

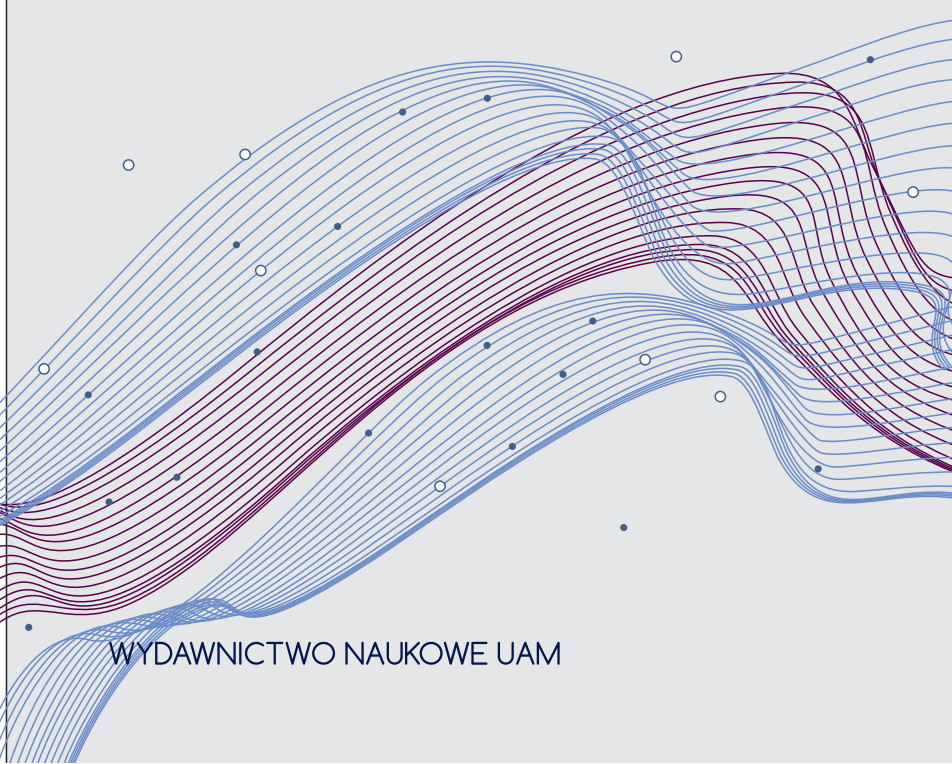
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PRAWA UŻYTKOWNIKÓW
NA JEDNOLITYM RYNKU CYFROWYM

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RIGHTS OF USERS
IN THE DIGITAL SINGLE MARKET

WYDAWNICTWO NAUKOWE UAM



HANDBOOK

UNIwersytet im. Adama Mickiewicza w Poznaniu

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Igor B. Nestoruk

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1.4. EU Consumer Protection Policy towards Digital Transformation

The starting point for determining the extent to which EU consumer protection law affects the legal position of consumers should be an explanation of whether and how the policy on consumer protection, which has been conducted on the level of European Communities for nearly half a century, addresses the development of digital technologies, or more broadly, the shaping of the information society. At the outset, the situation that emerges from the review of selected sources below can be summarized by the slogan “what is illegal offline should be illegal online” (Fig. 1).

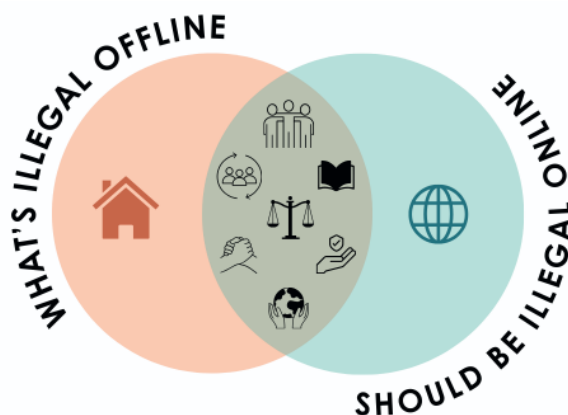


Figure 1: Consumer protection policy in the digital environment

In the Figure 1 both spheres (online and offline) are treated equivalently and are in a relationship of (partial) mutual overlap. The icons placed in the shared area are intended to symbolize the catalogue of fundamental consumer rights. Beyond shared area, distinct areas are left, highlighting the specific characteristics and unique differences of each of these spheres.

A key element in understanding this slogan is the concept of the “consumer” adopted in one of the first *soft law* documents⁴⁵ outlining non-binding regulatory principles in the area of consumer protection policy. In the ‘First programme’ of 1975, the EEC Council recognized that the “consumer is no longer seen merely as a purchaser and user of goods and services for personal, family or group purposes but also as a person concerned with the various facets of society which may affect

⁴⁵ EU *soft law* represents a specific issue considered in the discussion on the sources of EU law – cf. J. Köndgen, *Die Rechtsquellen des Europäischen Privatrechts*, in: K. Riesenhuber (ed.), *Europäische Methodenlehre: Handbuch für Ausbildung und Praxis*, Berlin 2006, p. 155.

example. It should be expected that users learn more about how online platforms determine accuracy and error rates of their algorithmic tools. The reporting template includes reporting the “contextual information,” which may constitute one of the tools to address the broader problem of better understanding of content moderation as “mass speech administration.”⁶⁴ This brings the analysis to the ultimate question of who will analyse the data on content moderation, and how it will impact assessment of the compliance with due diligence obligations, provided that effective protection of fundamental rights, including freedom of expression, is one of the main objectives of the DSA?

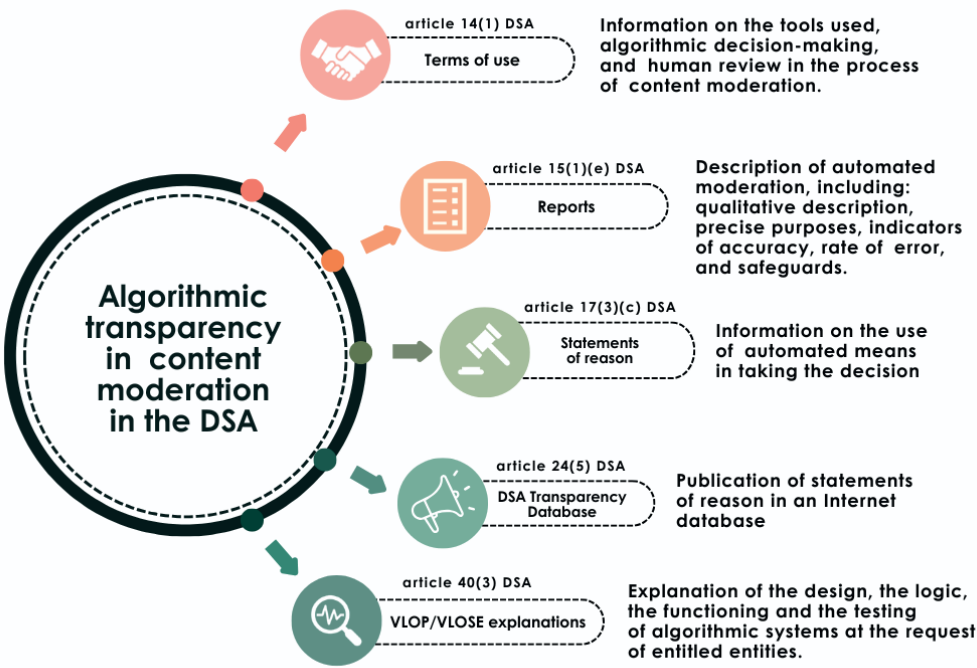


Figure 3: Algorithms in moderation – information obligations

Firstly, transparency should demonstrate compliance with the DSA due diligence framework, and primarily the DSCs and the European Commission are responsible for its supervision and enforcement.⁶⁵ Furthermore, transparency is important for individual users, especially as information needed to seek redress,

⁶⁴ E. Douek, *Content Moderation as Systems Thinking*, “Harvard Law Review” 2022, vol. 136, no. 2, p. 528.

⁶⁵ Enforcement issues are subject to discussion in Chapter V.

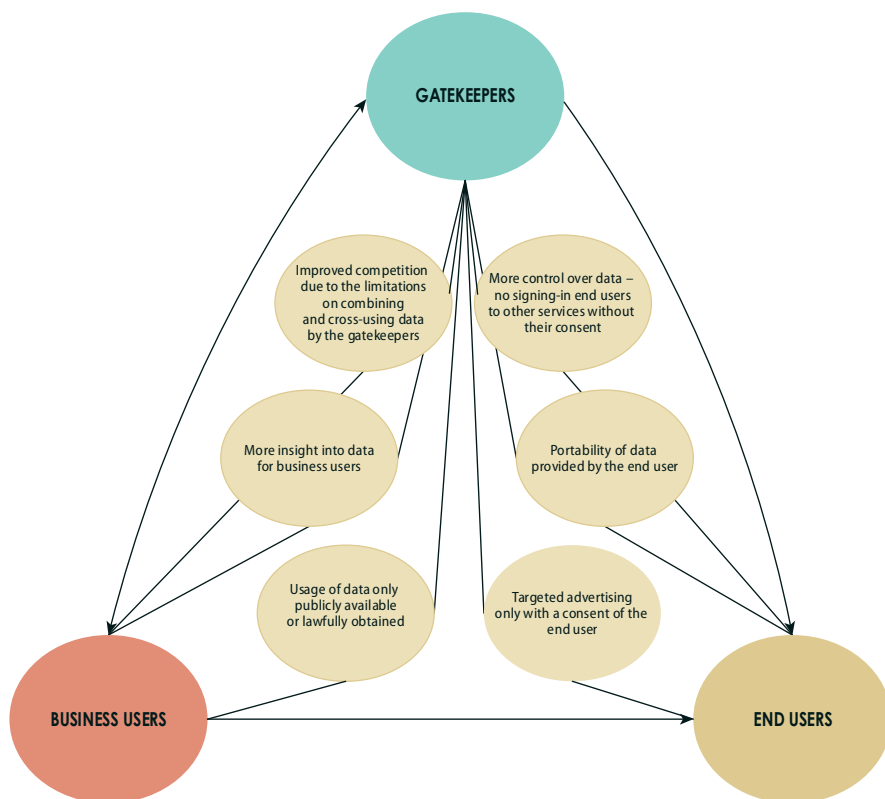


Figure 5: Key users' rights regarding use of data

4.5.2.2. Interoperability and similar rights

Interoperability is one of key factors ensuring that competition is not distorted by high entry barriers imposed by incumbents (or gatekeepers) and that markets therefore remain contestable. It guarantees that if new software or an online service (e.g. online application) is developed, it will be available to users of the main operating systems, for example.

In this context, Art. 6(7) DMA obliges gatekeepers to ensure effective interoperability with and access to (with the aim of granting interoperability) hardware and software features accessed or controlled via the operating system or virtual assistant to the same extent as they are available to services or hardware provided by the gatekeeper. Thus, providers of hardware and providers of services shall obtain access free of charge to markets arising from ecosystems created by gatekeepers.

include internal complaint mechanisms, entitlement to refer the dispute to an out-of-court dispute settlement body, or compensation claims in national courts (Figure 7). The DSA also ensures **the right to lodge a complaint to a DSC** in the state of establishment or location of a recipient.

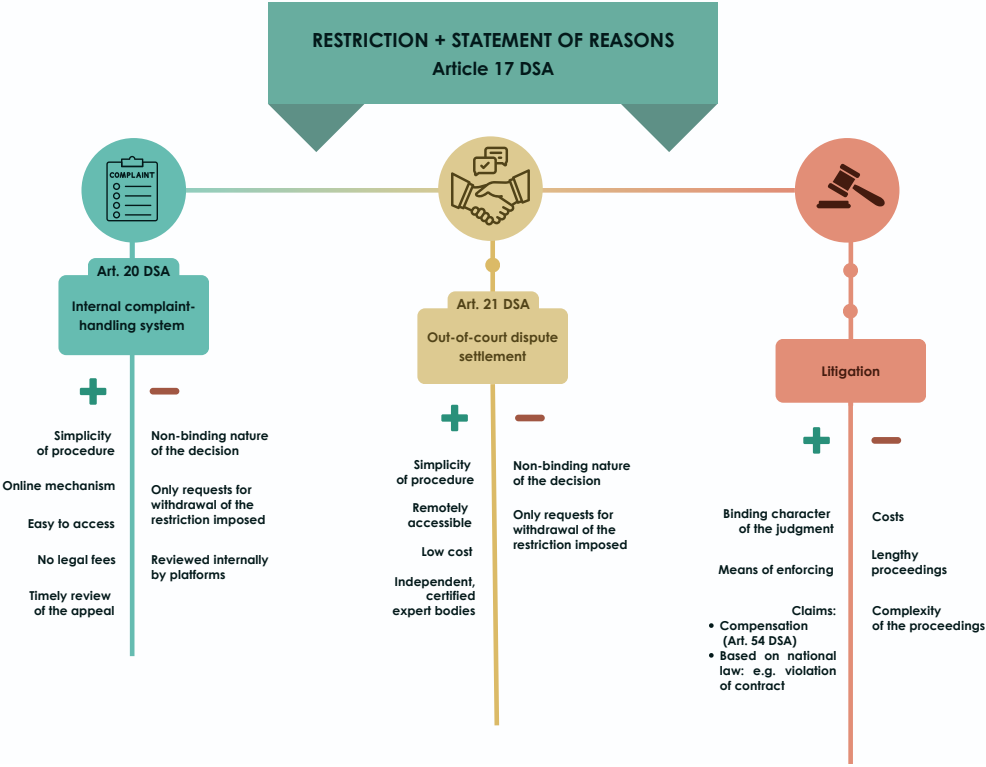


Figure 7: Remedies for users

In the context of remedies, the DSA refers to: (1) ‘service recipients’ in Art. 20 and 21 including individuals or entities who submitted notices (according to Art. 16)⁴⁰; (2) a ‘service recipient or any body, organisation or association mandated to exercise the rights conferred by this Regulation’⁴¹ Art. 53 in the context of the right to lodge a complaint; and (3) only to a ‘service recipient’ in Art. 54 addressing compensation claims. Therefore, **any user who has reported illegal content** can complain to the platform under the same conditions as service recipients, and if that user is affected by the decisions listed in Art. 20(1) DSA, he or she is entitled to select any out-of-court dispute settlement body.

⁴⁰ D. Lubasz underlines that the right to report illegal content is not and cannot be restricted only to service recipients, D. Lubasz, M. Namysłowska (eds.), *Akt o usługach cyfrowych. Komentarz*, Warsaw 2024, p. 400.

⁴¹ Art. 86 DSA.