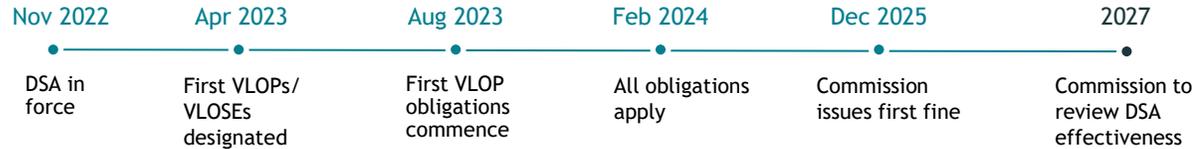


# Digital Regulation Essentials: The DSA

The EU Digital Services Act fully entered force on 17 February 2024, aiming to create a safer online environment in the EU. Here we provide a recap of the DSA, and an overview of recent developments and enforcement activity.

## TIMING



## WHO IS IN SCOPE?

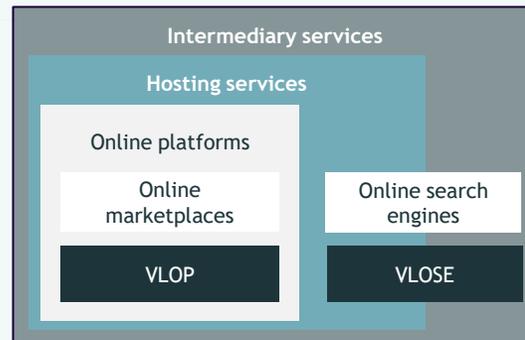
The DSA applies to ‘intermediary services’, including those outside the EU that provide services to the EU and have a ‘substantial connection’ to the EU.

### This breaks further down into:

- Mere conduits - services that transmit information or provide access to a communication network (e.g., internet access providers).
- Caching services - services that temporarily store user information for onward transmission (e.g., content delivery networks).
- Hosting services - services that store user information (e.g., cloud providers).

### Further sub-categories of service sit under this:

- Online platforms - hosting services that disseminate user information at a user’s request (e.g., social media sites).
- Online marketplaces - online platforms where consumers contract with traders.
- Online search engines - sites which enable searching of, in principle, all websites (or all websites in a certain language).
- Very large online platforms (VLOPs) and very large online search engines (VLOSEs) - online platforms and search engines averaging 45m+ active EU users.



## KEY RULES AND OBLIGATIONS

### Basic obligations

Some DSA obligations apply to all in-scope services. This includes: (i) designating a single point of contact in the EU; (ii) ensuring terms and conditions outline moderation policies and content restrictions; and (iii) publication of an annual transparency report.

### Additional tiered obligations

Other obligations apply across service categories in a cumulative manner:

- Hosting services have additional responsibilities (compared to caching and mere conduit services) - such as having ‘notice and action’ mechanisms, and systems to remove illegal content on notice.
- Online platforms have further duties still, such as implementing complaint-handling systems, designing services in a way that does not deceive or manipulate users, and setting out recommender system parameters in T&Cs. They must also, unless a small or micro enterprise, publish their monthly user numbers every six months.
- VLOPs and VLOSEs must comply with all DSA obligations. This includes conducting systemic risk assessments, implementing appropriate risk mitigation measures, and conducting independent audits of DSA compliance. VLOPs/VLOSEs must also maintain a searchable repository of hosted online advertisements, as well as permitting researchers access to their internal and public data to conduct research. They must also pay an annual supervisory fee to the Commission.

### Liability exemptions and no general duty to monitor content

The DSA largely maintains the E-Commerce Directive’s liability exemptions (or ‘safe harbours’) for intermediary service providers (e.g., hosting providers will not be liable for illegal content stored on behalf of a user unless the provider has actual knowledge of it and fails to act expeditiously to remove it). The DSA also reconfirms that there is no general obligation on service providers to monitor or seek out illegal content and codifies the principle that providers who do carry out voluntary monitoring do not forfeit the benefit of the safe harbours as a result.

## KEY DEVELOPMENTS

### Proactive enforcement, but limited sanctions

- Since the DSA fully entered force, the Commission has taken a proactive enforcement approach, issuing requests for information to the majority of designated VLOPs/VLOSEs, and opening investigations probing the compliance of X, Tiktok, AliExpress, Facebook, Instagram and Temu, among others. Such investigations have been wide-ranging in scope, albeit most cite a failure to meet the DSA’s broad requirement for VLOPs and VLOSEs to assess, and mitigate, systemic risk.
- Other areas of focus include: (i) failures to provide a searchable public repository of online advertisements; and (ii) failures to provide researchers with access to public data, with Tiktok and Meta provisionally held to be in breach of this requirement.

# Digital Regulation Essentials: The DSA

## KEY DEVELOPMENTS

### First DSA fine

- Notwithstanding the considerable Commission activity, financial sanctions to date have been limited. The first DSA fine (€120m) was issued in December 2025 against X for breaches of transparency obligations, some two years after the initial investigation commenced.

Specifically, X has been impugned for use of ‘deceptive’ blue checkmarks, its failure to meet transparency requirements in relation to its repository of online advertisements, and its failure to provide researchers with sufficient access to data. The fine is a milestone for the DSA regime, particularly given continued political controversy surrounding the DSA in the US, including government figures accusing the EU of censoring US tech firms.

- There are, however, indications of effective enforcement by other means - LinkedIn and TikTok both disabled functionality following Commission interest, and in the case of AliExpress and TikTok, the Commission has opted to agree ‘binding commitments’ to address non-compliance concerns. If such commitments are not fulfilled, the Commission can treat the failing as an immediate sanctionable breach of the DSA.

### Protection of children

- A particular area of Commission focus is the DSA requirement that online platforms implement measures to ensure a high level of privacy, safety and security for children, with related investigations opened into Meta, TikTok and numerous adult sites. These concern the addictive ‘rabbit hole’ nature of recommender systems, and insufficiently robust age verification tools to screen content. TikTok was found preliminarily in breach of the DSA in February 2026 for the addictive nature of its platform.
- In July 2025, the Commission published guidelines on the protection of minors, which, while not binding, will influence the Commission’s assessment of compliance. This includes recommendations to: (i) not expose minors to functionality promoting compulsive use; (ii) modify recommender systems to prevent exposure to harmful content and minimise behavioural monitoring; (iii) set minor accounts to private by default; (iv) give minors the opportunity to reset their feeds; and (v) implement age assurance measures to restrict accessible content.
- In October 2025, the Commission formally requested information from Snapchat, YouTube, Apple and Google to assess compliance with the guidelines, and is working with national authorities to identify platforms posing the greatest risk to children.

### Consumer safety

- This has been another area of particular focus. In June 2025, the Commission entered into binding commitments with AliExpress, including to address concerns regarding its systems for detecting and flagging illegal products, and tracing traders, on its platform.
- The Commission has also provisionally found AliExpress to be in breach of its obligation to mitigate the spread of illegal products.

- The Commission also conducted a mystery shopping exercise on Temu and in July 2025 provisionally found the platform was in breach of the DSA due to a high risk of encountering illegal products on the platform, noting that Temu was ‘*far from assessing risks for its users at the standards required*’. In particular, it noted that Temu’s risk assessment was generic and did not assess specific details about the Temu platform.
- The Commission and other authorities publicly urged Shein in May 2025 to comply with EU consumer protection laws - citing issues such as deceptive labelling and missing information - which were noted as complementary to ongoing DSA inquiries as to illegal goods on its marketplace and whether it is mitigating risks to consumers. The Commission has since formally requested information from Shein on how it prevents the circulation of illegal items on its marketplace, and ensures minors are not exposed to age-inappropriate content.

### General Court decisions: DSA challenges brought by VLOPs

- **Zalando:** In September 2025, the EU’s General Court dismissed Zalando’s challenge to its designation as a VLOP. Zalando had sought to argue that while it had 83m active users, it was not a VLOP, as only 30m users were exposed to third-party sellers. The court confirmed Zalando was an ‘online platform’ to the extent third-party traders sold products on the platform (i.e., direct product sales by Zalando itself do not bring the platform within scope). However, because Zalando could not identify which users from its total user base were exposed to third party sellers, the Commission was entitled to assume all 83m users had been. The decision also includes helpful broader commentary on the calculation of user numbers, e.g., providers cannot exclude those who have refused cookies, non-registered users, or those inactive for a period, and may have to count bots. The court noted that it is for providers to ‘*choose a reliable method*’ that is likely to ensure user numbers are not underestimated.
- **Amazon:** In November 2025, the EU’s General Court rejected Amazon’s challenge that VLOPs should be designated using qualitative criteria instead of utilising average monthly active users, and rejected the argument that online marketplaces should be excluded from the DSA’s scope. The court considered that marketplaces can give rise to systemic risks that the DSA is intended to mitigate and ruled that Amazon’s pleas that various DSA provisions violate the EU Charter of Fundamental Rights were unfounded.
- **Meta and TikTok supervisory fees challenge:** In September 2025, the EU’s General Court invalidated the Commission’s 2023 implementing decisions setting supervisory fees for Facebook, Instagram and TikTok. The court held that the methodology used should have been set out in a delegated act. The Commission has 12 months to remedy this and reissue fee decisions. Further challenges against the fee system by Meta and TikTok and by Google are also pending at the General Court.

### Russmedia: European Court of Justice decision on interplay between DSA and GDPR

In its decision in *Russmedia* in December 2025, the ECJ held that an online marketplace operator that is a joint controller under the GDPR for personal data in user ads cannot rely on the DSA’s ‘safe harbour’ exemptions to avoid GDPR obligations. The court also concluded that a controller must implement appropriate security measures to identify ads containing sensitive data before publication and to ensure GDPR compliance in respect of such ads, and that requirements arising from the GDPR cannot be classed as a ‘general monitoring obligation’ (which would be prohibited under the DSA).

# Digital Regulation Essentials: The DSA

## KEY DEVELOPMENTS

### Researcher data access

- In July 2025, the Commission adopted a delegated act aimed at enabling vetted researchers to conduct research into the systemic risks and mitigation measures of VLOPs and VLOSEs - as required by the DSA - and established a new 'data access portal' for researchers to find information and communicate with VLOPs and VLOSEs. VLOPs and VLOSEs are required to have an account on the portal. The Commission has said this will provide 'unprecedented access' and 'contribute to a safer online world'.

### New Codes of Practice

- The Code of Conduct on Disinformation and revised Code of Conduct on Countering Illegal Hate Speech were both formally integrated into the DSA in 2025. As such, they will be used by the Commission as benchmarks to assess VLOP/VLOSE compliance, with such entities required to report on measures taken as part of their annual audit.

## 5 KEY QUESTIONS TO ASK

In light of recent developments, in-scope providers should be asking themselves:



Have we taken steps to amend functionality and implement measures in line with the Commission's guidelines to ensure minors accessing our service are protected?



Are adequate steps being taken to mitigate the risk of illegal or non-compliant products, or misleading product information, being disseminated via our marketplace (if applicable)?



Have we stress-tested the way average monthly active users is calculated, given the Zalando decision?



Is our risk assessment sufficiently all-encompassing, and does it address issues identified in Commission enforcement action to date? Is the assessment sufficiently tailored to the specific risks of the particular platform?



Have we stress-tested compliance with all DSA requirements, even those which may appear straightforward to satisfy? For example, are there easy to access and user-friendly notice and action mechanisms to flag content, and DSA-compliant complaints procedures?

**OSA.** In addition to the above, providers operating search services or services where users can interact with one another in the UK market, or which have considerable numbers of UK users, need to ensure that they are also compliant with the UK's **Online Safety Act**, which is now substantially in force.

While there is a degree of overlap, meeting DSA requirements will not equate to OSA compliance and requires its own ongoing compliance programme. For more information on the OSA and DSA overlap, see our client [briefing](#).

## Digital Regulation at Slaughter and May

Our Digital Regulation practice covers the full spectrum of digital rules, from AI regulation, competition-focused platform regulation, to online harms and content regulation, and data access and portability. Clients look to us to offer practical, risk-adjusted advice that helps them navigate this ever more complex landscape - and to innovate at speed.

For more information, see our [Digital Regulation Practice page](#) or our blog on digital developments, [The Lens](#).



**LAURA HOUSTON**  
Partner

[laura.houston@slaughterandmay.com](mailto:laura.houston@slaughterandmay.com)  
+44 (0)20 7090 4230



**WILL MANLEY**  
Head of Digital Regulation

[will.manley@slaughterandmay.com](mailto:will.manley@slaughterandmay.com)  
+32 (0)2 737 9431



**JORDAN ELLISON**  
Partner

[jordan.ellison@slaughterandmay.com](mailto:jordan.ellison@slaughterandmay.com)  
+32 (0)2 737 9414



**NATALIE DONOVAN**  
Head of Knowledge, Tech and Digital

[natalie.donovan@slaughterandmay.com](mailto:natalie.donovan@slaughterandmay.com)  
+44 (0)20 7090 4058

This material is for general information only. It is not intended to provide legal advice.

© Slaughter and May  
February 2026.