EU Platform Regulation and its Implications for the Metaverse: An Analysis of DSA, DMA, and Related Legal Acts

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1 Introduction[1]

In recent years, the European Union (EU) has significantly changed its attitude towards digital tools and technologies, platforms, services and markets. After years of adopting a more liberal stance, it has now strengthened its regulatory measures to meet the challenges of digitization. A decisive moment was the adoption of the General Data Protection Regulation (GDPR)[2] in 2016, which marked the beginning of a series of new regulations that have already been adopted as part of the Commission's strategy "A Europe Fit for the Digital Age" (European Commission, n.d). Against this background, the question arises as to whether these regulatory approaches already have implications for metaverses. The following article will first summarize the individual legal acts and then show the connections to the metaverse.

2 Legal Acts of European Platform Regulation

A total of five legal acts can be assigned to platform regulation of the EU (Steinrötter et al., 2025), but due to reasons of space only the Digital

1 This chapter that has been published in a longer version as Müller & Kettemann, '§ 7 Plattformregulierung' in Steege/Chibanguza (eds.), Metaverse. Rechtshandbuch, pp. 135–147 and has been translated and significantly updated for this volume. All online sources were retrieved on 31 July 2025 last.

2 Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons regarding the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), OJ L 119, 1.

Services Act (DSA)[3] and the Digital Markets Act (DMA)[4] will be examined in detail. The other three acts, namely the Data Governance Act (DGA)[5], Data Act[6] and the Artificial Intelligence Act (AI Act[7]) will not be described in detail but their applicability to the Metaverse will briefly be analyzed in the second part of this article.

2.1 Regulating the Social Power of Platforms: Digital Services Act (DSA)

The DSA is an EU regulation that came into force in November 2022. The DSA and the DMA, which were co-negotiated at the same time, aim to create a safer digital space in which the fundamental rights of users of digital services are protected and to create a level playing field to promote innovation, growth and competitiveness in the European single market.

The DSA partially replaces the e-Commerce Directive[8] and further develops it through new due diligence obligations and the establishment of more uniform supervision throughout the Union, but retains the traditionally innovation-friendly liability regime (and the basic exemption from liability for third-party content if actual knowledge is lacking). The aim of the e-Commerce Directive was to create a legal framework that facilitates the free movement of intermediary services within the EU in order to promote innovation and e-commerce. The DSA now calls on digital platforms in

3 Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on an internal market for digital services and amending Directive 2000/31/EC (Digital Services Act), OJ L 277, 1.

4 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), OJ L 265, 1.

5 Regulation (EU) 2022/868 of the European Parliament and of the Council of 30 May 2022 on European data governance and amending Regulation (EU) 2018/1724 (Data Governance Act), OJ L 152, 1.

6 Regulation (EU) 2023/2854 of the European Parliament and of the Council of 13 December 2023 on harmonised rules on fair access to and use of data and amending Regulation (EU) 2017/2394 and Directive (EU) 2020/1828 (Data Act).

7 Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence and amending Regulations (EC) No 300/2008, (EU) No 167/2013, (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144 and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828 (Artificial Intelligence Act).

8 Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce'). OJ L 178, 1.

particular as responsible actors in the fight against specific illegal content and formulates important procedural, transparency and compliance obligations (Gerdemann & Spindler, 2023, p. 3).

2.2 Regulating the Economic Power of Platforms: Digital Markets Act (DMA)

The DMA seeks to limit the economic power of "Big Tech" platforms in digital markets. Although the competition law provisions at EU law (namely Articles 101 and 102 of the Treaty on the Functioning of the European Union, TFEU) and member state level apply to digital platforms also, they have been described as "*too little, too late*" in recent years. The justification for this is particularly evident in the long duration of proceedings by the European Commission against platforms that have not been able to improve competition in the market (Podszun et al., 2021, p. 60f.). The DMA moves from the so-called *ex-post* approach (i.e. that fines or other measures can only be imposed after a violation has been determined by the authorities) of classic competition law to an *ex-ante* approach and contains a total of 21 different due diligence obligations that are considered harmful to competition in digital markets. These due diligence obligations do not apply to all online platforms, but only to those designated as gatekeepers by the European Commission. For these general requirements, specific thresholds follow in Article 3 (2) DMA, all of which are fulfilled by the well-known Big Tech companies.

3 Applicability of the Legal Acts to Existing Metaverses

3.1 Applicability of Platform Regulation Acts for Metaverses

a) Application of the DSA

In the case of an offer for users in the Union, metaverses fall within the scope of the DSA due to the marketplace principle, even if they do not have an establishment in the Union. From a factual point of view, metaverses are to be regarded as hosting services in the tripartite division of intermediary services: In order to represent the virtual world and interact with it, the operators must store information of the users on their behalf, so that the

requirements of Art. 3 lit. g no. iii DSA for hosting services are met. Not directly relevant, but as an indication for the classification under hosting services, is also the fact that in most cases the design of the metaverses is technically and with regard to the applicable rules in the hands of their operators.

A special case is represented by *completely decentralised* metaverses. There is a lack *of a* hosting service that operates the metaverse, but there are *several* operators. Because the DSA continues the concept of the e-Commerce Directive, it will have to be assumed that the DSA cannot be applied here. This is also supported by the fact that there are no provisions for separate responsibilities, as is the case in Art. 26 GDPR, for example.[9] At the moment, however, no market-ready metaverse can be seen that does not allow attribution to a hosting service, so these considerations do not yet have any practical relevance.

At the heart of the DSA are due diligence obligations standardised in Chapter III, which initially affect all intermediary services and then individual regimes for all hosting services and then the even more specialised online platforms and very large online platforms and online search engines. Only if these obligations are complied with do the exclusions of liability now standardised in detail by Art. 4–6 DSA apply (previously Art. 12–15 e-Commerce Directive implemented in member states' kaw). In this respect, Art. 1 para. 2 lit. a DSA correctly speaks of a "conditional exemption from liability".

Since metaverses fall under the definition of hosting services, the question arises as to whether they also meet the requirements for online platforms as special hosting services. According to the legal definition of Art. 3 lit. i DSA, the decisive factor here is that, in addition to the storage of users' information, "public dissemination" takes place, which does not constitute a secondary function. Based on the reshaped understanding of "communication to the public" within the meaning of Section 15 (2) UrhG, Article 3 (k) of the DSA is based on the fact that a "provision of information to a potentially unlimited number of third parties" takes place; unlike the UrhG, it is about information that is provided on behalf of users. In metaverses, this data can be found, for example in the generally accessible design of the avatar by individual users or in the transfer of virtual items

9 With reference to metaverses Kaulartz/Schmid/Müller-Eising, RDi 2022, 521 para. 39.

via NFTs. This means that **metaverses are online platforms within the meaning of the DSA.**[10]

First of all, metaverse operators must comply with the provisions of Art. 11–15 DSA, which apply to all intermediation services. Here, further obligations are now being introduced compared to the e-Commerce Directive: For example, contact points for authorities, the commission and users must be kept available (Art. 11, 12 DSA) In the absence of establishment in the European Union, a legal representative in the European Union must be appointed in accordance with Article 13 of the DSA. Finally, the general terms and conditions of all intermediary services must meet certain requirements (Art. 14 DSA). Finally, the transparency obligation for content moderation under Art. 15 DSA should be mentioned. According to the legal definition of Art. 3 lit. t DSA, this refers to how intermediary services deal with illegal content. As hosting services, providers of metaverses must also comply with the obligations of Art. 16–18 DSA and contain the provisions on the precise design of notification and remediation procedures for illegal content and the obligation for providers to report serious crimes to law enforcement or judicial authorities if they become aware of them.

In their function as online platforms, the provisions of Art. 19–28 DSA apply. For smaller providers of metaverses, reference should be made at this point to the provisions of Art. 19 para. 1 subpara. 1 DSA within the meaning of Recommendation 2003/361/EC, which limits the regime of obligations for online platforms to Art. 24 para. 3 DSA (Kraul, 2023); however, with the exception that these are not very large online platforms (= an average of 45 million active users in the Union and corresponding designation by the Commission, Art. 33 paras. 1, 4 DSA). Articles 19–28 of the DSA contain a variety of different obligations, such as the establishment of an internal complaint management system (Art. 20 DSA), other transparency obligations, including with regard to advertising and the use of recommendation systems (Art. 24, 26 et seq. DSA) or the online protection of minors (Art. 28 DSA). If metaverses are platforms that allow the conclusion of distance contracts, in other words online trading platforms, the provisions on the traceability of traders (Art. 30 DSA) or on the information of consumers under Art. 32 DSA must be followed.[11] Here, too, exceptions apply to micro and small enterprises, Art. 29 para. 1 DSA. Since the distinction between

10 Using the term, Kaulartz et al., RDi 2022, 521 para. 56, but without apparent further classification under the requirements of the DSA.

11 Kraul, Das neue Recht der digitalen Dienste, § 4 marginal no. 178.

online platforms and very large online platforms is based solely on the number of active users, it may also be possible in the future to apply the obligations of very large online platforms regulated in Art. 33–43 DSA.

b) Application of the DMA

For the application of the DMA to metaverses, there is no designation of metaverses as central platform services – regardless of the variable prerequisites of influence on the internal market and the consolidated and lasting position with a view to the future. Part of the ex-ante approach now being pursued is the possibility for the Commission to designate new services by means of a market investigation under Art. 19 DMA and thus avoid (quasi-)monopolistic digital markets for future platform services. Since this is an essential part of the DMA, an adjustment of the list of central platform services that can be justified on the basis of Art. 290 para. 1 subpara. 2 TFEU cannot be carried out by the Commission itself by means of a delegated act (Art. 288 TFEU), but by means of an adaptation of the DMA via the ordinary legislative process (Schmidt & Hübener*, 2023)*. The **DMA is therefore not currently applicable to metaverses**, but with the corresponding advancement of technology, the adaptation of the list of central platform services appears to be a suitable instrument to prevent market failure.

c) Applicability of the Other Provisions of Platform Regulation

The other provisions of platform regulation also do not directly address metaverses, but are applicable to them in view of their technology-open foundations. Among the two data-related legal acts, the planned provisions of the Data Act may be particularly relevant for operators of metaverses: Since access to the metaverse will already be partially, but even more so in the future, linked to the use of AR/VR glasses, the regulation on the "horizontal right" to hand over user data to data holders in the case of IoT devices will be relevant. It also seems possible that the interoperability regulations can ensure a certain standardization of data formats in metaverses. The provisions on the interoperability of data only apply to data intermediation services (Art. 26 paras. 3, 4 in conjunction with Art. 29 Data Act) and operators of data rooms pursuant to Art. 28 et seq. Data Act. However, if these services have the success predicted by the Commission (European

Commission, n.d),[12] large parts of the digital economy, such as operators of metaverses, will use data switching services and data spaces in the near future and will therefore inevitably have to follow the standardisation of these services.

In the area of the AI Regulation, individual metaverses will not be able to do without AI (Paal 2022, p.194), even if metaverses are once again not directly accessible to regulation. Based on the named risk classes, operators of metaverses will design the use of their algorithms in a legally compliant manner.

3.2 Platform Regulation and "Private Orders" of the Metaverse

The statutory requirements already mentioned to general terms and conditions or the "private regulations" of the operators of metaverses are changing due to new provisions in the legal acts of platform regulation.

First and foremost is Art. 14 DSA, which deals with the general terms and conditions of platforms. In addition to the minimum requirements for the content of the GTC described in Art. 14 para. 1 DSA, Art. 14 para. 4 DSA now requires that the interests of users must be taken into account in the moderation of content and in complaints handled by platforms. The users of fundamental rights, such as the fundamental right to freedom of expression, are explicitly mentioned here. Contrary to the previous case law of the Federal Court of Justice, this is a direct, "horizontal" fundamental rights binding of the platforms, regardless of their size (Spindler, 2021, p. 545 (551); Quintais et al., 2022.)

A further influence on private orders can be shown on the basis of the FRAND conditions, which can be found in Art. 6 para. 6, 12 DMA, Art. 6 para. 2 DGA and Art. 8 para. 1 Data Act. The overarching goal of these provisions, which are similar in content, can be seen in the fact that they shape access to "data treasures" in the same way and do not make them dependent on the position of power of the data holders – currently initially platforms, and in the future possibly also operators of metaverses. In the broadest sense, these requirements can be understood as safeguarding the fundamental rights of users, primarily their freedom of contract, which

12 European Commission, European Data Strategy, https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/europe-fit-digital-age/european-data-strategy_de (last accessed July 31, 2025).

is protected in terms of fundamental and human rights, for example by the general freedom of action under Article 2.1 of the German Basic Law (BVerfGE 95, p. 267 (303f)), the freedom of occupation or the freedom to conduct a business (Article 12 of the German Basic Law, Article 15 of the Charter of Fundamental Rights) or guarantees of property in Article 14 of the German Basic Law or Article 1 of the 1st Additional Protocol to the ECHR[13] is protected. In the context of practical concordance, this justifies the encroachment on the fundamental rights of the service holders.

4 Conclusion

In addition to the "normative power" of platforms, the Union legal acts on platform regulation also regulate (Mendelsohn, 2021, p. 857 (857f); Kettemann, 2020) the factors that justify the success of platforms with data and its algorithmic evaluation. With regard to metaverses, it can be seen that the legal acts are open to future digital developments and are already determining the design. Specifically, in the near future, the operators of metaverses will have to comply with the extensive due diligence obligations for online platforms within the meaning of the DSA and – provided that the concept of the "horizontal law" of the Data Act is not comprehensively changed – ensure that the data obtained can be made available to users. Not relevant at the moment, but possible with appropriate economic success, is also an application of the DMA to ensure sufficient competition between the various operators of metaverses. This is made possible by the technology-open design of the legal acts and the possibility of accelerated adaptation to technological developments.

References

European Commission. (n.d.). *A Europe fit for the digital age.* https://ec.europa.eu/info/strategy/priorities-2019-2024/europe-fit-digital-age_de (last accessed July 31, 2025).

Gerdemann, S., & Spindler, G. (2023). *Das Gesetz über digitale Dienste (Digital Services Act) (Teil 1). Gewerblicher Rechtsschutz und Urheberrecht* (GRUR), 2023(3), 3.

13 Human rights case law has so far been issued in the context of regulations of social tenancy law, most recently Pařízek v. Czech Republic, No. 76286/14, judgment of 12.01.2023, § 53f.

Kaulartz, M., Schmid, F., & Müller-Eising, M. (2022). *Das Metaverse – eine rechtliche Einführung. Recht & Digitalisierung* (RDi), 521.

Kettemann, M. C. (2020). *The Normative Order of the Internet: A theory of rule and regulation online*. Oxford University Press. (Oxford Scholarship Online; Print ISBN 978-0-19-886599-5; First published July 27, 2020) publikationen.ub.uni-frankfurt.de+9lehmanns.de+9researchgate.net+9rsw.beck.de+1beck-online.beck.de+1

Kraul, S. (Hrsg.). (2023). *Das neue Recht der digitalen Dienste* (1st ed.).

Mendelsohn, J. (2021). *Die „normative Macht" der Plattformen – Gegenstand der zukünftigen Digitalregulierung? MMR – Multimedia und Recht*, 857.

Paal, B. (2022). *Metaversum und Recht*. In S. Gräfe (Hrsg.), *Telemedicus Tagungsband zur Sommerkonferenz 2022 – Das Recht der Informationsgesellschaft* (pp. 185–195).

Podszun, R., Bongartz, R., & Langenstein, G. (2021). *The Digital Markets Act: Moving from competition law to regulation of large gatekeepers. European Competition and Market Law Review* (EuCML), 60.

Quintais, J. P., Appelman, P., & Fahy, E. (2022, December 14). *Using terms and conditions to apply fundamental rights to content moderation*. SSRN. https://ssrn.com/abstract=4286147

Schmidt, M., & Hübener, S. (Hrsg.). (2023). *Der neue Recht der digitalen Märkte* (1st ed.).

Spindler, Gerald (2021): Anmerkung. In: GRUR 2021, S. 545–551. Most recently BVerfGE 95, 267 (303f).

Steinrötter, J., Heinze, R., & Denga, S. (2025). *EU Platform Law*.