



# EU Digital Strategy

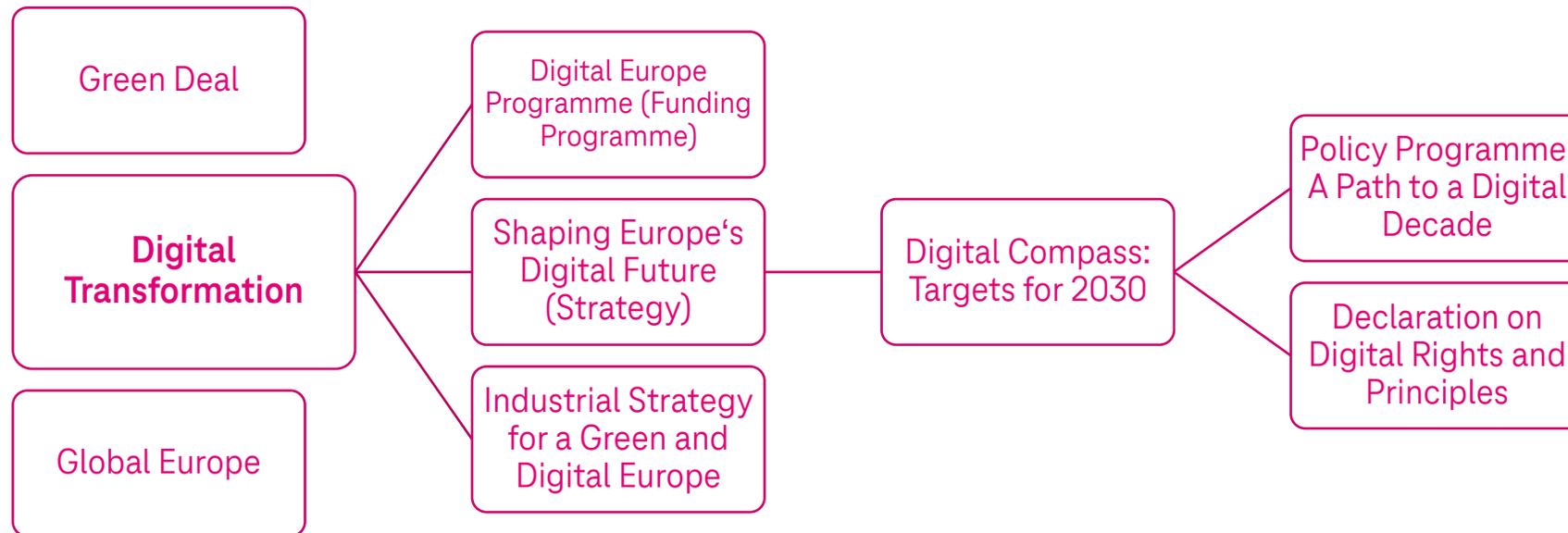
Setting a Level Playing Field | 23.09.22



LIFE IS FOR SHARING.

# Von der Leyen I (2019-2024)

## THREE PILLARS FOR THE EU'S AGENDA



### Objectives

*“Europe will no longer be naive in the face of the rapidly changing world and will seek to be in the driving seat”. (Breton, May 2021)*

1. New institutional set-up
2. Higher prioritization for digital affairs
3. A more strategic approach

\* Europe's Digital Decade: <https://digital-strategy.ec.europa.eu/en/policies/europes-digital-decade>

# A new awareness for digital: Europe needs to ...

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## Recalibrate digital markets

Digital markets follow different logic with fast tipping points, enormous ability to scale, data driven.

Competition law has been insufficient to address tendencies for lock-ins, dependencies & vertical integration → see **DMA**

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## Increase digital sovereignty

Europe is lacking behind in key areas of digital infrastructure and services.

Europe needs to be more digitally sovereign by strengthening its own and ability to compete. → see **Chips Act** or **IPCEI CIS**

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## Find the middle ground

European values are not congruent with Chinese techno-authoritarianism and American big-tech style surveillance capitalism. → see **AI Act (social credit scoring)** or **DSA**

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## Pay attention to reciprocity

Compared to other world regions Europe has been more open e.g. with regard to public procurements.

Strategic use of public investments or “moonshot” projects.

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## Build on own strengths

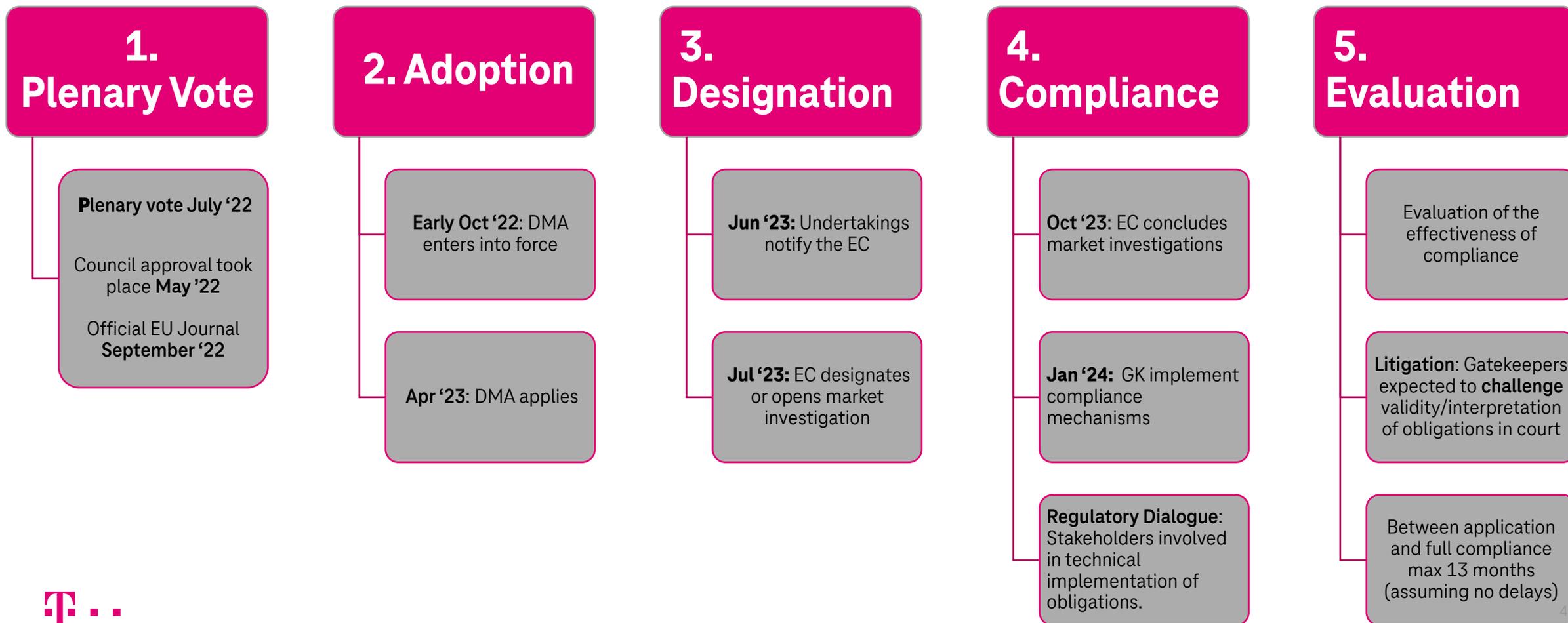
Europe has long-standing experience in regulating complex digital issues.

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# DMA: Bottom Line & Next Steps

CONCLUDED IN ONLY  
15 MONTHS  
(WELL BELOW EU  
AVERAGE)

- Gatekeeper tactics investing significantly to derail & delay the process have proven unsuccessful.
- **No obligations have been deleted.** Instead, in parts, they have become stricter.
- **Timely application, bold enforcement & sufficient resources** are now decisive for DMA's success.



# DMA: Who's in, who's out?

## FINAL TEXT

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Scope	10 Core Platform Services (CPS)	<ul style="list-style-type: none"><li>• (1) Operating Systems (2) Advertising, (3) Video-sharing</li><li>• (4) Social networks (5) Search engines (6) Market places</li><li>• (7) Number-Independent Communication Services</li><li>• (8) Web Browsers (9) Virtual Assistants (10) Cloud Computing</li></ul>
	Thresholds	<ul style="list-style-type: none"><li>• <b>Annual EU turnover</b> ≥ €7.5bn in each of last 3 financial years <b>or</b> average <b>market cap of undertaking</b> ≥ €75bn in last financial year</li><li>• Active <b>end-users</b> of Core Platform Service ≥ 45m (monthly) <b>AND</b> active <b>business users</b> ≥ 10k (yearly) in <b>last financial year</b></li><li>• <b>Provides same Core Platform Service in minimum 3 Member States</b></li></ul>

# DMA: Dos / Don'ts & Enforcement

## FINAL TEXT

<b>Obligations</b>	<b>Unbundling</b> (Art 5)	<ul style="list-style-type: none"> <li>• <b>Ban of bundling one Core Platform Service with another</b> (e.g. Cloud with OS, social network etc.), as condition for use, access, sign-up <b>for any of that GK's CPS</b></li> <li>• <b>Ban on tying web browsers, payment systems &amp; identification services to CPS</b></li> </ul>
	<b>Interoperability messaging</b> (Art. 7)	<ul style="list-style-type: none"> <li>• Make "basic functionalities" of <b>number-independent communications service interoperable with other NI-ECS</b> (e.g. end-to-end text messaging, video/voice calls)</li> <li>• Implementation within 4 years (two-step approach)</li> </ul>
	<b>Non-discriminatory access</b> (Art. 6)	<ul style="list-style-type: none"> <li>• Fair, reasonable &amp; non-discriminatory access to gatekeeper's <b>app store, search engine and social networks</b></li> <li>• <b>Refrain from unfair pricing conditions / unjustified differentiation</b></li> </ul>
	<b>HW/SW interoperability</b> (Art. 6)	<ul style="list-style-type: none"> <li>• Access to &amp; interop. with <b>software &amp; hardware features controlled by the gatekeeper (e.g. secure element)</b></li> </ul>
	<b>Others</b>	<ul style="list-style-type: none"> <li>• E.g. no <b>self-preferencing &amp; data combination w/o consent; access to data; sideloading</b></li> </ul>
<b>Enforcement &amp; Fines</b>		<ul style="list-style-type: none"> <li>• EC is <b>sole enforcer</b>, but cooperation with regulators, competition authorities etc.</li> <li>• <b>Coordination</b> with national competition authorities</li> <li>• <b>Fines: &lt;10% total worldwide turnover / &lt;20% in case of non-compliance</b></li> </ul>
		<ul style="list-style-type: none"> <li>• <b>No veto rights for EC on national initiatives.</b></li> <li>• <b>Domestic comp law fully applicable</b></li> </ul>

# DSA: Tackle illegal content online

Revision of 20-year-old eCommerce directive

Regulates **who assumes at what point** liability for illegal content online and specifies lawful counter-measures.

## All Service Providers



## Hosting



## Online Platforms



## Very Large Online Platforms

- **Mere conduits & caching**
- **Establish point of contact**, react to orders by public bodies (blocking orders can affect intermediary services, e.g. sanctions on Russia or xHamster in Germany)

- **Notice & action mechanisms:** Allow individuals to notify illegal content.
- Not every hosting service is affected, only when content is actually accessible;
- **Search engines** included in this category

- **Complaint handling system:** dispute settlement mechanism, rules for online advertisement;
- Additional rules for **online marketplaces:** Obligated to verify who is selling on their platform. (“know your business customer”)

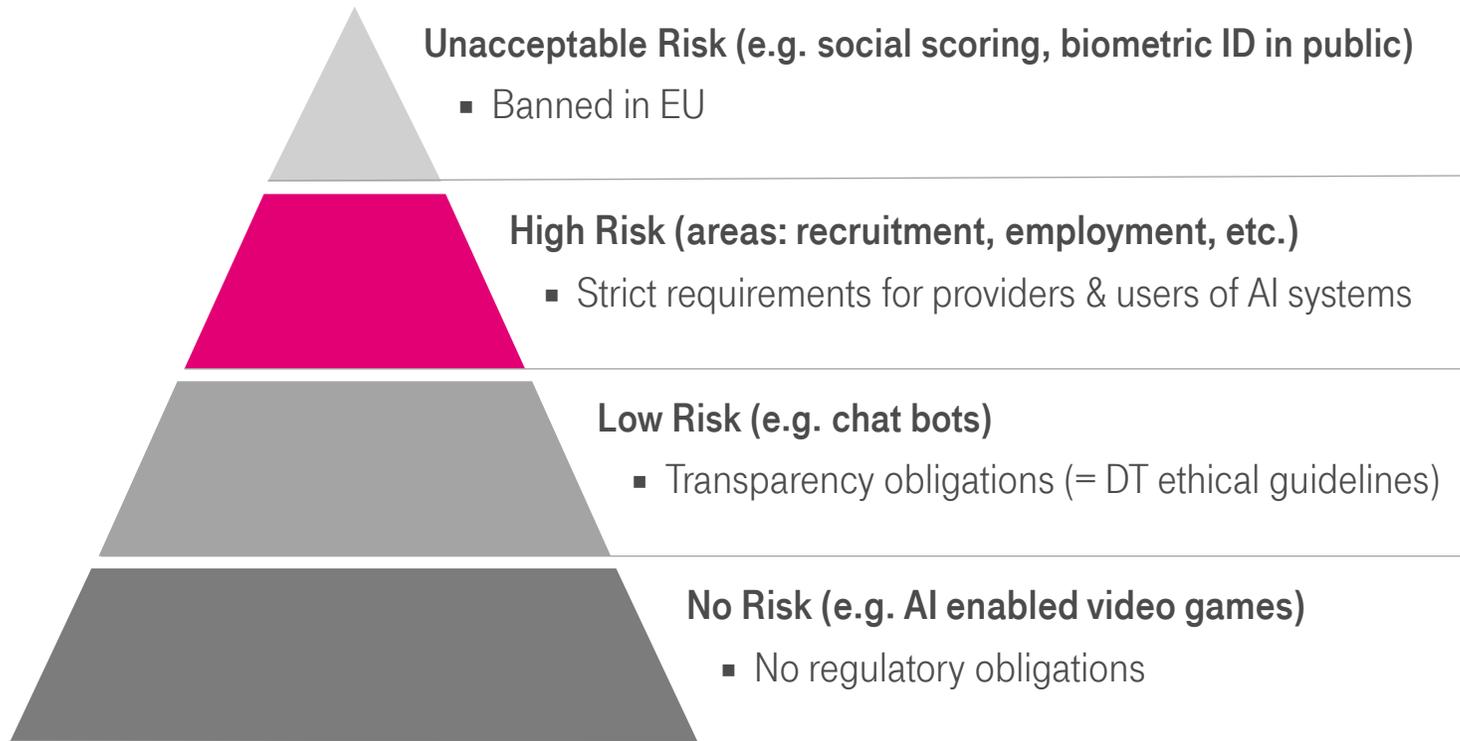
- **VLOPs** (average monthly user > 45m): Most and strictest rules apply - from risk assessments & independent audits to data access & rules for advertisement.
- **VLOSE** as separate category: additional risk assessment and preventive measures (e.g. regarding disinformation)

### Enforcement system in a nutshell:

- **European Commission:** Responsible for VLOPs & chairing the European Board for Digital Services;
- **EU member states:** EU member state, in which a company is located, is responsible (country of origin principle). One Digital Service Coordinator per member state;
- **National competent authority:** investigations and inquiries; designating trusted flaggers and handling complaints; giving out sanctions and orders;

# AI Act: Risk-based rules for trustworthy AI

UNDER  
DISCUSSION  
BY EP &  
COUNCIL



## Broad Definition

Software generating output such as content, predictions, recommendations, or decisions using statistical approaches, Bayesian estimation, search and optimization methods.



## AI Act: Objectives

“Create *trust*, *minimize risks*, distribute *responsibilities*”

1. **Address specific risks** posed by AI systems, following risk-based approach
2. Legal certainty to enable development and **uptake of AI in the EU**
3. **Human-centric approach**, setting highest regulatory standard worldwide

# Fair share: Ensure negotiation at eye-level

## AIM

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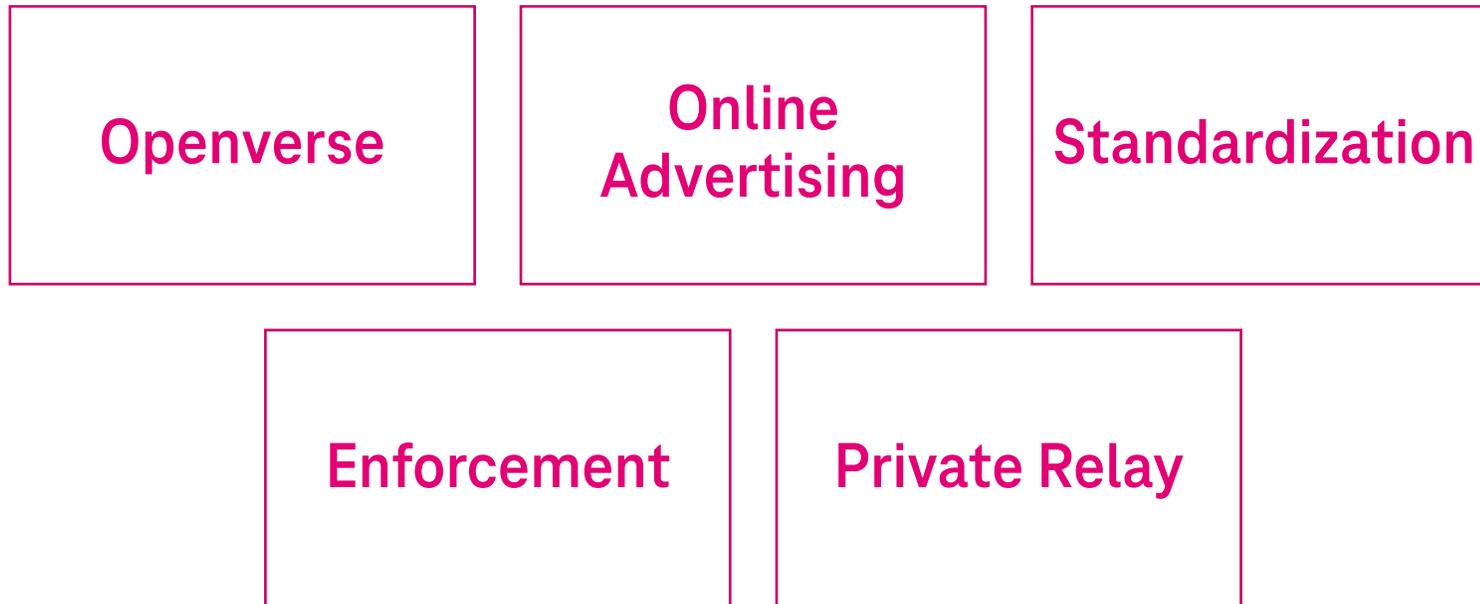
- Addressing asymmetries in IP market ensuring **fair and reasonable** outcomes of commercial negotiations
- Market-based solution continues to be main aim, but need for Regulation as “last resort” to **guarantee negotiations at eye level**

## EU REGULATION: ESSENTIAL ELEMENTS

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Scope	<b>Targeted scope</b> , limited to the very largest traffic generators
Negotiation mandate	Each network operator may <b>request negotiations</b> (no discrimination)
Fair & Reasonable Price	Obligation to agree on <b>fair and reasonable price</b>
EU Guidance	EU Commission to establish <b>general criteria / guidance</b> on “fair and reasonable” pricing
Dispute Resolution Mechanism	Compulsory <b>dispute resolution</b> mechanism via competent authority

# The road ahead: Whats next for the digital rulebook?



## EU policy objectives for the digital transformation

1. Fair and contestable markets (interoperability etc.)
2. Policies based on European values (human centrim, privacy, transparency etc.)
3. Skills development and capacity building
4. Climate neutrality