



**THE DIGITAL
SERVICES ACT
& THE DIGITAL
MARKETS ACT**

INFORMATION, COMMUNICATION & TECHNOLOGY

EUROPEAN COMMISSION PRESENTS TWO PROPOSALS FOR REGULATIONS – THE DIGITAL SERVICES ACT & THE DIGITAL MARKETS ACT

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On 15 December the European Commission released two new **proposals for Regulations**, the [Digital Services Act](#) and the [Digital Markets Act](#). This package presents an ambitious reform of the regulation targeting the digital environment, enhancing safety and the protection of human rights on the digital space while fostering competition and innovation.

Digital Services Act

The **Digital Services Act** (*Proposal for Regulation on a Single Market for Digital Services, “DSA”*) intends to harmonise the intermediaries’ obligations and accountability according to their impact in the online ecosystem, while fostering the growth of smaller platforms. This proposal changes the rules on **liability of online providers** and on the **handling of illegal content online**.

To whom does it apply?

- **Intermediary services**, e.g. access providers;
- **Hosting services**, e.g. cloud providers;
- **Online platforms**, e.g. marketplaces or social media
- **Very large online platforms**

What changes?

- **For all categories**
 - Prohibition of general monitoring or active fact-finding obligations;
 - Mandatory point of contact for authorities, and
 - Obligation to provide users with information on restrictions on the use of data (e.g. content moderation mechanisms or algorithmic decision-making)
- **For online platforms**
 - Creation of a redress mechanism and an out of court dispute settlement mechanism for users to challenge platform’s decisions;
 - Traceability of all users involved in a contract celebrated at distance (KYC procedures), and
 - Transparency obligation for online advertising.
- **For very large platforms:** all the abovementioned plus additional obligations considering the higher intrinsic risks for society.
 - Obligation to carry independent audits to prevent misuse of systems;
 - Transparency obligations for the algorithms used to rank content to a user;
 - Obligation to provide the user with an option that does not use profiling, and
 - Obligation to share data with authorities and researchers.

Supervision & Sanctions

- **Supervision:** by each Member State, supported by the **European Board for Digital Services**. For very large platforms supervision is performed by the **European Commission**
- **Fines:** Fines can up to **6%** of annual universal turnover

The Digital Markets Act

Digital Markets Act (*Proposal for Regulation on Contestable and Fair Markets in the Digital Sector, "DMA"*) aims to prevent core platform services, with significant and durable impact on the market (designated as *gatekeepers*) from **imposing unfair conditions**, complementing the current competition law rules.

To whom does it apply?	<p>Providers that act as gatekeepers in the digital sector.</p> <p>These providers act as a gateway between businesses and customers, impacting the market in depth and in a durable manner.</p> <p>Gatekeepers will be classified as such according to objective criteria, including having the control over a core platform service and being established in several Member States.</p>
What changes?	<ul style="list-style-type: none">▪ Gatekeepers will have to avoid self-preferencing of their own services, while also allowing inter-operation;▪ These providers will need to be transparent with advertisers, giving access to performance measuring tools;▪ Regarding data use, gatekeepers will be forbidden to use data from several sources while granting access to data to businesses;▪ These providers will also have to allow customers and businesses to conclude contracts outside the main platform;▪ Under the Digital Markets Act,
Supervision & Sanctions	<ul style="list-style-type: none">▪ Supervision: the European Commission can also carry market investigations, in order to ensure compliance and a proper identification of the gatekeepers▪ Fines: Fines can up to 10% of the annual worldwide turnover. When systematic infringements happen, structural remedies can be imposed, as compulsory sale of parts of the business.

The Proposals are now subject to **public consultation** and several gatekeepers have already endorsed the Commission's initiatives. Following the public consultation, the negotiations are expected to last at least **18 months**. After approval, the Regulations will **enter into force immediately** and the Member States will have 6 months to ensure their implementation.

At VdA, our ICT team is available advise to organisations in order to prepare them for the challenges arising from the implementation of the Digital Package.

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