



European  
Commission

# Ecommerce policy update

1 December 2021 Liege airport,

Jasmin Battista SG D1 EC

# Current legal framework

## E-Commerce Directive ([2000/31/EC](#)) & National laws implementing the e-Commerce Directive

### EC guidance

- **Recommendation** on measures to effectively tackle illegal content online (2018)
- **Communication** on Tackling illegal content online (2017)

### Self and Co-Regulation

**Sectoral dialogues and coordinated, voluntary actions** – e.g. *Product Safety Pledge, Internet Forum, Code of conduct on countering illegal hate speech online, Memorandum of Understanding for counterfeit products*

### Sector specific regulation

- **At EU level** – e.g. *Audio-visual, unsafe goods, toys, child sexual abuse material, terrorist content, IP, etc.*
- **At national level** – defining illegal activities

### Online platforms

- **Platforms-to-Business Regulation:** first horizontal regulation for online platforms
- **Competition tools**

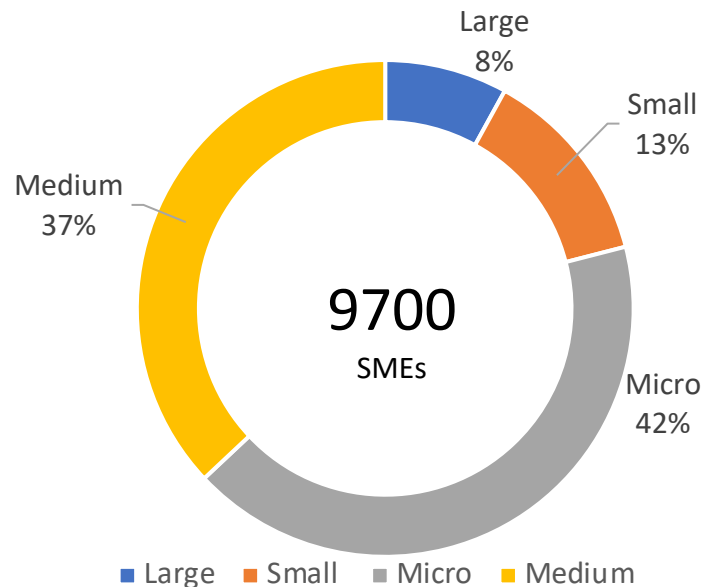
# e-Commerce rules in the EU

- The EU has made it easier and safer for European consumers to shop online no matter where they are in the EU. To reach the full potential of e-Commerce, the EU has worked on:
- the revised Payment Services Directive and new rules on cross-border parcel delivery services that are already in force;
- new rules to stop unjustified geo-blocking;
- revised consumer protection rules;
- new VAT rules for the online sale of goods and services.
- The Commission is working to create a modern framework for copyright in the EU which will allow more cross-border access to content online by making licensing for online transmissions simpler.
- New EU rules for audiovisual media have been agreed on, adapt existing rules to the digital age and promoting European works and preserving cultural diversity.

# Digital services today

There is a large diversity of online platforms in Europe, with almost 10,000 high-growth SMEs trying to scale up in the Single Market. However, American, and, increasingly so, Chinese companies cover the larger share of the market.

High-growth hosting services in the EU



At the same time:

The combined market capitalisation, in 2019 of the five leading platforms was

over \$4 trillion

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¼ of EU's GDP (\$18.8 trillion in 2018)

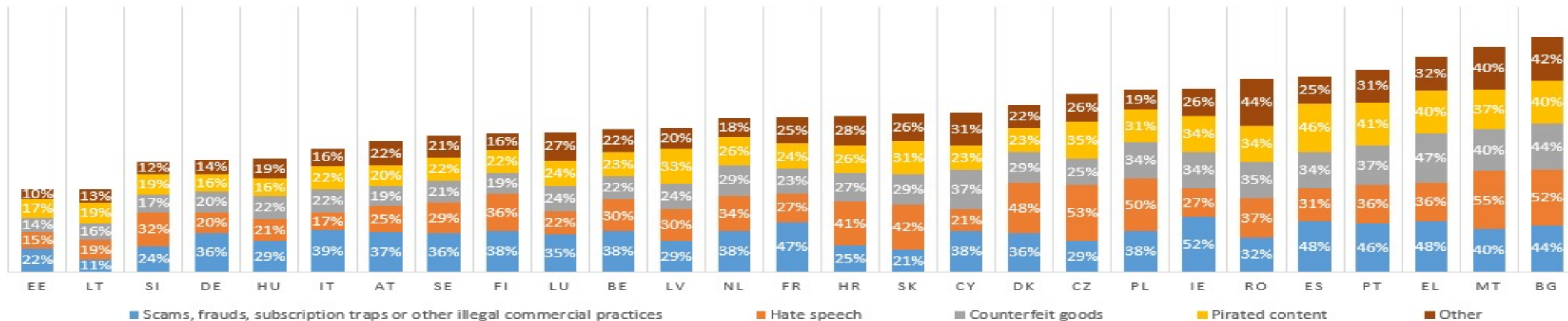
Source: Estimates based on the Dealrom database – 'hosting services' having received venture funding in 2018

# Illegal content spreads online

Indications of scale: moving target, with significant impacts on victims, society, economy. For example:

- Counterfeit products: EUR 121 billion loss
- CSAM: volumes of content identified doubled from 2016 to 2019

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

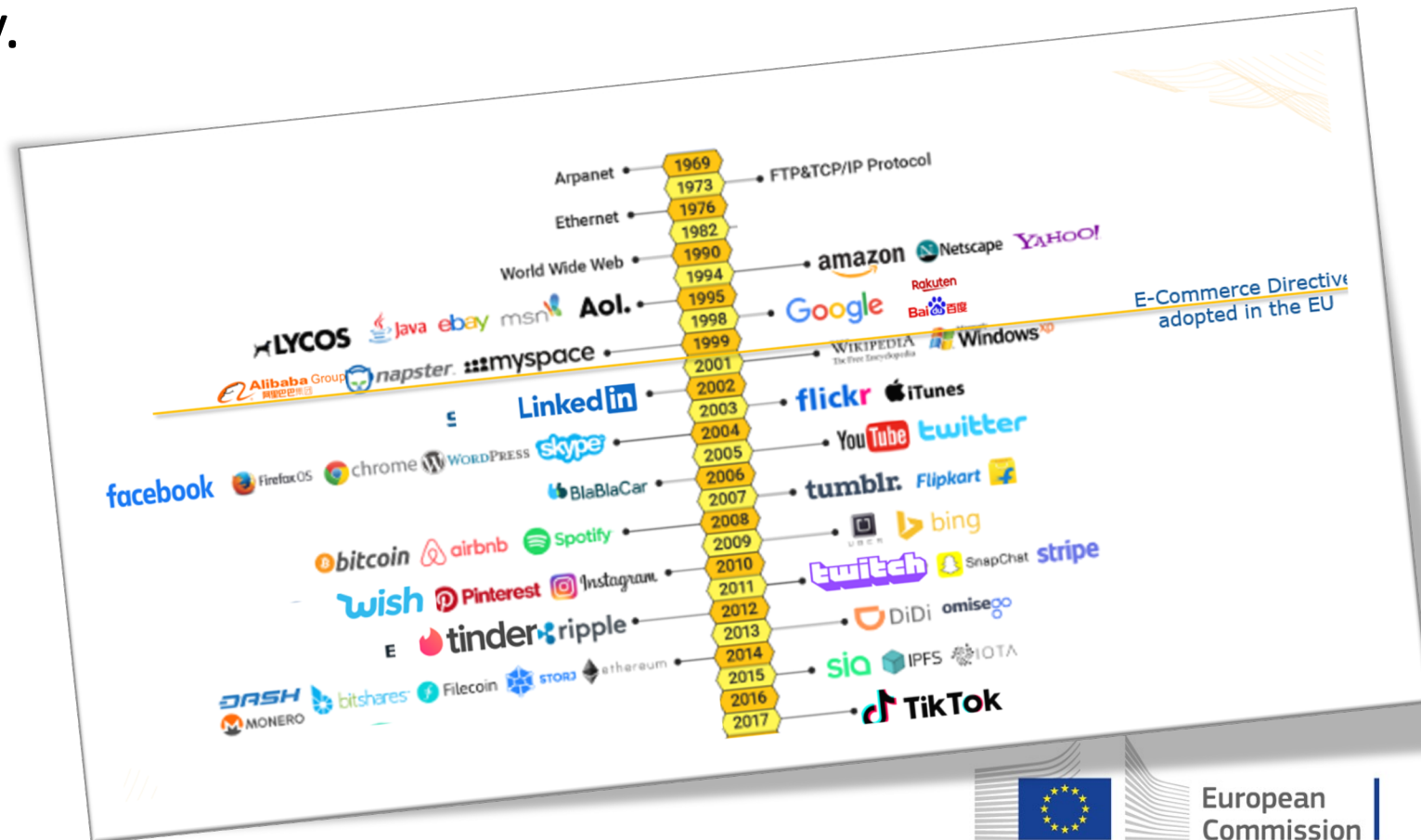


# Evolution and role of intermediary services

- A step-change in the nature, scale and role that digital services play in our economy and society.

- E-Commerce for example:

- 9% of Europeans shopped online in 2002
- 70% shop online today – and 40% of businesses that sell online, do so through online platforms



# Objectives & Ambition

## Digital Services Act

### Ensure a proper functioning of the single market for digital services

- ✓ Ensure the best conditions for **innovative cross-border digital services** to develop
- ✓ Maintain a **safe online environment**, with responsible and accountable behaviour from digital services
- ✓ Empower users and **protect fundamental rights**, and freedom of expression in particular
- ✓ Establish the appropriate **supervision of online intermediaries** and cooperation between authorities

## Digital Markets Act

### Ensure fair and open single market for digital services

- ✓ Ensure that gatekeepers by means of unfair behaviour do not undermine **functioning, fair and contestable platform markets**
- ✓ Enable business users **to bring innovative services to the market** and **empower customer to freely choose** their service providers
- ✓ Enhance **coherence** and **legal certainty** for all market operators by uniform set of substantive and procedural rules.



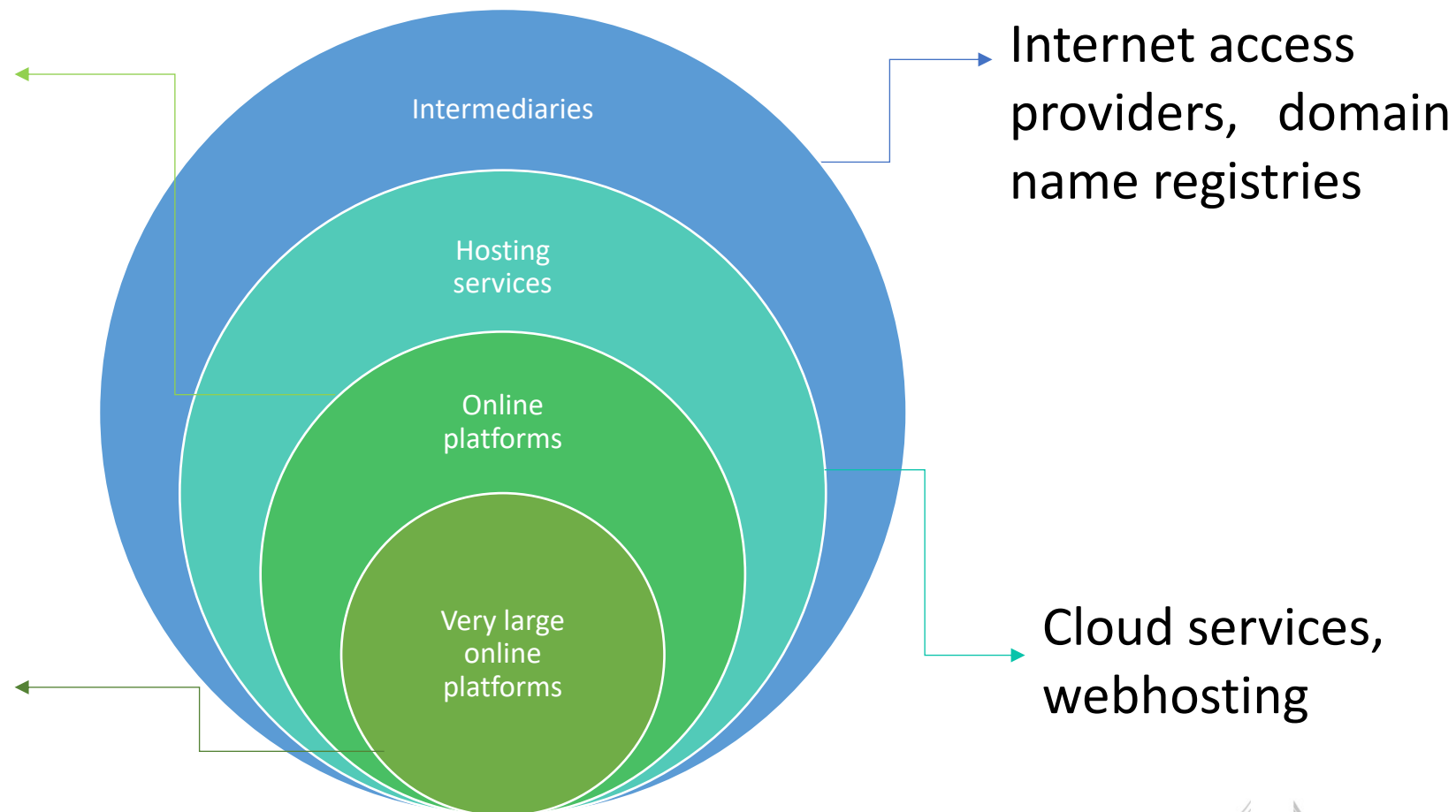
# **DIGITAL SERVICES ACT**



# Services in scope

Online marketplaces,  
app stores,  
collaborative economy  
platforms social  
networks

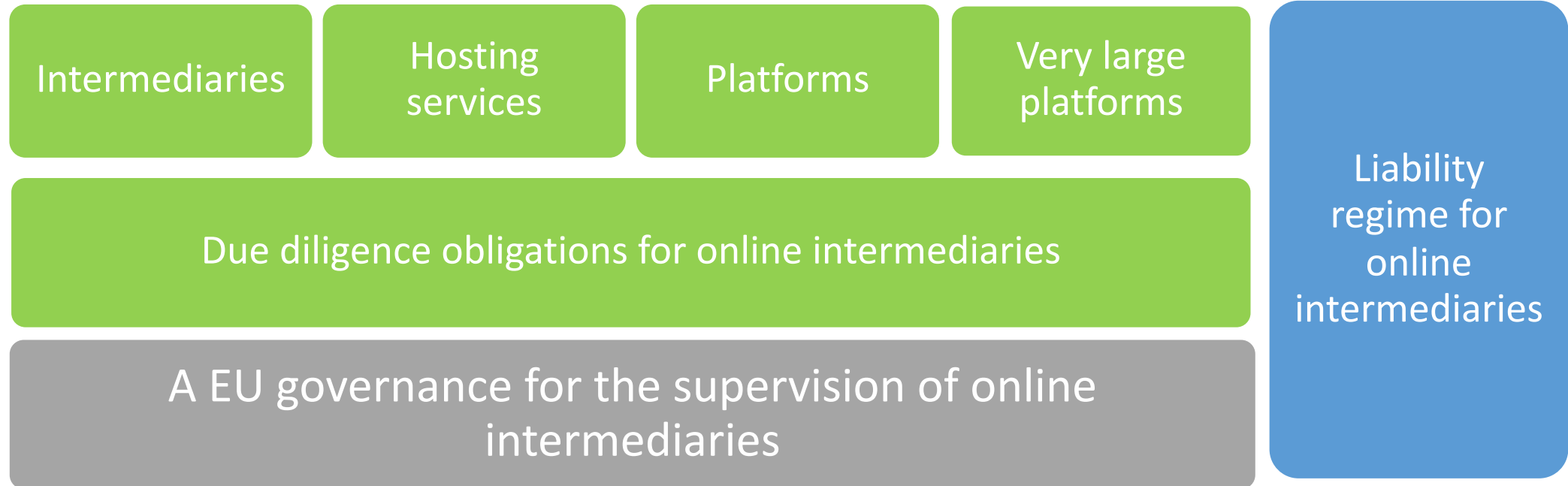
Over 45 mil users  
in the EU



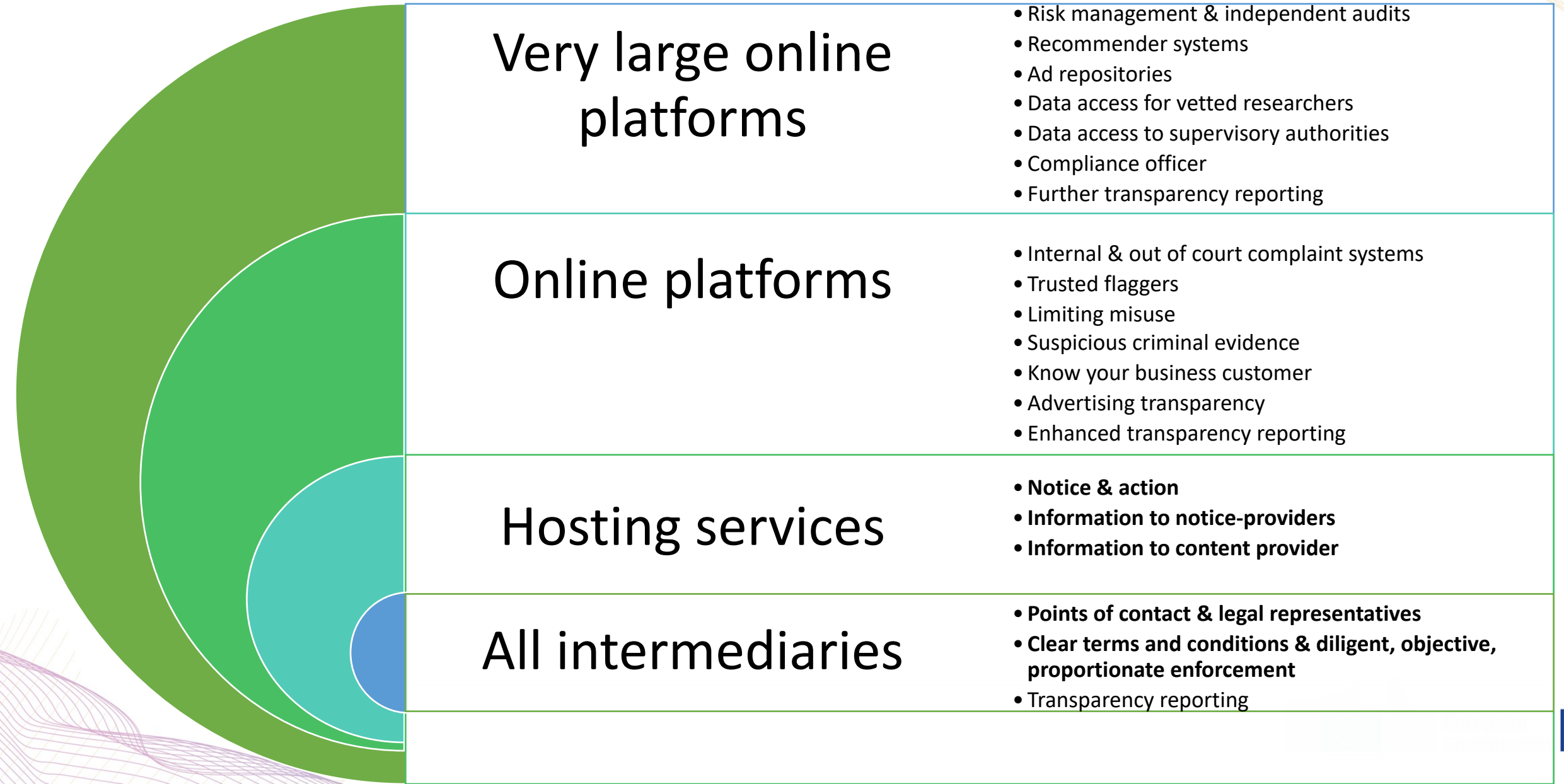
Internet access  
providers, domain  
name registries

Cloud services,  
webhosting

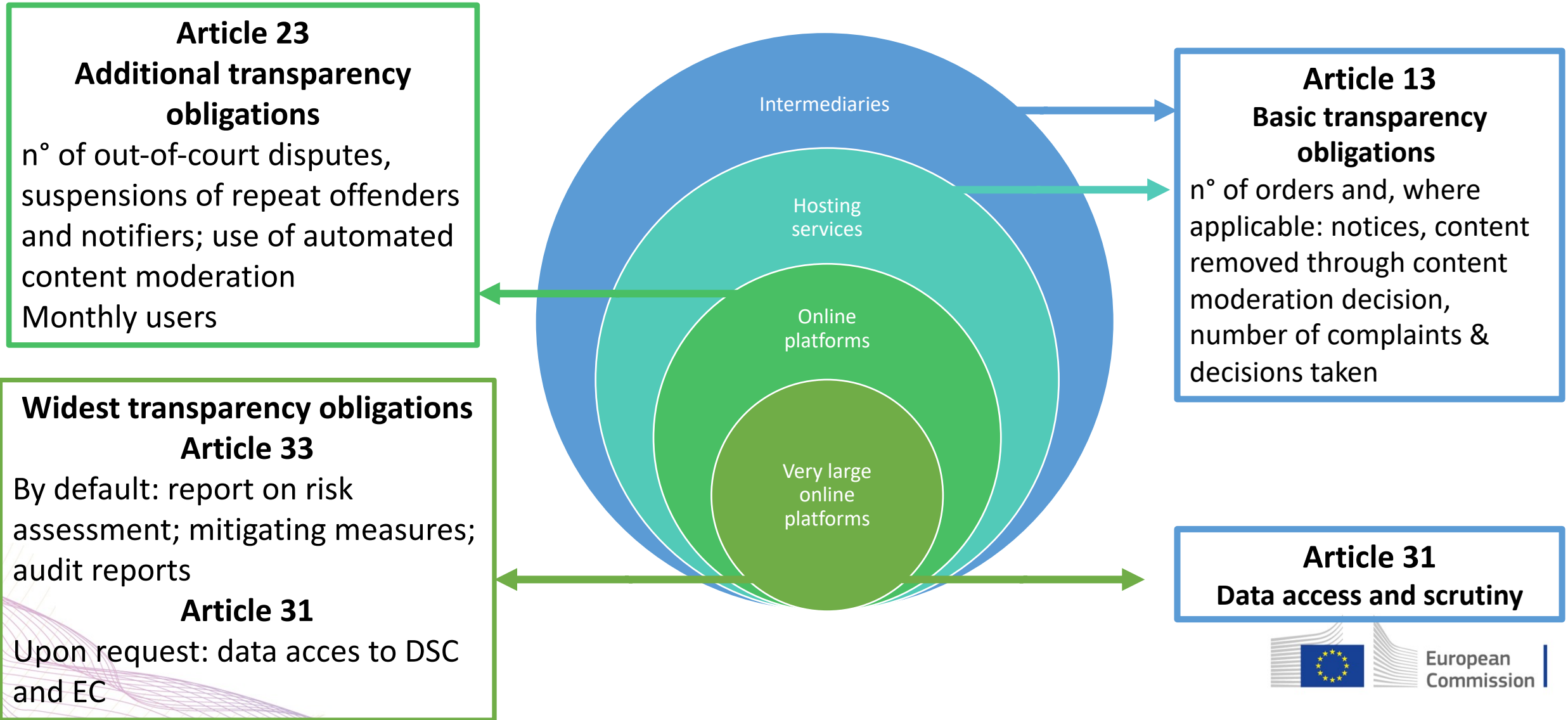
# Regulating responsibilities for digital services



# Due diligence obligations



# Asymmetric obligations: transparency of content moderation





## **FOR CITIZENS**

- Better protection of fundamental rights
- More choice, lower prices
- Less exposure to illegal content



## **FOR SOCIETY AT LARGE**

- Greater democratic control and oversight over systemic platforms
- Mitigation of systemic risks, such as manipulation and disinformation



## **FOR PROVIDERS OF DIGITAL SERVICES**

- Legal certainty, harmonisation of rules
- Easier to start-up and scale-up in Europe



## **FOR BUSINESS USERS OF DIGITAL SERVICES**

- More choice, lower prices
- Access to EU-wide markets through platforms
- Level-playing field against providers of illegal content



# **DIGITAL MARKETS ACT**

# Gatekeepers

**Gatekeeper = provider of core platform services (e.g. online search; online intermediation services; operating systems) that:**

- has a significant impact on the internal market;
- operates a core platform service which serves as an important gateway for business users to end users; and
- enjoys, or is expected to enjoy in near future, an entrenched and durable position in its operations

**three criteria**



**designated gatekeepers**



**Designation process:**

- rebuttable presumption of gatekeeper status if quantitative thresholds met (turnover, market capitalisation, number of users...)
- case-by-case assessment following a market investigation based on qualitative assessment

# Obligations

- **Directly applicable** (Articles 5 and 6)
- Obligations apply to **core platform services** that meet the conditions (Article 3(7))
- Narrow **exemptions**: public interest, viability of operations (Art. 8, 9)

**Directly implementable obligations**  
(Article 5)

**If need for further specification → Commission Decision**  
(Article 6 → Article 7)

**Information obligation of acquisitions of core platform service providers**  
(Article 12)

**Independent audit of techniques for profiling consumers across core platform services**  
(Article 13)

**Gatekeepers expected to enjoy a durable and entrenched position**

**Only obligations that are necessary and appropriate for contestability**



# Examples of obligations by type of unfair practices

- Data related unfair practices
  - Ban on the use **non-publicly available commercially sensitive data** of business users
  - Obligation to provide **effective portability of data**
- Unfair favourable treatment
  - Obligation to allow business users from **promoting offers to their customers**, and from concluding contracts with these customers **outside of the gatekeeper's platform or service**
- Unfair access conditions
  - Obligation to ensure **fair and non-discriminatory conditions** of access to business users to app stores
- Unfair advertising related practices
  - Provide advertisers and publishers with information concerning **the price paid by the advertiser** and **the price paid to the publisher** for the impression of the given ad

# Recovery and Resilience Facility Plans

- The EU financial assistance from the €672.5 billion Recovery and Resilience Facility aims to power the European economic recovery by supporting member states' **reforms and investment** projects. The measures approved in the national plans are centred around six policy areas ('pillars') set out in the regulation establishing the Recovery and Resilience Facility. The areas include green & digital transition, smart, sustainable and inclusive growth, social and territorial cohesion.
- Individual member states' measures to achieve recovery and **enhance the EU's resilience** include, for example, decarbonisation of industry, building renovation, digitalisation of public administration and reskilling of the labour force. The plans also address the country-specific recommendations identified in the course of the 2019 and 2020 European Semester discussions.
- Economic and finance ministers adopted mid July the first batch of Council implementing decisions on the approval of national recovery and resilience plans. **AU, BE, DA, FR, D, GR, IT, LT, LU, PT, SK and ES** got the green light for the use of EU recovery resilience funds. The adoption of Council implementing decisions permits MS to sign/grant/loan agreements allow - 13% pre-financing.