

FACTSHEET

The Digital Services Act

What impact does this legislation have on your organisation?

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As from 17 February 2024, the DSA is fully applicable. This European regulation will bring significant changes to the digital domain. The DSA aims to contribute to a well-functioning internal market for intermediary services by:

- creating a safe, predictable and trustworthy digital environment;
- facilitating innovation;
- and ensuring that fundamental rights are effectively protected.

This legislation has significant consequences, but what do these mean in practice for you as a consumer or as a provider of an online service? We are happy to help you answer that question and to bring your organisation into compliance with the DSA.

What is the DSA?

The DSA is a European regulation with direct effect in all Member States. This means that it does not need to be transposed into national legislation. The regulation revises the existing legal framework for the liability and responsibilities of online platforms and other intermediary services.

The e-Commerce Directive from 2000 forms the core of that framework. Over recent decades, the digital society has changed significantly, in particular due to the rise of online platforms. For that reason, the European Commission presented its proposal for the DSA in 2020. The legislation is now ready to become fully applicable in 2024.



Where does the DSA apply?

The DSA applies to intermediary services offered to recipients in the European Union (EU), regardless of where the providers of those intermediary services are established. Offering a service in the EU is demonstrated by a 'substantial connection' with the EU, which may be evident from factors other than establishment in the EU alone.

This may, for example, be the case where there is a large number of users in one or more EU Member States, or where activities are specifically directed at EU Member States. The latter cannot be inferred merely from a website being accessible from the EU, but may be evident from, for example, the language or currency used that is common in EU Member States, the possibility to order products from the EU, a national app store, or advertisements in a European language.

Who do the rules apply to?

The DSA is, in principle, broadly applicable to 'providers of certain information society services', a concept we know from earlier directives. This includes the concept introduced by the DSA of 'providers of intermediary services' (hereinafter: intermediary services). Within intermediary services, three categories are distinguished:

- **'mere conduit' services**

(for example internet service providers);

- **'caching' services**

(for example content delivery networks);

- **'hosting' services**

(for example cloud and web hosting services).

Mere conduit and caching services concern the transmission and temporary storage of information provided by users. Hosting services consist of the storage of information provided by, or at the request of, users of the service. Within the category of hosting services, online platforms are separately identified and defined as hosting services that not only store information, but also make it accessible to, and distribute it to, third parties. Examples include online marketplaces, app stores and social media platforms.

What are the **key** obligations?

The DSA concerns liability rules for intermediary services and also introduces new due diligence and transparency obligations, particularly in relation to content moderation.

The DSA has a layered structure. This means that the rules do not apply equally to all intermediary services. Below we set out the key obligations for you.

Liability

The liability rules in the DSA are based on the rules from the e-Commerce Directive. Those rules therefore largely remain in place. In essence, this means that an intermediary service is not liable for the information that users disseminate via or store with the intermediary service, unless the intermediary service has knowledge of the information that has been disseminated or stored. The main new obligations are as follows:

● Voluntary investigations

You are not excluded from the liability exemptions when you carry out voluntary investigations or take other measures against illegal content in good faith and with due care (Article 7 DSA). This provision is intended to ensure that you are not discouraged from moderating content. By moderating, you may gain knowledge of illegal content, which could otherwise trigger liability. The prohibition on a general monitoring obligation imposed by public authorities under the e-Commerce Directive remains in force under the DSA (Article 8 DSA).

● Orders

When you receive an order from a competent authority to act against illegal content, you must inform that authority or another competent authority without delay of the effect given to the order (Article 9 DSA). This also applies to orders to provide information about one or more specific users of the service (Article 10 DSA).

Due diligence and transparency

The DSA includes various new due diligence and transparency obligations, with the aim of creating a safer online environment. Below are the key obligations applicable to all intermediary services, followed by the additional obligations for hosting services and online platforms, respectively.

● Single point of contact

You must designate a single point of contact for communication with authorities (Article 11 DSA). If your company is not established in the EU, you must appoint a legal representative in the EU (Article 13 DSA). There must also be a single point of contact for users of the service, enabling communication in a quick and easy manner, and not based solely on automated tools (Article 12 DSA).

● Terms and conditions

You must provide clear information in your terms and conditions about your content moderation policies, procedures and tools. You must also state whether you use algorithmic decision-making or human review (Article 14 DSA).

● Reports

At least once a year, you must publish a report on content moderation (Article 15 DSA). This must include, among other things, the number of orders from authorities and the number of notices and complaints from users you have received, how many accounts you have blocked or removed, and any use of automated tools.

If you **provide a hosting service**, the following additional obligations apply:

● **Notice and action mechanisms**

You must provide notice and action mechanisms enabling users to report illegal content in an accessible and electronic manner (Article 16 DSA).

● **Statement of reasons**

When you remove content or (partially) suspend a user because their behaviour is incompatible with your terms or because they post illegal content, you must provide a clear and specific statement of reasons (Article 17 DSA).

● **Suspicion of a criminal offence**

If you become aware of information giving rise to a suspicion that a criminal offence has been, is being or will be committed, you must inform the competent authorities without delay. This obligation specifically concerns life-threatening criminal offences (Article 18 DSA).

If you provide an **online platform** (with the exception of micro and small enterprises), the following additional obligations apply:

● **Internal complaint-handling system**

You must offer an effective internal complaint-handling system allowing users to submit complaints electronically and free of charge for at least six months after a decision (Article 20 DSA).

● **Out-of-court dispute settlement**

You must give users access to out-of-court dispute settlement, for example where complaints could not be resolved (Article 21 DSA).

● **Trusted flaggers**

You must give priority to notices submitted by trusted flaggers. These are individuals or entities that have demonstrated expertise and competence in tackling illegal content (Article 22 DSA).

● **Suspension**

You must suspend users who repeatedly provide illegal content (Article 23 DSA).

● **Transparency reporting obligations**

Additional transparency reporting obligations apply to online platforms. For example, your reports must also include information on the number of disputes and the number of suspensions in a year (Article 24 DSA).

● **Online interfaces**

It is expressly prohibited to design online interfaces in a way that misleads or manipulates users, or that otherwise materially impairs their ability to make free and informed decisions (Article 25 DSA).

● Advertising

When you display advertising, you must ensure that certain information is directly available to each user, such as on whose behalf the advertisement is shown. In addition, the personalisation of advertisements based on special categories of personal data is prohibited (Article 26 DSA).

● Recommender systems

If you use recommender systems, you must clearly explain in your terms and conditions which parameters are used for those systems, as well as any options for users to modify them (Article 27 DSA).

● Protection of minors

The DSA places strong emphasis on the protection of minors. Where your platform is accessible to minors, you are required to take measures to ensure a high level of privacy, safety and protection of minors within your service. For services directed at minors, it is prohibited to display personalised advertising (Article 28 DSA).

Where you provide an online platform on which products or services are sold by traders to consumers, specific obligations apply:

● Verification

You must verify the legitimacy of the trader before allowing them to offer products to EU citizens on your platform. To that end, you must request the following information: name, address, telephone number, email address, copy of an identification document, bank account details, trade register and registration number, and the trader's self-certification (Article 30 DSA).

● Online interface design

It is essential to do everything possible to design and organise your online interface in such a way that traders are able to provide mandatory information when selling a product or service (Article 31 DSA).

● Informing consumers

When you become aware of an illegal product or illegal service, you must inform consumers who have purchased that product or service, insofar as you have their contact details (Article 32 DSA).

Very large online platforms are subject to additional obligations relating to risk assessments and mitigation, crisis response mechanisms, independent audits, and transparency reporting obligations on recommender systems and online advertising. A very large online platform is a platform with more than 45 million monthly active users in the EU.

Would you like to receive additional information?

Would you like to know more or do you have specific questions?

Please contact us

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