

# SHORT GUIDE TO VERY LARGE ONLINE PLATFORMS AND SEARCH ENGINES

# THE DIGITAL SERVICES ACT

The **Digital Services Act (DSA)** entered into force on 16 November 2022, nearly 2 years after the proposal was first adopted by the Commission. With the aim of ensuring the safe and proper functioning of the Digital Single Market, the Regulation creates the first set of obligations for “intermediary digital services”, introducing rules on due diligence, moderation and transparency among others. These are cumulative and organised in a four-tiered structure that reserves the most stringent obligations for those entities with a more significant socio-economic impact, and that were "*too big to care*".

The obligations include:

## Intermediary services

- appointment of two points of contact;
- providers not established in the EU must appoint a legal representative
- annual report on content moderation
- transparency reporting
- inclusion of any impossible restrictions on the use of the service in their terms and conditions, as well as making them understandable to minors when the services are aimed at them
- cooperation with national authorities upon the issue of an order

## Hosting services

- notice and action (N&A) and reporting of criminal offences

## Online platforms

- set up of an internal complaint-handling system for content moderation as well as out-of-court certified mediation mechanisms
- prioritise trusted flaggers' notices
- design online interfaces in such a way that allows recipients to make free and informed decisions
- ban on targeted advertising to children & the use of special characteristics for targeting
- transparency of the parameters used by recommender systems in their terms and conditions
- Transparency of advertising
- obligations for marketplaces, including: know-your-business-customer (KYBC), compliance by design and random checks.

## VLOPs and VLOSEs

- provide the possibility to opt out of recommendations based on profiling
- provide data access and allow scrutiny by the authorities
- codes of conduct
- annual external and independent audits & reporting obligations
- pay a supervisory fee to the Commission
- monitor, report and mitigate systemic risks caused by the design or functioning of the service
- risk management & crisis response, with mitigation measures
- public repository of ads

## WHAT ARE VLOPs and VLOSEs

The DSA defines **online platforms** as a “hosting service that, at the request of a recipient of the service, stores and disseminates information to the public” and **online search engines** as “intermediary service that allows users to input queries in order to perform searches of, in principle, all websites, or all websites in a particular language, on the basis of a query” in **Article 2 DSA**.

**Article 33 DSA** adds that only those with a number of **monthly EU average monthly active recipients equal to or higher than 45 million** (which accounts for approximately 10% of the EU population) qualify as VLOPs and VLOSEs. It is due to their size and impact that only Very Large Online Platforms (VLOPs) and Very Large Online Search Engines (VLOSEs) are subject to the most stringent obligations.

The text set a deadline for the publication of the information on the average monthly after recipients on **17 February 2023** and empowers the European Commission to adopt a delegated act clarifying the methodology for the calculation (**Article 24(2) DSA**). However, this process has not started yet and the questions that arose were addressed in a set of [guidelines](#).

These refer to Article 3 (p) & (q), which lay down the concept of 'active recipient', in relation to both online platforms and online search engines, as well as the clarifications provided in recital 77. According to these:

- An **active recipient of an online platform** is a recipient of the service that has **engaged** with an online platform by either **requesting** the online platform to **host information or being exposed to information** hosted by the online platform and disseminated through its online interface
- An **active recipient of an online search engine** is a recipient of the service that has **submitted a query** to an online search engine **and been exposed to information** indexed and presented on its online interface.



The Commission has warned those entities that have not revealed the exact number of users, since simply reporting whether they fall below or above the threshold is not enough to ensure compliance with their obligation.



























## SOME OF THE REPORTED NUMBERS


### >45 million average monthly active users







-  **Youtube:** 400 million
-  **Google Search:** 332 million
-  **Google Maps:** 278 million
-  **Google Play:** 275 million
-  **Facebook:** 255 million
-  **Instagram:** 250 million
-  **Wikipedia:** 151 million
-  **Linkedin:** 122 million
-  **TikTok:** 125 million
-  **Bing:** 107 million
-  **Twitter:** 100,9million
-  **Snapchat:** 96,8 million
-  **Google Shopping:** 75 million
-  **Booking.com:** >45 million
-  **iOS App Store:** >45 million
-  **Amazon Marketplace:** > 45 million
-  **Pinterest:** >45 million
-  **Aliexpress:** >45 million

### <45 million average monthly active users

-  **Chrome web store**
-  **Google Hotels**
-  **macOs App Store**
-  **Fitbit**
-  **Apple Podcasts (paid)**
-  **Apple Books**
-  **Tinder**
-  **OkCupid**
-  **Meetic**
-  **Onlyfans**
-  **eBay**
-  **Skyscanner**
-  **Github**
-  **Microsoft Store**
-  **Wolt**
-  **Spotify**
-  **Gofundme**
-  **DuckDuckGo**
-  **Viber**
-  **BeReal.**
-  **Uber**
-  **Tripadvisor**
-  **Airbnb**
-  **GoDaddy**

### THE FRONTRUNNERS

-  **Waze:** 40 million
-  **Telegram:** 38 million
-  **Vinted:** 37,4 million
-  **OTTO:** 37,6 million
-  **Quora:** 36,4 million

-  **Ticketswap**
-  **Shopify**
-  **Zalando**
-  **Reddit**
-  **Wallapop**
-  **Pornhub**

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## WHAT'S NEXT?

**1** Based on the reported number of average monthly active users, the Commission will make an assessment as to whether a platform should be designated a very large online platform or search engine and issue a **designation decision**, that should be communicated **"without undue delay"** to the providers.

**2** **Following such decisions**, the entities designated as VLOPs and VLOSEs will have **4 months** to comply with the obligations under the DSA, including carrying out and providing to the Commission the first annual risk assessment exercise.

**3** Entities will have to **update** the reported numbers at least once every **6 months**.

**4** EU Member States will need to empower their Digital Services Coordinators by **17 February 2024**, the general date of entry into application of the DSA. From that day on, the text will become fully applicable to all entities under its scope.

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## SECONDARY LEGISLATION

Moreover, the European Commission has started the work to develop delegated and implementing acts under the DSA that will clarify other aspects of the obligations for VLOPs and VLOSEs.

- **Digital Services Act - methodology for calculating the supervisory fee (DEA)** provided for in Article 43 DSA. The text will lay down the criteria to determine the costs that the Commission will incur in the exercise of its supervisory and enforcement tasks, including rules on the calculation of the overall amount of the fee and on the identification of its maximum overall limit, and details regarding the arrangements to make payments. The Draft Act is available and Commission adoption is expected in **Q1 2023**.
- **Digital Services Act – conducting independent audits (DEA)** will lay down rules for the audit procedure and methodology, providing the necessary templates that must be used in the audit process of VLOPs and VLOSEs. The draft act has not yet been published and the adoption is expected in **Q3 2023**.
- **Digital Services Act – implementing regulation** on some aspects of the Commission's investigatory and enforcement powers in relation to the power to conduct inspections, interim measures, commitments and monitoring actions (Articles 69 - 72 DSA), the hearings under the right to be heard, access to the file and the negotiated disclosure of information (Article 79 DSA).

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