

# Digital Services Act and Online Safety Bill

## What You Need to Know

- The **Digital Services Act (DSA)** will apply in all EU Member States from 17 February 2024. It will apply to the largest platforms earlier. The DSA applies to various types of intermediary services, including hosting services and online platforms. In addition to restating the safe harbors for liability under the eCommerce Directive, the DSA also includes rules on content moderation, online targeted advertising, the settings of online interfaces, recommender systems, and online marketplaces, among other things.
- The UK has proposed the **Online Safety Bill** to tackle issues relating to online content. The Bill applies to search services and services, known as user-to-user services, that allow individuals to share content online. It applies rules—known as “duties of care”—to all such services to address illegal content. The Bill is still under review in the UK House of Commons.

## Why Covington?

Our technology regulatory team at Covington has longstanding expertise helping tech companies navigate content moderation and related rules. We also regularly advise businesses across the advertising sector. We are therefore well placed to advise on the impact of the DSA and similar UK initiatives.

For more information, please reach out to Fredericka Argent, Shóna O'Donovan, Anna Sophia Oberschelp de Meneses, or another member of our team.



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## Why Does It Matter?

- Depending on the type of service, the **DSA** sets various requirements. Among them:
  - it requires that providers of the service describe their content moderation practices in their terms and conditions, and publish annual transparency reports on content moderation practices;
  - with regard to online advertising, it requires not only that advertising is identified as such, but also that the advertiser and the sponsor be identified;
  - with regard to the settings of online interfaces, it prohibits certain nudging techniques or deceiving practices that impair a user's ability to make free choices on how they interact with the platform;
  - with regard to recommender systems, which are systems that determine the way that information is displayed to users, it requires providing information about the main parameters used; and, finally,
  - it requires providers of online marketplaces to provide information about the traders offering goods or services on the online marketplaces.
- The DSA also contains more onerous obligations that apply to certain online services that reach an average of 45 million or more monthly active recipients in the EU, and are designated by the Commission.
- Non-compliance with the DSA may lead to fines of up to 6 % of the annual worldwide turnover of the provider in the preceding financial year. In light of these high penalties for non-compliance, intermediary service providers should consider the extent to which their services fall within scope of the DSA and what compliance obligations apply to those services.
- Service providers who come within the **Online Safety Bill's** scope are subject to obligations—known as “duties of care” to:
  - conduct risk assessments;
  - take proportionate steps to mitigate risks of harms to users on their services; and
  - to take steps to prevent, mitigate and/or minimize the presence of content on their services.
- Service providers also have a duty to balance these obligations with a duty to protect freedom of expression, privacy and content of journalistic and democratic importance.
- Companies who do not comply with the Online Safety Bill can be subject to fines of up to 10% of a provider's worldwide qualifying revenue, and senior business managers can also be subject to criminal actions.