

JUDICIAL TRAINING:

the right skills to embrace
the digitalisation of justice

26, 27 & 28 April 2023



European
Commission

Regulatory framework for digital platforms

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*The views expressed are personal
and cannot be attributed to the
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DSA and DMA

- Context

- Key role of **digital intermediaries** in the evolution of internet economy
- Intermediating huge amount of content and exchanges among users
- Operating as gateways between consumers and business users
- Controlling access to markets and information
- Addressing risk of fragmentation in EU Single Market

Digital Services Act (Reg. (EU) 2022/2065)

- To create a **safer digital space** in which the **fundamental rights** of all users of digital services are protected

Digital Markets Act (Reg. (EU) 2022/1925)

- To establish a **level playing field** to foster **innovation, growth and competitiveness**, both in the European Single Market and globally



DSA – Digital Services Act

- **Aim:** Create **risk-based accountability for illegal and harmful content**, while ensuring dissemination of content in accordance with fundamental rights
- Single set of European rules defining obligations for all **digital intermediaries**
 - Mere conduit, caching, hosting, platforms, search engines

How ?

Principles on conditional liability and prohibition of general monitoring obligations (E-Commerce Directive)



Asymmetric due diligence obligations



DSA – Due diligence obligations

	VERY LARGE PLATFORMS	ONLINE PLATFORMS	HOSTING SERVICES	ALL INTERMEDIARIES
Transparency reporting	•	•	•	•
T&Cs	•	•	•	•
Cooperation with national authorities	•	•	•	•
Points of contact & legal representatives	•	•	•	•
N&A	•	•	•	
Reporting criminal offences	•	•	•	
Complaint & redress mechanisms, OOC dispute settlement	•	•		
Trusted flaggers	•	•		
Prohibition of Dark Patterns	•	•		
Measures against abusive notices	•	•		
Special obligations for marketplaces (e.g. KYBC, random checks)	•	•		
Bans on targeted ads to children and based on special categories of personal data	•	•		
Accessibility	•	•		
Transparency of recommender systems	•	•		
Advertising transparency	•	•		
Risk management	•			
Independent audits	•			
User can opt out of profiling	•			
Data sharing with authorities & researchers	•			
Codes of conduct	•			
Crisis response cooperation	•			

- Gradually applicable during 2023 to Very Large Online Platforms and Search Engines (VLOPs/VLOSEs), 4 months after designation
- Generally applicable to all intermediaries active in EU as from 17 February 2024



More safety online and fundamental rights respected

- Create more transparency and accountability
- Allow for contestability of decisions
 - through notice and action mechanisms
 - by mandating redress and compensation measures
- Mandate risk assessment and mitigation
 - Fight against disinformation
 - Countering illicit content and goods
 - Address other online harms
- Uphold freedom of expression
- Additional protection of minors' safety and privacy
- Ensure protection of free and pluralistic media
- Ensure a healthier public debate
- Allow for democratic oversight of platforms
- Give users more information and agency



DSA - enforcement

- **Public enforcement (Chapter IV)**

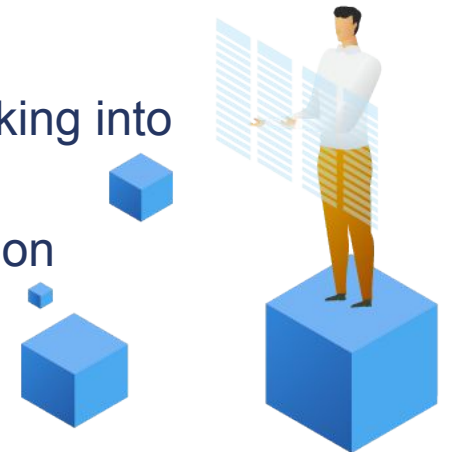
- National authorities and (for VLOPs/VLOSEs) Commission
- Checking compliance of **internal systems and processes** of providers with due diligence obligations
- No adjudication on individual items of content

- **Private enforcement (Article 54)**

- National courts
- Damages caused by violation of due diligence obligations
- Causation link – damages in an individual case



- Systemic nature of the obligations: beyond scrutiny of T&C and individual cases, looking into internal processes and how algorithms applied work and react
- Risk based approach: ex-ante analysis of potential risks and effectiveness of mitigation measures



DSA – Development of expertise and capabilities

- Periodic risks assessment and audits carried out by VLOPs/VLOSEs (Articles 34 and 37)
- Direct access to data of VLOPs/VLOSEs by vetted researchers, and dissemination of research performed (Article 20)
- Analysis of emerging risks in different areas (freedom of speech, public health, gender violence, pedopornographic content, counterfeit and piracy, hate-speech, etc....)
 - Cross-sectoral and institutional cooperation (see Article 64)
- Examination and testing of algorithms
 - European Centre for Algorithmic Transparency (ECAT) hosted by JRC
- Use of data
- Behavioural studies and causation (beyond forensic economics)



DMA - Context

Digital sector: market concentration tendencies and underlying market dynamics in the digital sector, as well as other characteristics of digital markets, have contributed to several market failures:

- **Extreme scale and scope economies**, often resulting from nearly zero marginal costs to add customers and business users
- **Strong network effects** associated to the multi-sidedness of online platforms
- **Data driven-advantages** that leave no room for competitors
- **Presence of large platforms**, often integrated in large **ecosystems**, exacerbates negative effects triggered by these features, thus making it impossible for markets to self-correct.



DMA – central ideas

- **Focus on gatekeepers of a ‘core’ platform service** as most powerful actors in the ecosystem of digital services
 - Designation of gatekeepers in ten Core Platform Services (online intermediation services, online search engines, online social networking services, video-sharing platform services, number-independent interpersonal communication services, operating systems, web browsers, virtual assistants, cloud computing services, advertising services) on the basis of quantitative and qualitative criteria
- **Horizontal application** that covers all sectors
- **Ex-ante** regulations, clear list of **do’s and don’ts** to drive **innovation and foster contestability of the markets**
- **Complementarity** by providing new tools alongside competition law and sectoral regulations that continue to apply



Map of obligations

Data-related

- Ban on data combination (5(2))
- Data silos (6(2))
- Data portability (6(9))
- Access to data generated by users (6(10))
- Access search data for online search engines (6(11))

Commercial relations

- Ban MFN clauses (5(3))
- Anti-steering (5(4))
- Reader rule (5(5))
- Ban gag clauses (5(6))
- Termination (6(13))

Mobile ecosystems

- Un-installation/choice screens (6(3))
- Side-loading apps (6(4))
- Switching (6(6))

Reporting

- Report about implementation (11)
- Inform about mergers (14)
- Audit re techniques for profiling consumers (15)

Fair access

- Fair ranking and ban of self-preferencing (6(5))
- FRAND access conditions (6(12))

Transparency

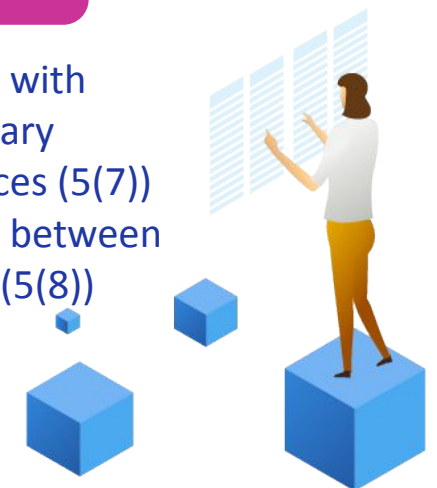
- Transparency on ads pricing (5(9) and 5(10))
- Transparency on ads performance (6(8))

Interoperability

- Vertical interoperability for hardware/software (6(7))
- Interoperability for NI-ICS (7)

Tying

- Tying with ancillary services (5(7))
- Tying between CPSs (5(8))



DMA – Development of expertise and capabilities

- Similar to DSA, designation based on self-certification, but more precise delineation of services
- Equivalence as a key aspect in implementing obligations
- FRAND access
- Examination and testing of algorithms for fairness purposes
 - European Centre for Algorithmic Transparency (ECAT) hosted by JRC
- Use of data
- Behavioural studies and causation (beyond forensic economics)



THANK
YOU
for your participation!



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