



SHAPING EUROPE'S DIGITAL FUTURE



Shaping Europe's Digital Future

- ◆ **Societal impact** – digital permeates our society and economy
- ◆ **Opportunities and challenges** – digital will further accelerate
- ◆ **Global** – digital is inherently cross-border
- ◆ **Holistic approach** – digital regulation must go together with funding, private and multi-stakeholder action



PLATFORM REGULATION



Why do we need new rules?



Significant evolution of platform services



Outdated legislative framework



Growing concentration and increasing power imbalances



Newly emerging challenges like disinformation



Evolution of digital services

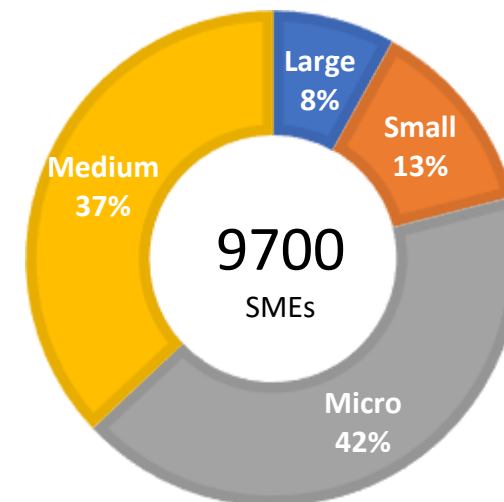
In quality regarding business models of big players...

...but also in quantity with many smaller players emerging.



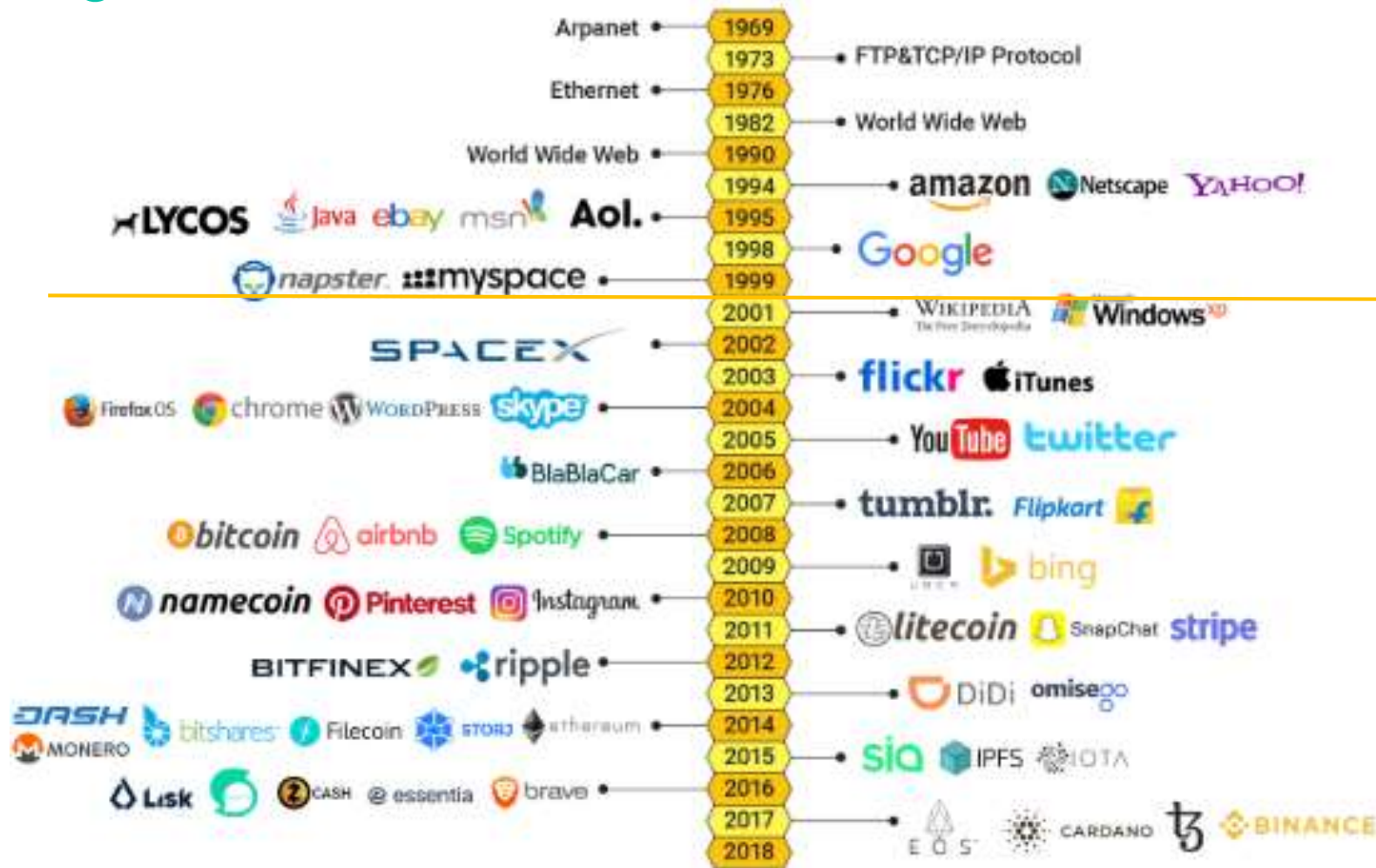
AROUND 10.000 PLATFORMS IN THE EU

■ Large ■ Small ■ Micro ■ Medium





Outdated legislative framework

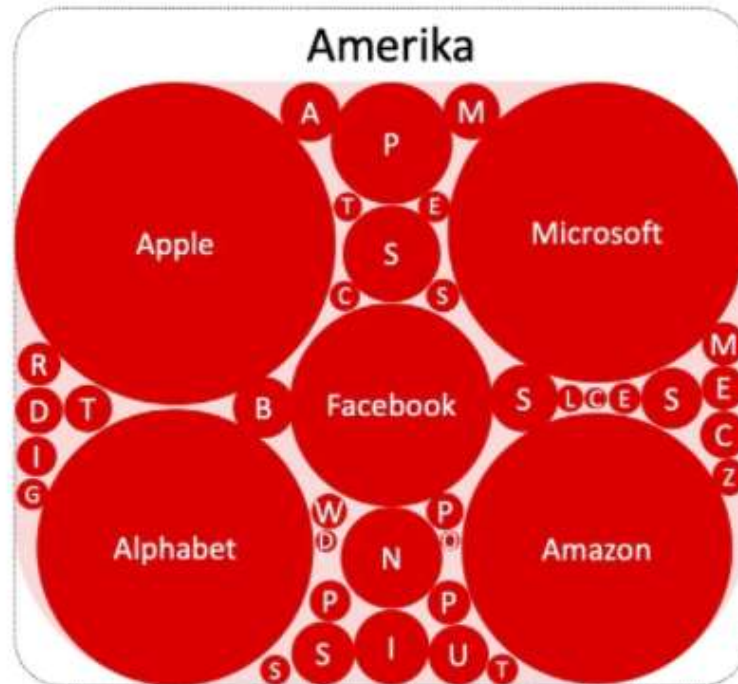


2000: eCommerce-Directive adopted in the EU



Growing concentration and power imbalances

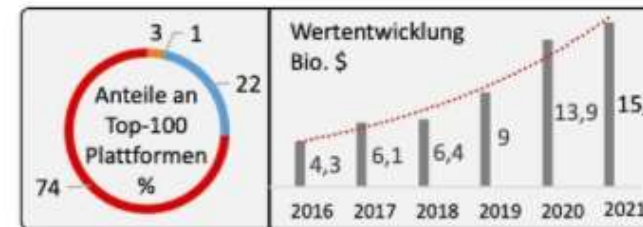
Top-100 Plattformen der Welt



DEIX
Digital Economy Institute

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Börsenwert / Bewertung jüngste bekannte Finanzierung / Stand Juli 2021



THE ORIGINAL PLATFORM FUND



Growing concentration and power imbalances



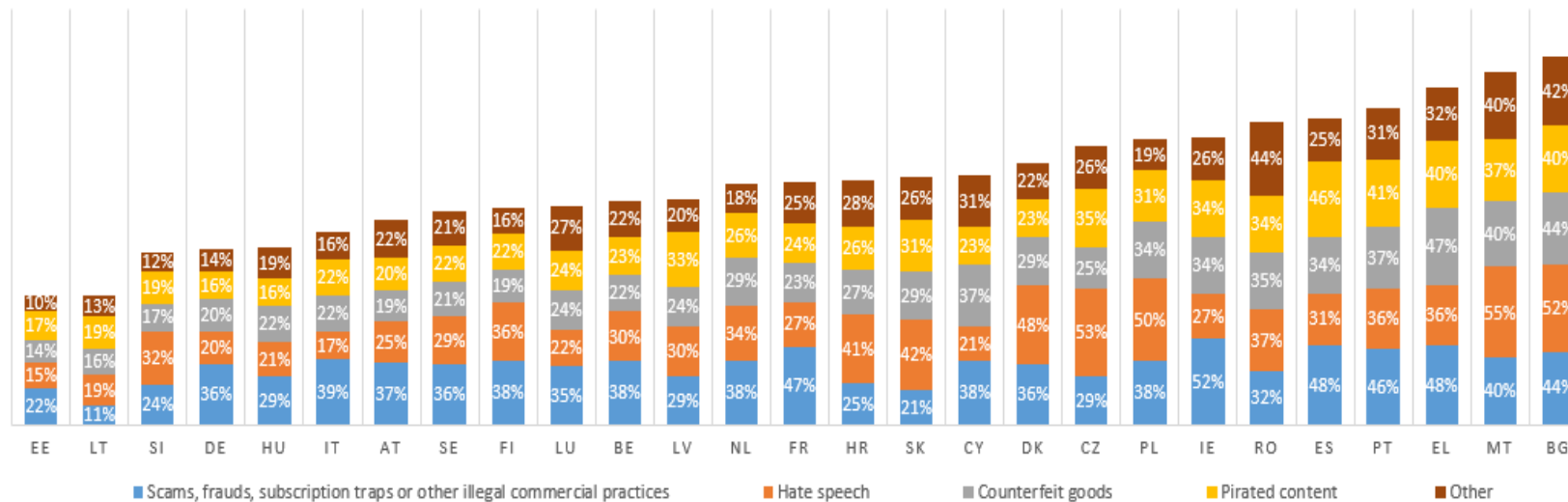
Source: platformeconomy.com



Newly emerging challenges

- ◆ Spread of illegal content online
- ◆ Disinformation campaigns

MOST FREQUENTLY SEEN TYPES OF ILLEGAL CONTENT PER MEMBER STATE
(percentage of respondents per MS)





EU APPROACH



Purpose and principles

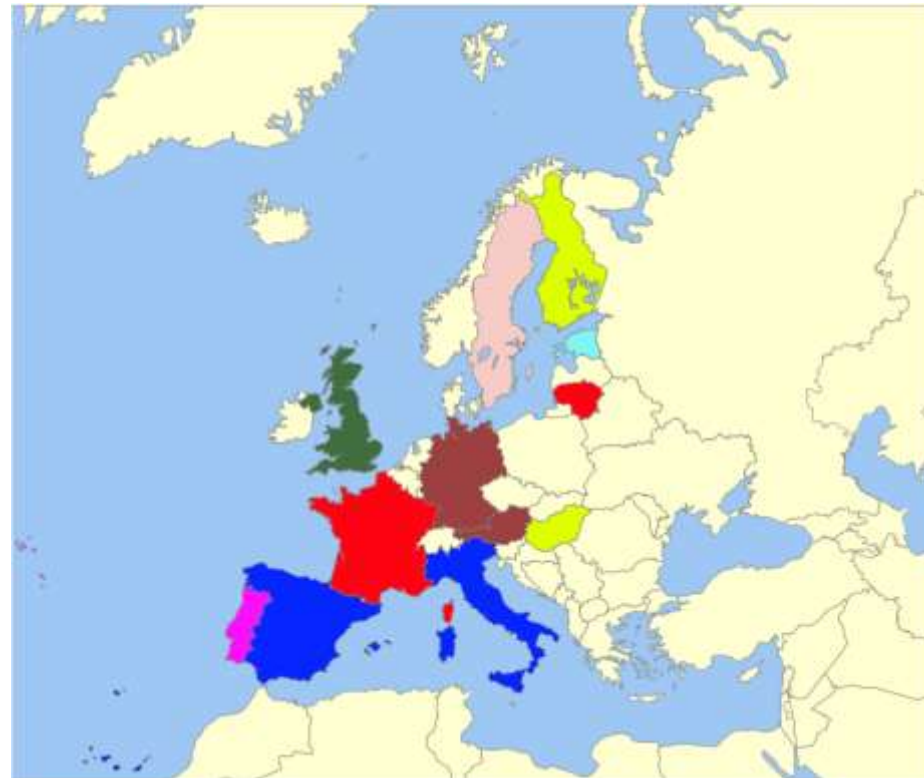
- ◆ Improving safety of citizens AND freedom of expression of all
- ◆ Ensuring innovation
- ◆ Preventing legal fragmentation of EU internal market

- ◆ **DSA** – citizen agency over platforms to surface quality content
- ◆ **DMA** – contestability and fairness to leverage pipeline of platforms



Regulatory fragmentation and the internal market

- ◆ Emergence of differing legal frameworks in Member States
- ◆ Endangered functioning of the Digital Single Market





Proposals for the DSA and the DMA

OBJECTIVES



- ◆ To create a **safer digital space** in which the **fundamental rights** of all users of digital services are protected
- ◆ To establish a **level playing field** to foster **innovation, growth and competitiveness**, both in the European Single Market and globally



Regulatory landscape - Platforms

P2B-Regulation

- **Scope:** All online intermediary services with business users
- **Aim:** Transparency and fairness in platform environment
- **Application:** 12th July 2020

Transparency for businesses

Digital Services Act

- **Scope:** Providers of intermediary services
- **Aim:** Create risk-based accountability for illegal and harmful content
- **Application:** Beginning 2023

Safety for citizens

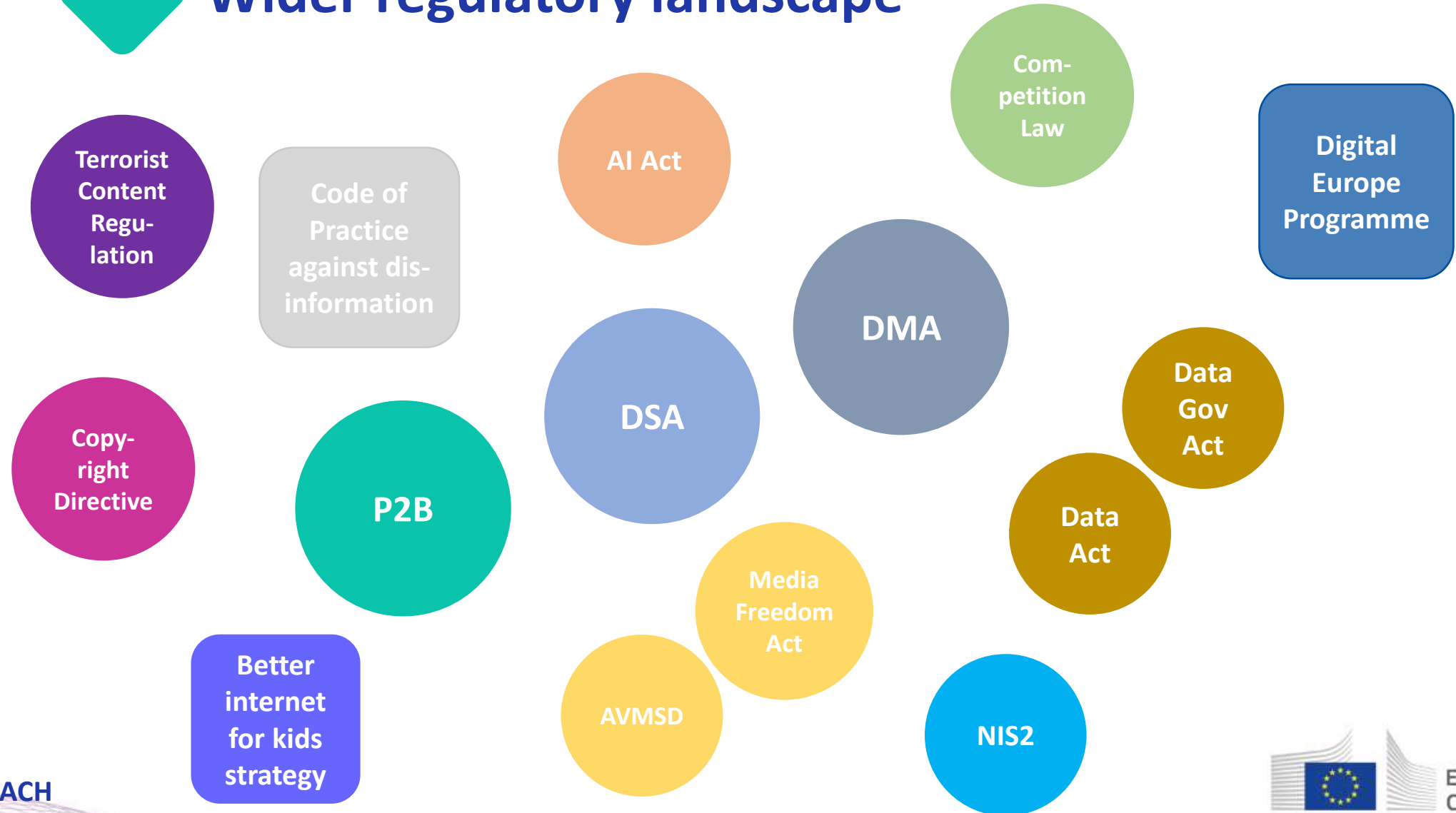
Digital Markets Act

- **Scope:** Large Gatekeepers
- **Aim:** Address unfair behaviour and improve contestability of digital markets
- **Application:** Beginning 2023

Fair and contestable markets

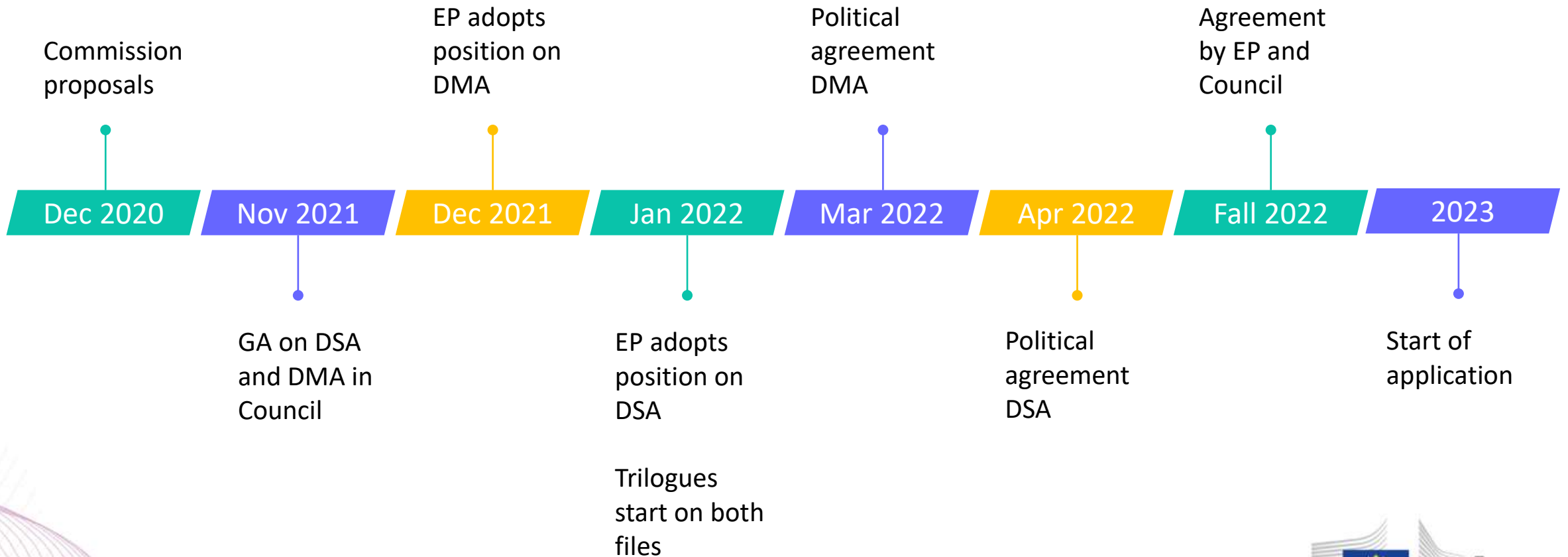


Wider regulatory landscape





Timeline DMA and DSA





KEY ELEMENTS OF THE DSA AND DMA



Digital Services Act

Safety and fundamental rights online

- ◆ Maintains **liability exemption** and **country of origin**
- ◆ New **due diligence obligations** for all 10'000+ intermediary services
 - ◆ e.g. on T&Cs, Notice & Action, disputes
- ◆ Special regimes for services with largest societal impact (VLOPs)
 - ◆ e.g. **risk assessments & audits**
- ◆ **Reinforced supervision** with national coordinators, EU board and enforcement by the Commission



Digital Markets Act

Fair and contestable digital markets

- ◆ Designation mechanism to identify **gatekeepers**, including **emerging ones**
 - ◆ via hybrid quantitative and qualitative parameters
- ◆ Immediately applicable **ex ante obligations**
 - ◆ Fair ranking, data access, interoperability
- ◆ Possible **technical specification** of some obligations
- ◆ Comprehensive remedies, including on structural level
- ◆ **EU-level enforcement** through Commission



Summary Digital Services Act

Safety and fundamental rights online

- ◆ Maintains **liability exemption** and **country of origin principle**
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 - ◆ E.g. Ban to engage in self-preferencing or to combine data across services
- ◆ Possible **technical implementation** of some obligations
- ◆ Comprehensive **remedies**, including for systematic non-compliance
- ◆ **EU-level enforcement** through Commission



KEY PROVISIONS DIGITAL SERVICES ACT



Central ideas for the DSA

- ◆ **Maintaining key principles** from the eCommerce-Directive, upgrading them where necessary
- ◆ **Asymmetric obligations** to account for different sizes and risk profiles in the ecosystem of digital services providers
- ◆ **Strengthening fundamental rights** by providing more safety online and protection freedom of expression.



Maintaining key principles I - Liability in the DSA

DSA harmonises liability exemptions

- Does **not attribute** liability for content
- Specifies **due diligence obligations** as conditions for **exemption** from liability
- Providers conducting **voluntary-own initiative investigations** still benefit from liability exemptions

DSA is neutral

- Does **not define** what is illegal
- Illegality is defined by **national or EU law**

DSA is horizontal

- All types of **illegal content**, civil and criminal liability

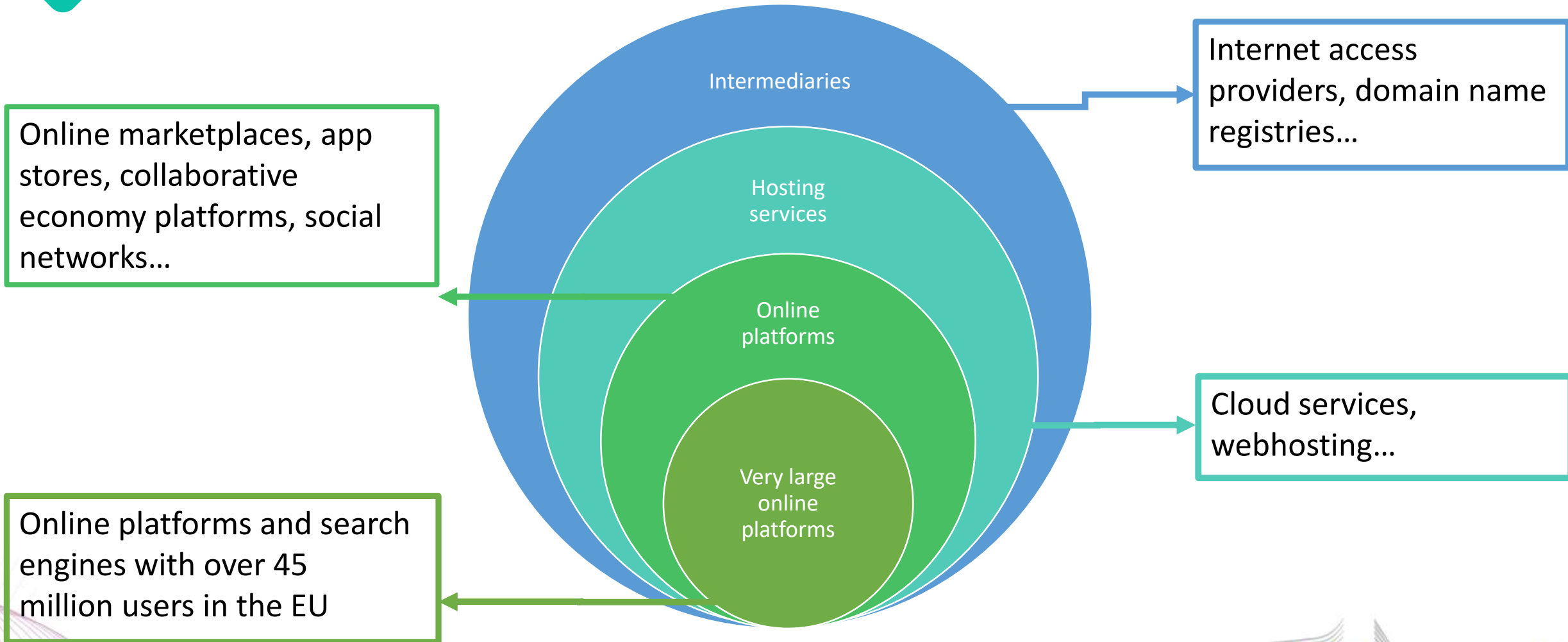


Maintaining key principles II - Prohibition of general monitoring obligations

- ◆ **Prohibition on general obligations for providers:**
 - ◆ to systematically monitor the information which they transmit or store
 - ◆ to actively seek facts or circumstances indicating illegal activity
- ◆ However, for **specific cases** Member States can impose a monitoring obligation:
 - ◆ As long as they are in line with national legislation and the conditions set out in the DSA

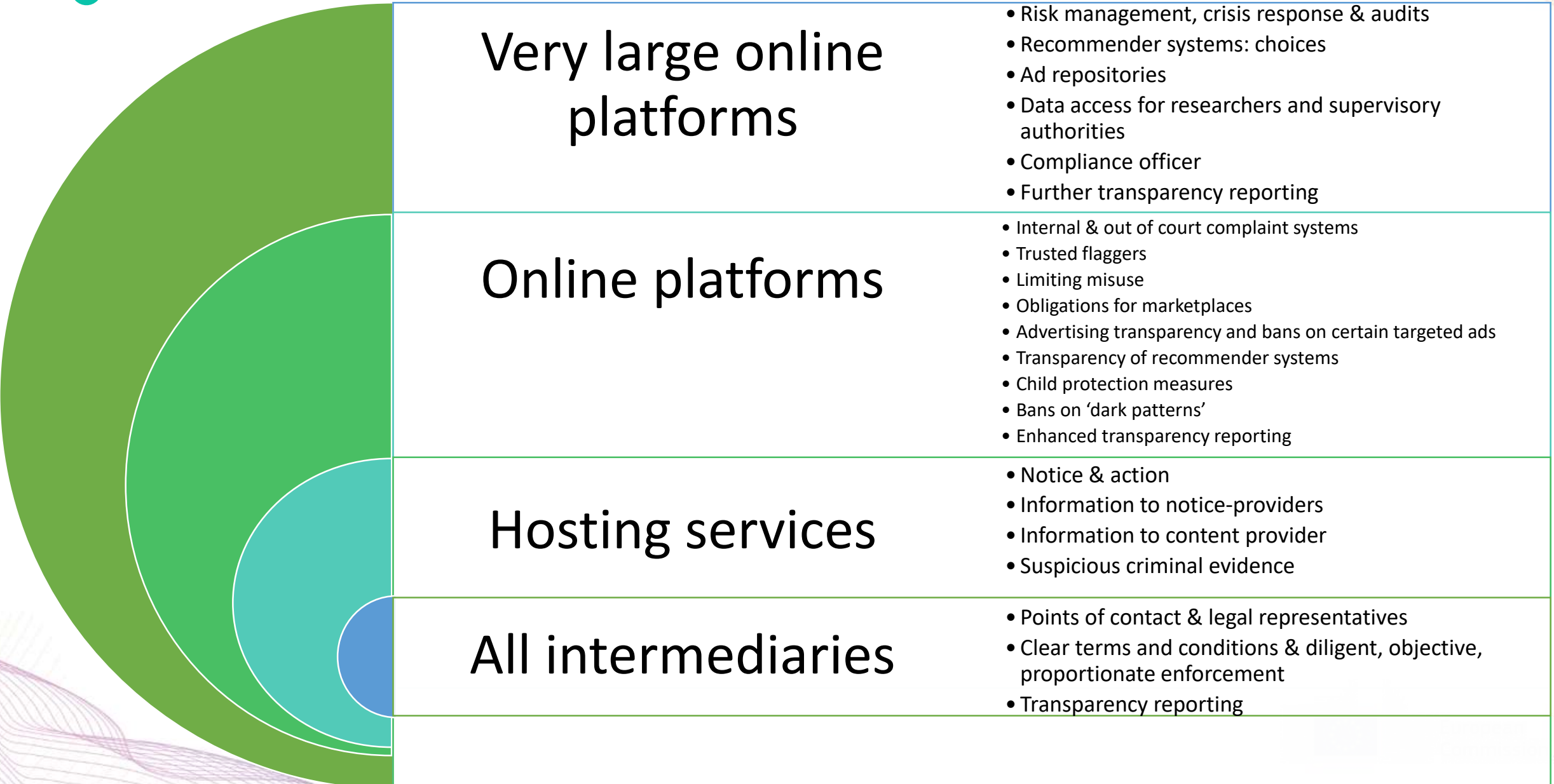


Asymmetric obligations I - Scope of the DSA





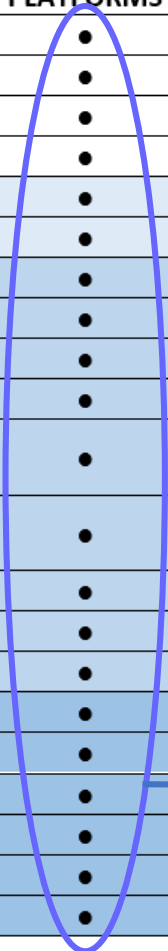
Cumulative obligations II – How it looks overall





Asymmetric obligations III – How it looks overall

	VERY LARGE PLATFORMS	ONLINE PLATFORMS	HOSTING SERVICES	ALL INTERMEDIARIES
Transparency reporting	•	•	•	•
T&Cs	•	•	•	•
Cooperation with national authorities	•	•	•	•
Points of contact & legal representatives	•	•	•	•
N&A	•	•	•	
Reporting criminal offences	•	•	•	
Complaint & redress mechanisms, OOC dispute settlement	•	•		
Trusted flaggers	•	•		
Prohibition of Dark Patterns	•	•		
Measures against abusive notices	•	•		
Special obligations for marketplaces (e.g. KYBC, random checks)	•	•		
Bans on targeted ads to children and based on special categories of personal data	•	•		
Accessibility	•	•		
Transparency of recommender systems	•	•		
Advertising transparency	•	•		
Risk management	•			
Independent audits	•			
User can opt out of profiling	•			
Data sharing with authorities & researchers	•			
Codes of conduct	•			
Crisis response cooperation	•			



Cumulative obligations



Asymmetric obligations IV – Accountability of VLOPs

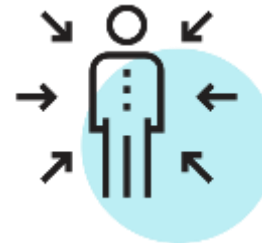
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Codes of conduct
Crisis response cooperation



Annual independent audit covering compliance with all obligations



Risk mitigations measures like adaptation to service or systems



Yearly risk assessment and publication of a report on systemic risks (illegal content, fundamental rights and manipulation of provided service)



Proportional approach - VLOPs/VLOSE

Very Large Online Platforms and Search Engines

- ◆ Have a large reach
- ◆ Are important in facilitating public debate, economic transactions and the dissemination of information, opinions and ideas, as well as in influencing how recipients obtain and communicate information online
- ◆ May have a disproportionate impact in the Union
- ◆ May cause societal risks



Article 25

- **>45 million monthly active recipients of the service established or located in the Union (10% of the EU population)**

Section 4 obligations: e.g. Article 26 & 27

- **Risk assessment (Article 26)**, taking into account - in particular: recommender systems; content moderation; terms & conditions; advertisement systems, data related practices
- **Risk mitigation (Article 27)**
- **Etc.**



Strengthen all fundamental rights online

...more safety online...

- ◆ Create more transparency and accountability
- ◆ Allow for contestability of decisions
 - ◆ through notice and action mechanisms
 - ◆ by mandating redress and compensation measures
- ◆ Mandate risk assessment and mitigation
 - ◆ Fight against disinformation
 - ◆ Countering illicit content and goods
 - ◆ Address other online harms

...and enhancing freedom of expression

- ◆ Uphold freedom of expression
- ◆ Additional protection of minors' safety and privacy
- ◆ Ensure protection of free and pluralistic media
- ◆ Ensure a healthier public debate
- ◆ Allow for democratic oversight of platforms
- ◆ Give users more information



Strengthen all fundamental rights online

...more safety online...

- ◆ Art. 14 – Knowledge upon compliant notices
- ◆ Art. 15 – Statement of reasons for contestability
- ◆ Art. 18 – Dispute settlement by certified bodies
- ◆ Art. 26 – Assessment of systemic risks
- ◆ Art. 27 – Mitigation of risks
- ◆ Art. 28 – Independent audit & implementation report
- ◆ Art. 32 – Compliance officer
- ◆ Articles 34, 35 and 36 – Standards, Codes of Conduct and voluntary crisis protocols

...and enhancing freedom of expression

- ◆ Art. 6 – Own initiative investigations
- ◆ Art. 19 – **Certified** trusted flaggers and transparency
- ◆ Art. 24 – Ban on targeting using sensitive category of data
- ◆ Art. 26 – Assessment of systemic risks
- ◆ Art. 27 – Mitigation of risks
- ◆ Art. 28 – Independent audit & implementation report
- ◆ Art. 29 – Recommender systems not based on profiling
- ◆ Art. 30 – API based access to ad repositories
- ◆ Article 31 – Data access for **vett**ed researchers
- ◆ Article 33 – Transparency for VLOPs for risk assessment and mitigation



Governance of supervising digital services



Digital Services Coordinator (National level)

- Independent authorities
- Direct supervision and enforcement
- Coordination and exchanges with other national competent authorities



European Board for Digital Services

- Ad-hoc independent advisory group
- Composed by national Digital Services Coordinators
- Chaired by the Commission
- Advises DSCs and COM, issues recommendations



European Commission

- Direct enforcement powers vis-à-vis VLOPs
- **Risk assessment (check co-legislation elements)**
- Advises on cross border disputes
- Intervenes following DSC requests



Practical implications DSA

- ◆ **Transparency, increased information and public scrutiny**
 - ◆ e.g. via risks assessments and mitigation, independent audits, data access...
 - ◆ Provides insight and public scrutiny for regulators and the wider public
- ◆ **Regulatory supervision and enforcement structure**
 - ◆ Creates real accountability for VLOPs
- ◆ **Real protection of users**
 - ◆ e.g. through prohibition of dark patterns, prohibition of the use of minors' data and sensitive categories of data



KEY PROVISIONS DMA



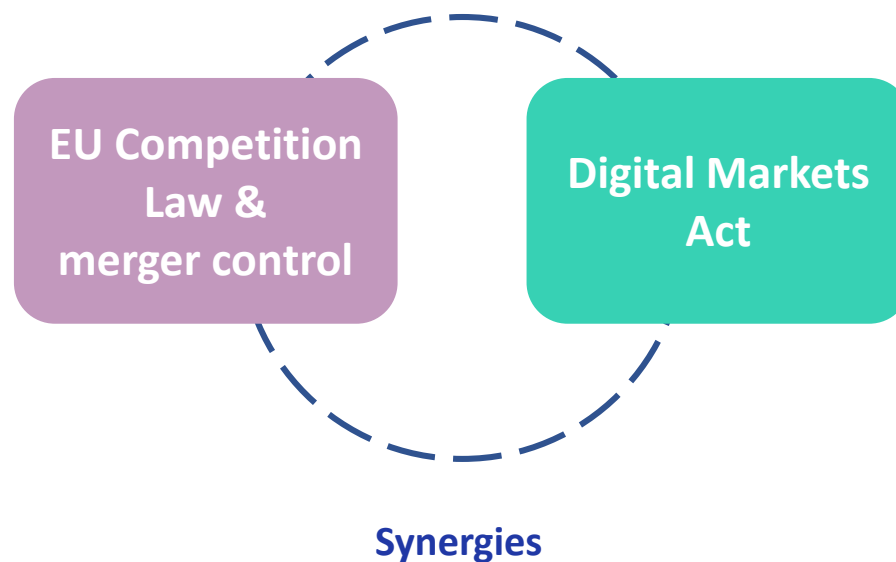
Central ideas for the DMA

- ◆ **Focus on gatekeepers of a ‘core’ platform service** as most powerful actors in the ecosystem of digital services
- ◆ **Horizontal application** that covers all sectors
- ◆ **Ex-ante** regulations, clear list of **do’s and don’ts** to drive innovation
- ◆ **Complementarity** by providing new tools alongside competition law and sectoral regulations that continue to apply



A new tool for fairness and market contestability

- Ex post and ex ante tools based on Arts. 101 & 102 TFEU and Reg. 139/2004 on merger control
- Captures undertakings more generally in all markets
- Aim is to protect competitive process and enhance consumer welfare
- Anticompetitive practices developed by EU case law and Commission decisions
- Necessary to define markets
- Efficiency defence possible



- Ex ante regulation based on Art. 114 TFEU
- Only captures gatekeepers for concrete online services
- It addresses unfairness and lack of market contestability
- Clear list of prohibitions and obligations
- Art. 14 imposes obligation to notify about mergers but not control ex ante
- No need to define markets
- No efficiency defense

EU competition law & merger control continue to apply after adoption of DMA (Art 1(6) DMA)

Cases under Arts. 101 & 102 TFEU relevant for market investigations in DMA to add new practices/services

Member States can use info obtained under Art 14 DMA to trigger review under EU merger control



Focussing on gatekeepers – Core platform services

Criteria considered:

- ◆ Highly concentrated platform services;
- ◆ One or very few large digital platforms set the commercial conditions irrespective of their competitors, customers or consumers;
- ◆ Few large digital platforms act as gateways for business users to reach their consumers and vice-versa;
- ◆ Gatekeeper power often misused by means of unfair behaviour

- ◆ **online intermediation services** (incl. esp. marketplaces, app stores, social media for business)
- ◆ **online search engines**
- ◆ **social networking services**
- ◆ **Video-sharing platform services**
- ◆ **number-independent interpersonal electronic communication services**
- ◆ **operating systems**
- ◆ **Web browsers**
- ◆ **Virtual assistants**
- ◆ **cloud computing services**
- ◆ **advertising services**



Designation of gatekeepers on quantitative criteria

Gatekeeper?

- ◆ Has a **significant impact** on the internal market
- ◆ Operates a **core platform service**, which serves as an **important gateway** for business users to reach end users
- ◆ Enjoys an **entrenched and durable position** in its operations or it is foreseeable that it will enjoy such a position **in the near future**



Article 3(2) – Rebuttable presumption

- Annual EEA turnover \geq EUR 7.5 billion in the last three financial years
OR
 - Average market capitalisation or the equivalent fair market value \geq EUR 75 billion in the last financial year
AND
 - It provides a core platform service in **at least three Member States**
-
- **>45 million monthly active end users** established or located in the Union
AND
 - **>10 000 yearly active business users** established in the Union in the last financial year
-
- Requirements in Article 3(2)(b) met in the last three financial years



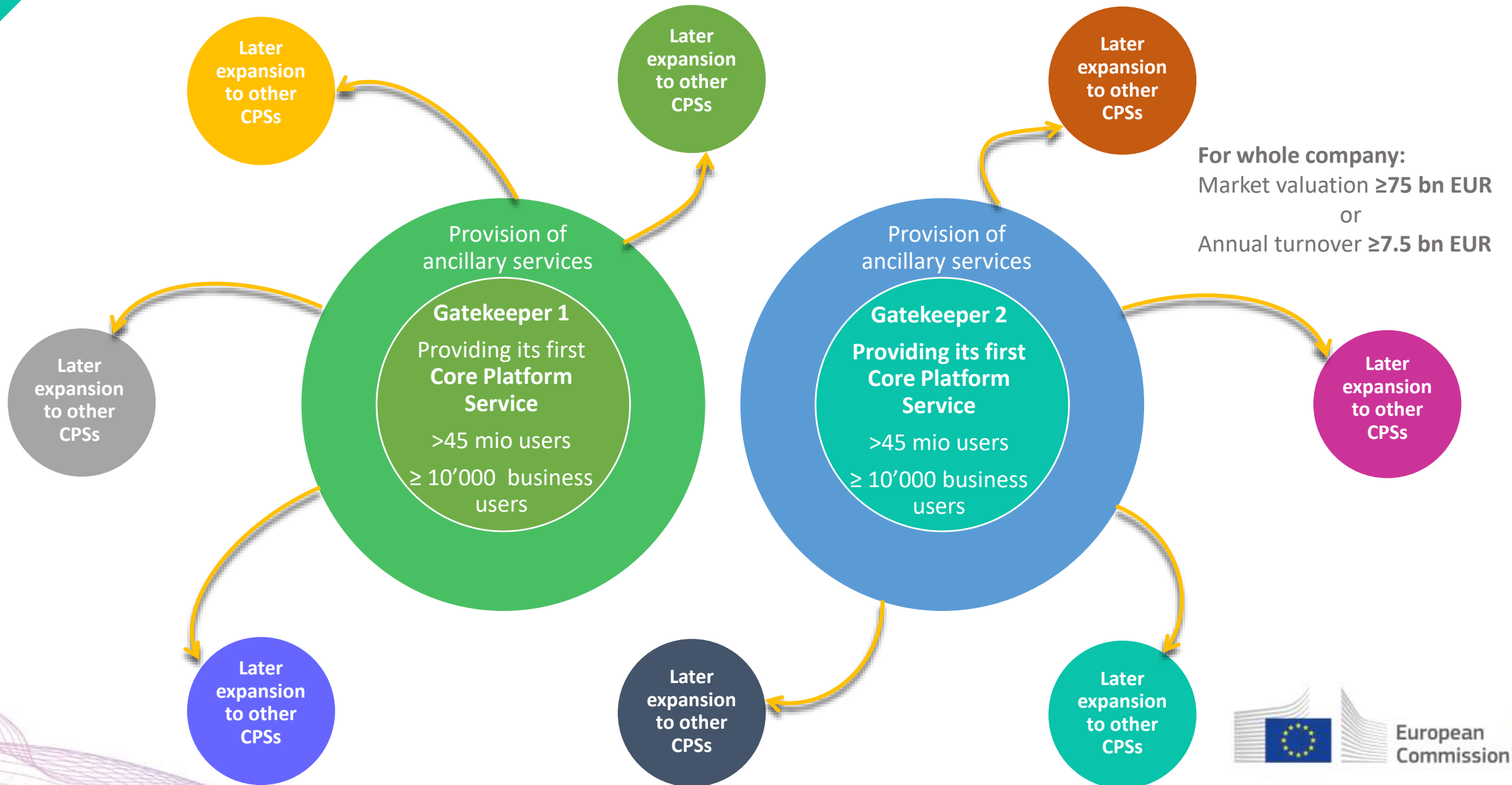
Designation of gatekeepers on quantitative criteria

To be designated a gatekeeper, the provider of core platform services must...

- ◆ Have a **significant impact** on the internal market:
 - ◆ Annual EEA turnover \geq EUR 7.5 billion in the last 3 financial years or average market capitalization \geq EUR 75 billion in the last financial year;
 - ◆ It provides a core platform service in at least three Member States
- ◆ Operate a **core platform service**, which serves as an **important gateway** for business users to reach end users:
 - ◆ >45 million monthly active end users established or located in the Union
 - ◆ >10 000 yearly active business users established in the Union in the last financial year
- ◆ Enjoy an **entrenched and durable position** in its operations or it is foreseeable that it will enjoy such a position **in the near future**:
 - ◆ Above requirements should be met in the last 3 financial years



Scope and cumulative effect of DMA on ecosystems





Obligations and unfair practices I

◆ Data-related unfair practices

- ◆ Ban on the use of **non-publicly available commercially sensitive data** of business users
- ◆ e.g. marketplace operator cannot sell its own goods informed by data of its sellers

◆ Unfair favourable treatment

- ◆ Obligation to offer third-party service providers access to **hardware and software features** controlled via operating systems or virtual assistants
- ◆ e.g. hardware elements like NFC antenna in mobile phones opened to third parties

◆ Unfair ranking – specific form of unfair favourable treatment

- ◆ Obligation to apply **transparent, fair and non-discriminatory conditions** to ranking of third-party services relative to their own
- ◆ e.g. search engines cannot rank their own services and products higher



Obligations and unfair practices II

- ◆ **Unfair tying of services in support of core platform services**
 - ◆ Specifically refrain from imposing own identification services, payment services or technical support services for those payment services on business users
 - ◆ e.g. app developers can freely choose from third parties or develop their own identification services
- ◆ **Interoperability requirements for messenger services**
 - ◆ Obligation for gatekeepers providing messenger services to allow for interoperability upon request
 - ◆ Text messages between individuals (immediately after entry into force/designation)
 - ◆ Group chats (two years after entry into force/designation)
 - ◆ Audio and video calls (four years after entry into force/designation)

Governance and enforcement



Investigatory powers

- Requests for information
- On-site inspection
- Ability to take interview

Whistleblowers
Representative actions



Enforcement powers

- Non-compliance decisions with fines **up to 10% of annual turnover**
- Periodic penalty payments of **up to 5% of daily turnover**
- Repeated infringements with fines **up to 20% of annual turnover**
- Systematic non-compliance can lead to **merger moratorium**



Governance

- Commission as enforcer of the DMA
- Close cooperation with national authorities and courts
- Role for pre-investigation by national authorities



INTERNATIONAL ASPECTS



Declaration for the Future of the Internet

- ◆ Sets out an affirmative, positive agenda for the future of the global internet based on **shared fundamental principles**
- ◆ Supports an **open, free, global, interoperable, reliable, secure internet** that respects human rights
- ◆ Signed by **more than 60 international partners** so far
- ◆ **Next steps:**
 - ◆ EU, US and other Governments will continue to reach out
 - ◆ Promote and implement the principles of the Declaration in practice, including with stakeholders
 - ◆ Working towards a high-level political conference in 2022



EU-US Trade & Technology Council

- ◆ In 2021, the EU and US agreed to **strengthen cooperation** on shared concerns
- ◆ **Working Group 5 on Data Governance and Platforms** addresses the spread of illegal and harmful content and conduct on online platforms
- ◆ During the Paris Summit they agreed to the following on online platforms:
 - ◆ increase transparency and responsiveness in content moderation
 - ◆ deepen the understanding of algorithmic amplification of illegal or harmful content and its effects on society
 - ◆ facilitate data access for researchers
 - ◆ protect minors online and ensure they benefit from a positive environment
 - ◆ Setup of a cooperation framework on information integrity in crisis situations, including on online platforms



Collaborating internationally on DMA and DSA II

◆ Partnership Agreements

- ◆ e.g. EU-Japan Digital Partnership, including on Platform Governance

◆ Voluntary global initiatives

- ◆ Christchurch Call



SUMMARY/BACK-UP



Key benefits of EU digital services acquis



Breaking down regulatory barriers across the Single Market



Allowing business to operate with predictability



Protecting rights of (business) users and citizens



Addressing newly emerging challenges



State of play on DMA and DSA

Ambitious agreements reached in record time
by co-legislators

- ◆ **Digital Markets Act** agreed on 24th March
 - ◆ *'A new era in tech regulation'* – Rapporteur Schwab
 - ◆ *'Il faut les respecter ex ante, et ça c'est vraiment une révolution très importante'*
– Commissioner Breton
- ◆ **Digital Services Act** agreed on 23rd April
 - ◆ *'we ensure that platforms are held accountable for the risks their services can pose to society and citizens'* – European Vice-President Vestager





Digital Services Act

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