

# The Digital Services Acts Package and what it entails





---

# Abstract

Many governments and regulators around the world are raising concerns about the growing popularity and control by few players when it comes to Digital Services and how data is handled.

In the Middle East, very few countries have enacted laws relating to Digital Services and data protection. Within the GCC, some members have no present laws such as Kuwait and Oman, while other member nations have formulated regulations or are in the process of finalising them.

Qatar was the first GCC member nation to issue a law in accordance with the GDPR adoption in Europe in 2016; Bahrain has also drawn international best practices and its law covers non-nationals and companies without a place of business in Bahrain (unlike GDPR). KSA and UAE have both taken steps to protect individual privacy, but there is room for more.

**This paper focuses on policies around data and evaluates the Digital Services Acts recently introduced in the European Parliament – providing learnings for the GCC.**



Ever since the foundation of the European Union in November 1993, providing a highly competitive market economy and promoting scientific and technological progress have been among key goals of the Union. The EU has constantly emphasised the importance of digitalisation of the European society – a need that has been highlighted with the COVID-19 pandemic.

Digital technologies usher in new ways to learn, entertain, work, explore, and reach goals. They offer EU citizens the right to reach out beyond physical barriers and geographical locations. However, there are several challenges associated with moving to a digital world; challenges that need to be addressed include protecting citizens from counterfeit products, cybertheft, and disinformation, and most importantly, tackling the digital divide.

The EU's digital compass translates its digital ambitions for the next decade into clear, concrete targets, setting out a European way for the digital decade. To reach goals set out over the next decade, key policy areas have been identified around cloud computing, artificial intelligence, digital identities, data, and connectivity.

The European Commission recently proposed two legislative initiatives to upgrade rules governing digital services (Digital services include a large category of online services, from simple websites to internet infrastructure services and online platforms) in the EU: The **Digital Services Act (DSA)** and the **Digital Markets Act (DMA)**.

### These Acts have two main 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.

### Why were new Acts needed?

1 2 3 4 5 6

To update the current e-Commerce directive that was issued in 2000 and regulates digital services' liability till date. There is also a need to evolve European legislation in view of the multiple new ways to communicate, shop or access information online that have appeared over the last two decades and are continuously evolving

1 2 3 4 5 6

To address the disadvantages of online platforms that otherwise facilitate cross-border trading within and outside the Union:

- Trade and exchange of illegal goods, services and content online
- Manipulative algorithmic systems spreading disinformation

1 2 3 4 5 6

To augment existing sector-specific interventions at EU-level

1 2 3 4 5 6

To check the emergence of few large platforms as gatekeepers in digital markets with the power to act as private rule-makers

1 2 3 4 5 6

To address areas where the previously issued GDPR failed, for instance the importance of data for competition

1 2 3 4 5 6

To strengthen existing rules such as a voluntary Code of Conduct against hate speech and a Code of Practice on Disinformation (which is to be strengthened within the framework of another Commission initiative, the European Democracy Action Plan)

## What are the main characteristics of the proposed Acts?

The Digital Markets Act advocates a fair-play market, while the Digital Services Act is concerned with transparency and consumer protection. The table below highlights key characteristics for both the proposed Acts:

### Key characteristics of the proposed Acts

	Digital Markets Act	Digital Services Act
Objective	<ul style="list-style-type: none"><li>To enable competition by making it easier for new platforms to enter the market</li></ul>	<ul style="list-style-type: none"><li>To enable transparency, user safety, and platform accountability</li></ul>
Addresses	<ul style="list-style-type: none"><li>“Gatekeeper” platforms with turnover of at least EUR6.5bn; activities in at least 3 EU countries; at least 45 million monthly active end users and 10,000 yearly active business users (both in the EU); having met these thresholds in the last three years</li></ul>	<ul style="list-style-type: none"><li>Intermediaries (covering conduit providers, caching providers, hosting providers), online platforms; special rules for “very large” online platforms with more than 45 million monthly active users</li></ul>
Provisions	<ul style="list-style-type: none"><li>Concerns 18 practices (7 prohibited + 11 practices that are problematic for competition)</li></ul>	<ul style="list-style-type: none"><li>Liability rules; transparency reporting obligations; due diligence obligations</li></ul>
Enforcement	<ul style="list-style-type: none"><li>EU level (Directorate-General for Communication Networks, Content and Technology)</li></ul>	<ul style="list-style-type: none"><li>National regulators (advised by the European Board for Digital Services (EBDS))</li></ul>
Sanctions	<ul style="list-style-type: none"><li>Fines of up to 10 per cent of global turnover, structural separation in case of systematic non-compliance</li></ul>	<ul style="list-style-type: none"><li>Fines of up to 6 per cent of global turnover; in extreme cases: restriction of access to platforms</li></ul>



## What has been the course of these Acts so far and what are proposed next steps?

The EU Parliament published the first draft report for the Digital Services Act in April 2020. In the month of July 2020, the report was adopted by the Civil Liberties, Justice and Home Affairs (LIBE) Committee and submitted its recommendations to the Internal Market and Consumer Protection (IMCO) Committee. In October 2020, the EU Parliament voted on the three main reports. The IMCO Committee ran a public consultation from June to September 2020 to assess how to best deepen the internal market and clarify responsibilities in respect of digital services; the outcome – it received more than 200 replies.

While the Committee concluded that the e-Commerce Directive remains valid and has enabled the growth and accessibility of digital services across borders, it highlighted three main problems related to the governance of digital services in the EU:

### A. Increasing exposure to illegal and harmful activities online

- Sale of illegal goods (such as dangerous goods, unsafe toys, illegal medicines, counterfeit products (imports of counterfeit goods in Europe totalled EUR121 bn in 2016))
- Dissemination of illegal content (such as content infringing IP rights, child sexual abuse material (which doubled between 2017 and 2019), terrorist content, illegal hate speech, and illegal ads targeting individuals)

### B. Lack of cooperation between national authorities and limits of supervision mechanisms

- No detailed mechanisms for cooperation or information sharing across Member States

### C. Risk of legal fragmentation and legal barriers for digital services

- New barriers created by national initiatives in the internal market particularly for SMEs, including innovative start-ups

## National initiatives from EU member states



### Germany

A law on improving law enforcement in social networks that was passed in 2017 and modified in 2020 (NetzDG) is in the process of being amended again



### France

Draft legislation on political separatism would enshrine in French law wide-ranging content moderation obligations for online platforms



### Poland

Social media laws that would prohibit platforms from removing content that did not specifically break the Polish rules

**Others:** Legislative work on content moderation is also under way in other Member States including in Hungary

In October 2020, the EU Parliament voted and approved “legislative initiative” reports. The European Commission then presented the Digital Services Act and the Digital Markets Act in December 2020.

Both these Acts are currently legislative proposals. In order to become laws, they require approval by the European Council and the European Parliament, which is expected to take around a year and a half from the time the Acts were proposed by the European Commission in December 2020. In January 2021, the Parliament Internal Market Committee confirmed that the S&D group will lead the DSA in Parliament.

## What are the obligations of these Acts?

The DSA proposal is a horizontal instrument establishing a framework of layered responsibilities targeted at different types of intermediary services. Hence, a range of harmonised EU-wide asymmetric obligations have been introduced based on the size and impact of digital services provided.

### DSA obligations by size of digital services provider

Obligation	Intermediary services	Hosting services	Online platforms	Very large platforms
Transparency reporting	●	●	●	●
Requirements on terms of service due account of fundamental rights	●	●	●	●
Cooperation with national authorities following orders	●	●	●	●
Points of contact and, where necessary, legal representative	●	●	●	●
Notice and action and obligations to provide information to users		●	●	●
Complaint and redress mechanism and out of court dispute settlement			●	●
Trusted flaggers			●	●
Measures against abusive notices and counter-notices			●	●
Vetting credentials of third-party suppliers ("KYBC")			●	●
User-facing transparency of online advertising			●	●
Reporting criminal offences			●	●
Risk management obligations and compliance officer				●
External risk auditing and public accountancy				●
Transparency of recommender systems and user choice for access to information				●
Data sharing with authorities and researchers				●
Codes of conduct				●
Crisis response cooperation				●

Any major change like these Acts is likely to impact businesses. As a predecessor to these Acts, the General Data Protection Regulation (GDPR) published in 2016 had adverse effects on businesses upon implementation.

GDPR made it harder for firms to collect, store, and analyse customer data in order to protect privacy. Consequently, the cost of doing business increased, particularly for start-ups and small firms as both groups were seriously disadvantaged against larger firms. When the GDPR was implemented in 2018, a negative impact on growth of AI start-ups was witnessed. Investments in European tech start-ups were also negatively impacted due to the GDPR. The implementation resulted in 17 per cent relative concentration in the web technology vendor market. Further, websites were 15 per cent less likely to share personal data with small web technology providers (in favour of larger providers).

While the DSA lays rules for players of all sizes, criteria for the DMA focuses on the largest technology players. As per the definition, “Gatekeeper” platforms are entities with turnover of at least EUR 6.5bn; activities in at least 3 EU countries; at least 45 million monthly active end users and 10,000 yearly active business users (both in the EU); and having met these thresholds in the last three years.

The reactions to DMA have not been as pleasant as those for DSA. According to Digital Europe (a trade association with members including Facebook and Google), support for the DSA is strong among big technology players, but most of them want tweaks in the provisions of the DMA. At present, different stakeholders are preparing their feedback and laying their suggestions for these Acts – this includes industry players, civil society groups, Member States and lawmakers in the EU Parliament.

### What are the pluses of these Acts?

While the Acts will undergo a series of changes before they are enacted as laws, the presumed advantages can be bucketed into two categories – positives at the **consumer level** and positives at an **economy level**.

#### For the consumer

- An end to the era of automatic sign-ins: This is a widespread practice today with tech giants such as Google and Facebook (e.g., logging into Gmail logs you into YouTube or Google Maps, etc.). This practice will cease to exist once these Acts are finalised.
- No more cross tying: Imagine being able to use an iPhone without an iCloud ID. The proposed Acts will impose a ban on customers and end-users to sign up for “ancillary services”.
- Data portability: Gatekeepers will be mandated to provide all consumer data in a giant blob, portable to a rival.

#### For the economy

- Preparing for the future: The DMA is designed to be updated from time-to-time.
- Promoting fair competition: The Acts propose real penalties and structural remedies. For instance, a company like Facebook could face a USD1.7 billion fine (based on 2019 revenues). Other remedies include orders to sell off whole divisions, etc.
- Multiple app stores – will become a reality: Gatekeepers will be obligated to permit third party app stores that can compete with their own store.
- Protecting multiple processes and terms: DMA would ban gatekeepers from making rules on selling prices set by business customers.
- Allowing interoperable add-ons: “Ancillary service” providers will be able to plug into core services on the same terms as for the gatekeeper.
- Offering unconditional data access to business customers: Gatekeepers will be obligated to allow business customers (free, high quality, continuous) access to data on their sales, subscribers, and commercial activities.



We look at the perceived benefits of these Acts for the European Union. If passed without substantial changes, these Acts will have multiple advantages including reducing internal market fragmentation, fuelling economic growth and employment, promoting innovation and fostering online cross-border trade, to name a few. The table below lists these advantages and their economic impact.

### Economic impact of the proposed Acts for the European Union

Description	Amount	Comments Description
Internal market fragmentation	EUR92.8 bn	Substantial decrease in internal market fragmentation as EU member states will not be needed to introduce national legislations
Impact on economic growth	EUR12-23 bn	Higher investment in R&D in the ICT sector leads to an increase EU 27 GDP
Employment	600,000 jobs preserved; 136,387 to 294,236 jobs created	Preserve current level of employment and possible increase related to increased R&D spending
Innovation	EUR221-323 bn over 10 years	Positive impact on innovation stemming from higher market contestability
Competition	Fall in HHI Index	Low barriers to entry could reduce the Herfindahl-Hirschman Index (a lower number indicates a higher degree of perfect competition)
Online cross-border trade	EUR450 bn to EUR1.76 tn (after 10 years)	Assumption: internal market fragmentation is fully addressed
Consumer surplus	EUR13 bn	Possible decrease on advertising and companies passing on the savings to consumers

That said these Acts could have negative consequences (both intended and unintended) for businesses (particularly large gatekeepers) as well as consumers. The table below highlights some possible shortcomings of these Acts.

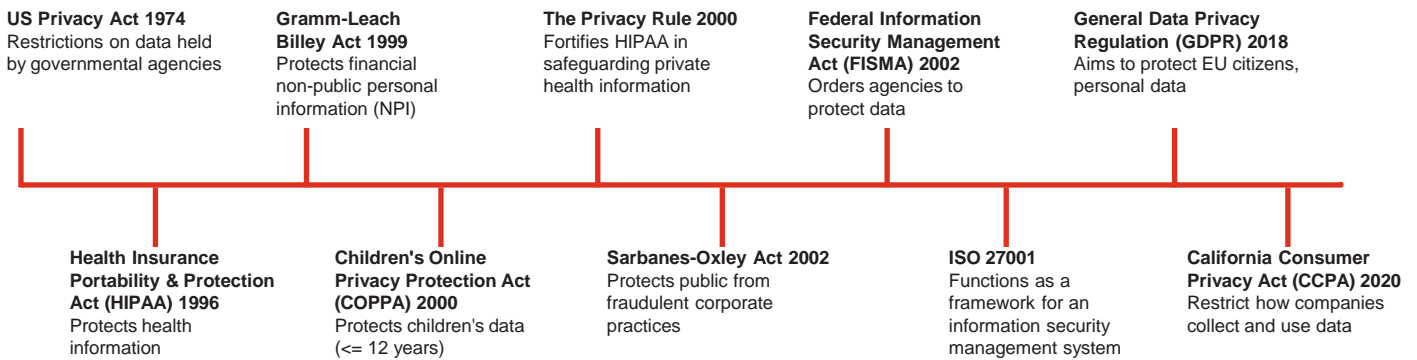
### Possible shortcomings of the proposed Acts

Consequence	Businesses / Gatekeepers	Consumers
Monitoring data practices closely	<ul style="list-style-type: none"> <li>Undermining service innovation and competition among services</li> </ul>	<ul style="list-style-type: none"> <li>Limiting options for consumers (fewer / more expensive options)</li> </ul>
Limiting use and combinations of large datasets	<ul style="list-style-type: none"> <li>Increasing difficulties for complimentary businesses to collaborate</li> <li>Forcing some businesses to invest in duplicate infrastructures</li> </ul>	<ul style="list-style-type: none"> <li>Failing at stopping algorithms that direct consumers to more profitable products</li> </ul>
Orchestrating ecosystem without being able to sell goods / services in it	<ul style="list-style-type: none"> <li>Limits business model innovation, particularly for incumbents in traditional sectors such as banking</li> </ul>	<ul style="list-style-type: none"> <li>Limiting differentiation and overall number of options</li> </ul>

While the European Union has been slow in updating rules and regulations pertaining to e-commerce and online platforms, some countries have been implementing such practices for many years. Case in point is the United States – data protection gained prevalence in the 1970s with passing of the US Privacy Act 1974 which imposed restrictions on data held by government agencies.

There have been multiple laws and acts following the US Privacy Act 1974. Some of the key ones are listed below.

### US data protection laws and acts – a timeline



## What is the optimal level of regulation?

It is rather difficult to determine the most optimal level of regulation. At a national level, regulations depend on political, social, and economic factors. While some regulators believe in lesser control, others believe in a higher degree of regulatory intervention. Regulations can be classified into two sub-groups: behavioural and structural.

Behavioural regulations mandate lower control over involved parties. Examples of countries following behavioural regulations include Australia, India, South Africa and the US. Regulations here are means for continuous monitoring and periodic review of the situation. Such regulations foster international cooperation and are often not legislative in nature.

Structural regulations mandate higher control over involved parties. Examples of countries following structural regulations include China, European Union, Indonesia, Saudi Arabia, Singapore and UAE. Regulations here translate into licensing and other rules applicable to global online providers. Some nations allow global providers to operate only when fulfilling certain criteria (such as partnerships with local companies, etc.).

Success of any regulatory regime is dependent on several parameters, starting from the nature of regulations to implementation to defining performance KPIs. Highlighted below are some guiding principles for regulators to balance the need to regulate with protecting innovation.

### Guiding principles for regulators

Challenge	Guiding principle	Resolution
<ul style="list-style-type: none"><li>• Overly restrictive regulations (such as DMA) constraints innovation opportunities by mandating specific design choices</li><li>• Reducing gatekeeper power will not necessarily unlock competition</li><li>• “Open platform” model is not the key to creating more competition or allowing new entrants to disrupt existing biggies</li><li>• Regulations mostly fail in dynamic markets with rapid technological change</li></ul>	<ul style="list-style-type: none"><li>• Preserve business model innovation</li><li>• Ensure that ecosystems remain competitive</li><li>• Foster market contestability in adjacent segments</li><li>• Maintain gatekeeper accountability without dictating next steps</li></ul>	<ul style="list-style-type: none"><li>• Focus on problem areas instead, for instance, undue restrictions to access marketplace or “biased” recommendation system that favours their own products / services over competition</li><li>• Focus on anticompetitive practices resulting in structural barriers to competition between ecosystems</li><li>• Focus on allowing platforms to differentiate themselves (Airbnb or Uber would not have been successful had this mindset prevailed)</li><li>• Focus on creating decentralised, data-driven accountability. Gatekeepers could provide data APIs for auditing to neutral digital agencies without the need to disclose their algorithm</li></ul>

This paper has striven to analyse the Digital Services Acts in detail highlighting the possible advantages and limitations for each stakeholder group. Governments in the GCC / Middle East region can benefit tremendously by learning the characteristics of these Acts and being the first mover in their region to enact similar regulations in their territories. This will enable them to prepare for a future that does not allow Digital Markets to be controlled and dominated by few big companies and to provide a safer and level playing field to smaller businesses and users.

## Authors:



**Bahjat El-Darwiche**  
Partner, EMEA TMT Leader  
PwC Middle East  
bahjat.eldarwiche@pwc.com



**Alastair Macpherson**  
Partner  
PwC UK  
alastair.macpherson@pwc.com

### About PwC

At PwC, our purpose is to build trust in society and solve important problems. We're a network of firms in 156 countries with over 295,000 people who are committed to delivering quality in assurance, advisory and tax services. Find out more and tell us what matters to you by visiting us at [www.pwc.com](http://www.pwc.com).

Established in the Middle East for 40 years, PwC has 22 offices across 12 countries in the region with around 7,000 people. ([www.pwc.com/me](http://www.pwc.com/me)).

PwC refers to the PwC network and/or one or more of its member firms, each of which is a separate legal entity. Please see [www.pwc.com/structure](http://www.pwc.com/structure) for further details.

© 2021 PwC. All rights reserved