



## **NEW EU LEGISLATION TO MAKE THE INTERNET A SAFER SPACE FOR USERS**

*28 April 2022*

### **Introduction**

On 23 April 2022, the Council and the European Parliament reached an agreement on the Digital Services Act (“DSA”), which introduces a new principle: *“what is illegal offline must also be illegal online”*.

The DSA aims to protect the digital space against the spread of illegal content and ensure the users’ fundamental rights. This includes a requirement to moderate and manage content, e.g., to assure that no dangerous products are advertised or sold and to prevent sharing of illegal content such as child porn or terrorist content.

The DSA is still subject to formal approval and adoption by the Council and the European Parliament. When formally adopted, the DSA will be directly applicable in the member

states and enter into force on the later of (i) 15 months after the adoption or (ii) on 1 January 2024.

However, the DSA will apply for very large online platforms (see definition below) four months after their designation as a very large online platform. The designation of very large platforms will start from the date of formal adoption.

## **Background**

The DSA was proposed by the European Commission in December 2020 together with the Digital Markets Act, described in our [newsletter](#) from 29 March 2022. Together the two acts aim at ensuring a more safe, open, and fair online environment in the European Union.

The overall purpose of the DSA is to create a safe online environment, where online platforms are required to be transparent on their content moderation decisions, prevent misinformation from being spread and avoid unsafe products being offered on marketplaces.

## **Definition of Online Platforms covered by the DSA**

The DSA sets out which online platforms that the new obligations will impact, and such are defined as follows:

- *Intermediary services*: Services that offer network infrastructure (internet access, domain name registrars).
- *Hosting services*: Cloud and web hosting services.
- *Online platforms*: Online marketplaces, app stores, collaborative economy platforms and social media platforms.
- *Very large online platforms and search engines (“VLP”)*: Online platforms that pose a particular risk on sharing illegal content and harm and reaching more than 45 million active users within the European Union.

How extensive the new obligations are to the online platforms depends on the European online system’s role, size, and impact.

Some of the material changes are described below.

## **New Obligations for Online Platforms**

### *Measures to curb illegal goods, services, or content online*

Online platforms will have an obligation to offer an easy way for users to report any illegal goods content, including a system that makes it easy for the online platform to cooperate with the reporting user.

If an online platform becomes aware that a user has spread or published illegal content on its platform, the online platform is required to inform users of the illegal content in order to get its opinion. If this process is not met, the online platform cannot suspend the user from its platform.

The described process will secure that the user's freedom of expression (and other fundamental rights) is not limited unproportionally - and give the online platform the possibility to enjoin the user to obey the rules or suspend such.

If the user disagrees with the online platform's decision the user can challenge such and seek financial compensation if the DSA is not respected.

### *Transparency on Algorithms*

Currently, the online platforms can refuse to provide any information on how their algorithms function and how they recommend content for users.

With the DSA, the online platforms will now be required to "open the black box" and provide information on the algorithms and their function to secure fundamental rights such as freedom of expression and information, the right to private life, and the right to non-discrimination.

### *Advertising on Online Platforms*

With the DSA, all online platforms are required to ban certain types of targeted advertises. This includes that they will no longer be able to target advertising based on religion, sexual preference, health information and/or political beliefs.

The online platforms will not be able to personalise any advertising based on personal data to children (individuals below the age of 18). This is to secure privacy and safety online for children.

### **Obligations for VLP's**

Further to the above-mentioned obligations the following will also apply for VLP's.

#### *Risk Assessments and Audits*

VLP's will be required to take risk-based action to prevent misuse of their platforms. This obligation means that the VLP's must use all necessary measures to parry all risks identified. For example, such measures could be that they adjust the design and function of their content-moderation, algorithms, or measures to increase the visibility of information from authorities to prevent and limit the illegal content on their platforms.

VLP's must undergo an independent audit of their risk management systems from an organisation that: (i) is independent of the VLP, (ii) have proven expertise in risk management, technical competence, and capabilities, and (iii) has proven objectivity and professional ethic.

The auditor must have access to all relevant information necessary to conduct the audit and the possibility to include independent external experts within the area of the VLP's business. The VLP's are required to publish an audit report each year, which must contain a detailed description of their moderation efforts, including information on the number of staff working on the moderation, their expertise, languages spoken and the use of artificial intelligence to remove illegal content. The audit report must also include information on the number of accounts suspended and pieces of content deleted.

#### *Crisis Mechanism*

Under extraordinary circumstances that may impact public security or public health the European Commission has the authorisation to take an initiative to prepare crisis protocols. Such protocols shall ensure a quick, collective and border crossing effort in the online environment.

Such extraordinary circumstances can be earthquakes, cross boarding threats against public health, terror – or more current, pandemics and war - where online platforms can be used to spread illegal content or misinformation.

### **Government and Sanctions**

With the DSA, online platforms will be held accountable for the risks their services can pose to society and their users. The European Union member states will have the primary role of supervision and will be supported by a new European Board of Digital Services. The European Commission has been given the authority to supervise VLP's.

Each member state shall lay down their own penalties for infringements, which must be effective, proportionate, and dissuasive.

The European Commission has the possibility to impose a fine of up to 6 % of a global turnover or – in case of repeated serious breaches – ban the online platform on operating within the European Union.

### **Our Comments**

The DSA will impose significant burdens on online platforms – especially on VLP's. The moderation requirements for online platforms to secure that no illegal goods, services, or content is sold or shared on their platforms will be comprehensive and will require a large setup and a huge number of staff with the right competencies.

The new legislation will impact human rights, such as the freedom of expression, positively and negatively. It is necessary to prevent any harmful conduct on online platforms – especially for children – and to stop the spread of misinformation regarding important matters. However, the DSA will make a huge impact on the freedom of expression, for instance, as it will limit the possibility of expressing one's opinion.

The size of the penalties is determined to incentive online platforms to comply with the new legislation. Given this, all such must start preparing for when the DSA comes into force.

**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)



Jeanette Kjeldgaard Rasmussen  
Associate  
[Jeanette.rasnussen@moalemweitemeyer.com](mailto:Jeanette.rasnussen@moalemweitemeyer.com)

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