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## THE DIGITAL SERVICES ACT PACKAGE: PROTECTION OF THE FUNDAMENTAL RIGHTS OF DIGITAL SERVICE USERS IN THE EUROPEAN UNION

*In recent years, the European Union has been trying to adequately respond to constant technological progress and changes in the digital world by establishing a legislative and legal framework aimed at protecting users in the online environment. The Digital Services Act (DSA) and the Digital Markets Act (DMA) as a single set of rules are applied throughout the European Union with the aim of creating a safer digital space in which the fundamental rights of all users of digital services are protected. In addition to the protection of fundamental rights, the aim of these rules is to establish equal conditions for encouraging innovation, growth and competitiveness, both in the single European market and globally. The aim of the paper is to present the fundamental differences between the DMA and the DSA in the context of separate regulatory measures and obligations they impose on digital platforms. Summarily observing, the main goal of the research is the analysis of the legislative and legal framework of the European Union aimed at creating a safer and more open digital space. The results of the research will present the importance of EU regulations as part of the Digital Services Package in the context of the adoption of significant new rules aimed at strengthening the rights of users in the online environment and increasing transparency in the operation of internet platforms.*

**Keywords:** European Union, legislative and legal framework, digital space, protection of rights.

### 1. INTRODUCTORY REMARKS

For many years, the European Union (hereafter: EU) has been pursuing a digital strategy by developing a modern legal framework to protect online users' fundamental rights while facilitating business expansion and access to new markets.<sup>1</sup> The

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<sup>1</sup> Turillazzi, A. *et al.* 2023. The digital services act: an analysis of its ethical, legal, and social implications. *Law, Innovation and Technology*, 15(1), p. 83.

goal of the EU is to create a digital single market and to govern the digital transition underway. As part of the digital single market strategy, the European Commission has recently developed the “Digital Service Act Package,” consisting of the Digital Service Act (DSA) and the Digital Market Act (DMA). It sets out a first comprehensive rulebook for the online platforms with the specific purpose of creating a safer digital space where the fundamental rights of users are protected and to establish a level playing field for businesses.<sup>2</sup> On 16 December 2020, the European Commission delivered on the plans proposed in the European Digital Strategy<sup>3</sup> by publishing two proposals related to the governance of digital services in the European Union: the Digital Services Act (DSA) and the Digital Markets Act (DMA). The much-awaited regulatory reform is often mentioned in the context of content moderation and freedom of expression, market power and competition. It is, however, important to bear in mind the contractual nature of the relationship between users and platforms and the additional contracts concluded on the platform between the users, in particular traders and consumers. Moreover, the monetisation offered by digital platforms has led to new dynamics and economic interests.<sup>4</sup>

Taking into account that in the past 20 years, online platforms have emerged, grown and become sources of both benefits and risks for citizens, including exposure to illegal contents, the DMA and DSA strike a balance between fostering innovation and competition while working to ensure consumer protection and a secure online environment. The introduction of these regulations reflects the growing recognition of the need to regulate the digital sector and bring it in line with societal values and market principles.<sup>5</sup> Both legislative acts were adopted by the Council and the European Parliament in 2022. Since 17 February 2024, the full implementation of the DSA rules has come into effect. From this date forward, all digital service providers are expected to comply with the new regulations.

The goal of the research is to contribute to the better understanding of the relevance of EU regulations, which make up the Digital Services Package, vis-à-vis the need to strengthen the rights of users in the online environment and increase transparency in the operation of internet platforms. In an effort to pursue the set research goals, the paper will analyse the impact of the DSA Package on citizens and platforms, and will determine differences in regulatory measures and obligations between the DSA and the DMA. In the final part of the paper, we will analyse the Commission's enforcement powers under the DSA.

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<sup>2</sup> Chiarell, M. L. 2023. Digital Markets Act (DMA) and Digital Services Act (DSA): New Rules for the EU Digital Environment. *Athens Journal of Law*, 9(1), p. 34.

<sup>3</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, A Digital Single Market Strategy for Europe, Brussels, 06/05/2015, COM (2015) 192 final

<sup>4</sup> Cauffman, C. & Goanta, C. 2021. A New Order: The Digital Services Act and Consumer Protection. *European Journal of Risk Regulation*, 12, p. 758.

<sup>5</sup> See: Usercentrics. 2023. Key differences between the Digital Markets Act (DMA) and the Digital Services Act (DSA). Available at: <https://usercentrics.com/knowledge-hub/differences-between-digital-markets-act-and-digital-services-act/> (10. 10. 2024).

## 2. THE DIGITAL SERVICES ACT PACKAGE

Since the adoption of the e-commerce Directive<sup>6</sup> two decades ago, online platforms have evolved into key intermediaries in the digital economy, as well as essential sources and shapers of information. They have developed from passive, neutral intermediaries to active co-creators of the digital sphere. In the attention economy, digital services and content are optimised to benefit online platforms' advertising-driven business models.<sup>7</sup> The COVID-19 crisis has made it obvious that the digital economy is and will remain central to the lives of many, and that numerous individuals, companies and states rely on e-commerce and digital services in many aspects of their lives. Beyond e-commerce, e-education, e-health or e-work, perhaps the time has come to talk about e-life? In this context, the Digital Services Act Package appears to be a landmark piece of legislation, intended to update a legal framework that has remained unchanged since the adoption of the e-Commerce Directive in 2000. In the past 20 years, online platforms have emerged, grown and become sources of both benefits and risks for citizens, including exposure to illegal contents. Some of these platforms have also gradually built up the ability to control huge parts of the digital ecosystems in which citizens now live and work.<sup>8</sup>

Navigating the nuanced landscape of platform liability regimes and fundamental rights demands a comprehensive look at key legislative frameworks. Originating in the 1990s, early limited liability regimes aimed for a precarious balance between user rights and the operational freedoms of DSPs. This ethos has been enshrined in the E-Commerce Directive, which stands as a landmark in shaping the responsibilities of online platforms in the European Union. However, with the advent of the Digital Single Market Strategy and the impending Digital Services Act, the policy equilibrium is being recalibrated.<sup>9</sup>

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<sup>6</sup> Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce'), *OJ L* 178, 17/07/2000.

<sup>7</sup> A central component of this business model is the moderation of content in order to encourage users to spend more time on the platform and share more personal data. Today's search engines, social media networks and e-commerce platforms determine not only which users can participate in the ecosystem or the way transactions are to be carried out via the platform but also what information corresponding users will receive. See: Buiten, M. C. 2021. The Digital Services Act from Intermediary Liability to Platform Regulation. *Journal of Intellectual Property, Information Technology and E-Commerce Law*, 12(5), p. 361.

<sup>8</sup> Ponce Del Castillo, A. 2020. The Digital Services Act package: Reflections on the EU Commission's policy options. *ETUI Policy Brief*, 12, p. 1.

<sup>9</sup> The new legislative thrust appears to retain some of the foundational principles while introducing more stringent obligations on platforms, thereby sparking debates about rights, responsibilities, and the overarching role of digital intermediaries in society. As the European Union seeks to harmonise and deepen its digital single market, this evolving legal framework continues to stir contentious dialogues around balancing corporate interests, user freedoms and the rule of law. See more in: Frosio, G. & Geiger, C. 2023. Taking fundamental rights seriously in the Digital Services Act's platform liability regime. *European Law Journal*, 29(1-2), pp. 36-67.

On 15 December 2020, the European Commission submitted its legislative proposal for digital service to the European Council and the European Parliament. The proposal has two components, the Digital Services Act (DSA) and the Digital Market Act (DMA). Together, these constitute the DSA Package.<sup>10</sup> The DMA and DSA were enacted by the European Commission under one regulation package, the Digital Services Act Package (DSA Package), but they are in fact separate and independent laws.<sup>11</sup>

Digital services impact our lives in many different ways. We use them to communicate with each other, shop, order food, find information, watch films, listen to music and more. Digital services also make it easier for companies to trade across borders and access new markets. While these are some examples of the many benefits of the digital transformation, there are also problems. Despite a range of targeted, sector-specific interventions at EU level, there are still significant gaps and legal burdens to address at the dawn of the 2030 Digital Decade.<sup>12</sup> The Digital Services Act (DSA) and the Digital Market Act (DMA) form a single set of rules that apply across the whole European Union (EU). They have 2 main goals: 1) to create a safer digital space in which the fundamental rights of all users of digital services are protected; 2) to establish a level playing field to foster innovation, growth, and competitiveness, both in the European Single Market and globally.<sup>13</sup>

The first part of the Package is the Digital Services Act (DSA), which addresses platform practices in terms of content management and distribution. The DSA requires companies to take a more active role in monitoring and responding to issues such as political disinformation campaigns or hate speech and applies financial penalties if platforms are in breach. These fines can be up to 6% of the company's global revenue. The DSA also requires that platforms provide more transparency to users; for example, more information about advert microtargeting will be provided so users understand why a particular ad appears on their feeds. The DSA aims to introduce more accountability for platforms and their practices around content removal. This mainly concerns very large platforms, which are required to proactively mitigate systemic risks that enable disinformation or other harmful contents to spread. In this, the DSA

<sup>10</sup> UCD Centre for Digital Policy. *The Digital Services Act Package: A Primer*. Available at: <https://digital-policy.ie/the-digital-services-act-package-a-primer/> (10. 10. 2024).

<sup>11</sup> See: Usercentrics, 2023.

<sup>12</sup> For example, some large platforms control important ecosystems in the digital economy. They have emerged as gatekeepers in digital markets, with the power to act as private rule-makers. Their rules sometimes result in unfair conditions for businesses using these platforms and less choice for consumers. Another concern is the trade and exchange of illegal goods, services and content online. And, online services are being misused by manipulative algorithmic systems to amplify the spread of disinformation, and for other harmful purposes. These challenges and the way platforms address them have a significant impact on fundamental rights online. Therefore, the European Union adopted a modern legal framework that ensures the safety of users online, establishes governance with the protection of fundamental rights at its forefront, and maintains fair and open online platform environment. See: European Commission. f. The Digital Services Act Package. Available at: <https://digital-strategy.ec.europa.eu/en/policies/digital-services-act-package> (10. 10. 2024).

<sup>13</sup> European Commission. f. The Digital Services Act Package. Available at: <https://digital-strategy.ec.europa.eu/en/policies/digital-services-act-package> (10. 10. 2024).

complements the updated Code of Practice on Disinformation<sup>14</sup> which is part of the European Democracy Action Plan.<sup>15, 16</sup>

The second part of the Package is the Digital Markets Act (DMA) which focuses on companies' roles as "gatekeepers" between businesses and consumers.<sup>17</sup>

### ***2.1. The DSA Package: Implications for Platforms***

For platforms, the implementation of the DSA Package means that they have to adjust their practices in ways that enhance rather than stifle competitiveness and innovation and that allow smaller companies to grow (DMA). Secondly, they have to operate with clear and transparent rules and be accountable to their users (DSA). Additionally, the DSA Package aims to harmonise platforms' responsibilities across the EU and improve transparency for users and researchers. The new rules apply differently to different size platforms. Very large platforms, defined as those with a user base that reaches at least 10% of the EU population, or 45 million people, are addressed as "Gatekeepers" because they have "a central role in facilitating the public debate and economic transactions." Very large platforms are considered to pose a higher risk than smaller, more niche platforms and would be subject to specific obligations regarding risk management. This means Google, Facebook and Twitter have to ramp up their reporting and open some more windows into their operations. They need to become more transparent and provide information on recommender algorithms that select and present information

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<sup>14</sup> The new Code aims to achieve the objectives of the Commission's Guidance presented in May 2021, by setting a broader range of commitments and measures to counter online disinformation. The strengthened Code of Practice on Disinformation has been signed and presented on the 16 June 2022 by 34 signatories who have joined the revision process of the 2018 Code. The 2022 Code of Practice is the result of the work carried out by the signatories. It is for the signatories to decide which commitments they sign up to and it is their responsibility to ensure the effectiveness of their commitments' implementation. The Code is not endorsed by the Commission, while the Commission set out its expectations in the Guidance and considers that, as a whole, the Code fulfils these expectations. European Commission. The 2022 Code of Practice on Disinformation. Available at: <https://digital-strategy.ec.europa.eu/en/policies/code-practice-disinformation> (10. 10. 2024).

<sup>15</sup> On 3 December 2020, the European Commission presented its Democracy Action Plan to empower citizens and build more resilient democracies across the EU. It is a non-legislative initiative announcing further steps, including legislative ones. Protecting and strengthening European democracy and in particular European elections and the threat of disinformation raise challenges that cannot be addressed by national or local action alone. The Plan is centred around the individual rights and freedoms, transparency and accountability. European Parliament. 2024. European Democracy Action Plan In "A New Push for European Democracy". Available at: <https://www.europarl.europa.eu/legislative-train/theme-a-new-push-for-european-democracy/file-european-democracy-action-plan> (10. 10. 2024).

<sup>16</sup> See: UCD Centre for Digital Policy.

<sup>17</sup> Here the focus is on "levelling the playing field" and countering the oligopolies set up by large platforms. This is accomplished mainly by setting up stiff fines for anti-competitive practices, which can be up to 10% of the company's global revenue. For example, a search engine like Google cannot prioritise their own services ahead of a third-party business in search results. In online marketplaces, "own brand" items cannot be prioritised ahead of third-party products. A second important stipulation of the DMA is to counter illegal trade and increase business transparency. For example, new online businesses will be required to provide much more detailed information which can help authorities identify and prevent sales of illegal goods. See: UCD Centre for Digital Policy.

on search and social media feeds to users. Very large platforms also have to arrange for independent investigators and auditors to access and examine algorithms, recommender systems, and content moderation practices to verify compliance. Compliance officers and cooperation with authorities in the case of crises are also required. Further, the obligations under the DSA require enhanced measures to address illegal content, such as working with “trusted flaggers” to identify and report content. Micro and small companies still have some obligations under the DSA, but they will not be as extensive as those of big tech with its bigger resources. Rather, obligations are proportionate to platforms’ ability and size.<sup>18</sup>

## ***2.2. The DSA Package: Implications for Citizens***

These enhanced obligations of digital service providers aim to improve the digital environment for users. The DSA attempts to crack down on illegal activities online and protect citizens from harm while protecting fundamental rights, including freedom of expression, and the right to privacy. It is a challenging balancing act. Currently, the platforms make decisions on what types of content or accounts to take down. Companies such as Facebook or YouTube can remove communities and individuals without any accountability or need to offer information on who was removed and why. The Act requires digital platforms to be more transparent about what they take down and why, as well as to allow users to challenge any content moderation decisions such as take-downs. But how does it address illegal or harmful content such as hate speech and disinformation? The DSA retains the exemption from liability for online platforms for content posted by users. However, there are certain obligations regarding risk management and due diligence that must be adhered to. Under the DSA users should have enhanced mechanisms to report illegal content on social media. The platforms have requirements to respond within set timeframes and are subject to penalties if they fail to meet targets. In this respect, the main provisions are to strengthen the Code of Practice on Disinformation and the Code of Conduct on illegal contents. In other words, the DSA does not go so far as to define what illegal and harmful content is; these rules are contained in other EU and national legislations.<sup>19</sup>

## **3. THE DIGITAL SERVICES ACT (DSA)**

Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022, on a Single Market for Digital Services, commonly known as the Digital Services Act (“DSA”), is another important milestone in the European Union’s (“EU”) regulation of the digital sector.<sup>20</sup>

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<sup>18</sup> UCD Centre for Digital Policy.

<sup>19</sup> See: UCD Centre for Digital Policy.

<sup>20</sup> See: Cuatrecasas. Digital Services Act: New regime for intermediary services. Available at: <https://www.cuatrecasas.com/en/portugal/intellectual-property/art/digital-services-act-new-regime-for-intermediary-services> (10. 10. 2024).

Since the adoption of Directive 2000/31/EC (the “e-Commerce Directive”), epochal changes have occurred that have transformed society and the market, giving rise to a “digital revolution.”<sup>21</sup> New and innovative digital services have emerged, changing our daily lives, shaping how we communicate, connect, consume goods, and do business. This transformation is defined as the new digital revolution, which is as fundamental as that caused by the industrial revolution. At the same time, the use of digital services has also become the source of new risks and challenges, both for society as a whole and for individuals.<sup>22</sup>

The DSA was originally announced by *Ursula von der Leyen* in her political guidelines in July 2019, and forms part of a legislative package for regulating the online environment in the EU and beyond. It is an element of the European Digital Strategy “Shaping Europe’s Digital Future,” and was subject to public consultation from June to September 2020.<sup>23</sup>

The Digital Services Act is the most important and most ambitious regulation in the world in the field of the protection of the digital space against the spread of illegal content, and the protection of users’ fundamental rights.<sup>24</sup> The goal of the DSA rules is that online platforms must implement ways to prevent and remove posts containing illegal goods, services, or content while simultaneously giving users the means to report this type of content. End users should enjoy a safer online experience and the companies operating these services have a more clearly defined set of rules they need to follow.<sup>25</sup>

On 15 December 2020, the European Commission submitted a proposal for a Regulation on a Single Market for Digital Services (Digital Services Act, DSA) and amending Directive 2000/31/EC.<sup>26</sup> In November 2021, the Council of the European Union reached agreement on an amended version of this proposal,<sup>27</sup> and on 20 December 2021 the

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<sup>21</sup> Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (“Directive on Electronic Commerce”), *OJ L* 178, 17.7.2000.

<sup>22</sup> This situation has been exacerbated by the pandemic emergency which has dramatically increased the use of online bargaining and the use of digital services. In the meantime, digitalisation has become one of the pillars of post-pandemic transformation of the EU. For this reason, given the immense importance of online platforms and digital services, European Institutions feel the need to introduce specific rules for the sector to improve online access to goods and services for consumers, to prohibit the dissemination of illegal content and products, as well as to facilitate innovation, competition and growth of the European digital ecosystem. See: Chiarell, 2023, pp. 33–34.

<sup>23</sup> See: Herbert Smith Freehills. 2022. The Digital Services Act: Europe’s new framework for online regulation to come into force next month. Available at: <https://www.herbertsmithfreehills.com/notes/tmt/2022-10/the-digital-services-act-europes-new-framework-for-online-regulation-to-come-into-force-next-month> (10. 10. 2024).

<sup>24</sup> See: The Digital Services Act (DSA) Regulation (EU) 2022/2065. Available at: <https://www.eu-digital-services-act.com/> (10. 10. 2024).

<sup>25</sup> See: Alorica. EU Digital Services Act. Ensuring Online Safety and Fairness. Available at: <https://www.alorica.com/insights/resource/eu-digital-services-act-ensuring-online-safety-and-fairness> (10. 10. 2024).

<sup>26</sup> COM (2020) 825: Proposal for a Regulation of the European Parliament and of the Council on a Single Market for Digital Services (Digital Services Act) and amending Directive 2000/31/EC.

<sup>27</sup> Council of the European Union, Proposal for a Digital Services Act and amending Directive 2000/31/EC – General approach, 18/11/2021, Council Document 13203/21.

European Parliament’s Committee on the Internal Market and Consumer Protection (IMCO) released a draft for an EP legislative resolution.<sup>28</sup> The legislative project “seeks to ensure the best conditions for the provision of innovative digital services in the internal market, to contribute to online safety and the protection of fundamental rights, and to set a robust and durable governance structure for the effective supervision of providers of intermediary services.”<sup>29</sup> To achieve these aims, the DSA sets out numerous due diligence obligations for intermediaries concerning any type of illegal information, including copyright-infringing content.<sup>30, 31</sup>

The Digital Services Act was formally adopted by the European Parliament on 5 July 2022, and by the Council of the European Union on 18 July 2022. It was published in the Official Journal of the European Union on 27 October 2022. It came into effect gradually in 2023 and 2024.<sup>32</sup> The DSA governs online intermediaries through a set of horizontal rules and a continuation of the intermediary liability regime in the European Union. The liability rules are restated for all intermediaries while due diligence obligations are created, and a new governance regime is established to oversee implementation, reporting, compliance, and enforcement. The DSA is said to provide legal certainty, remove disincentives for platforms to take voluntary measures and keep their services safe, preserve a fair balance of fundamental rights and prohibition of general monitoring obligations.<sup>33</sup> The DSA is more comprehensive than any previous legislation of the dig-

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<sup>28</sup> Report on the proposal for a regulation of the European Parliament and of the Council on a Single Market for Digital Services (Digital Services Act) and amending Directive 2000/31/EC, 20/12/2021 – (COM(2020)0825 – C9-0418/2020 – 2020/0361(COD))

<sup>29</sup> COM (2020) 825: Proposal for a Regulation of the European Parliament and of the Council on a Single Market for Digital Services (Digital Services Act) and amending Directive 2000/31/EC.

<sup>30</sup> See Recital 12 of the Digital Services Act (DSA) of the European Union: In order to achieve the objective of ensuring a safe, predictable and trustworthy online environment, for the purpose of this Regulation the concept of “illegal content” should broadly reflect the existing rules in the offline environment. In particular, the concept of “illegal content” should be defined broadly to cover information relating to illegal content, products, services and activities. In particular, that concept should be understood to refer to information, irrespective of its form, that under the applicable law is either itself illegal, such as illegal hate speech or terrorist content and unlawful discriminatory content, or that the applicable rules render illegal in view of the fact that it relates to illegal activities. Illustrative examples include the sharing of images depicting child sexual abuse, the unlawful non-consensual sharing of private images, online stalking, the sale of non-compliant or counterfeit products, the sale of products or the provision of services in infringement of consumer protection law, the non-authorized use of copyright protected material, the illegal offer of accommodation services or the illegal sale of live animals. In contrast, an eyewitness video of a potential crime should not be considered to constitute illegal content, merely because it depicts an illegal act, where recording or disseminating such a video to the public is not illegal under national or Union law. In this regard, it is immaterial whether the illegality of the information or activity results from Union law or from national law that is in compliance with Union law and what the precise nature or subject matter is of the law in question.

<sup>31</sup> Peukert, A. *et al.* 2022. European Copyright Society – Comment on Copyright and the Digital Services Act Proposal. *IIC - International Review of Intellectual Property and Competition Law*, 53, p. 359.

<sup>32</sup> See: Secure Privacy. 2024. Digital Services Act (DSA) of the European Union Explained. Available at: <https://secureprivacy.ai/blog/eu-digital-services-act-explained> (10. 10. 2024).

<sup>33</sup> See more in: Leiser, M. 2023. Analysing the European Union’s Digital Services Act Provisions for the Curtailment of Fake News: Disinformation, & Online Manipulation. pp. 1-13. Available at: <https://osf.io/>



ital world in the European Union and addresses a range of issues, such as content moderation, monetisation, competition and accountability.<sup>34</sup>

The DSA revamps the principle of the limitation of liability for online intermediaries contained in the e-Commerce Directive, but its core innovation is a new chapter on standards for transparency, and the accountability of all providers of “intermediary services” regarding illegal and harmful content.<sup>35</sup> The DSA’s general date of applicability was 17 February 2024. However, the DSA applies to providers of online platforms and of online search engines whose services have been designated as Very Large Online Platforms (VLOPs) and Very Large Online Search Engines (VLOSEs) as from four months following notification of the decision designating those services as such.<sup>36</sup> The DSA establishes a notice-and-action regime, a legal framework that requires intermediaries to restrict content that violates their own terms of service or the laws of an EU Member State. In turn, people have the right to appeal decisions to remove or alter their content.<sup>37</sup> The DSA regulates online intermediaries and platforms such as marketplaces, social networks, content-sharing platforms, app stores, and online travel and accommodation platforms. Its main goal is to prevent illegal and harmful activities online and the spread of disinformation. It ensures user safety, protects fundamental rights, and creates a fair and open online platform environment.

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preprints/socarxiv/rkhx4 (10. 10. 2024).

<sup>34</sup> The European Commission under *Ursula von der Leyen* has made the digital world a priority with the “A Europe Fit for the Digital Age” initiative and its dual purpose: to assert and strengthen Europe’s digital sovereignty, that is, its capacity to develop innovative new technologies; and to set up its own standards, which derive from Europe’s commitment to fundamental rights for citizens and a competitive free market. The DSA Package constitutes an example of co-regulation, where the regulatory body (the EU in this instance), sets the framework for the operation of the tech industry, but the industry itself is responsible for developing rules for implementation and enforcement mechanisms and for delivering self-assessment reports to regulators. It is, in this sense, a light touch approach. See: UCD Centre for Digital Policy.

<sup>35</sup> See: Crowell. 2022. The Digital Services Act: EU Regulation of Intermediary Service Providers Imminent. Available at: <https://www.crowell.com/en/insights/client-alerts/the-digital-services-act-eu-regulation-of-intermediary-service-providers-imminent> (10. 10. 2024).

<sup>36</sup> On 25 April 2023, the Commission designated 17 online platforms as VLOPs and 2 online search engines as VLOSEs. Consequently, the DSA already applies to the providers of those VLOPs and VLOSEs, for which the Commission enjoys the competence to supervise and enforce. If VLOPs and VLOSEs fail to comply with DSA requirements to moderate content or address systemic risks, they can be fined up to 6 percent of their annual global revenue. The European Commission has yet to issue any fines, but it has opened formal proceedings against a host of platforms, including TikTok and X. Freedom House. 2022. The EU Digital Services Act: A Win for Transparency, New tech regulations are poised to help civil society foster a more democratic online experience. Available at: <https://freedomhouse.org/article/eu-digital-services-act-win-transparency> (10. 10. 2024).

<sup>37</sup> Under the law, regulators from each EU member state will help to implement the law and appoint “trusted flaggers,” to point out content that is illegal or violates intermediaries’ terms of services. The act also requires that intermediaries identify risks that are inherent to their platform’s design, known as systemic risks, including features that negatively impact civic discourse, electoral processes, and fundamental rights. It empowers independent auditors to assess how well intermediaries are mitigating these risks, which is crucial to understanding how platforms behave ahead of high-stakes events like elections. See: Freedom House, 2022.

### 3.1. *The EU Framework for Fundamental Rights Online: The Role of the DSA*

In response to the challenges connected to the proliferation of illegal content, goods, and services, the EU has adopted over the past years a variety of initiatives, including sector- specific legislation, non-binding guidelines for platforms to tackle illegal content online and measures based on self-regulatory cooperation. These initiatives have to a certain extent complemented the e-Commerce Directive and have increased awareness on the risk and harms brought by the digital transformations, including as regards the implications for the protection of fundamental rights. However, as acknowledged by the Commission, such interventions inevitably fail to address the systemic societal risks posed by digital services and online platforms in particular. Crucially, the lack of updated and harmonized rules hinders appropriate levels of protection for fundamental rights, adding legal uncertainty and fragmentation to an already complex regulatory landscape.<sup>38</sup>

In order to guarantee proportional balancing of fundamental rights in the DSA, reference must be primarily made to the legal framework set up both by the Charter of Fundamental Rights of the European Union (EU Charter)<sup>39</sup> and the European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention of Human Rights or ECHR),<sup>40</sup> as construed respectively by the CJEU and the ECtHR. Only the strict application of the fundamental rights that can be extracted from this legal framework which binds Member States can help secure a coherent legislative framework and a horizontal, fundamental rights compliant approach in the different legislative interventions.<sup>41</sup>

The DSA protects consumers and their fundamental rights online by setting clear and proportionate rules. It fosters innovation, growth and competitiveness, and facilitates the scaling up of smaller platforms, SMEs and start-ups. The roles of users, platforms, and public authorities are rebalanced according to European values, placing citizens at the centre.<sup>42</sup>

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<sup>38</sup> Buri, I. & Van Hoboken, J. 2021. *The Digital Services Act (DSA) proposal: a critical overview*. Amsterdam: Faculty of Law University of Amsterdam, p. 5.

<sup>39</sup> See: Charter of Fundamental Rights of the European Union, 2012 OJ (C 326) 391. See also See Article 6 (1) of the Treaty on the European Union (TEU): “The Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union of 7 December 2000, as adapted at Strasbourg, on 12 December 2007, which shall have the same legal value as the Treaties. The provisions of the Charter shall not extend in any way the competences of the Union as defined in the Treaties.”

<sup>40</sup> See Article 6 (2) and (3) of the Treaty on the European Union (TEU): “The Union shall accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Such accession shall not affect the Union’s competences as defined in the Treaties. Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union’s law.”

<sup>41</sup> Frosio & Geiger, 2023, pp. 44–45.

<sup>42</sup> See: European Commission. Digital Services Act (DSA) overview. Available at: [https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/europe-fit-digital-age/digital-services-act\\_en](https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/europe-fit-digital-age/digital-services-act_en) (10. 10. 2024).

Recital 3 of the DSA stresses that a responsible behaviour of DSPs is essential for allowing the exercise of the fundamental rights guaranteed in the EU Charter, “in particular the freedom of expression and information and the freedom to conduct a business, and the right to non-discrimination.”<sup>43</sup> The DSA should be interpreted and applied in accordance with the fundamental rights recognised by the EU Charter with an obligations for public authorities exercising the powers provided by the DSA to achieve a fair balance of the conflicting fundamental rights, in accordance with the principle of proportionality. However, the DSA also includes some specific prescriptive obligations for DSPs to enforce fundamental rights. First, by defining its scope, the DSA states that the aim of the Regulation is to regulate an online environment “where fundamental rights enshrined in the Charter are effectively protected.” Secondly, the DSA has included the impact of digital services on the exercise of fundamental rights protected by the EU Charter as a category of systemic risks that should be assessed in depth by very large online platforms (VLOPs) and very large online search engines (VLOSEs), a new category of online platform to which special obligations apply. VLOPs and VLOSEs must also take mitigating measures as a result of the systemic risk assessment they carry out in connection to the functioning of their services. In particular, the risk assessment of platforms’ services must regard the impact of digital services on (i) human dignity (ii) the freedom of expression and information, (iii) personal data, (iv) the right to private life, (v) the right to non-discrimination and (vi) the rights of the child and (vii) consumer protection. Finally, the DSA highlights the role of fundamental rights in conjunction with the emerging sensitive issues of the extra territorial enforcement of DSPs’ obligations, which has been recently debated before the CJEU and other international courts. Fundamental rights must be taken into consideration among the conditions to define the territorial scope of “orders to act against illegal content,” which should “not exceed what is strictly necessary to achieve its objective”. On one side, the territorial—and extraterritorial scope—will be determined by EU and national law but also by the proportional balancing of fundamental rights that emerges from the EU Charter. On the other side, the territorial scope should be, however, limited by international law principles, including comity, according to what the CJEU established in *Glawischnig-Piesczek*<sup>44</sup> and *CNIL*<sup>45</sup>.

<sup>43</sup> See Recital 3 of Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act): “Responsible and diligent behaviour by providers of intermediary services is essential for a safe, predictable and trustworthy online environment and for allowing Union citizens and other persons to exercise their fundamental rights guaranteed in the Charter of Fundamental Rights of the European Union (the “Charter”), in particular the freedom of expression and of information, the freedom to conduct a business, the right to non-discrimination and the attainment of a high level of consumer protection.”

<sup>44</sup> See: Case *Glawischnig-Piesczek*, ECLI:EU:C:2019:821, see n. 60, para 48–52. See also: Frosio & Geiger, 2023, pp. 36–67.

<sup>45</sup> In 2015, the CNIL informed Google that it must remove links from all versions of its search engine throughout the world when implementing an erasure request from a data subject. Google declined to comply, limiting its de-referencing of links obtained via its search engines with domain extensions inside the EU only (e.g., google.de or google.fr), as well as using geo-blocking techniques, which prohibits links from appearing in searches performed in France regardless of the version used. As a consequence, the CNIL imposed a fine of EUR 100,000 on Google due to non-compliance with the data protection legislation. Google filed a request

Only strict application of the fundamental principles that can be extracted by this constitutional framework can help secure a coherent legislative framework and a horizontal, fundamental-rights compliant approach in the different legislative interventions.<sup>46</sup>

Some inappropriate online services, content, and people can potentially be dangerous or harmful to children. Therefore, the DSA aims to provide a list of measures platforms and search engines can follow to create a digital environment where children feel safe. The DSA specifically aims to provide: a) the “best interest of the child” principle;<sup>47</sup> b) the right to protection for the child; c) the right to freedom of expression; d) the right not to face discrimination; e) the right to protection of personal data; f) a high level of consumer protection.<sup>48</sup> Platforms need to ensure that their online services focus on safety, security, and privacy for children. Some measures that are enforced to protect children are: a) prevent ads targeting children based on profiling; b) ensure terms and conditions are understandable to children; c) interfaces designed with privacy, security, and safety measures in mind. Specifically, DSA forbids dark patterns, which are interfaces that trick users into making decisions they didn’t intend to make; d) availability of parental control to help parents limit access to online services; e) simple methods of reporting illegal or harmful content; f) systems that securely verify a user’s age before granting access to a service.<sup>49</sup>

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with the Conseil d’État to have the fine annulled. The Conseil d’État subsequently submitted concerns to the Court of Justice, citing “many severe challenges” surrounding the interpretation of the directive. In its decision, the CJEU ruled that the territorial scope of the right to be forgotten in the context of search engines is limited to the borders of the EU Member States, since under EU law no obligation to do so exists. However, while reading paragraph 72, we notice that the Court tries to embed a global application and scope of the right to be forgotten as a general principle. Stating that, although EU law does not provide for an obligation, when granting a request for removal of links, to carry out such removal for all versions of the search engine in question, it does not prohibit it either. Consequently, a supervisory authority or a court of a Member State still has jurisdiction, in the light of national standards for the protection of fundamental rights, to balance the rights of the data subject against the freedom of information of the public and to instruct the operator of the relevant search engine, where appropriate, to remove the links for all versions of that search engine after such consideration. So it remains to be seen whether the court will uphold this case law in the future. See: Case 507/17 *Google LLC v Commission nationale de l’informatique et des libertés (CNIL)*, ECLI:EU:C:2019:772, para 64–72; GDPR Hub. CJEU - C-507/17 - Google (Territorial scope of de-referencing). Available at: [https://gdprhub.eu/index.php?title=CJEU\\_-\\_C-507/17\\_-\\_Google\\_\(Territorial\\_scope\\_of\\_de-referencing\)](https://gdprhub.eu/index.php?title=CJEU_-_C-507/17_-_Google_(Territorial_scope_of_de-referencing)) (10. 10. 2024).

<sup>46</sup> Case *Glawischnig-Piesczek*, ECLI:EU:C:2019:821, see n. 60, para 48–52; Frosio & Geiger, 2023, pp. 36–67.

<sup>47</sup> The principle of the best interests of the child is one of the four overarching guiding principles on children’s rights (right to non-discrimination, best interests, the right to life, survival and development, and the right to participation or right to express views and have them taken into account). It is anchored in Art. 3 (1) of the Convention on the Rights of the Child and in Art. 24 (2) of the Charter of Fundamental Rights of the European Union. Both instruments give children the right to have their best interests taken into account as a primary consideration in all actions or decisions that concern or affect children. In addition, Art. 24 (3) of the Charter further addresses the need to take into account the child’s right to maintain a relationship with both parents. This has also been underlined in the case law of the Court of Justice of the European Union (CJEU), e.g., in the Case C-230/21. See: European Commission. Best interests of the child (BIC). Available at: [https://home-affairs.ec.europa.eu/networks/european-migration-network-emn/emn-asylum-and-migration-glossary/glossary/best-interests-child-bic\\_en](https://home-affairs.ec.europa.eu/networks/european-migration-network-emn/emn-asylum-and-migration-glossary/glossary/best-interests-child-bic_en) (10. 10. 2024).

<sup>48</sup> Marshall-Heyman, T. 2024. Digital Services Act: Age Verification and Protecting Children Online. Available at: <https://www.criipto.com/blog/digital-services-act> (10. 10. 2024).

<sup>49</sup> Marshall-Heyman, 2024.

Protection of user rights does not only depend on dispute resolution mechanisms. Legislation should provide for safeguards that allow users to effectively complain about decisions, actions, or inaction of DSPs. First, a notification about actions to be undertaken would be an essential tool to guarantee users' right to a legal remedy. According to Mostert, the “digital due process” should be based on the following principles: (1) a fair and public review by an independent and impartial panel or competent court within a reasonable time; (2) a proper prior notification of the review; (3) an opportunity for a user or notifier to respond and present evidence in respect of a takedown or a stay-up inaction by a platform; (4) the right to legal representation; (5) the right to appeal to an appeals panel, alternative dispute resolution tribunal or competent court; (6) notifiers may at any stage in the process seek access to competent courts; (7) the right to receive a decision which clearly articulates the reason for that decision; and (8) the right to an effective remedy including, for example, stay-up or takedown of the content.<sup>50</sup> These principles adapt safeguards and guarantees developed by the CJEU and the ECtHR to the digital world.

In summary, a robust platform liability regime should be anchored in the principles of due process, ensuring fair and impartial dispute resolution with practical access to justice. It must foster transparency, accountability, and contestability, particularly in algorithmic decision-making, with the implementation of “digital due process” principles, including a fair public review, proper prior notification, the opportunity for users to present evidence, the right to legal representation, the right to appeal, and the right to an effective remedy.<sup>51</sup>

### **3.2. Commission's Enforcement Powers Under the Digital Services Act (DSA)**

The Digital Services Act (DSA) provides a framework for cooperation between the Commission, EU and national authorities to ensure platforms meet its obligations. To ensure an efficient enforcement of the DSA, the Commission is building an enforcement network of relevant European entities, national authorities and leading experts in the field covered by the Digital Services Act (DSA). This cooperation framework supports the Commission and Digital Services Coordinators (DSCs) in the supervision, enforcement and monitoring of the Regulation together with the Commission.<sup>52</sup> Under the DSA, the Commission has both investigative and sanctioning powers.

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<sup>50</sup> See: Mostert, F. 2020. ‘Digital due process’: a need for online justice. *Journal of Intellectual Property Law & Practice*, 15(5), pp. 378–389.

<sup>51</sup> To address power imbalances, the system should advocate for the “equality of arms” between platforms and users, so that any significant advantage in terms of access to relevant information should be balanced. Both state-based and non-state grievance mechanisms have roles to play, provided they meet standards of impartiality and effectiveness. Legislative safeguards and independent oversight are also crucial to ensure that these principles are not just theoretical but are effectively implemented in practice. Emphasising its role as a cornerstone in this context, the DSA has already laid down the essential legal norms that serve as a blueprint for actualising these guiding principles. See: Frosio & Geiger, 2023, pp. 57–58.

<sup>52</sup> See: European Commission. The cooperation framework under the Digital Services Act. Available at: <https://digital-strategy.ec.europa.eu/en/policies/dsa-cooperation> (10. 10. 2024).

- a) When it comes to *investigative powers*, the Commission can: 1) send a request for information (RFI) to verify platforms' compliance with the DSA. The RFI can be sent also upon decision of the Commission. Fines\* can be imposed if a reply is incorrect, misleading or incomplete; 2) order access to the VLOPS' data and algorithms, e.g., to assess how the algorithm/recommender system of a platform promotes illegal content. Fines can be imposed if the provider does not comply; 3) conduct interviews of any person who might have information on the subject matter of an investigation. Interviews can be conducted only with the person's consent and cannot be forced; 4) conduct inspections at the VLOP's premises. Inspections can be conducted only after consultation of the DSC of the Member State of establishment. The DSC may need to request an authorisation issued by the judge in the Member State of establishment. Fines can be imposed if the provider refuses to submit to inspection.<sup>53</sup>
- b) When it comes to the sanctioning powers, starting from 17 February 2024, the Commission can:
  - 1) Apply fines up to 6% of the worldwide annual turnover in case of: a) breach of DSA obligations; b) failure to comply with interim measures; c) breach of commitments.
  - 2) Apply periodic penalties up to 5% of the average daily worldwide turnover for each day of delay in complying with remedies, interim measures, commitments.<sup>54</sup>

As a last resort measures, if the infringement persists and causes serious harm to users and entails criminal offences involving threat to persons' life or safety, the Commission can request the temporary suspension of the service, following a specific procedure: 1) the Commission requests interested parties to submit written observations within a period that shall not be less than 14 working days, describing the measures it intends to request and identifying the intended addressee or addressees; 2) the Commission requests the DSC of the Member State of establishment to seek from the competent judicial authority of its Member State an order to temporarily restrict access to the service concerned by the infringement; 3) the Digital Service Coordinator seeks the order from the judge; 4) the order must be issued by a judge in the Member State of establishment.<sup>55</sup>

On 26 March 2024, the Commission has published guidelines under the DSA for the mitigation of systemic risks online for elections. The European Commission has published guidelines on recommended measures to Very Large Online Platforms and

<sup>53</sup> Fines up to 1% of the worldwide annual turnover can be imposed. Periodic penalties up to 5% of the average daily worldwide turnover can be imposed for each day of delay in replying to RFI by decision or allowing inspection. See: European Commission. The enforcement framework under the Digital Services Act. Available at: <https://digital-strategy.ec.europa.eu/en/policies/dsa-enforcement> (10. 10. 2024).

<sup>54</sup> See: European Commission. The cooperation framework under the Digital Services Act. Available at: <https://digital-strategy.ec.europa.eu/en/policies/dsa-cooperation> (10. 10. 2024).

<sup>55</sup> European Commission. The cooperation framework under the Digital Services Act. Available at: <https://digital-strategy.ec.europa.eu/en/policies/dsa-cooperation> (10. 10. 2024).

Search Engines to mitigate systemic risks online that may impact the integrity of elections, with specific guidance for the upcoming European Parliament elections in June.<sup>56</sup>

The European Commission has launched the DSA Transparency Database,<sup>57</sup> which tracks when online platforms remove content, and also requires VLOPs to maintain their own databases with detailed information on all their online advertisements. These repositories can be a tremendous asset for researchers, and can also help regulators identify harms and propose creative strategies to combat them.<sup>58</sup>

To monitor the addressees' compliance with the new rules and possibly enforce them, the DSA introduces two new oversight institutions: Digital Services Coordinators at the national level, and the Board for Digital Services at the EU level. These new public agencies would have specific supervisory rights with regard to the DSA—something the committee reports by the EU Parliament have been strongly advocating for.<sup>59</sup> Dig-

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<sup>56</sup> These guidelines recommend mitigation measures and best practices to be undertaken by Very Large Online Platforms and Search Engines before, during, and after electoral events, such as to:

- a) Reinforce their internal processes, including by setting up internal teams with adequate resources, using available analysis and information on local context-specific risks and on the use of their services by users to search and obtain information before, during and after elections, to improve their mitigation measures;
- b) Implement elections-specific risk mitigation measures tailored to each individual electoral period and local context;
- c) Adopt specific mitigation measures linked to generative AI: Very Large Online Platforms and Search Engines whose services could be used to create and/or disseminate generative AI content should assess and mitigate specific risks linked to AI, for example by clearly labelling content generated by AI (such as deepfakes), adapting their terms and conditions accordingly and enforcing them adequately;
- d) Cooperate with EU level and national authorities, independent experts, and civil society organisations to foster an efficient exchange of information before, during and after the election and facilitate the use of adequate mitigation measures, including in the areas of Foreign Information Manipulation and Interference (FIMI), disinformation and cybersecurity;
- e) Assess the effectiveness of the measures through post-election reviews.

Available at: EU Digital Services Act. The Digital Services Act (DSA) Regulation (EU) 2022/2065. Available at: <https://www.eu-digital-services-act.com/> (10. 10. 2024).

<sup>57</sup> The Digital Services Act (DSA), obliges providers of hosting services to inform their users of the content moderation decisions they take and explain the reasons behind those decisions in so-called statements of reasons. To enhance transparency and facilitate scrutiny over content moderation decisions, providers of online platforms need to submit these statements of reasons to the DSA Transparency Database. The database allows to track the content moderation decisions taken by providers of online platforms in almost real-time. It also offers various tools for accessing, analysing, and downloading the information that platforms need to make available when they take content moderation decisions, contributing to the monitoring of the dissemination of illegal and harmful content online. See more at: European Commission. i. Welcome to the DSA Transparency Database! Available at: <https://transparency.dsa.ec.europa.eu/> (10. 10. 2024).

<sup>58</sup> See: Freedom House, 2022.

<sup>59</sup> Under Art. 38 (2) DSA, each Member State shall designate a Digital Services Coordinator (hereinafter DSC) responsible for “all matters relating to application and enforcement” of the DSA. For supervision, investigation, and enforcement, the DSC shall have special rights awarded by the DSA and common to all Member States. Moreover, they will have the authority to impose fines, to impose measures against a service's management, and, as ultima ratio, to decide over the interruption of a service if the DSC identifies repeated infringements (Art. 41 DSA). To allow for a harmonized approach within the EU, the DSCs shall cooperate with each other and with other competent authorities. The DSA lays the cornerstone for this

ital Services Coordinators help the Commission to monitor and enforce obligations in the Digital Services Act (DSA). The Commission and the national Digital Service Coordinators (DSCs) are responsible for supervising, enforcing and monitoring the DSA.<sup>60</sup>

#### 4. THE DIGITAL MARKET ACT (DMA)

Following the initial proposal of the European Commission in December 2020, the Regulation was adopted by the European Parliament and the Council on 14 September 2022. It was published in the Official Journal on 12 October 2022.<sup>61</sup> The DMA entered into force on 1 November 2022 and became applicable on 2 May 2023. Within two months of that date, companies providing core platform services will have to notify the Commission if they meet the quantitative thresholds and provide all relevant information. The Commission will then have 45 working days to adopt a decision designating a specific gatekeeper. The designated gatekeepers will have a maximum of six months after the Commission decision to ensure compliance with the obligations and prohibitions laid down in the DMA.<sup>62</sup>

The DMA builds on the existing P2B Regulation<sup>63</sup> and is aligned with other EU instruments, including the EU Charter of Fundamental Rights, the European Convention of Human Rights, the General Data Protection Regulation,<sup>64</sup> EU competition rules and the EU's consumer law acquis. The purpose of the DMA is to ensure the proper functioning of the market through effective competition in digital markets, and to solve

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new authority (Art. 39 DSA) but leaves any further development of the task at the Member States' discretion. States that already adopted a similar law could, for instance, merge the already existing competent authority at the national level with the DSC. See: Flew, T. & Martin, F. R. 2022. *Digital Platform Regulation: Global Perspectives on Internet Governance*. Cham: Springer Nature Switzerland AG, pp. 73–74.

<sup>60</sup> Each Member State has to designate a Digital Services Coordinator (DSC), who is responsible for all matters relating to the application and enforcement of the DSA in that country. On 24 April, the European Commission decided to open infringement procedures by sending letters of formal notice to six Member States where significant delays in the designation and or empowerment of their Digital Services Coordinators had to be expected. At that time, Estonia, Poland, and Slovakia still had to designate their Digital Services Coordinators. In addition, despite designating their Digital Services Coordinators, Cyprus, Czechia and Portugal still have to empower them with the necessary powers and competences to carry out their tasks, including the imposition of sanctions in cases of non-compliance. When deciding on the next steps, the Commission will take into account the communication by Member States of the designation and empowerment of their Digital Services Coordinators. European Commission. Digital Services Coordinators. Available at: <https://digital-strategy.ec.europa.eu/en/policies/dsa-dscs> (10. 10. 2024).

<sup>61</sup> Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services and amending Directive 2000/31/EC (Digital Services Act), OJ L 265, 12/10/2022.

<sup>62</sup> See: European Commission. About the Digital Markets Act. Available at: [https://digital-markets-act.ec.europa.eu/about-dma\\_en](https://digital-markets-act.ec.europa.eu/about-dma_en) (10. 10. 2024).

<sup>63</sup> Regulation (EU) 2019/1150 of the European Parliament and of the Council of 20 June 2019 on promoting fairness and transparency for business users of online intermediation services.

<sup>64</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).



the critical issues of the market to facilitate innovation and consumer protection by combating unfair and anti-competitive behaviour. It aims to allow platforms to unlock their full potential by facing the most critical issues at the EU level, so “as to allow end users and business users alike to reap the full benefits of the platform economy and the digital economy at large, in a contestable and fair environment.”<sup>65</sup>

The DMA applies to companies that own large online platforms—which the law designates and 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.<sup>66</sup>

The purpose of DMA is to contribute to the proper functioning of the internal market by laying down harmonised rules ensuring for all businesses, contestable and fair markets in the digital sector across the Union where gatekeepers are present, to the benefit of business users and end users. DMA shall apply to core platform services provided or offered by gatekeepers to business users established in the Union or end users established or located in the Union, irrespective of the place of establishment or residence of the gatekeepers and irrespective of the law otherwise applicable to the provision of service.<sup>67</sup>

## **5. DIFFERENCES IN REGULATORY MEASURES AND OBLIGATIONS BETWEEN DIGITAL SERVICES ACT (DSA) AND THE DIGITAL MARKET ACT (DMA)**

The DMA is in particular aimed at harmonising existing rules in member states, in order to better prevent the formation of bottlenecks and the imposition of entry barriers to the digital single market. The DSA establishes a series of fundamental rules and principles regarding, essentially, the way intermediaries participate in the publication and distribution of online content. It especially focuses on content hosting and sharing platforms, such as Facebook, TikTok, Twitter, and YouTube.<sup>68</sup>

Differences between the Digital Markets Act (DMA) and the Digital Services Act (DSA) are apparent in the separate regulatory measures and obligations they impose on digital platforms. The DMA sets out a list of obligations for designated gatekeepers, including requirements to: a) eliminate unfair or anti-competitive practices; b) provide

<sup>65</sup> Chiarell, 2023, p. 38.

<sup>66</sup> The six designated gatekeeper companies to date that fall under the DMA’s requirements include: a) Apple; b) Amazon; c) Alphabet (parent company of Google and Android); d) Meta (parent company of Facebook, Instagram and WhatsApp); e) ByteDance (parent company of TikTok); f) Microsoft. Under the DMA, gatekeepers will need to follow a set of rules that prevent them from engaging in unfair practices on their platforms, promoting a fairer and more competitive digital environment. See: Usercentrics, 2023.

<sup>67</sup> Article 1 of Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services and amending Directive 2000/31/EC (Digital Services Act).

<sup>68</sup> Barata, J. et al. 2021. *Unravelling the Digital Services Act package - RIS Special*. Strasbourg: European Audiovisual Observatory, p. 5.

access to data gathered or generated on their platforms; c) ensure compatibility; d) prevent favouring their own or specific partners' functionality or services. These provisions are aimed at promoting a fair and competitive digital landscape within the European Union. On the other hand, the Digital Services Act (DSA) aims to create a safer and more transparent online environment for users. The DSA introduces new obligations for online platforms, including: a) content moderation; b) mechanisms for handling user complaints; c) transparency of algorithms; d) cooperation with authorities; e) measures to prevent spreading illegal content.

While both Acts address different aspects of the digital market, there are some areas of overlap. For example, both regulations recognize the importance of transparency in online platforms' practices. The DMA requires designated gatekeepers to provide transparency reports on their algorithms and ranking criteria, while the DSA requires reports on content moderation practices from the VLOPs.<sup>69</sup>

## 6. CONCLUSION

As of February 2024, the European Union's (EU) Digital Services Act (DSA) is fully implemented across the bloc. The DSA is a landmark law for platform responsibility, and could transform how we understand and address the harms that online platforms exacerbate, including disinformation and harassment. Provisions within the DSA promise to aid civil society during a crucial period, as a record number of countries hold elections, generative artificial intelligence (AI) threatens to further distort the information landscape, and tech companies downsize their content moderation, trust and safety, and human rights teams. The act's potential lies in its transparency measures, which require more detailed reporting from tech companies and allow external researchers to access online platforms' data.<sup>70</sup> In conclusion, both the DSA and DMA are significant regulations introduced in the EU to regulate the digital market and address the challenges posed by digital platforms. While the DMA focuses on market competition and levelling the playing field, the DSA emphasizes user protection and transparency. Despite their differences, both Acts recognize the importance of transparency in online platforms' practices and aim to create a fair and competitive digital market. As businesses and consumers adapt to these regulations, the business landscape online will likely undergo significant changes.<sup>71</sup> The DSA is imperfect. The law could lead to the excessive removal of people's content as companies try to avoid fines, and governments within the EU could leverage the act to remove content protected by international human rights standards. Civil society and academic experts have also warned that emergency powers could be abused to block platforms. Additionally, the regulatory burden could make it difficult for small businesses with fewer financial and personnel resources to comply. However, despite these risks, the DSA presents a welcome model for internet regulation. As the

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<sup>69</sup> See: Usercentrics, 2023.

<sup>70</sup> See: Freedom House, 2022.

<sup>71</sup> See: Usercentrics, 2023.

European Commission implements the act, platforms should ensure they are adopting best practices globally, not just in the EU. Because of the outsized impact that EU regulation has globally, the act's transparency measures can help civil society, policymakers, and tech companies across the world chart a path toward a more rights-centred and democratic online experience.<sup>72</sup>

## LIST OF REFERENCES

### *Literature*

- Barata, J. *et al.* 2021. *Unravelling the Digital Services Act package - RIS Special*. Strasbourg: European Audiovisual Observatory.
- Buiten, M. C. 2021. The Digital Services Act from Intermediary Liability to Platform Regulation. *Journal of Intellectual Property, Information Technology and E-Commerce Law*, 12(5), pp. 361-380. <https://doi.org/10.2139/ssrn.3876328>
- Buri, I. & Van Hoboken, J. 2021. *The Digital Services Act (DSA) proposal: a critical overview*. Amsterdam: Faculty of Law University of Amsterdam.
- Cauffman, C. & Goanta, C. 2021. A New Order: The Digital Services Act and Consumer Protection. *European Journal of Risk Regulation*, 12, pp. 758-774. <https://doi.org/10.1017/err.2021.8>
- Chiarell, M. L. 2023. Digital Markets Act (DMA) and Digital Services Act (DSA): New Rules for the EU Digital Environment. *Athens Journal of Law*, 9(1), p. 33-58. <https://doi.org/10.30958/ajl.9-1-2>
- Flew, T. & Martin, F. R. 2022. *Digital Platform Regulation: Global Perspectives on Internet Governance*. Cham: Springer Nature Switzerland AG. <https://doi.org/10.1007/978-3-030-95220-4>
- Frosio, G. & Geiger, C. 2023. Taking fundamental rights seriously in the Digital Services Act's platform liability regime. *European Law Journal*, 29(1-2), pp. 36-67. <https://doi.org/10.1111/eulj.12475>
- Leiser, M. 2023. Analysing the European Union's Digital Services Act Provisions for the Curtailment of Fake News: Disinformation, & Online Manipulation. pp. 1-13. Available at: <https://osf.io/preprints/socarxiv/rkhx4> (10. 10. 2024). <https://doi.org/10.31235/osf.io/rkhx4>
- Mostert, F. 2020. 'Digital due process': a need for online justice. *Journal of Intellectual Property Law & Practice*, 15(5), pp. 378-389. <https://doi.org/10.1093/jiplp/jpaa024>
- Peukert, A. *et al.* 2022. European Copyright Society – Comment on Copyright and the Digital Services Act Proposal. *IIC - International Review of Intellectual Property and Competition Law*, 53, pp. 358-376. <https://doi.org/10.1007/s40319-022-01154-1>
- Ponce Del Castillo, A. 2020. The Digital Services Act package: Reflections on the EU Commission's policy options. *ETUI Policy Brief*, 12, pp. 1-6. <https://doi.org/10.2139/ssrn.3699389>

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<sup>72</sup> The EU Digital Services Act: A Win for Transparency, *op. cit.* (10/07/2024)

Turillazzi, A. *et al.* 2023. The digital services act: an analysis of its ethical, legal, and social implications. *Law, Innovation and Technology*, 15(1), pp. 83-106. <https://doi.org/10.1080/17579961.2023.2184136>

### ***Legal Sources and Case Law***

Case 507/17 Google LLC v Commission nationale de l'informatique et des libertés (CNIL), ECLI:EU:C:2019:772.

Case Glawischnig-Piesczek, ECLI:EU:C:2019:82.

Charter of Fundamental Rights of the European Union, 2012 OJ (C 326) 391.

Consolidated version of the Treaty on European Union, O. J. C 326, 26.10.2012.

Council of the European Union, Proposal for a Digital Services Act and amending Directive 2000/31/ EC – General approach, 18.11.2021, Council Document 13203/21.

COM (2020) 825: Proposal for a Regulation of the European Parliament and of the Council on a Single Market For Digital Services (Digital Services Act) and amending Directive 2000/31/EC.

Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, A Digital Single Market Strategy for Europe, Brussels, 6.5.2015, COM(2015) 192 final.

Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce'), OJ L 178.

Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).

Regulation (EU) 2019/1150 of the European Parliament and of the Council of 20 June 2019 on promoting fairness and transparency for business users of online intermediation services.

Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/ EC (Digital Services Act), OJ L 265.

Report on the proposal for a regulation of the European Parliament and of the Council on a Single Market For Digital Services (Digital Services Act) and amending Directive 2000/31/EC, 20.12.2021 - (COM(2020)0825 – C9-0418/2020 – 2020/0361(COD)).

Treaty on the European Union (TEU).

### ***Internet Sources:***

Alorica. EU Digital Services Act. Ensuring Online Safety and Fairness. Available at: <https://www.alorica.com/insights/resource/eu-digital-services-act-ensuring-online-safety-and-fairness> (10. 10. 2024).

Crowell. 2022. The Digital Services Act: EU Regulation of Intermediary Service Providers Imminent. Available at: <https://www.crowell.com/en/insights/client-alerts/>

- the-digital-services-act-eu-regulation-of-intermediary-service-providers-imminent (10. 10. 2024).
- Cuatrecasas. Digital Services Act: New regime for intermediary services. Available at: <https://www.cuatrecasas.com/en/portugal/intellectual-property/art/digital-services-act-new-regime-for-intermediary-services> (10. 10. 2024).
- European Commission. Best interests of the child (BIC). Available at: [https://home-affairs.ec.europa.eu/networks/european-migration-network-emn/emn-asylum-and-migration-glossary/glossary/best-interests-child-bic\\_en](https://home-affairs.ec.europa.eu/networks/european-migration-network-emn/emn-asylum-and-migration-glossary/glossary/best-interests-child-bic_en) (10. 10. 2024).
- European Commission. Digital Services Coordinators. Available at: <https://digital-strategy.ec.europa.eu/en/policies/dsa-dsccs> (10. 10. 2024).
- European Commission. About the Digital Markets Act. Available at: [https://digital-markets-act.ec.europa.eu/about-dma\\_en](https://digital-markets-act.ec.europa.eu/about-dma_en) (10. 10. 2024).
- European Commission. The cooperation framework under the Digital Services Act. Available at: <https://digital-strategy.ec.europa.eu/en/policies/dsa-cooperation> (10. 10. 2024).
- European Commission. The enforcement framework under the Digital Services Act. Available at: <https://digital-strategy.ec.europa.eu/en/policies/dsa-enforcement> (10. 10. 2024).
- European Commission. f. The Digital Services Act Package. Available at: <https://digital-strategy.ec.europa.eu/en/policies/digital-services-act-package> (10. 10. 2024).
- European Commission. Digital Services Act (DSA) overview. Available at: [https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/europe-fit-digital-age/digital-services-act\\_en](https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/europe-fit-digital-age/digital-services-act_en) (10. 10. 2024).
- European Commission. The 2022 Code of Practice on Disinformation. Available at: <https://digital-strategy.ec.europa.eu/en/policies/code-practice-disinformation> (10. 10. 2024).
- European Commission. i. Welcome to the DSA Transparency Database! Available at: <https://transparency.dsa.ec.europa.eu/> (10. 10. 2024).
- European Parliament. 2024. European Democracy Action Plan In “A New Push for European Democracy”. Available at: <https://www.europarl.europa.eu/legislative-train/theme-a-new-push-for-european-democracy/file-european-democracy-action-plan> (10. 10. 2024).
- EU Digital Services Act. The Digital Services Act (DSA) Regulation (EU) 2022/2065. Available at: <https://www.eu-digital-services-act.com/> (10. 10. 2024).
- Freedom House. 2022. The EU Digital Services Act: A Win for Transparency, New tech regulations are poised to help civil society foster a more democratic online experience. Available at: <https://freedomhouse.org/article/eu-digital-services-act-win-transparency> (10. 10. 2024).
- GDPR Hub. CJEU - C-507/17 - Google (Territorial scope of de-referencing). Available at: [https://gdprhub.eu/index.php?title=CJEU\\_-\\_C-507/17\\_-\\_Google\\_\(Territorial\\_scope\\_of\\_de-referencing\)](https://gdprhub.eu/index.php?title=CJEU_-_C-507/17_-_Google_(Territorial_scope_of_de-referencing)) (10. 10. 2024).
- Herbert Smith Freehills. 2022. The Digital Services Act: Europe's new framework for online regulation to come into force next month. Available at: <https://www.herbertsmithfreehills.com/notes/tmt/2022-10/the-digital-services-act-europes-new-framework-for-online-regulation-to-come-into-force-next-month> (10. 10. 2024).

Marshall-Heyman, T. 2024. Digital Services Act: Age Verification and Protecting Children Online. Available at: <https://www.criipto.com/blog/digital-services-act> (10. 10. 2024).

Secure Privacy. 2024. Digital Services Act (DSA) of the European Union Explained. Available at: <https://secureprivacy.ai/blog/eu-digital-services-act-explained> (10. 10. 2024).

UCD Centre for Digital Policy. The Digital Services Act Package: A Primer. Available at: <https://digitalpolicy.ie/the-digital-services-act-package-a-primer/> (10. 10. 2024).

Usercentrics. 2023. Key differences between the Digital Markets Act (DMA) and the Digital Services Act (DSA). Available at: <https://usercentrics.com/knowledge-hub/differences-between-digital-markets-act-and-digital-services-act/> (10. 10. 2024).