

# DIGITAL SERVICES ACT & DIGITAL MARKETS ACT

IFCLA CONFERENCE 30 SEPTEMBER 2021  
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EC PROPOSAL: DSA & DMA

THE DIGITAL SERVICES ACT

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# DSA & DMA – EC PROPOSAL

- 15 December 2020 – EC: new framework for digital platforms
  - Digital Services Act
    - Consumer protection, expands eCommerce Directive
    - Transparency / accountability
    - Combat illegal goods / services / content
  - Digital Markets Act
    - Competition framework – level playing field
    - Regulates digital ‘gatekeepers’
- 



# KEY GOALS OF THE DSA / DMA

## **For citizens**

- More choice, lower prices
- Less exposure to illegal content
- Better protection of fundamental rights

## **For society at large**

- Greater democratic control and oversight over systemic platforms
- Mitigation of systemic risks, such as manipulation or disinformation

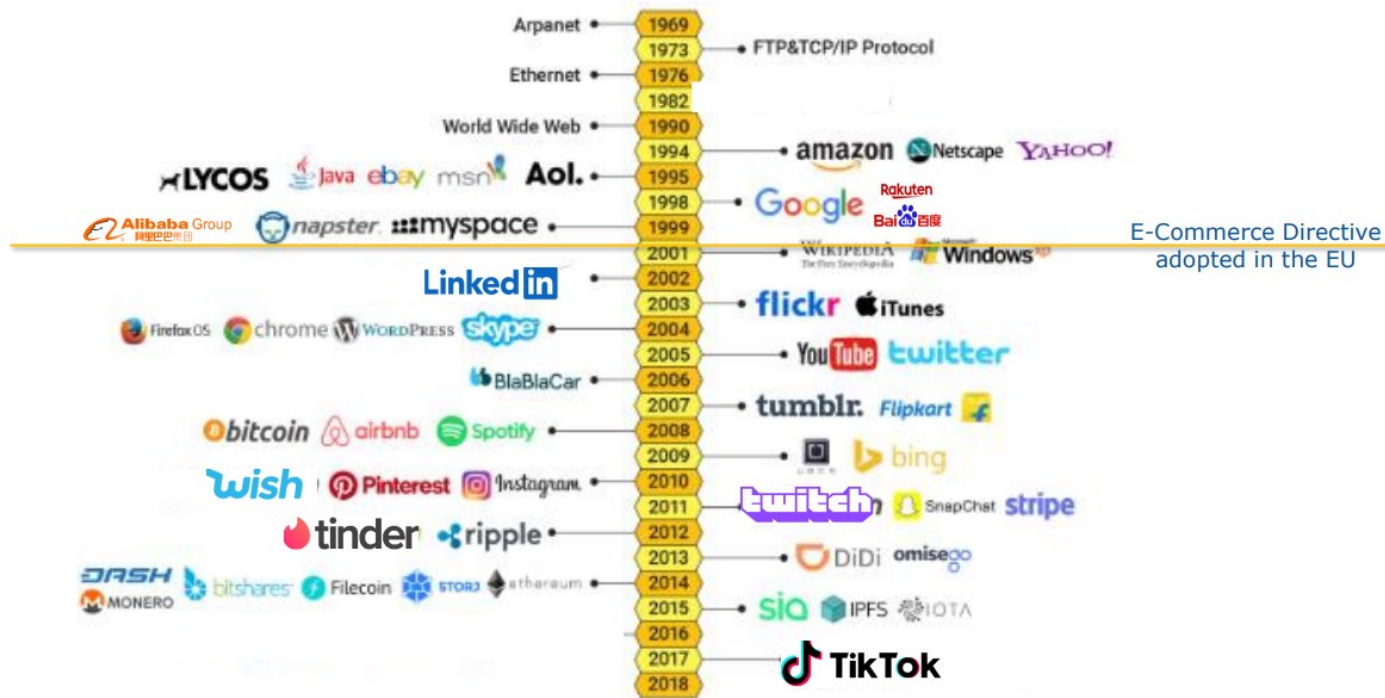
## **For providers of digital services**

- Legal certainty, harmonisation of rules
- Easier to start-up and scale-up in Europe

## **For business users of digital services**

- More choice, lower prices
- Access to EU-wide markets through platforms
- Level playing field against providers of illegal content

# THE CURRENT FRAMEWORK IS 20 YEARS OLD



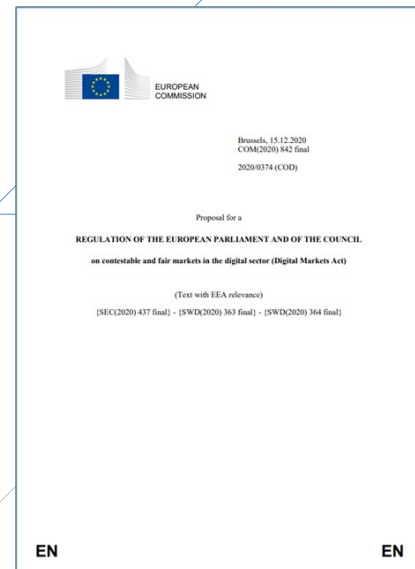
# THE DIGITAL SERVICES ACT

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# DIGITAL SERVICES ACT

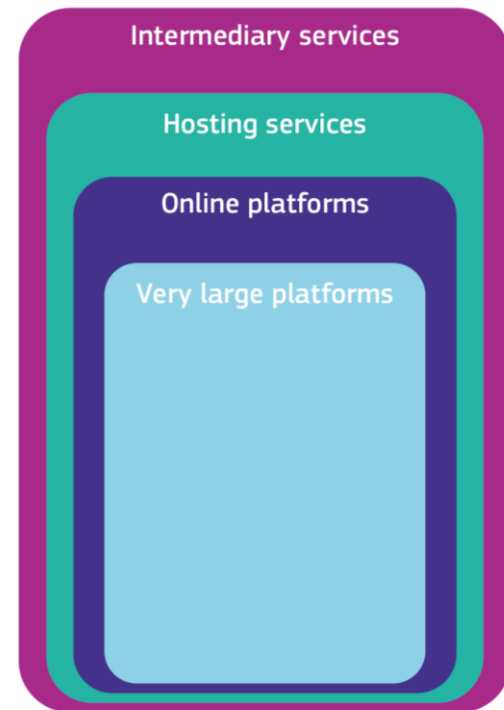
Proposal of 15 December 2020:

- Regulation Of The European Parliament And Of The Council on a Single Market For Digital Services (Digital Services Act) and amending Directive 2000/31/EC
- Aimed at 4 categories of Digital Service Providers
- Accountability Framework
- More Transparency

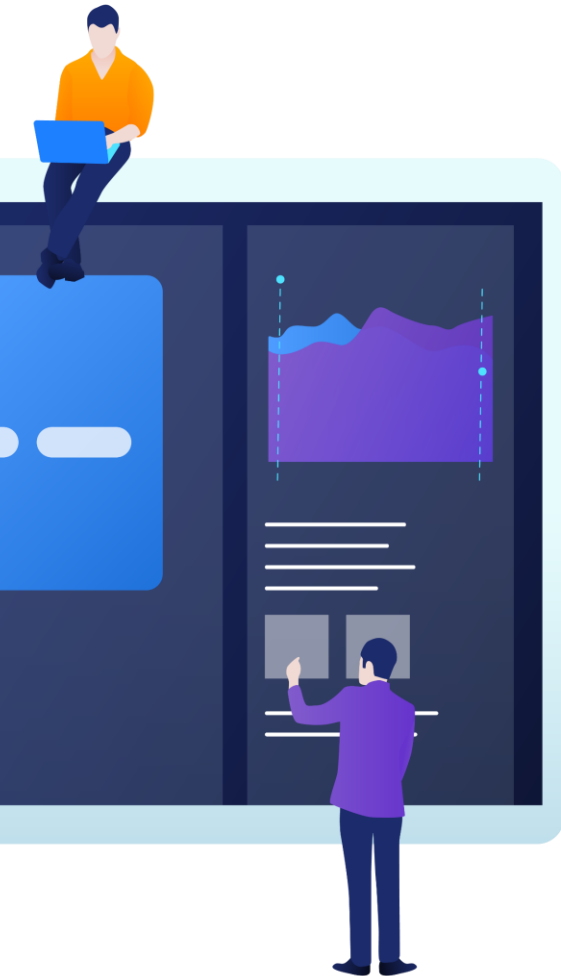


# DSA - CATEGORIES OF SERVICE PROVIDERS

- **Intermediary services** offering network infrastructure:  
e.g., Internet access providers, domain name registrars.
- **Hosting services** such as cloud and webhosting services.
- **Online platforms** bringing together sellers and consumers such as online marketplaces, app stores, collaborative economy platforms and social media platforms.
- **Very large online platforms:** platforms reaching more than 10% of consumers in Europe (10% of 450 million).







# LIABILITY REGIME

- Updated liability regime for intermediaries
- Core principles of eCommerce Directive remain mostly intact – hosting liability exemption
- Hosting provider / online platform: required to put in place user-friendly notice and takedown mechanisms
- Priority to notifications from trusted flaggers.
- What is illegal content: left to national and EU law

## NEW OBLIGATIONS FOR DIGITAL SERVICE PROVIDERS

- More active role for platforms to remove content and protect users
- New rules on KYC and traceability of business users in online market places
- Rules for the removal of illegal goods, services or content online
- Safeguards for users whose content has been erroneously deleted by platforms
- Transparency measures for online advertising and algorithms used to recommend content to users
- Additional obligations for very large platforms

# ONLINE INTERMEDIARY SERVICES

Obligations for intermediary services:

- Points of contact;
- Appoint legal representatives for non-compliance;
- Requirements on terms and conditions;
- Reporting obligations;
- Cooperation with national authorities following orders;



# HOSTING SERVICES

All obligations for intermediary services and:

- EU formalization of the 'Notion and Action' mechanisms;
- Statement of reasons when removing content

**total**  
**webhosting**  
**solutions**



# ONLINE PLATFORMS

All obligations for intermediary and hosting services and:

- Implement internal complaint-handling system;
- Trusted flaggers;
- Measures against abusive behavior;
- Vetting credentials of third-party suppliers (KYBC);
- Reporting criminal offences;
- Advertising transparency.



**Booking.com**



# VERY LARGE ONLINE PLATFORMS

All obligations for intermediary services, hosting services, online platforms and:

- Reporting obligations;
- Risk assessment and mitigation;
- Independent audits and public accountability;
- Crisis protocol and cooperation;
- Data access and scrutiny;
- Compliance officer;
- Transparency of recommender systems;
- Enhanced advertising transparency.

The Amazon logo, featuring the word "amazon" in a dark blue, lowercase sans-serif font. A curved orange arrow is positioned below the letters "a" and "z", pointing from the "a" to the "z".The Facebook logo, featuring the word "facebook" in a blue, lowercase sans-serif font.

# OVERVIEW OF OBLIGATIONS

	VERY LARGE PLATFORMS	ONLINE PLATFORMS	HOSTING SERVICES	ALL INTERMEDIARIES
Points of contact	•	•	•	•
Legal representatives	•	•	•	•
Terms and conditions	•	•	•	•
Reporting obligations	•	•	•	•
N&A	•	•	•	
Statement of reasons	•	•	•	
Complaint handling	•	•		
OOO	•	•		
Trusted flaggers	•	•		
Abusive behaviour	•	•		
KYBC	•	•		
Reporting criminal offences	•	•		
Advertising transparency	•	•		
Reporting obligations	•			
Risk assessment and mitigation	•			
Independent audits	•			
Recommender systems	•			
Enhanced advertising transparency	•			
Crisis protocols	•			
Data access and scrutiny	•			
Compliance officer	•			
Reporting obligations	•			

Cumulative obligations

# KYC OBLIGATIONS: TRACEABILITY

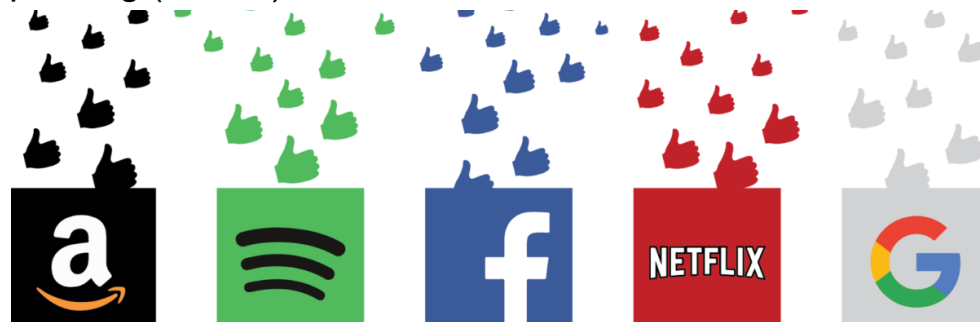
- Article 22 DSA
- Obligations for online marketplaces
- Collect information: name, address, telephone number, email and bank account of the trader
- Reasonable efforts to check the information
- To help track down sellers of illegal goods or services
- Obligation to suspend service until all information is received





# TRANSPARENCY OF RECOMMENDATION SYSTEMS

- Article 29 DSA
- Very large online platforms
- Transparency on algorithms used for recommendations
- Terms and conditions: main parameters
- Easy option for consumers to modify or influence the parameters
- At least one option should not be based on profiling (GDPR)



# ILLEGAL CONTENT, GOODS AND SERVICES

- Article 14 DSA | Notice and Action mechanisms
  - Hosting services
- Article 19 DSA | Flagging mechanisms and trusted flaggers
  - Online platforms
- Article 20 DSA | Measures against misuse
  - Online platforms
- Article 26 DSA | Risk assessment
  - Very large platforms
- Article 8 DSA | (Court) Orders to act against illegal content
  - All intermediary services

# PENALTIES

- Penalties: shall be effective, proportionate and dissuasive.
- Maximum penalty: **6% of the annual turnover** of the service provider.
- Failure to 'cooperate': penalty maximum 1% **of the annual turnover**
  - supply of incorrect, incomplete or misleading information;
  - failure to reply or rectify incorrect, incomplete or misleading information; and
  - failure to submit to an on-site inspection.

# THE DIGITAL MARKETS ACT

# DIGITAL MARKETS ACT

Proposal of 15 December 2020:

- Regulation Of The European Parliament And Of The Council on contestable and fair markets in the digital sector (Digital Markets Act)
- Aimed at ‘gatekeepers’ (large core platform services)



# CORE PLATFORM SERVICES

‘Core platform service’ (article 2 DMA):

- a) online intermediation services;
- b) online search engines;
- c) online social networking services;
- d) video-sharing platform services;
- e) number-independent interpersonal communication services;
- f) operating systems;
- g) cloud computing services;
- h) advertising services, including any advertising networks, advertising exchanges and any other advertising intermediation services, provided by a provider of any of the core platform services [...]

# GATEKEEPER

Gatekeeper: means a provider of core platform services (art 3 DMA) which meets the following criteria:

- Significant impact on the internal market;
  - annual turnover equal to or above €6.5 billion
- Serves as an important gateway for business users to reach end users; and
  - over 45 million monthly end users and over 10 000 yearly business users
- Enjoys an entrenched and durable position in its operations or will foreseeably enjoy such a position soon.
  - above thresholds were met in each of the last three financial years.



# GATEKEEPERS

**amazon**

The Amazon logo consists of the word "amazon" in a dark blue, lowercase, sans-serif font. Below the text is a curved orange arrow that starts under the 'a' and points towards the 'z'.

**Google**

The Google logo features the word "Google" in its signature multi-colored font: blue for 'G', red for 'o', yellow for 'o', green for 'g', and red for 'l' and 'e'.

**facebook**

The Facebook logo is the word "facebook" in a blue, lowercase, sans-serif font.

  
**Alibaba**

The Alibaba logo features a stylized orange graphic above the word "Alibaba". The graphic is a thick orange line forming a shape reminiscent of a stylized 'A' or a mountain peak, with a small registered trademark symbol (®) to its right. The word "Alibaba" is written in a bold, orange, sans-serif font.



# DMA - OBLIGATIONS

## Obligations for Gatekeepers

- Level playing field
- Non-discrimination
- Transparency
- Data requirements
- Ranking



# GATEKEEPER OBLIGATIONS – LEVEL PLAYING FIELD

- Relationship with customers
  - Allow business users to contract with end users outside of the platform;
  - Refrain from requiring business users or end users to subscribe with any other core platform services of the gatekeeper;
  - Refrain from requiring business users to use another service of the gatekeeper.
- Technical requirements / lock-in
  - Refrain from technically restricting end users to switch between different software applications and browsers;
  - Allow end users to un-install pre-installed software applications;
  - Allow the installation and effective use of third-party software applications or stores.

# GATEKEEPERS OBLIGATIONS – NON-DISCRIMINATION

## NON-DISCRIMINATION

- Apply fair and non-discriminatory general conditions of access for business users to its software application store;
- Refrain from self-preferencing their own products;
- Allow business users to offer the same products or services to end users through third party online intermediation services at their own conditions.

# GATEKEEPERS OBLIGATIONS – TRANSPARENCY

## TRANSPARENCY

- Provide advertisers with information concerning the price paid by the advertiser for a given ad;
- Provide advertisers free of charge, access to their performance measuring tools;
- Refrain from preventing business users from raising issues with relevant public authorities.
- Ranking:
  - Gatekeeper or affiliates should not be treated more favourably in ranking
  - Apply fair and non-discriminatory conditions to ranking

# GATEKEEPERS OBLIGATIONS – DATA

## DATA

- Refrain from combining personal data with data from other services without consent;
- Allow data portability for data collected by business and end users;
- Provide business access and use of aggregated or non-aggregated data;
- Provide search engines access on fair, reasonable and non-discriminatory terms to ranking, click and view data;
- Refrain from using, in competition with business users, any data not publicly available, which is generated through activities by those business users.

# SANCTIONS

## Fines (article 26 DMA)

- Commission may impose fines on a Gatekeeper:
  - not exceeding 10% of its total turnover in the preceding financial year
  - periodic penalty payments may not exceed 5% of the average daily turnover in the preceding financial year per day

# DSA / DMA - NEXT STEPS?

- Ordinary legislative procedure
- Next: The European Parliament and EU Member States will discuss the proposals
- Once adopted, the DMA and DSA will be directly applicable across the EU

Discussion and questions

# CONTACT



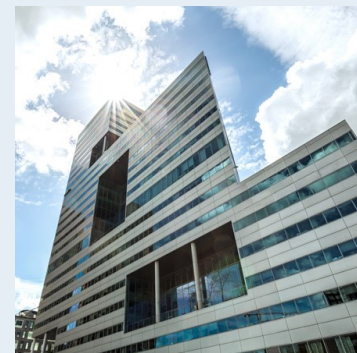
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