

COMPLIANCE WITH THE DIGITAL SERVICES ACT (DSA)

How to prepare a safe and
trusted digital environment



In July of this year, the EU Parliament voted to adopt the Digital Services Act (DSA) and the Digital Markets Act (DMA), two legislative initiatives that will help safeguard the rights of users of digital services and establish a level playing field in the digital arena.

The DSA and DMA go hand in hand with the Data Governance Act; all three are central to the strategy of 'A Europe fit for the Digital Age'.

Here, we explore the **practical steps required to comply with the DSA**.

The nature of the DSA means that businesses must understand and address the compliance requirements holistically, with a risk-based approach to operational implementation, and not through a 'tick-box' exercise against a list of minimum requirements.

DSA AT A GLANCE

The DSA is designed to significantly improve the mechanisms for the removal of **illegal content** and for the effective **protection of users' fundamental rights online**, including the **freedom of speech**. It also creates **stronger public oversight** of online platforms, in particular for platforms that reach more than 10% of the EU's population.

Fines for violation of the DSA are up to 6% of firms' global revenue, while serious and repeated violations could result in national courts banning operations in their territories of jurisdiction.

The DSA has been developed against a backdrop of regulatory action against online platforms globally. We should expect increasing regulatory focus on consumer protection online due to the pace of technological developments and heightened consumer protection expectations.



WHO DOES THE **DSA** APPLY TO?

The DSA applies to providers of intermediary services, with the level of obligations imposed dependent on the digital footprint and therefore potential impact of the business. There are four categories of businesses that the DSA applies to:

1. **Providers of intermediary services:** Within this group, the provision of any of the following three services qualifies a business as an intermediary service provider: (i) a 'mere conduit' service, (ii) a 'caching' service, and (iii) a 'hosting' service.
2. **Providers of hosting services:** For example, cloud service providers, online marketplaces or app stores.
3. **Online platforms and marketplaces:** These cover providers of hosting services that publicly disseminate users' information. Examples of this group include online travel and accommodation websites and app stores.
4. **Very large online platforms (VLOPs) and search engines (VLOS):** Organisations with an average monthly number of users of 10% or more of the total EU consumer population qualify as VLOPs or VLOS. The European Commission will designate the entities that qualify and will be directly involved with the supervision and enforcement of obligations for VLOPs.

WHAT DO INTERMEDIARY SERVICE PROVIDERS NEED TO DO?

The DSA applies a layered or cumulative approach to in-scope businesses, with the fourth category of businesses outlined on the previous page needing to comply with the full set of requirements. When planning DSA compliance, consider two types of operational constructs: (i) developing existing functions to cater for new obligations, and (ii) the build of new components (be it processes, capabilities or reporting).

To aid with your DSA compliance roadmap, we have grouped below the key DSA requirements into five practical building blocks.

Note that those requirements which apply to all four categories of businesses outlined above are marked with an *

GOVERNANCE AND POLICIES

1

- Clearly defined internal policies, procedures, and training*
- Single point of contact, and where necessary, legal representative*
- Ensuring terms of service clearly reflect fundamental rights* and the main parameters of recommender systems
- Independent annual auditing with corrective actions promptly applied
- Internal compliance function operating independently of the business
- Participation in codes of conduct (voluntary but recommended)

INTERFACE, COOPERATION, AND FACILITATION

2

- Cooperation with national authorities on orders*
- Cooperation with authorities for on-site inspections
- Data sharing with authorities and vetted researchers, with the ability to explain underlying specifics of your algorithmic systems
- Interface with trusted flaggers

Note that those requirements which apply to all four categories of businesses outlined above are marked with an *

CONTROL ENVIRONMENT

3

- Ongoing identification, analysis and proportionate management of systemic risks stemming from the functioning and use made of your business' services in the EU
- Complaints and redress management
- Marketplace traders obligation management
- Management of user choice not to have recommendations based on profiling
- Ban on targeted adverts to minors and those based on users' special characteristics

RESPONSE

4

- Crisis readiness and response e.g., wartime, pandemic
- Measures and protection against misuse of provided service
- Criminal offence reporting
- Enabling and facilitating notices
- Out of court dispute settlements

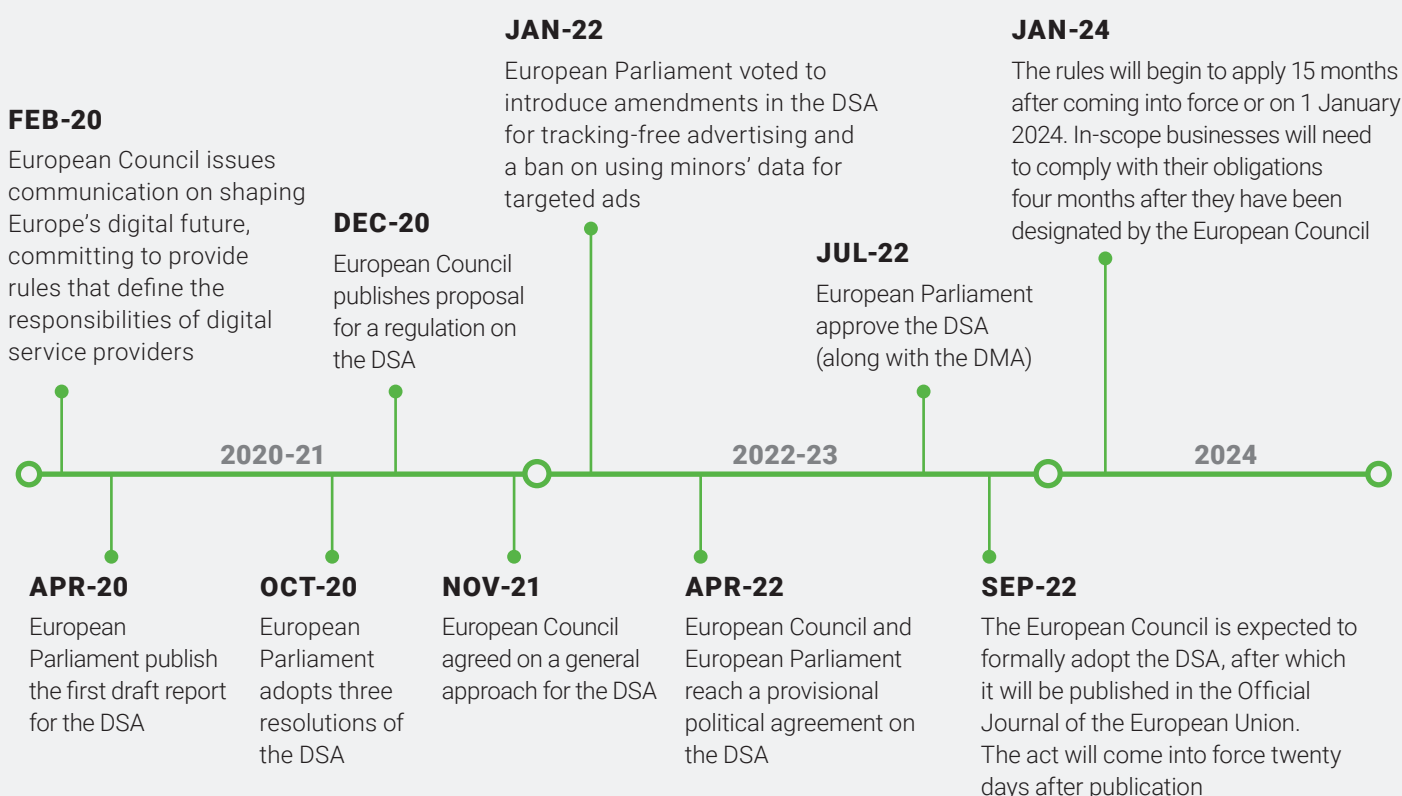
REPORTING

5

- Clear and comprehensible reporting*
- User-facing transparency of online advertising* with the requirement for a publicly available advertising repository for VLOPs and VLOS

WHERE ARE WE NOW?

The DSA regulatory text is pending formal agreement by the European Council and European Parliament. Once approved, it will be published in the Official Journal of the European Union and come into force twenty days after publication. Thereafter, the rules will begin to apply fifteen months after coming into force, or from 1 January 2024 – whichever is later. For VLOPs and VLOS, the rules will apply earlier, four months after designation.



IN SUMMARY, HERE'S WHAT WE RECOMMEND COMPANIES DO:



PREPARE EARLY: It is never too early to assess whether and how the DSA applies to your business and the implications on your business.



PREPARE EFFICIENTLY: The DSA builds upon existing regulations such as the GDPR and the recently introduced UK Online Safety Bill. Consider how your existing compliance arrangements could be extended or developed. This is best carried out by adopting a cross-functional approach to develop and sustain operating arrangements for DSA compliance across your business.

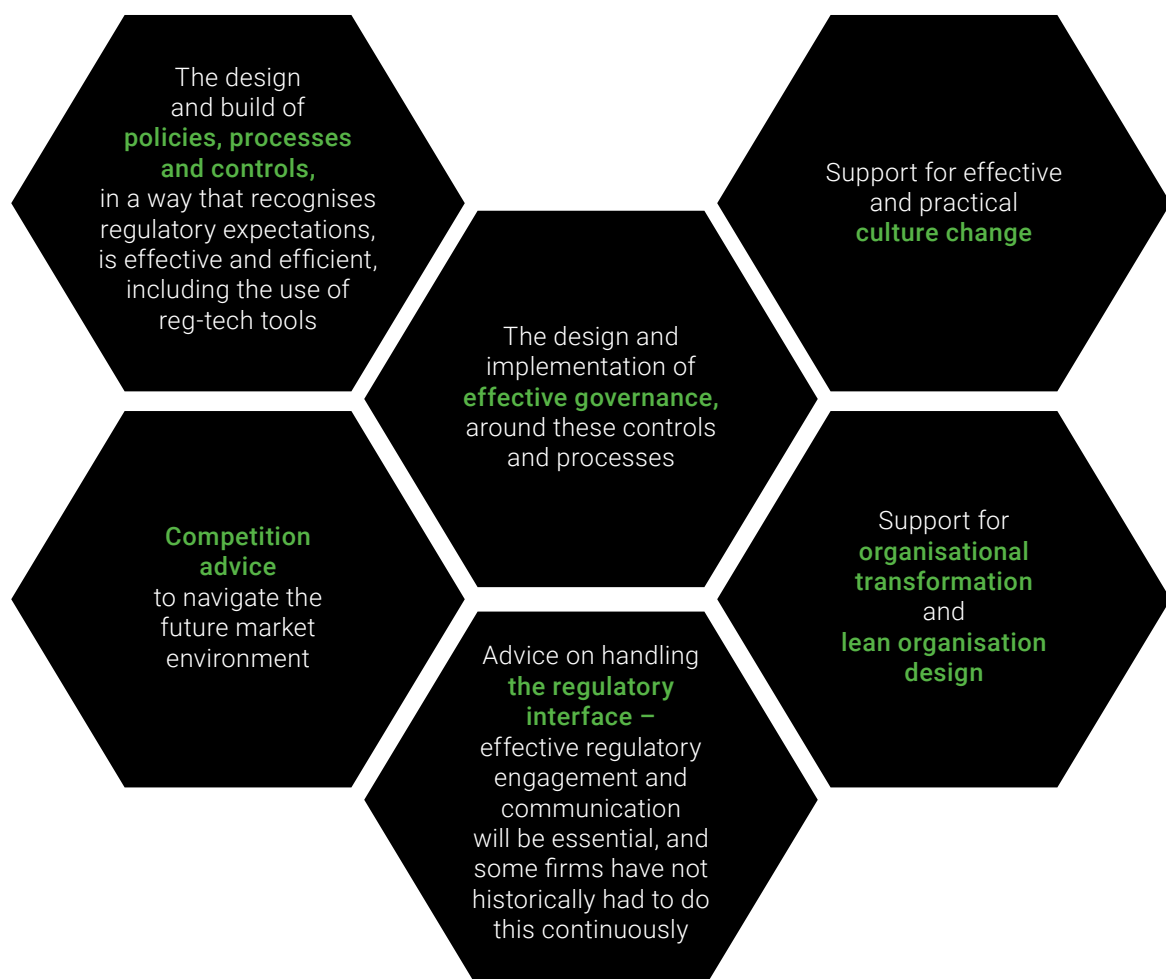


PREPARE STRATEGICALLY: Compliance alone should not be the ultimate end goal; building trust with customers and innovating for future growth are key. The greatest success in DSA compliance will be achieved by integrating the building blocks outlined above through the entire operating structure of your business.

HOW CAN ALIXPARTNERS HELP?

We have been working with regulated firms across industries for years, including building compliance capabilities for newly regulated firms and transforming compliance in mature businesses.

This practical experience helps firms who will be in scope of the DMA and DSA in multiple ways, such as:



CONTACT THE AUTHORS:

Tim Roberts

Managing Director
+44 7768 424 095
troberts@alixpartners.com

Yalini Pathy

Director
+44 7471 958 887
tarinaminpathy@alixpartners.com

ABOUT US

For more than 40 years, AlixPartners has helped businesses around the world respond quickly and decisively to their most critical challenges – circumstances as diverse as urgent performance improvement, accelerated transformation, complex restructuring and risk mitigation.

These are the moments when everything is on the line – a sudden shift in the market, an unexpected performance decline, a time-sensitive deal, a fork-in-the-road decision. But it's not what we do that makes a difference, it's how we do it.

Tackling situations when time is of the essence is part of our DNA – so we adopt an action-oriented approach at all times. We work in small, highly qualified teams with specific industry and functional expertise, and we operate at pace, moving quickly from analysis to implementation. We stand shoulder to shoulder with our clients until the job is done, and only measure our success in terms of the results we deliver.

Our approach enables us to help our clients confront and overcome truly future-defining challenges. We partner with you to make the right decisions and take the right actions. And we are right by your side. When it really matters.

The opinions expressed are those of the authors and do not necessarily reflect the views of AlixPartners, LLP, its affiliates, or any of its or their respective professionals or clients. This article Compliance with the Digital Services Act (DSA) ("Article") was prepared by AlixPartners, LLP ("AlixPartners") for general information and distribution on a strictly confidential and non-reliance basis. No one in possession of this Article may rely on any portion of this Article. This Article may be based, in whole or in part, on projections or forecasts of future events. A forecast, by its nature, is speculative and includes estimates and assumptions which may prove to be wrong. Actual results may, and frequently do, differ from those projected or forecast. The information in this Article reflects conditions and our views as of this date, all of which are subject to change. We undertake no obligation to update or provide any revisions to the Article. This Article is the property of AlixPartners, and neither the Article nor any of its contents may be copied, used, or distributed to any third party without the prior written consent of AlixPartners.