



Digitalisation - Digital Services Act (DSA) and Digital Markets Act (DMA)

■ Why does it matter to intermediaries?

Since December 2020, the European legislators have been working on a set of new rules for all digital services, including cloud services, messaging, social media, online marketplaces and other online platforms as well as app stores that operate in the EU. These new sets of rules are contained within the **Digital Services Act (DSA)** and the **Digital Markets Act (DMA)**. Both Acts create a horizontal framework for all categories of online services, contents and products, including financial services and activities.

The main purpose of these two pieces of legislation is to ensure that “what is illegal offline is equally illegal online”. For our sector, this means, for example, comparison websites that provide their online services to businesses and consumers which are established in the EU, will have to comply with due diligence obligations imposed on online platforms, irrespective of their own place of establishment. On the other hand, intermediaries that provide their financial services online as users of a platform, will be entitled to the rights accorded to them as “recipients” of the website’s services. Intermediaries that provide their services via an online platform (either their own platform or as users of a platform) have to also comply with the sector-specific rules and competition law.

■ State of play

The Digital Services Act (DSA)

The DSA was adopted on 19 October 2022 and entered into force on 16 November 2022. It contains due diligence obligations that apply to all digital services and aims to target trade and exchange of illegal goods, services and content online and algorithmic systems amplifying the spread of disinformation. It contains specific rules on targeted advertising, content recommendation, profiling and minor protection.

The obligations under the DSA depend on the role, size and impact of the entity. Very large online platforms will have to take risk-based action to prevent abuse of their systems, including oversight through independent audits of their risk management measures. Based on that risk-based approach and the principle of proportionality, certain exemptions for micro and small entities are included within the DSA.

The DSA also aims to ensure that recipients of digital services and organisations representing them will be able to seek redress for any damages resulting from a platform breaching its due diligence obligations.

The DSA empowers the Commission to adopt a series of “level 2 rules” through Delegated Acts.

On 2 March 2023, the Commission adopted a **delegated Regulation on the detailed methodologies and procedures regarding the supervisory fees** charged by the Commission on providers of very large online platforms and search engines. Under the DSA, the Commission is required to charge an annual supervisory fee to each provider designated as a very large online platform or search engine. The DSA only sets basic criteria for the determination of this supervisory fee. The delegated Regulation sets out detailed procedures and methodology to calculate and levy the supervisory fees in order to provide the concerned platforms with legal certainty. After its adoption by the Commission, the delegated Act was sent to the Council and EP that have three months to scrutinize it. After that deadline, the Act will be published and will enter into force unless the Council and/or EP voice an objection.



Digitalisation - Digital Services Act (DSA) and Digital Markets Act (DMA)

On 5 May 2023, the Commission launched a **public consultation on a DSA delegated Regulation regarding independent audits**. The DSA requires very large online platforms to conduct such independent audits to ensure compliance with their risk management and crisis response obligations. The draft delegated Act contains main principles that auditors should apply when selecting methodologies and procedures. It also contains templates for the audit report. The consultation will end on 2 June 2023, after which the Commission plans on adopting the rules by the end of the year. After adoption by the Commission, the draft delegated Act will be submitted to the Council and EP for scrutiny.

The Digital Markets Act (DMA)

The DMA was adopted on 14 September 2022 and entered into force on 1st November 2022. Its objective is to address the negative consequences arising from certain behaviours by large online platforms acting as digital “gatekeepers” to the Single Market. These are the kind of platforms that serve as important gateways for business users to reach their customers.

The DMA considers “gatekeepers” to be online platforms that have an annual turnover of at least €7.5 billion within the EU in the past three years or have a market evaluation of at least €75 billion, and have at least 45 million monthly end users and at least 10 000 business users established in the EU. The platform must also control one or more core platform services in at least three Member States.

The Regulation defines and prohibits a series of unfair practices by gatekeepers such as self-referencing in ranking of products and services offered, reuse of private data collected for the purposes of another service, establishment of unfair conditions for business users, pre-installing certain software or applications, etc. The DMA also imposes some obligations on gatekeepers such as ensuring users have the right to unsubscribe, not requiring software by default upon installation of the operating system, ensuring the interoperability of their instant messaging services’ basic functionalities, giving business users access to their marketing/advertising performance data and informing the Commission in case of acquisition or merger.

The DMA started applying on 2 May 2023.

■ BIPAR’s position / key messages

BIPAR welcomes the initiative’s objective to tackle unfair online business practices and insists on the necessity to ensure a level playing field exists, even in a digital environment. Competition issues have been arising as more and more business is carried out online and SMEs and startups find it difficult to compete with very large online platforms.

The existence of smaller entities in digital markets should be considered and the new obligations and sanctions should be proportionate to the size, turnover, scope and risk exposure of the different online entities. This will ensure innovative SMEs and startups are not being prevented from competing on the same online market as large platforms.

■ Next steps

- The DSA will start applying on 17 February 2024. It will start applying earlier for very large online platforms. These platforms will be subject to the application of the DSA four months after their designation. In addition, certain obligations started applying when the DSA entered into force on 16 November 2022. These includes some transparency and reporting obligations for online platforms and the establishment of supervisory authorities by Member States.
- The DMA started applying on 2 May 2023.

Both texts empower the Commission to adopt a series of Delegated Acts to develop “level 2 rules”. These acts should continue to be developed by the Commission in the coming months.

■ Links

- [Digital Services Act \(DSA\)](#)
- [Digital Markets Act \(DMA\)](#)
- [Commission’s delegated Regulation on the detailed methodologies and procedures regarding the supervisory fees](#)
- [Commission’s public consultation on a DSA delegated Regulation regarding independent audits](#)
- [BIPAR’s website: dossier on digitalisation](#)