

Regulation 2022/2065 Digital Services Act



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The Digital Services Act (DSA), entering into full force on February 17th, 2024, paves the way to an updated legal framework for providers of **“intermediary services”** via digital platforms that keep up with the contemporary internal market needs and prevents from the risks deriving from the online environment. Basic obligations are imposed to all providers of intermediary services and additional obligations are set forth for providers of **“hosting services”**. The level of accountability envisaged for **very large online platforms** and those used by at least 10% of the Union's population such as Amazon, Google, or Meta, is higher compared to other simple digital platforms, whereas micro or small enterprises, as defined in Commission Recommendation 2003/361, are exempted from the application of the Regulation in order to promote innovation and investment. Moreover, the DSA facilitates the necessary oversight by competent authorities and provides for effective, proportionate and dissuasive sanctions.

The adoption of the Regulation appears timelier than ever before as users tend to treat digital platforms in an infringing and lawless manner. The anonymization or pseudonymization of the digital platform user has led to the dramatical increase of human rights violations such as hate speech, privacy infringements, child abuse and minority abuse via the internet. It is noteworthy that a professional YouTuber who posted videos of helpless people being abused and humiliated recently featured in the Greek news. Apart from the personal liability of the above-mentioned professional YouTuber that is somehow not affected by the Regulation, the following general question arises as well, i.e. Is YouTube liable for being the means facilitating such violations?

According to the DSA, large or very large digital platforms shall be subject to the strictest due diligence obligations, proportionate to their social impact. This

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significant reach should be deemed to exist when the number of recipients exceeds an operational threshold of 45 million, equivalent to 10% of the Union's population, as cited above. Among such obligations is the implementation by design of measures intended to prevent and mitigate risks arising from new technologies and the fast expansion of information through the Internet. In practice, large or very large online platforms are additionally set under supervision by a Digital Service Coordinator designated by the State Member who completes and notifies annual reports with activities carried out under the Regulation according to the DSA. The Coordinator is obliged to record the number of breaches and complaints that led to the opening of any formal investigation or to the transmission to other Digital Services Coordinators, without referring to personal data. The same also applies to the number and the type of orders to tackle acts of disclosure of illegal content issued by the national judicial or administrative authorities, as set forth in the annual report of the DSA. Information related to the adopted measures to resolve any problematic situation such as extrajudicial dispute resolution is also included in the annual report. Last but not least, the non-compliance of the provider of intermediary services with the obligations laid down in DSA shall incur penalties under the article 52 §§ 3, 4 of this Regulation according to which Member States shall ensure that the maximum amount of fines that may be imposed for a failure to comply with an obligation laid down in this Regulation shall be 6 % of the annual worldwide turnover of the provider of intermediary services concerned in the preceding financial year. Member States shall ensure that the maximum amount of the fine that may be imposed for the supply of incorrect, incomplete or misleading information, failure to reply or rectify incorrect, incomplete or misleading information and failure to submit to an inspection shall be 1 % of the annual income or worldwide turnover of the provider of intermediary services or person concerned in the preceding financial year.
