



European Center for  
Not-for-Profit Law

**The Digital Services Act:**  
Overview of obligations, fundamental rights impact  
assessments and recommendations for investors

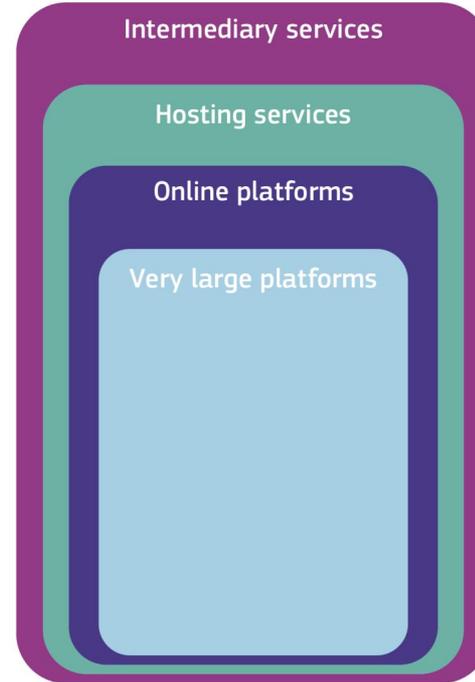
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Investors Alliance for Human Rights, 30 January 2024

# The EU's Digital Services Act

## Key objectives:

- Create a safe online space
- Limit the spread of illegal content
- Introduce due process in content moderation
- Ensure algorithmic transparency and accountability
- Empower users vis-a-vis digital services providers



# Companies designated as VLOPs/VLOSEs as of January 2024

Alibaba AliExpress  
Amazon Store  
Apple App Store  
Booking.com  
Facebook  
Google Play  
Google Maps  
Google Shopping  
Instagram  
LinkedIn  
Pinterest  
Snapchat  
TikTok  
Twitter  
Wikipedia  
YouTube  
Zalando

Bing  
Google Search

Pornhub  
Stripchat  
Xvideos

## Intermediary Services

- transparency reporting
- terms of services respect fundamental rights
- cooperation with national authorities
- point of contact and/or legal representative

## Hosting Services

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- Notice & Action and statement of reasons
- reporting criminal offenses

## Online Platforms

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- internal complaint-handling system
- out-of-court dispute settlement
- trusted flaggers
- obligations for marketplaces (KYBC)
- Bans on targeted ads to children and based on special characteristics of users
- transparency around ads and recommender systems

## Very Large Online Platforms and Search Engines

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- risk management and crisis response
- annual third party audit
- data sharing with researchers
- codes of conduct
- alternate recommender system

# The Obligation of Risk Assessments & Mitigation

- VLOPs/VLOSEs have to conduct **yearly self-assessments** into any “systemic risks” stemming from the design or the use of their service
- They must **adopt “mitigation measures” to address these risks**, with particular attention to fundamental rights impacts
- **Consultation** with users, impacted groups, independent experts, and civil society organisations is encouraged
- Risk assessments will be subject to **external independent audits** and they are also subject to **scrutiny by the European Commission**

# Civil Society Recommendations for Fundamental Rights Impact Assessments under the DSA

## 1. GOVERNANCE

FRIAs should be governed by the EU Charter of Fundamental Rights, which encompasses and elaborates on existing human rights standards and strengthens them with strong EU enforcement powers.

## 2. SCOPE

FRIAs must identify *all* negative effects on *all* fundamental rights and freedoms listed in the EU Charter that VLOPs and VLOSEs' products, services, or processes may cause, contribute to, or to which their services may be directly linked.

## 3. DETAIL

FRIAs should contain essential information about VLOPs/ VLOSEs' systems and processes, including details of the criteria and methodologies used to determine the most pressing negative effects on fundamental rights.

## 4. TRANSPARENCY

FRIAs must be transparent and publicly available for external stakeholders to scrutinise.

## 5. HARMONISATION

Every FRIA should be flexible and "fit for purpose," while following a harmonised structure, enforced by the European Commission to ensure accurate risk identification and facilitate future oversight and accountability.

## 6. CONSULTATION

FRIAs must be informed and shaped by regular input from external stakeholders, including civil society organisations and impacted communities.

Read ECNL and Access Now policy paper outlining key recommendations for meaningful fundamental rights impact assessments under the EU's Digital Services Act:

<https://ecnl.org/publications/human-right-s-impact-assessments-are-key-effective-dsa-enforcement>

# Interplay of the DSA with the GDPR

- The two laws have **different objectives**: GDPR is focused on data protection while the DSA is focused on intermediary liability, content and platform governance, and consumer protection
- The GDPR applies to companies **in any case**, the DSA does not modify the GDPR
- DSA risk assessments are **separate** from GDPR data protection impact assessments as they focus on broader societal risks and not only impacts on data protection; however, both assessments should complement and inform each other
- The DSA complements the GDPR when it comes to **targeted advertising** (by explicitly introducing a ban on advertising based on profiling and using special categories of sensitive data, e.g., sexual or political orientation)
- **Different enforcement structure**: GDPR is enforced by national Data Protection Authorities, the DSA - by the European Commission (for VLOPs) or the Digital Services Coordinator in Member States (usually a media regulator or a consumer protection authority)

# Recommendations for investors

- Push companies to conduct meaningful risk assessments which are not just a compliance exercise; utilise and leverage risk assessments in making companies accountable to investors
- Demand clear commitments for effective mitigation measures for identified systemic risks, if necessary - to change or phase out a feature causing risks which cannot be mitigated
- Encourage transparency about the risk assessment process (e.g. publication of redacted versions)
- Encourage meaningful stakeholder engagement with civil society and affected communities
- Encourage commitments to offer equal protection to users from countries outside of the EU, especially in Global Majority countries

**Thank you!**

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