

**UN TRADE and DEVELOPMENT
International Forum
Tirana, Albania
22 January 2025**

**Enforcing competition and consumers protection law in digital
markets and Ecosystems: Policy challenges and options
(EU & MS experience to address challenges in digital markets)**

Presentation by:

***Dr. François Souty
Frm International Affairs Officer, DG Competition, European Commission, Brussels
Executive Persident LRACG Consulting in European Strategies, Angoulême
Lecturer Excelia Business School Group, La Rochelle***

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2025

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law in digital markets and Ecosystems: policy
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(EU & MS experience to address challenges in digital
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François SOUTY

*Frm International Affairs Officer, DG Competition, European Commission, Brussels
Executive Persident LRACG Consulting in European Strategies, Angoulême
Lecturer Excelia Business School Group, La Rochelle*

UNCTAD Conference, Tirana School of Magistrates, 23 January 2025

Outline

1. DMA and DSA, differentiated regulatory texts
2. An introduction to the DMA
3. An Introduction to the DSA
4. A Dual Enforcement of the DSA



I

DMA and DSA, differentiated regulatory texts



DMA & DSA: 2 complementary objectives but different ways of enforcement

⇒ Main distinctions between the Digital Markets Act (DMA) and the Digital Services Act (DSA) lie in their respective **applicability, scope and enforcement. DMA is better advertised**

1. Applicability :

- **The DMA primarily addresses designated gatekeepers, companies with a significant influence and impact on the market and is firms (supply) oriented.**
- **The DSA takes a more comprehensive approach**, encompassing a wider range of digital intermediary services and imposing stricter requirements on very large online platforms (VLOPs) and very large online search engines (VLOSEs) to address societal risks associated with their operations. DSA finality is consumers (demand) oriented

2. The scope of these acts differs significantly as well.

- **The DMA primarily focuses on fostering a fair and competitive digital market,**
- **The DSA addresses the EU's concerns regarding the growing influence of online platforms in** political discussions, disinformation campaigns, fake news dissemination in the lead-up to elections, and the societal impact of hate speech.

3. Enforcement differs:

- **DMA enforcement is a competence of the Commission, EU Commission is mostly in charge (DG COMP & DG CNCT) + Common Law Courts in MS (REGULATION directly applicable!)**
 - **DSA: enforcement is shared between national authorities and the Commission**
- ⇒ In general, the DSA aims to create a safer digital space, protect users' fundamental rights, establish a level playing field for businesses in the EU. It dictates new rules for VLOPs and VLOSEs to ensure that they are responsible for content published and that users' data is respected and secured.



II

An introduction to the DMA



DMA a short introduction

The DMA promotes fair and open digital markets. It applies to companies that own large online platforms - which the law designates & refers to as « *gatekeepers* » play a dominant role in the digital ecosystem, providing core platform services - also specified by the law - that provide essential access to end-users.

- ⇒ These gatekeepers are characterized by their strong economic position, significant influence over and impact on the market and on competitors, and active presence in multiple EU countries or the entire EU/EEA region.
- ⇒ To be subject to the DMA, a company **must hold a strong market position and connect a large user base to numerous businesses**. The seven designated gatekeeper companies to date that fall under the DMA's requirements include:

- *Apple*
- *Amazon*
- *Alphabet (parent company of Google and Android)*
- *Meta (parent company of Facebook, Instagram and WhatsApp)*
- *Booking.com*
- *ByteDance (parent company of TikTok)*
- *Microsoft*



DMA short introduction : « ensuring fair and open digital markets »

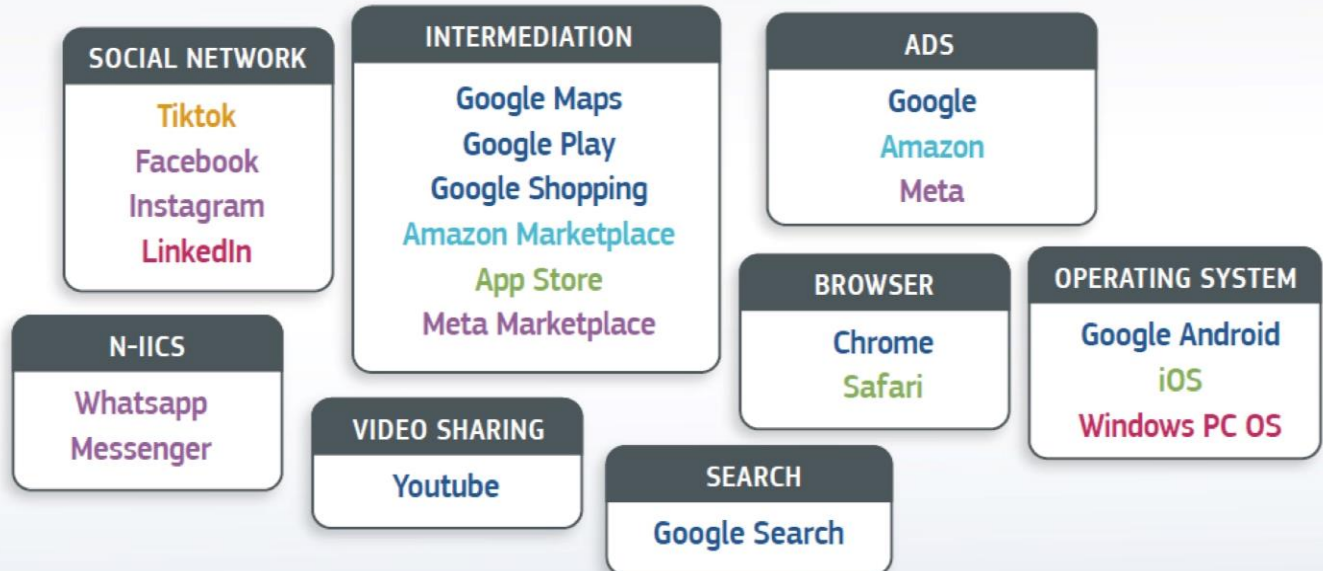


Gatekeeper Designations

Gatekeeper



Core Platform Service



III

An Introduction to the DSA



DSA: introduction

- ⇒ **The Digital Services Act (DSA) is designed to prevent illegal and harmful activities online**, while protecting users' fundamental rights and safety and nurturing trust in the digital environment.
- ⇒ **The DSA does this through a 'layered responsibilities' approach**, which means that online intermediary services' obligations correspond to their role, size and impact.
- ⇒ **DSA targets Very large online platforms (VLOPs) and very large online search engines (VLOSEs)** that pose particular risks must abide by the strictest rules. These are platforms that have, on average, at least 45 million active monthly users in the EU.
- ⇒ **The DSA imposes significant fines for non-compliance of up to 6 %** of the intermediary's annual worldwide turnover. Users who have suffered damage or losses due to online intermediaries' infringements may also seek compensation.



DSA introduction

In contrast to the DMA, the *Digital Services Act* (DSA) covers a wider range of online services, including social media sites, ecommerce stores, and various other online providers.

- ⇒ **The DSA applies to all digital intermediary services**, in particular to very large online platforms (VLOPs) and very large online search engines (VLOSEs) with 45 million or more monthly active users in the EU.
- ⇒ **These services need to evaluate the societal risks of their operations, such as sharing harmful content and its potential impact on elections, human rights, and the mental health of users.** They must take measures to mitigate these identified risks.
- ⇒ While the DSA is often associated with regulating tech giants from Silicon Valley, it should be noted that **thousands of smaller European service providers will also be affected by the new obligations.**
- ⇒ **Examples of online platforms within the scope of the DSA include** *YouTube, Zalando, Instagram, LinkedIn, Wikipedia, Booking.com, Snapchat, Amazon Store, Google Play*, and more.



IV

A Dual Enforcement of the DSA



DSA enforcement

- **Enforcement of the Digital Services Act at national level is still very limited owing to delayed implementation.**
- ⇒ The European Commission has therefore begun infringement procedures against several Member States.
- ⇒ At European level, the Commission has started formal proceedings against five very large platforms and has found, on a preliminary basis, that the platform X does not comply with the act. The other investigations are still ongoing.
- ⇒ Enforcement of the DSA is **shared between national authorities and the Commission. National authorities supervise and enforce smaller platforms' compliance**, while the Commission's primary responsibility is supervising VLOPs and VLOSEs.
- ⇒ The DSA also established the **European Board for Digital Services (EBDS)**, an independent advisory group composed of **national digital service coordinators (DSCs)** and chaired by the Commission.
- ⇒ The EBDS plays a crucial role in applying the DSA and became operational in February 2024. In addition, the **European Centre for Algorithmic Transparency** was established to provide technical assistance in enforcing the DSA; it was launched in April 2023.
- ⇒ The Commission has also set up the **DSA whistleblower tool**, to help it monitor compliance by VLOPs and VLOSEs



DSA Enforcement at national level

- ⇒ National enforcement of the DSA is still very limited due to delayed designation and/or empowerment of several DSCs. These are independent authorities, responsible for supervising and enforcing intermediary services' compliance with the DSA on the territory of the Member States.
- ⇒ DSCs have the power to request access to data, conduct inspections, and issue fines to intermediary service providers within their jurisdiction.
- ⇒ Each Member State was required to designate a national DSC by February 2024, when all providers of online intermediary services became accountable to a set of general, due diligence obligations imposed by the DSA.



DSA enforcement at National Level

In response to the late implementation, the Commission sent letters of formal notice to six Member States in April 2024, and a further six in July 2024.

While some Member States have taken the necessary steps to enable enforcement of the DSA, others have only partially complied.

The Commission has already sent reasoned opinions to Czechia, Cyprus and Portugal for not empowering their designated DSCs.

The Commission could issue further reasoned opinions, as in Belgium and Poland the formal designation of DSCs is still pending, while in a few other countries designated DSCs have not yet been empowered.



DSA National enforcement: France

- In France, Law No. 2024-449, effective January 1, 2025, is transposing the **European Digital Services Act (DSA)** and **Digital Markets Act (DMA)** into national law.
- It is enhancing the Communications Sectoral Regulator's authority (that of ARCOM) to protect minors online by regulating access to pornographic content. It is setting technical standards for age verification systems, with penalties for non-compliance.
- It also bans cloud service providers from charging excessive data transfer fees and mandates service interoperability and portability, including the provision of necessary APIs free of charge.



Concluding Remarks

The Commission has opened formal proceedings under DSA against five platforms so far. It can start such proceedings if it is not satisfied with the replies to its requests for information. So far, the Commission has issued preliminary findings on part of the investigations against the platform **X**, while all the other investigations are at an earlier stage. *These proceedings could serve as an example to national authorities when they start enforcement at national level.*

1 - **December 2023** formal proceedings against **X**, investigating its compliance with several DSA provisions. The Commission adopted preliminary findings in **July 2024**, which identified a potential breach of the DSA regarding dark patterns because the platform's verified accounts system potentially deceives users. In addition, the Commission's preliminary view was that **X** breaches the DSA rules on transparency of advertising, as it does not have a searchable advertisement repository, and makes it difficult to monitor and investigate potential risks of online ads.

2 - **February 2024** and **April 2024**, formal proceedings against **TikTok**, investigating its compliance clodsd after **Tiktok** committed to withdrawing the feature from its applications offered within the EU.

3 - **March 2024**, formal proceedings against AliExpress started

4 - **April and May 2024**, proceedings against **Meta (Instagram and Facebook)**

5 - **October 2024**, the Commission started proceedings against **Temu**.



Thanks for your attention!

soutyf@excelia-group.com

