

# What are the DMA and DSA, the new European rules for regulating the Internet?

**These two main texts should limit the economic dominance of large platforms and the distribution of illegal content and products online. What are the consequences for Enhanced Security?**

More than 10,000 online platforms operate in the European digital marketplace today, [according to the](#) European Commission. However, only a small fraction of them capture most of the value generated by these activities.

Although they are not mentioned directly, the GAFAMs (Google, Apple, Facebook, Amazon, and Microsoft) and other industry giants are the main targets of these two texts: the **Digital Markets Act** (DMA) and the **Digital Services Act** (DSA).

The first objective is to better regulate the economic activities of the largest platforms. The Commission calls them "*gatekeepers*" to indicate that they have become mandatory in order to benefit from the advantages of the Internet. They are accused of making companies and consumers particularly dependent on their services and of preventing competition from other companies.

The second, which is to modernize part of the previously unchanged 2000 e-commerce [directive](#), deals with content (hate, child pornography, terrorism, etc. ) and illegal (counterfeit or dangerous) products offered online. It seeks in particular to harmonize the national laws already in force in the member states in this area and has the motto: "*what is illegal offline should also be illegal online.*"

18 months after the Commission's proposal, negotiations on the MDA resulted in an agreement between the Parliament and the Council on March 24, 2022. The text still needs to be formally adopted by these two institutions before it can enter into force (within 20 days) and be applied 6 months later, in principle from October 2022.

A month later, on April 23, the DSA was provisionally agreed. It will be applied in two stages: 15 months after it comes into force or from January 1, 2024 for most platforms, whichever is later; and 4 months after its designation for very large online platforms and search engines.

Once finally adopted, these two texts will apply to all EU countries and the companies that operate in them.

## What are the new rules under the DMA?

The DMA and the DSA do not address the same challenges. The Digital Markets Act (DMA) should limit the many advantages that allow gatekeepers to maintain a dominant market position. In response to their sometimes unfair practices, the text aims to impose a series of ex ante obligations: today, fines for competition law violations are often imposed late, which does not incentivize companies to change their behavior in a meaningful way.

With DMA, gatekeepers can no longer favor their own services and products over those of the companies that use them, or exploit the latter's data to compete with them. They cannot impose the most important software (e.g. browsers or search engines) by default when installing their operating system. Uninstalling pre-installed software or applications on the computer, phone or tablet also becomes possible in most cases.

The Regulation also ensures that a user company can promote its offering, enter into contracts with its customers, or offer its own services to consumers outside of a platform to which it is linked.

In order to promote its competitive products and services, a company, and in particular an online merchant, may request access to data generated by its activities (marketing performance, etc.) and to data related to the advertisements it funds on a platform.

The March 24 agreement adds several new features to the initial version. As requested by the European Parliament, a platform will only be able to associate a user's personal data with targeted advertising if the user gives explicit consent.

The major messaging services (Whatsapp, Facebook Messenger, iMessage, etc. ) will also have to be interoperable with their smaller competitors. Thus, a user will be able to send messages, files or make video calls from one messaging app to another. Social networks may also be affected in the future, but this will have to be clarified by the European Parliament and the Council. Finally, access controllers will have to inform the Commission about acquisitions and mergers.

## What about the DSA?

The Digital Services Act (DSA) seeks to limit the spread of illegal content (incitement to hatred or violence, harassment, child pornography, apology for terrorism, etc. ) and the sale of illegal products online.

To ensure this principle, the DSA imposes certain obligations on service providers and, in particular, platforms. Currently, the procedures for notifying and removing such content and products differ from one Member State to another and do not allow for effective action, with hate messages or videos, for example, being removed long after they have been widely distributed.

While the DSA does not question the limited liability of platforms for the illegal content and products they host (the notion of "passive host"), they will have to provide a tool that allows users to report them. Once informed, they will then have to remove the content and products or quickly disable access to them.

Platforms will be required to cooperate with "trusted alerts." These are bodies, associations or individuals labeled within each state for their expertise and who will have priority in processing their notifications.

The DSA also prohibits targeting people with online ads based on their religion, sexual preferences, health information, or political beliefs. Advertising directed at minors is also prohibited.

Platforms' targeted advertising and moderation policies are subject to transparency obligations. In particular, platforms will have to explain the workings of their recommendation systems, which increase the visibility of certain content to a user based on their personal interests. Very large online platforms and search engines will also be required to offer users an alternative recommendation system not based on their profile.

"Dark patterns," which lead users to perform unwanted actions on a site for the site's benefit, will be prohibited.

Very large platforms will also be required to assess and take measures to mitigate the risks arising from the use of their services: dissemination of illegal content, negative effects on private and family life, violation of freedom of expression, etc. They will have to perform this risk reduction analysis every year under the supervision of the European Commission.

Online marketplaces that bring sellers and consumers together, such as Amazon or AirBnb, will be required to display certain information about the products and services they sell, and to maintain information that can be used to track sellers of illegal goods and services.

The Commission had also proposed that the DSA should require all companies that provide online services to Europeans to appoint a legal representative in an EU country. This representative should, for example, in the case of platforms, comply with any request from one of the 27 member states to remove dangerous content or products.

Under the Commission's initial proposal, a "digital services coordinator" in each member state will also be able to investigate, take legal action if irregularities are found, and even sanction a company directly in certain situations. The 27 coordinators will cooperate within a "committee of national digital services coordinators" with the power to conduct joint investigations in several states. The committee will also be able to recommend that the European Commission activate a crisis mechanism in the case of particular events to combat online disinformation.

While Member States will oversee small platforms, the Commission will have exclusive power to oversee large online platforms and search engines, i.e. about thirty companies. This new responsibility is to be funded by the platforms themselves, depending on the size of their service and up to a maximum of 0.05% of their annual global net revenue.

Several provisions of the DSA aim to counterbalance content control measures in order to ensure respect for freedom of expression: the author of illegal content will have to be informed before it is removed. He or she will be able to challenge this decision free of charge with the platform (in addition to the courts) and request financial compensation from the company if it does not comply with the text.

While the Digital Services Act (DSA) aims to encourage the removal of illegal content, harmful legal content (disinformation, hoaxes, manipulation, etc. ) is not covered in the same way. The text aims to limit their propagation not by eliminating them, which would be contrary to free speech, but by requiring platforms to review the mechanisms (algorithms) that allow them to amplify.

Such harmful content is also currently subject to non-binding European regulation, notably through the code of good practice against misinformation, signed by several large digital companies.

## What are the sanctions?

If the Commission considers that an access controller is not complying with its obligations under the MAD, it may indicate concrete measures to be implemented. If the controller persists, it may be fined up to 10% of its total worldwide turnover. In the event of a repeat offence, the fine may be as much as 20% of that turnover.

In case of systematic non-compliance with the MAD (rules broken at least 3 times in 8 years), the Commission can open a market investigation and, if necessary, impose measures such as a ban on acquiring other companies for a certain period.

The European Commission is responsible for the correct application of the Regulation by the access controllers it appoints, as well as for any sanctions. Member States' national competition authorities can initiate investigations into suspected infringements and forward their findings to the European executive.

Under the DSA, each member state will determine the applicable penalties up to a limit of 6% of the company's annual income or turnover (reduced to 1% in the case of incorrect information or refusal of an on-site investigation). Penalties will be capped at 5% of daily turnover. For very large platforms, the Commission will be able to monitor compliance with the legislation itself. Companies that repeatedly fail to comply may be banned.

## What are the consequences for Increased Security?

Our know-how consists in simplifying the enhanced signature, an obligation in the European Community, to which these two texts refer. This prevents illegal penetration, theft and other illegal actions.

Directly, we are not concerned with the texts surrounding the DMA. Alternatively, we have a role to play in the DSA. If only our clients would demonstrate their willingness to be "good European citizens".

Indirectly, these texts contribute to the value of Increased Safety, which is even more than usual at the heart of the engine.

### What about cars ?

Increased Security alerts manufacturers and third parties to the dangers inherent in the prevalence of the cloud in all vehicles. Theft, illegal tracking, accidents. A potential new VWgate.

However, all car manufacturers want to become big players on the Internet, as shown by numerous articles such as *"Stellantis & You subsidiary wants to win 25% of customers on the Internet"* *"The digital experience on board future Stellantis vehicles will be signed by Amazon..."* *"Renault is turning to Qualcomm's Snapdragon Digital Chassis"* etc. *Renault is turning to Qualcomm's Snapdragon Digital Chassis"* etc..

**These players will be subject to the DMA and certainly the DSA texts starting in late 2022. This is an important opportunity for Augmented Security, whose European patent will help secure and facilitate the legal use of PSD2.**

Furthermore, during the Forum Europe: Towards a European Digital Space jointly organized by the Paris Ile de France Chamber of Commerce and Industry and the *Enterprise Europe Network*<sup>1</sup>, it was clearly stated that the U.S. and major industrial countries were following with interest European developments for implementation in their own areas of influence.

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<sup>1</sup> The Enterprise Europe Network is part of the European Commission and aims to "help companies innovate and grow internationally." The [Enterprise Europe Network \(europa.eu\)](https://www.enterprise-europe-network.eu)