

Digital Services Act – Key Liability & Due Diligence Rules

Territorial scope: Offer/target intermediary services to EU consumer/business recipients

All intermediary services (OSEs??)

Liability exemptions

- As before, incl. no general monitoring required & caching/hosting liable on actual knowledge; + extra conditions for *hosting*
- New: exemption *not* lost if proper voluntary investigation or legal compliance

Comply with judicial/administrative **orders**

- On illegal content takedown
- Info on specific service “recipients”

Due diligence & transparency

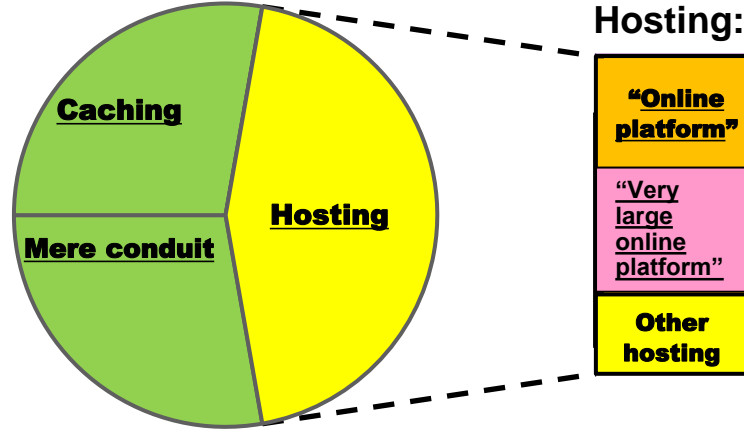
- Public electronic **contact point** info (authorities, recipients); in main establishment/rep + broadest EU **language**
- Notify DSC EU legal representative: **liability!**
- User content restrictions: required **terms content & format**, incl. intelligible (esp. to any minors), **machine-readable**, moderation policies & processes e.g. algorithmic & human review, complaint procedures, moderation application/ enforcement incl. other rights & freedoms; **notify recipients of significant changes**
- Public, machine-readable, easily-accessible **report ≥ 1x/yr** (unless small/micro): info on moderation, orders, complaints, automated moderation; **Commission templates** (draft)
- Voluntary standards** for notices, recipient comms, ads info, etc. to be supported; also **voluntary codes of conduct** e.g. for **ads transparency, accessibility**

Key

DSC=designated national Digital Services Coordinator
Board=European Board for Digital Services (DSCs)
MS=Member States
“Recipients”=service users, incl. organisations
“VLOP”=“very large online platform”
“VLOSE”=“very large online search engine”
“Online interface”=software incl. website, apps
“In quotes”=defined or qualified term
Colours: green like pre-DSA, yellow & amber more & more rules, pink=most onerous; blue=OSEs

Timing: The **DSA** applies from **17 Feb 2024** or (for designated **VLOPs/VLOSEs**) **4mths** after Commission designation, some in **Apr 2023**; but online platforms & online search engines had to publish number of average monthly active EU recipients **by 17 Feb 2023**. **Not** covered here: **supervision, enforcement or investigations**, but note that DSCs can require measures then ask courts to **restrict service access**; **max 6% annual worldwide turnover fine generally**, 1% for certain only failings; **daily fines of 5%** average daily worldwide turnover or income; and recipients etc. can **complain, claim compensation**

“Intermediary services”



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VLOPs & VLOSEs (≥45m active recipients/mth + Commission designation; OJ)

- 45m Commission-adjustable; **designated** after consulting MS/DSC, **annual supervisory fee** to Commission, fee **per designated service** (factors: no. of recipients, previous year’s costs, ≠ 0.05% worldwide annual net income); **methodology, report** on costs, **calculation**; **dedesignation** process
- Clear, unambiguous, concise, easily accessible machine-readable **summary of terms** for recipients, incl. remedies & redress; in **official languages of all MS** where offered
- ≥1x/yr **systemic risk assessment**: illegal content; actual/foreseeable negative effects on certain human rights, civic discourse/public security, gender-based violence, public health, minors, serious negative consequences for physical or mental health; **factors** e.g. any intentional manipulation, regional/linguistic aspects; supporting documents **≥3yrs**, **Commission/DSC can request**
- Reasonable, proportionate, effective tailored **systemic risk mitigation measures**; see **examples**
- 1x/yr **reports by Board** of key systemic risks & best practice mitigations, per MS & for EU
- Crisis response**: Commission can issue/amend Board-recommended **public** decision requiring actions on serious threats to public security/public health; Commission **monitoring/reporting**; encourage **voluntary crisis protocols, testing**, etc
- ≥1x/yr **independent audit** (own cost); requirements, **rules, reports, remediation**; Commission **rules, methodology etc.**; **certain info** to DSC/Commission, publish **≠3mths** after report (**redactable**)
- Recommender systems**: **≥1 option** not based on profiling
- Searchable public repo + API** of **certain ads info**, **1yr** after, reasonable efforts on accuracy etc
- Data access on request**: to DSC / Commission + **explanations (compliance)**; **vetted researchers** if DSC requests (systemic risks); requirements/process; **sharing with researchers**
- Independent compliance function** incl. **head**; requirements, tasks; notify to DSC, Commission; **management body governance, accountability, reviews, involvement**
- Reports **≥6-mthly**, + **even more info**; **reports on** systemic risks assessment / mitigation, audit & remediation (**redactable**)
- Also: **designated VLOPs/VLOSEs**; elections systemic risks guidelines; inspections etc. procedures

Hosting:

“Online platform”

“Very large online platform”

Other hosting

Hosting services

- >1x/yr report: + **info on notices alleging illegal content**
- Illegal content**: **notice & action mechanisms** (=actual knowledge if illegality identifiable); **statement of reasons** for restrictions (exceptions)
- Notify suspected offences** (threat to life/safety) if aware

“Online platforms” (host for recipient for “public” dissemination) + “online search engines” (OSEs)

- Average monthly active EU recipients**: **publish ≥ 6-monthly** (any Commission methodology) & **on DSC/Commission request**;
- Decisions/statements of reasons** (no personal data) **to Commission**, for **public machine-readable database**
- ≥6mth access** to free electronic **complaints handling system** on restrictions/notices, for recipients incl. notice-givers; inform decision without undue delay; not solely automated
- Dispute settlement**: provide **easily-accessible etc. info**; right (exception) & requirements; NB. fees/costs; DSC-certified bodies, requirements, process, reports to & by DSC; Commission public list of certified bodies
- Prioritise “trusted flaggers”**: DSC-awarded; criteria; public machine-readable database of TFs; TF reports >1x/yr to DSC & published; online platforms to police/report inaccurate TFs, process to investigate/terminate; Commission guidance
- Anti-misuse**: suspend recipients & notice-givers if manifestly illegal/unfounded; requirements; misuse policy in **terms**
- >1x/yr report: + info on **disputes, suspensions**
- Dark patterns/users’ free, informed decisions**: no deception, manipulation etc in web/app design/organisation/operation; Commission guidance
- Advertising**: transparency regarding ads, advertisers, main parameters for presenting (& how to change them); ability for recipients to declare commercial comms, making nature clear; **no** ads based on profiling using special category data
- Recommender systems transparency**: main parameters/options in **terms**; enable recipient-preferences if several
- Protection of minors**: measures incl. no advertising based on profiling of minors; Commission guidance
- Traders**: obtain certain info, checks (**12mths** legacy); correction; suspension; secure storage **≠6mth** post-termination; limited disclosure; clear info display for recipients; **compliance by design** for traders’ required info (product safety, pre-contractual info, compliance), **best efforts + random checks**; if aware **notify consumers (6mths)** re illegal products/services or publish
- Small/micro** exempt (**reports, online platforms**) **except** request for active recipients info, **trader provisions** if **VLOP**; or **unless VLOP**