

**Public and Private Law
and the Challenges
of New Technologies
and Digital Markets.
Volume I. Regulatory
Challenges**

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Introduction

New technologies are changing the contemporary marketplace in all its aspects. However, these changes have not been either continuous or uniform. Indeed, some of the new market entrants are proud to call themselves 'digital disruptors.'

As a result legislators are faced with one of the most difficult challenges of recent years as they have to address the diversified impact of the digital market on the behaviour of market players, emergent new (digital) market roles as well as the structure of the market itself. This monograph presents an analysis of selected issues related to these new technologies and the digital market, which, apart from many benefits, bring also many attendant risks. Each study refers not only to current, often controversial problems, but also has a unique significance for the practice. The book is divided into three parts which cover the most pressing concerns. They discuss opportunities but also barriers generated by the introduction of new technologies in various areas of social and economic life in the context of regulatory challenges in the EU Member States.

The aim of the publication is to identify problems at the intersection of new technologies and the economy, and to address the question about the role of the state and the law in building a new digital economy.

The publication is a joint work of scholars representing a number of academic centres in Europe. The monograph *Public and Private Law and the Challenges of New Technologies and Digital Markets. Volume I. Regulatory Challenges* comprises 19 chapters divided into three parts, which bring together issues related to their titles, namely: "Public Administration and New Technologies," "Digital Platforms in the Digital Market," and "Protection of Personal Data."

The starting point is a reflection on the impact of regulatory techniques on the establishment and development of a digital single market in the European Union. The author of the chapter draws attention to the fact that it is necessary not only to choose the right form of regulation for the digital market, but also to apply uniform principles of implementation in all Member States, which would make it possible to build a market based on fully harmonised regulations. As such, the chapter written by Beata Pachuca-Smulska refers to the whole book, rather than only to the part devoted to the issues of public administration. In turn, Elena di Carpegna Brivio in the following chapter takes a narrower view of new technologies in the digital administration presenting the Italian road to an open digital administration. The author outlines the impact of new technologies on the transparency of activities undertaken by administrative authorities. By doing so, she shows how a digitalization of public administration becomes a useful tool for increasing social awareness of the activities of the latter thus making the relations between administrative bodies and citizens more open. The next two chapters deal with the impact of digitalization on changes in the Polish procedural administrative law. The authors of the third chapter, Agnieszka Skóra and Paweł Kardasz, explain the meaning and consequences of using

electronic documents. They indicate which legal measures are necessary to ensure security of transactions carried out with the use of electronic documents within the framework of administrative proceedings and document numerous problems faced by administrative authorities employing new technologies. In chapter four, Agnieszka Korzeniowska-Polak discusses the use of electronic mail in the Polish administrative procedure. In her analysis, she refers to the principle of limited formalism in the form and content of an official administrative request, but only in cases where the law does not require more formalised means of communication. She stresses that the proposed solution speeds up and simplifies communication; however, it is not always feasible or optimal. Moving from general issues of administrative law to specific solutions, Maciej Bendorf-Bundorf examines the electronic auction as a method for selecting the most beneficial tender offer in a public procurement procedure. In his analysis, the author is looking for the reasons for a low interest in e-auctions in the Polish public procurement system. He also points out that electronic auctions in public procurement are a means towards increased efficiency of public expenditure and a more competitive system.

In chapter six, Paweł Lewandowski addresses the problems that arise when new technologies are employed to collect data on business undertakings. He discusses the changes that have recently been introduced to the procedure of registration of business undertakings as well as new rules of control of registration data, including in particular the registration files. In addition, he demonstrates that a fully digital register kept exclusively in an electronic form entails a number of risks, and may therefore raise some concerns.

The first part of the book closes with a chapter on the use of new technologies by tax authorities in Italy. In his study, Emanuele Comi points out that the Italian tax authorities are now increasingly using collected data not only for statistical purposes, but also to detect tax fraud and tax evasion.

The second part of the monograph is devoted to digital platforms and opens with a chapter by Laura Ammannati on the problem of regulation of the same and the challenges faced by regulators and legislators in this area. Since the digital economy has impacted traditional business models, the author addresses the question of whether and how platforms should be regulated and how to resolve the conflict between innovation and other legally protected objectives.

The following chapter, written by Enguerrand Marique and Yseult Marique, addresses the problem of balance between state control and individual user freedom in the digital space. The authors argue that the platforms are in fact quasi-states with legislative, judicial and executive powers. This leads to a failure of the liberal attempt to create a cyberspace free of sovereign power to promote balanced relations between the various actors present on the platforms.

This part of the monograph also includes Valentina Giomi's reflections on the demand for digital platforms in some market sectors using an example of the public transport sector in Italy. The author, analysing regulations in this area, shows that the lack of a competitive market is caused by the persistence of strong legal barriers hindering market entry of new operators using new technological and IT tools. She also stresses the need to safeguard multiple social objectives that characterise transportation services in the face of changing collective needs. The latter are forcing new regulatory objectives, which means that, with the old community objectives still present, new modes of transport using technology platforms must be managed without changing the overall public service function which this service still performs.

The next two chapters of this part of the monograph discuss the role of digital platforms in the labour market. The study by Elena Signorini emphasizes that labour law in the digital economy needs to also encompass new forms that labour relations have assumed as a result of the impulses of a fluid economy. Digital platforms have led to market disintegration and obsolescence of traditional models, which are being replaced by new contractual forms inspired by sharing, cooperation, but also randomness. According to the author, in the digital economy the labour law has taken on a new dimension, and it is necessary to search for new archetypes in order to secure and guarantee appropriate labour relations in intelligent and technology-inspired working environments.

These considerations are continued in the chapter by Gina Rosamari Simoncini, which is devoted to the protection of employees in an economy based on digital platforms. As the author discusses, although the social protection of employees is enshrined in the Treaty on European Union, the measures and nature of collective perceptions vary among the Member States, and the development of the platforms of cooperation requires particular attention to those working in such a system. Analysing this type of economy, the author indicates that an important problem is to ensure protection of employees' safety, regardless of social insurance and other social security measures.

The third part of the monograph brings together seven chapters dealing with data protection and cyber security issues in the context of the digital market. The opening chapter by Katarzyna Krupa-Lipińska presents user profiling in the context of the EU Data Protection Regulation (GDPR) 2016/679, which is practiced in both private and public sectors, bringing certain benefits but also risks to the rights and freedoms of individuals, in particular in the area of the right to privacy. The definition of profiling as set forth in the GDPR is based on personal data and is a form of processing limited to purpose-oriented 'automated processing.' The introduction of the definition of profiling in the GDPR was desirable given its different meaning and widespread use in modern business models, which may pose a serious threat to individual privacy. The broad definition of profiling combined with the general application of the data processing principles of GDPR seem to be a reasonable legal model for balancing the protection of privacy against public and business interests.

The next chapter, written by Agata Cebera and Jakub Grzegorz Firlus, addresses the impact of the new legal framework for data protection on administrative procedures in Poland. The authors argue that data processing and data provider protection issues are correlated with a given generation of administrative procedures. Currently a vital problem in this area is the new so-called 'implementational' act which came into force on 4 May 2019 with a view to co-relating peculiarities of the Polish legal system with the EU law on personal data protection.

Katarzyna Araczevska, the author of the third chapter in this part of the monograph, deals with interdependence between data protection and consumer law in Poland and the EU. This is all the more important since data-driven business models are becoming dominant in the digital market and many e-commerce merchants treat consumer data as profit-making commercial assets. The study presents both the legal theory and legal practice perspectives on the areas of interaction between consumer law and data protection regulations, pointing to the similarities between the two systems and the possibilities of their consistent application.

The next paper by Kamila Naumowicz discusses the protection of employee privacy in the light of the general data protection regulation. According to the author, GDPR, by defining biometric data as protected personal data and delineating new boundaries for their use in the workplace environment, has filled in a gap in this respect. However, in the era of a growing use of new technologies, the risk of privacy breaches in the workplace is still high, and therefore its identification and discussion are the subject of this chapter.

The following study by Ewa Lewandowska examines digitalization of cultural heritage assets in the light of copyright law; in particular digitalization of such assets in the context of objects defined as a 'work' under the Act on copyright and related rights. While analysing the legal organization of the digitalization process, including its evaluation and indicating its conditions and legal consequences, the author points out the need for several important changes: It is necessary to introduce a detailed regulation on the digitisation as a field of exploitation of a work, and to seek out a solution that will reduce the risk of copyright infringement while simultaneously ensuring that copyrights are respected.

The study by Joanna Narodowska and Maciej Duda presents new forms of cyberspace-related crime in Poland from the legal and criminal perspective. It describes growing misconduct and crime emerging from cyberspace, such as pathostreaming, Nigerian scams, money laundering (money mule), cybercurrencies, online gambling, skimming, theft of avatars and gaming items, pornography, grooming, and hate speech. The authors suggest that these new forms of wrongdoing are a major challenge for the law enforcement and justice system(s), but also a major problem of a global reach.

Part three closes with the chapter by Marcin Rojszczak on the evolution of the EU cybersecurity model in its present form and expected future state. The author discusses the existing legal framework underpinning the EU cybersecurity model, including Directive 2016/1148 and the recently passed Regulation 2019/881 as well as the institutional model adopted by the EU legislator in this field. The focus is on the practicality and effectiveness of the solutions adopted, in particular with regard to the existence of sufficiently strong EU competences in implementing cybersecurity standards among the Member States.

As may be seen from the brief review of the chapters provided above, as a whole, they provide a comprehensive overview of the problems related to the dynamic process of development of new technologies as the latter intersect with various spheres of social and economic life and shape the digital economy.

The authors hope that it will prove valuable not only in the didactic process, but also that it will be of interest to all those involved in the (broadly understood) legal practice, i.e. judges, legal advisors, public authorities and other institutions.

The authors would like this monograph, as a scientific study, to become an inspiration for further reflection and exploration, and to lead to implementation of legal measures to ensure real and effective protection and security for participants in the digital market.

All chapters are based on legal regulations as of 30 August 2019.

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