




DIGITAL SERVICES ACT & DIGITAL MARKETS ACT

Diana VLAD-CÂLCIC

14 October 2022

The background of the image is the European Union flag, featuring a blue field with twelve five-pointed gold stars arranged in a circle. The flag is shown with a slight ripple, giving it a three-dimensional appearance.

A single set of **rules** for the whole EU.

New landmark rules for online platforms in the EU.

Digital **Services** Act & Digital **Markets** Act

#DigitalServicesAct #DigitalMarketsAct #DigitalEU

OBJECTIVES

One set of rules across the entire EU single market

Proportionate, asymmetric obligations

Exemptions for Small and micro-enterprises

Fair and contestable markets



1. to create a **safer digital space** in which the **fundamental rights** of all users of digital services are protected

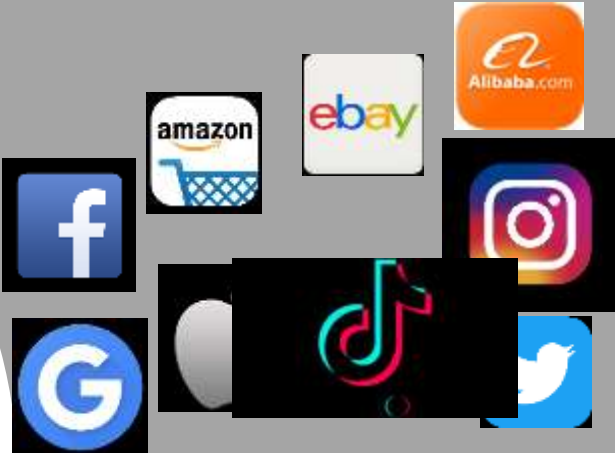
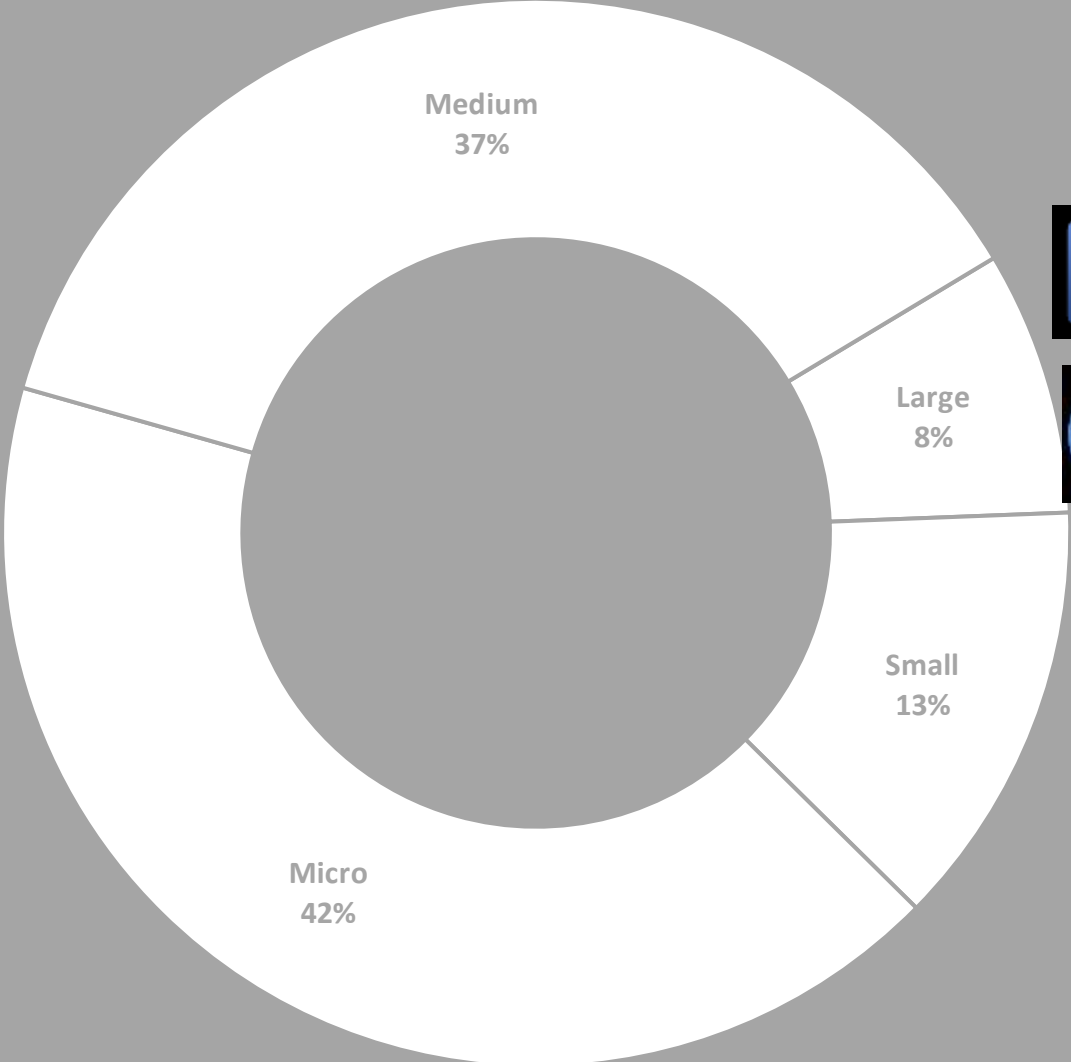
2. to establish a **level playing field** to foster **innovation, growth, and competitiveness**, both in the European Single Market and globally

Spread of illegal content, sale of non-complaint goods and services

Protecting fundamental rights online

Tackling societal concerns such as disinformation and child safety

OVER 10.000 PLATFORMS IN THE EU

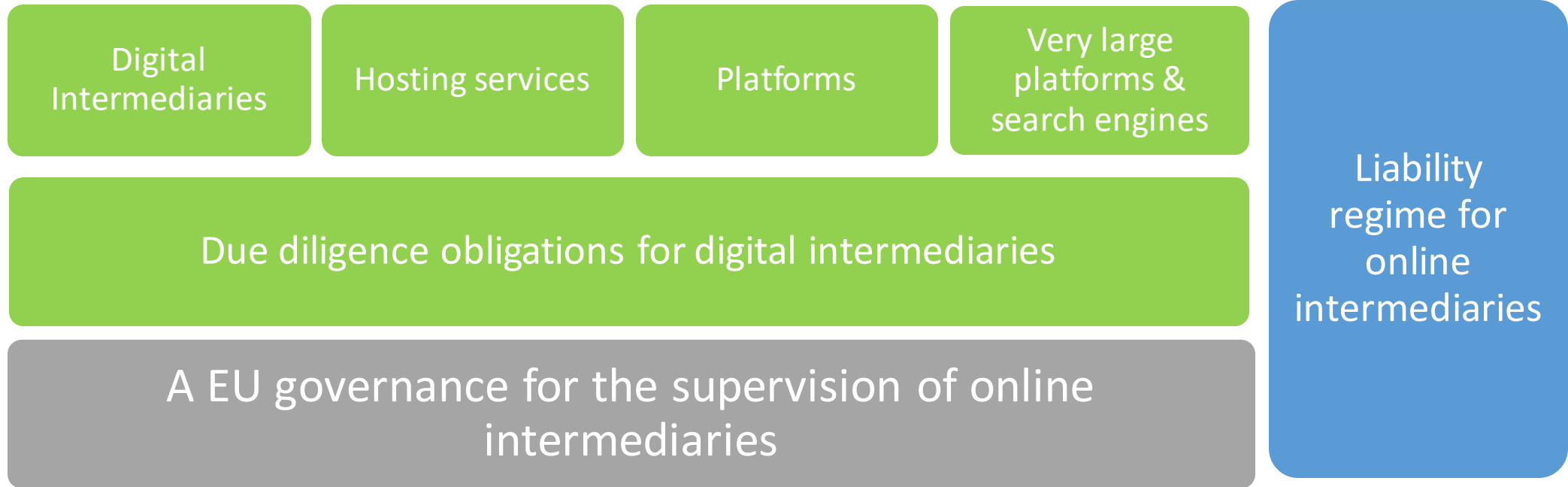


With different economic power and societal impacts.

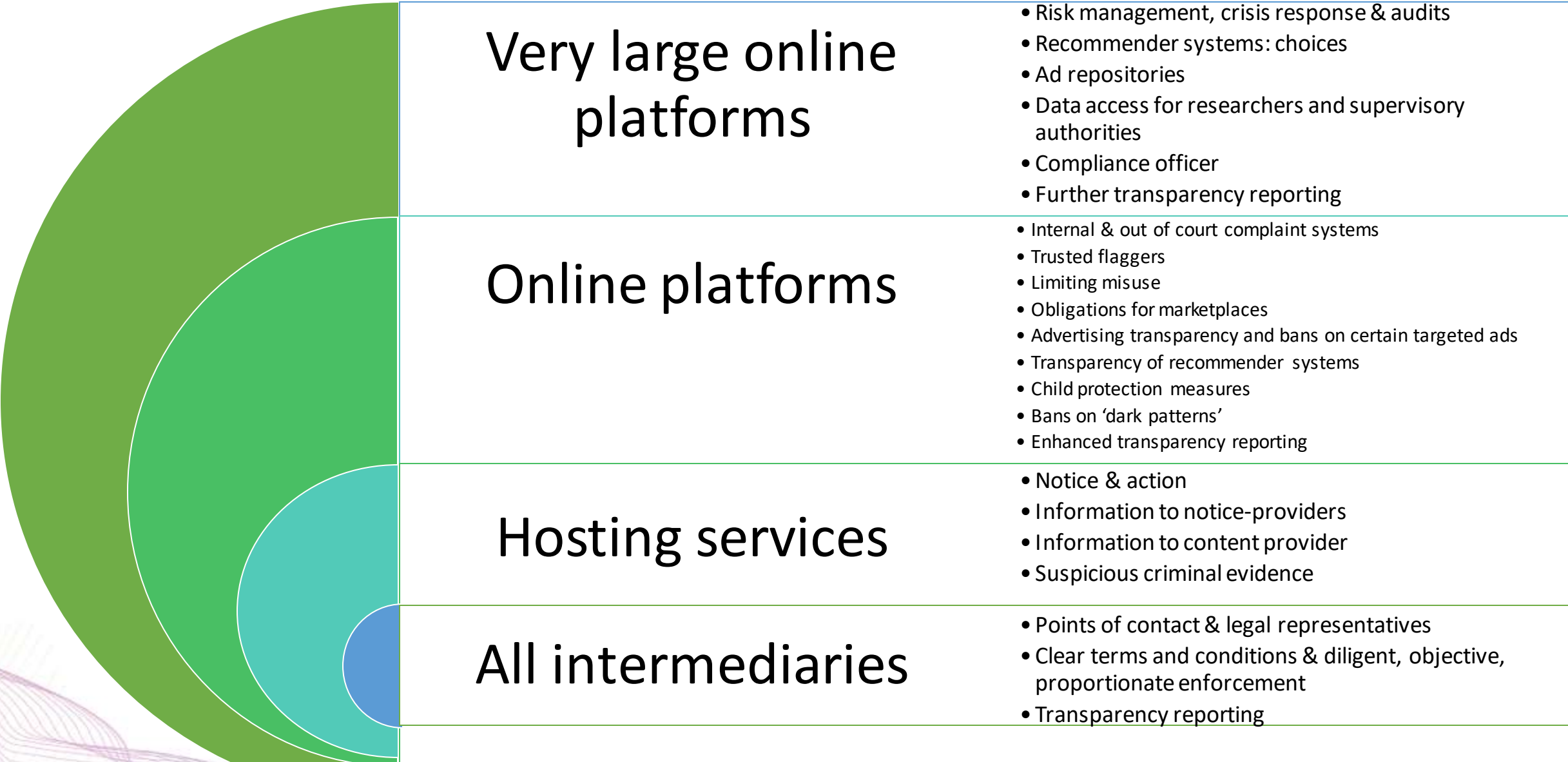


1. The Digital Services Act

The Digital Services Act



Due diligence obligations



Very large online platforms

- Risk management, crisis response & audits
- Recommender systems: choices
- Ad repositories
- Data access for researchers and supervisory authorities
- Compliance officer
- Further transparency reporting

Online platforms

- Internal & out of court complaint systems
- Trusted flaggers
- Limiting misuse
- Obligations for marketplaces
- Advertising transparency and bans on certain targeted ads
- Transparency of recommender systems
- Child protection measures
- Bans on 'dark patterns'
- Enhanced transparency reporting

Hosting services

- Notice & action
- Information to notice-providers
- Information to content provider
- Suspicious criminal evidence

All intermediaries

- Points of contact & legal representatives
- Clear terms and conditions & diligent, objective, proportionate enforcement
- Transparency reporting

Ensuring accountability

Independent audits

- At least once a year
- Performed by organisations which :
 - Are independent from the very large online platform audited
 - Have proven expertise: risk management, technical competence and capability
- Scope:
 - All due diligence obligations – including risk management measures
 - Commitments taken under Codes of Conduct and Crisis protocols

Public scrutiny

- Public reporting on the risk assessments, mitigation measures, audits
- Specialised scrutiny for the evolution of risks: data access for vetted researchers
- Specialised scrutiny on particular issues: public ad repositories



2. The Digital Markets Act

DMA: Who are the gatekeepers?

Gatekeeper?

- Has a **significant impact** on the internal market
- Operates a **core platform service**, which serves as an **important gateway** for business users to reach end users
- Enjoys an **entrenched and durable position** in its operations or it is foreseeable that it will enjoy such a position **in the near future**



Rebuttable presumption

- Annual EEA turnover \geq EUR 7.5 billion in the last three financial years
OR
 - Average market capitalisation or the equivalent fair market value \geq EUR 75 billion in the last financial year
AND
 - It provides a core platform service in **at least three Member States**
- **>45 million monthly active end users** established or located in the Union
AND
 - **>10 000 yearly active business users** established in the Union in the last financial year
- Requirements in Article 3(2)(b) met in the last three financial years

Online platforms

DMA: core platform services

- ***online intermediation services (incl. esp. marketplaces, app stores)***
- online search engines
- operating systems
- cloud computing services
- ***video sharing platform services***
- number-independent interpersonal electronic communication services
- ***social networking services***
- advertising services

DSA: online platforms

- Hosting services that disseminate information to the public

The Digital Markets Act

Directly
implementable
obligations

Obligations
susceptible of
further
measures

Gatekeeper platforms

Enforcement
and
governance



Obligations and unfair practices I

◆ Data-related unfair practices

- ◆ Ban on the use of **non-publicly available commercially sensitive data** of business users
- ◆ e.g. marketplace operator cannot sell its own goods informed by data of its sellers

◆ Unfair favourable treatment

- ◆ Obligation to offer third-party service providers access to **hardware and software features** controlled via operating systems or virtual assistants
- ◆ e.g. hardware elements like NFC antenna in mobile phones opened to third parties

◆ Unfair ranking – specific form of unfair favourable treatment

- ◆ Obligation to apply **transparent, fair and non-discriminatory conditions** to ranking of third-party services relative to their own
- ◆ e.g. search engines cannot rank their own services and products higher



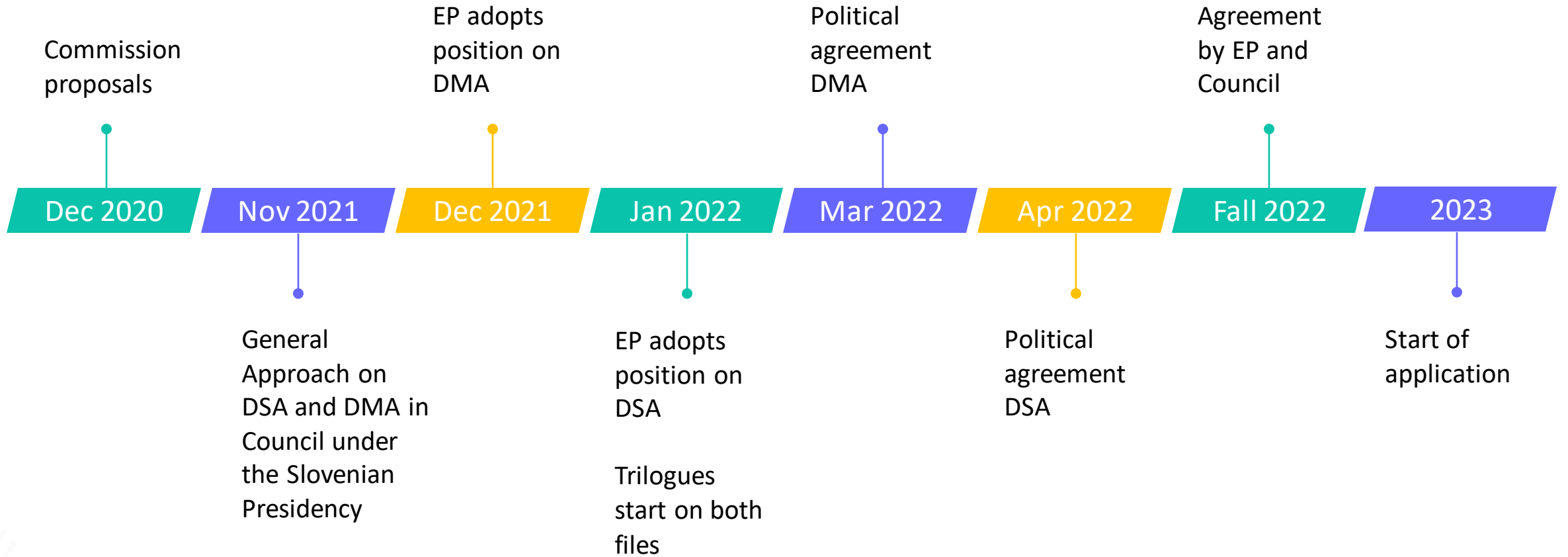
Obligations and unfair practices II

- ◆ **Unfair tying of services in support of core platform services**
 - ◆ Specifically refrain from imposing own identification services, payment services or technical support services for those payment services on business users
 - ◆ e.g. app developers can freely choose from third parties or develop their own identification services
- ◆ **Interoperability requirements for messenger services**
 - ◆ Obligation for gatekeepers providing messenger services to allow for interoperability upon request
 - ◆ Text messages between individuals (immediately after entry into force/designation)
 - ◆ Group chats (two years after entry into force/designation)
 - ◆ Audio and video calls (four years after entry into force/designation)

The background features a complex abstract design. On the left, there's a teal area with a white dot grid. This transitions into a large, wavy shape filled with a dense grid of thin, wavy lines in yellow and purple. The right side of the image is dominated by a solid blue area with a white, wavy, organic shape at the bottom. The overall aesthetic is modern and digital.

The governance challenge

Adoption of the DSA & DMA



More than the sum of parts

DSA

- The Commission as lead enforcer for very large online platforms
- EU Board for Digital Services as independent advisory group
- Independent Digital Services Coordinators :
 - enforce the rules on all digital services established in their Member State
 - Ensure cooperation and coordination of all relevant national authorities



DMA

- The Commission as enforcer of the DMA
- Digital Markets Advisory Committee to cooperate and coordinate with competition authorities and courts
- Role for pre-investigation by national authorities

How do we supervise and enforce digital rules?

How to supervise adaptive regulation?

- The issues change (e.g. disinformation), the practices and players change as well
- Evolving our capability, constant monitoring and evaluation
- Using all the tools in the toolbox: regulatory dialogues, secondary legislation, guidelines, codes of conduct, standardization

What rules and procedures for independent regulators?

What types of expertise and capability?

- Fundamentally multidisciplinary: legal, data science, social science
- IT infrastructure
- Methodologies

How to leverage public scrutiny?

How do we work as 'more than the sum of parts'?

- Joint investigations with Digital Services Coordinators
- Sharing knowledge, expertise, tools
- Leveraging best practices

Our work is only starting



Minister @MikulasBek and @EP_President signed the long-awaited Digital Markets Act 🇪🇺.

The new legislation defines clear rules for large online platforms and will create a fairer space for new players in digital markets.

#EU2022CZ #DMA



Mikuláš Bek and 3 others

4:13 PM · Sep 14, 2022 · Twitter Web App

Building capability within the Commission & Member States

Secondary legislation

And we start!

Shaping Europe's digital future

[Home](#) [Policies](#) [Activities](#) [News](#) [Library](#) [Funding](#) [Calendar](#) [Consultations](#)

[Home](#) > [Policies](#) > [European Centre for Algorithmic Transparency](#)

European Centre for Algorithmic Transparency

The European Centre for Algorithmic Transparency (ECAT) is committed to improved understanding and proper regulation of algorithmic systems.

Algorithmic systems determine many aspects of our online experience, for example, a music streaming app may use algorithms to suggest songs or bands to its users. With the ever-increasing societal impact of online platforms such as social networks, online marketplaces, and search engines, there is an urgent need for public oversight of the processes at the core of their business. This includes in particular how these platforms and search engines **moderate content** and how they **curate information** for their users.



© image by montaj - Gettyimages/iStock

Thank you!

Diana VLAD-CÂLCIC

Policy officer @ DG CONNECT

Diana.Vlad-Calcic@ec.europa.eu

@dianavladcalcic



© European Union 2020

Unless otherwise noted the reuse of this presentation is authorised under the [CC BY 4.0](https://creativecommons.org/licenses/by/4.0/) license. For any use or reproduction of elements that are not owned by the EU, permission may need to be sought directly from the respective right holders.

