

The unanswered need to identify consumers on online platforms

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Outline

Limited access to user data

Previous perspectives

A contract law problem

Concepts of intermediaries

EU law: E-Commerce Directive, GDPR & DMA / DSA



Limited access to user data



Receiver or provider of good or service



Name, address, e-mail, phone number

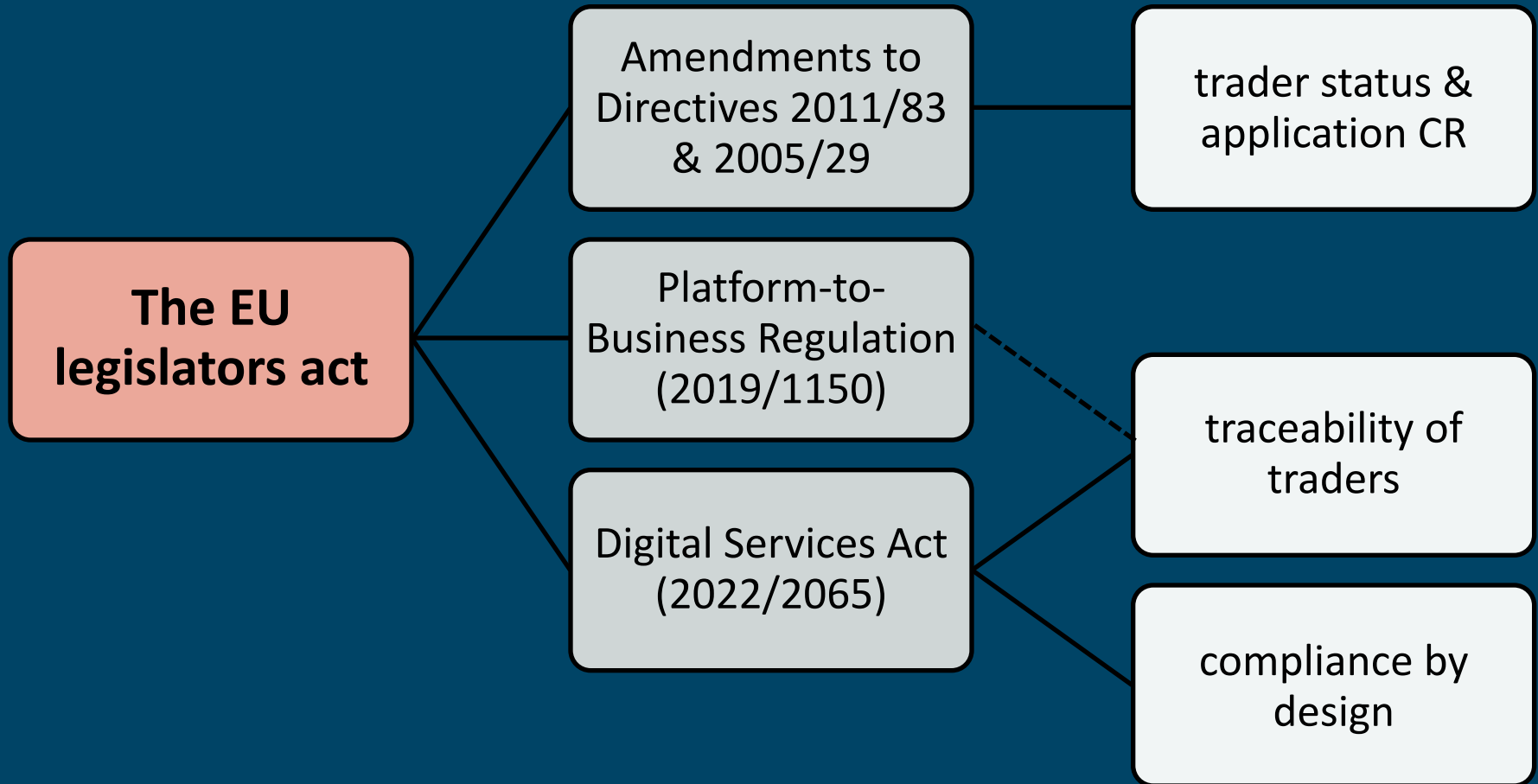


Gradual sharing of some data



User trust & privacy + service cost

Previous perspectives



A contract law problem (1)

Examples: damage after rental on Airbnb / customer does not collect or pay personalised order on Uber Eats

Unknown contract partner?

Offer / acceptance

Validity requirements

Stake: liability actions

Platform dispute resolution (DR)

Summons

Physical address!

Platform operator duties

Disclose ID if platform DR fails?

General role >< specific protection



A contract law problem (2)

Vending machine / physical market / ...	Platforms
<ul style="list-style-type: none">➤ Rapid transactions➤ Rapid transfer➤ Counterparty mostly unknown➤ But: approachable, if foreseen	<ul style="list-style-type: none">➤ Rapid transactions➤ <i>Delayed</i> transfer➤ Counterparty mostly unknown➤ But: approachable <i>within platform design</i>, if foreseen

A contract law problem (3)

Distance communication	Platforms
<ul style="list-style-type: none">➤ Slower transactions (<i>negotiations</i>)➤ Delayed transfer➤ Counterparty mostly unknown➤ But: safety measures through <i>terms of transfer</i>	<ul style="list-style-type: none">➤ Rapid transactions➤ Delayed transfer➤ Counterparty mostly unknown➤ But: <i>terms of transfer must fit within platform design</i>



A contract law problem (4)

Website	Platforms
<ul style="list-style-type: none">➤ Rapid transactions (<i>bookings</i>)➤ Delayed transfer➤ <i>Customer</i> mostly unknown➤ But: safety measures through <i>advance payment</i>	<ul style="list-style-type: none">➤ Rapid transactions➤ Delayed transfer➤ Counterparty mostly unknown➤ But: terms of transfer must fit within platform design

A contract law problem (5)

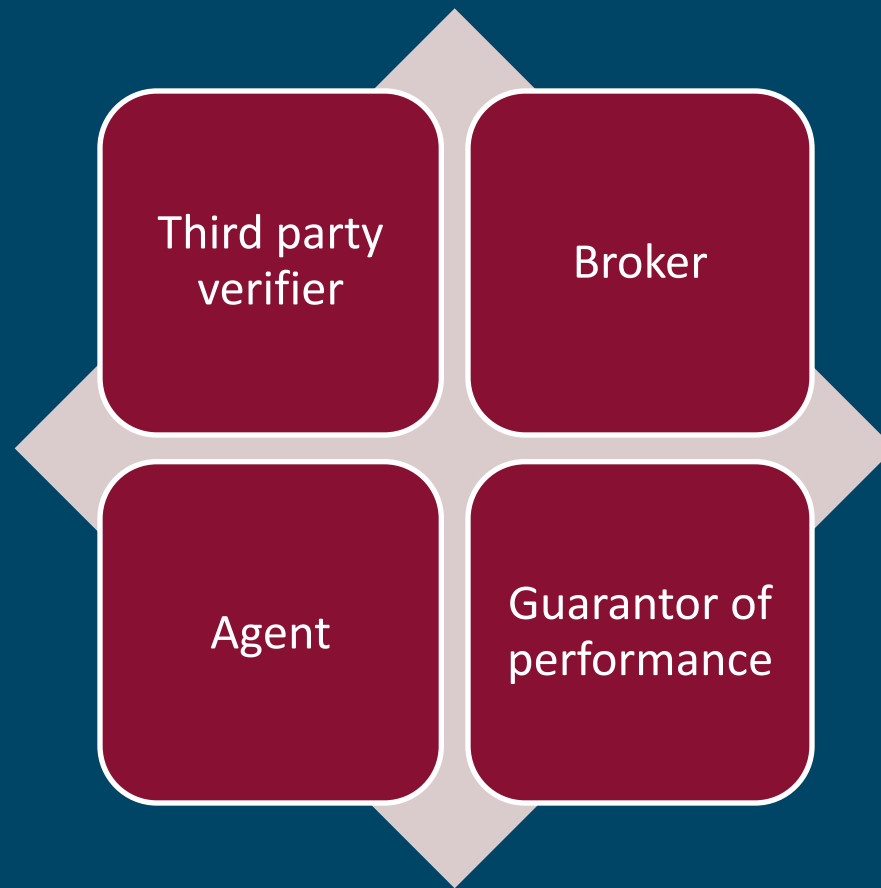
No formal validity requirements (most cases)

- But: safe transfer not guaranteed (see above)
- But: insufficient consent (limited)

Timing is key!

- Terms of transfer as a guarantee
- Identification before transfer: a wise step, if possible within design

Concepts of intermediaries (1)



Concepts of intermediaries (2)

Third-party verifier

- Independent?
- Should share the verified data

Broker

- Verifies parties' identities
- Connects parties based on their preferences and its own motives
- Does not take part in contract conclusion
- ➔ Disclose identity before contract conclusion!

Concepts of intermediaries (3)

Direct agent

- Takes part in conclusion
- Disappears afterwards
- Identity sharing not mandatory at contract conclusion (BE & DE)
- Sharing required for useful effect of contract

Indirect agent

- Takes part in conclusion
- Party to the contract: passes on sums, goods and rights received
- Should not disclose identity: implied confidentiality
 - Violated by users (unless required by law, e.g. hotel registration)
 - Violated by platform operator



Concepts of intermediaries (4)

Guarantor of performance

- Not personally obliged to execute, but may lead to damages
- Cf. dispute resolution, extended withdrawal, money-back guarantee

Escrow agent

- Object cannot be withheld indefinitely
 - Transfer of price
- >< Disclosure of identity



EU law (1)

E-Commerce Directive

'Hosts' (cf. DSA):
far-reaching protection *if* mere
passive-technical position

'Information service providers':
not beyond rules of country of
establishment *if* mere information
service

GDPR

Data processing for the preparation
or execution of contracts

No separate consent needed

Data sharing within contract
networks



EU law (2)

Digital Markets Act: gatekeepers



Restricted transactions between traders and their 'acquired' customers



Mandatory use of platform payment / identification service



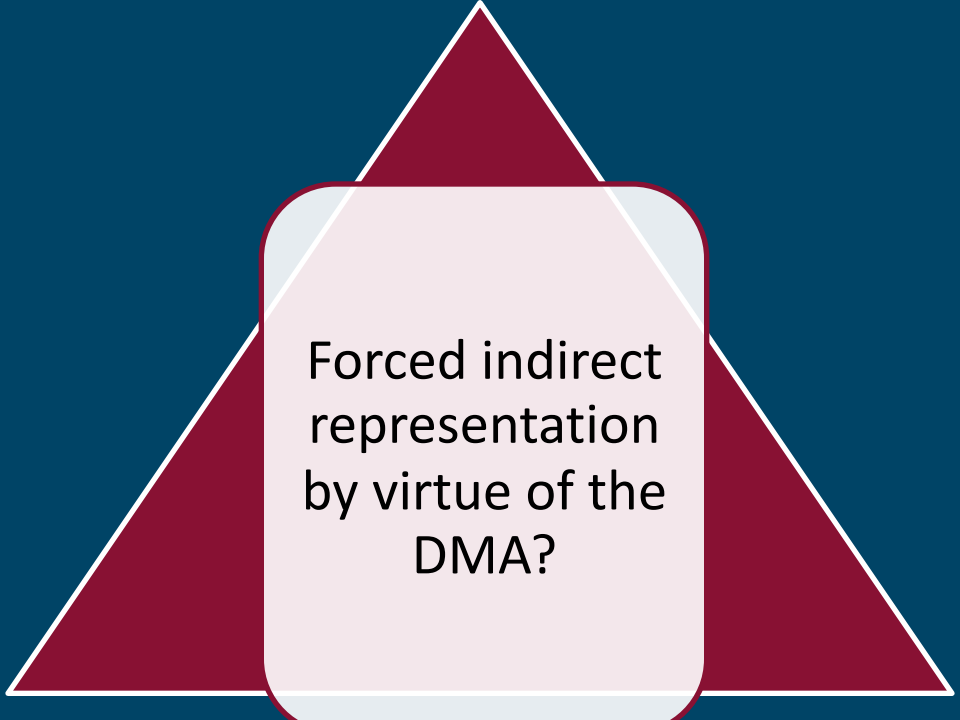
Access to end user data: **opt in required** >< GDPR?

Digital Services Act



Traceability of *traders*

Conclusion



Forced indirect
representation
by virtue of the
DMA?

Thank you!



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