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# Digital Services Act: short notes.

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Report

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## One step closer to the *Digital Services Act (DSA)*

**The European Parliament and the UE Members achieved an agreement last Saturday, April 23, on the proposal for a Regulation on an EU single market for digital services.**

**Once approved, and therefore has taken the form of a regulation, the DSA will be directly applicable throughout the European Union.**

### 1. DSA Objectives

The principal purpose of the DSA is to provide improved protection for Internet users and to reinforce their fundamental rights in digital environments, as well as to protect them against the proliferation of illegal content in these environments.

To this end, the DSA updates the basic rules relating to the provision of EU online services - including Directive 2000/31/EC - and intends to ensure that the digital environment remains a safe space, safeguarding freedom of expression and opportunities for digital businesses. Likewise, the future regulation intends to give effect to the basic principle, as expressed by the Commission, "*what is illegal offline, should be illegal online*".

Regard to digital service providers, the DSA establishes a single set of regulations in the European internal market, with the intention of providing legal certainty to the Union's digital space, and making it easier for providers to develop and scale in a harmonized European digital market.

To do so, the DSA creates and defines a clear framework of obligations for those online platforms that have more than 45 million active users in the European Union. In this sense, major platforms such as Google, Apple, Facebook, Amazon, Microsoft or Twitter would be affected by these new obligations imposed by the DSA.

The DSA therefore affects platforms that provide all kinds of digital services in different sectors, from search engines, social networks, e-commerce or content services, which have a significant impact on our society.

On the other hand, the DSA aims to increase competitiveness in the market where companies using digital services and platforms can benefit from more options and lower prices, in a more open and flexible European market.

Finally, the regulation intends to create control and supervision mechanisms for the so-called systemic platforms, as well as to avoid the risks of disinformation or manipulation of digital services.

The DSA is complemented by the Digital Market Act (DMA), which establishes specific obligations for large online platforms operating as access "gatekeepers". The European Parliament and the Council also reached a political agreement on this proposal last March.





## 2. Classification and regulation of Providers.

The DSA classifies and regulates the different internet providers according to the type of services they provide, volume of users or impact on the online ecosystem.

For this purpose, the legislation establishes the difference between 4 types of providers:

- Intermediary services (e.g., network infrastructure or internet access).
- Data hosting services (e.g., cloud services, hosting).
- Online platforms (e.g. e-commerce, app stores, collaborative economy platforms, social networks).
- Major online platforms (as above but with 10% of the 450 million European users).

In this sense, the DSA is based in a basic principle: The greater the size and the volume of users of an online platform, the greater is its responsibilities and demands for control and supervision.

## 3. New obligations for Online Providers

The DSA establishes clear and harmonized obligations for online providers proportional to their size, impact and risk, in accordance with the provider classification.

The following basic obligations are established for all providers:

- Transparency reports on its activity.
- Requirements on conditions of service, considering fundamental rights.
- Cooperation with national public administrations.
- Requirement of a point of contact or legal representative.

These measures include obligations related to content accessible by minors, new safeguards for the protection of minors and limits on the use of sensitive personal data for targeted advertising. In other words, platforms will be prohibited from offering the user with targeted advertising based on the use of minor's personal data.

Transparency measures are also established for online platforms, including those related to reporting on the algorithms used to recommend content or products to users.

On the other hand, for online platforms and major online platforms, the following new obligations, among others, are established:

- Transparency measures in online advertising for users.
- Mechanisms for complaints and out-of-court dispute resolution.
- Measures to enable criminal complaints.
- Verification of the credentials of third-party providers.

These measures are intended to prevent the use and commercialization of illegal goods, services or content, as well as to create mechanisms so that users can easily report illegal content, and to oblige platforms to cooperate with the so-called "trusted reporters". New obligations are also established regarding the traceability of user companies in online marketplaces.



In addition, and with respect to enabling the filing of complaints by users, the possibility of challenging the content moderation decisions of the platforms and pursuing compensation, either through an out-of-court or judicial litigation mechanism, is established. Also, it establishes the obligation to provide investigators with access to key data from the major platforms, in order to provide more information on the evolution of online risks.

And finally, for major online platforms only, the following new obligations stand out:

- Risk management obligations.
- Annual external risk audits and public accountability.
- Data exchange with administrations and researchers.
- Codes of conduct.
- Cooperation in crisis response.

It is worth highlighting the obligations imposed on major online platforms to take risk-based measures to prevent misuse of their systems and to submit to independent audits of their risk management systems.

Finally, the DSA gives the European Commission extensive supervisory and enforcement controls with respect to major online platforms, including the power to impose effective and dissuasive sanctions of up to 6% of global business volume or even a prohibition from operating in the EU single market in case of repeated serious infringements.

This oversight and enforcement framework also establishes the important role of the independent Digital Services Coordinators and Board for Digital Services.

#### **4. Entry into force**

The political agreement reached by the European Parliament and the Council is now subject to formal approval by the two co-legislators. Once approved, the DSA, as it has taken the form of a Regulation, will become directly applicable throughout the EU, within fifteen months from its formal adoption or as of January 1, 2024, whichever is later.

To major online platforms and major search engines, the DSA will apply earlier, only four months after their designation as such.

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