

The European Commission, the EP and the Council have been working since December 2020 on a set of new EU rules for all digital services, including cloud services, messaging, social media, online marketplaces, and other online platforms and app stores that operate in the European Union: the [Digital Services Act](#) and the [Digital Markets Act](#). The new rules will introduce a horizontal framework for all categories of content, products, services, including financial services, and activities provided, for example, via online intermediary services.

The one purpose that both proposals serve is to make sure that “*what is illegal offline is equally illegal online*”. 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. Of course, 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.

■ Digital Services Act (DSA)

The DSA contains due diligence obligations that apply to all digital services and it aims to tackle trade and exchange of illegal goods, services and content online and algorithmic systems amplifying the spread of disinformation. The DSA will give people more control over what they see online by introducing rules on targeted advertising, on content recommendation, on profiling and on minor protection.

The obligations under DSA depend on the online service provider’s role, size, and impact on the online ecosystem. The Regulation puts forward rules for the removal of illegal goods, services or harmful content online (such as a “flag” mechanism for users), rules for the traceability of business users in online marketplaces, rules on deceiving or nudging techniques to influence users’ behaviour through “dark patterns”, rules on erroneously deleted content by platforms. Very large online platforms, with a reach of more than 10% of the 450 million consumers in the EU, will have to take risk-based action to prevent abuse of their systems, including oversight through independent audits of their risk management measures. Certain exemptions from DSA obligations for micro and small enterprises are included. Recipients of digital services

and organisations representing them will be able to seek redress for any damages resulting from platforms not respecting their due diligence obligations.

In April 2022, the EU co-legislators reached a political agreement on the final text of the DSA. Once formally adopted, the DSA will apply fifteen months after entry into force or from 1 January 2024, whichever is later. As regards the very large online platforms, the DSA will apply from an earlier date, that is four months after their designation.

■ Digital Markets Act (DMA)

The objective of the DMA is to address the negative consequences arising from certain behaviours by large platforms acting as digital “gatekeepers” to the Single Market. These are platforms that have a significant impact on the internal market, serve as an important gateway for business users to reach their customers, and which enjoy, or will foreseeably enjoy, an entrenched and durable position.

According to the DMA, “gatekeeper” online platforms are considered those that have had an annual turnover of at least €7.5 billion within the EU in the past three years or have a market valuation of at least €75 billion, and secondly, they 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 sets out harmonised rules defining and prohibiting unfair practices by gatekeepers and providing an enforcement mechanism based on market investigations. Examples of such practices are self-preferencing in ranking of products/services offered, reuse of private data collected for the purposes of another service, establishing unfair conditions for business users, pre-installing certain software or applications. Under the DMA, gatekeepers will have several obligations such as to ensure that users have the right to unsubscribe, not to require software by default upon installation of the operating system, to ensure the interoperability of their instant messaging services’ basic functionalities, to give sellers access to their marketing or advertising performance data on the platform and to inform the European Commission of their acquisitions and mergers.

In March 2022, the EU co-legislators reached a political agreement on the final text of the DMA. Once formally adopted, the DMA will apply six months after entry into force.