

DENTONS

Digital Services Act

A Practical Overview

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Grow | Protect | Operate | Finance

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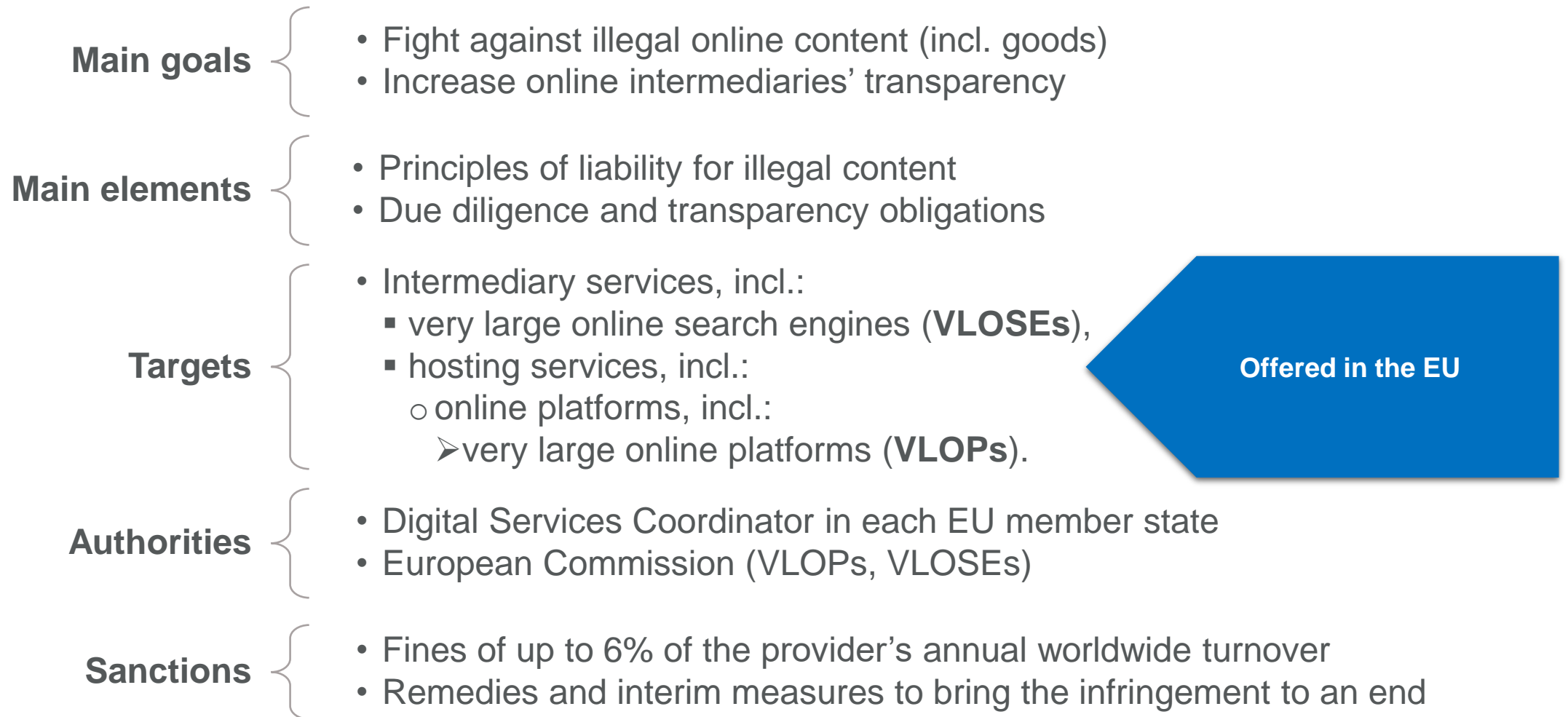
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DSA in a nutshell

Content moderation law



Offered in the EU

- Authorities**
- Digital Services Coordinator in each EU member state
 - European Commission (VLOPs, VLOSEs)

- Sanctions**
- Fines of up to 6% of the provider's annual worldwide turnover
 - Remedies and interim measures to bring the infringement to an end

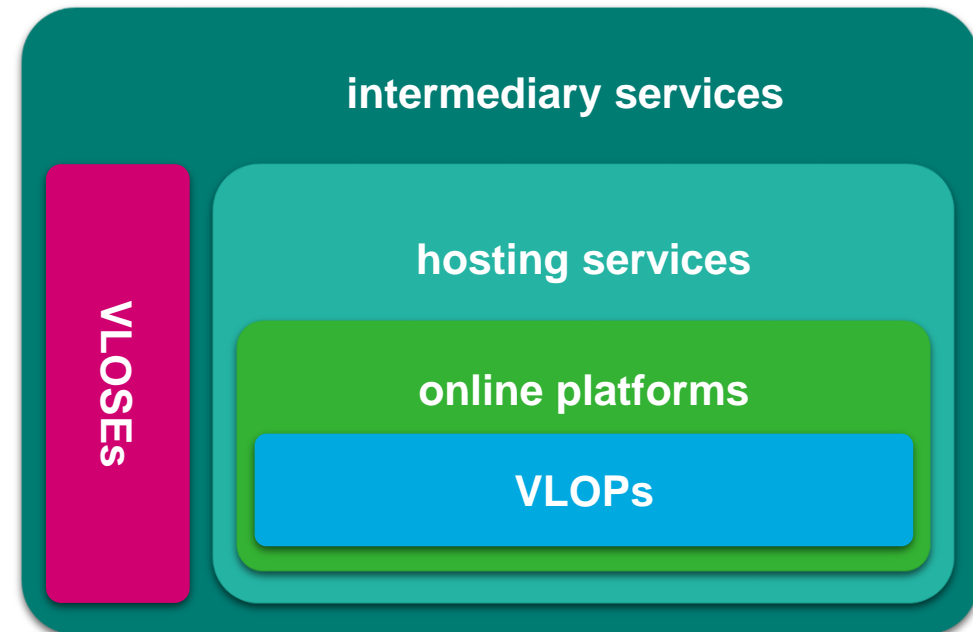
DSA main elements

Liability principles, due diligence & transparency obligations

principles of liability for illegal content

due diligence and transparency obligations

- ✓ minor adjustments only
- ✓ safe harbor stays



DSA target services (excl. VLOSEs)

Intermediary service

mere conduit, caching, online search engine, hosting
(see Annex I for more details)

Examples: network access, network transmission, network caching, online search engine, DNS services, domain name registration, issuing of digital certificates, VoIP, email, hosting services (see below)

Hosting service

storing information

Examples: shared hosting, dedicated hosting, cloud hosting, online platforms (see below)

Online platform

storing information and disseminating it to the public
(unless genuinely minor and ancillary feature or another service)

Examples: online marketplace, app store, social network (incl. the comments section – ancillary but major feature, but comment section in an online newspaper not covered – ancillary and minor feature)

VLOP

platforms which have at least 45 million average monthly active recipients in the EU and are designated by the Commission.

Active recipient: a recipient who has engaged with the platform by either requesting it to host content or being exposed to content hosted by it and disseminated through its online interface (see Annex I for more details on counting users)

DSA obligations breakdown - Intermediary services

| Obligation | Intermediary services | Hosting services | Online platforms | VLOPs & VLOSEs | Service provider will need to... |
|--|-----------------------|-------------------|-------------------|----------------|---|
| Publish reports on content moderation Art. 15, 24, 42 | ✓ (unless MSE) | ✓ (unless MSE) | ✓ (unless MSE) | ✓ | Publish annual reports on content moderation (e.g., number of orders from authorities, number of complaints against moderation decisions, automated tools used, median reaction times, etc.). Additional information required from hosting services (e.g., number of private notices), online platforms (e.g., number of out-of-court disputes, suspensions for frequent offenders), and VLOPs / VLOSEs (e.g., human resources dedicated to content moderation and their language competencies). VLOPs / VLOSEs must publish reports every 6 months. |
| Ensure T&Cs are clear and have certain elements Art. 14 | ✓ | ✓ | ✓ | ✓ | Make sure the T&Cs are clear, intelligible, user friendly and unambiguous and explain employed: <ul style="list-style-type: none"> - content restrictions (e.g., moderation policies and tools, incl. algorithmic decision-making and its error rate, human supervision, policy against frequent offenders); - complaint handling system (if exists – required for online platforms); - termination rights of the users. |
| Designate legal representative and points of contact Art. 11, 12, 13 | ✓ | ✓ | ✓ | ✓ | Designate: <ul style="list-style-type: none"> - a single electronic point of contact for authorities (in English and in the language of the main establishment / legal representative; may be the same as the one used for other EU laws (e.g., as under the Product Safety Regulation); - a single user-friendly electronic point of contact for users with at least one not purely automated channel; - a legal representative in the EU (if no establishment in the EU); name of the legal representative should be notified to the Digital Service Coordinator. |

DSA obligations breakdown - Hosting services

| Obligation | Intermediary services | Hosting services | Online platforms | VLOPs & VLOSEs | Service provider will need to... |
|---|-----------------------|------------------|------------------|----------------|--|
| Implement notice and action mechanism Art. 16 | | ✓ | ✓ | ✓ | <p>Check if existing mechanisms for reporting illegal content meet the DSA requirements, e.g.:</p> <ul style="list-style-type: none"> - are easy to access and user-friendly; - keep the notifying entity informed of the submission status and redress possibilities. |
| Provide statement of reasons Art. 17, 24.5 | | ✓ | ✓ | ✓ | <p>Make sure that users (save for high-volume spammers) receive a statement of reasons in case of any service restrictions (e.g., content takedown, payment suspension, account suspension) and that it is in line with the DSA (e.g., it must contain the legal ground relied on, redress possibilities, and information on automated decision-making).</p> <p>Online platforms must submit the decision and the statements of reasons to the Commission for its inclusion in a database.</p> |
| Report serious criminal offences Art. 18 | | ✓ | ✓ | ✓ | <p>Promptly inform the authorities of a relevant EU member state of any information giving rise to a suspicion of criminal offence involving a threat to anyone's life or safety (if not clear which member state is relevant, inform the member state of your establishment or Europol).</p> |

DSA obligations breakdown - Online platforms 1

| Obligation | Intermediary services | Hosting services | Online platforms | VLOPs & VLOSEs | Service provider will need to... |
|--|-----------------------|------------------|--------------------------------------|----------------|--|
| Allow complaints and out-of-court settlements Art. 20, 21 | | | ✓ (unless MSE) | ✓ | Allow users (including the notifying entity) to easily challenge decisions concerning service restrictions (e.g., on content takedown, suspending an account, etc.), quickly resolve cases <i>not solely on the basis of automated means</i> and allow for a certified out-of-court dispute settlement . The internal complaint-handling system should be user friendly (e.g., should avoid multiple formal requirements or questions) and be easy to find. |
| Prioritize trusted flaggers Art. 22 | | | ✓ (unless MSE) | ✓ | Prioritize and swiftly address notices issued by trusted flaggers, as designated by the Digital Services Coordinator. |
| Suspend frequent offenders Art. 23 | | | ✓ (unless MSE) | ✓ | Suspend users who frequently provide <i>manifestly illegal</i> content or who frequently issue <i>manifestly unfounded</i> notices or complaints, after a warning with reasons. |
| Inform consumers about illegal products / services Art. 32 | | | ✓ (only marketplaces, unless MSE) | ✓ | Upon becoming aware of an illegal product, inform consumers who acquired that product within the past six months about the illegality, the trader and possible means of redress. If no contact details of all consumers concerned, publish the information on your online interface and make it easily accessible. |

DSA obligations breakdown - Online platforms 2

| Obligation | Intermediary services | Hosting services | Online platforms | VLOPs & VLOSEs | Service provider will need to... |
|--|-----------------------|------------------|--------------------------------------|----------------|--|
| Protect minors and sensitive personal data Art. 28 | | | ✓ (unless MSE) | ✓ | Refrain from displaying targeted ads to minors (but do not process more personal data than you already have to assess if the recipient is a minor) and from targeting ads based on GDPR sensitive personal data . Ensure a high level of privacy, safety, and security of minors (this might imply implementing parental control mechanisms). The European Commission may issue additional guidelines. |
| Be transparent about ads Art. 26 | | | ✓ (unless MSE) | ✓ | Prominently mark ads , indicate the advertiser, sponsor (if different from the advertiser), and main targeting parameters. Allow users to mark sponsored content. |
| Increase transparency of recommender systems Art. 27 | | | ✓ (unless MSE) | ✓ | Set out in the T&Cs the main parameters of the recommender systems and any options for users to modify those parameters. Make those options easily accessible. |
| Ensure traders' traceability Art. 30 | | | ✓ (only marketplaces, unless MSE) | ✓ | Obtain specific information from traders before they can use the service (incl. address, telephone number, copy of an ID, registration number if available, types of products the trader intends to offer), display it to other users and make reasonable efforts to ensure that it is reliable and complete (online databases, requests to the trader). |

DSA obligations breakdown - Online platforms 3

| Obligation | Intermediary services | Hosting services | Online platforms | VLOPs & VLOSEs | Service provider will need to... |
|--|-----------------------|------------------|--------------------------------------|----------------|---|
| Allow traders to show all legally required information Art. 31 | | | ✓ (only marketplaces, unless MSE) | ✓ | Make it possible for traders to provide and display legally required pre-contractual information and product safety information (e.g., name, address, email). Before displaying the product, make best efforts to check if the required information was provided. (The General Product Safety Regulation will provide more specific requirements, e.g., marketplaces must display "any warning or safety information that is to be affixed on the product or to accompany it in accordance with this Regulation or the applicable Union harmonization legislation in a language which can be easily understood by consumers"). |
| Do random checks Art. 31 (3) | | | ✓ (only marketplaces, unless MSE) | ✓ | Make reasonable efforts to randomly check whether the products or services offered have been identified as illegal in any official , freely accessible and machine-readable online database or interface (presumably, this includes the Safety Gate database). |
| Refrain from dark patterns Art. 25 | | | ✓ (unless MSE) | ✓ | Refrain from design tricks that manipulate users to make a certain decision (e.g., giving more prominence to certain choices when asking users to make a decision, repeatedly requesting a recipient to make a choice, making the cancelling significantly more cumbersome than signing up, etc.). The Commission may issue additional guidelines. |
| Publish the number of monthly active recipients Art. 24.2 | | | ✓ (unless MSE) | ✓ | Publish, at least once every six months, information on the average monthly active recipients of the service in the EU, calculated as an average over the past six months. |

DSA obligations breakdown - VLOPs & VLOSEs 1

| Obligation | Intermediary services | Hosting services | Online platforms | VLOPs & VLOSEs | Service provider will need to... |
|---|-----------------------|------------------|------------------|----------------|--|
| <p>Identify, assess and remedy systemic risks Art. 34, Art. 35, Art. 42.4</p> | | | | ✓ | <p>Carry out annual assessments of "systemic risks," including risks of:</p> <ul style="list-style-type: none"> - dissemination of illegal content (this might cover offers of illegal products), - any actual or foreseeable negative effects for the exercise of fundamental rights, in particular human dignity, protection of personal data, freedom of expression and information, and consumer protection, - any actual or foreseeable negative effect on civic discourse and electoral processes and public security, - any actual or foreseeable negative effects in relation to gender-based violence, the protection of public health, minors and serious negative consequences to the person's physical, mental and well-being. <p>Put in place reasonable, proportionate and effective mitigation measures, tailored to the identified risks, such as interface redesign, changing T&Cs or adapting moderation tools. The Commission can issue guidelines.</p> <p>Submit the risk assessment report and information on the mitigation measures to the Digital Services Coordinator and the Commission. Publish non-confidential versions.</p> |

DSA obligations breakdown - VLOPs & VLOSEs 2

| Obligation | Intermediary services | Hosting services | Online platforms | VLOPs & VLOSEs | Service provider will need to... |
|--|-----------------------|------------------|------------------|----------------|---|
| Do independent audits Art. 37 | | | | ✓ | Organize annual audits conducted by an independent organization to assess compliance with the DSA using the framework set out by the Commission . Submit the audit and audit implementation reports to the Digital Services Coordinator and the Commission. Publish non-confidential versions. |
| Allow recommendations not based on profiling Art. 38 | | | | ✓ | Provide at least one option for each recommender system which is not based on profiling . |
| Publish ad repository Art. 39 | | | | ✓ | Make a repository of data on all ads displayed in the past year including information on content, advertiser, period, targeting, recipients, and removal, and make it available: (a) in a specific section of the online interface through a searchable and reliable tool that allows multicriteria queries, and (b) through an API. |
| Give access to data to authorities and researchers Art. 40 | | | | ✓ | Upon request, provide the Commission / Digital Services Coordinator of establishment / independent researchers with <i>access to data</i> (details to be specified in delegated acts) and explain design, logic, functioning and testing of the systems. |

DSA obligations breakdown - VLOPs & VLOSEs 3

| Obligation | Intermediary services | Hosting services | Online platforms | VLOPs & VLOSEs | Service provider will need to... |
|--|-----------------------|------------------|------------------|----------------|--|
| Provide T&C translations and summary Art. 14.5 | | | | ✓ | Provide the T&Cs in the official languages of all member states in which it offers its services. Provide a concise and easily readable summary of the T&Cs main elements. |
| Appoint compliance officers Art. 41 | | | | ✓ | Appoint one or more compliance officers with sufficient authority, stature and resources, and communicate it to the authorities. Each VLOP might need a separate DSA compliance officer. |
| Pay supervisory fee Art. 43 | | | | ✓ | Pay an annual supervisory fee. The fee is set by the Commission for each VLOP based on the anticipated costs incurred by the Commission to enforce the DSA and <i>shall in any case not exceed 0,05 percent of [the VLOP's] worldwide annual net income.</i> |
| Comply with crisis decisions Art. 36 | | | | ✓ | Comply with the Commission's decision to respond to a crisis, including by identifying and applying specific remedies. Such a decision might be adopted <i>where extraordinary circumstances lead to a serious threat to public security or public health</i> (for example, where the platform is misused for the rapid spread of illegal products or disinformation). |

DSA sanctions

Power to impose sanctions

- Digital Services Coordinators (one for each EU member state)
 - European Commission (for VLOPs & VLOSEs)
-

Fines

Fines of up to:

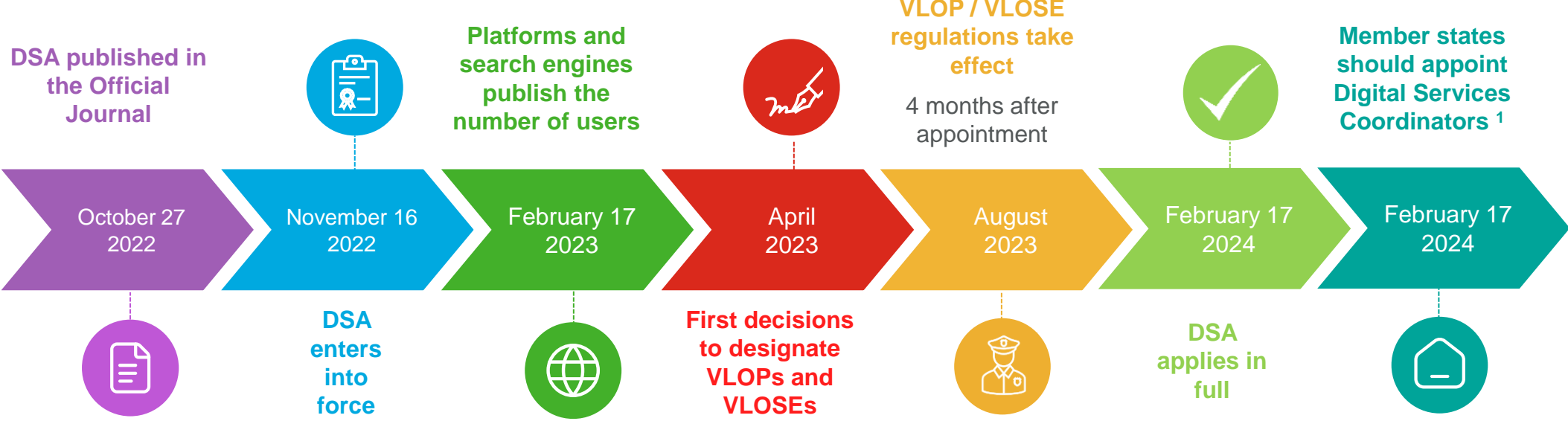
- 6% of the provider's annual worldwide turnover for violating the DSA obligations,
 - 1% of the provider's annual income or worldwide turnover for failure to reply or rectify incorrect, incomplete or misleading information and to submit to an inspection,
 - 5% of the average daily turnover in the preceding financial year per day to enforce compliance.
-

Other remedies

Digital Services Coordinators can impose **specific dos and don'ts**.

Ultimately, for serious and persistent infringements, Digital Services Coordinators will have power to order the **temporary restriction of access** to the service concerned.

DSA timeline



1. As of April 1, 2024, only 17 Member States appointed a DSC.

Annex I

Definition of intermediary services

Intermediary service means one of the following information society services:

1. **Mere conduit** service that consists of the transmission in a communication network of information provided by a recipient of the service, or the provision of access to a communication network
2. **Caching** service that consists of the transmission in a communication network of information provided by a recipient of the service, involving the automatic, intermediate and temporary storage of that information, performed for the sole purpose of making more efficient the information's onward transmission to other recipients upon their request
3. **Hosting** service that consists of the storage of information provided by, and at the request of, a recipient of the service
4. **Online search engine** means a service that consists of automated indexing and locating of information provided by a third party in order to perform searches of, in principle, all websites, or all websites in a particular language, on the basis of a query on any subject in the form of a keyword, voice request, phrase or other input, and returns results in any format in which information related to the requested content can be found

Annex II

Counting active recipients of a platform

at least 45 million average monthly active recipients in the EU to become a VLOP

Active recipient of an online platform means the recipient of the service that has engaged with an online platform by either requesting the online platform to host content or being exposed to content hosted by the online platform and disseminated through its online interface.

- Engagement is not limited to purchasing, registering, and not even to interacting with content (e.g., by clicking on, commenting, linking or sharing) – the notion of active recipient seems to cover **all visitors**.
- A recipient of the service who uses different interfaces, such as websites or apps, including where the services are accessed through different URLs or domain names, should, where possible, be **counted only once**.
- Advertisers who request platform to store ads count as recipients.
- The notion of active recipient of the service **should not include *incidental use of the service by recipients of other online intermediaries that indirectly make available content hosted by the provider of online platform through linking or indexing by a provider of online search engine.***
- DSA **does not require** providers of online platforms or of online search engines to **perform specific tracking of individuals** online (and so cannot justify such tracking under the GDPR).
- Where providers can **discount automated users**, such as bots or scrapers, without further processing of personal data and tracking, they may do so.

DENTONS

Thank you



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