The Council further added detailed specifications on the execution and respective powers of the Commission during investigations of gatekeepers (Art. 21) as well as the support and new rights to NCAs. In respect to coordination between Commission and Member States more generally, the Council urged for cooperation to coherently and efficiently enforce the regulation (Art. 32 (a)). It further specified the role of NCAs and the Commission by not allowing decisions that counter Commission ruling under this regulation and by stressing the use of the European Competition Network as platform for information exchange (Art. 32 (a2,3)).

In summary, the technical aspects introduced by the co-legislators during intra-institutional bargaining show the further increased inter-institutional preference convergence that enabled the trilogues.

5.3 Inter-institutional Bargaining

This section provides a detailed overview on the outcome of the inter-institutional bargaining and the respective preference convergence among the EU institutions to reach a provisional agreement on the DMA. The inter-institutional preference convergence towards a consensus on the DMA was facilitated through the absence of strong European digital industry players. The French Secretary of State for the Digital Transition, Cédric O, illustrated the absence of strong European digital industry by stating that "[…] Of the top 10 companies in the world, eight are in the technology sector. Six did not exist 25 years ago and none are European […]" (Agence Europe, 2022a). To contextualise this further, one interviewee described European platforms as factor 10 to 15 times smaller than online platforms from the US and none as providers of a complete platform ecosystem (Interview #6, 2023).

The DMA defines a gatekeeper as an undertaking that provides CPSs (DMA, Art. 2 (1)). This excludes non-commercial online platforms. For other gatekeepers, the following three characteristics of the DMA need to be fulfilled (Art. 3): "(a) it has a significant impact on the internal market; (b) it provides a core platform service which is an important gateway for business users to reach end users; and (c) it enjoys an entrenched and durable position, in its operations, or it is foreseeable that it will enjoy such a position in the near future".

CPSs can be characterised as services with the following characteristics that could be exploited (Rec. 2): These are "[…] extreme scale economies […]" with "[…] often nearly zero marginal costs to add business users or end users […]", coupled with "[…] very strong network effects […]". The authors define the network effects as the "[…] ability to connect many business users with many end users through the multisideness of theses services […]". Along with these economic effects of monopolistic platforms, the authors argue that there is a "[…]

significant degree of dependence of all sorts of users […]" and "[…] lock-in effects […]" that are amplified by a "[…] lack of multi-homing for the same purpose by end users […]". Key strategies to increase the monopolistic powers of these platforms are vertical integration and data driven advantages, according to the authors, that catalyse with the level of integration.

The DMA lists the specific Core Platform Services that fall under market-dominating platform services (Art. 2 (2)):

(a) online intermediation services;
(b) online search engines;
(c) online social networking services;
(d) video-sharing platform services;
(e) number-independent interpersonal communications services;
(f) operating systems;
(g) web browsers;
(h) virtual assistants;
(i) cloud computing services;
(j) online advertising services, including any advertising networks, advertising exchanges and any other advertising intermediation services, provided by an undertaking that provides any of the core platform services listed in points (a) to (i);

When comparing the positions of the EU institutions on the gatekeeper indicators and thresholds with the outcome of the DMA it is striking that the DMA took over the Council position on the gatekeeper market capitalisation threshold. The final regulation defines gatekeepers with thresholds of 75 billion € or more in market capitalisation and at least 7.5 billion € of annual turnover within each of the last three financial years and added that these were counted in the same CPS. The platform indicators measuring market dominance of the DMA align more closely with the Commission and the Council positions. They define gatekeepers with thresholds of 45 million or more active users and 10 000 or more active business users. In contrast with the Parliament's positions, these numbers are not counted per CPS. However, the DMA went a step further in the direction of the official Parliament position. It reduced the number of years in which CPSs must have been provided to qualify as gatekeeper, to the last financial year. The overleaf presented table summarises the positions towards inter-institutional preference converge on the gatekeeper designation under the DMA during the bargaining process.

Table 7: How the Gatekeeper Definition Changed During the Bargaining for the EU's Digital Markets Act

Key bargaining positions	EC DEC 2020	EP (Schwab) JUN 2021	EP (IMCO) NOV 2021	Council NOV 2021	DMA MAY 2022
Economic gatekeeper indicator (Article 3(2), point (a))					
Market coverage: Number of Member States in which one CPS is provided	≥ 3	≥ 3	≥ 3	≥ 3	≥ 3
					the same CPS
Market capitalisation or equivalent fair market value [bn €]	≥ 65	≥ 100	≥ 80	≥ 75	≥ 75
					last financial year
EEA annual turnover in the last financial year(s) [bn €]	≥ 6.5	≥ 10	≥ 8	≥ 6.5	≥ 7.5
	last 3	last 3	last 3	each of the last 3	each of the last 3
					the same CPS
Platform gatekeeper indicator (Article 3(2), point (b))					
CPS(s) provided	1	≥ 2	≥ 1	1	1
End users [millions monthly]	> 45	> 45	> 45	≥ 45	≥ 45
	active users	active users	users	active users	active users
		per CPS	per CPS		
Business users [yearly]	> 10 000	> 10 000	> 10 000	> 10 000	≥ 10 000
	active users	active users	users	active users	active users
		per CPS	per CPS		
CPS provided in / Users established or located in[3]	EU	EU	EEA	EU	EU
CPS / User thresholds met in the last financial year(s)	3	3	2	3	1
Entrenched market position gatekeeper indicator (Article 3(2), point (c))					
If conditions under point (b) are met over a period of financial year(s)					each of the last 3

Source: Author's compilation based on Marinello and Martins (2021) as well as the European Commission (2020h), Council of the European Union (2021a), European Parliament (2021c), European Parliament (2021b), European Parliament and Council of the European Union (2022d), European Parliament and Council of the European Union (2022b).

[3] End users: Established and located; Business users: Established.

The threshold debate indicates that the analysis of the positioning of the EU institutions on the DMA benefits from a detailed overview that contrasts which proposal would have regulated which online platform. The overleaf presented table illustrates these preferences based on a selection of online platforms. Contrary to the Schwab proposal, the outcome demonstrates that not only do platforms originating from the Silicon Valley fall under the DMA, but also online platforms with European origin, such as Booking.com. However, it is acknowledged that the highest burden of the DMA falls on the largest players which originate primarily from the US.

Questioned on how the gatekeeper thresholds were decided, Commissioner Breton said that the selection is oriented along the first half of the Stock 50 index (Agence Europe, 2022e). Given the significant impact this regulation has on US firms, the US Chamber of Commerce was quick to issue statements that condemn the practice as discriminatory (Agence Europe, 2022e). The overleaf presented table contrasts the potential designations of online platforms as gatekeeper during the bargaining process of the DMA and in respect to the previous versions of the legislative text.

Table 8: How the Potential Designation as Gatekeeper Evolved Throughout the Bargaining for the EU's Digital Markets Act

Potential Gatekeeper	EC DEC 2020	EP (Schwab) JUN 2021	EP (IMCO) NOV 2021	Council NOV 2021	DMA MAY 2022
Airbnb	Yes	No	No	Yes	Yes
Amazon	Yes	Yes	Yes	Yes	Yes
Apple	Yes	Yes	Yes	Yes	Yes
Booking Holdings	Yes	Yes	Yes	No	Yes[4]
eBay	No	No	No	No	No
Expedia	No	No	No	No	No
Facebook (Meta Inc.)	Yes	Yes	Yes	Yes	Yes
Google	Yes	Yes	Yes	Yes	Yes
Microsoft	Yes	Yes	Yes	Yes	Yes
Netflix	No	No	No	No	No
Oracle	Yes	No	Yes	Yes	Yes
PayPal	Yes	No	Yes	Yes	Yes
Salesforce	Yes	No	Yes	Yes	Yes
SAP	Yes	No	Yes	Yes	Yes
Slack	No	No	No	No	No[5]
Spotify	No	No	No	No	No
Twitter	No	No	No	No	No
Uber	No	No	No	No	No
Vivendi	Yes	No	Yes	Yes	Yes
Yahoo (Verizon)[6]	Yes	Yes	Yes	Yes	Yes
Zalando	Yes	No	No	No	No
Zoom	Yes	No	No	Yes	No[7]

Note: The selection of online platforms is listed in alphabetical order. Green colour represents potentially designated, while red represents potentially not designated by the respective version of the legislative text. The table is for visualisation purposes only and does not reflect a legal assessment. Calculations for the final version of the DMA are based on available company and market data as of May 2022. Please also note that the COVID-19 pandemic and the war in Ukraine have led to volatility in the market valuations of the companies and could lead to unexpected changes when determining the gatekeeper designation of platforms.

Source: Author's compilation based on Marinello and Martins (2021) and the European Parliament and Council of the European Union (2022d).

[4] Surpassed threshold for economic indicators.
[5] Acquired by Salesforce in 2021.
[6] Sold by Verizon in 2021.
[7] Dropped below economic indicator threshold due to fluctuations in market capitalisation.

Platforms considered gatekeepers have a broad range of obligations (DMA, Art. 5). The first key element of the provisions in this article is to avoid data sharing and cross-service integration of users with one provider. Providers are restricted to use personal data for advertising through third parties (Art. 5 (2a)), the combination of personal data from CPSs (Art. 5 (2b)), the cross-use of the data in other services provided separately (Art. 5 (2c)) and sign-in of end users into different services of gatekeepers (Art. 5 (2d)). These obligations restrict vertical and horizontal integration of users in respect to CPSs in the European Digital Single Market, practices generally referred to as cross-use (Nielsen, 2022). Another element of the obligations is to strengthen business users that are using gatekeeper services (Art. 5 (3),(4)). These provisions safeguard business users from restrictive practices by gatekeepers that prevent them from selling via third-party services or limiting their ability to contact and advertise customers acquired via the service of a gatekeeper. Additionally, end users should be allowed to use content, subscriptions, features and other items provided by gatekeeper platforms, also in case they use software from other business users (Art. 5 (5)). Moreover, gatekeepers are not allowed to interfere with users raising non-compliance of gatekeepers with the respective authorities (Art. 5 (6)). Furthermore, gatekeepers must keep their services accessible to users by not requiring an identification or payment service (Art. 5 (7)). Users of gatekeeper platforms should not be required to register to other CPSs of the gatekeeper (Art. 5 (8)). Finally, gatekeepers must provide advertisers and publishers with daily information on their services rendered via these gatekeeper platforms (Art. 5 (9),(10)). This includes detailed information about fees, prices and renumerations as well as the metrics of the calculations.

The DMA also includes new provisions on interoperability for the Digital Single Market that enable users to switch their messenger services and send messages to users on other messenger services (Breyer, 2022a, DMA, Art. 7). This includes the provision of technical interfaces by providers for interoperation offered free of charge (Art. 7 (1)). The interoperability obligations will gradually increase in scope over four years, starting with basic end-to-end encrypted messaging and file sharing, towards interactions with groups and individual users within two years, until implementation of end-to-end encrypted voice and video calls between users and in interaction with and within groups in four years from designation as gatekeeper (Art. 7 (2)). The implementation of the article is linked to rules limiting the use of personal data (Art. 7 (8)) and the integrity, security and privacy of the services (Art. 7 (9)).

With these market regulating obligations for online platforms come general compliance functions, reporting and audit obligations for online platforms in the EU's Digital Single Market (Art. 28, 11, 15). Providers under the outlined thresholds must notify the Commission within two months (Art. 3 (3)). Additionally, the Commission has the right to perform market investigations to determine the gatekeeper status of existing and new services/practices or to investigate systematic non-compliance (Chapter IV, Art. 16-19). Following this, the DMA

enables regulators to break-up online platforms that are systemically non-compliant as last resort (Knapstad, 2023).

To oversee these obligations, the DMA introduced new forms of oversight over the EU's Digital Single Market. Online platforms that are designated gatekeepers can face various measures from regulators under the DMA. The Commission and the Member States have been given broad investigation, enforcement and monitoring powers (Chapter V, Art. 20-43). In this regard, the Commission's powers under the DMA can be highlighted by the selection of governance tools listed below:

- Broad access to data from online platforms that is necessary to monitor them (Art. 21)
- Conduct inspections and interviews including the recording of statements (Art. 23)
- Interim measures (Art. 24)
- Fines (Art. 30) and periodic penalty payments (Art. 31)
- Cooperation with the NCAs of the Member States (Art. 37)
- Possibility to open market investigations for new services (Art. 41)

The Commission and Council positions on the maximum fine level of 10% of the total worldwide turnover in the preceding financial year was agreed-upon and the 20%-level proposed by the Parliament was rejected (Art. 30 (1)). However, a compromise was struck with fines for iterated non-compliance by gatekeepers that can go up to 20% (Art. 30 (2)).

When examining the detailed outcomes of the bargaining on the cooperation between the Commission and the Member States, three categories of entities are involved. These are NCAs, courts and 'the high-level group', which represents experts from various European bodies and networks (Art. 37-40). The Commission and NCAs share the responsibility to cooperate closely on enforcing the rules under the European Competition Network (Art. 38 (1)). Cooperation with national courts is primarily foreseen as an information exchange and the Commission has the right to submit a written observation on its own initiative (Art. 39 (3)). However, the DMA restricts national courts from ruling against decisions adopted by the Commission under this regulation (Art. 39 (5)). The high-level group can be traced back to a proposal of the Parliament and serves as advisory board with a maximum of 30 members that meets at least once a year or on specific grounds, if requested by the majority of its members (Art. 40). The group will present an annual report to the European Institutions and the Commission has to provide secretariat services for the organisation of the meetings (Art. 40 (4),(6)).

The Commission can also request a European standardisation body to develop standards, particularly in regard to data and interoperability obligations of gatekeepers (Art. 48). Finally, there was a new article introduced detailing exemption grounds in case of public

health or public security repercussions (Art. 10). In summary, the trilogue bargaining was the final step in the inter-institutional preference convergence.

5.4 Path Dependency

The DMA follows a path dependence. This path dependency limits the policy options available for institutional change to legislators. In the case of the DMA, there are two central pieces of (proposed) legislation with direct impact on the DMA: the NCT and the P2B regulation. The NCT is firmly embedded in the further integration of the Digital Single Market of the EU and specifically aimed to update the bloc's competition rules. The NCTs initiative to overhaul EU competition rules was abandoned (European Commission, 2020k). With the failure of the NCT, some core characteristics were carried on to digital markets and online platform regulation (Zimmer and Göhsl, 2021, Interview #20, 2023). The aspects relevant for online platforms were integrated into the DMA.

On the other hand, there was already a legislation that aimed to improve the transparency and fairness in business-to-business relations of online platform ecosystems in the Digital Single Market with the P2B regulation. Moreover, the P2B regulation singled-out specific problems on systemic importance of platforms that required legislators to address it in a separate regulation and with a broader scope that is not only limited to relations between platforms and other businesses (Interview #20, 2023). Hence, the DMA follows this path dependent trajectory and adds new rules to provide a consistent framework that also encompasses business-to-consumer relations.

Another path-dependent aspect is the experience of the EU institutions with the enforcement of the EU's GDPR. There are several lessons learned from the GDPR that were integrated in the DSA and DMA and aspects that link the regulations (Interview #2, 2023, Interview #12, 2023, Interview #13, 2023, Interview #14, 2023, Interview #15, 2023, Interview #17, 2023, Interview #18, 2023, Interview #20, 2023). Most notably the GDPR has a national, decentralised enforcement scheme that resulted in significant backlogs in some Member States. This enforcement design was heavily criticised and described as "bottleneck" in the past (Interview #2, 2023, Interview #14, 2023). In contrast, the DSA and DMA feature a centralised enforcement mechanism that can be traced back to the experiences of EU institutions from the GDPR. This centralised enforcement was described as the "big boom" by one interviewee as the EU Member States delegated their sovereignty for enforcement to the Commission (Interview #21, 2023). Hence, the path dependent trajectory of the GDPR experience determined that the delegation of power from the Member States to the Commission was required for effective enforcement of the EU's online platform regulations.

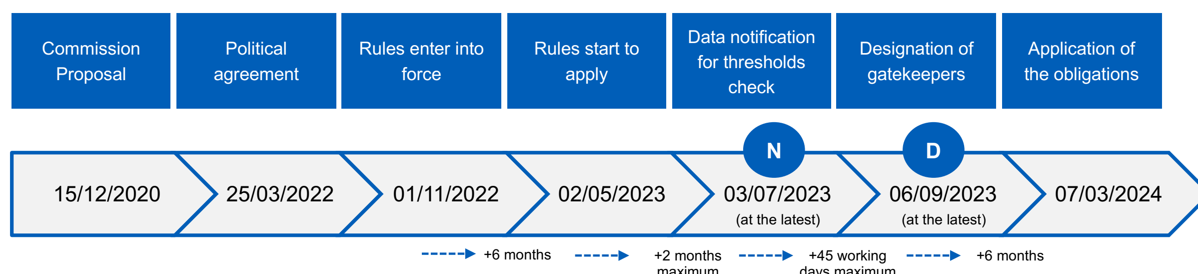
5.5 Outcome

The inter-institutional preference convergence coalesces with path dependency in regulating digital markets that limits the policy options available in legislative bargaining and explains the specifics of the DMA (Interview #2, 2023, Interview #7, 2023, Interview #9, 2023, Interview #10, 2023, Interview #12, 2023, Interview #13, 2023, Interview #15, 2023, Interview #16, 2023, Interview #17, 2023, Interview #18, 2023, Interview #21, 2023). Overall, there was a consensus on the importance of developing a strong EU Digital Single Market (Interview #17, 2023) and to grow the European platform economy (Interview #7, 2023, Interview #9, 2023). While some MEPs had a "Europe first" approach in mind (Interview #3, 2023), there were no major conflict lines within Parliament on the overall EU's regulation of online platforms (Interview #6, 2023). The EU Digital Single Market faces negative externalities from monopolistic gatekeeper platforms that limit contestability or engage in unfair business practices (cf. Moore and Tambini, 2018, p. 3ff). Therefore, one of the main goals of the DMA was to further simplify and to reduce fragmentation in the Digital Single Market (Interview #6, 2023). With the Digital Single Market as a very political project (Interview #6, 2023), the EU wanted to have a global first-mover advantage in the regulation of online platforms (Interview #11, 2023). The initiative for the DMA came along other global pushes to regulate Big Tech (Interview #9, 2023), such as in the US with the House of Representatives investigation from 2020 (United States House of Representatives, 2020). Some elements in the DMA strengthen competition in the Digital Single Market through lower entry barriers for firms and to reduce structural dependency on Big Tech (Interview #3, 2023). Increased reporting and auditing obligations for online platforms in the EU fit into a broader picture of new scrutiny in several policy fields (Interview #18, 2023), such as with supply chain policies.

The path dependency that limits policy options in legislative bargaining in the DMA started with fragmented internet governance in the early 2000s (Prodi), developed into the EU Digital Single Market with the Digital Agenda of 2010 (Barroso II) and the Digital Single Market Strategy of 2015 (Juncker), and resulted in additional legislation to regulate online platforms with the Digital Decade of 2020 (von der Leyen I). The P2B regulation is a specific predecessor to the DMA, while the failed attempt to update EU competition law through the NCT has resulted in some of the rules to be implemented in digital markets through the DMA.

To implement and execute the DMA, the Commission is entitled to the required headcount, financial and technical means. The specific amounts are currently being discussed, but approximated to 81 million € with headcounts ranging from 80 to 220 staff and depend on implementation options selected (Carugati and Martins, 2022). The DMA will be implemented in the EU's Digital Single Market according to the subsequent presented timeline. The Commission established a DMA whistleblower tool to support enforcement (European Commission, 2024e)[8].

Figure 4: Implementation Timeline of the Digital Markets Act



Note: N stands for 'notification' of the platforms and D for 'designation' as gatekeeper.

Source: Author's compilation based on European Commission (2022d).

[8] Citation includes link to DMA whistleblower tool.

The following graphic shows the current gatekeepers that have to comply with the DMA.

Table 9: Seven Gatekeepers under the EU's Digital Markets Act (August 2024)

Gatekeeper	Core Platform Service							
	Social Network	*N-IICS*	*Intermediation*	*Video Sharing*	*Search*	*Ads*	*Browser*	*Operating System*
Alphabet			Google Maps Google Play Google Shopping	YouTube	Google Search	Google	Chrome	Google Android
Amazon			Amazon Marketplace			Amazon		
Apple			App Store				Safari	iOS iPadOS
Booking			Booking.com					
ByteDance	TikTok							
Meta	Facebook Instagram	WhatsApp Facebook Messenger	Meta Marketplace			Meta		
Microsoft	LinkedIn							Windows PC OS

Note: N-IICS stands for 'Number-Independent Interpersonal Communication Service'.

Source: Author's compilation based on European Commission (2023c), European Commission (2024a), European Commission (2024b).

5.6 Interim Conclusion

The EU's regulation of online platforms with the DMA supports both hypotheses made in this dissertation. First, the analysis has shown that the preferences of the EU institutions converged. This was facilitated by the absence of strong European digital industry players. Second. the DMA follows a path dependency in the regulation of online platforms by building on existing initiatives and legislation, such as the failed NCT or the P2B.

The DMA is the first basic framework to govern online platforms from a competition and antitrust policy perspective, i.e. regulating online platforms that hold market-dominating positions and are therefore considered as gatekeepers. With these market characteristics in mind, industry policy motives come to mind (cf. Hoeffler and Mérand, 2023). While the DMA received the most attention in regard to this domain, due to its content, but also the prominent feature of gatekeeper designations, these aspects are best discussed from a consolidated perspective of the DMA and the DSA, initially introduced together as Digital Services Act package. The DMA and DSA were about de-risking, increasing fundamental rights, focussing on democracy and open and fair digital markets, not about protectionism (Interview #21, 2023). One interviewee rejected industrial politics completely as the main driver for the regulation of online platforms in the EU and described the narrative as a "myth" (Interview #2, 2023). Another interviewee added that the nature of the European platform regulation is not protectionist, even if the rhetoric of Commissioner Breton suggested otherwise (Interview #18, 2023). Another interviewee pointed towards some industrial policy relevance (Interview #7, 2023). Many involved stakeholders agreed that industrial policy was not the starting point for the DMA or the DSA, but that the EU's regulation of online platforms was triggered by the defects of digital markets and resulting negative externalities (Interview #4, 2023). Both EU platform regulations have economic metrics and related methodology that define the scope of regulatory action and are universally applied to any firm that surpasses these metrics, irrespective of the origin of the online platform (Interview #20, 2023).

The industrial policy debate is also part of the wider Digital Decade programme, which has other policies with a tailored industrial policy agenda. These are e.g. the Data Act and the complementary Data Governance Act, which aim to create a European market for data and to foster European industry (Interview #4, 2023). Moreover, a brief comparison with the negotiations of another Digital Decade policy initiative, the AI Act, demonstrates that industrial policy goals were more prevailing there, than in the DSA and DMA. For example, in the AI Act negotiations, France strongly voiced concerns about the regulation's impact on its domestic industry (Interview #6, 2023). To further contextualise this debate, one interviewee pointed towards other EU-initiatives that provide an example on how intended and targeted industrial policy preferences translate into policies, such as in the case of the CO2 emissions regulation

and the Fit for 55 European climate law (Interview #21, 2023). In this context, the Digital Decade is part of a broader geoeconomics and industry policy debate, but the two legislations, the DSA and DMA, were primarily driven by other preferences of the EU institutions. Finally, the US-perspective on both EU regulations changed during the legislative process. Initial criticism and accusations towards the EU as protectionist faded and resulted in support from some prominent US-politicians for the EU's regulations of online platforms (Interview #10, 2023).

According to the Corporate Europe Observatory, the financial resources of Big Tech spent on lobbying against the regulation of online platforms in the EU were twice as high as those of the automobile industry, with additional access to think tanks and industry associations (Agence Europe, 2020a). To illustrate this in abstract figures, ten technology companies have spent a third of all lobbying resources on related policies from 2019 to 2020, or about 32 million € (Agence Europe, 2021ad, Corporate Europe Observatory, 2021). Additionally, online platforms tried to lobby US-legislators to pressure their EU-counterparts (Interview #7, 2023). A leaked Google strategy document stands exemplary for the aggressive approach of some online platforms in lobbying against the EU's online platform regulation (Chee, 2020, Espinoza, 2020, Satariano and Stevis-Gridneff, 2020). One interviewee vividly described this perspective as Big Tech wanting to "[…] lobby the hell out of Parliament" (Interview #5, 2023). But lobbying from Big Tech faced some inherent challenges to exert pressure on legislators. The US-origin resulted in limited economic pressure compared to European industry lobbying, for example because of the lack of significant impact on tax payments or jobs in the EU. With this in mind, Big Tech focussed their lobbying activities towards Member States in which they had substantial local investments to lobby against the European online platform regulation with a two-level game logic (Interview #9, 2023).

With all resources and efforts invested, lobbying from Big Tech had one remaining issue. The preferences of online platforms did not converge (Interview #15, 2023). Platform business models differ and platform business is highly competitive, thus firms can profit from the regulation of a competitor (Interview #14, 2023). Hence, lobbying from Big Tech was not homogeneous and less tailored for coherent impact (Interview #8, 2023). In contrast, lobbying from civil society organisations was well coordinated to impact the inter-institutional preference convergence of the legislation and was quite vocal (Interview #8, 2023, Interview #18, 2023). For example, the appearance of Facebook whistle-blower Frances Haugen in front of the Parliament was coordinated by one NGO and interviewees confirmed that it impacted legislators (Interview #8, 2023). Some interviewees pointed towards the bigger picture that the EU's online platform regulation was unavoidable for Big Tech (Interview #10, 2023) and some form of regulation was considered even a good thing by the platforms, as it can protect the lucrative platform ecosystem from which they benefit (Interview #5, 2023, Interview #10, 2023,

Interview #19, 2023). While there is some relevance to this, the EU's regulation of online platforms resulted in even more ambitious legislation and more obligations to larger platforms in the final texts, as Council and Parliament added new aspects to the Commission proposal.

The business interests and resulting preferences of online platforms were not homogeneous in the EU, undermining their power to influence the inter-institutional preference convergence of the three EU institutions. This setting is framed by industry-wide scandals that have caught attention of regulators and citizens in recent years. More generally, the resulting salience of the EU's regulation of online platforms and its resulting awareness by the public cautioned EU legislators to interact with lobbyists (Interview #18, 2023). This public awareness also cautioned Big Tech from active engagement in the final stages of the legislative process to avoid bad publicity (Interview #10, 2023). These factors decrease the effectiveness of domestic interests of online platforms to influence EU legislation, as Newman (2020: 288) demonstrates in the case of the EU's GDPR. The author argues that the Snowden revelations reduced US firms' ability to influence the bargaining for the data protection rules in the case of the GDPR. Additionally, the EU institutional actors were careful not to tailor any exemptions in the legal text that could be used as backdoor for Big Tech to avoid public backlash (Interview #5, 2023).

Another factors was timing. Most of the EU's online platform regulation was negotiated during the Covid pandemic. This restricted lobbyists' access to regulators (Interview #20, 2023), but lobbying via Zoom was reported to have worked without major difficulties (Interview #6, 2023, Interview #10, 2023). Additionally, there was a striking difference between the co-legislators in providing access for lobbyists. The Parliament invited stakeholders actively for the consultations, while the Council did not (Interview #17, 2023). Interestingly, it was also reported that the EC had lobbied the Parliament and the Council for its proposal (Interview #5, 2023). In summary, these findings demonstrate the inter-institutional preference convergence and path dependency that explain the EU's regulation of online platforms through the DMA.

6 CONCLUSION

> *"Our common ambition is to make Europe a true digital power in the world, structured according to our own rules and values."*
>
> European Commission President Ursula von der Leyen
>
> cited by Agence Europe (2021af)

This dissertation concludes that inter-institutional preference convergence and path dependency in regulating digital markets facilitated the EU's regulation of online platforms in the cases of the DSA and DMA.

The theoretical argument presented consists of two components. First, the inter-institutional preference convergence among Commission, Parliament, and Council was necessary. In the agenda setting phase, preference convergence starts the legislative procedure. During the intra-institutional phase, the bicameral legislators mitigate conflict within their institutions and determine the strategic bargaining positions that anticipate the co-legislator's preferences. Finally, during the inter-institutional bargaining or trilogues, further preference convergence irons-out remaining conflict that enables an agreement on new legislation. Second, path dependency in the regulation of digital markets limits the policy options available for legislative bargaining. The limitation can support preference convergence during the three steps of the legislative bargaining. First, in the agenda-setting phase it provides building blocks for new proposals. Second, in the intra-institutional phase previous experience in digital policies can simplify finding a common position within the institutions as internal preferences are partly known, which reduces transaction costs. Third, in the trilogues path dependency supports the detailing of the specifics of the legislative text based on the trajectory of previous legislations and experiences of the institutions. Hence, this dissertation demonstrates that transformative change can take place without immediate critical juncture but based on the coalescence of inter-institutional preference convergence and path dependency.

The empirical findings can be organised correspondingly. First, there was inter-institutional preference convergence among the European Commission, the European Parliament and the Council of the EU that Commission President Ursula von der Leyen described as "[…] common ambition […]" of the institutions (Agence Europe, 2021af). The case studies demonstrate that this convergence is based on a consensus of the EU institutions on the risks that online platforms can pose to citizens and the Digital Single Market. The absence of strong European digital industry players facilitated this convergence. Two aspects of the preference convergence among the co-legislators are particularly evident. On the one hand, the European Parliament generally favoured legislative texts that regulate online

platforms more extensively than the initial proposal of the Commission (Agence Europe, 2021o), except for the gatekeeper thresholds in the DMA. This resembles also the Parliament's preference to only regulate the very largest online platforms, while improving the conditions of European digital markets for SMEs. Moreover, MEPs were concerned about the impact of the DSA and the DMA on free media and the protection of journalists (Agence Europe, 2022o). Additionally, Parliament rapporteurs were underlining the importance of balancing the interests of the Commission with the Member States on the issue of harmonised rules in the EU (Agence Europe, 2021h). On the other hand, the Council generally supported the Commission proposals and demanded that NCAs should be more actively involved in the exchange on the DSA and DMA (Agence Europe, 2021e, Agence Europe, 2021f). This underlines the support of the Council for Member State authority in the regulations.

Second, there was path dependency in regulating digital markets in the EU. The DSA and DMA build on existing initiatives and legislation of previous Commission presidencies that Commission President von der Leyen described as the EU's "[…] own rules […]" (Agence Europe, 2021af). From early internet governance and continued telecommunications regulations in the 2000s, the advancement of the Digital Single Market, until the Digital Decade in 2020, this path dependent trajectory limited the policy options available to legislators. Managing the digital transformation of the EU was a priority of the von der Leyen Commission I and regulating online platforms with the DSA and DMA is a crucial objective of its digital policymaking (von der Leyen, 2019, European Commission, 2020j). The specific path dependency is demonstrated through the revision of the eCommerce Directive for the DSA. The regulation redefines the three main principles from the eCommerce Directive that limit the liability of intermediaries, specify the rules to comply with to conduct business in the (Digital) Single Market and restrict the general monitoring of users. On the other hand, the DMA has a path dependent trajectory from the P2B regulation that focussed on the business to business segment of digital markets only and derives from a general initiative to update competition law in the EU's Single Market through the NCT that was unsuccessful and resulted in a compromise for new rules in digital markets. Common to both, DSA and DMA, is the path dependent trajectory towards centralised enforcement of the regulations that was a lessons-learned from backlogs in the GDPR enforcement.

In Summary, the EU became a global first mover to regulate online platforms facilitated by inter-institutional preference convergence and path dependency in regulating digital markets. An interviewee, strikingly put the consensus of the EU institutions in one sentence: "[…] everyone sat down at the table and got things done in the EU" (Interview #14, 2023). Additionally, the broader path dependency from further integration of the Digital Single Market and the more specific dependency on previous rules and regulations that limit policy options in legislative bargaining, mattered. This dissertation is based on extensive document research

from official sources and news outlets, such as Agence Europe, and was complemented by twenty-one semi-structured interviews. The key findings are summarised in the subsequent table.

Table 10: Summary of the Key Findings

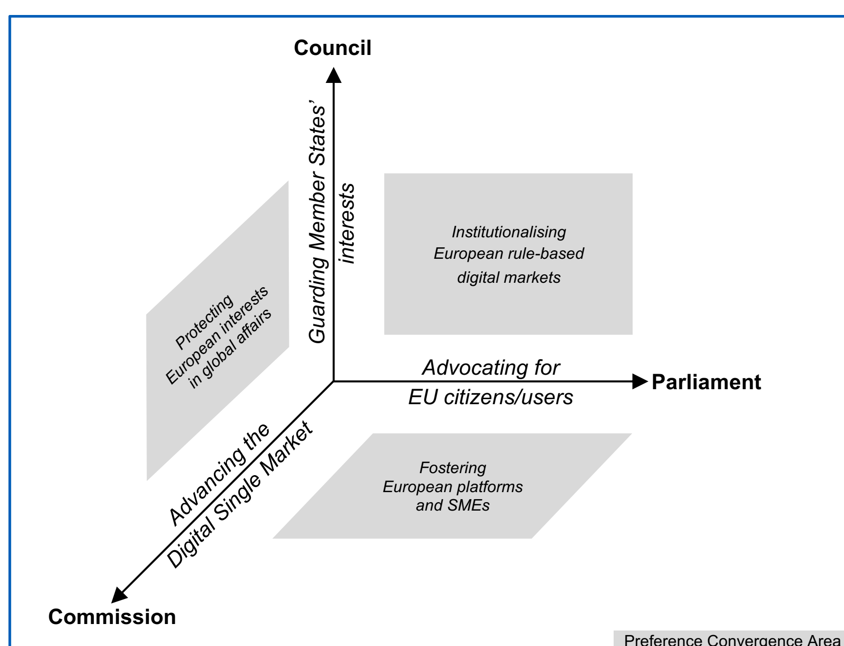
<table>
<tr><th></th><th>Digital Services Act (DSA)</th><th>Digital Markets Act (DMA)</th></tr>
<tr><td rowspan="2">Inter-institutional preference convergence</td><td>Inter-institutional preference convergence based on:
• The risks and challenges from the rise of online platforms for EU citizens, society and democratic institutions in general
• Online equivalent to offline rules summarised under the principle 'what is illegal offline, should be illegal online'</td><td>Inter-institutional preference convergence based on:
• EU competition law lacked the ability to effectively and efficiently address the power and dominance of the largest and most powerful online platforms
• Lengthy EU competition case procedures at the European Court of Justice</td></tr>
<tr><td colspan="2">The importance of the three phases of legislative bargaining in the EU for inter-institutional preference convergence:
1. Agenda-setting: The Commission as agenda setter prepares the basis for the inter-institutional preference convergence and sets the legislative train on track with the proposal for legislation
2. Intra-institutional: The co-legislators determine their strategic bargaining positions for the trilogues and mitigate internal conflict to the level that trilogues can start and have a chance of success
3. Inter-institutional: Trilogues are the last step of the inter-institutional preference convergence by bringing all three institutional actors to the negotiation table to find a consensus on the legislation</td></tr>
<tr><td rowspan="2">Path dependency in regulating digital markets</td><td colspan="2">Shared path dependency:
• 2000s continued telecommunications regulations and early internet governance (Prodi)
• 2010 Digital Agenda (Barroso II)
• 2015 Digital Single Market Strategy (Juncker)
• 2020 Digital Decade (von der Leyen I)
• Lessons-learned from the GDPR: Centralised enforcement through the Commission</td></tr>
<tr><td>Specific path dependency of the DSA:
• 2000 eCommerce Directive as predecessor
• 2016 and onwards with different Communications and Recommendations on content moderation and hate speech</td><td>Specific path dependency of the DMA:
• Platform to Business Regulation (P2B) regulating business to business segment of digital markets, but lacked a more comprehensive approach to digital markets regulation in general and the business to consumer dimension in particular
• New Competition Tool (NCT) initiative failed in revising EU competition law, resulting in new rules for digital markets only</td></tr>
</table>

Source: Author's compilation.

We can transfer the specific findings of this dissertation on the regulation of online platforms through the DSA and DMA to the broader analysis of digital policymaking in the EU. Three key dimensions of preferences can be derived for the institutional actors. First, the Commission prefers the advancement of the Digital Single Market. Second, the Parliament advocates for EU citizens and users. Third, the Council preferes to keep Member States' influence in digital policies. This leads to several areas for potential preference convergence between two of the three insitutions. The Commission and Council have shared preferences

in protecting European interests in global affairs, including digital governance, while fostering European platforms and SMEs is an area of preference convergence between the Commission and the Parliament. Lastly, the Council and Parliament have shared preferences in the institutionalisation of rule based digital markets. The interplay of the three dimensions and areas of potential preference convergence during the three phases of the EU's legislative procedure can support future analyses of bargaining outcomes in EU digital policymaking. The scheme is presented in the subsequent graphic.

Figure 5: Main Areas for Inter-institutional Preference Convergence in EU Digital Policymaking



Source: Author's compilation.

This dissertation makes theoretical and empirical contributions to our understanding of the regulation of online platforms in the EU. The theoretical contribution is twofold. First, it combines the preference-based analysis of LI with the temporal dimension provided by HI. Second, the preference analysis is expanded to include all three key institutional actors, the Commission, Parliament, and Council to reflect the increased importance of the Commission as agenda setter and the Parliament as bicameral legislator in the EU's ordinary legislative procedure. The empirical contribution is threefold. First, it is one of the first accounts that investigates the regulation of online platforms from both lenses, the DSA and the DMA, that were initially introduced as package and remained linked during the legislative procedure. Second, this dissertation provides a single source of information about the legislative processes in the DSA and DMA, including a detailed timetable of the bargaining for both regulations. Third, the bargaining positions of the three institutional actors are presented and

the inter-institutional convergence towards the outcome is traced. The bargaining positions over time are contrasted and presented in text and table format. The empirical discussion is embedded in a larger overview on digital policymaking in the European Union and an outlook on enforcement is provided. This includes a list with the online platforms placed under the highest regulatory scrutiny under the DSA (i.e. very large platforms and search engines) as well as under the DMA (i.e. gatekeepers) at the time of writing. Hence, the theoretical and empirical contributions expand our understanding of the governance of new technologies and digital policymaking in the European Union.

6.1 Alternative Explanations

There are three main alternative explanations for the EU's regulation of online platforms: neofunctionalism, the "Brussels Effect" hypothesis, and the role of industrial policy. The first alternative explanation is that functionalism can explain the regulation of online platforms in the EU. Hooghe and Marks (2019: 1114) describe functionalism as supranational cooperation triggered to scale economies in the provision of public goods. In contrast, neofunctionalism emphasises the role of regional cooperation as driver for further integration in other policy fields. Common to both variants is the key mechanism of spillover that can be described as gradual and self-sustaining process of change (Pollack, 2001, Schimmelfennig, 2014, Niemann and Ioannou, 2015). From a functionalist line of argumentation, the EU's regulation of online platforms is based on spillovers from other policy fields that trigger supranational cooperation for platform regulation. Based on the interviews conducted, little evidence points towards a functionalist mechanism in regard to the enactment of the DSA and DMA in the EU's regulation of online platforms. However, the further evolution from the Single Market to the Digital Single Market and thereby a spillover from physical goods and services market policy to digital policy was described as natural evolution by one interviewee (Interview #16, 2023). The culprit of spillovers is that the trajectory it causes remains indeterminate, resulting in difficulties to explain specific empirical outcomes, such as regulations (cf. Moravcsik, 1993, p. 475f). Hence, functionalist explanations can provide answers to further integration from the Single Market to the Digital Single Market in the EU but fall short to explain the specific development of the EU's online platform regulation through the DSA and DMA.

The second alternative explanation is the so-called "Brussels Effect" that can explain the regulation of online platforms in the EU. The Brussel's effect hypothesis (Bradford, 2012) is based on the argument that the EU has unilateral regulatory power in global markets by setting standards in the EU's Single Market (Bradford, 2019). When other jurisdictions adopt these standards, this results in increased power of the EU in global governance (Bradford, 2019). Following this line of argumentation, the regulation of online platforms in the EU is an effort to maximise the power of the EU globally. However, the debate of the regulation of online

platforms has been focused on levelling the playing field between offline and online worlds in terms of harmful and illegal activities (i.e. in the DSA). Similarly, antitrust and competition rules were not adequate for enforcement in digital markets and for online platforms in particular so that they required new legislation (i.e. the DMA). Both legislations tell foremost a story about European rules and the EU Single Market. This is a story about fixing existing problems in the EU and not predominantly a story about expanding the EU's influence globally, or an external dimension per se. The evidence gathered from the interviews supports this. While some interviewees assessed that the Brussels Effect played a role in the EU's digital policy making and some role in the regulation of online platforms (Interview #3, 2023, Interview #5, 2023, Interview #6, 2023, Interview #18, 2023), there was no conclusive evidence that the DSA and DMA were predominantly an effort to increase the EU's power in global governance through standardisation in line with the Brussels effect argument (Interview #8, 2023, Interview #12, 2023, Interview #15, 2023, Interview #20, 2023). One interviewee rejected the Brussels Effect hypothesis in the case of online platform regulation in the EU as a "myth" (Interview #2, 2023). This was a singular statement, but the overall evidence points towards that the Brussels Effect is not the predominant explanation for the specific regulation of online platforms in the EU through the DSA and DMA as policy package. The Brussels Effect hypothesis is better suited to capture the broader dynamic of the Digital Decade policy programme of the EU, than that of specific legislations, such as the DSA and DMA.

The third alternative explanation is that industrial policy can explain the regulation of online platforms in the EU. Following this line of argumentation, the regulation of online platforms in the EU is predominantly an effort to foster EU industry globally as well as an effort to 'catch-up' with the US and the success story of the Silicon Valley. The EU's industrial policy for digital markets is embedded in the bloc's larger arsenal of policy tools, such as state aid provisions under the General Block Exemption Regulation (GBER) for within the Single Market or the Recovery and Resilience Facility of the NextGenerationEU temporary funding instrument that was set up to counter adverse effects from the Covid pandemic to stabilise the EU's economic performance globally (cf. European Commission, 2023m, European Commission, 2023k). Moreover, the Digital Europe Programme and specifically the Chips Act secure the supply of vital technology for the EU's Digital Single Market (Digital Europe Programme, 2021, Chips Act, 2023). The digital strategy of the von der Leyen Commission I with the EU's Digital Decade include industrial policy for the EU. But the scope and intent to achieve industrial policy goals is not homogenously distributed among the policies. The policies of the Digital Decade require differentiation and benchmarking against the other policies of the policy programme to evaluate the role of industrial politics. When comparing the online platform regulations to other initiatives of the Digital Decade, the DSA has limited, while the DMA has some industrial policy goals. The overarching goal of the DSA is to secure

online environments, and the goal of the DMA is to create fair digital markets. However, there are other legislations of the Digital Decade that specifically pursue EU industrial policy. These are, for example, the Data Governance Act (Data Governance Act, 2023) and the Data Act (Data Act, 2023) of the Digital Decade strategy as well as the subsequent European Strategy for Data (European Commission, 2020e). In comparison, industrial policy is not the predominant explanation for the EU's regulation of online platforms through the DSA and DMA. The results from the interviews support this assessment. While some interviewees agreed that online platform regulation in the EU is linked to industrial politics (Interview #1, 2023, Interview #7, 2023, Interview #9, 2023), others differentiated this causal relation for the DSA and DMA and argued that this was not the predominant cause for the regulation of online platforms in the EU (Interview #2, 2023, Interview #11, 2023, Interview #12, 2023, Interview #19, 2023, Interview #21, 2023). One interviewee added that the Commission is currently "myth busting" the narrative of industrial politics in respect to the DSA and DMA (Interview #21, 2023). However, industrial policy is part of the equation to regulate online platforms almost by definition, as economic policies can affect relative competitiveness between jurisdictions. But industrial policy interests are better suited to explain the overall ambitions of the Digital Decade and that of certain regulations within the policy programme with specific links to industrial policy. Based on the evidence of this dissertation, industrial politics is not sufficient to explain the regulation of online platforms in the EU through the DSA and the DMA when viewed as policy package.

6.2 Limitations and Avenues for Further Research

There are some limitations of this investigation. The research design has two double affirmative or success case studies only. Resulting in a potential weakness due to the lack of variation on the dependent and independent variables. As discussed in the methodology section, the lack of variance on the dependent variable is partly corrected for as the complete universe of cases of online platform regulation in the EU is known and analysed with the DSA and DMA case studies in this dissertation. Nevertheless, the investigation was initially designed as comparative work, contrasting EU versus US regulation. But the complexity and the restrictions on data availability required a shift in focus towards EU cases only. However, this has the advantage that the case studies are much more detailed and the specifics of the cases could be displayed, allowing for a significantly increased analytical depth. Further research should address this comparative dimension and the variation on the dependent and independent variables to include pending and failed cases of online platform regulation as well as cases without preference convergence or path dependency.

This dissertation demonstrates that the study of inter-institutional preference convergence and path dependency can provide new explanatory value to current puzzles of digital

policymaking in the EU. The theoretical debate benefits from research into the role of institutions to investigate the factors that can lead to gridlock in decision-making and into factors that reduce the efficiency of institutions. Furthermore, increased research can examine the modes of governance in digital markets and revisit the specifics of the potential trade-off between regulation and innovation in digital markets (cf. Interview #7, 2023). Moreover, additional research can investigate the role of lobbying for digital regulation specifically and infer the variations in respect to lobbying for traditional industries as well as how different lobby mechanisms work. Finally, future research can open the unit of analysis of this dissertation, the three institutional actors, to analyse which role preference constellations and decision-making processes within these institutions play for bargaining outcomes.

The findings of this dissertation have implications for empirical research in several policy fields, such as digital and technology policy, data governance, AI policy as well as EU Single Market studies in general. Further empirical research can investigate how individual freedom rights of users are defined and enforced in digital markets and which role consumer protection has in digital economies. An important area for further research is (algorithmic) content moderation and the use of recommender systems that influence how product placement is executed and how these systems influence the news we consume. Another aspect is research on how market dominance of technology firms and online platforms is governed. Which institutional aspects matter for effective and efficient enforcement and how does this affect policy design in the future?

The findings of this dissertation can be transferred to the study of global governance of online platforms as well as the legislative decision-making in other jurisdictions, such as the US, South Korea, Australia or the UK. With an increasing number of jurisdictions regulating or attempting to regulate online platforms, this dissertation's findings can be expanded into large-n analyses of digital policymaking and provide a basis for the mapping of digital policies to increase our theoretical and empirical understanding to provide increased transparency about the governance of digital markets.

6.3 Policy Recommendations

At the time of writing, the 2024 – 2029 von der Leyen II Commission is forming and the new political agenda was published recently with its translation into strategy ongoing (Leyen, 2024). There are seven action areas in the agenda of the new Commission that have direct and indirect relevance to the future of online platform regulation and digital policymaking in the EU (Leyen, 2024): First, "A new plan for Europe's sustainable prosperity and competitiveness" that, among other aspects, aims to further develop the (Digital) Single Market and with that the role of digital platforms and data remains a central issue. Second, "A new era for European Defence and Security" emphasises further integration in the sector towards the creation of a

Single Market for Defence, while aspects of cyber security, counter-terrorism, and the fight against organised crime remain strongly related to future online platform governance. Third, “Supporting people, strengthening our societies and our social model” that aims to promote equality and social inclusion. Fourth, “Sustaining our quality of life: food security, water and nature” that among quality and common agricultural policy also focusses on the competitiveness of food value chains. Fifth, “Protecting our democracy, upholding our values” that proposes to introduce a European Democracy Shield to counter the manipulation of information offline and, most importantly, online. Sixth, “A global Europe: Leveraging our power and partnerships” that encompasses the EU’s new geostrategic ambitions, including a new foreign economic policy, the uplevelling of the Global Gateway instrument, and the reform of global governance. Seventh, “Delivering together and preparing our Union for the future” that sets new guidelines for the EU budget to support modernisations and transformations. In summary, this indicates that the regulation of online platforms and digital policymaking will remain a highly current issue during the new Commission and in the future.

In this context, there are three main policy recommendations to draw from my dissertation. First, to prioritise the enforcement of digital policies for credible regulatory action. The European Union will be measured globally and by its citizens for enforcing the DSA and DMA against global online platforms (cf. Interview #8, 2023). Therefore, EU regulators have a strong incentive to avoid paper tiger regulation to establish their credibility to regulate digital markets and to deliver on the promises made to regulate digital markets in the EU. But can regulators keep-up with the rapid evolution of the sector (cf. Interview #6, 2023)?

Second, to harmonise the digital policies governing the EU’s Digital Single Market. The many new rules pose the risk of fragmentation and increase complexity. With an inherently interlinked legislative framework, the requirement for clarity and transparency grows (cf. Interview #7, 2023). Therefore, harmonisation and coherence of digital policies is a key issue to avoid legal patch-work (cf. Interview #5, 2023). This will also close existing loopholes in the regulations and improve efficiency. Moreover, strengthened cooperation and coordination between EU institutions and agencies increase institutional efficiency.

Third, to increase global governance of digital markets. Global firms, require global solutions. This is even more so important for digital markets that evolve at a very fast pace and have global powers. Increased global governance, for example, plays a crucial role to reduce regulatory arbitrage between jurisdictions and to strengthen our multilateral world and its institutions. Different types of governance, multi-layer frameworks, or different levels of institutionalisation, ranging from bilateral partnerships to governance through multilateral organisations, can be part of the options (cf. Interview #12, 2023, cf. Interview #21, 2023). However, policymakers should be cautious about the effects digital regulation can have in different political systems, such as in democratic versus authoritarian regimes.

But what does this specifically mean for future EU online platform regulation and digital policymaking? The implementation of the DSA and DMA frameworks demonstrate the broad applicability of these new governance frameworks that intersect digital and high salience policy issues, such as defence, security or migration, as well as the further development and harmonisation of the Single Market of the EU. Online platform regulation will also benefit from the obligatory access to data from online platforms for researchers granted in the DSA that can shape the future debate on platform regulation and become crucial to validate the effectiveness and efficiency of the regulations (cf. Interview #21, 2023).

What about the future-proofness of the DSA and the DMA? Both regulations are frameworks and adaptive. The DSA does not define what is illegal and therefore remains open to the ascent of new risks and illegal practices. The DMA is already equipped to handle competition issues concerning artificial intelligence platforms (Interview #20, 2023) which provides a certain degree of future-proofness.

How will online platforms adapt to the changing regulatory environment and how do they shape the future regulatory debate? We have already seen delayed or withdrawn apps and services, such as in the case of the Bard/Gemini (Alphabet) and the Threads (Meta) apps which could be deliberate actions of online platforms to retaliate against the EU and not merely delays in making them compliant with EU rules (cf. Interview #4, 2023). Recently announced Apple AI features will not be available in the EU Single Market at start, with Apple blaming the new online platforms regulations and specifically the DMA (Montgomery, 2024). But we have also seen the opening of the Apple Appstore to sideloading of alternative app stores (Kafka, 2024, Porter and Pierce, 2024) as well as the choice to opt-out on AI-generated recommendations by Meta on its social media platforms Instagram and Facebook that can benefit EU users (Associated Press, 2023).

Addressing these questions and considering the policy recommendations helps to navigate existing and to anticipate future risks of digital markets, while it contributes to the broader strategic imperative of the European Commission towards strategic autonomy and de-risking, which is increasingly a question of geopolitics and geoeconomics.

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Annex

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I) Bargaining Positions and Outcome of the Digital Services Act

The following table summarises the positions of the three EU institutions and the outcome of the bargaining for the Digital Services Act.

Table 11: Key Bargaining Positions of the EU Institutions and Outcome of the EU's Digital Services Act

Issue	Commission	Parliament	Council	Digital Services Act
Limited liability	Uphold limited liability except for cases where 'reasonably well-informed' consumers could have believed that the information was not only handled, but also provided or controlled by the provider (Art. 5 (3); Rec. 23)	Restriction of limited liability in cases where platform has control over prices and quality of goods and services offered (Rec. 23)	Restriction of limited liability in cases where platform has control over prices and quality of goods and services offered (Rec. 22a)	• Limited liability persists unless provider appears or actually has control over information transmitted or actual knowledge of illegal activities on its services (Art. 4-6) • Exemptions on liability for providers that offer encrypted or anonymised forms of services (Rec. 20)
Country of origin principle	Keep the country-of-origin principle	Keep the country-of-origin principle	Keep the country-of-origin principle	Country of origin principle
Scope (VLOSEs / VLOPs)	• 45 million monthly active users as threshold to be determined a VLOSEs/VLOPs (Art. 25) • Comment sections in newspapers do not fall under the regulation (Art. 2, Rec. 13) • Dissemination of information in closed groups with finite numbers does not fall under the regulation • No cloud services included	• 45 million users as threshold for VLOSEs/VLOPs (Art. 25) • Public groups are groups with automated access (Rec. 14) • Exclude micro, small and medium providers (Art. 11 (5a), Art. 16, Rec. 2, 37) • Level of obligations of providers to be weighed against burden on providers (Rec. 43a) • Including cloud services and search engines • Cloud services are defined as infrastructure services (Rec. 13, 27)	• 45 million users as threshold for VLOSEs/VLOPs (Art. 25) • Comment section of social network does fall under the regulation, even if ancillary function (Rec. 13) • Dissemination of information in open groups or channels that can potentially be made available to an unlimited number of people falls under the regulation (Rec. 14) • Exclude micro and small providers	• 45 million users as threshold for VLOSEs/VLOPs (Art. 33) • Exclusion of cloud and web hosting services as information disseminators if these services function as infrastructure (Rec. 13) • Exemptions for micro and small providers (Art. 29) • Higher burdens for very large providers, but without a weighing mechanism between burden and benefits (Art. 33ff, Rec. 49, 57, 62, 73, 150)

Issue	Commission	Parliament	Council	Digital Services Act
		• Offering encrypted, anonymised or confidential services result not per se in liability for the providers if illegal content is transmitted via the services (Art. 7 (1 b))	• Largest platforms bear highest burden according to their societal impact (Rec. 54) • Including cloud services and search engines (Rec. 5 and others) • Offering encrypted, anonymised or confidential services result not per se in liability for the providers if illegal content is transmitted via the services (Rec. 20) • Indexing of content and preference-based recommendations do not constitute knowledge of providers about illegal activities on the platform (Rec. 22)	
Fundamental rights in digital markets	Protection of fundamental rights effectively (Art. 1 (2b))	• Ensure that fundamental rights are respected in terms and conditions of services (Art. 1, 12) • Refusal to share personal information with platforms by user cannot have impact on usability of platform services (Rec. 52) • Regulation should adhere to existing fundamental rights codices, such as the United Nations Convention on the Rights of the Child (Rec. 3)	Ensure that fundamental rights are respected in terms and conditions of services (Art. 1, 27)	Reference to the European Union's Charter on Fundamental Rights (cf. Art. 1, 14 (4), 35)
Use of automated tools and content moderation	• Content moderation and use of automated tools allowed (Art. 17, 23, 26), but without general monitoring requirement (European Commission, 2020c, p. 1) • EC to monitor all content moderation decisions taken by platforms in a database	• No specific definition of 'fake' information added but obligation of platforms to label deep fakes (Art. 30a, Rec. 63) • Content moderation with pornographic content conducted by specifically trained personnel (Art. 24b)	• Aligning with the EC position that 'Fake' information is defined as misleading information proposal (Rec. 57, 68) • Moderation to be adapted to level of risk posed by infringement (Rec. 58) • 24 hour deadline to remove content from very large platforms	• Human review on content moderation with obligation to local awareness training for reviewers (Art. 14 (1), Rec. 58) • 24-hour reaction time for very large providers in adherence to the 2016 code of conduct on countering illegal hate speech online (Rec. 87)

Issue	Commission	Parliament	Council	Digital Services Act
	(European Commission, 2020c,, Rec. 51)	• Only sufficiently reliable techniques to be used if automated controls are used (Rec. 52)	and very large search engines (Rec. 46, 58)	• All content moderation decisions to be monitored by the EC (Rec. 151) • In case of use of automated content moderation and algorithmic decision-making, this has to be reported publicly (Art. 14) • No labelling of deep fakes, but safeguards against fake information (cf. Art. 30) • No general monitoring obligation for providers (Art. 8)
Algorithmic decision-making and recommender systems	Several references to increase transparency when algorithmic systems in place, such as for content moderation (Art. 12)	Increased transparency for recommender systems (Art. 24a)	Increased transparency for recommender systems (Art. 24a, Art. 29)	Detailed references and regulations to increased transparency when algorithmic decision-making is used, such as e.g. (Art. 14; 34)
Targeted advertisement	Recipients of advertisements should be informed when and on whose behalf advertisement is displayed (Art. 30, Rec. 52)	• Additional provisions that restrict the use of personal data by providers for advertisement (Rec. 52) • Restriction of the use of dark patterns (Rec. 39a, 62) • Recipients of services can refuse or withdraw consent for targeted advertising (Rec. 52) •	• [Aligned with EC position] • Restriction of the use of dark patterns (Rec. 50a)	• Prevention of profiling, specifically when based on sensitive personal data exploiting the vulnerabilities of users through targeted advertisement with manipulative techniques (Art. 24, 35 (e), 39 (1), Rec. 52). • Restriction of the use of dark patterns (Rec. 67)
User / consumer protection	Suspensions should be communicated transparently (Art. 20)	Recipients of services can receive compensation for damage or loss by providers (Art. 2 (1na), 43, Rec. 83a)		• Communication between contact points and recipients have, among others, to be direct, rapid, electronic and user-friendly (Art. 12) • Compensation of users in case of damage or loss (Art. 54) • Suspension of accounts possible, but unclear how to act in case of multiple accounts (Art. 14, 15)

Issue	Commission	Parliament	Council	Digital Services Act
Rights to information				• All users have right to be informed how their data is used in recommender systems Art. 27, 38, 40 (3)) • Users have right to be informed if illegal products or services have been provided (Art. 32)
Protection of minors	Safeguarding users, particularly minors (p. 12, Rec. 34)	Increased protection of minors (Art. 12 (1c), 13 (a), 17, 24 (1b), 27 (ba), 34 (1a), Rec. 52, 69)	Increased protection of minors (Art. 12, 27, Rec. 34, 38, 46, 57, 58, 67)	Protection of minors implemented
Online interface design and organisation		• Obligations on interface design (Art. 13a) • Providers should not interfere in exploitative ways in the free and autonomous decision-making of users (Rec. 39a)		No deceptive or manipulative online interface design (Art. 25)
Out-of-court dispute settlement	Increased transparency in out-of-court dispute settlements (European Commission, 2020c,, Art. 18)			Out of court dispute settlement (Art. 21)
Traceability of business users	Compliance with information transparency requirements of business users, including a monitoring function (Art. 22, Rec. 49) and monitoring function	• Additionally, trademarks and logos of business users selling on platforms should be visible (Art. 22 (3b.)) • Platforms have to conduct due diligence checks on information provided by business users to improve their traceability (Rec. 39 (b) and Chapter III)	• Platforms should have detailed record of business users contact information Council of the European Union, 2021b,, Art. 24a • Platforms have to conduct due diligence checks on information provided by business users to improve their traceability (Rec. 54, 84 and Chapter III)	Set of traceability of business traders obligations for platforms such as due diligence checks and information storage (Art. 30)
Due diligence and transparency reporting	• Single point of contact by providers (Art. 10; Rec. 36) • Obligations for representatives of providers (Rec. 37; 59)	The entity or person who pays for an advertisement needs to be displayed in case it is different from the entity who displays the advertisement (Art. 30, (2ba); Rec. 63).	Providers have to list illegal products and services removed from the platform (Art. 24c).	Providers have to disclose who paid for an advertisement (Art. 26 (1c)).

Issue	Commission	Parliament	Council	Digital Services Act
Risk assessment and mitigation	• Obligation to active risk management of platforms (Rec. 35, 53) • Obligation to have compliance officers for DSA (p. 15Art. 32, Rec. 65).	• Risk management according to systemic level of threat of platform (Art. 26). • Added fourth systemic risk category on serious threat to public health, including risk for addiction or detrimental effects on physical, mental, social and financial well-being of a person (Art. 26 (1ca)) • Evaluation of the implementation and effectiveness of risk mitigation measures of very large platforms and search engines (Rec. 58)	Risk management according to systemic level of threat of platform (Art. 26).	Four categories of systemic risks retained (Art. 34 (1))
Crisis response mechanism and protocol	./.	./.	./.	Crisis response mechanism was added during the trilogue negotiations (Art. 36)
Oversight and enforcement	• EC can conduct onsite inspections and execute interim measures (Art. 54, 55). • Special powers vested in the EC to execute measures in times of crisis (Art. 37).	• No general monitoring obligation (Art. 7) • ECJ review important but less pronounced as in the Council position (Rec. 16) • Digital Service Coordinators in the Member States have powers to conduct interim measures (Rec. 77), but EC should develop further guidelines and a specification of their role (Rec. 9) • EC has the power to enforce and evaluate the regulation (Art. 73)	• No general monitoring obligation, but specific forms of monitoring possible (Art. 7, Rec. 28) • Full capabilities for review by ECJ and lower responsibilities for NCAs in judicial review (Art. 64a, Rec. 6, 8a, 28, 30 and others) • More executive powers for NCAs and the Digital Services Coordinators of the Member States (Rec. 30, 46, 74, 77 and others) • EC has the power to enforce and evaluate the regulation (Art. 73). • On-site inspections can be held in cooperation between EC and NCAs and Digital Services Coordinators (Rec. 96)	• ECJ can review the regulation (Art. 81) • EC to supervise and enforce the regulation (Art. 56ff) • Interim measures can only be conducted by the EC Commission (Art. 70), except in case of serious harm in which the national Digital Services Coordinator can conduct interim measures (Art. 51 (2e)) • On-site inspections (Art. 69)

Issue	Commission	Parliament	Council	Digital Services Act
Risk management and audits	• Inclusion of civil society organisations into consultation process of designing risk management and audit functions in case of systemic risks (Art. 35, 36, Rec. 59) • Risk assessment system with three categories (Art. 26)	Legal representatives of platforms to be registered with the national Digital Service Coordinators of the Member States (Art. 11)	Legal representatives of platforms to be registered with the national Digital Service Coordinators of the Member States (Art. 11)	• Civil society organisation should be involved in the development of risk management and audit standards case of systematic risks related to very large providers (Art. 45, 47, 48, Rec. 90, 137) • Compliance officers of providers have to report directly to the management (Art. 41)
Data access (incl. researchers)		Broader data access including vetted not-for-profit bodies, organisations and associations (Art. 31)	Data access to vetted researchers only (Art. 23, 31)	Access for researchers (Art. 40)
Code of conduct and (technical) standard settings	EC encourages the development of voluntary industry standards (Art. 34; Rec. 66)	24 months deadline for providers to develop industry standards; then EC in charge (Art. 34; Rec. 66)	Development of voluntary standards together with the board [of national Digital Services Coordinators] (Art. 34)	EC promotes voluntary development of industry standards (industry self-regulation) without specific deadline (Art. 44, Rec. 102)
Fines and penalties	• Up to 6% of annual income or turnover of provider for not complying with the regulation and up to 1% for incorrect, incomplete or misleading information (Art. 42 (3.)) • Maximum penalty up to 5% of average daily turnover (Art. 42 (4.)).	Aligned generally with the EC proposal (Art. 42)	Aligned generally with the EC proposal (Art. 42)	• Non-compliance is a sanctionable offence (cf. Art. 13, 41, 70, 73) • Fines and penalties up to 6% of the worldwide turnover of a provider (Art. 52, 74) • Maximum fine capped at 5% of average daily worldwide turnover or income (Art. 76)
Supervisory fee	./.	./.	./.	Supervisory fee to be determined and charged by the EC to very large providers (Art. 43); does not exceed 0.05% of platforms worldwide annual net income and relative to number of users (Art. 43 (2), (5b,c))

Issue	Commission	Parliament	Council	Digital Services Act
Trusted flaggers	Trusted flaggers for content moderation	No limitation of the number of trusted flaggers, but function can only be awarded by the Digital Service Coordinator (Rec. 46)	Limited number of trusted flaggers (Rec. 46)	No restriction in the number of trusted flaggers (Art. 22)
Coordination with Member States	Digital Services Coordinators in Member States as main point of contact	Increased coordination among Member States and reduced administrative burden for EU-wide cooperation of non-compliance (Rec. 86)	Increased coordination among Member States and reduced administrative burden for EU-wide cooperation of non-compliance (Rec. 86)	Digital Services Coordinators in the Member States and Board to facilitate coordination (Art. 49; 63)

Source: Author’s compilation based on the institutions’ published positions: European Commission (2020i); Council of the European Union (2021b); European Parliament (2022f); and European Parliament and Council of the European Union (2022c).

II) Bargaining Positions and Outcome of the Digital Markets Act

The following table summarises the positions of the three EU institutions and the outcome of the bargaining for the Digital Markets Act.

Table 12: Key Bargaining Positions of the EU Institutions and Outcome of the EU's Digital Markets Act

Issue	Commission	Parliament	Council	Digital Markets Act
Limitation of extreme scale economic and network effects	Gatekeepers cannot limit business users to engage with customers acquired on gatekeeper platforms via other distribution channels (Art. 5 (c))	• Specified the definitions of 'web browser' and 'interoperability' (Art. 2) • Complaint mechanism for business and other users (Art. 24 (a))	Method to calculate active user metrics to determine gatekeeper status (Art. 3 (2b))	Exemptions in case of public health or public security repercussions (Art. 10)
Anti-discrimination of products/services	• Gatekeepers cannot interfere with business users selling products through other platforms, e.g. through means of price-setting or tailoring the conditions of sale (Art. 5 (b)) • Providers cannot dictate the use of specific identification services to business users to access the platforms (Art. 5 (e)) • Gatekeepers cannot require business or other end users to sign-up with other core platforms services to use gatekeeper platforms (Art. 5 (f)) • Advertisers and publishers can request detailed information from gatekeepers about price-levels and renumeration in respect to their products and services (Art. 5 (g))	Advertisers and publishers can receive information about prices and renumeration for free from gatekeepers, including real-time data and detailed data on the services provided to advertisers and publishers (Art. 5 (1g))	Advertisers and publishers can receive information about prices and renumeration for free from gatekeepers (Art. 5 (1g))	• Restricted use of personal data for advertising through third parties (Art. 5 (2a)) • Restriction to combine personal data from CPSs (Art. 5 (2b)) • Restriction of cross-use of data in other services provided separately (Art. 5 (2c)) • Restriction of signing end-users into other services from gatekeepers (Art. 5 (2d)) • Prevent restrictive practices by gatekeepers on business users, such as limitation to sell via third-party services or communications and advertisement towards customers (cf. Art. 5 (3),(4)) • Gatekeepers required to allow access to platform without identification or payment service (Art. 5 (7)) • Users of gatekeeper platforms not required to register with a CPS of gatekeeper (Art. 5 (8))

Issue	Commission	Parliament	Council	Digital Markets Act
				• Daily information for advertisers and publishers on their services rendered via platforms, including detailed information about fees, prices and renumeration as well as the calculation method (Art. 5 (9),(10))
Restriction of personal data use across services	Restricting the use of personal data between core platforms as well as automated sign-ins (Art. 5 (a))			
General transparency provisions	Gatekeepers are restricted to prevent business users to complain with authorities (Art. 5 (d))		Terms for termination of users from a platform need to be proportionate to the offence (Art. 6 (1ka))	Gatekeepers are restricted to prevent business users to complain with authorities (Art. 5 (6))
Interoperability	Introduction of data access for developers to facilitate interoperability in cases where providers are both, hardware and software developers (Rec. 52)	• Interoperability provisions for hardware and software providers (Art. 6 (1c)) • EC can develop technical standards for interconnectivity of services (Art. 10 (2a))	Interoperability provisions for hardware and software providers (Art. 6 (1c))	• Messenger interoperability (Art. 7), including the provision of technical interfaces offered free of charge (Art. 7 (1)) as well as detailed steps for the scope of services included over time (Art. 7 (2)) • End users can use gatekeeper content, subscriptions and features with software from other business users in the gatekeeper platform (Art. 5 (5))
Market oversight, audits and enforcement	• EC can request information from entities under oversight as well as national conduct authorities (Art. 19) • EC can conduct interviews, on-site inspections and adopt interim measures in urgent cases (Art. 20-22) • EC can draw on external experts and auditors for monitoring assistance (Art. 24)	• Strict compliance obligations for gatekeepers (Art. 7), including detailed decision powers vested in the EC in execution (Art. 7 (1a)), with additional mechanisms for coordination between EC and gatekeepers to be developed(Art. 7 (2), Art. 7 (1b)) • Market investigations by the EC (Art. 14), with the option to revert to NCAs for assistance (Art. 14 (3a))	• Strict compliance obligations for gatekeepers (Art. 7) with additional mechanisms for coordination between EC and gatekeepers to be developed (Art. 7 (2) • Market investigations by the EC (Art. 14) • Empowered the EC to execute investigations of gatekeepers (Art. 21)	• General compliance, reporting and audit obligations for platforms (Art. 28, 11, 15) • EC has the right to perform market investigations to determine gatekeeper status (Art. 16-19) • Broad investigation, enforcement and monitoring powers (Chapter V, Art. 20-43)

Issue	Commission	Parliament	Council	Digital Markets Act
	• Non-compliance should be defined by the EC (Art. 25)	• Annual reporting by EC on monitoring activities and impact assessments regarding effect on SMEs (Art. 4 (3)) • Audit standards to be developed by EC in cooperation with EU Data Protection Supervisor, the European Data Protection Board and civil society organisations and experts (Art. 13) • Annual report on the state of the digital economy by the EC (Art. 30 (a)) • EC can develop guidelines and facilitate standard setting (Art. 36) • EC can temporarily suspend acquisition activities of gatekeepers (Art. 16(1a)) • EC can conduct interim measures for new services that are investigated to become gatekeepers (Art. 17 (ba))		
Fines	EC can levy fines and penalties; fines as high as 10% of total turnover of up to 5% of the average daily turnover for period penalties; based on the preceding financial year (Art. 26-30)	Minimum of 4% and maximum of 20% fines of total worldwide turnover in preceding financial year (Art. 26)		• Maximum 10% fines of total worldwide turnover of the preceding year (Art. 30 (1)) • Up to 20% fines of total worldwide turnover of the preceding financial year in case of iterated non-compliance by gatekeepers (Art. 30 (2))
Coordination between EC and Member States	• NCAs functions as information providers to the EC (Art. 19 (6)) • No shared responsibility between EC and NCAs for execution (cf. Art. 20-22) • No shared responsibility between EC and NCAs for monitoring (cf. Art. 24)	• EC can issue delegated acts (Art. 3 (5)) • High-Level Group of Digital Regulators as advisory committee representing European bodies and NCAs (Art. 31 (a,b)) • Mutual assistance and cooperation between EC and Member States (Art. 31 (c,d))	• Coordination of efforts between EC and Member States to coherently and efficiently enforce the regulation (Art. 32 (a)) • Use of European Competition Network as platform for information exchange between EC and Member States (Art. 32 (a2,3))	• Cooperation between EC and Member States through the European Competition Network in enforcing the rules (Art. 38 (1)) • EC can submit written observation on own initiative to national courts (Art. 39 (3)) • National courts restricted in adopting decision rulings against

Issue	Commission	Parliament	Council	Digital Markets Act
	• No shared responsibility between EC and NCAs to define non-compliance in respect to the regulation (cf. Art. 25) • No shared responsibility between EC and NCAs to determine fines and penalties (cf. Art. 26-30) • Digital Markets Advisory Committee consisting of the NCAs that can issue written opinions (Art. 32) • Market investigations by the EC on the request of three or more Member States (Art. 33)			decisions adopted by the EC under the DMA (Art. 39 (5)) • EC can request European standardisation board to develop standards, particularly in regard to data operability and gatekeepers (Art. 48)

Source: Author's compilation based on the institutional actors' published positions: European Commission (2020h); Council of the European Union (2021a); European Parliament (2021b); and European Parliament and Council of the European Union (2022b).

III) Interview Statistics

Twenty-one semi-structured research interviews were conducted under the condition of anonymity.

Interview Stakeholder Group Distribution

Stakeholder category (custom order)	**Number of interviews** (n = 21)
European Commission	3
Council of the EU	1
EU Member States	4
European Parliament	4
International Organisation	1
Online platform (or industry representation)	4
Civil society organisation	4

Interviews Conducted

Interview number	Interview date (chronological order)	Mode
1	29 June 2023	In-person
2	04 July 2023	Videoconference
3	10 July 2023	In-person
4	11 July 2023	Videoconference
5	04 August 2023	Videoconference
6	22 August 2023	Videoconference
7	23 August 2023	Videoconference
8	30 August 2023	Videoconference
9	30 August 2023	Videoconference
10	31 August 2023	Videoconference
11	11 September 2023	Videoconference
12	13 September 2023	Videoconference
13	15 September 2023	Videoconference
14	19 September 2023	Videoconference
15	19 September 2023	Videoconference
16	20 September 2023	Videoconference
17	20 September 2023	Videoconference
18	21 September 2023	Videoconference
19	21 September 2023	Videoconference
20	06 October 2023	Videoconference
21	18 October 2023	Videoconference

IV) Interview Questionnaire

This two-page interview questionnaire was used for the interviews:

Doctoral Research Patrick Baldes | 2023

This research interview is conducted by

Patrick Baldes

Research Associate and doctoral candidate, Technical University of Munich (TUM), School of Social Sciences and Technology, Chair of European and Global Governance.

Further information at: https://www.hfp.tum.de/governance/team/

For my doctoral research project on

The European Regulation of Big Tech:
Preference Convergence and Inter-institutional Bargaining

Goal of the dissertation

To explain how the EU became a front-runner in substantially regulating online platforms.

Dissertation supervisors

Prof. Dr. Eugénia da Conceição-Heldt, Technical University of Munich (TUM)
Prof. Kathleen Thelen, Ph.D., Massachusetts Institute of Technology (MIT)

Funding

This research is funded by the Technical University of Munich's Institute for Advanced Study (TUM-IAS), which serves as the flagship institute for top-level international research at TUM.

Purpose of the interview

To validate and complement publicly available information.

Organisational aspects

Duration of the interview: 30 – 45 minutes (can be adjusted based on your availability)
Interview mode: In-person or remote via Zoom

Confidentiality

The answers provided will be used anonymised and in a non-attributable way. Neither name, position, nor affiliations of the interviewee will be published.

Thank you for your time in supporting my doctoral research!

If you have further questions or can recommend additional experts to be interviewed, please do not hesitate to contact me via patrick.baldes@tum.de or my mobile at [redacted].

Technical University of Munich (TUM) | Richard-Wagner-Str. 1 | 80333 Munich (Germany)
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Interview Questionnaire – Digital Services Act & Digital Markets Act

Date	
Time	
Format	in person / video conference
Location	
Interviewee (entity)	
Function of interviewee	
Interviewer (entity)	Patrick Baldes (TUM)

1 Regulating Digital Markets in the EU

- Why was it crucial for the EU to further regulate the Digital Single Market?
- Which were the controversial issues of the DSA and DMA?
- To which extent were the DSA and DMA negotiations linked?

2 Preferences of the EU-institutions

- Where did we see preference convergence or coalitions among the EU institutions?
- Who was in favour or against the regulations in the Council / the fractions of the Parliament?
- What kind of interactions happened between your institution and tech firms?
- To which extent was the regulation of online platforms a way of protecting European economic interests?
- Is there evidence for US-interference in the legislative process?
- Did external shocks play a role (e.g. Covid-19 pandemic or the war in Ukraine)?

3 Inter-institutional negotiations (trilogues)

- It is very difficult to get information on the trilogues, can you tell me more on how the inter-institutional negotiations functioned?
- What is your take on the role that the negotiators of the institutions played during the trilogues?

4 Closing

- From your point of view, what is the importance of the regulations for the future of the tech sector?
- Do you have any final remarks?

Thank you for your time!

Note: Mobile phone number redacted by author for this annex.