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# Digital Services Act: Are you ready?

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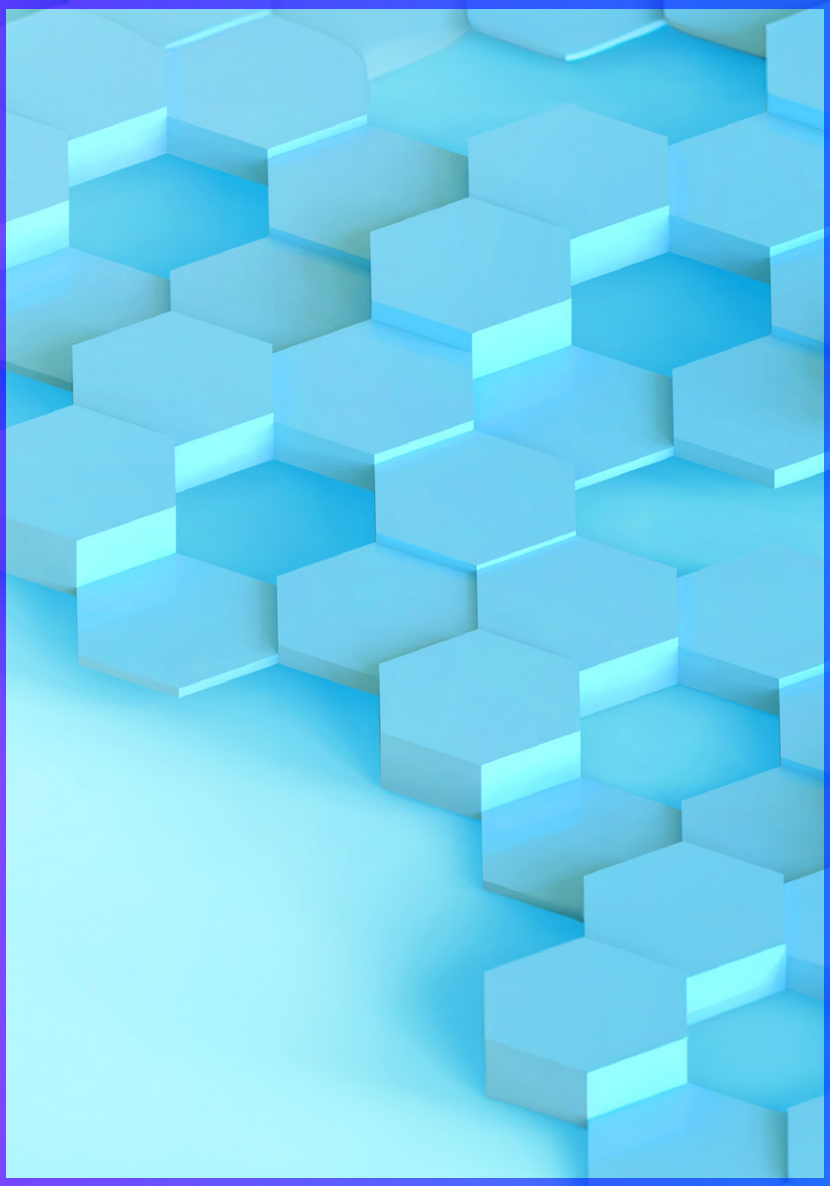

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# Digital Services Act: Are you ready?

The Digital Services Act (DSA) is a key part of a number of legislative initiatives put forward by the European Commission known as the Digital Services Package. These initiatives seek to create a safer digital space where the fundamental rights of all users of digital services are protected, and to create a level playing field which fosters innovation, growth and competitiveness across the EU and globally.

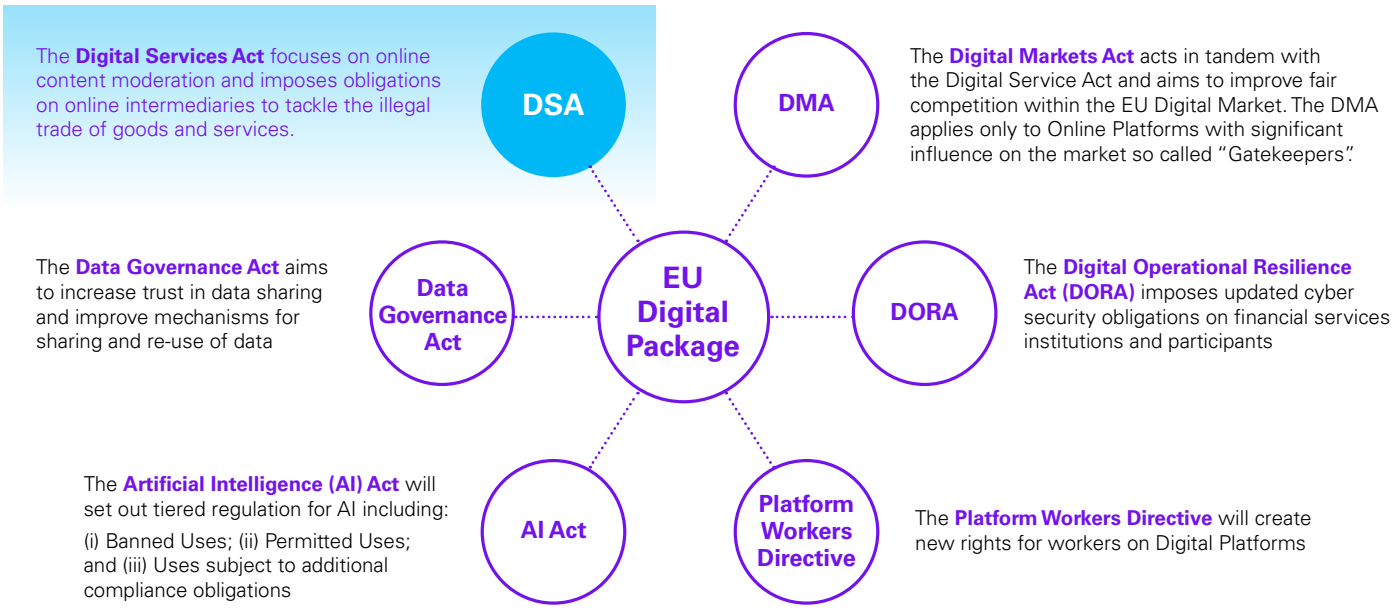
The DSA focuses on consumer protection, online content regulation and prevention of the illegal trade of goods. The regulation will apply to intermediary services offered to recipients of the service that have their place of establishment or are located in the EU, irrespective of where the providers of those intermediary services have their place of establishment. The DSA was brought into force in November 2022 and has been directly applicable to Very Large Online Platforms (VLOPs) since 25 August 2023, and will apply to all other in-scope entities from 17 February 2024.

## DSA: key objectives and features

- **Increase the accountability** of online platforms for illegal content on their service and give users enhanced mechanisms for reporting harmful content
- **Increase transparency** in online advertising, giving users greater control over how their personal data is used
- **Provide greater protection for children** online by banning targeted advertising to children
- **Will impact 1000s of online platforms** (large and small) such as social media platforms, market places, and app stores.
- **Minimise systemic risks** (such as dissemination of illegal content, discriminatory content, and negative content relative to gender based violence) and ensure that appropriate controls are in place
- **Provide a crisis response mechanism** which allows for intervention by the European Commission in the event of threats to public health and security
- **Penalties for breaches: up to 6% of annual global revenue** (for some global platforms that could be up to $7billion)

## The EU Regulatory Landscape

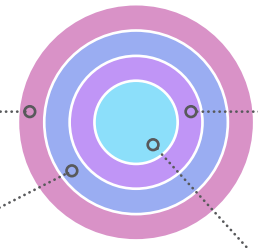
As the influence of online platforms in our social and economic lives continues to grow, so too does the scrutiny from regulators and law-makers worldwide. In the EU, the DSA forms part of a wider group of digital and data initiatives proposed to ensure a safe and competitive environment in the digital space.



# Scope of Application

The scope of the DSA is broad, and as such, potentially thousands of digital platforms from very large online platforms to small digital businesses may be required to comply with this regulation to varying degrees. There are four layers of organisations in scope for the DSA - each layer is a subset of the previous:

- **Intermediary services:** A service that offers network infrastructure, including: conduit services, caching services, hosting services. This also includes Internet Service Providers (ISPs) and domain name registrars
- **Hosting services:** Services that allows for the storage of information provided by, and at the request of, a recipient of the service, for example Cloud and webhosting services



- **Online platforms:** Services which, at the request of the recipient, store and disseminate information to the public, including online marketplaces, app stores, collaborative economy platforms and social media platforms.
- **Very Large Online Platforms (VLOPs) and Very Large Search Engines (VLOSEs) that:**
  - have monthly active recipients in the EU of more than 45 million; and
  - are designated by the European Commission.

Online platform means a hosting service that, at the request of a recipient of the service, stores and disseminates information to the public, unless that activity is a minor and purely ancillary feature of another service or a minor functionality of the principal service and, for objective and technical reasons, cannot be used without that other service, and the integration of the feature or functionality into the other service is not a means to circumvent the applicability of this Regulation.

# Key Obligation Areas by type of Platform

Requirements under the DSA are tiered based on the type of service and number of users, with VLOPs/VLOSEs having the broadest obligations.

| Article | Description | Intermediary Services | Hosting Services | Online Platforms | OP That Do B2C Trade | VLOPs / VLOSEs |
|---|---|---|---|---|---|---|
| 11 | Points of contact for authorities | ☑ | ☑ | ☑ | ☑ | ☑ |
| 12 | Points of contact for recipients of the service | ☑ | ☑ | ☑ | ☑ | ☑ |
| 13 | Legal representatives | ☑ | ☑ | ☑ | ☑ | ☑ |
| 14 | Terms and conditions | ☑ | ☑ | ☑ | ☑ | ☑ |
| 15 | Transparency reporting obligations | ☑ | ☑ | ☑ | ☑ | ☑ |
| 16 | Notice and action mechanisms | | ☑ | ☑ | ☑ | ☑ |
| 17 | Statement of reasons | | ☑ | ☑ | ☑ | ☑ |
| 18 | Notification of suspicious criminal offences | | ☑ | ☑ | ☑ | ☑ |
| 20 | Internal complaint handling system | | | ☑ | ☑ | ☑ |
| 21 | Out of court dispute settlement | | | ☑ | ☑ | ☑ |
| 22 | Trusted flaggers | | | ☑ | ☑ | ☑ |
| 23 | Measures and protection against misuse | | | ☑ | ☑ | ☑ |
| 24 | Transparency reporting obligations (OP) | | | ☑ | ☑ | ☑ |
| 25 | Online interface design and organisation | | | ☑ | ☑ | ☑ |
| 26 | Advertising on online platforms | | | ☑ | ☑ | ☑ |
| 27 | Recommender system Transparency | | | ☑ | ☑ | ☑ |
| 28 | Online protection of minors | | | ☑ | ☑ | ☑ |
| 30 | Traceability of traders | | | | ☑ | ☑ |
| 31 | Compliance by design | | | | ☑ | ☑ |
| 32 | Right to information | | | | ☑ | ☑ |
| 34 | Risk assessment | | | | | ☑ |
| 35 | Mitigation of risks | | | | | ☑ |
| 36 | Crisis response mechanism | | | | | ☑ |
| 37 | Independent audit | | | | | ☑ |
| 38 | Recommender systems | | | | | ☑ |
| 39 | Additional online advertising Transparency | | | | | ☑ |
| 40 | Data access and scrutiny | | | | | ☑ |
| 41 | Compliance function | | | | | ☑ |
| 42 | Transparency reporting obligations | | | | | ☑ |
| 43 | Supervisory fee | | | | | ☑ |
| 45 | Codes of conduct | | | | | ☑ |
| 46 | Codes of conduct for online advertising | | | | | ☑ |
| 48 | Crisis protocols | | | | | ☑ |

# 10 key themes to address for DSA Compliance

## 01 Governance arrangements

Determine single points of contact, legal representatives, and compliance heads, communicate who they are and empower them. Also, work with your Board to establish DSA compliance duties and wider oversight structures including reporting frequency, air time to be provided to DSA compliance discussions and type and depth of Management Information (MI) and reporting to inform the Board and other governance fora on DSA risk and compliance matters.

## 02 Transparency to users

This includes updating terms and conditions, and communicating changes. For example, information on any policies, procedures, measures and tools used for the purpose of content moderation, including algorithmic decision-making and human review. Firms should also take steps to ensure recommender system transparency and provide recommender system optionality.

## 03 Online Platform design and controls

Implement measures to prevent the manipulation of the recipients to make free and informed decisions. Firms should also implement transparent advertisement methods and take steps to protect minors and implement bans on targeted adverts to children and those based on special characteristics of users. In addition, online platforms should implement Know Your Business Clients (KYBC) controls and enable compliance by design, in particular in the case of online market places.

## 04 Mechanisms to counter illegal content

Develop notification and action mechanisms to allow individuals or entities to notify them of information that may be illegal. Also, establish processes to notify suspicions of criminal offences to relevant law enforcement or judicial authorities, implement trusted flaggers technical and organisational measures, and implement measures and protection against misuse, including suspension of services.

## 05 Appeals and Complaints

Implement an internal complaints-handling system and related processes following decisions to remove, disable, restrict access of information; suspend or terminate the provision of the service, suspend or terminate the recipients' account; and suspend, terminate or otherwise restrict the ability to monetise information provided by the recipients. Online platforms must also respond to complaints logged effectively and efficiently; and inform users of out-of-court dispute settlement mechanisms.

## 06 Risk and Control Assessments

Very Large Online Platforms and Search Engines (VLOP's/ VLOSE's) must establish procedures to identify, analyse and assess any systemic risks stemming from the design or functioning of their service and its related systems, including algorithmic systems, or from the use made of their services. This includes performing systemic risk assessments based on probability and severity; and implementing controls to mitigate systemic risks. To some extent, it is likely non-VLOPs/VLOSEs will also need to put similar processes in place

## 07 Compliance Management and Oversight

Very Large Online Platforms and Search Engines (VLOPs/ VLOSE's) should also establish an independent Compliance Function with direct reporting line to the Board. This means that a compliance framework and operating model will likely be required to perform compliance oversight activities and processes. Consideration should be given to establishing a central compliance team as opposed to operating in silos, particularly in the case of global firms.

## 08 Crisis response, communication and learning

A crisis shall be deemed to have occurred where extraordinary circumstances lead to a serious threat to public security or public health in the EU or in significant parts of it. Online platforms should identify, assess and implement measures to prevent or eliminate serious threats; develop crisis protocols for addressing crisis situations, and report to the Commission (at regularly intervals) the implementation and qualitative and quantitative impact of the measures taken to mitigate serious threats.

## 09 Transparency Reporting, Data and MI

Online platforms should develop and publish annual content moderation transparency reports. For example: publish reports on any content moderation activity performed, e.g. number of notices submitted, number of complaints received. Online platforms should also establish processes that allow them to respond to data access requests from the Commission or Digital Services Coordinators.

## 10 Assurance and Remediation

Very Large Online Platforms and Search Engines (VLOPs/ VLOSE's) should arrange an independent audit, at least annually, and implement any remediation measures.

# Recent Developments in the Enforcement of Digital Services Act

## Letters from the European Commission

In the past month, Online platforms have seen a surge of disinformation due to the Israel-Hamas conflict. According to the European Commission, Companies have not taken sufficient measures to promptly remove such content from their platforms, which could cause more confusion and potentially lead to further conflict and violence. In order to mitigate the spread of disinformation, the European Commission has issued public letters to a number of VLOPs/VLOSEs urging them to take swift action to remove such content and comply with their obligations under the DSA.

## Final DSA Independent Audit Rules

The European Commission has released the final version of the DSA Independent Audit Delegated Act, which provides rules for the performance of independent audits on VLOP's or VLOSE's. The act introduces changes to prevailing market assumptions, including the requirement for the audit provider to test the operating effectiveness of individual mitigation measures, which was not present in the draft Delegated Act and will increase the audit scope for VLOPs/VLOSEs. Additionally, it provides additional focus on benchmarking, audit scope and criteria and other key areas.

## 10 Key insights from the European Commission (EC) Digital Services Act (DSA) Event in Brussels

On **June 27, the European Commission hosted cross-functional workshops** with members from civil society, policy makers, think tanks, representatives from technology companies, audit firms, law firms, and consultancies to discuss practical implications of DSA implementation. Members of KPMG's Global DSA/DMA Working Group from Ireland, Netherlands, UK, and US attended the discussion panels and identified 10 key themes1. These are outlined **here**

# Irish application of the DSA: Coimisiún na Meán (CnaM)

CnaM has been established as the the Digital Services Coordinator (DSC) for the DSA in Ireland and will be responsible from 17 February 2024 for all matters relating to supervision and enforcement of the DSA. CnaM was established through the Online Safety and Media Regulation Act 2022 ("OSMR Act 2022"), which was enacted on 10 December 2022, and is tasked with establishing the regulatory framework for online safety, update the regulation of television broadcasting and audiovisual on-demand services, and transpose the revised Audiovisual Media Services Directive into Irish law.

This will include the role of enforcing the DSA, in addition to the functions required under the Broadcasting Act 2009, the Terrorist Content Online Regulation (TCOR), and the OSMR Act 2022.

CnaM has 5 Commissioners (including a Chairperson) and they will function as a unified leadership and decision-making body. Each Commissioner leads a particular area of work, including Platform Supervision and Enforcement, Regulatory Policy, Media Landscape, and User Support.

# Timeline for Implementation

The following sets out the key milestones for implementation of the DSA fromentering into force in 2022 until all firms must be compliant.

**11 November 2022**
DSA Rules enter force

**17 February 2023**
Online platforms publish monthly user numbers

**25 April 2023**
European Commission designate VLOPs

**25 August 2023**
VLOPs must comply with DSA rules and publish risk assessment

**17 February 2024**
All other in-scope entities must comply with DSA rules

Compliance with the DSA will be required for all impacted platforms and services by 17 February 2024. Online platforms should prioritise DSA delivery and ensure this receives the appropriate level of funding and attention from Senior Management.

# How KPMG can help

Our team has deep technical expertise across all DSA related areas., including: implementing compliance functions, frameworks and operating models; implementing complaints handling and issue management systems and processes; designing and implementing Know Your Business Controls (KYBC); performing systemics risk assessments, performing independent reviews and audits.

Our capabilities include experts  from IT Assurance, Risk Consulting, Technology Law, Algorithm Assurance, Privacy, Cybersecurity, and Forensic teams. In addition, our DSA services are powered by accelerators to ensure an efficient process. These include:

- A global better practice DSA Audit criteria framework;
- A DSA Compliance Assessment tool, developed and used for DSA compliance projects at other VLOPs / VLOSEs;
- A wealth of experience from other regulated sectors regarding the establishment of independent compliance functions; performing risk assessment; design and implementation of compliance controls, including many aspects of the DSA such as governance arrangements, KYBC controls, complaints handling, and related risk mitigation requirements; and,
- An algorithm assurance methodology supporting the audit of DSA obligations in relation to your recommender and content moderation systems.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