Background

• Over the last years, a step-change has taken place in the nature, scale and role that digital services play in our economy and society.

• While the main principles of the E-commerce Directive (2000) remain valid, new rules are needed to address new challenges.

• Proliferation of sector-specific interventions (on terrorist content, copyright, audiovisual media services ...).

• Concerns from Member States and stakeholders => targeted actions have been rising leading to a patchwork of national laws.

➢ Announcement of DSA package by COM’s President led to three own initiative reports by the European Parliament, fleshing out areas of concern and calling for ambitious measures.
Online intermediaries: new opportunities and challenges

**Online intermediaries** are the main focus of the impact assessment and of the intervention, with a special attention on **online platforms**:

- Inherently cross-border, with a strategic importance in supporting a truly European single market.

- Major innovators and supporting innovations.

- Evolving business models for online platforms (e.g. importance of online marketplaces and social media platforms). By their reach and scale, they pose particular societal risks today.
DSA proposal: based on robust evidence

- Building on **continuous monitoring and data collection since 2000** (public consultations in 2010, 2012, 2015, 2018, implementation reports of ECD)
- Dedicated **studies** (legal, technical, economic)
- **Evaluation** of the E-Commerce Directive
- Desk research
- **Targeted consultation** with Member States, national consultations, studies, evaluations and policy experimentation
- Feedback from the **E-Commerce Expert Group**
- Feedback on **Inception Impact Assessment**: over 100 replies
- **Open Public consultation**: almost 3000 replies
- Over 300 **position papers**
- **Workshops, roundtables**
- Bilateral **meetings** with over 200 organisations
## Impact Assessment - Core problems and policy objectives

<table>
<thead>
<tr>
<th>Main problems</th>
<th>Policy Objectives</th>
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<tr>
<td><strong>1.</strong> Serious societal and economic risks and harms of online intermediaries: illegal activities online, insufficient protection of the fundamental rights and other emerging risks</td>
<td>1. Ensure the best conditions for innovative cross-border digital services to develop</td>
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<td><strong>2.</strong> Ineffective supervision of services &amp; insufficient administrative cooperation, creating hurdles for services and weakening the single market</td>
<td>2. Maintain a safe online environment, with responsible and accountable behaviour from digital services, and online intermediaries in particular</td>
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<td><strong>3.</strong> Legal barriers for services: preventing smaller companies from scaling up and creating advantages for large platforms, equipped to bear the costs</td>
<td>3. Empower users and protect fundamental rights, and freedom of expression in particular</td>
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<td>4. Establish the appropriate supervision of online intermediaries and cooperation between authorities</td>
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## Liability provisions and content moderation

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<th>DSA harmonises liability exemptions, not liability</th>
<th>It does not attribute liability</th>
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<tr>
<td>DSA is neutral</td>
<td>The contrary would mean to harmonise tort or criminal law</td>
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<td>DSA is horizontal</td>
<td>Does not define what is illegal</td>
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<td>Illegality is defined by national or EU rules</td>
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<td>DSA applies to services, not to actors</td>
<td>All types of illegal content, civil and criminal liability</td>
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<td>Not “Facebook is an intermediary&quot;, but &quot;it provides intermediary services&quot;</td>
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<td></td>
<td>A provider can provide many different services (mere conduit + caching + hosting)</td>
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![Diagram showing the relationship between content moderation, harmful content, content against terms of service, and illegal content.]
Due diligence obligations

Very large online platforms: ‘Public spaces’ test => highest impact where large audience reached

- Value set at 10% of the EU population (45 mil.), as a proxy value for the significant, systemic role and potential impact of such services.

Assymmetric obligations on the basis of the role of services in intermediating content, of their size and outreach in the society.
## Governance structure

### Digital Services Coordinators
- Independent authorities
- Direct supervision and enforcement (by default)
- Coordination with other national competent authorities
- Coordination and cooperation at EU level with Board, COM and other DSCs

### European Board for Digital Services
- Ad-hoc independent advisory group
- Composed by DSCs
- Chaired by COM, no vote
- Advising DSCs and COM, recommending actions
- No binding acts, but need to take them into account
- Cooperation with other EU bodies, agencies, offices on related matters

### European Commission
- Direct enforcement powers vis à vis very large online platforms for
  - specific obligations for very large online platforms (after DSC supervision)
  - all other obligations (if DSC failed to act)
- Administrative support to the Board
- Advises on cross-border disputes
- Intervenes upon DSC request

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In cases of breaches of DSA obligations = various sanctions and fines up to 6% of the provider’s turnover
In summary, the proposed DSA:

- Maintains and builds upon the principles of the E-commerce Directive (liability exemptions, general monitoring prohibition).

- Provides the tools for ensuring safety online for users.

- Complements sector-specific rules.

- Introduces tailor-made provisions for online marketplaces.

- Includes safeguards for the protection of fundamental rights and in particular the freedom of expression.

- Provides for a high standard of transparency for users and a real step-change in the public supervision of online advertising systems run by very large online platforms.

- Ensures proportionate obligations depending on the size of the provider.

- Provides for a robust system of enforcement and supervision across the EU, by complementing the country of origin principle.