



CONSUMERPRO

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The Digital Services Act

Supplementary document to Digital Rights Theoretical Background Document

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This document is a supplement to the Theoretical Background document on Digital Rights, presenting an update on the Digital Services Act [published in the official journal](#) of the EU on 27 October 2022.



1. The Digital Services Act (DSA) – An introduction

The overall **objective** of the DSA is the correct functioning of the internal market for online intermediary services. This includes tackling illegal content online by harmonising rules to facilitate innovation and respect fundamental rights, consumer protection included – cf. Article 1(1).

The DSA applies **without prejudice to other EU laws**, including on consumer protection and product safety – Art. 2(4). This for example means:

- Other laws can include more specificities than those included under the DSA (e.g., a deadline to remove a specific type of content)
- Companies should still abide by other rules on consumer protection, data protection, privacy, etc.

However, the general principles of the DSA should apply for all types of illegal content.

Entry into force: 16 November 2022 (art. 93(1)).

Application: With some exceptions (e.g. in relation to the supervision of very large online platforms (VLOPs) and search engines (VLOSEs), the DSA shall apply as of 17 February 2024 (art. 93(2)).

VLOPs and VLOSEs have four months to comply once designated as such by the Commission and in any case by 17 February 2024 (art. 92).

All online platforms need to publish the number of their active users in the EU by 17 February 2023 (art. 24(2)).

Check more details about the DSA application timeline at [https://www.europarl.europa.eu/thinktank/en/document/EPRS_ATA\(2022\)739227](https://www.europarl.europa.eu/thinktank/en/document/EPRS_ATA(2022)739227)

2. Who does the DSA apply to?

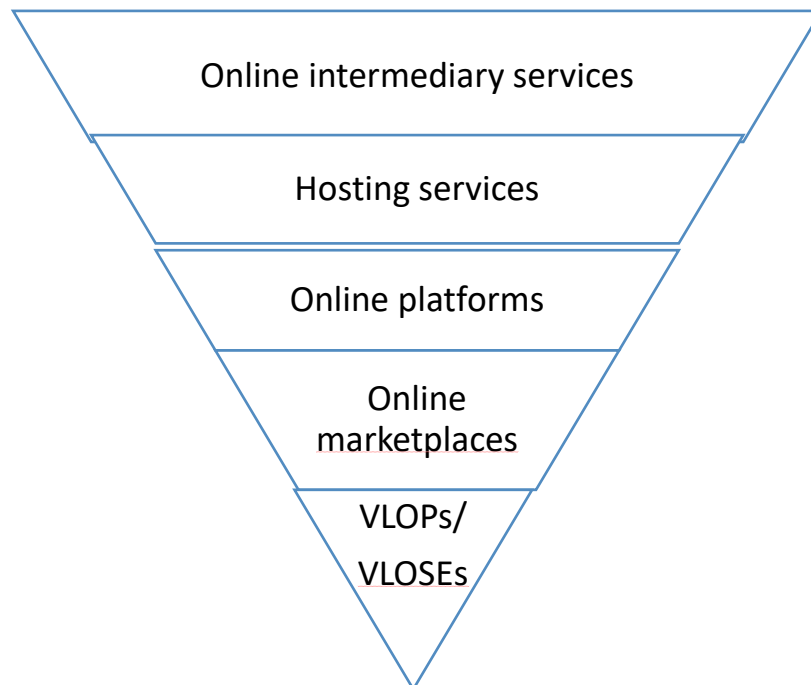
Not all rules of the DSA apply to all online intermediary services. The DSA establishes rules depending on their role, size, and impact.

As explained by the European Commission, the DSA establishes obligations for providers of

- **Intermediary services** offering network infrastructure: Internet access providers, domain name registrars, including also:
- **Hosting services** such as cloud and webhosting services, including also:
- **Online platforms** bringing together sellers and consumers such as online marketplaces, app stores, collaborative economy platforms and social media platforms.



- **Very large online platforms** pose particular risks in the dissemination of illegal content and societal harms. Specific rules are foreseen for platforms reaching more than 10% of 450 million consumers in Europe.¹



3. What rules does the DSA contain?

3.1 In a nutshell:

- Online intermediaries need to have a more active role to tackle illegal content (products and services included)
- Additional transparency and due diligence obligations for online platforms to comply with a so-called “Know-Your-Business-Customer” obligation to improve trader traceability
- Additional obligations for very large online platforms and search engines (≥ 45M EU active users)
- Two-tier enforcement framework: at EU and national level
- Strengthened means of redress for consumers

3.2 Limited liability exemption for “marketplaces”

The DSA does not impose positive liability. Instead, it harmonises the limits to liability via an exemption for hosting service providers (Art. 6). Injunctions are still possible (Art. 6(4)).

¹ https://ec.europa.eu/info/strategy/priorities-2019-2024/europe-fit-digital-age/digital-services-act-ensuring-safe-and-accountable-online-environment_en#which-providers-are-covered

At the same time, the DSA foresees an exception to the liability exemption: online platforms that allow consumers to conclude distance contracts with traders cannot benefit from the liability exemption if they present the specific item of information (e.g., a product) or misleads an average consumer to believe that the information, product or service is provided by the platform itself or by a recipient of the service who is acting under its authority or control - Art. 6(3). Recitals 23 and 24 further clarify this. Examples of acting under the authority or control of the platform: if the platform “determines the price of the goods or services offered by the trader” (recital 23).

More examples as to when the liability exemption does not apply (recital 24):

- If the platform does not clearly display the identity of the trader “as required by this Regulation”
- If the platform only discloses the identity or contact details of the trader after the conclusion of the contract
- If the platform markets the product or service under its own name and not the name of the trade which will supply it
- Assessment on the basis of “all relevant circumstances” (recital 24)

3.3 Due diligence obligations

- Obligations applicable to all online intermediary service providers (Arts. 11-15)
- Additional obligations for online hosting service providers (Arts. 16-18)
- Additional obligations for online platform providers (Arts. 19-28). Art. 19 contains an exemption for micro and small platforms². Medium platforms have a 1-year grace period to comply (art. 19(1))
 - Additional obligations for online platforms allowing consumers to conclude distance contracts with traders (including online marketplaces, Arts. 29-32)
- Additional obligations for VLOPs and VLOSEs (Arts. 33-43)

See a summary of the DSA’s due diligence obligations below:³

New obligations	Intermediary services	Hosting services	Online platforms	Very large platforms
	<i>(cumulative obligations)</i>	<i>(cumulative obligations)</i>	<i>(cumulative obligations)</i>	<i>(cumulative obligations)</i>
Transparency reporting	●	●	●	●
Requirements on terms of service due account of fundamental rights	●	●	●	●

² As defined under 2003 Recommendation concerning the definition of micro, small and medium-sized enterprises: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32003H0361>

³ https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/europe-fit-digital-age/digital-services-act-ensuring-safe-and-accountable-online-environment_en



Cooperation with national authorities following orders	•	•	•	•
Points of contact and, where necessary, legal representative	•	•	•	•
Notice and action and obligation to provide information to users		•	•	•
Reporting criminal offences		•	•	•
Complaint and redress mechanism and out of court dispute settlement			•	•
Trusted flaggers			•	•
Measures against abusive notices and counter-notices			•	•
Special obligations for marketplaces, e.g. vetting credentials of third party suppliers ("KYBC"), compliance by design, random checks			•	•
Bans on targeted adverts to children and those based on special characteristics of users			•	•
Transparency of recommender systems			•	•
User-facing transparency of online advertising			•	•
Risk management obligations and crisis response				•
External & independent auditing, internal compliance function and public accountability				•
User choice not to have recommendations based on profiling				•
Data sharing with authorities and researchers				•
Codes of conduct				•
Crisis response cooperation				•

Some important examples from a consumer perspective:



Article 25: Ban on dark patterns Providers of online platforms must not design, organise, operate their online interfaces in a way that deceives, manipulates, materially distorts or impairs users' ability to make free, informed decisions. Unfortunately, this provision risks not being very usable for consumers as this provision does not apply if practices are covered in the General Data Protection Regulation (GDPR) or the Unfair Commercial Practices Directive (UCPD).

Article 28: Measures on online protection of minors

“Providers of online platforms accessible to minors shall put in place appropriate and proportionate measures to ensure a high level of privacy, safety, and security of minors, on their service” (Art. 28(1)).

Bans on platforms presenting advertising based on profiling

- using personal data when aware user is a minor (Art. 28(2))
- using personal data of sensitive nature - art. 9(1) GDPR (Art. 26(3))

More online advertising, recommender systems transparency

Online platforms presenting advertising on online interfaces must adequately inform users that information displayed is an ad, including by using prominent markings. – Art. 26

Providers of online platforms that use recommender systems must set out in their terms and conditions the main parameters used, as well as options for users to modify those parameters. – Art. 27

VLOPs have additional, stricter requirements on recommender systems: obligation to provide users with, at least, one option not based on profiling (opt-out option) – Art. 38.

Article 22: ensuring traceability of traders before letting them do business ('know your business customer' includes, inter alia:

- Obligation to previously request information from traders
- Best efforts obligation to conduct random checks against public databases for illegal products
- Compliance by design: marketplaces' online interface must enable traders to display relevant information to comply with EU rules
- (Limited) right to information of consumers

4. How will the DSA be enforced?

National Enforcement

- Enforced by 'Digital Services Coordinators' (DSCs). Member States are free to designate who the DSCs will be (e.g. the Audiovisual Media Services regulator, the telecoms regulator, a new authority...).
- Retains 'country of origin' principle. If a company has no establishment in the EU, the competent authority will be the DSC where the company has their legal representative. If the company does not have one, all DSC are competent to enforce the DSA. If the company is a VLOP/VLOSE, the Commission has exclusive powers to enforce the special obligations only applicable to them – Art. 56.

- Coordination of DSC by the European Board for Digital Services – art. 61 *et seq.*

EU-Level Enforcement

- Relevant for VLOPs/VLOSEs (having ≥ 45 million EU users) – art. 33
- The European Commission has exclusive powers to designate and enforce VLOP/VLOSE's special obligations. Requests for action can be made by Digital Services Coordinators – arts. 56 and 65 *et seq.*
- VLOPs/VLOSEs should contribute an annual supervisory fee (Max. 0.05% global annual net income) - art. 43
- The DSA sets forth cooperation mechanisms – art. 56 *et seq.*

5. How can consumers seek redress?

Article 20: Internal complaint-handling mechanism: a consumer can complain directly to the platform when content is (or not) removed, when their account is suspended...

Article 21: Out-of-court dispute settlement: certified mechanisms to settle disputes between providers and users. Caveat: non-binding decisions.

Article 53: Right to lodge a complaint before your Digital Service Coordinator (which then may be transferred to the DSC of establishment of the company).

Article 54: Right to compensation: without prejudice to EU consumer law, consumers can seek compensation from providers against any damage or loss suffered due to the infringement of DSA obligations. Applicable national law on how to claim compensation should be followed (recital 121).

Article 86: Representation: Without prejudice to the RAD or to any other representation under national law, consumers have a right to mandate an NGO (consumer organisations included). Their complaints should have priority and should be decided upon without undue delay.

Article 90: The DSA is **added to the annex of the Representative Actions Directive.**

Further information:

- Read the DSA at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32022R2065>
- Husovec, Martin and Roche Laguna, Irene, Digital Services Act: A Short Primer (July 5, 2022). Martin Husovec and Irene Roche Laguna, Principles of the Digital Services Act (Oxford University Press, Forthcoming 2023), Available at SSRN: <https://ssrn.com/abstract=4153796> or <http://dx.doi.org/10.2139/ssrn.4153796>



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