

COMPARATIVE ANALYSIS

Digital Services Act vs. **PL 2630/20**

b/luz





Summary



You can navigate between pages

Introduction	3
Methodology	4
Scope	5
Providers' liability	6
Risk management	7
Duty of care	8
Security protocol	9
Content moderation	10
Transparency measures	11
Digital advertising on platforms	12
Safety of minors online	13
Messaging services	14
Competent authorities	15
Fines & Penalties	16
Date of applicability	17
Other topics	18



Introduction

What is this report about?

It is a comparison between EU's Digital Services Act (DSA) approved on October 2022 vs the Brazilian Bill No. 2,630/2020 (popularly known, the "Fake News" Bill) currently pending Legislature approval.

What is the DSA?

The DSA, enacted in the European Union, regulates service providers' liability for content published on the internet.

What is the Bill 2630?

The Bill, currently pending Legislature approval. regulates, among other topics, the obligations of digital platforms, search engines, and messaging apps.

What is the object of this report?

This report aims to identify what points in the Brazilian Draft Bill were inspired in the DSA (mentioned 26 times in the draft's report) and what points are unique in the Brazilian law.

Authors

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Methodology

How was the report prepared?

First, we mapped the topics addressed in Bill 2630. Then, we located the provisions in the DSA that also address such topics. Finally, we analyzed the converging and diverging points in both statutes.

Which versions were used in this study?

The published version of the DSA and PRLP n. 1 do PL 2630/20, published by Orlando Silva on April 27, 2023.

Compatibility Thermometer



What is the consistency rate?

It is a tool used to compare the levels of consistency and similarity between the provisions of the DSA and Bill 2630. It is divided into 4 levels:

Consistent

The DSA and the Bill bear a high degree of similarity in the rationale, core, scope, and the application of the provision considered.

Fairly consistent

The DSA and the Bill bear a high degree of similarity in the rationale, core, and the scope of the provision considered; however, the details governing its application differ.

Fairly inconsistent

The DSA and the Bill bear several differences with regard to scope and application of the provision considered, however its rationale and core presents some similarities.

Inconsistent

The DAS and the Bill bear a high degree of difference with regard to the rationale, core, scope and application of the provision considered.

Scope



DSA

Bill 2630

Arts. 2 and 3 (g)

Arts. 2 and 3

WHAT DOES IT SAY?

The DSA applies to intermediaries providing services to recipients located in the EU. Thus, intermediary services, hosting services, online platforms and very large platforms shall follow this law

It applies to providers offering services to Brazilians, and which have, on average, 10+ million users/mo.

According to the Bill, service providers are social networks, search engines, and instant messaging apps (in specific situations, it also includes service providers offering on-demand content)

DIFFERENCES

While in the DSA the obligations of service providers vary according to their role, size and impacts caused on the web ecosystem, the Bill proposes an uniform law that applies to all providers, without adopting a proportionality system for the obligations ([Access a summary table on proportionality here](#))

According to the DSA, intermediary services have fewer obligations than hosting services, which have fewer obligations than online platforms, which have fewer obligations than very large platforms (with 45+ million active users in EU/mo).

SIMILARITIES

The obligation to comply with the law under both statutes refer to services provided to people residing in EU or Brazil; service providers not necessarily have to be established in these countries to be accountable.

Providers' liability



DSA

Bill 2630

Chap. II

Art. 6

WHAT DOES IT SAY?

Overall, in terms of accountability, the DSA maintains a liability safeguard to platforms if users disseminate illegal content. Only when the service providers become aware of the illegal content, they shall act. The DSA also states that platforms do not have a general obligation to monitor the content

It says that service providers can be held jointly liable, and shall indemnify for any losses caused by third-party content, both in cases where the content is paid or in case of non-compliance with their duty of care, while the security protocol mechanism lasts

DIFFERENCES

- The DSA updated the liability regime adopted in the e-Commerce Directive, i.e., its assigns the responsibility to service providers if they know about the illegal content, and do not remove it. It formalized the "notice and action" mechanism, which resembles Article 19, of the Brazilian Civil Framework for the Internet ("judicial notice and takedown").
- On the other hand, the regime adopted by the Bill is quite broad, and it obliges service providers to act vigilantly, in order to prevent being held jointly liable
- In practice, the regime adopted in the Bill obliges platforms to analyze each content before publishing them
- The DSA, on the other hand, expressly states that service providers do not have the obligation to monitor or perform active fact-finding procedures
- Unlike the Bill, the DSA does not impose specific liability on paid content

SIMILARITIES

Both statutes acknowledge that service providers should be liable for illicit content. But, as mentioned above, they differ on how such liability is applied, and when service providers start becoming liable

Risk management



DSA

Bill 2630

Art. 11 - 48

Art. 7 - 10

WHAT DOES IT SAY?

The DSA obliges service providers to conduct due diligence activities. The obligations are specific, more detailed, scaled, and vary according to the type and size of the company. E.g.: the DSA establishes obligations to provide a contact channel to users and authorities, and conduct certain actions whenever the platform becomes aware of illegal content.

The Bill establishes a uniform risk management mechanism for all platforms, regardless of their size and nature of services provided. It states that a future regulation will be enacted, determining certain parameters, thus showing the level of subjectivity of the measures to be adopted. E.g., the obligation to conduct a risk assessment, but the guidelines for evaluating it are pending regulation

DIFFERENCES

- Unlike the DSA, the Bill sets out standardized obligations, i.e., without any proportionality in terms of risk management measures to be taken according to the platform size and type of services provided
- The DSA, particularly for very large platforms (45+ million active users/mo. in the EU) establishes stricter obligations. E.g., platforms shall conduct a risk assessment and take risk mitigation measures to mitigate the identified risks
- The DSA provides more details on how the risk mitigation measures should be implemented

SIMILARITIES

- Despite the lack of a progressive mechanism with regard to the obligations, both statutes include risk assessments and mitigation mechanisms
- Platforms shall conduct regular assessments of systemic risks arising from their operations (including algorithmic systems)
- They also need to implement reasonable, proportional and effective risk mitigation measures
- Both statutes provide that the risk assessment should be annually reviewed by an independent audit firm

Duty of care



DSA

Bill 2630

art. 25, 27, 28, 34, 35, 37

art. 11

WHAT DOES IT SAY?

The DSA does not expressly include the term "duty of care"; also, it does not have a specific provision in this regard. It establishes several obligations for platforms to prevent and redress damage caused to users, spread out in several of its provisions

There is a specific Section covering the platforms' duty of care. It states that service providers should act diligently to prevent and mitigate illegal practices on their platforms

DIFFERENCES

- Various provisions under the DSA establish different obligations concerning specific practices that should be taken by platforms to prevent and redress damage, thus reducing the chance of them acting subjectively
- In regard of the duty of care, in the Bill, there are several situations that may be interpreted subjectively. In practice, the service providers will be deciding what is considered illegal or not

SIMILARITIES

Despite different degrees of subjectivity, both statutes establish measures to prevent and redress damage caused to users

Security protocol



DSA

Bill 2630

art. 48

art. 7 – 10

WHAT DOES IT SAY?

According to the DSA, there is a “crisis protocol”, which includes response mechanisms, that should be implemented by platforms for situations that may affect public safety or public health

According to the Bill, there is a “safety protocol” that should be implemented by platforms in case of imminent damaging risks

DIFFERENCES

- The DSA clearly establishes the type of governance that shall be adopted for the procedure set forth in Art. 48. The Digital Services Committee is responsible for requesting the implementation of crisis protocols and the EU Commission shall coordinate and monitor its implementation
- The Bill does not provide much information about what exactly is the safety protocol and how it should be applied. Also, it states that this topic will be regulated in the future, thus establishing a regulatory gap. E.g.: the Bill does not inform what public entity is responsible for enforcing the protocol, and monitoring the implementation of the requested measures
- The DSA’ crisis protocol applies “strictly limited to extraordinary circumstances affecting public safety or public health”
- The Bill, however, states that the protocol may apply when providers fail their obligations regarding systemic risk analysis and mitigation, as well as in imminent risk situations (these legal concepts are broad and subjective)

SIMILARITIES

Both statutes understand that there may be situations where a regular risk management is not enough, thus requiring greater rigor and promptness on the platforms’ side

Content moderation



DSA

Bill 2630

art. 3 (t), 14 (1), 15(1), 34(2)(b), 35(1)(c), 42(2)(a)

art. 16, 17, 18, 19

WHAT DOES IT SAY?

In the DSA, moderation issues are addressed in various provisions. It states that content moderation aims to detect and combat illegal content. It establishes certain practices that should be adopted by platforms, to dissuade or suspend accessing such content

The Bill has a specific Chapter on content moderation. According to it, content moderation is the use of certain rules to make the content unavailable (or diminish access to it)

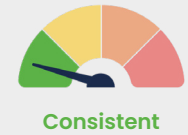
DIFFERENCES

- The Bill has a specific chapter on this topic, whereas the DSA addresses content moderation in several sparse provisions
- While the DSA specifies the type of content that should be moderated, the Bill does not specify it. It only refers to the procedures that should be followed in this regard
- Unlike the DSA, that establishes the definitions and requirements for content moderation, the Bill states that this topic will be further regulated

SIMILARITIES

Both statutes provide for transparency rules and procedures for users to be able to appeal against decisions made by platforms regarding content moderation.

Transparency measures



DSA

Bill 2630

art. 15, 24, 27, 39, 42

art. 20, 21, 22, 23

WHAT DOES IT SAY?

The DSA does not address transparency in a specific section. This topic is addressed in various provisions. E.g., the platform's duty to send transparency reports. Also, recommendation systems and online advertising need to be transparent

The Bill has a specific chapter on the duty of transparency, where it establishes what should be included in the platform's terms of use, the mechanisms for content recommendation, targeted ads, among others

DIFFERENCES

Despite requiring transparency reports, the Bill states that the guidelines for issuing such reports will be published in the future, under a specific regulation; therefore, the information in the Bill is broader if compared to the DSA

SIMILARITIES

- Both statutes have similarities regarding transparency reports, and the principal is the recommendation algorithm mechanisms
- In brief, platforms need to explain why certain content is suggested to users
- There is also transparency requirements for online advertising, such as providing a repository with information such as: who is responsible for the Ad, and the main parameters used to determine the targeted audience

Digital advertising on platforms



DSA

Bill 2630

art. 9, 34, 39, 44, 46

art. 6, 7, 18, 20, 26, 27, 28, 29, 30, 34, 35, 36, 40, 47

WHAT DOES IT SAY?

The DSA establishes transparency measures for Ads placed on platforms. It also provides the rules for digital advertising in several provisions scattered throughout the text

The Bill establishes transparency measures for Ads placed on platforms. There is a possibility of platforms being jointly liable for paid content. There are rules on digital advertising set forth in several other provisions of the Bill.

DIFFERENCES

- According to the Bill, platforms may be joint liable for any losses caused by paid content, while the DSA provides for an exclusion mechanism after the platform is notified, similar to Article 19 of the Brazilian Civil Framework for the Internet (“judicial notice and takedown”)
- According to the DSA, very large platforms (+45 million users) have more transparency obligations, e.g., create a repository including information about the Ads published on the platform
- According to the Bill, foreign advertisers need to have legal representatives in Brazil. The DSA only requires legal representation of platforms subject to the law, but they need to collect information about the advertisers
- According to the Bill, fines imposed on illegal paid content may threefold the fines imposed on organic content

SIMILARITIES

- Both statutes forbid publishing Ads targeted to children & adolescents
- Both statutes require systemic risks analysis, advertising policies, transparency reports and the identification of advertisers

Safety of minors online



DSA

Bill 2630

art. 14, 28, 34, 35, 40

art. 7, 11, 39, 40

WHAT DOES IT SAY?

The DSA establishes the measures that should be taken by platforms to protect minors, which will be further detailed by the Committee. Child and teen protection is also included in the systemic risk analysis. Many other provisions address this topic in the DSA

Chapter X of the Bill is entirely dedicated to this topic. It describes the privacy, protection and security measures that shall be undertaken by platforms accessible by minors. There is a prohibition to publish targeted ads to minors, the inclusion of this topic in the duty of care, and in the systemic risk analysis

DIFFERENCES

- According to the Bill, platforms should act diligently to prevent the crimes foreseen in the applicable laws against children and teens, and remove all illegal content within 24 hours upon issuance of the court order, similar to what is provided for in the German law (NetzDG)
- The DSA is more flexible in terms of time to remove the illegal content: "without undue delay"

SIMILARITIES

- Both describe the identification and risk mitigation measures in terms of children & teen protection online
- Both statutes forbid publishing ads targeted to children & adolescents.

Messaging services



DSA

Bill 2630

Consideration (14)

art. 41, 42, 43

WHAT DOES IT SAY?

Private messaging services are not regulated by the DSA, but it applies to public groups and transmission lists

Chapter X of the Bill is entirely dedicated to this topic. It establishes the measures, such as limiting circulation, prior consent for inclusion in groups, rules for automated business accounts, and procedures for criminal investigation

DIFFERENCES

- The DSA does not have specific provisions on private messaging services
- The Bill describes the measures that should be taken to reduce message circulation
- The Bill regulates the procedures that will be taken for the criminal investigation of the reported content

SIMILARITIES

Both statutes regulate open groups & transmission lists

Competent authorities



DSA

Bill 2630

art. 43, 49, 50, 51, 56, 61, 62, 63, 64, 65, 66, 67, 68, 69

art. 51, 52, 53

WHAT DOES IT SAY?

The EU Commission is responsible for supervising very large online platforms. The DSA states that each EU Member State shall appoint a Digital Services Coordinator. It also created the European Board for Digital Services which will supervise digital services and act as mediator among Digital Services Coordinators. This topic is addressed several times in the DSA

This topic is addressed under Chapter 15. The Internet Steering Committee (CGI) will be the responsible agency for creating the guidelines and supervising the implementation of the measures required by law

DIFFERENCES

- According to the DSA, the EU Commission and the Digital Services Coordinators have the power to initiate investigations, enforce provisional measures and impose penalties
- CGI does not have the power to impose enforcement measures, such as administrative sanctions
- According to the DSA, Digital Services Coordinators shall be politically and economically independent
- The Bill does not mention if more resources will be assigned to the CGI, but it guarantees multisectoral representation in forums relating to the application of law
- According to the DSA, the Commission will charge supervisory fees on very large platform providers
- The Bill does not foresee the collection of supervisory fees from the regulated companies

Fines & Penalties



DSA

Bill 2630

art. 51, 52, 54, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82

arts. 44, 45, 46, 47, 48, 49, 50

WHAT DOES IT SAY?

According to the DSA, if businesses do not comply with the new rules, the Commission and the relevant Digital Services Coordinator may apply financial fines and administrative penalties. There are three types of financial fines **(i)** failure to comply with the regulation: up to 6% of the global turnover of the service provider **(ii)** providing incorrect information: up to 1% of the global turnover of the service provider; and **(iii)** mandatory penalty of up to 5% of the daily average revenue

According to the Bill, financial fines and administrative penalties will be enforced by Court decision. Also, the infringing provider has 24 hours to remove the illegal content under penalty of having to pay a fine ranging from BRL 50 thousand - BRL 1 million. It established a fine up to 10% of the economic group's domestic revenue, and a fine ranging from BRL 10.00 - BRL 1,000.00 per registered user. It grants the right to ample defense, and penalties are progressive

DIFFERENCES

- According to the DSA, services may be blocked up to 4 weeks, and this time may be renewed
- The Bill does not establish suspension times
- The DSA assigned to the Court of Justice of the European Union the task of supervising fines and penalties imposed by the Commission
- The Bill did not assign a body with the task of supervising such procedures
- According to the Bill, service providers have 24 hours to fulfill the Court order requesting the removal of the illegal content, while the DSA uses the term "without unjustified delay"
- Regarding administrative penalties: the Bill does not clarify what body is responsible for enforcing and monitoring the corrective measures, but the DSA assigned this responsibility to the European Commission and to the Digital Services Coordinators

SIMILARITIES

- Both statutes established fines and penalties when service providers fail to comply with the legal provisions
- The punitive measures established in both statutes have a financial and operative approach, e.g.: temporary suspension of the services

Date of applicability



DSA

Bill 2630

art. 92 e 93

art. 60

WHAT DOES IT SAY?

The DSA entered into force in November 2022, and it will become applicable in the following three dates:

- a. Immediately
- b. 4 months after identifying the very large online platforms (over 45 million active users)*
- c. February 2024 for other service providers

If approved the Bill will become applicable in three different dates, according to the topic:

- a. Immediately
- b. 90 days
- c. 1 year

The dates are valid for all services regulated by the law

DIFFERENCES

- In the DSA, the dates of applicability depend on the size of the platform
- In the Bill, the dates of applicability depend on the topic

SIMILARITIES

Both statutes establish three similar dates of applicability

* [Access the list of Very Large Online Platforms published by the European Commission in March/23](#)

Other topics

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Cap VI – PL 2630

PAYMENT OF NEWS CONTENT

Cap VII – PL 2630

PARLIAMENTARY IMMUNITY

Art. 33 – PL 2630

These topics are not addressed in the DSA, but they are in part of the scope of the current version of the Bill 2630

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