

# Social Media Developments in the EU

What you need to know

PLI Conference | San Francisco | 02-27-2025

# Today's Speakers



Lara Bliesner  
Arm



Catalin Cosovanu  
LinkedIn



Jevan Neilan  
Mason Hayes



Dr. Kai Westerwelle  
CMS Rep Office

# Social Media Developments

Introduction

AI Act

Digital Services Act

Digital Markets Act

Data Act

Toolbox for EU Compliance

# Social Media Developments

Introduction

AI Act

Digital Services Act

Digital Markets Act

Data Act

Toolbox for EU Compliance

# Introduction

Regulation on Markets in  
Crypto-assets

Data Act

ePrivacy  
Regulation

PSD3

Database  
Directive

Digital Services  
Act

Artificial Intelligence  
Act

NISD  
2

Platform to Business  
Regulation

Data  
Governance Act

eIDAS2

Cybersecurity  
Act

European Cyber  
Resilience Act

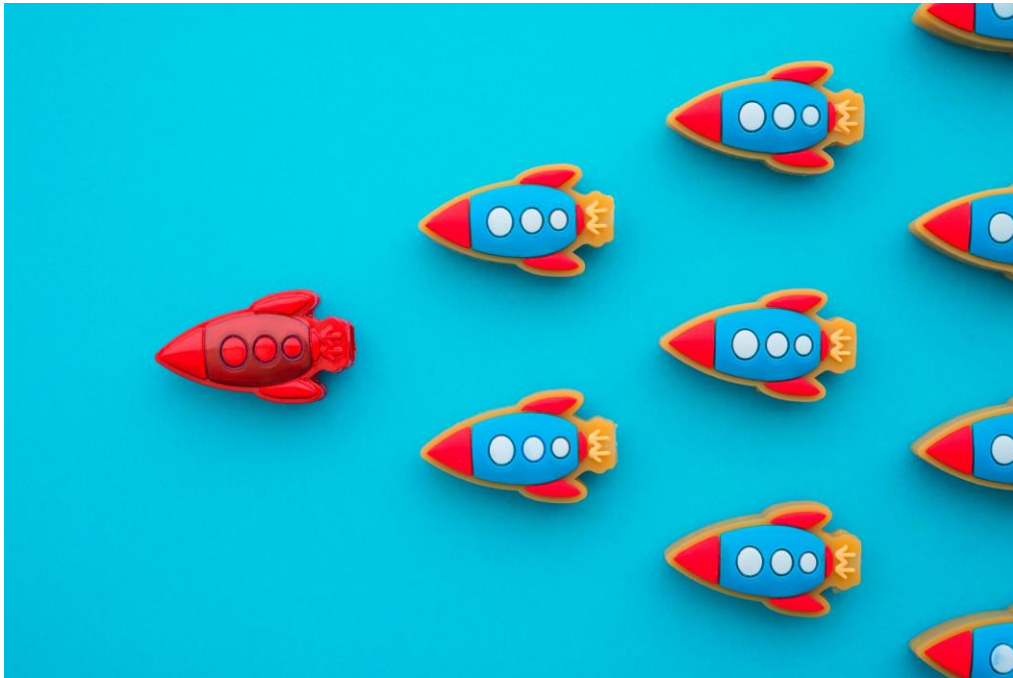
Digital Markets  
Act

EHDS

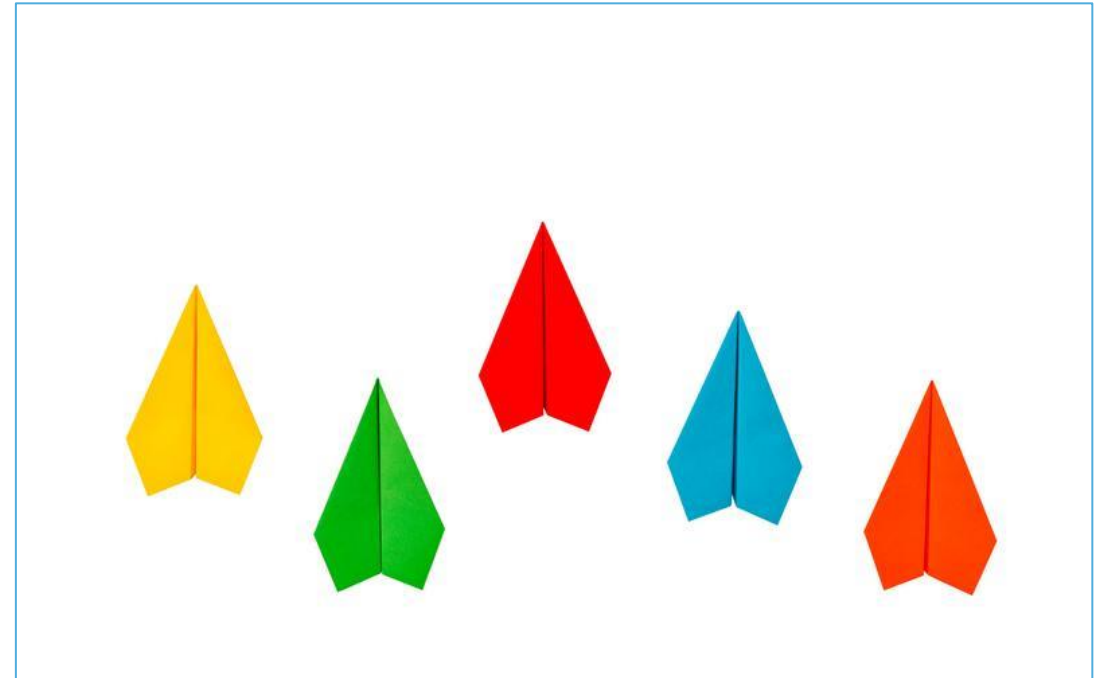
Radio Equipment  
Directive

# Introduction

## Regulation



## Directive



# Introduction



# Social Media Developments

Introduction

AI Act

Digital Services Act

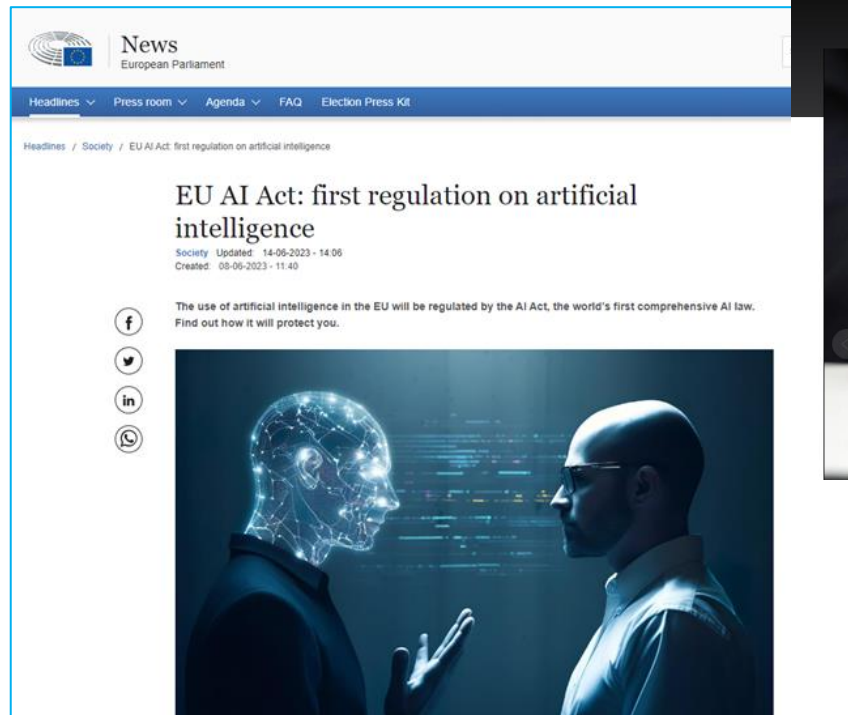
Digital Markets Act

Data Act

Toolbox for EU Compliance

# Artificial Intelligence Act

## A Game Changer?



### Trump rescinds Biden's executive order on AI safety in attempt to diverge from his predecessor



### China takes major step in regulating generative AI services like ChatGPT



By Laura He, CNN

🕒 3 minute read · Published 4:03 AM EDT, Fri July 14, 2023

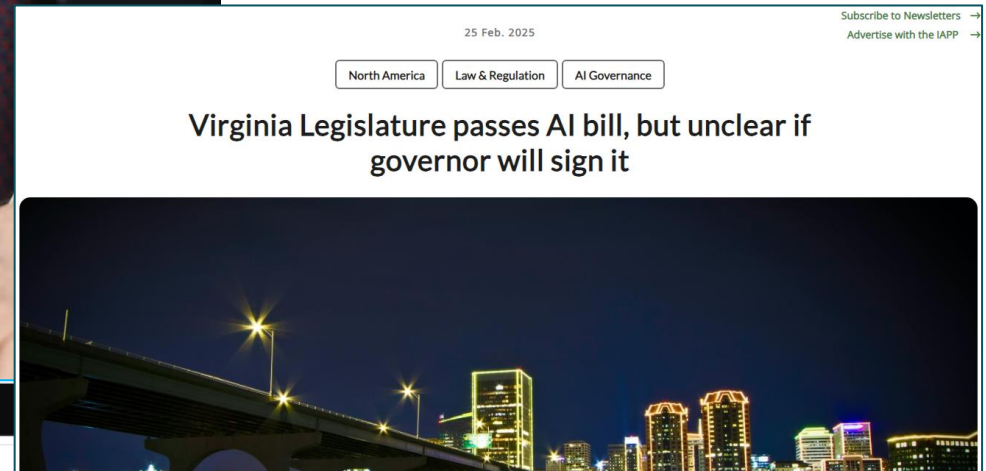


Administration

OCTOBER 30, 2023

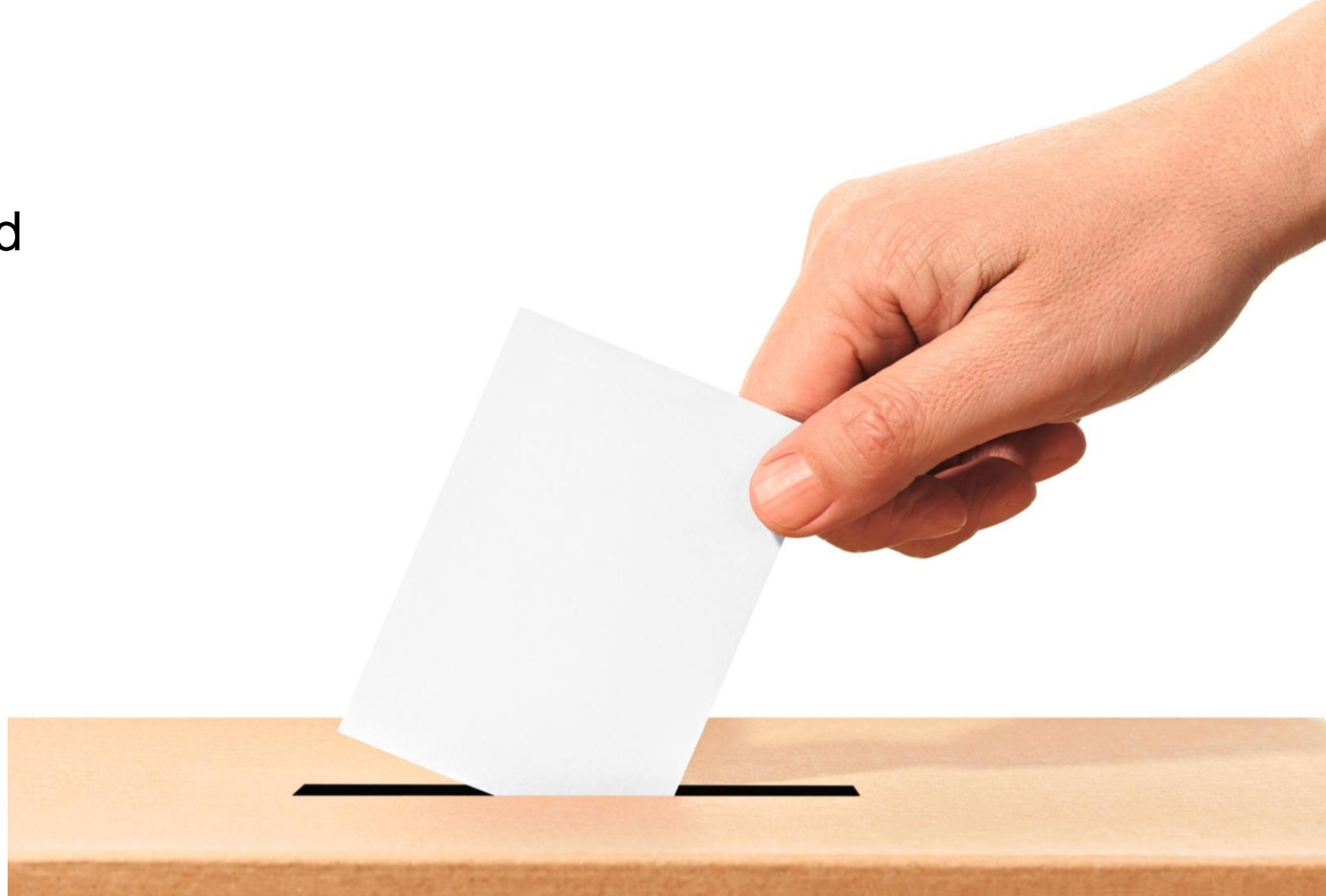
### FACT SHEET: President Biden Issues Executive Order on Safe, Secure, and Trustworthy Artificial Intelligence

🏛️ BRIEFING ROOM STATEMENTS AND RELEASES



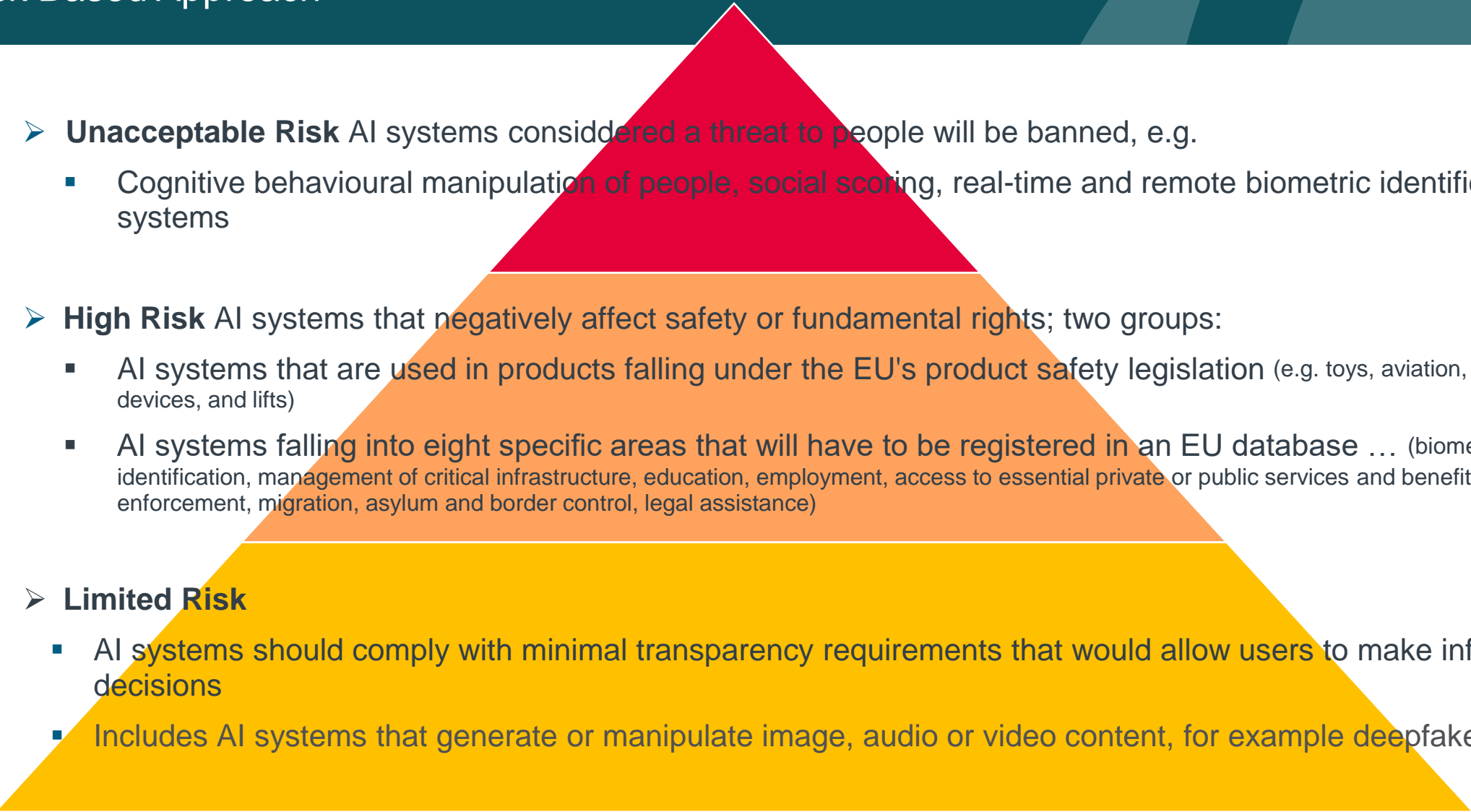
# Poll

Is there a chance for an aligned  
global AI regulation?



# Artificial Intelligence Act

## Risk Based Approach

- 
- **Unacceptable Risk** AI systems considered a threat to people will be banned, e.g.
    - Cognitive behavioural manipulation of people, social scoring, real-time and remote biometric identification systems
  - **High Risk** AI systems that negatively affect safety or fundamental rights; two groups:
    - AI systems that are used in products falling under the EU's product safety legislation (e.g. toys, aviation, cars, medical devices, and lifts)
    - AI systems falling into eight specific areas that will have to be registered in an EU database ... (biometric identification, management of critical infrastructure, education, employment, access to essential private or public services and benefits, law enforcement, migration, asylum and border control, legal assistance)
  - **Limited Risk**
    - AI systems should comply with minimal transparency requirements that would allow users to make informed decisions
    - Includes AI systems that generate or manipulate image, audio or video content, for example deepfakes.

# Artificial Intelligence Act

## Implementation of AI Governance



# Social Media Developments

Introduction

AI Act

Digital Services Act

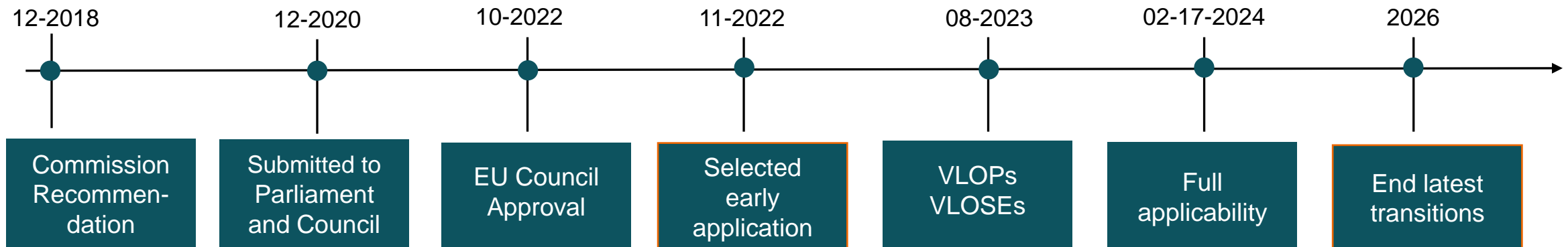
Digital Markets Act

Data Act

Toolbox for EU Compliance

# Digital Services Act

## Timeline



# Digital Services Act

## Scope

### Art. 2:

This Regulation shall apply to **intermediary services** offered to recipients of the service that have their place of establishment or are located in the Union, irrespective of where the providers of those intermediary services have their place of establishment."

"Substantial connection to the Union" (Recital 7)

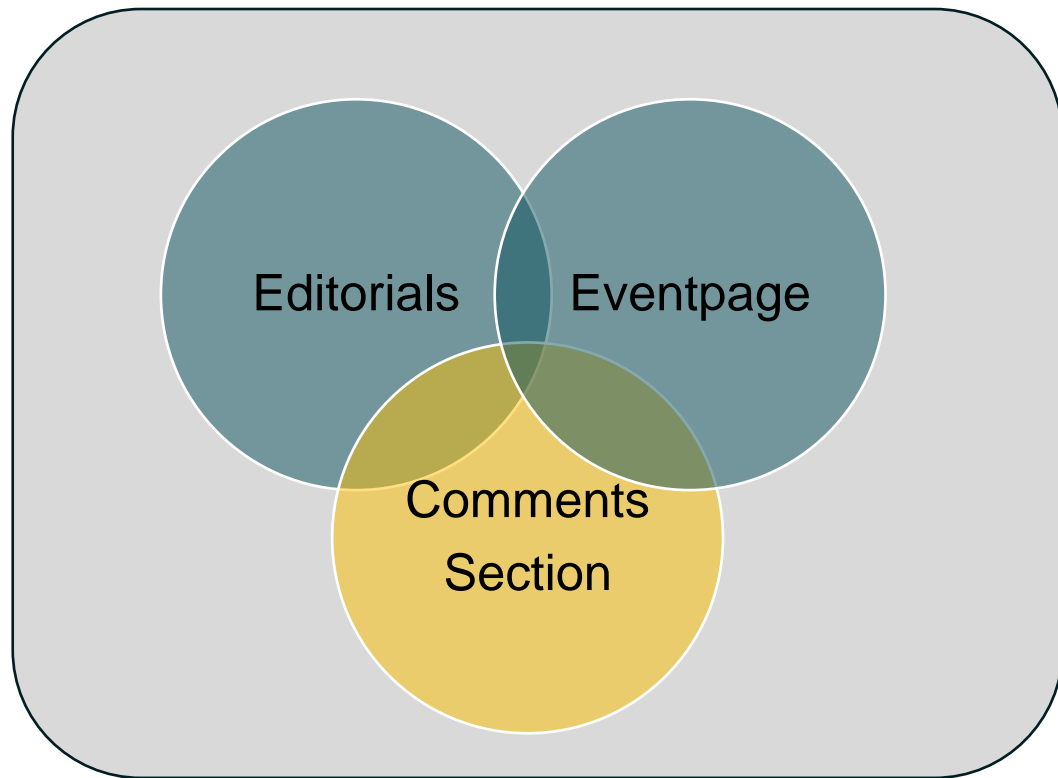
### Art. 3 (g):

'intermediary service' means one of the following information society services:

- (i) a '**mere conduit** service', consisting of the transmission in a communication network of information provided by a recipient of the service, or the provision of access to a communication network;
- (ii) a '**caching**' service, consisting of the transmission in a communication network of information provided by a recipient of the service, involving the automatic, intermediate and temporary storage of that information, performed for the sole purpose of making more efficient the information's onward transmission to other recipients upon their request;
- (iii) a '**hosting**' service, consisting of the storage of information provided by, and at the request of, a recipient of the service ...'

# Digital Services Act

## Scope



\*Recitel 13

**Recitel 28:** "... wireless local area networks, domain name system (DNS) services, top-level domain name registries, registrars, certificate authorities that issue digital certificates, virtual private networks, online search engines, cloud infrastructure services, or content delivery networks, that enable, locate or improve the functions of other providers of intermediary services. Likewise, services used for communications purposes, and the technical means of their delivery, have also evolved considerably, giving rise to online services such as Voice over IP, messaging services and web-based email services, where the communication is delivered via an internet access service."

# Digital Services Act

## Territorial Scope

'Such a substantial connection to the Union should be considered to exist where the service provider has an **establishment in the Union** or, in the absence of such an establishment, where the number of recipients of the service in one or more Member States is significant in relation to the population thereof, or on the basis of the **targeting of activities towards one or more Member States**.

The targeting of activities towards one or more Member States can be determined on the basis of **all relevant circumstances**, including factors such as the use of a language or a currency generally used in that Member State, or the possibility of ordering products or services, or the use of a relevant top-level domain. The targeting of activities towards a Member State could also be derived from the availability of an application in the relevant national application store, from the provision of local advertising or advertising in a language used in that Member State, or from the handling of customer relations such as by providing customer service in a language generally used in that Member State.

... In contrast, mere technical accessibility of a website from the Union cannot, on that ground alone, be considered as establishing a substantial connection to the Union.'

(Recital 8)

"Substantial connection to the Union" (Recital 7)

# Digital Services Act

## Provider Liability

- Important limitation of the liability of Intermediary Service Provider for content (e-commerce directive)
- "Illegal Content is broadly interpreted: '... information, irrespective of its form, that under the applicable law is either itself illegal ... or that the applicable rules render illegal in view of the fact that it relates to illegal activities ...' (Recital 12)

### illegal content

- sharing of images depicting child sexual abuse

## Notice and Take-Down

(Artt. 16 following)

- illegal offer of accommodation services
- illegal sale of live animals

### Legal content

- An eyewitness video of a potential crime should not be considered to constitute illegal content, merely because it depicts an illegal act, where recording or disseminating such a video to the public is not illegal under national or Union law
- Be aware: to be determined on a State level by Service provider !

# Digital Services Act

## Due Diligence Obligation

### Points of Contact

- Designate Single Point of Contact for communication
- Information to be published (local language)

### Legal Representative

- If no establishment in the EU
- Legal or natural person
- In one of the Member States
- Direct liability of the Representative (Art. 13.3)

### Terms

- Must include all information on any restrictions in relation to the use of services
- Clear, plain, intelligible, user-friendly and unambiguous language (higher bar for minors)
- Publicly available and easy accessible
- Local language requirement for VLOP

# Digital Services Act

## Due Diligence Obligations

### User Interface

- Ban of Dark Patterns (e.g. unclear opt-out) (Art. 25 and Recital 67)
- Highest level on privacy protection and security for minors

### Online Advertising Online Market- Places

- High transparency requirements
- Full disclosure of parameters for Profiling
- No advertising based on profiling using sensitive data (ref. to 9.1 GDPR)

### Content Moderation

- Intermediary service providers must report Content Moderation (1x/year)
- Not for "micro and small enterprises" (no reporting) or VLOP (special obligations Art. 34)
- High level notice-and-take-down procedures (Art. 16)

### Dispute Settlement

- Providing of out-of-court certified dispute settlement body
- Not exclusive and no power to impose a binding settlement on the parties

# Poll

Does your company prepare for compliance with the Digital Services Act?



# Digital Services Act

## Special Topics



# Social Media Developments

Introduction

AI Act

Digital Services Act

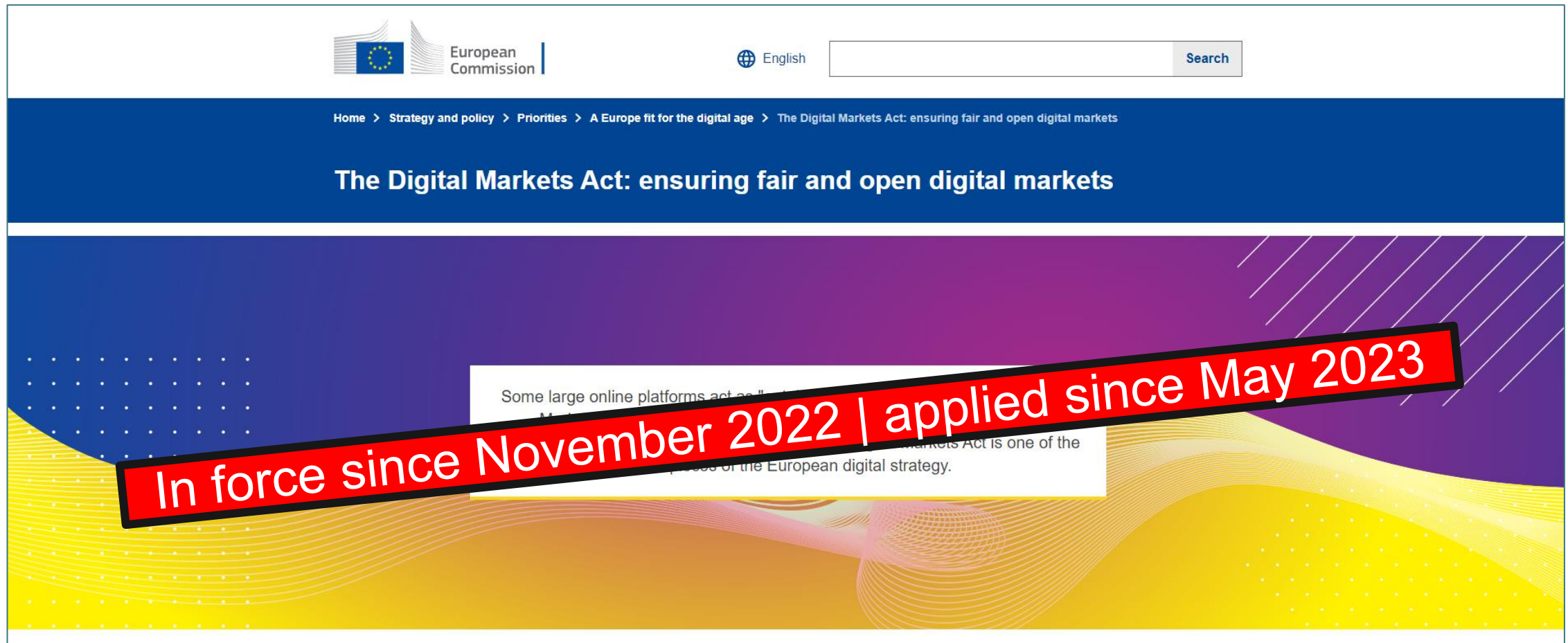
Digital Markets Act

Data Act

Toolbox for EU Compliance

# Digital Markets Act

## Competition Law



# Digital Markets Act

## Gatekeepers



'The Digital Markets Act (DMA) is one of the world's toughest pieces of legislation targeting the world's top technology companies' market clout and is aimed at making it easier for people to move between competing services – such as social media platforms, internet browsers and app stores.'



# Digital Markets Act

## The New Digital Gatekeeper Regulation

- **Objective:** Ensure fair and contestable digital markets by regulating large digital platforms ("**gatekeepers**")
- **Key Gatekeeper Criteria:**
  - EU revenue  $\geq$  €7.5 billion or market cap  $\geq$  €75 billion
  - Core platform service with  $\geq$  45 million monthly EU users
  - Entrenched and durable market position
  - Designated platforms must comply within 6 months of designation
- **Core Platform Services (CPS) Include:** social networks, online intermediation, video-sharing platforms, messaging services

# Digital Markets Act

## Consent Requirements

- **Restricts “gatekeepers” from using personal data across services without obtaining GDPR-compliant end user consent when:**
  - Combining personal data with personal data from other CPS (whether designated or not), any other services provided by gatekeeper, or third-party services
  - Cross-use of personal data between CPS and other gatekeeper services offered separately
  - Processing personal data of end users of third parties, which use gatekeeper CPS, for online advertising purposes

# Digital Markets Act

## Section 5 – Business User Protections

### **Business user rights, including commercial freedom, data access, and consent requirement:**

- Must allow business users to promote offers and conclude contracts with customers outside the platform
- Prohibition on requiring consent for data combination as condition for business user access
- Provide ability to access data generated through platform use

# Digital Markets Act

## Section 5 – Further Obligations related to Advertising

### ➤ **Section 5.2**

- Unless the user consents or the data is anonymized, no:
  - Use for advertising of “data from end users using services of third-parties that make use of core platform services of the gatekeeper”
  - Combination of data across services or third parties.
  - Cross-use of data across “services offered separately”
- Note: high GDPR standards for consent and anonymity also apply in DMA context.

### ➤ **Section 6.8**

- “access to the performance measuring tools of the gatekeeper and the data necessary for advertisers and publishers to carry out their own independent verification of the ad inventory”

### ➤ **Sections 5.9 and 5.10**

- Provide advertisers and publishers access to advertisement information including pricing conditions, price-setting mechanism, price and fees paid by the advertiser and publisher, remuneration paid to the publisher for publishing ads.

# Social Media Developments

Introduction

AI Act

Digital Services Act

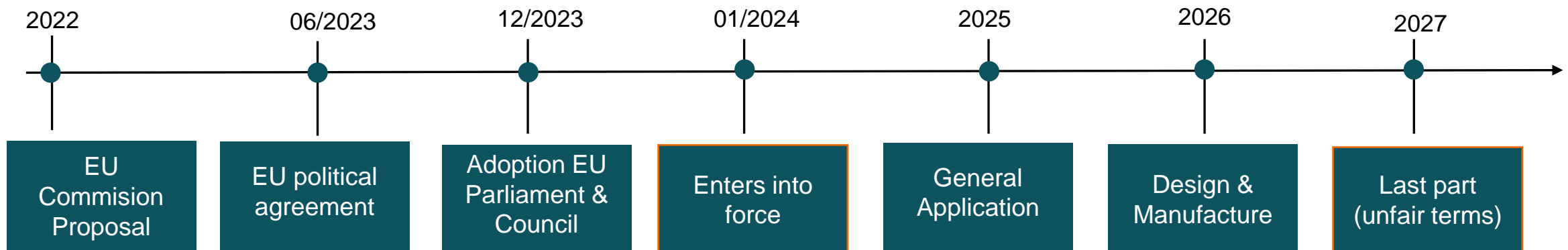
Digital Markets Act

Data Act

Toolbox for EU Compliance

# Data Act

## Timeline



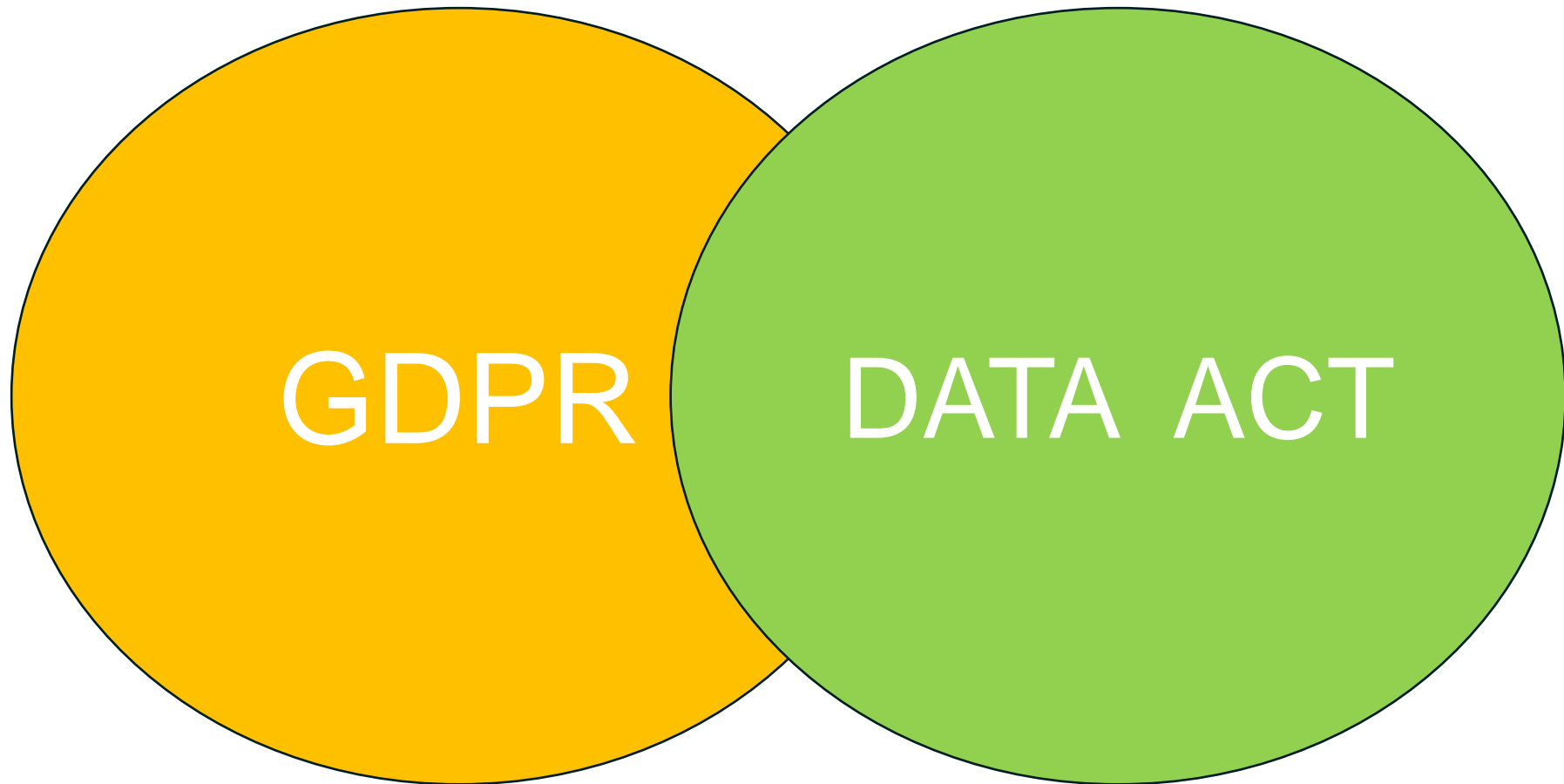
# Data Act

## Take Aways

- Facilitate access to and use of **non-personal data for everybody** the data economy
- Ensure fairness in the allocation of **data value** in the data economy
- Obliges facilitation of data **portability, switching, and interoperability**
- Applies to **personal and non-personal** data
- Applies to manufacturers and providers of **connected products** and services placed on the market in the EU, **data holders** and data recipients in the EU as well as providers of data processing services

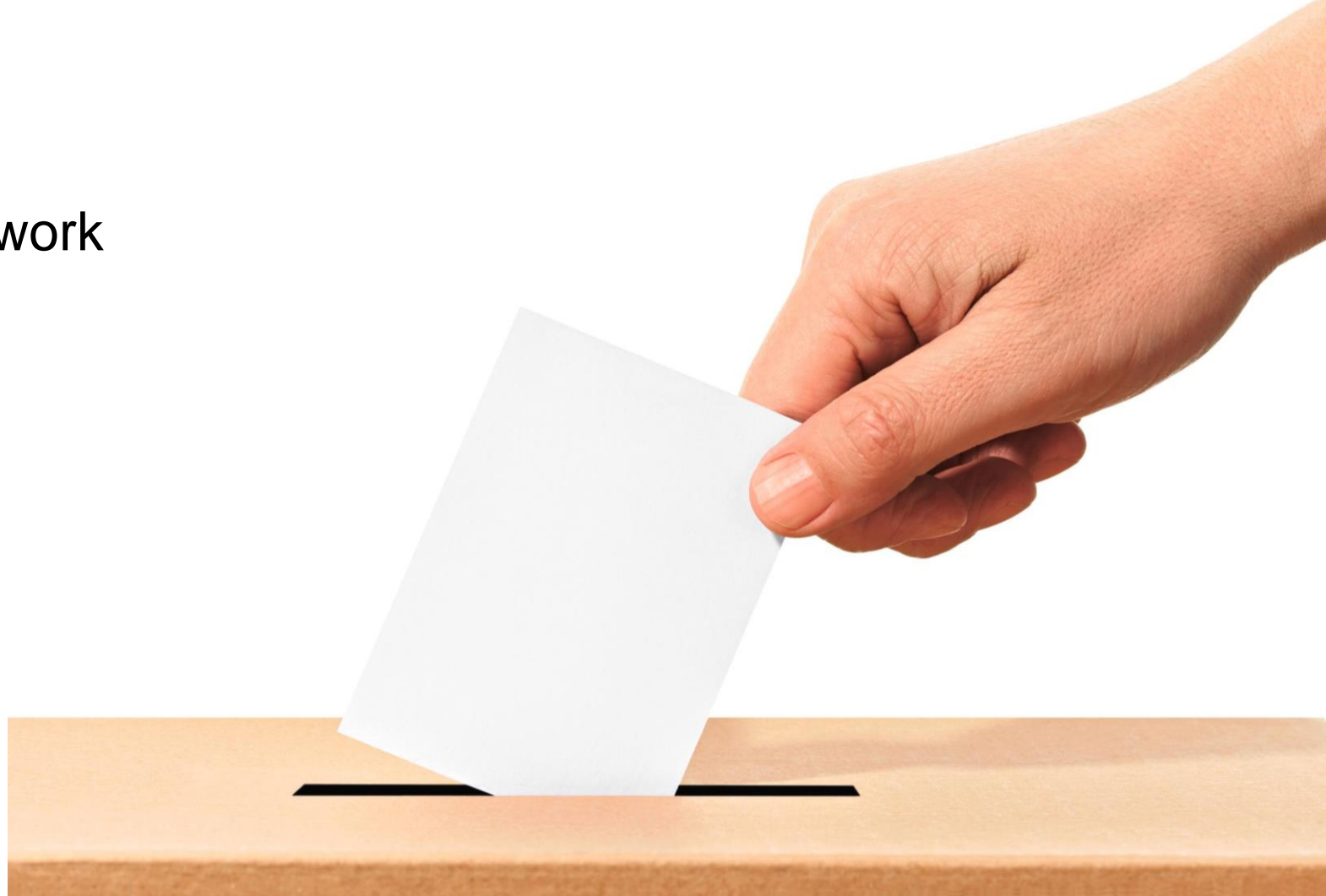
# Data Act

Overlapp with GDPR



# Poll

Will the EU-US Privacy Framework survive the next two years?



# Social Media Developments

Introduction

AI Act

Digital Services Act

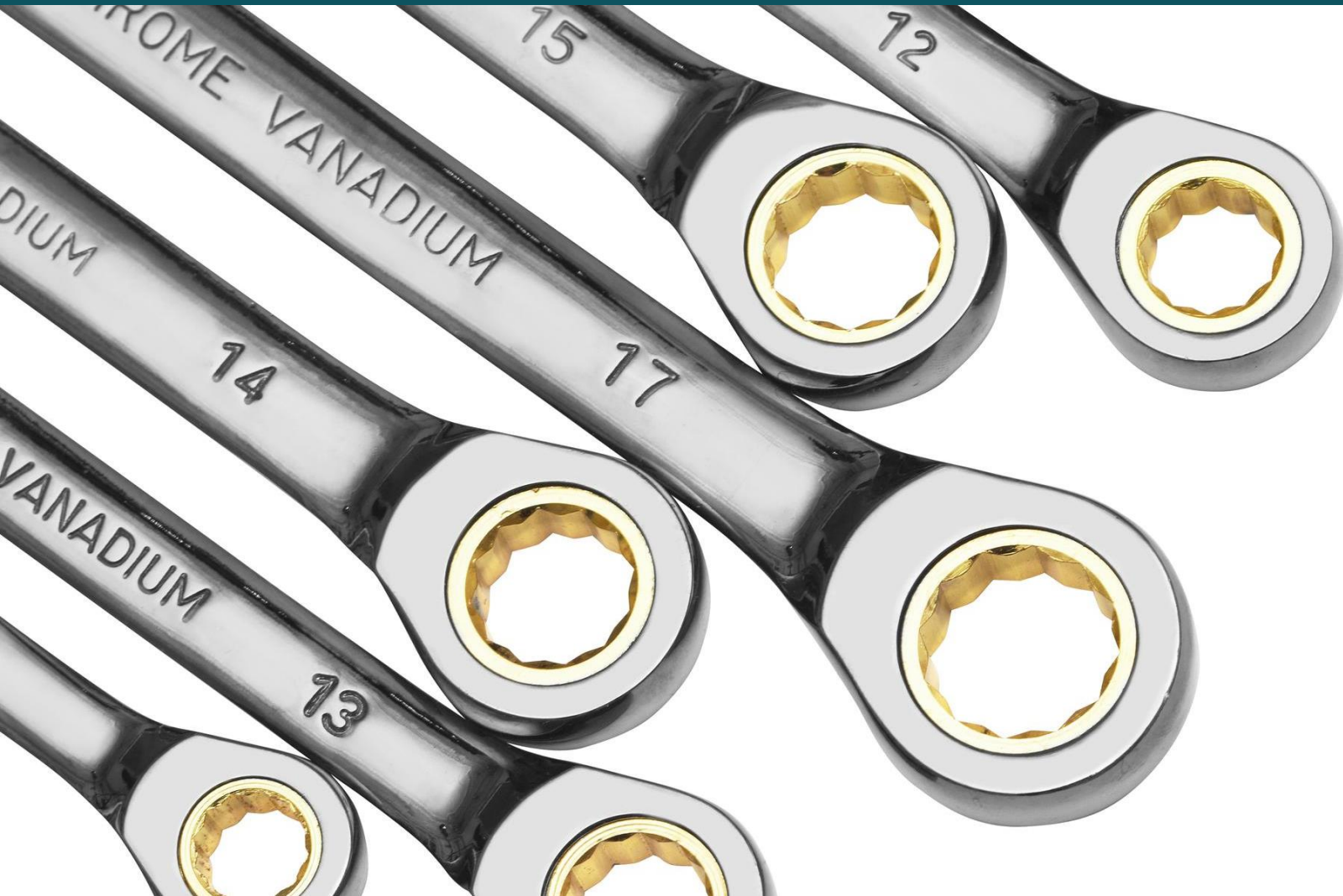
Data Act

Digital Markets Act

Toolbox for EU Compliance

# Toolbox for EU Compliance

Practical Approach



# Social Media Developments

## Questions



# THANK YOU



**Lara Bliesner, Esq.**  
Privacy/Data Protection/Cybersecurity/AI



**Dr. Kai Westerwelle**  
Partner CMS | Privacy & Data  
Protection | Tech Transactions | Int...



**Jevan Neilan**  
Privacy & Data Security | Head of San Francisco,  
Mason Hayes & Curran



**Catalin Cosovanu**  
Senior Director of Product & Privacy,  
Legal at LinkedIn

