MASON HAYES & CURRAN

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Product & Consumer Protection

Mid-year Review 2026

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Welcome

Product & Consumer Protection Mid-year Review 2026

Since the publication of our Annual Review in December 2025, there has been a steady stream of new reforms and regulatory developments in the EU product and consumer law space.

For businesses operating in Ireland and across the wider EU market, this year brings a fresh set of priorities. As safety, sustainability and artificial intelligence increasingly intersect, companies must navigate a new wave of upcoming deadlines, and compliance requirements. To help you stay ahead of these changes, this Review explores several key issues, including:

- Updates to the EU Cosmetics Products Regulation and their impact for stakeholders
- Stricter requirements for sustainability products claims
- Significant changes due to come into effect in 2026 for e-commerce and consumer protection law
- The Guidelines on high-risk AI classification and how they apply in practice, and
- The impact of the Digital Services Act since its implementation two years ago.

We hope you enjoy our Product & Consumer Protection Mid-year Review for 2026.

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Michaela is Head of the Products practice. She advises clients in the pharmaceutical, healthcare, medical device, digital health, cosmetic, video game, software and general consumer products sectors on various regulatory compliance matters. She has particular expertise in wearables and software medical devices.

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Anna is Of Counsel in our Product Regulatory team. She advises clients across a number of sectors on the regulatory frameworks applicable to their products and services throughout their life cycle. She specialises in the regulation of consumer products, food, cosmetics, medical devices, and pharmaceuticals.

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Navigating new updates to the EU Cosmetic Products Regulation

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The European Union recently updated its Cosmetic Products Regulation (CPR).[1] These changes impose a ban on several harmful substances and introduce strict sustainability rules. Brands should review their product formulations to ensure compliance with these new requirements as non-compliant cosmetic products face immediate removal from the market.

What you need to know

The European Commission published the 'Omnibus Act VIII on CMR substances', which amended the CPR.[2] The amendments target substances classified as carcinogenic, mutagenic or reprotoxic (CMR).

The Act introduces 18 new substances to the list of ingredients that are now prohibited or subject to restricted use in cosmetic products. These newly added substances will be incorporated into the list of restricted and prohibited substances maintained in Annexes II-VI of the CPR. These updated legal requirements are applicable from 1 May 2026.

The update follows the European Commission's ongoing process for reviewing and updating cosmetic product ingredient restrictions and prohibitions. Under this process and subject to any specific exemptions, harmful substances are first classified as hazardous under the Classification, Labelling and Packaging (CLP) Regulation.[3] As the title suggests, the CLP Regulation provides standard requirements for the classification, labelling and packaging of chemical substances and specifically targets chemicals that cause cancer, genetic mutations or reprotoxicity. The CPR then applies those classifications to set clear rules that either ban those substances or limit how they may be used in cosmetic products.

Updates to the CPR

These recent regulatory updates in the cosmetic products area target chemicals which may be dangerous to the health of consumers. The updated framework introduces fresh ingredient prohibitions and strict usage limits. All products sold in Ireland must comply with these EU rules. National authorities will stringently enforce these requirements.

Ingredient bans and restrictions

The updated rules ban or restrict 18 newly classified harmful substances:

- Newly banned substances include acetone oxime, carbon nanotubes and specific nitrobenzene compounds.[4] Companies can no longer use them in cosmetic products. Non-compliant items must be removed from the market by 1 May 2026.
- The CPR has also grouped perboric acid and its salts together, ensuring clearer and more consistent regulation of this chemical family. Some substances remain permitted for use under strict conditions.
- Silver is subject to a differentiated approach based on particle size: both nano-form silver (1 nm to 100 nm) and bulk massive silver (≥ 1 mm) are now prohibited. Only silver powder within a

[1] Regulation (EC) No. 1223/2009
[2] Regulation (EU) 2026/78
[3] (EC) No 1272/2008
[4] Regulation (EU) 2026/78

defined intermediate particle size range is permitted in specific applications such as toothpaste and mouthwash, in formulations up to 0.05% by weight.

- Hexyl salicylate faces strict concentration limits varying by product type, ranging from 2% in certain fragrance applications down to 0.001% in oral products. Its use is generally prohibited in products for children under three years of age.
- O-Phenylphenol[5] is permitted at a maximum concentration of between 0.2% and 0.15% depending on product type, with additional requirements for warnings regarding the avoidance of eye contact.

These changes require manufacturers of cosmetic products to conduct detailed reviews of their product formulations and undertake safety assessments of their products.

Sustainability and product formulation

These regulatory updates align with the EU Chemical Strategy for Sustainability.[6] The goal is a toxic-free environment. Removing harmful substances reduces long-term human and environmental risks. It also simplifies disposal and waste management. This supports a circular economy.

The practical impact on businesses is significant. Companies must find alternatives for banned ingredients. Reformulated products must be thoroughly tested to ensure safety and product stability. Suppliers must provide exact material composition data to support the strict testing process. These challenging requirements are driving market innovation, pushing the sector towards safer products being made available to consumers.

Timeline

In addition to these measures, the timeline below outlines the other key product regulatory developments in this space and their implementation dates, both past and prospective:

- **October 2023:** Ban on intentional addition of microbeads to products comes into force.[7]
- **March 2024:** Restrictions on nanomaterials – certain nano ingredients are prohibited.[8]
- **April 2024:** Concentration limits introduced for substances including Vitamin A, Alpha-Arbutin, Genistein and Triclosan.[9]
- **January 2026:** "One Substance, One Assessment" regime comes into force designed to streamline chemical assessments under EU law.[10]
- **July 2026:** New requirements relating to fragrance allergens take effect.[11]
- **October 2026:** Restrictions on PFHxA, a PFAS subgroup, in cosmetics apply.[12]
- **October 2027:** Ban on microplastics in rinse-off cosmetics, subject to certain exemptions, comes into force.[13]
- **July 2028:** Fragrance allergen rules – all non-compliant stock must be withdrawn from the market.[14]
- **October 2029:** Ban on microplastics in leave-on products applies.[15]

Conclusion

The EU cosmetics regulatory framework is evolving. The recent amendments represent a substantial step. Safety and sustainability are now central to cosmetic products being placed on the EU market. The amendments ultimately serve a shared goal, ensuring safer products and a healthier environment. Irish businesses must take practical steps to ensure compliance with EU legislation. Businesses should engage with their suppliers early, examine product formulations and update safety documentation without delay.

"Businesses should engage with their suppliers early, examine product formulations and update safety documentation without delay.

[5] o-Phenylphenol (OPP) is a synthetic antibacterial agent and fungicide used primarily as a preservative in cosmetic products. It protects creams, lotions, and soaps from microbial spoilage and bacterial contamination.
[6] Chemicals Strategy for Sustainability
[7] Regulation (EU) 2023/2055
[8] Commission Regulation (EU) 2024/858
[9] Commission Regulation (EU) 2024/996
[10] EU Commission Press Release, New rules to streamline EU chemical assessments enter into force 5 January 2026.
[11] Commission Regulation (EU) 2023/1545
[12] Commission Regulation (EU) 2024/2462
[13] Commission Regulation (EU) 2023/2055
[14] Commission Regulation (EU) 2023/1545
[15] Commission Regulation (EU) 2023/2055

02

Stricter requirements for sustainability product claims

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Businesses making environmental or social claims to consumers will face stricter rules from 27 September 2026. The new regime will prohibit certain green claims outright and introduce clearer tests for assessing whether other claims are misleading. Companies should review product labels, marketing, brand language and sustainability messaging now to ensure claims are accurate and supported by appropriate evidence.

What you need to know

- The Empowering Consumers for the Green Transition Directive has been transposed in Ireland and will apply from 27 September 2026.
- The rules apply to B2C marketing and capture stated and implied environmental or social claims, including text, labels, symbols, brand names and product names.
- Certain claims will be prohibited, including generic environmental claims, misleading whole-product claims, unsupported carbon neutral claims and claims based on legal compliance presented as a distinctive benefit.
- Future performance claims, such as climate neutral by 2030, must be based on clear, objective and verifiable commitments supported by a realistic implementation plan.
- Businesses should begin reviewing claims early, as substantiation may require lifecycle evidence, input from multiple internal teams and, in some cases, third-party verification.

Introduction

Claims about the environmental or social characteristics of a product must not mislead consumers. To achieve this overarching requirement, the European Union has introduced a list of prohibited claims and criteria for assessing whether other claims are misleading. Businesses should start preparing early to ensure their claims are compliant by 27 September 2026.

The Empowering Consumers for the Green Transition Directive[16] (the EmpCo Directive) has been transposed in Ireland and will apply from 27 September 2026.

The Directive amends the Unfair Commercial Practices Directive[17] (the UCPD) and applies to businesses who market to consumers.

The legislation introduces a list of prohibited claims and criteria for assessing whether other claims are misleading.

Claims can be stated or implied, and include text, pictorial, graphic or symbolic representations, such as labels, brand names, company names or product names.

[16] (EU) 2024/825
[17] 2005/29/EC

How is greenwashing regulated?

Consumer protection legislation is not intended to result in a reduction of claims. Instead, the legislation aims to ensure that businesses' claims are accurate, verifiable and not misleading.

This overarching goal is usually provided for in a general prohibition of claims that do not meet this standard. Supporting guidance and/or principles-based codes might also be in place, with examples of non-compliant claims.[18]

How is the regulation changing?

The EmpCo Directive moved the dial from a general prohibition to more specific circumstances of when a claim will be considered misleading and unfair. These requirements were recently transposed in Ireland[19] and will apply from 27 September 2026.

Broadly speaking the legislation provides:

- A list of commercial practices that are prohibited under all circumstances, and
- Other misleading actions and omissions which, assessed on a case-by-case basis, cause or are likely to cause average consumers to take a transactional decision that they would not have taken otherwise.

Do the requirements apply to corporate claims?

The legislation is B2C, however Member States have the option of also applying the requirements at a business-to-business, or "B2B", level. Generally the claims only apply to product-related claims, however a corporate claim, like one made in a sustainability report, can fall into scope if the advertisement or marketing is directed at consumers.

What types of claims fall within scope?

The legislation captures a wide variety of claims. It can include implied as well as stated claims. The claims can be made in text, pictorial, graphic or symbolic representation, such as labels, brand names, company names or a product name.

For environmental claims, the claim could indicate that the product:

- Has a positive or zero impact on the environment
- Is less damaging to the environment than other products, product categories, brands or traders, or
- Has improved its impact over time.

For social claims, it could relate to social characteristics such as employee welfare, community engagement and human rights issues.

What types of claims are "prohibited"?

The types of claims that are prohibited are as follows:

- A generic claim unless it can demonstrate recognised excellent environmental performance relevant to the claim. For example, a claim that a product is "green" or "eco" is considered general, as the specification of the claim is not provided in clear and prominent terms on the same medium, e.g. the product label. Recognised environmental performance includes the EU Eco Label, national or regional EN ISO 14024 type I ecolabelling schemes (e.g. Nordic Swan) or a legal standard (e.g. Class A for Energy Labelling Regulation).
- Carbon offsetting: Carbon neutral claims are only permitted when they are based on the actual lifecycle of a product.
- Sustainability labels: Must be based on specified certification schemes.
- Misleading whole product claims: It is prohibited to claim that a product as a whole is sustainable if only one component meets the claim.
- Legal requirements: It is prohibited to market compliance with legal requirements within the relevant product category on the European Union market as a distinctive feature of the seller's offer.
- Future performance claims, like stating a product or business will be climate neutral by 2030, must be based on clear, objective, publicly available and verifiable commitments. They must be set out in a detailed and realistic implementation plan that includes measurable and time-bound targets.
- Irrelevant benefits: For example making a claim about a particular product when it does not result from any specific feature of the product and is common to that type of product.

[18] For example, the UK has published a "Green Claims Code"
[19] S.I. No. 124/2026 - European Union (Empowering Consumers for the Green Transition) Regulations 2026

Must a claim be substantiated by third-party verification?

Third-party verification may be required according to the type of claim. For example, the implementation plan for future performance claims should be regularly verified by an independent third-party expert. In addition, the certification schemes for sustainability labels should be monitored by an independent third-party. Generally speaking, businesses will need to assess whether third-party verification will provide additional comfort to support the claim.

A Proposal for a Green Claims Directive[20] required third-party verification to support certain claims. The European Commission considered this would be a burden for micro-enterprises and we are waiting to see whether the Directive is progressed in future.

Even if third-party verification is not required, businesses should still ensure they have processes in place to check that the claims are not misleading. This could be a lengthy process, particularly if it requires an assessment of the full life cycle of a product and input from different departments.

Conclusion

Environmental and social claims can incentivise consumers to purchase a product. However, the European Commission, consumer watchdogs and enforcement authorities have identified an increase in claims that are potentially misleading.

The UCPD prohibits unfair commercial practices that mislead consumers. The EmpCo Directive will, from 27 September 2026, prohibit certain claims and introduce a legal test for when other claims could still be misleading.

Business should start early to ensure their claims are not misleading. Information may be required for the whole life cycle of a product, and input may be needed from different internal departments, senior management and potentially external consultants.

[20] COM(2023) 166 final

03

e-Commerce and consumer protection developments in 2026

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Significant changes to e-commerce and consumer protection law are due to take effect in 2026. New requirements will enter into force covering online withdrawal rights, warranty notices, durability information and potential new fining powers for the CCPC.

Further EU measures are also expected under the 2030 Consumer Agenda, including proposals targeting issues like dark patterns, unsafe online imports, influencer marketing and strengthened cross-border enforcement powers.

This is particularly relevant for online retailers, and marketplaces selling goods or services to consumers online. We outline some of the key measures below.

What you need to know

Significant changes are due to come into effect for e-commerce and consumer protection law in 2026. These include:

- A new online withdrawal function for distance contracts.
- New rules on misleading environmental claims and pre-contractual information.
- New administrative fining powers for the Competition and Consumer Protection Commission.
- Requirements for both online and bricks and mortar traders to display harmonised notices for warranties and durability.
- Upcoming EU legislative measures under the 2030 Consumer Agenda.

New online withdrawal function for distance contracts

From 19 June 2026, traders offering distance contracts via online interfaces in the EU must provide consumers with a dedicated online withdrawal function. This development will likely require technical modifications to websites and apps.

Key obligations include:

- The withdrawal option must remain continuously available throughout the withdrawal period.
- It must be easily accessible and clearly labelled as “withdraw from contract here” or use equivalent, unambiguous wording.
- Consumers must be able to withdraw online as easily as they concluded the contract.
- Once a consumer submits a withdrawal request, businesses must send an acknowledgement of receipt on a durable medium without undue delay.

New green requirements

The Empowering Consumers for the Green Transition Directive (EmpCo Directive), which amends the Unfair Commercial Practices Directive and the Consumer Rights Directive, introduces rules addressing misleading environmental claims (addressed in the article above) and new pre-contractual information requirements on product durability, repairability and software updates. These new rules will apply from 27 September 2026. In Ireland, these rules are implemented by the European Union (Empowering Consumers for the Green Transition) Regulations 2026[21] (EmpCo Regulations) which will amend the Consumer Protection Act 2007 and the Consumer Rights Act 2022.

Mandatory warranty notice and durability labels

From 27 September 2026, under the EmpCo Directive, traders will be required to display a harmonised notice to remind consumers of their statutory warranty rights regarding the two-year legal guarantee of conformity. The notice will need to follow a strict layout and text specified by the Commission through an implementing act. For e-commerce businesses, it must be positioned prominently on the website. The Irish EmpCo Regulations, however, have an additional requirement that the harmonised notice include a general reference to the possibility that the duration of the legal guarantee of conformity can exceed two years under the Statute of Limitations 1957. However, the EU implementing act provides that none of the elements of the harmonised notice can be edited.

In addition, where a producer provides a commercial guarantee of durability covering the entire product for more than two years at no extra cost, a mandatory harmonised label must be displayed prominently next to the product images, shelf labels or packaging.

New fining powers for the CCPC

The Irish government has proposed giving the Irish consumer protection regulator, the Competition and Consumer Protection Commission (CCPC), new power to impose administrative financial sanctions for breaches of consumer protection legislation. This is a significant departure under Irish law as, to date, the CCPC has had limited fining powers and is required to prosecute breaches of consumer protection law in the Irish courts. This follows an appeal from the CCPC to the Irish government for stronger enforcement powers with the targeted timeline for implementation being Q4 2026. Providing these powers to the CCPC could result in greater and more rapid enforcement action by the CCPC.

Following the closure of the public consultation on 27 February 2026, the Department of Enterprise, Tourism and Employment is now analysing the stakeholder feedback to refine policy directions and draft the General Scheme of new legislation.

Future of the P2B Regulation?

There is a push towards simplifying the EU digital rulebook. This follows the publication of two Omnibus Regulation Proposals in November 2025. While these have principally targeted data protection and AI rules, an interesting proposal is being mooted to repeal the Platform-to-Business (P2B) Regulation owing to its overlap with the EU Digital Services Act. Despite this, the CCPC recently published the results of a sweep of online platforms' compliance with the P2B Regulation, finding that 80% of platforms reviewed had some element of non-compliance.

The 2030 Consumer Agenda: what lies ahead?

The European Commission's 2030 Consumer Agenda, published in November 2025, sets out a long-term strategy addressing major challenges facing European consumers, including unsafe e-commerce imports, barriers to cross-border shopping and digital commerce that features manipulative practices. Businesses should plan ahead for several pieces of legislation moving through the pipeline, including:

- **Digital Fairness Act (Q4 2026):** Aimed directly at outlawing dark patterns, addictive designs in video games and social media, and problematic influencer marketing.
- **Consumer Protection Cooperation Regulation Revision (Q4 2026):** Bolstering cross-border enforcement coordination and evaluating centralised EU-level investigation and enforcement powers.
- **European Product Act (Q3 2026):** Modernising market surveillance frameworks and rules for placing consumer products on the EU market, especially items imported via e-commerce.
- **Geo-Blocking Regulation Evaluation (Q2 2026):** Completing the evaluation of the current regulation and analysing whether to extend or clarify its scope.

Next steps for businesses

These developments suggest a significant shift in the Irish and EU e-commerce and consumer protection landscape. Online retailers, digital platforms and marketplaces should review their user interfaces, checkout flows and contractual terms to ensure compliance with these new requirements.

[21] SI 124/2026

04

Guidelines on high-risk AI classification

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The European Commission's draft Guidelines provide important practical direction on how high-risk AI systems should be classified under the AI Act. They offer guidance on intended purpose, Annex I and Annex III use cases, and the circumstances in which providers may seek to avoid high-risk classification.

Our Artificial Intelligence team explores how, despite the Guidelines being extensive and detailed, some key issues still require further clarification, including some Annex III categories, intended purpose, value chain responsibilities under Article 25 and the concept of substantial modification.

What you need to know

- The Guidelines give detailed guidance on how providers should assess whether an AI system is high-risk under the AI Act.
- Intended purpose is central. Providers seeking to avoid high-risk classification must understand this concept and how it is applied in the general-purpose AI space in particular.
- The Guidelines take a narrow approach to the Article 6(3) derogation, with providers expected to document their assessment carefully.
- Annex III use cases are dealt with in some detail, including biometrics, recruitment, workplace decisions, creditworthiness and election-related AI tools.
- Important areas remain unresolved, including intended purpose, Article 25 responsibilities across the AI value chain and the concept of substantial modification.

The European Commission published its highly anticipated and long-awaited draft guidelines on the classification of high-risk AI systems (Guidelines) on 19 May 2026. The Guidelines are comprehensive , running to some 164 pages in total. They are separated into three documents and cover:

1. General principles
2. Guidance on classifying Annex I high-risk AI systems, and
3. Guidance on classifying Annex III high-risk AI systems

We consider some notable takeaways from the Guidance including observations on some key Annex III high-risk use cases together with other topics like intended use.

Key takeaways

Determining high-risk classification

The Guidelines provide guidance on key concepts related to determining high-risk classification:

- **Intended purpose and avoiding high-risk classification:** The Guidelines highlight the importance of intended purpose for high-risk classification. In order to avoid high-risk classification, providers, in particular providers of general-purpose AI systems, will need to ensure that high-risk uses are explicitly and unequivocally excluded across all materials. They will also need to ensure that the product is not positioned as an AI system to be used for any high-risk uses. If these conditions are not fulfilled and high-risk uses are not explicitly excluded, particularly for AI systems that have broad application or are capable of these uses, then the AI system will be presumed to be intended to be used for those high-risk uses and classified as high-risk. Notably, the Guidelines do not mention any requirement to implement technical safeguards to avoid classification. This approach appears to set a lower standard than what is required to avoid classification for general-purpose AI systems under the Prohibited AI Guidelines.
- **Complex systems:** The Guidelines introduce the concept of "complex systems" such as several AI systems / architectures which form part of a more complex AI system. Notably, this covers AI agents also. It refers to the applicability of concepts such as intended purpose and the application of the derogations to these complex systems.
- **Reliance on Article 6(3) derogation:** The Guidelines note that the conditions are to be interpreted narrowly and provide detailed guidance on each condition. The Guidelines also provide further detail on what the documented assessment for relying on the derogation should contain. In addition, they note that providers can be subject to penalties where they improperly relied on the Article 6(3) derogation. Interestingly, it suggests that deployers should confirm that the derogation is relied on by checking the EU database as part of due diligence processes.

High-risk classifications under Annex III

The Guidelines also provide detailed guidance on the conditions and various elements of the high-risk classifications under Annex III, along with helpful practical in and out of scope examples. We consider the headline points arising from this part of the guidance:

- **Biometrics (Annex III, point 1(a), (b), and (c)):** The Guidelines state that the definition of biometric data under the AI Act is intended to be broader than under the GDPR. In addition, it is worth noting that while it does provide some context and examples, it does not definitively clarify the line between high-risk and prohibited biometric categorisation.
- **Recruitment (Annex III point 4(a)):** The Guidelines describe a test for a borderline AI system that may be useful for providers to leverage. The test involves assessing the AI system's potential impact on candidates' employment and career opportunities, or the risk of discrimination. It also provides detailed guidance on when targeted ads might be in and out of scope.
- **Decisions affecting work-related relationships (Annex III point 4(b)):** The Guidelines highlight that the decision does not have to be automated by the AI system necessarily to fall in scope, but rather if the human managing the system relies heavily on the output or the decision is "AI driven", it is enough to bring an AI system into scope.
- **Essential Services - Creditworthiness (Annex III, point (5(b)):** The Guidelines indicate that AI systems used for creditworthiness evaluations or credit scoring for access to *"non-essential private services"* will be out of scope and provide further detail on this concept.
- **Administration of justice and democratic processes - influencing the outcome of elections (Annex III, Point 8(b)):** Notably the Guidelines indicate that, in certain cases, AI-enabled targeting of political ads and chatbots intended to promote support for candidates or policies may be in scope. For chatbots, the Guidelines are clear that certain safeguards must be implemented to fall out of scope. These include replying to a user that it cannot give any voting advice when asked, or providing only neutral, factual, and informational content about elections.

Notably there are certain high-risk AI related topics that the Guidelines do not address. Unfortunately, despite the length and detail of the Guidelines, the following areas still require guidance and clarification:

- **Article 25(1):** While the Commission mentions Article 25(1), it does not provide any meaningful guidance on this provision which will have a major impact on both providers and deployers alike. However, the Commission notes in footnote 7 that separate guidelines will be issued on *"the practical application of rules for responsibilities along the AI value chain under Article 25 of the AI Act which will include more detailed explanations about the use cases where the three circumstances under Article 25(1) may apply*".

- **Substantial modification:** The Guidelines do not address the concept of substantial modification in any detail. However, we note that the Commission has previously indicated as part of the Omnibus that separate guidelines on the practical application of the provisions related to substantial modification will be published. We suspect it may be addressed in the Article 25 guidance.

Where to next?

This note is just a high-level summary of some aspects of the Guidelines and focuses on the topics most frequently seen by us in practice. It is not intended to be a comprehensive summary of all the relevant recommendations made in the Guidelines. Our view is that organisations need to take the time now to review the Guidelines and to consider whether any further review of your AI systems is warranted.

"In order to avoid high-risk classification, providers, in particular providers of general-purpose AI systems, will need to ensure that high-risk uses are explicitly and unequivocally excluded across all materials.

05

The DSA two years on and what to expect

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Following a lengthy learning and implementation period for providers, the European Commission and national regulators are now gearing up for enforcement of the Digital Services Act (DSA). Later this year, we expect 'vetted' researcher access and the protection of minors to be the focus.

Notable developments from year two:

The first DSA fine

Online platform X was fined €120 million for breaches of the DSA related to the deceptive design of its 'blue checkmark', the lack of transparency of its advertising repository and the failure to provide access to public data for researchers. This was the first fine issued by the European Commission under the DSA and followed a two-year investigation.

The European Commission's decision was subpoenaed and published by the US House of Representatives. The decision outlines the European Commission's positions on a range of DSA issues, including the geographical scope of data access under Article 40 DSA and a broad conceptualisation of the data which may be relevant for research into "systemic risks".

Guidance from the European Commission and the EDPB

The European Commission's Article 28 Guidelines were published on 14 July 2025. They contain prescriptive requirements for 'online platforms' underpinned by a *Risk Review* to determine which requirements are appropriate for a given service. Of note:

- **Age assurance:** A sliding scale of age assurance measures are proposed, up to and including age verification for certain providers. Assessments of age should be contestable by users via a mechanism which fulfills the criteria of Article 20 DSA.
- **Default settings:** Minor users' account settings must be set to the highest level of privacy, safety and security by default. These settings need to be designed in a way that interaction is limited to approved contacts, and features like geolocation, tracking, autoplay, live streams, and push notifications are turned off.
- **Feedback and reporting:** In addition to the requirements of Articles 16 and 20 DSA, the European Commission expects that platform terms are amended to cover certain "harmful" content. For example, the Guidelines require reporting and feedback mechanisms for violations of the platform's terms which *"includes any content, user or activity that is considered by the platform to be harmful to minors' privacy, safety, and/or security"*.

The European Data Protection Board (EDPB) released its Guidelines in September 2025 on the interplay between the DSA and the GDPR. Of note:

- **DPIA for proactive moderation:** Voluntary proactive moderation technology is likely to meet several Article 35 GDPR Data Protection Impact Assessment (DPIA) triggers. These are likely to include evaluation or scoring, automated-decision making (ADM) with legal or similarly significant effects and systematic monitoring of data subjects. Legitimate interests under Article 6(1)(f) will be the most suitable legal basis to rely on.
- **Protection of minors as a legal obligation:** Articles 28(1) and (2) DSA can qualify as a legal basis for processing under Article 6(1)(c) GDPR to process personal data subject to the condition that the controller is able to demonstrate (on a case-by-case basis) that such processing is necessary and proportionate to achieve the goals established by Articles 28(1) and (2) DSA.
- **ADM within recommendations:** Recommender system suggestions could be considered an Article 22(1) GDPR 'decision' i.e., the 'decision' to present specific content to an individual may have an impact that is not necessarily legal *"but rather economic and social"*.

Irish enforcement commences

Throughout the past year, the Irish Digital Services Coordinator (DSC) under the DSA, Coimisiún na Meán (CnaM), engaged with service providers following the receipt of user complaints alleging non-compliance with the DSA.

Three formal investigations were commenced against X, LinkedIn and TikTok. In X's case, CnaM acknowledged that its concerns had been supplemented by information provided in DSA complaints. CnaM has also forwarded user complaints to the European Commission to support its investigations into VLOPs.

Experience has shown to date that CnaM is focused on user-facing processes and due diligence under the DSA, including the Article 16 DSA notice and action mechanism, Article 17 statements of reasons and the Article 20 DSA internal complaints process.

What's to expect in the coming year:

Data Access under Article 40(4) DSA

For providers of very large online platforms and search engines (VLOPSEs), data access for "vetted researchers" will commence in the coming weeks. CnaM, in its role as the DSC for 15 out of the 25 designated VLOPSEs, published the results of a survey it carried out with prospective researcher applicants in September 2025. Of particular note here is the potential volume of research requests, particularly for large social and video platforms. From the 116 responses to its survey:

- 103 researchers plan to make applications under Article 40(4) DSA within the first 12 months and are expected to submit a total of 602 individual applications, and
- 448 of those applications are expected to be made within the first six months, with 317 relating to VLOPSEs established in Ireland.

Irish-established VLOPSEs can expect significant engagement from CnaM and researchers over the coming months.

Regulatory engagement on Article 28 DSA

Regulators and platforms have now had over a year to digest and consider the Article 28 Guidelines. We expect that CnaM will engage with platforms on:

- The Risk Reviews expected to be carried out under the Guidelines, and
- The appropriate measures put in place to protect minor users.

Platforms should be cognisant of the need to evidence why certain measures are relevant, or a priority, given the specific aspects of their service and user base.

In the Netherlands, the Dutch DSC initiated an investigation into Roblox to assess whether the platform *"takes sufficient measures to protect minors on its service"* on 20 January 2026, marking the first such national investigation.

The first standardised DSA transparency reports will shortly be published

Over the next few weeks, all services within the scope of the DSA are for the first time required to publish transparency reports using the prescriptive templates published under the European Commission's Implementing Regulation. These reports will allow both regulators and the wider research and academic community to directly compare the content moderation activity undertaken by these services. You can learn more about these reports in our recent article "Transparency reporting and the Digital Services Act".

Recent MHC events, articles & publications

Events & webinars

- CPD on Demand: Commercial Contracts: What's Market 2026?
- CPD on Demand: In-House Counsel Masterclass – Recent developments in IP
- CPD on Demand: EU Product Regulation – Safety, AI & Consumer Protection
- CPD on Demand: Product Liability in Life Sciences – Recent reforms

Publications

- Product & Consumer Protection Annual Review 2025
- Product & Consumer Protection Mid-year Review 2025
- Promoting medicines on social media: Key takeaways from new HPRA guidance
- Application of limitation periods under the PLD: *LF v Sanofi Pasteur SA*
- The EU Breakfast Directives makeover: What food brands need to know to comply
- AI platform for food safety launched in the EU
- Commission presents Safety Gate Report for 2025
- Consumer Protection developments in 2026
- Public consultation on Irish Consumer Protection Law

MASON HAYES & CURRAN

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Our legal services are grounded in deep expertise and informed by practical experience. We tailor our advice to our clients' business and strategic objectives, giving them clear recommendations.

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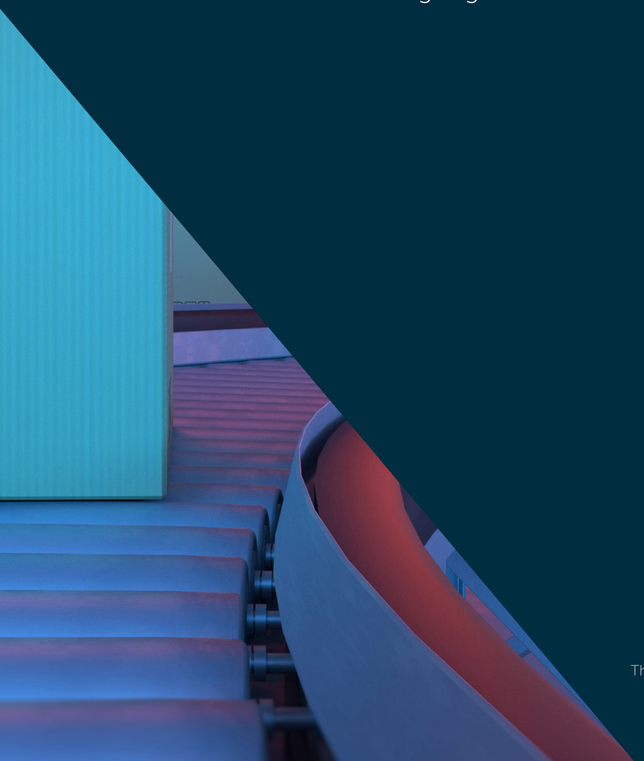

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