

**WILLIAM FRY**

# **EU Digital Services Act: Does it apply to you?**

Quick reference guide to  
businesses impacted by the DSA.

February 2024

## TIER 1 OBLIGATIONS

## 1

**CACHING OR MERE CONDUIT SERVICE PROVIDERS**

The legal definition of intermediary service providers includes caching and mere conduit service providers. These services include the transmission and/or temporary storage of user provided information in communication networks.

**EXAMPLES:** Internet Service Providers, Domain Name Service Providers, and Providers of VPNs.



An **'intermediary service'** means one of the following **information society services** (Article 3(g)/Recital 29):

1. a **'mere conduit' service**, consisting of the transmission in a communication network of information provided by a recipient of the service, or the provision of access to a communication network (this includes: local wireless networks, DNS Services or domain name registries);
2. a **'caching' service**, consisting of the transmission in a communication network of information provided by a recipient of the service, involving the automatic, intermediate and temporary storage of that information, performed for the sole purpose of making more efficient the information's onward transmission to other recipients upon their request (this includes, content delivery networks or proxies).



**'information society service'** means a 'service' normally provided for remuneration, at a distance, by electronic means and at the individual request of a recipient of services.

## TIER 2 OBLIGATIONS

## 2

## HOSTING SERVICE PROVIDERS

The legal definition of intermediary services includes hosting service providers. A hosting service will be covered by the DSA where it stores information provided by and at the request of the user.

**EXAMPLES:** Cloud Service Providers, Web Hosting Services, and File Storage and Sharing Services.



An **'intermediary service'** means the following **information society service**, (Article 3(g)/Recital 29):

3. a **'hosting' service**, consisting of the storage of information provided by, and at the request of, a recipient of the service.



**'information society service'** means a 'service' normally provided for remuneration, at a distance, by electronic means and at the individual request of a recipient of services.

## TIER 2 OBLIGATIONS

## 3

## ONLINE SEARCH ENGINES

An online search engine (**OSE**) is an intermediary service that also allows users to perform searches of all websites and provides information relating to those searches. OSE's will be required to publish their average monthly users every six months so it can be assessed whether they are a Very Large Online Search Engine. Recital 28 provides that OSEs may also benefit from the exceptions from liability for services that are mere conduits or that cache or host.

**EXAMPLES:** Online Search Engines such as Google Search, Bing, and Yahoo!



An **online search engine** is any **intermediary service** that allows users to input queries in order to perform searches of, in principle, all websites or websites in a particular language, on the basis of a query on any subject in the form of a keyword, voice request, phrase or other input and returns results in any format in which information related to the requested content can be found (Article 3(j)).

**Intermediary Services are:**

1. Mere Conduit Service (see above)
2. Caching Service (see above)
3. 'Hosting' Service (see above)

## TIER 3 OBLIGATIONS

## 4

**ONLINE PLATFORMS & ONLINE PLATFORMS ALLOWING DISTANCE CONTRACTS TO BE CONCLUDED**

Under the DSAS, online platforms are hosting services which, at the request of the user, stores, and disseminates, information to the public. Online platforms which allow distance contracts to be concluded are also required to provide information which will allow traders to be traced by consumers and design their interfaces in such a way that allows traders to comply with existing contract and product safety laws.

**EXAMPLES:** Social Media Networks, Online Market Places, App Stores, Crowd Funding Platforms, Collaborative Economy Platforms.



An **online platform** is a **hosting service** that, at the request of a **recipient of the service, stores and disseminates information to the public**, unless that activity is a minor and purely ancillary feature of another service or a minor functionality of the principal service and, for objective and technical reasons, cannot be used without that other service, and the integration of the feature or functionality into the other service is not a means to circumvent the applicability of the DSA (Article 3(i)/Recital 13/14).



a **'hosting' service**, consisting of the storage of information provided by, and at the request of, a recipient of the service (see above).

**'recipient of the service'** means any natural or legal person who uses an intermediary service, in particular for the purposes of seeking information or making it accessible.



According to Recital 14, **dissemination to the public** involves making available of information to a potentially unlimited number of persons, meaning making the information easily accessible to recipients of the service in general without further action by the recipient of the service providing the information being required, irrespective of whether those persons actually access the information in question.

**'Distance contract'** means any contract concluded between the trader and the consumer under an organised distance sales or service-provision scheme without the simultaneous physical presence of the trader and the consumer, with the exclusive use of one or more means of distance communication up to and including the time at which the contract is concluded (Article 2(7) Consumer Rights Directive).



## TIER 4 OBLIGATIONS

## 5

**VERY LARGE ONLINE PLATFORMS (VLOPS) AND VERY LARGE ONLINE SEARCH ENGINES (VLOSES)**

To fall within the scope of obligations faced by VLOPs and VLOSEs, the service must be an online platform or online search engine which has an average of 45 million or more monthly active users in the EU and which has been designated by the European Commission. All platforms and search engines, regardless of size, are required under the DSA to publish average user numbers every six months.

**EXAMPLES: VLOPs:** Amazon Store; Google Shopping; Booking.com; Apple AppStore; Facebook; Instagram have all been designated as VLOPs.

**VLOSEs:** Bing and Google Search have both been designated as VLOSEs.



A ‘**Very Large Online Platform**’ (“**VLOP**”) and a ‘**Very Large Online Search Engine**’ (“**VLOSE**”) are either of the above which have 45 million or more (or 10% EU of the population) average monthly active recipients in the EU and are designated by the Commission as such (Article 33).



An ‘**Online Platform**’ is a hosting service that, at the request of a recipient of the service, stores and disseminates information to the public, unless that activity is a minor and purely ancillary feature of another service or a minor functionality of the principal service and, for objective and technical reasons, cannot be used without that other service, and the integration of the feature or functionality into the other service is not a means to circumvent the applicability of this Regulation (Article 3(i)/Recital 13/14).

An “**online search engine**” is an 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 on any subject in the form of a keyword, voice request, phrase or other input, and returns results in any format in which information related to the requested content can be found (Article 3(j)).

## Act Now! The DSA deadline day of 17 February 2024 approaches.

If you would like any further information or have any queries on how the DSA could impact your business, please contact Leo Moore, your usual William Fry contact, or email our dedicated TechReg team at [techreg@williamfry.com](mailto:techreg@williamfry.com)

You can use our free DSA scope analysis tool on our website as a first step.

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