



# **THE EUROPEAN COMMISSION PROPOSES NEW DIGITAL PLATFORM REGULATION**

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## **Introduction**

In December 2020, the European Commission proposed new regulation for online platforms. The regulation includes two pieces of legislation: the Digital Services Act and the Digital Markets Act. The regulation is directed at social media platforms and online marketplaces operating within the EU and will change the way companies offer and use digital services in the EU. The regulation will affect most providers of digital services and their business users and customers.

## **The Digital Services Act**

The Digital Services Act is intended to apply to all providers of intermediary service, hosting services and online platforms, specifically providers of internet, cloud and messaging services, marketplaces, and social networks. The rules are to supplement the current regulation of the E-Commerce Directive which was implemented 20 years ago.

One of the main items of this regulation is an obligation for providers to implement measures for effective intervention against illegal content, products, and services. The rules propose to impose a due diligence obligation for platform and hosting providers.

It is proposed that users and businesses must be able to report illegal content, products, and services to the providers and that the providers must be obligated to implement formal procedures for handling complaints, drafting formal decisions, and offering the possibility of appeal.

A second main item of the regulation is that it proposes a requirement for traceability of business users of online marketplaces to make it easier to identify sellers of illegal products or services. Platform providers will also be obligated to effectively remove illegal goods and services offered.

A third main item of the regulation is that it imposes an obligation for the providers to secure transparency in targeted advertisement. Users must be able to understand why and how they are being targeted by specific advertisers and who pays for such advertisement.

The Commission has suggested specifically strict obligations for large online platform providers. These are defined as platforms reaching more than 10% of the population of EU, equaling approx. 450 million consumers. These large providers are obligated to implement intervening measures for the protection against illegal content, products, and services, and to – upon request - provide database access for researchers and authorities for investigating advertisement on the platforms. Also, large providers are obligated to analyze any systemic risk stemming from the use of their platforms and put in place effective content moderation mechanisms to address the identified risks, and to designate a dedicated compliance officer responsible for the compliance. Each member state is suggested to appoint a national Digital Services Coordinator who will be responsible for supervising intermediaries established within each of the member states. Further, each member state is suggested to introduce specific penalties for non-compliance. Both national authorities and the Commission should be able to demand immediate action from platform providers, and if providers do not react to or comply with such demands, the national authority or the Commission, as the case may be, may order temporary suspension of the services of the platform provider.

The Commission has suggested that it be given the power to supervise large providers and, under severe circumstances, to impose fines of up to 6% of the providers' global annual turnover.

### **The Digital Markets Act**

It is proposed that the Digital Markets Act is to regulate platforms which are classified as "gatekeepers" in the digital sector. The purpose of the Act is to limit the market power of very large digital corporations which control core platforms. The Digital Markets Act is to be considered as a supplement the competition laws.

The regulation will apply to all large providers of core platform services (gatekeepers) including search engines, social media networks, certain messaging services and intermediation services. Objective criteria based on size, impact on the market and the status as gateway between small and medium sized businesses and their customers have been proposed, however, the Commission will have the authority to deviate from these criteria if considered necessary.

All gatekeepers will be obligated to proactively implement measures to secure a fair and open online market.

It is proposed that gatekeepers must refrain from using the data of its business users for competing with such users, and refrain from making restrictions regarding the conclusion of contracts with customers outside the platforms. Under special circumstances, gatekeepers are also proposed to be obligated to secure interoperability between the gatekeepers' software (the platform) and third-party software.

To enable the enforcement of the Digital Markets Act, it is suggested that the Commission be the supervising authority, with the power to initiate investigations for the purposes of identifying gatekeepers, identifying new core platforms, and for designing additional remedies against systemic infringements of the legislation.

It is suggested that the Commission should be able to impose fines of up to 10% of the gatekeepers' total worldwide annual turnover and impose periodic penalties of up to 5% of the gatekeepers' total worldwide annual turnover in case of the gatekeepers' violations of the regulation. As a last resort, it is also suggested that Commission should be able to force gatekeepers to divest certain or all its businesses within the EU. It is noted by the Commission that the possibility to enforce divestiture should only be used as a last resort in case of

systematic infringements, and only under circumstances where such measures are considered proportionate to the offences committed by the gatekeepers.

### **Next Steps**

The European Parliament and the EU member states will now discuss and negotiate the proposed Digital Services Act and Digital Market Act in accordance with the ordinary legislative procedure. It may take several years before the rules are actually adopted and implemented.

If the regulation is adopted, it will have direct effect in each member state across the EU.

### **Our Comments**

The Commission has proposed a comprehensive set of rules for the purpose of making the EU a pioneer within regulation of online markets.

The proposed legislation will impose significant and comprehensive burdens on the platform providers and intermediaries for the purpose of securing a fair and open market, and for protecting the rights of the European consumers online. In order to incentivize providers to comply with the regulation, the possibility of very large fines has been proposed.

We will continue to follow the developments closely to monitor the possible effects and implications of this proposed new regulatory regime. Given the importance of the suggested changes, we recommend that companies that are potentially affected by this new regime follow the development closely.

**If you have any questions or require further information regarding any of the above, please do not hesitate to contact us:**



Pernille Nørkær  
Partner  
[pernille.noerkaer@moalemweitemeyer.com](mailto:pernille.noerkaer@moalemweitemeyer.com)



Sarah Veje Rasmussen  
Associate  
[sarah.rasmussen@moalemweitemeyer.com](mailto:sarah.rasmussen@moalemweitemeyer.com)

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