

Digital Services Act & NIS2

Key Takeaways & Collaboration InterAct Members



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DSA

European Commission (EU) proposed the Digital Services Act (DSA).

DSA contains rules on liability and responsibilities of online intermediary services.

Services covered are:

Intermediary services

Hosting services

Online platforms

Very large online platforms & very large search engines

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DSA

DSA not only for Facebook or Google. All(!) online intermediaries offering their services in the single market, whether they are established in the EU or outside, will have to comply with the new rules.

Depending on type of 'intermediary services' provided, different regimes apply.

Obligations increase step by step: very large platforms subject to most strict (due diligence) obligations.

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DSA

Responsibilities/obligations include:

- measures to counter illegal goods, services or content online
- traceability of business users (KYBC)
- ban on certain type of targeted adverts on online platforms
- transparency measures for online platforms
- additional obligations for very large platforms

DSA

Liability

- DSA replaces the preceding liability regime under the E-Commerce Directive.
- Framework remains largely intact, but introduction ‘Good Samaritan’ clause & DSA makes clear that online intermediaries must comply with orders



DSA

Enforcement, fines & penalties

- **Unique oversight structure:** the Commission will be the primary regulator for very large online platforms (+ 45 million users), while other platforms will be under the supervision of Member States where they are established (or where its legal representative resides)
- each Member State will need to appoint a Digital Services Coordinator (DSC), an independent authority which will be responsible for supervising the intermediary services established in their territory.
- maximum amount of fines imposed shall be 6% of the global turnover of a service provider.

DSA

Date of applicability / Date of entry into force

- The DSA has entered into force on 16 November 2022.
- The DSA will be directly applicable across the EU and shall apply from 17 February 2024.

Online platforms need to publish data about number of active monthly users by 17 February 2023

As regards the obligations for very large online platforms and very large online search engines, the DSA will apply from an earlier date, that is four months after their designation by the Commission

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NIS Directive

Network and Information Systems (NIS) Directive (2016/1148): the first piece of EU-wide *cybersecurity legislation*.

It applies to operators of essential services (OES) and digital service providers (DSP) and requires that said entities:

- take appropriate and proportionate technical and organizational measures to adequately protect their ICT
- notify incidents with significant effects to the competent authority or the Computer Security Incident Response Team (CSIRT).

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NIS2 Directive

Evaluation NIS: lack of a harmonized approach & supervision and enforcement of the NIS proved to be ineffective

Commission proposed its successor, the NIS2.

On November 10, 2022 the final text was approved by the European Parliament. The Council needs to formally adopt the law before it will be published in the EU's Official Journal.

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NIS2 Directive

Key obligations remain intact: taking appropriate and proportionate security measures + notifying incidents with significant effects

NIS2 entails notable changes such as:

- extension of scope & clear size cap
- more clear and strict cybersecurity measures by including a list of 7 basic security elements
- address cybersecurity risks in supply chains and supplier relationships;
- different and more precise provisions on incident reporting
- minimum list of administrative sanctions (fines for non-compliance up to € 10 million or 2% of the total worldwide annual turnover)

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Collaboration InterAct Members

Handling possible cases regarding DSA and NIS: how can 'find' legal work, share expertise & making referrals?

- identify clients who might be subject to obligations as laid down in DSA and NIS(2)
- check location client (main establishment in EU or where legal representative resides)
- check whether client is subject to (and aware of) obligations arising out of DSA and NIS(2)
- give advice & contact InterAct member where client is established for more feedback on national laws/local authorities
- seek assistance from De Vos & Partners or another InterAct firm when you need advice about DSA, NIS or other types of E-commerce or Cybersecurity legislation
- Join webinar presented by De Vos & Partners (DVP) & B2RLAW (see next slide)

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Collaboration DVP & B2RLAW

B2RLAW & De Vos & Partners have been working on a brochure providing stakeholders with an introduction to the NIS & (upcoming) NIS2, including its scope, requirements and possible fines / penalties.

A webinar about NIS/NIS2 is scheduled to take place on January 26th, 2023. Join us incl. clients of yours who you think might be interested!

