



European  
Commission

# SHAPING EUROPE'S DIGITAL FUTURE

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**Menno Cox**

Head of Sector for the global aspects  
of online platform regulation  
DG CNECT



# Shaping Europe's Digital Future

- ◆ **New** – digital as a self-standing policy area
- ◆ **Global** – digital is inherently cross-border
- ◆ **Opportunities and challenges** – digital will further accelerate
- ◆ **Holistic approach** – digital regulation must go together with funding, private and multi-stakeholder action



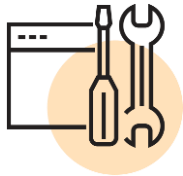
# PLATFORM REGULATION



## Why do we need new rules?



Significant evolution of platform services



Outdated legislative framework



Growing concentration and increasing power imbalances



Newly emerging challenges



# Evolution of digital services

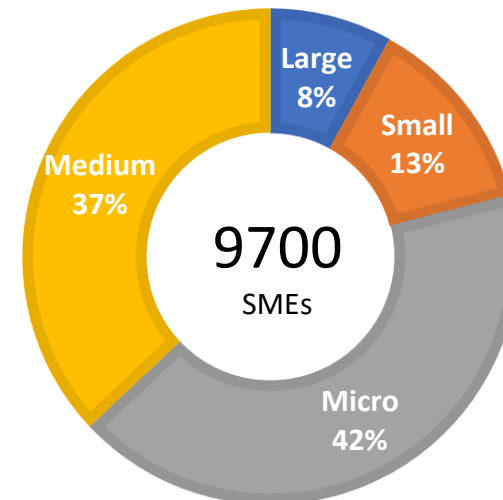
In quality regarding business models of big players...

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



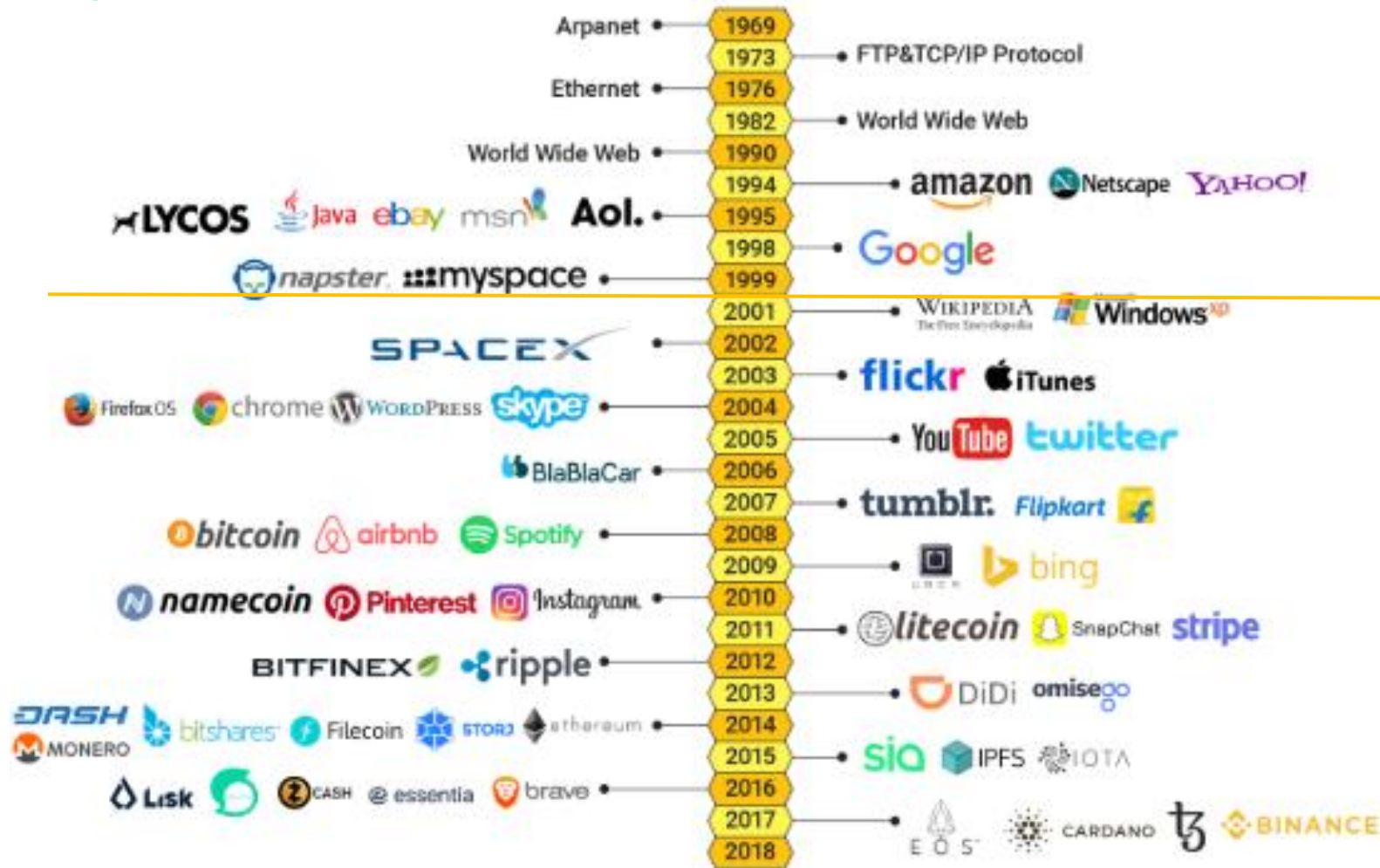
AROUND 10.000 PLATFORMS IN THE EU

■ Large ■ Small ■ Micro ■ Medium





# Outdated legislative framework

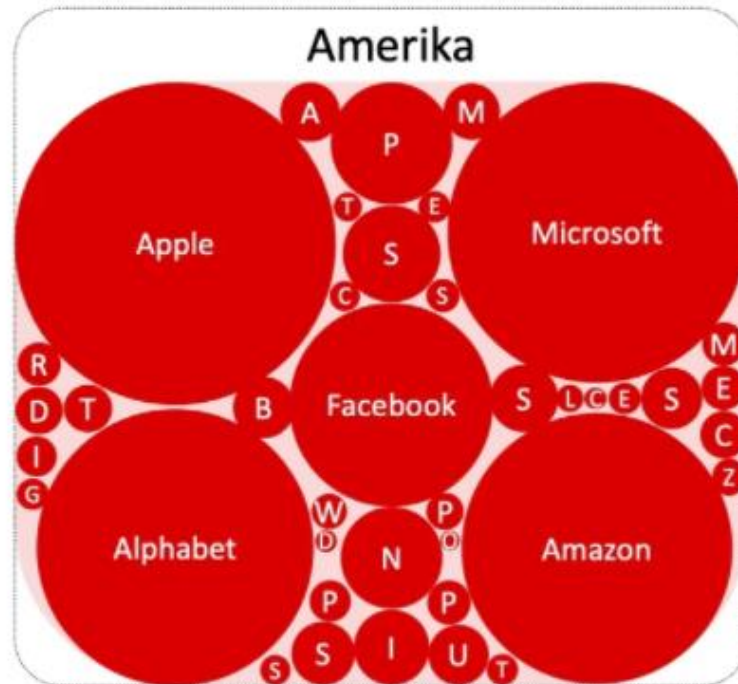


2000: eCommerce-Directive adopted in the EU



# Growing concentration and power imbalances

## Top-100 Plattformen der Welt



DEIX  
Digital Economy Investments

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Börsenwert / Bewertung jüngste bekannte Finanzierung / Stand Juli 2021



THE ORIGINAL  
PLATFORM FUND



# Growing concentration and power imbalances



Source: [platformeconomy.com](https://platformeconomy.com)

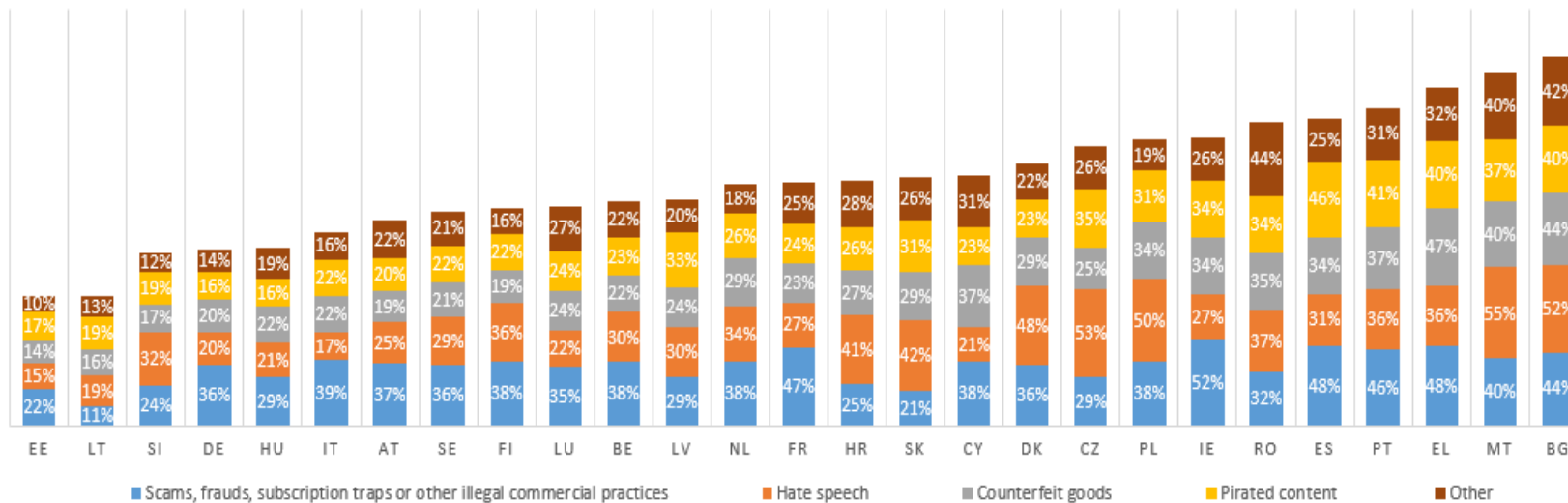




# Newly emerging challenges

- ◆ Spread of illegal content online
- ◆ Disinformation campaigns

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



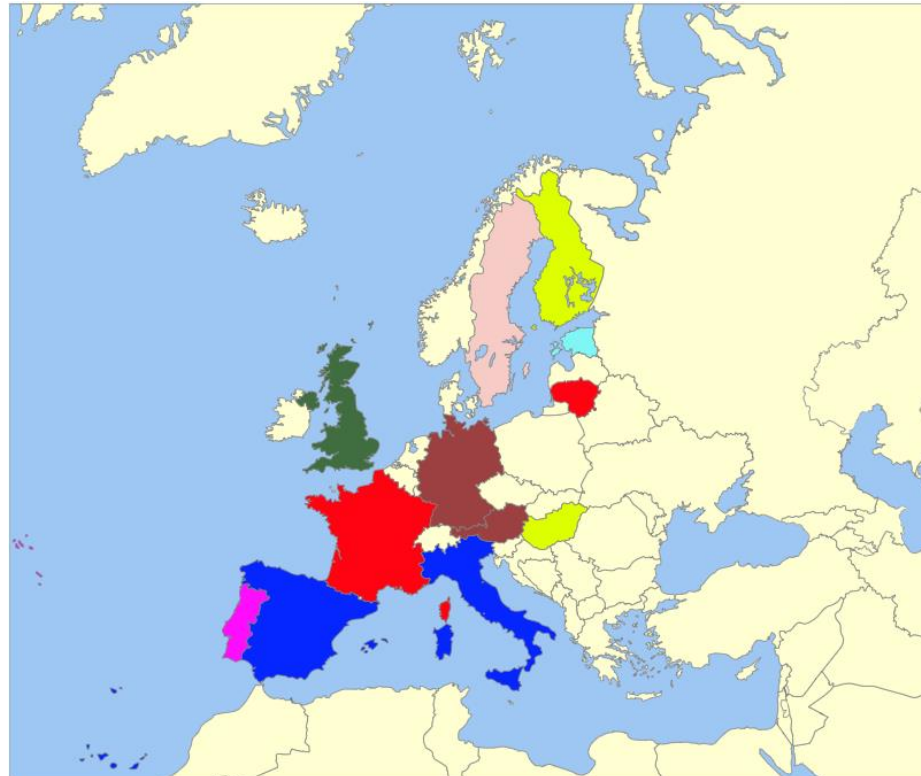


**EU APPROACH**



# Regulatory fragmentation and the internal market

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





# Regulatory landscape - Platforms

## P2B-Regulation

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

Transparency for businesses

EU APPROACH

## Digital Services Act

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

Safety for citizens

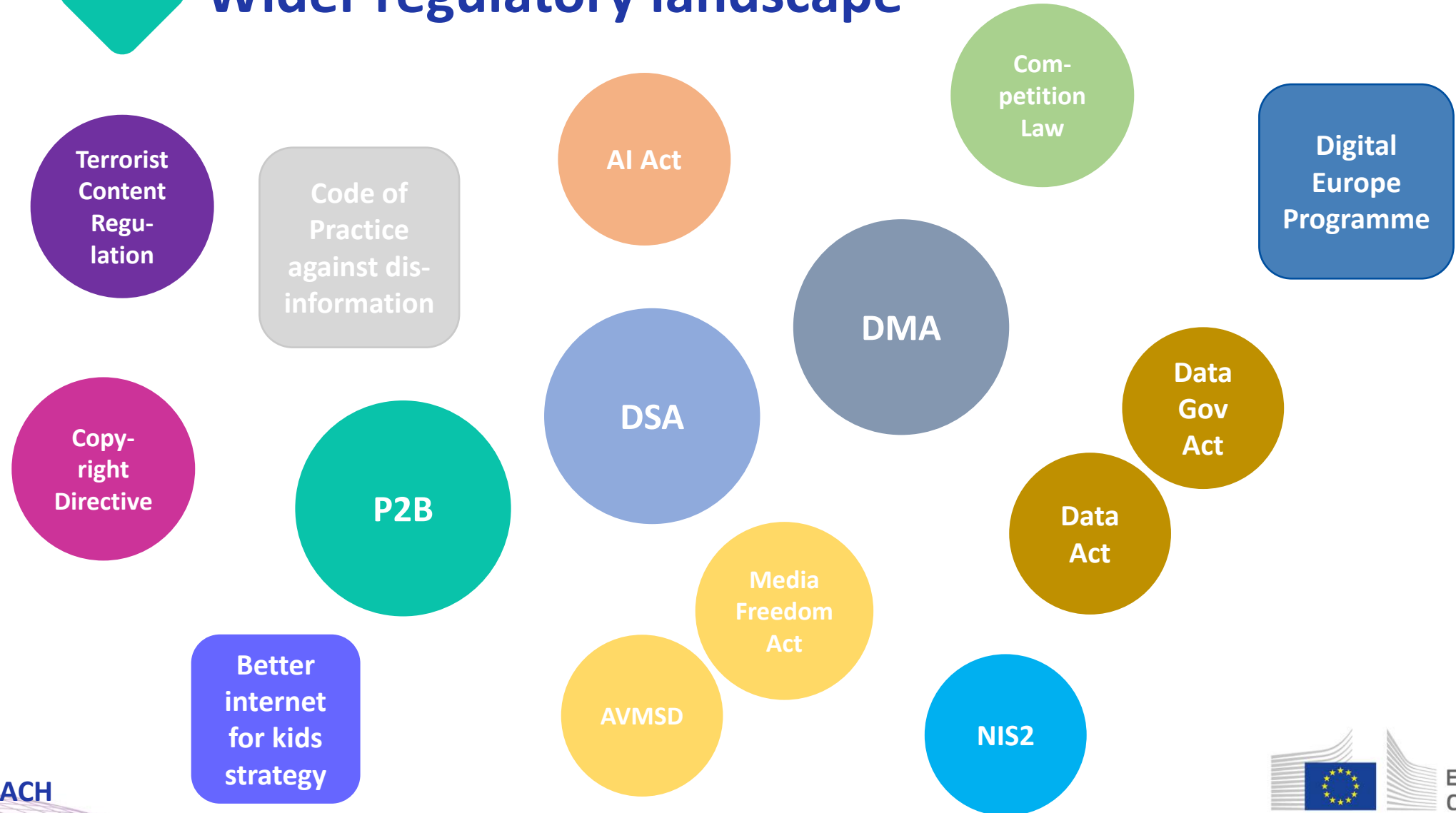
## Digital Markets Act

- **Scope:** Large Gatekeepers
- **Aim:** Maintain fair and contestable markets through ex-ante rules
- **Application:** Beginning 2023

Fair and contestable markets

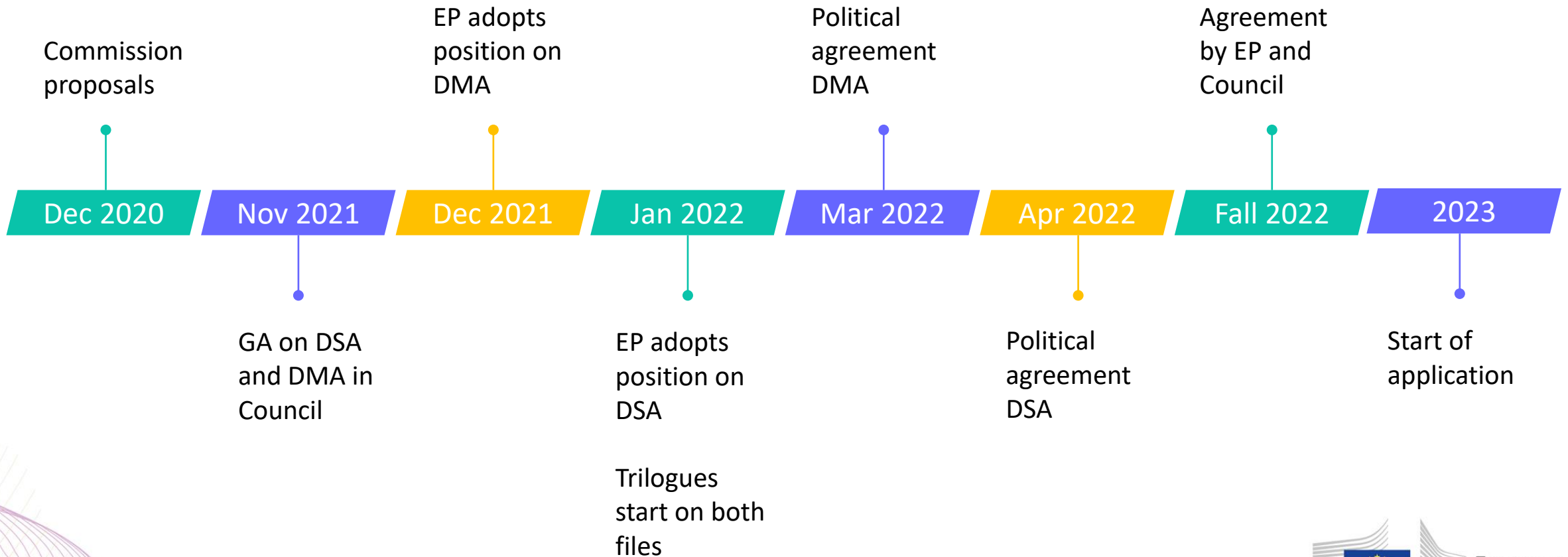


# Wider regulatory landscape





# Timeline DMA and DSA





# 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 - 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

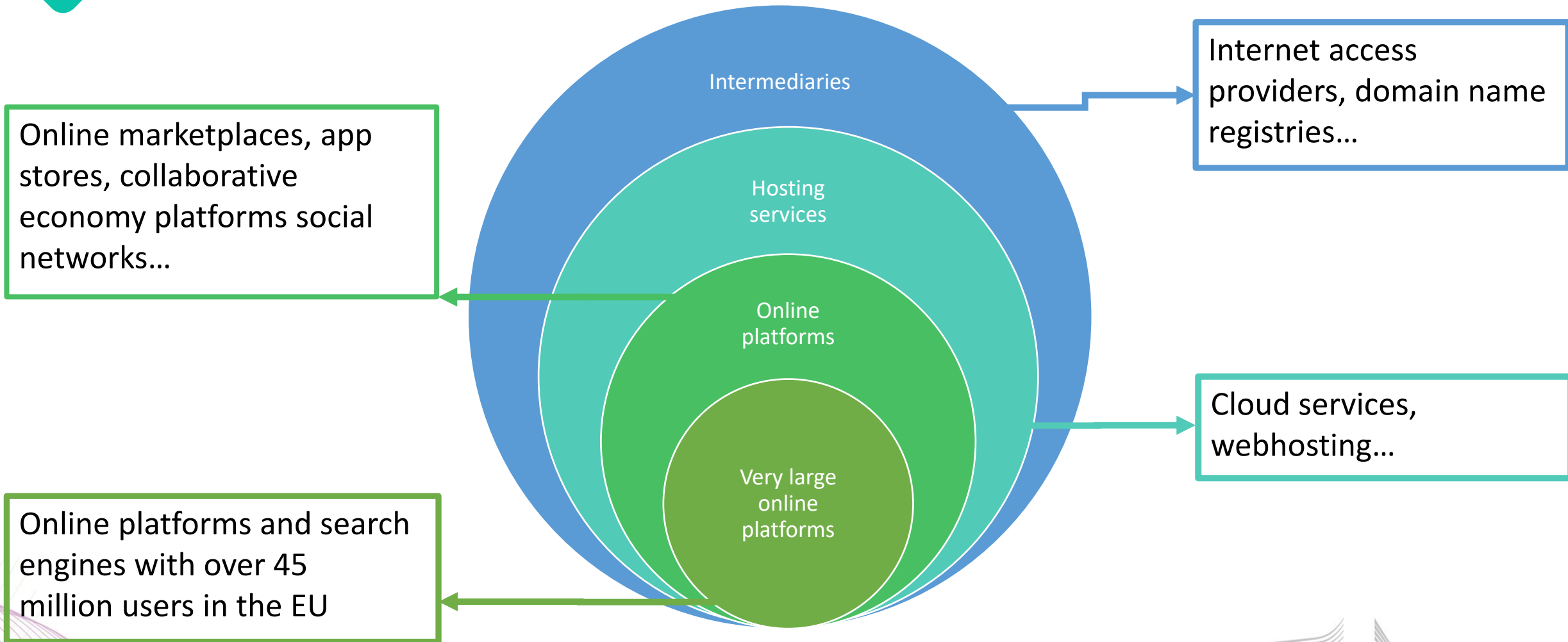
- Does **not define** what is illegal
- Illegality is defined by **national or EU law**

## DSA is horizontal

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



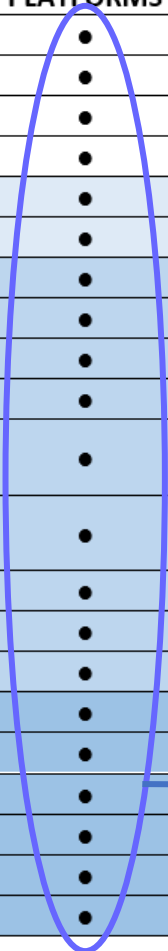
# Asymmetric obligations I - Scope of the DSA





# Asymmetric obligations II – 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



# Strengthening 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
- Advises on cross border disputes
- Intervenes following DSC requests



# KEY PROVISIONS DMA

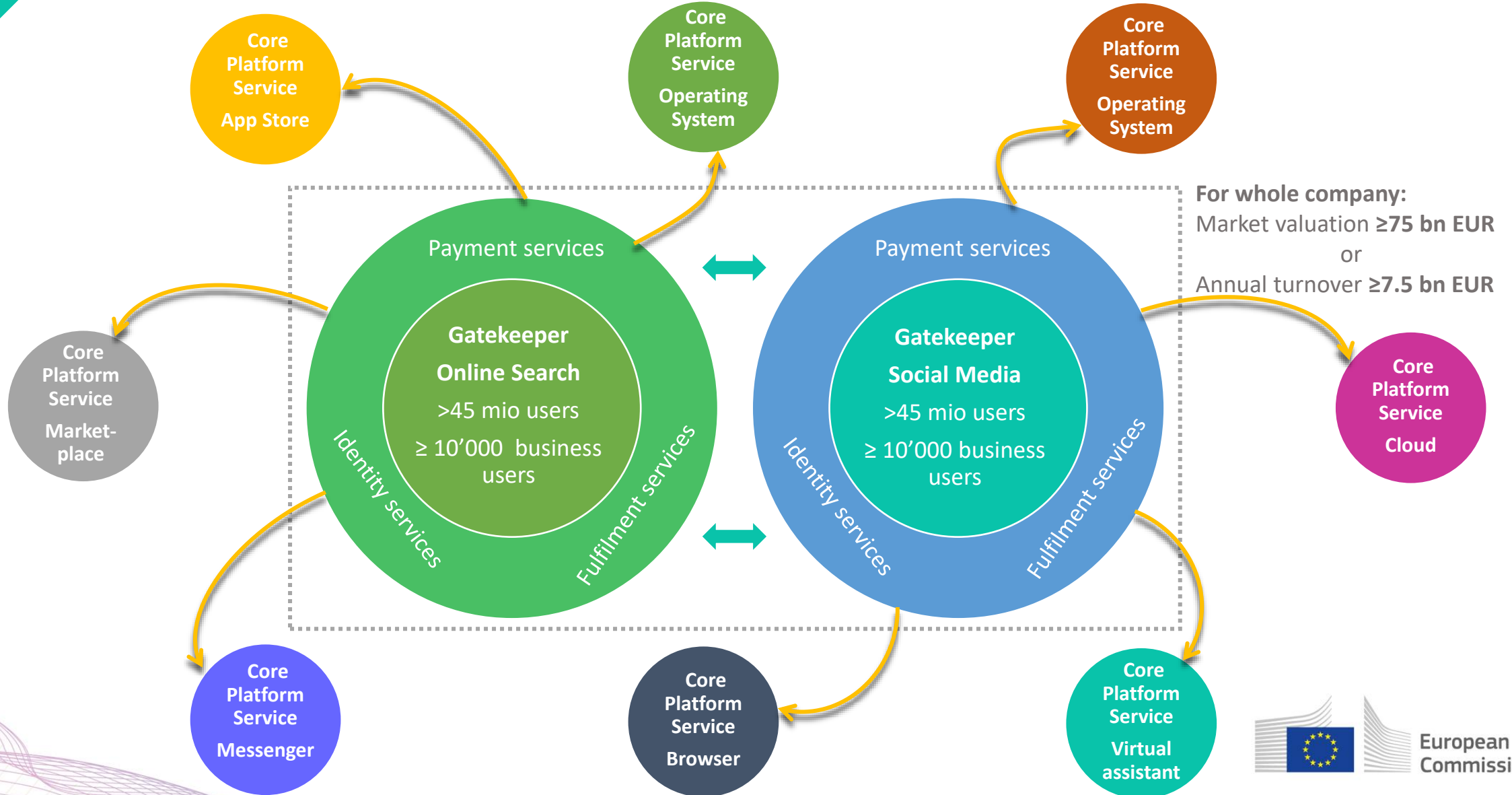


## Central ideas for the DMA

- ◆ **Focussing on gatekeepers** as most powerful actors in the ecosystem of digital services
- ◆ **Horizontal application** that covers all sectors to mirror effects of digitalisation
- ◆ **Cumulative effect** highlighting the interplay of clear, *ex-ante* obligations **to drive innovation** – also for the DSA
- ◆ **Complementarity** by providing new tools alongside competition law and sectoral regulations that continue to apply



# Scope and cumulative effect







# 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
- Digital Markets Advisory Committee to cooperate and coordinate with competition authorities and courts
- Role for pre-investigation by national authorities

The image features a complex abstract design. On the left, a teal background is overlaid with a white grid of small dots. This transitions into a large, white, wavy shape that contains a fine, light-colored grid pattern. To the right of this shape is a solid blue area with a white, wavy border at the bottom. The text 'INTERNATIONAL ASPECTS' is centered in the blue area.

# INTERNATIONAL ASPECTS



# Collaborating internationally on DMA and DSA I

## ◆ Declaration for the Future of the Internet

- ◆ Provides key elements and values for a sustainable internet, including

- ◆ Safety and fundamental freedoms online

- ◆ Contestable and fair online markets

## ◆ EU-US TTC

- ◆ e.g. work on modality for data access for researchers



# Collaborating internationally on DMA and DSA II

## ◆ Partnership Agreements

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

## ◆ Voluntary global initiatives

- ◆ Christchurch Call



**THANK YOU FOR  
YOUR ATTENTION**



# Digital Services Act

## *Safety and fundamental rights online*

- ◆ Article 114 TFEU: **single framework**
- ◆ 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*

- ◆ Article 114 TFEU: **single framework**
- ◆ 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 implementation** of some obligations
- ◆ Comprehensive remedies, including on structural level
- ◆ **EU-level enforcement** through Commission





## State of play on DMA and DSA

Ambitious agreements reached in record time  
by co-legislators

- ◆ **Digital Markets Act** agreed on 24<sup>th</sup> 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 23<sup>rd</sup> April
  - ◆ *‘we ensure that platforms are held accountable for the risks their services can pose to society and citizens’* – European Vice-President Vestager

