

# Software in the European Regulatory Landscape

**“Protecting the most vulnerable?”**

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# Regulations Presented Today (RPT)

Digital Markets Act (**DMA**)

Cyber Resilience Act (**CRA**)

Product Liability Directive (**PLD**)

Digital Operational Resilience Act (**DORA**)

Digital Services Act (**DSA**)

**Links at the end of the presentation**

# Very Important Meanings (VIM)

Trilogue (informal & provisional)

- Parliament (rep people)
- Council (rep governments)
- Commission (cabinet)

EU Single Market (not VAT)

Enter Force

In Application / Applies

Acts vs. Directives

Commercial Activity

Open Source Stewards

Market Surveillance

Information and Communication Technology (ICT)

Regulatory Capture vs. Malicious Compliance

# Digital Markets Act (DMA)

TIMELINE: Applied beginning March, 2024

REGULATES: Gatekeepers (Alphabet, Amazon, Apple, Bytedance, Microsoft, Meta)

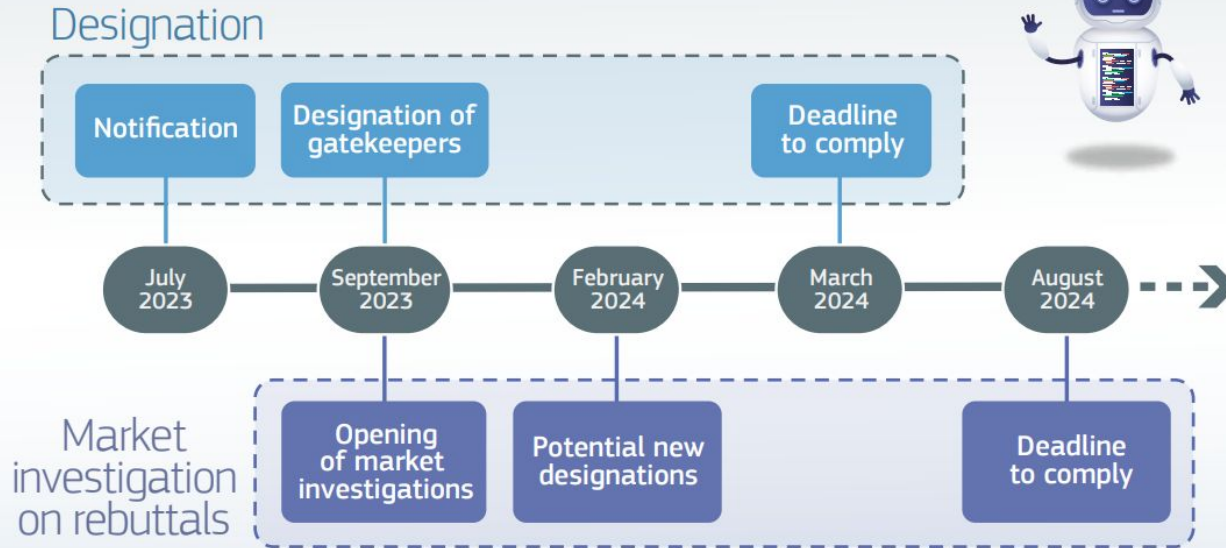
IMPACTS: App Stores, Browsers, Ad Networks, Operating Systems, etc.

The Digital Markets Act levels the playing field and takes a step toward removing technological barriers put in place by gatekeepers to protect their monopolies. Note the phrasing in the act:

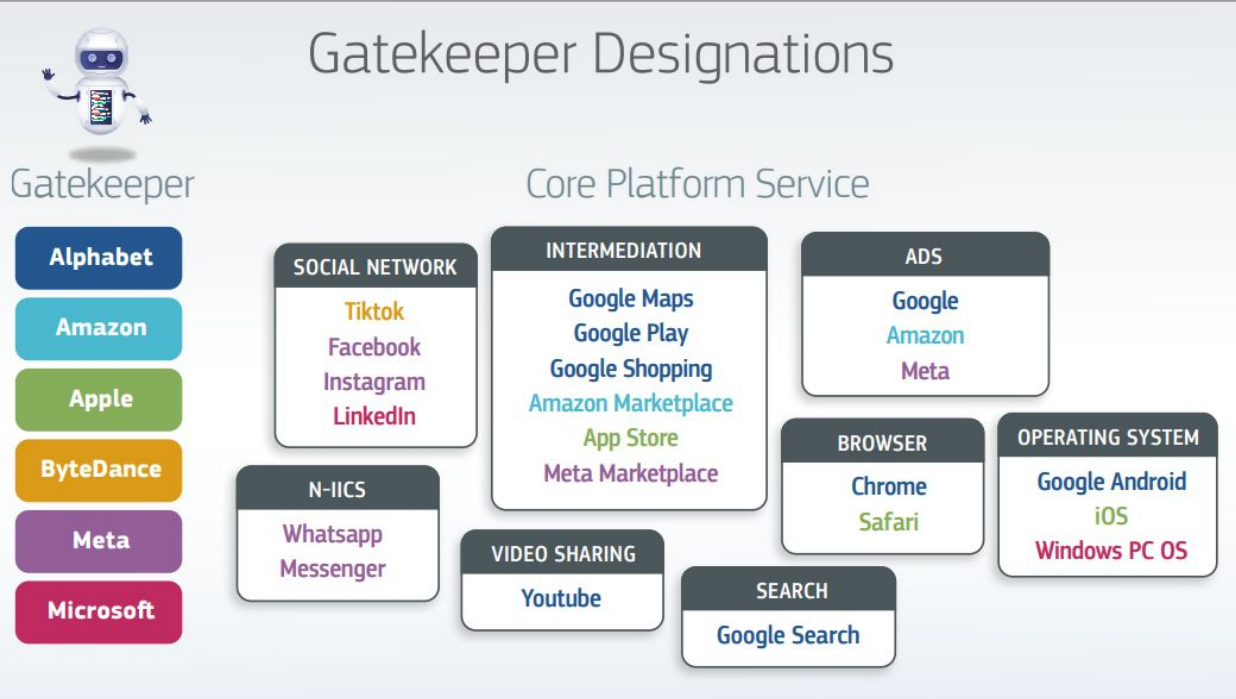
“Regulation [...] on contestable and fair markets in the digital sector [...]”

# Digital Markets Act (DMA)

## DMA timeline



# Digital Markets Act (DMA)



# Digital Markets Act (DMA)

## Latest News:

- **Apple**
  - App Store rules require 1m EUR bond
  - PWA no longer installable on iOS
- **Microsoft**
  - Decided of own volition NOT to ship Edge by default, in advance of a summary judgement
- **Google**
  - More consent windows, limitation of feature with regard to searching

# Digital Markets Act (DMA)

## EXTRA CREDIT

- Market Surveillance can flag “malicious compliance”, and inform regulatory bodies - which can fine and/or adjust regulations
- Japan is currently investigating similar changes in its jurisdiction
- Landmark legal battle in the US Between Apple and Epic



# Cyber Resilience Act (CRA)

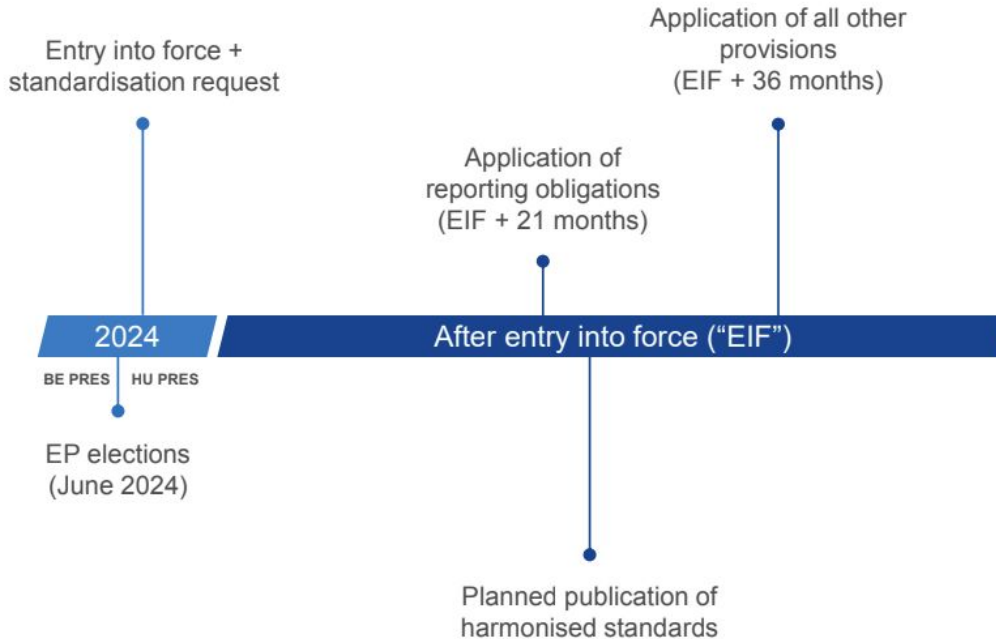
TIMELINE: Final vote likely in September/October 2024

REGULATES: Commercial activity, OSS, Software Liability

IMPACTS: Businesses, OSS Stewards, Software as a Product

“The Cyber Resilience Act mandates that products with digital elements will only be made available on the market if they meet specific essential cybersecurity requirements. It requires manufacturers to factor cybersecurity into the design and development [and maintenance] of products with digital elements.”

# Cyber Resilience Act (CRA)

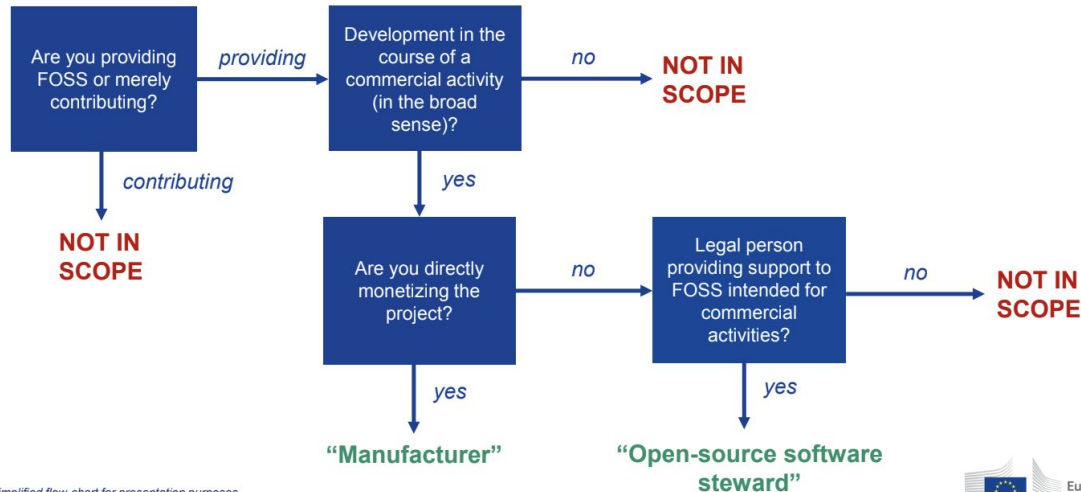


# Cyber Resilience Act (CRA)

- Cybersecurity rules for the placing on the market of hardware and software
- Obligations for manufacturers, distributors and importers
- Cybersecurity essential requirements across the life cycle
- Harmonised standards to follow
- Conformity assessment – differentiated by level of risk
- Reporting obligations
- Market surveillance and enforcement

# Cyber Resilience Act (CRA)

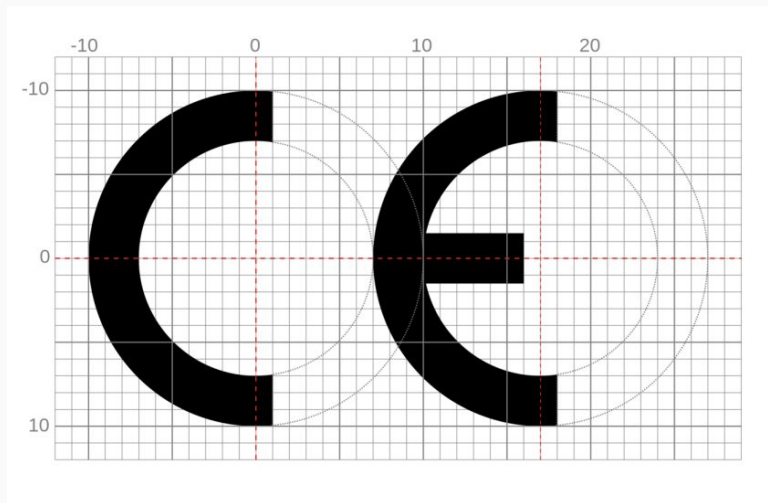
Is your open-source project covered?\*



\* Simplified flow-chart for presentation purposes.

# Cyber Resilience Act (CRA)

If you are a “Steward”,  
you **MAY NOT** apply a CE  
certification to your software,  
because it is not a product for  
sale on the single market  
and you are therefore not a  
Manufacturer. In all other  
cases, you **MUST** certify your  
conformity...



# Product Liability Directive (PLD)

**TIMELINE:** Still in revision, likely enters force in 2025 (40 years after previous)

**REGULATES:** Manufacturers of Products with Digital Elements

**IMPACTS:** Protects software consumers (the most vulnerable)

**IRONY:** It would appear to shift liability from e.g. Apple to the manufacturers of the software that is installed by users on their devices, making the 1m Bond requirement of Apple's new 3rd Party Appstore requirement a moot issue.

Software is now regarded as a product, comparable to hardware and vendors have now similar liabilities.

# Digital Operational Resilience Act (DORA)

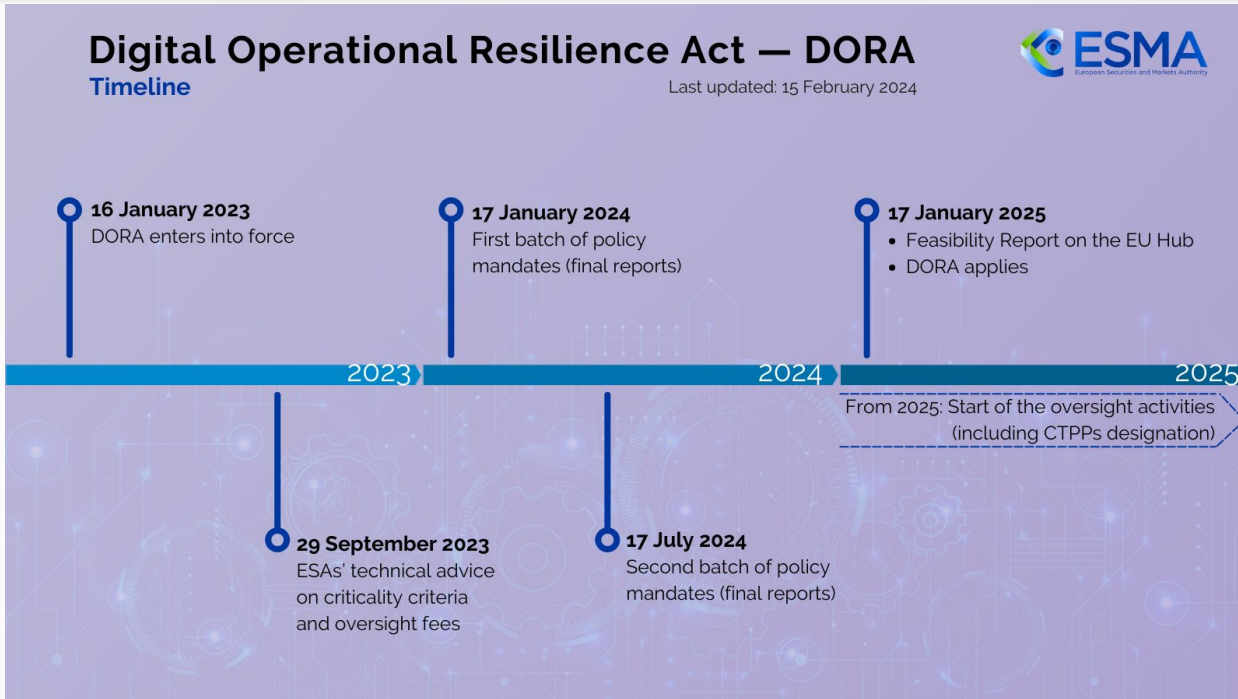
TIMELINE: Application begins January 17, 2025

REGULATES: Financial sector and their ICT service providers

IMPACTS: Risk management, liability transfer, reporting, oversight

“The financial sector is increasingly dependent on information and communication technology (ICT) tools and systems to deliver its financial services, for which they increasingly rely on ICT service providers. This may expose financial entities to potential ICT (third-party) risk because the delivery of their financial services relies on entities who are not directly supervised nor subject to the same regulatory frameworks (i.e. when the ICT service providers are not financial entities themselves).”

# Digital Operational Resilience Act (DORA)





# Digital Operational Resilience Act (DORA)

If you provide services as an ICT to an entity within the financial services industry operating within the European Single Market, you **MUST** be compliant on Jan 17, 2025.

**Challenge:** You won't know until July 2024 what all you **EXACTLY** have to comply with.

# Digital Services Act (DSA)

TIMELINE: In application since February 17, 2024

REGULATES: Illegal content (including goods and services), safeguards users, protection of minors

IMPACTS: providers, cloud services, messaging, marketplaces, social networks, search  
Carved out for companies with less than 50 employees and 10m past year revenue.

“The Digital Services Act (DSA) regulates the obligations of digital services, including marketplaces, that act as intermediaries in their role of connecting consumers with goods, services, and content. It better protects users by safeguarding fundamental rights online, establishing a powerful transparency and accountability framework for online platforms and providing a single, uniform framework across the EU.”

# Digital Services Act (DSA)

It can be seen as the “Human Rights GDPR”, where, instead of protecting the Personally Identifiable Information (PII) of Citizens and Residents, it serves as a watchdog to protect consumers (especially children) from:

- illegal online activity
- illegal marketplaces / illicit sellers
- lack of transparency
- dark patterns
- not having access to complain and seek compensation

# Digital Services Act (DSA)

Note: What constitutes illegal content is defined in other laws either at EU level or at national level – for example terrorist content or child sexual abuse material or illegal hate speech is defined at EU level. Where a content is illegal only in a given Member State, as a general rule it should only be removed in the territory where it is illegal.

This is the salient part of the European Legislative Process: Regulations that are tightly coupled with each other to provide Law in Depth.

# Links

## Trilogue

[https://www.europarl.europa.eu/thinktank/en/document/EPRS\\_BRI\(2021\)690614](https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI(2021)690614)

## Digital Markets Act

<https://eur-lex.europa.eu/eli/reg/2022/1925>

## Digital Markets Act Case Decisions

<https://digital-markets-act-cases.ec.europa.eu/search>

## Cyber Resilience Act

<https://berthub.eu/cra/cra-coreper-en23.pdf>

## Cyber Resilience Act Custom GPT

<https://chat.openai.com/g/g-KD6c9J7m1-european-cyber-resilience-act-knowledge-hub>

## Apple vs. Epic

<https://www.reuters.com/legal/us-supreme-court-snubs-epic-games-legal-battle-with-apple-2024-01-16/>

## THE Blue Book (CE and Product Information.)

[https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C\\_.2022.247.01.0001.01.ENG](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C_.2022.247.01.0001.01.ENG)

## Product Liability Directive (Latest Text, full of revisions.)

<https://data.consilium.europa.eu/doc/document/ST-5809-2024-INIT/en/pdf>

## Digital Operational Resilience Act

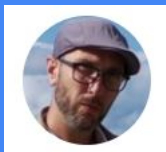
<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32022R2554&qid=1709117381921>

## Digital Services Act

[https://ec.europa.eu/commission/presscorner/detail/en/qanda\\_20\\_2348](https://ec.europa.eu/commission/presscorner/detail/en/qanda_20_2348)

# Much too much too much too much?

Get in touch with my company's security and regulatory specialists to identify your compliance "opportunities" today - and be prepared for the future before it takes you off guard, off line, or out of business in Europe.



Connect with me on LinkedIn to get a copy of these slides, and find out how we can help you!



 **CrabNebula**