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List of abbreviations

DMA	Digital Markets Act
DSA	Digital Services Act
DSC	Digital Services Coordinator
EU	European Union
GDPR	General Data Protection Regulation
VLOP	Very Large Online Platform
VLOSE	Very Large Online Search Engine

I. Introduction

In recent years, the rapid growth of the internet and digital technologies has transformed the global marketplace, giving rise to new forms of commerce and connectivity. Online platforms, in particular, have become integral to the modern business landscape, facilitating interactions between buyers and sellers, connecting consumers with products and services, and driving economic growth. As the online marketplace continues to evolve, it is crucial to establish a comprehensive legal framework that balances the promotion of innovation and economic development with the protection of consumers' rights and interests.

This Master Thesis aims to explore the legislation surrounding online platforms and the specific obligations of Very Large Online Platforms in the legal landscape within the European Union. By examining the regulatory framework governing online platforms, we can gain insights into the legal challenges and opportunities presented by the online marketplace.

II. History of the DSA and the need for regulation of this sector

The legislation surrounding online platforms has evolved over time, driven by the need to adapt to the dynamic nature of the digital marketplace. The European Union has been at the forefront of these regulatory efforts, recognizing the importance of establishing a comprehensive legal framework to govern online activities. In this context, the E-commerce Directive, adopted in 2000, laid the foundation for harmonizing rules related to online services, electronic contracts, and the liability of intermediaries. While it has played a significant role in facilitating cross-border e-commerce, the rapid growth of online platforms has highlighted the need for more specific and tailored regulations.

Some Member States have included notice-and-action procedures in their legislation, especially in the area of copyright infringements; others have included counter-notice procedures and forms of alternative dispute settlement¹. Relevant regulations regarding this matter, enacted in the Member States are the following: the French Avia Law², the Austrian KoPlG³, the German Network Enforcement Act (Netzwerk-

¹ Ilaria Buri, Joris van Hoboken, 'The Digital Services Act (DSA) proposal: a critical overview', 6, <https://dsa-observatory.eu/wp-content/uploads/2021/11/Buri-Van-Hoboken-DSA-discussion-paper-Version-28_10_21.pdf> accessed 15 July 2023

² Loi visant à lutter contre les contenus haineux sur internet, sous le n° 2020-801 DC, le 18 mai 2020

durchsetzungsgesetz – NetzDG)⁴, which governs the management of platforms containing illicit content and intersects with significant aspects of the DSA⁵; the French Law for Confidence in the Digital Economy (Loi pour la Confiance dans l'Économie Numérique or LCEN)⁶, which was brought as an instrument to implement the E-Commerce Directive etc. Other laws are also applicable, depending on the different aspects of online businesses. The applicable law from Spain is the Information Society Services and Electronic Commerce Law (LSSICE)⁷ as well as other laws covering different areas of law⁸.

The DSA was brought as part of the legislation under the European Democracy Action Plan, a policy framework presented by the European Commission in December 2020⁹. The European Democracy Action Plan has been designed to tackle the threats posed to democracy within the EU and worldwide due to digital advancements. Linked to safeguarding basic human rights, and upholding transparency and accountability with respect to online services, the action plan delineates a framework for the EU. This structure is built around targeted measures intended to accomplish three primary goals: promoting free and fair elections, strengthening media freedom and countering disinformation. The DSA was accounted for taking part in the last two. The accompanying acts to the DSA in reaching these goals are the Free Media Act and the Code of Practice on Disinformation.

Within the EU, the most significant current legislation governing online intermediaries are the Digital Services Act, the Digital Markets Act, the E-Commerce Directive and the General Data Protection Regulation. The Digital Services Act was brought as a part of the Digital Services Package, together with the Digital Markets Act in an effort to regulate the digital space and create the Digital Single Market.

³ Bundesgesetz über Maßnahmen zum Schutz der Nutzer auf Kommunikationsplattformen (Kommunikationsplattformen-Gesetz – KoPl-G) StF: BGBl. I Nr. 151/2020 (NR: GP XXVII RV 463 AB 509 S. 69. BR: 10457 AB 10486 S. 917.)

⁴ Netzwerkdurchsetzungsgesetz vom 1. September 2017 (BGBl. I S. 3352), das zuletzt durch Artikel 3 des Gesetzes vom 21. Juli 2022 (BGBl. I S. 1182) geändert worden ist

⁵ Gregor Schmidt, 'Digital Services Act (DSA): Dark patterns and other current issues', <<https://www.taylorwessing.com/en/interface/2023/predictions-2023-part-2/digital-services-act-current-issues>> accessed 15 July 2023

⁶ Law No. 2004-575, For Confidence in the Digital Economy (Loi pour la Confiance dans l'Économie Numérique a.k.a LCEN)

⁷ Law 34/2002 on E-Commerce and Information Society Services (ECISSA)

⁸ Jonatan Carbonell, Regulations for e-commerce in Spain, <<https://www.tas-consultoria.com/blog-en/regulations-e-commerce-spain/>> accessed 15 July 2023

⁹ European Commission, 'Protecting Democracy', <https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/new-push-european-democracy/european-democracy-action-plan_en> accessed 15 July 2023

1. The Digital Markets Act¹⁰

The DMA was brought as a complementing act to the DSA, which concerns certain core online platforms which meet the definition of “gatekeepers”. The DMA classifies online platforms as gatekeepers if they fulfill the following criteria:

- Has considerable influence on the internal market, executing activities across several EU nations;
- Provides a central platform service linking a broad end-user community with a large array of businesses;
- Holds, or is on the verge of securing, a solid and long-lasting market position.

Generally, the DMA imposes obligations on the online platforms’ activities that limit the competition in the digital markets or are unfair.

2. The General Data Protection Regulation¹¹

While not specifically targeting only online platforms, the GDPR plays a crucial role in regulating the processing of personal data within the digital marketplace. It establishes a robust framework for data protection and privacy, ensuring that individuals' rights are respected and their personal information is handled securely. Online platforms, as data controllers or processors, must comply with the GDPR's requirements regarding consent, data minimization, data subject rights, and data breach notification.

3. The E-commerce Directive¹²

The E-commerce Directive, adopted in 2000, remains a cornerstone of EU legislation governing e-commerce activities. Its objective is to establish a legal framework that promotes the development of e-commerce within the EU while ensuring the smooth functioning of the internal market. The Directive establishes rules related to the liability of online intermediaries, electronic contracts, information requirements, and online advertising. It provides legal certainty for online businesses and consumers by harmonizing certain aspects of e-commerce regulation across EU Member States.

¹⁰ Regulation (EU) 2022/1925 of the European Parliament and of the Council from 14 September 2022 [2022] OJ 2 265/0

¹¹ REGULATION (EU) 2016/679 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) [2016] OJ 2 119/0

¹² Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market [2000] OJ 2 178/0

The E-commerce Directive incorporated provisions regarding liability first, which have been instrumental in shaping the legal landscape for online platforms. The firstly introduced "mere conduit," "caching", and "hosting" safe harbor provisions provided important liability exemptions for online intermediaries, subject to certain conditions. The conditions were for them not to have actual knowledge of illegal activity or information and if they obtain such knowledge or awareness, they need to act immediately to remove or to disable access to the information. With the enactment of the DSA, the liability exemption provisions were repealed by it, since they are also included in the DSA. This should ensure that intermediaries continue to thrive¹³.

4. The Digital Services Act¹⁴

The DSA was brought as a landmark, catch-all legislation by the EU that intends to regulate the digital world by covering many areas of law that have shown to be problematic for the online intermediaries through the years. The objectives of the DSA encompass the promotion of fundamental rights and innovation in digital services, as well as the harmonization of rules to enhance and protect the functioning of the internal market. The DSA contains provisions that intersect with various fields of law, including data protection, audio - visual media regulation, consumer protection, telecommunications, and the regulation of terrorism content. The novel obligations the DSA imposes upon digital service providers, such as risk mitigation obligations, considerations related to freedom of expression, data access and scrutiny, and the regulation of recommender systems have sparked debates among the stakeholders. The areas that the DSA covers are already subject to oversight by independent national regulatory authorities, which presents a risk of establishing overlapping or conflicting measures applicable to digital service providers. This may present a challenge in enforcing the DSA and maintaining internal coherence within EU law which creates an uncertain enforcement environment for establishing a Digital Single Market¹⁵.

¹³ Shaping Europe's Digital Future, European Commission, <[https://digital-strategy.ec.europa.eu/en/faqs/digital-services-act-questions-and-answers#:~:text=The%20Digital%20Services%20Act%20\(DSA\)%20does%20not%20replace%20the%20e,thrive%20in%20the%20single%20market](https://digital-strategy.ec.europa.eu/en/faqs/digital-services-act-questions-and-answers#:~:text=The%20Digital%20Services%20Act%20(DSA)%20does%20not%20replace%20the%20e,thrive%20in%20the%20single%20market)> accessed 02 June 2024

¹⁴ Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act) [2022] OJ 2 277/0

¹⁵ Bengi Zeybek, Joris van Hoboken, 'The Enforcement Aspects of the DSA, and its Relation to Existing Regulatory Oversight in the EU', <<https://dsa-observatory.eu/2022/02/04/the-enforcement-aspects-of-the-dsa-and-its-relation-to-existing-regulatory-oversight-in-the-eu/>> accessed 15 July 2023

The primary goal of the DSA is to bridge the regulatory gap and tackle the fragmentation that arose under the E-Commerce Directive. The DSA will be applicable without prejudice to other acts of Union law that regulate the provision of online services, which includes:

- The Audiovisual Media Services Directive (AVSMD),
- The Regulation on addressing the dissemination of terrorist content online,
- The e-Privacy Directive,
- The Unfair Commercial Practices Directive (Recital 10), and
- Union rules pertaining to copyright and related rights (Recital 11).

Furthermore, it is crucial to highlight that the General Data Protection Regulation will apply to all aspects of the DSA that involve the processing of personal data.

III. Definition of online platforms, intermediaries and very large online platforms

The fast development of the internet and digital technologies has revolutionized traditional commerce, thus creating the online marketplace. A digital market is an electronic platform or environment where the buying and selling of goods, services, and information takes place predominantly through digital channels.¹⁶ It involves the exchange of products, services, and data over the internet or other digital networks. Digital markets have gained significant importance with the widespread adoption of technology and the internet, allowing businesses and individuals to connect, transact, and interact online. Digital markets have revolutionized numerous industries, including retail, entertainment, travel, and finance. They have facilitated new business models, such as e-commerce, online advertising, software-as-a-service, and the sharing economy. However, digital markets also pose challenges related to data privacy, cybersecurity, market concentration, and fair competition, which require regulatory attention to ensure a level playing field and consumer protection. Typical members of the online market are the digital services that act as intermediaries in their role of connecting consumers with goods, services, and content. Online intermediaries belong to the category of digital services.

Online platforms are online intermediaries that facilitate interactions between two or more distinct but interdependent sets of users (whether organizations or individuals) who interact through the service via

¹⁶ Elina L. Sidorenko, 'Definition of "Digital Platforms"' in Maxim I. Inozemtsev, Elina L. Sidorenko and Zarina I. Khisamova (eds), *The Platform Economy: Designing a Supranational Legal Framework* (Palgrave Macmillan 2022) 83; Jörn Lengsfeld, *Digital Era Framework: Ein Bezugsrahmen für das Digitale Informationszeitalter* (2019) 157, 158

the internet¹⁷. Online platforms, such as e-commerce websites, digital marketplaces, and sharing economy platforms, have transformed the way goods and services are exchanged, allowing businesses and consumers to connect and transact across geographical boundaries. This shift has led to enhanced convenience, expanded consumer choices, and increased market competition. The online marketplace has experienced exponential growth in recent years, becoming an integral part of global commerce and transforming the way businesses and consumers interact. However, this rapid expansion has brought forth new challenges, including the concentration of power among a few dominant platforms, the proliferation of harmful content, issues related to data privacy, transparency and the need for enhanced user protection. In response to these concerns, the European Union has introduced the Digital Services Act, which aims to regulate online intermediaries and establish a comprehensive framework that balances innovation, accountability, and user rights in the online marketplace.

It is important to define the subcategories of online platforms in order to properly establish their responsibilities under the DSA. There is a difference between platforms that store and disseminate information at the request of the recipients of the service and platforms that disseminate that information as it represents a minor and ancillary feature of such services, like cloud computing or web-hosting services (Recital 13 DSA). Online platforms like social networks not only store but also distribute user-provided information to the public (Recital 13 DSA). However, providers will not be considered online platforms if their public dissemination function is minor and fundamentally tied to another service, or if the primary service cannot technically operate without it (Recital 13 DSA). For example, a newspaper's comments section can be such a feature, while social networks storing comments should be viewed as an online platform service (Recital 13 DSA). In the Regulation, cloud computing and web-hosting services are not classified as online platforms if public dissemination is a minor part of their services (Recital 13 DSA). 'Dissemination to the public', in the DSA, means making information available to an unlimited audience without needing further action from the information provider (Recital 14 DSA).

Very large online platforms and very large search engines are characterized as such if the number of their users reaches 45 million, which is a number equivalent to 10% of the Union population (Art. 33(1) DSA, Recital 76 DSA). They impose a higher societal impact and that is why they are subject to additional obligations than the other online service providers (Recital 76 DSA).

¹⁷ Dāvis Auškāps, Dans Rozentāls and Dmitrijs Kravčenko, 'The Outsourcing Dilemma of SMEs: A Case of Five Latvian Tech Firms' in Devi Akella, Niveen Eid and Anton Sabella (eds), *Cases on Critical Practices for Modern and Future Human Resources Management* (IGI Global 2021)

According to Art. 24(2) of the DSA, providers of online platforms and online search engines had to publish publicly available information regarding the number of active users of their services until 17 February 2023. Based on this information, the European Commission adopted decisions on 25 April 2023 specifying **17 online platforms** and **2 online search engines** as very large under the DSA. Currently, the following online platforms are considered as Very Large Online Platforms: Alibaba AliExpress, Amazon Store, Apple AppStore, Booking.com, Facebook, Google Play, Google Maps, Google Shopping, Instagram, LinkedIn, Pinterest, Snapchat, TikTok, Twitter, Wikipedia, YouTube and Zalando, and the following online search engines as Very Large Online Search Engines: Bing and Google Search¹⁸.

IV. The DSA and the obligations of Very Large Online Platforms

1. Introduction to the Digital Services Act

The Recital of the Digital Services Act is a lengthy introduction to the core of the Act which sets out its basic directions. It begins by explaining that since the E-Commerce Directive was brought 20 years ago, there has been significant changes in the information society services and especially intermediary services in the digital world¹⁹ (Recital 1 DSA). The Member States are continuously introducing national legislation covering this area which affects the internal market negatively (Recital 2 DSA).

The DSA imposes a uniform set of rules that protect the basic human rights under the EU Charter, especially the freedom of expression and of information, the freedom to conduct a business, the right to non-discrimination and the attainment of a high level of consumer protection²⁰ (Recital 4 DSA). Its main goal is to ensure legal certainty by ending the fragmentation of the internal market and imposing rules that are uniform in all Member States (Recital 4 DSA).

It further continues to explain to whom the DSA applies (Recital 5-8 DSA). It is generally applicable to providers of intermediary services that have a substantial connection to the Union, irrespective of their place

¹⁸ European Commission, 'Digital Services Act: Commission designates first set of Very Large Online Platforms and Search Engines' (Press Release, 25 April 2023) <https://ec.europa.eu/commission/presscorner/detail/en/IP_23_2413> accessed 15 July 2023

¹⁹ Ethan Shattock, 'Self-regulation 2.0? A critical reflection of the European fight against disinformation', 2021 2(3) Harvard Kennedy School Misinformation Review, 2

²⁰ Thomas Weck, 'The DSA and Digital Violence: Entrepreneurial Freedom and Special Responsibility' (30 November 2023), 3 <<https://ssrn.com/abstract=4667280>> accessed 31 March 2024

of establishment or their location. A substantial connection is considered to exist if the service provider has an establishment in the Union or his services are used or targeted in one or more Member States²¹ (Recital 8 DSA). Services are considered to be targeted in a State by taking all relevant circumstances into account, 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, the availability of an application in the relevant national application store, by local advertising, by providing customer service in a language generally used in that Member State etc. (Recital 8 DSA).

The actual articles of the DSA begin by stating the aim of the Regulation, which is to contribute to the proper functioning of the internal market for intermediary services. It also adds that harmonized rules are set to create a safe, predictable, and trusted online environment that fosters innovation and effectively protects fundamental rights, including consumer protection. Also, it provides that the Act establishes a framework for conditional exemption from liability for providers of intermediary services, specific due diligence obligations tailored to certain categories of providers of intermediary services and rules on implementation and enforcement, including cooperation and coordination between competent authorities²² (Art. 1 DSA).

The DSA applies directly into the legislation of the Member States, but it does not derogate rules placed by:

- Directive 2010/13/EU of the European Parliament and of the Council including the provisions thereof regarding video-sharing platforms;
- Regulations (EU) 2019/1148, (EU) 2019/1150, (EU) 2021/784 and (EU) 2021/1232 of the European Parliament and of the Council and Directive 2002/58/EC of the European Parliament and of the Council, and provisions of Union law set out in a Regulation on European Production and Preservation Orders for electronic evidence in criminal matters and in a Directive laying down harmonized rules on the appointment of legal representatives for the purpose of gathering evidence in criminal proceedings;
- Union law on consumer protection, in particular Regulations (EU) 2017/2394 and (EU) 2019/1020 of the European Parliament and of the Council, Directives 2001/95/EC, 2005/29/EC, 2011/83/EU and 2013/11/EU of the European Parliament and of the Council, and Council Directive

²¹ Florence G'sell, 'The Digital Services Act (DSA): A General Assessment' in Antje von Ungern-Sternberg (ed.), *Content Regulation in the European Union – The Digital Services Act* (SCHRIFTEN DES IRDT - TRIER STUDIES ON DIGITAL LAW, Volume 1, Verein für Recht und Digitalisierung e.V., Institute for Digital Law (IRDT), Trier April 2023), 4 <<https://ssrn.com/abstract=4403433>> accessed 31 March 2024

²² Ibid

93/13/EEC

- Union law on protection of personal data, in particular Regulation (EU) 2016/679 and Directive 2002/58/EC;
- Union rules on private international law, as Regulation (EU) No 1215/2012, and rules on the law applicable to contractual and non-contractual obligations;
- Union law on working conditions and Union law in the field of judicial cooperation in civil and criminal matters (Art. 2 DSA).

The DSA applies to issues that have not been addressed by the previously mentioned legal acts as well as to issues to which the Member States have the possibility to adopt certain measures for at national level.

The Act does not impose an obligation for monitoring of obligations of general nature, nor de facto nor de jure^{23 24} (Recital 30, 108; Art. 8 DSA). The DSA imposes a clear, effective, predictable and balanced set of harmonized due diligence obligations for providers of intermediary services, depending on type, size and nature of the intermediary service, with the goal of ensuring public safety and accountability, and protecting fundamental rights (Recital 40 DSA). It provides basic obligations to all providers of intermediary services and additional obligations for providers of hosting services, online platforms, very large online platforms and of very large online search engines.

2. Obligations of Very Large Online Platforms

Considering the large societal impact of VLOPs, it is provided in Art. 92 of the DSA that the obligations from it will apply to VLOPs and VLOSEs after four months from the decision of the Commission that designates VLOPs and VLOSEs as such. The Commission published its decision on designation of VLOPs and VLOSEs on 25 April 2023. It was expected for the VLOPs and VLOSEs to comply with the DSA until 25 August 2023. The DSA applied to the other online intermediaries from 17 February 2024.

VLOPs have the highest standard of due diligence obligations proportionate to their societal impact. The Commission can adopt delegated acts to update the operational threshold (Recital 76 DSA).

²³ Florence G'sell, 'The Digital Services Act (DSA): A General Assessment' in Antje von Ungern-Sternberg (ed.), *Content Regulation in the European Union – The Digital Services Act* (SCHRIFTEN DES IRDT - TRIER STUDIES ON DIGITAL LAW, Volume 1, Verein für Recht und Digitalisierung e.V., Institute for Digital Law (IRDT), Trier April 2023), 10 <<https://ssrn.com/abstract=4403433>> accessed 31 March 2024

²⁴ Caroline Cauffman and Catalina Goanta, 'A New Order: The Digital Services Act and Consumer Protection' (2021) 12(4) *European Journal of Risk Regulation*, 758

2.1 General remarks

In the Act, the specific rules and obligations of the providers of VLOPs and VLOSEs are provided in separate chapters and articles. However, there are some general remarks regarding VLOPs and VLOSEs that have been posed in the Recital of the Act, which give a general overview and additional content to the provisions of the Articles. Some of those are:

- The additional obligations for online platforms from the Act should not apply to micro or small enterprises, but if a provider qualifies as a provider of a VLOP or VLOSE, that exemption will not apply (Recital 57 DSA).
- VLOPs and VLOSEs and the other online intermediaries should pay special attention to the rights and interests of the recipients of the service, including fundamental rights as enshrined in the Charter, especially to freedom of expression and of information, including media freedom and pluralism and should also pay due regard to relevant international standards for the protection of human rights (Recital 109 DSA).
- Providers of VLOPs and VLOSEs should provide their terms and conditions in the official languages of all Member States in which they offer their services as well as a summary of the terms and conditions (Recital 48; Art. 14 DSA). The summary should include the possibility of easily opting out from optional clauses (Recital 48 DSA).
- The codes of conduct of the providers need to facilitate the use of the platforms and search engines by people with disabilities. They need to be perceivable, operable, understandable and the platforms need to make sure that forms and measures provided from the Act are made available in a manner that is easy to find and accessible to persons with disabilities (Recital 105 DSA) etc.

2.2 Specific obligations for the VLOPs

Providers of very large online platforms, should comply with the obligations set out for online intermediaries as well as online platform providers, alongside some additional ones. VLOPs are obliged specifically to:

- carry out annual assessments and mitigate the systemic risks of their service and dedicate special attention to the algorithms they use;
- set up **risk mitigation measures** (adapting their terms and conditions, adapting the design, features or functioning of their services, testing and adapting their algorithmic systems, adapting their content moderation processes etc.);
- create a crisis response mechanism and cooperate with the Commission related to crisis mitigation measures
- conduct independent audits to assess the degree of compliance with the DSA;
- include at least one option that is not based on the profiling of the recipient of the service in their recommender systems;
- guarantee additional online advertisement transparency;
- make access available to the data necessary to assess their compliance to the DSA for the Digital Service Coordinator of establishment and for the Commission, as well as vetted researchers for research purposes;
- establish an internal independent compliance function with the DSA, made up of compliance officers;
- publish transparency reports, with additional transparency obligations to those imposed to the other intermediaries and providers of online platforms;
- pay an annual supervisory fee^{25 26}.

a. Risk assessments (Art. 34 DSA)

The first specific obligation for the providers of VLOPs and VLOSEs is that they should assess systemic risks arising from their services and take mitigating measures. Risks include safety concerns, shaping public opinion, and influencing online trade. Mitigation should consider the severity and probability of risks and be in line with fundamental rights.

The Act provides for four categories of systemic risks that should be assessed by the providers of VLOPs

²⁵ Tommaso Mauri, 'DSA obligations are now binding for very large online platforms and search engines' (Rödl & Partner, 10 October 2023) <<https://www.roedl.com/insights/dsa-obligations>> accessed 10 December 2023

²⁶ European Platform of Regulatory Authorities, 'Online harms on major online platforms: the Commission now officially in the game' (6 September 2023) <https://www.epra.org/news_items/dsa-provisions-on-vlops-enter-into-force> accessed 10 December 2023

and VLOSEs. The first category is the dissemination of illegal content and the conduct of illegal activities. The second category of risks is the impact of the service on the exercise of the fundamental rights including human dignity, freedom of expression and of information, including media freedom and pluralism, the right to private life, data protection, public security, gender-based violence, the right to non-discrimination and the rights of the child and consumer protection. The third category of risks covers the actual or foreseeable negative effects on democratic processes, civic discourse and electoral processes, as well as public security. The fourth category of risks concerns the protection of public health, minors and serious negative consequences to a person's physical and mental well-being, or on gender-based violence^{27 28 29}(Art. 34 DSA).

The providers need to keep the documentation related to the risk assessments that they carry out in order to follow the progress of identification of risks (Art. 34 DSA).

Providers of VLOPs and VLOSEs, when assessing the previous risks should focus on the algorithmic systems that may be relevant, their recommender systems and advertising systems, their terms and conditions as well as their content moderation processes, technical tools, allocated resources and data practices of the provider. The providers also have an obligation to pay attention to activities that are not per se illegal, but contribute to the systemic risks. Therefore, it is crucial for such providers to prioritize monitoring the usage of their services in order to prevent the dissemination or amplification of misleading or deceptive content, including disinformation. These providers must thoroughly evaluate how their service's design and functionality, as well as deliberate and coordinated manipulation or misuse of their services, or the systematic violation of their terms of service, contribute to these risks (Recital 84 DSA).

The DSA does not include instructions nor definitions on how to conduct the risk assessments and it does not specify how risks can be evaluated. Disinformation is a large topic in the risk assessments area and it is not easy to appraise information as disinformation since it carries many components that need to be analyzed. Two of those are trustfulness and intention. While it is generally easier to evaluate truthfulness of an information, the fundamental right to freedom of speech gives power to wrong information too. As

²⁷ Andrej Savin, 'The EU Digital Services Act: Towards a More Responsible Internet' (2021) Copenhagen Business School Law Research Paper 21-04, 11

²⁸ Heiko Richter and others, 'To Break Up or Regulate Big Tech? Avenues to Constrain Private Power in the DSA/DMA Package' (2021) Max Planck Institute for Innovation & Competition Research Paper 21-25, 51 <<https://ssrn.com/abstract=3932809>> accessed 31 March 2024

²⁹ Jens-Peter Schneider, Kester Siegrist and Simon Oles, 'Collaborative Governance of the EU Digital Single Market established by the Digital Services Act' (2023) University of Luxembourg Law Research Paper 2023-09, 35 <<https://ssrn.com/abstract=4561010>> accessed 31 March 2024

such, it is not possible to impose a strict “ban” on disinformation. However, disinformation can still cause systemic risks. Therefore, it is necessary to evaluate a platform’s role when conducting a risk assessment. The European Commission or the Digital Service Coordinator can request these risk assessments. Meaningful risk assessments require an independent research that examines the relationships between platform design, usage patterns, and emerging risks. This approach is crucial for evaluating the quality of the risk assessments conducted by the platforms. To facilitate this evaluation, transparency into the inner workings of platforms and comprehensive data access are essential. Previously, prior to the establishment of the DSA, researchers and civil society organizations had to rely on platforms’ willingness to provide necessary data access. The DSA now establishes a framework that mandates transparency and data access, enabling independent research into platforms’ operations and their societal and systemic risk implications³⁰.

Fundamental rights often need to be balanced and it is not an easy task to assess what causes negative effects and in what amount. In order to perform the risk assessments correctly, it is necessary to establish what constitutes a risk that leads to systemic failure or crisis and what are the actions that contribute to those. A parallel can be made from the financial sector in order to assess and evaluate the possible risks. First, the systems need to be identified and their interconnected relationships. Then, the possible risks and the different types and influences need to be determined and finally the systemic failure and crisis need to be measured³¹.

The providers need to ensure that their strategies for risk assessment and mitigation utilize the most reliable and current information and scientific understanding. Also, they should validate their assumptions by engaging with the communities most significantly affected by both the potential risks and the precautionary measures they implement (Recital 90 DSA).

Drawing up of codes of conduct for the providers is encouraged which would regulate how the Act would be applied (Recital 103 DSA). Specifically, it should be provided that the providers of VLOPs and VLOSEs have the obligation to assess the systemic risks, like disinformation or abusive behaviors on minors which would have a negative impact on the community. The risk assessment should pertain the risk of dissemination of illegal content irrespective of whether or not the information is also incompatible with their terms and conditions. This assessment does not supersede the personal responsibility of the recipient of

³⁰ Alexander Hohlfeld, ‘Digital Services Act: Grappling with the ambiguities of disinformation’ in Alexander Hohlfeld and others (eds), *Taming the Digital Realm - Global Content Moderation Practices* (Friedrich Naumann Foundation, August 2023)

³¹ Sally Broughton Micova and Andrea Calef, ‘Elements for Effective Systemic Risk Assessment Under the DSA’ (July 2023), 50 <<https://ssrn.com/abstract=4512640>> accessed 31 March 2024

the service or of the owners of websites indexed by very large online search engines. They should also pay special attention to the interests of minors, especially when their services are used by them. The providers need to make sure that their services are allowing minors to easily access the notice and action mechanisms (Recital 104 DSA).

b. Mitigation of risks (Art. 35 DSA)

The providers are bound to provide mitigation measures in order to tackle the systemic risks provided in Article 34, DSA. The measures that the providers undertake need to be in accordance with their responsibilities and the required effect, under the Act. Measures adopted should be reasonable, effective, proportionate, and consider the economic capacity of the provider^{32 33 34}. They should avoid unnecessary restrictions on use of their services, having disruption on the fundamental rights in mind. Particular attention should be given to the freedom of expression.

Some of the measures are:

The providers need to adapt their services, the terms and conditions, content moderation processes and they must diligently test and adapt their algorithmic systems, including the recommender systems, to address any necessary improvements³⁵. They should take steps to mitigate the adverse impacts of personalized recommendations and rectify the criteria used in their recommendations. Furthermore, they should consider corrective measures in their advertising systems, such as discontinuing revenue for specific information, improving visibility of authoritative sources, or making structural adjustments. These providers should strengthen internal processes, particularly in detecting systemic risks, and conduct more frequent or targeted risk assessments related to new functionalities. Advertising systems can contribute to systemic risks, and providers should consider corrective measures. Internal processes, supervision, risk assessments, cooperation with other providers and trusted flaggers, and awareness-raising ac-

³² Andrej Savin, 'The EU Digital Services Act: Towards a More Responsible Internet' (2021) Copenhagen Business School Law Research Paper 21-04, 11

³³ Zohar Efroni, 'The Digital Services Act: risk-based regulation of online platforms' (Frameworks for Data Markets, Weizenbaum Institute, 16 November 2021) <<https://policyreview.info/articles/news/digital-services-act-risk-based-regulation-online-platforms/1606>> accessed 31 March 2024

³⁴ Joan Barata, 'The Digital Services Act and Its Impact on the Right to Freedom of Expression: Special Focus on Risk Mitigation Obligations' (DSA Observatory, 27 July 2021) <<https://dsa-observatory.eu/2021/07/27/the-digital-services-act-and-its-impact-on-the-right-to-freedom-of-expression-special-focus-on-risk-mitigation-obligations/>> accessed 31 March 2024

³⁵ Alexander Hohlfeld, 'Digital Services Act: Grappling with the ambiguities of disinformation' in Alexander Hohlfeld and others (eds), *Taming the Digital Realm - Global Content Moderation Practices* (Friedrich Naumann Foundation, August 2023)

tions may be necessary. They are also obliged to enforce the decisions rendered by extrajudicial dispute resolution bodies under Article 21.

Other measures include implementing awareness-raising measures and modifying their online interface to provide the recipients with additional information, implementing targeted measures to safeguard the rights of the child, such as employing age verification and parental control tools, as well as tools designed to assist minors in reporting abuse or seeking appropriate support and ensuring that any information is identifiable through conspicuous markings when displayed on their online interfaces.

The Board is obliged to publish yearly reports in cooperation with the Commission, which will contain the most important systemic risks that were identified by the providers of VLOPs and VLOSEs and the best practices of the providers to mitigate the identified risks (Art. 35 DSA).

The selection of the mitigation measures should be coordinated with the best practices of the industry, based in self-regulatory cooperation such as in codes of conduct, while respecting the guidelines from the Commission (Recital 89 DSA).

c. Crisis mitigation measures (Art. 36 DSA)

Having their impact on society in mind, providers of VLOPs and VLOSEs are obliged to undertake some measures in times of crisis as well. This implies to emerging conflicts, acts of terrorism, natural disasters, pandemics and other serious cross-border threats to public health (Recital 91 DSA).

The premise is that VLOPs, while not necessarily originating the hazard, can profoundly shape crisis management and the real consequences of extraordinary situations on public security and health³⁶. In the drafting of the DSA, a late addition, the mechanism, has been highlighted as a critical aspect of the legislation. Concerns from civil society organizations emphasized that this mechanism could grant excessive authority to the European Commission, potentially leading to restrictions on freedom of expression and information dissemination. While safeguards have been introduced to prevent arbitrary use, ongoing criticism revolves around the broad definition of crisis, raising fears that the mechanism could be mis-

³⁶ Zohar Efroni, 'The Digital Services Act: risk-based regulation of online platforms' (Frameworks for Data Markets, Weizenbaum Institute, 16 November 2021) <<https://policyreview.info/articles/news/digital-services-act-risk-based-regulation-online-platforms/1606>> accessed 31 March 2024

used³⁷. The Commission, upon the Board's recommendation, may adopt a decision requiring providers to initiate a crisis response urgently. The providers can be obliged to assess their contribution to the threats, to report to the Commission regarding the assessment and/or to take some measures. Measures must be strictly necessary, justified, proportionate, and limited to a maximum of three months (Art. 36 DSA). The providers might implement measures such as, for instance, applying content moderation procedures and allocating more resources towards content moderation. Other possibilities include adjusting terms and conditions, relevant algorithmic and advertising systems, enhancing collaboration with trusted flaggers, initiating measures to raise awareness, promoting trustworthy information, and refining the design of their online interfaces. This should be without prejudice to the other provision of the Act (Recital 91 DSA). Additionally to the crisis response mechanism, the Commission can initiate the drafting of voluntary crisis protocols³⁸. As part of crisis protocols, it's common to feature in them official crisis information which was placed on various platforms. This serves to counteract misinformation effectively³⁹. The obligations stemming from these protocols should be limited in time and should not be taken as general obligations (Recital 108 DSA).

d. Independent audits (Art. 37 DSA)

Providers of VLOPs and VLOSEs will undergo independent audits at least once a year to assess compliance with obligations and commitments. The obligations regarding the due diligence obligations of the providers from Chapter III and the commitments from the codes of conduct under Art. 45 and 46 DSA and the crisis protocols from Art. 48 DSA will be subject to the audits. Audits will be performed by independent organizations with expertise, objectivity, and professional ethics^{40 41}. They should make all efforts and cooperate in order to enable the auditors to have all relevant data and premises where to perform the

³⁷ Alexander Hohlfeld, 'Digital Services Act: Grappling with the ambiguities of disinformation' in Alexander Hohlfeld and others (eds), *Taming the Digital Realm - Global Content Moderation Practices* (Friedrich Naumann Foundation, August 2023)

³⁸ Andrej Savin, 'The EU Digital Services Act: Towards a More Responsible Internet' (2021) Copenhagen Business School Law Research Paper 21-04, 11

³⁹ Jens-Peter Schneider, Kester Siegrist and Simon Oles, 'Collaborative Governance of the EU Digital Single Market established by the Digital Services Act' (2023) University of Luxembourg Law Research Paper 2023-09, 42 <<https://ssrn.com/abstract=4561010>> accessed 31 March 2024

⁴⁰ Andrej Savin, 'The EU Digital Services Act: Towards a More Responsible Internet' (2021) Copenhagen Business School Law Research Paper 21-04, 11

⁴¹ Jens-Peter Schneider, Kester Siegrist and Simon Oles, 'Collaborative Governance of the EU Digital Single Market established by the Digital Services Act' (2023) University of Luxembourg Law Research Paper 2023-09, 41 <<https://ssrn.com/abstract=4561010>> accessed 31 March 2024

audit properly (Art. 37 DSA). The auditors need to have relevant expertise in risk management and to be competent to audit algorithms. They need to perform the audit according to the best industry practices and high professional ethics (Recital 92 DSA). They should also guarantee the confidentiality, independence and security of the performed audit (Recital 92; Art. 37 DSA).

The audit report should provide a detailed account of all activities conducted and conclusions made, relevant information, methodology, findings, opinions, and recommendations for compliance measures. This report should be forwarded to the Digital Services Coordinator, the Commission, and the Board after its receipt. It should also include the providers' risk assessment, mitigation measures, and implementation reports without unnecessary delays, showcasing how they addressed the audit's recommendations. The report should include an audit opinion, either positive (with comments, if necessary) or negative, based on compliance with the regulation and potentially explaining any failed conclusions for specific audited elements. If the report is not positive, the providers will take operational recommendations into account and adopt an audit implementation report within one month. In case they do not comply with the recommendations, they need to provide substitute measures that will address the findings⁴². The Commission may adopt delegated acts to establish necessary rules for audit performance (Art. 37 DSA).

Creating an audit report usually contains four steps. Firstly, a plan should be made, based on the structure of the platform under investigation and the relevant stakeholders in the audit process. Second, it is necessary to define a scenario by precisely defining the issues which lead to systemic risks. Third, it is needed to have specific measures of certain issues as thresholds in specific situations, which are usually developed by the auditors. Finally, analysis of the results should be made and the report should be written. There are many methods that can and should be used in order to achieve the aforementioned objectives. Also, there are many sides and perspectives that need to be viewed and analyzed in order to define a plan, a scenario, and applicable measures etc. Usually, the platform's size is taken into account, its audience, its meaning and objectives, the goals it is trying to achieve etc. Then, the risks of its functioning are evaluated and the measures are set up to evaluate when and how the platform's functioning creates and contributes to systemic risks⁴³.

⁴² Martin Husovec and Irene Roche Laguna, 'Digital Services Act: A Short Primer' (5 July 2022), 10 <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4153796> accessed 31 March 2024

⁴³ Anna-Katharina Meßmer and Martin Degeling, 'Auditing Recommender Systems – Putting the DSA into practice with a risk-scenario-based approach' (Cornell University, arXiv:2302.04556, 9 February 2023) < <https://arxiv.org/abs/2302.04556> > accessed 31 March 2024

The Commission and Board for Digital Services have extensive authority to enlist experts for inspections, consideration, and other functions related to monitoring and enforcement. It is important that this is used to supplement and enhance the knowledge and work of the auditors, specifically in relation to indicating negative effects, the nature of the risks and pertinent thresholds, and to develop a critical overview over the auditing organizations' work and the quality of the audit reports⁴⁴.

The nominated compliance officers from the providers will be responsible for the execution of the audits (Art. 41 DSA).

e. Recommender systems

Providers of VLOPs and VLOSEs are obliged to use recommender systems which provide at least one option that is not based on profiling, in alignment with Regulation (EU) 2016/679 (Art. 38 DSA). The obligation for assessment and mitigation of risk should make the providers adjust their recommender systems, especially when it comes to personalization on the basis of personal data. These options should be readily available on the same online interface where recommendations are shown (Recital 94 DSA; Art. 38 DSA).

f. Advertisement and repositories

Advertisements present a risk of negative impact on public health, public security, civil discourse, political participation and equality (Recital 95 DSA). Providers of VLOPs and VLOSEs that display advertisements must create and publicly make available a repository of information in order to facilitate supervision and research into potential risks, such as illegal ads or manipulative techniques causing negative impacts on various aspects of society⁴⁵. The repository should be accessible through a searchable tool and application programming interfaces, and should be located in a specific section of the online interface (Art. 39 DSA).

The repository should contain the following information: content of the advertisement, including the product, service, or brand name, person or entity on whose behalf the advertisement is presented, person or entity who paid for the advertisement, period during which the advertisement was presented, targeted

⁴⁴ Sally Broughton Micova and Andrea Calef, 'Elements for Effective Systemic Risk Assessment Under the DSA' (July 2023) <<https://ssrn.com/abstract=4512640>> accessed 31 March 2024

⁴⁵ Berrak Genç-Gelgeç, 'Regulating Digital Platforms: Will the DSA Correct Its Predecessor's Deficiencies?' (2022) 18 CYELP 25

recipient groups and parameters used for targeting, particularly when ads are delivered to vulnerable individuals like minors, commercial communications published on the platform and total number of recipients reached and, if applicable, numbers by Member State. The repository must not include personal data of recipients and should be accurate and complete (Art. 96 DSA).

Implementing transparency requirements for online advertisements, including the disclosure of parameters, is essential for fostering fairness and clarity. Such measures not only promote equitable use of these parameters but also serve to mitigate the excessive influence and control wielded by online intermediaries, particularly VLOPs, over user choices and information dissemination⁴⁶.

To effectively evaluate the compliance of large online platforms and search engines with regulatory obligations, the Digital Services Coordinator or the Commission may request specific data, including algorithm-related data. This data could be necessary for assessing risks and potential harm caused by these platforms' systems, the accuracy and operation of algorithmic systems for content moderation, recommendation or advertising systems, and data related to processes and outputs of content moderation or internal complaint systems. However, these data requests should not involve producing specific user information intended for determining user compliance with other Union or national laws (Recital 96 DSA).

The development of voluntary standards, created by standardization bodies will be encouraged regarding the interoperability of the advertisement repositories. The Commission will consult and support the Board regarding this matter (Art. 44 DSA).

g. Access to data

The Digital Service Coordinators of establishment or the Commission are authorized to access the providers' data through a reasoned request in order to overview the compliance with the Act. The access can only be granted with the objective to monitor the application of the Act. The providers are obliged to explain the operation of their algorithmic and recommender systems.

The Act establishes a framework compelling VLOPs and VLOSEs to provide to the affiliated researchers access to data for research supporting their public service objectives^{47 48}. While protecting personal data,

⁴⁶ Ibid

⁴⁷ Alexander Hohlfeld, 'Digital Services Act: Grappling with the ambiguities of disinformation' in Alexander Hohlfeld and others (eds), *Taming the Digital Realm - Global Content Moderation Practices* (Friedrich Naumann Foundation, August 2023)

trade secrets, and confidential information, the providers' commercial interests should not obstruct required data access for research, with protective measures like data vaults ensuring secure access.

VLOP and VLOSE providers should ensure that researchers meeting certain criteria can use publicly accessible data for systemic risk research, and provide, when technically possible, real-time access to public engagement data. Emphasizing greater data access to monitor societal issues, these providers and researchers should simultaneously uphold the protection of personal data, abide by Regulation (EU) 2016/679, and employ anonymization or pseudonymization of personal data unless it hinders the research purpose (Art. 40 DSA).

h. Compliance function

Taking their meaning into account, these providers need to establish a compliance function which needs to be independent from the operational part of the providers, composed of compliance officers⁴⁹. The compliance function should have sufficient authority, stature, and resources and access to the management body to monitor compliance. Compliance officers should have the necessary qualifications, knowledge, experience, and ability to fulfill their tasks. The head of the compliance function should be an independent senior manager and report directly to the management body. The compliance officers' tasks include cooperating with the Digital Services Coordinator and the Commission, identifying risks, organizing independent audits, informing and advising management and employees, monitoring compliance, and monitoring commitments under codes of conduct or crisis protocols. Providers must communicate the name and contact details of the head of the compliance function to the Digital Services Coordinator and the Commission. The management body is responsible for implementing governance arrangements to ensure the independence of the compliance function, division of responsibilities, prevention of conflicts of interest, and sound management of systemic risks. The management body should review strategies and policies for risk management at least once a year and allocate sufficient resources to risk management (Recital 99 DSA; Art. 41 DSA).

i. Transparency reporting

Additional transparency requirements apply to VLOPs and VLOSEs. Transparency reporting obligations

⁴⁸ Andrej Savin, 'The EU Digital Services Act: Towards a More Responsible Internet' (2021) Copenhagen Business School Law Research Paper 21-04, 11

⁴⁹ Ibid

are meaningful for identifying risks and assessing their probability and impact⁵⁰. They should report comprehensively on risk assessments and subsequent measures adopted as specified in the Act (Recital 100 DSA).

Providers of VLOPs and VLOSEs must publish reports which are obligatory for all providers of intermediary services, but with bigger frequency than the other providers. They should publish them within two months from the date of application and thereafter at least every six months⁵¹.

The reports published by providers of very large online platforms, in addition to the other transparency reporting obligations for online intermediaries and providers of online platforms information must specify:

- The human resources dedicated to content moderation for the services offered in the Union, broken down by each official language of the Member States. This includes compliance with obligations set out in Art. 16 and 22 DSA as well as compliance with obligations in Art. 20 DSA.
- The qualifications and linguistic expertise of the personnel involved in content moderation, as well as the training and support provided to them.
- Indicators of accuracy and related information specified in Art. 15(1), point (e) DSA, broken down by each official language of the Member States.

In addition to the information mentioned in Art. 24(2) DSA, the reports must include information on the average monthly recipients of the service for each Member State.

The Commission will adopt delegated acts specifying further details on the transparency reporting obligations, the internal control measures, the independent audit, and the cooperation with public authorities of very large online platforms.

The providers are obliged to send a report regarding the results of the risk assessment under Art. 34 DSA, the audit report from Art. 37(4) DSA and the audit implementation report from Art. 37(6) DSA and to notify him of the specific mitigation measures under Art. 35(1) DSA as well as consultations held in support of the risk assessments and design of the risk mitigation measures (Art. 42 DSA).

⁵⁰ Zohar Efroni, 'The Digital Services Act: risk-based regulation of online platforms' (Frameworks for Data Markets, Weizenbaum Institute, 16 November 2021) <<https://policyreview.info/articles/news/digital-services-act-risk-based-regulation-online-platforms/1606>> accessed 31 March 2024

⁵¹ Berrak Genç-Gelgeç, 'Regulating Digital Platforms: Will the DSA Correct Its Predecessor's Deficiencies?' (2022) 18 CYELP 25

j. Supervisory fee

The Commission should have sufficient resources (staffing, expertise, and financial means) for its tasks under the Act (Recital 110). The Commission will charge the providers of VLOPs and VLOSEs an annual supervisory fee upon their designation.

The aggregate sum of the annual supervisory fees shall encompass the anticipated expenses incurred by the Commission in connection with its supervisory responsibilities under the Act. This includes costs associated with the designation, the establishment, upkeep, and operation of the database, the information sharing system, referrals, providing support to the Board and the supervisory tasks delineated in Article 56 and Section 4 of Chapter IV DSA.

Providers of VLOPs and VLOSEs shall be subject to an annual supervisory fee for each designated service, as per Art. 33 DSA. The Commission will issue implementing acts to determine the specific amount of the annual supervisory fee for each provider of a VLOP or VLOSE.

The implementing act mentioned in Paragraph 3, Art. 43 DSA and the delegated act mentioned in Paragraph 4, Art. 43 DSA shall adhere to the following principles:

- The calculation of the overall amount of the annual supervisory fee considers the costs incurred in the previous year.
- The annual supervisory fee is proportionate to the number of average monthly active recipients in the Union for each designated VLOPs and VLOSEs under Article 33 DSA.
- The total amount of the annual supervisory fee levied on a specific provider of a VLOP and VLOSE does not, under any circumstances, exceed 0.05% of its worldwide annual net income in the preceding financial year.

The Commission is obliged to report yearly to the European Parliament and to the Council regarding the total expenses incurred for the fulfillment of tasks under the Act and the aggregate amount of individual annual supervisory fees assessed in the previous year (Art. 43 DSA).

k. Enforcement of obligations of providers of very large online platforms and of very large online search engines

The DSA provides for specific possibilities for enforcement of the obligations of the providers of VLOPs

and VLOSEs^{52 53 54}. Art. 56 of the DSA distributes the regulatory powers for the DSA horizontally and vertically. The Commission has vertical power to overview the enforcement of the obligations of the DSA for the VLOPs and VLOSEs, while the powers for enforcing the DSA regarding the other platforms and intermediaries lies horizontally in the Member States. The horizontal distribution of powers for the other platforms and intermediaries corresponds to the distribution of powers in data protection or media law⁵⁵. In terms of regulation of VLOPs and VLOSEs, the DSA enables a vertical coordination and composite administration system. This means that it creates a network of cooperation and coordination between the Commission, the EBDS, the DSCs and other institutions. The EBDS has an advisory support role to the Commission and its regulation and supervision VLOPs and VLOSEs (Art. 61(2) (c), Art. 63(1)(d) DSA). Regarding this, the Commission has to strongly consider the opinions of the EBDS (Art. 66(4), Art. 75(1) 2 DSA).

Additional procedural coordination mechanisms include the right of the DSCs to submit requests to the Commission to assess infringements of VLOPs or VLOSEs that are suspected by the DSCs (Art. 65(2), (3) DSA) and the Commission's power to request from national regulators restrictions of access to services of VLOPs or VLOSEs (Art. 75(4), or Art. 82(1) sub-para. 1 in connection with Art. 51(3) sub-para. 1(b) DSA). The DSA also provides for the possibility to request general support of any DSC (Art. 66(3) DSA) and also a few supporting services (Art. 68(2), Art. 69(3), (7)-(9), Art. 72(2) DSA) in enforcement procedures against VLOPs or VLOSEs⁵⁶.

The Commission should develop expertise and capabilities on Union level, in cooperation with the Digital Services Coordinators and the Board. It will also coordinate the assessment of systemic and emerging issues across the Union related to VLOPs and VLOSEs, with regard to matters covered by the Act. In doing so, the Digital Services Coordinators, the Board and other Union bodies, offices and agencies with rele-

⁵² Andrej Savin, 'The EU Digital Services Act: Towards a More Responsible Internet' (2021) Copenhagen Business School Law Research Paper 21-04, 11

⁵³ Berrak Genç-Gelgeç, 'Regulating Digital Platforms: Will the DSA Correct Its Predecessor's Deficiencies?' (2022) 18 CYELP 25

⁵⁴ Jens-Peter Schneider, Kester Siegrist and Simon Oles, 'Collaborative Governance of the EU Digital Single Market established by the Digital Services Act' (2023) University of Luxembourg Law Research Paper 2023-09, 37 <<https://ssrn.com/abstract=4561010>> accessed 31 March 2024

⁵⁵ Bengi Zeybek and Joris van Hoboken, 'The Enforcement Aspects of the DSA, and its Relation to Existing Regulatory Oversight in the EU' (DSA Observatory, 4 February 2022) <<https://dsa-observatory.eu/2022/02/04/the-enforcement-aspects-of-the-dsa-and-its-relation-to-existing-regulatory-oversight-in-the-eu/>> accessed 31 March 2024

⁵⁶ Jens-Peter Schneider, Kester Siegrist and Simon Oles, 'Collaborative Governance of the EU Digital Single Market established by the Digital Services Act' (2023) University of Luxembourg Law Research Paper 2023-09, 50 <<https://ssrn.com/abstract=4561010>> accessed 31 March 2024

vant expertise can be included in support of the assessment of systemic and emerging issues across the Union under the Act. The Member States should also cooperate with the Commission for this matter (Art. 64 DSA).

- Requests for information

The Commission is authorized to require the provider of the VLOP and VLOSE, as well as any other natural or legal person acting for purposes related to their trade, business, craft or profession to provide information related to possible infringement of the Act. The request for information has to state the legal basis and the purpose of the request, indicate the required information and impose a period within which the information needs to be provided, and the fines provided for in Art. 74 DSA for supplying incorrect, incomplete or misleading information. The Commission can also require the providers to supply information by decision and it needs to state the same information in it as in the request for information and it can also state or impose the periodic penalty payments provided in Art. 76 DSA. The right for the decision to be reviewed by the Court of Justice of the Union should also be indicated in the decision (Art. 67 DSA).

- Power to take interviews and statements

The Commission is also authorized to interview any legal or natural person related to ongoing investigations regarding suspected infringement of the Act. In order to do so, the Commission needs to obtain the person's consent and it can also record the interview. It can also inspect the premises of the providers of VLOPs or VLOSEs and the officials are empowered to:

- enter any premises, land and means of transport of the provider;
- examine the books and other records related to the provision of the service concerned;
- obtain in any form copies from the books or other records;
- require the provider to provide access to and explanations on its organization, functioning, IT system, algorithms, data-handling and business practices and to record or document the explanations given;
- seal any premises used for purposes related to the trade, business, craft or profession of the provider, as well as books or other records, for the period and to the extent necessary for the inspection;
- ask any representative or member of staff for explanations on facts or documents relating to the subject-matter and purpose of the inspection and to record the answers;
- address questions to any such representative or member of staff relating to the subject-

matter and purpose of the inspection and to record the answers.

Inspections may be carried out with the assistance of auditors or experts appointed by the Commission pursuant to Art. 72(2) DSA, and of Digital Services Coordinator or other competent national authorities of the Member State in the territory of which the inspection is conducted (Art. 68 DSA).

- Interim measures

The Commission also has the authority to order interim measures against the provider of the VLOPs and VLOSE where there is urgency due to risk of serious damage to the recipients of the service based on a prima facie finding of an infringement of the Act. The decision regarding this applies for a limited time and can be renewed (Art. 70 DSA).

- Commitments

The providers of VLOP and VLOSE may offer commitments in order to ensure compliance with the Act, and the Commission can make the commitments binding on the providers and declare that there are no further grounds for action. The Commission can reopen the proceedings: where there has been a material change in the facts which founded the decision, where the provider acts contrary to its commitments or where the decision was based on incomplete, incorrect or misleading information provided by the provider. It can also reject the commitments by the provider if it considers them as insufficient or not adequate enough to ensure effective compliance with the Act (Art. 71 DSA).

- Monitoring actions

The Act gives the Commission power to monitor the implementation of it by the providers of VLOPs or VLOSEs. This encompasses giving access and explanations regarding the databases and algorithms of the providers. It can impose obligations to maintain documentation regarding compliance with the Act. In order to monitor the providers, the Commission may appoint independent external experts and auditors, which may also be from national authorities to assist it and to provide relevant expertise (Art. 72 DSA).

- Non-compliance

In case the Commission establishes that a provider does not conform to the following, it can adopt a non-compliance decision:

- provisions of the Act;

- interim measures under Art. 70 DSA;
- commitments under Art. 71 DSA.

The Commission needs to share its preliminary findings regarding the non-compliance of the provider to it and explain the measures that the Commission will take, or the providers of VLOPs or VLOSEs should take. The Decision needs to include a reasonable deadline for the provider to comply with its orders and to share the measures that it aims to take. The providers also need to describe the measures that it has taken. Regarding this, the Commission may impose a fine in the maximum amount of 6% of the provider's total worldwide annual turnover in the preceding financial year (Art. 73 DSA).

- Fines

The fines should not exceed the amount of 1% of the total annual income or worldwide turnover in the preceding financial year, if the provider or other natural or legal person if they:

- supply incorrect, incomplete or misleading information in response to a request under Art. 67 DSA;
- fail to reply to the request for information by decision within the set period;
- fail to rectify within the set period given information which is incorrect, incomplete or misleading or if they fail or refuse to provide complete information;
- refuse to submit to an inspection under Art. 69 DSA;
- fail to comply with the measures adopted by the Commission under Art. 72 DSA;
- fail to comply with the conditions for access to the Commission's file pursuant to Art. 79(4) DSA.

For these types of fines, the Commission is also obliged to share its preliminary findings to the providers of VLOPs or VLOSEs before adopting the decision. In order to establish the amount of the fine, for both types of fines, due regard shall be given to the nature, gravity, duration and recurrence of the infringement and, for the second type of fines, the delay caused to the proceedings (Art. 74 DSA).

- Initiation of proceedings by the Commission and cooperation in investigation

If the Commission undertakes any proceedings from the previous two paragraphs, it needs to inform the Digital Services Coordinators, the Board and the provider through the information sharing system from Art. 85 DSA. The Digital Services Coordinators are obliged to transmit any information they have regarding the infringement. The undertaking of proceedings absolve the Digital Services Coordinator or the compe-

tent authorities of their duties under Art. 56(4) DSA. The Commission can ask for the Digital Services Coordinators' help which are concerned by the suspected infringement as well as the Digital Services Coordinator of establishment (Art. 66 DSA).

- Enhanced supervision of remedies to address infringements of obligations laid down in Section 5 of Chapter III

The Commission may use the enhanced supervision system when adopting a decision under Art. 73 DSA related to infringements by a provider. It should require the provider to draw up and share an action plan which will provide the necessary measures for termination of the infringement. The providers are obliged to perform an independent audit in accordance with Art. 37(3) and (4) DSA on the implementation of the other measures and they need to specify the identity of the auditors and the methodology, timing and follow-up of the audit. Additionally, the Commission will issue an opinion on the action plan and will follow the execution of it. The Commission and the provider need to cooperate in the process and the Board needs to be informed about the implementation. The Act further provides for reasons under which the Commission may take measures in accordance with the Act regarding the action plan and its execution (Art. 75 DSA).

- Periodic penalty payments

The Commission is also authorized to impose periodic penalty payments on the providers of VLOPs or VLOSEs which should not exceed 5% of the average daily income or worldwide annual turnover in the preceding financial year per day, with the incentive for them to:

- supply correct and complete information in response to a decision requiring information under Art. 67 DSA;
- submit to an inspection under Art. 69 DSA;
- comply with a decision ordering interim measures under Art. 70(1) DSA;
- comply with commitments which are legally binding by a decision under Art. 71(1) DSA;
- comply with a decision pursuant to Art. 73(1) DSA, including where applicable the requirements it contains relating to the action plan referred to in Art. 75 DSA.

If the provider satisfies the obligations, the Commission may reduce the final amount from what was initially imposed (Art. 76 DSA).

- Limitation period for the imposition of penalties

The limitation period for the imposition of penalties is five years and in cases of repeated infringements the period begins to run on the day on which the infringement ceases. The Act further also provides for reasons for interruption which set the time running from the start. If the decision by the Commission is subject to proceedings in front of the Court of Justice, the limitation period should be suspended (Art. 77 DSA).

- Limitation period for the enforcement of penalties

The limitation period for enforcement of decisions is also five years. The Act also provides reasons for interruption and suspension of the period (Art. 78 DSA).

- Right to be heard and access to the file

The provider has the right to be heard before the Commission adopts a decision regarding:

- preliminary findings of the Commission; and
- measures that the Commission intends to take in view of the preliminary findings.

The providers of VLOPs or VLOSEs have the right to submit observations on the preliminary findings and the Commission has to base its decisions only on objections on which the providers were able to comment.

The parties to the proceedings have full rights of defense. They have right to access the Commission's file under the terms that the business secrets of the provider shall be kept, as well as the confidential information of the Commission, the Board, the Digital Service Coordinators, other competent authorities or other public authorities of the Member States (Art. 79 DSA).

- Publication of decisions

The decisions by the Commission should be published, pursuant to Art. 70(1), Art. 71(1) and Art. 73 to 76 DSA. The publication needs to state the names of the parties and the main content of the decision, including any penalties imposed. In accordance with Art. 261 TFEU, the Court of Justice of the European Union has jurisdiction to review decisions which impose fines or periodic penalty payments. It may cancel, reduce or increase the fine or periodic penalty payment imposed (Art. 80 DSA).

- Requests for access restrictions and cooperation with national courts

If all possibilities to end an infringement according to the Act have been exhausted, the Commission may ask the Digital Services Coordinator of establishment of the provider to perform under Art. 51(3). Before it does so, the parties need to provide written observations which describe the measures it intends to undertake. The Commission is also authorized to submit written observations. The decisions by the Commission have priority over the decisions by the national courts and the national courts should always assess to stay their proceedings if the Commission has already undertaken any under the Act, without prejudice to Art. 267 TFEU (Art. 82 DSA).

- Implementing acts relating to Commission intervention

The Commission is authorized to adopt implementing acts regarding the proceedings under Art. 69 and 72 DSA, the hearings provided for in Art. 79 DSA and the negotiated disclosure of information provided for in Art. 79 DSA. The concerned parties may submit their comments on the draft of the acts and they need to be adopted in accordance with the advisory procedure referred to in Art. 88 DSA (Art. 83 DSA).

V. General provisions and obligations from the DSA applicable to the other online platforms and intermediaries which also apply to VLOPs

The provisions of the DSA begin by stating the aim of the Act which is to ensure the smooth operation of the internal market for intermediary services by establishing unified regulations that foster a secure and dependable online environment, encouraging innovation while safeguarding fundamental rights, such as consumer protection. The Act is divided in to three main parts regarding the main regulations governing intermediary services, which are the following:

- Conditional exemption from liability for service providers;
- Specific due diligence requirements for certain categories of service providers;
- Guidelines for implementing and enforcing the Act, including cooperation and coordination among relevant authorities.

The main objective of the Act while regulating the online services is the respect of fundamental rights, including freedom of expression, freedom of information, and media freedom and pluralism (Recital 3 DSA, Recital 153 DSA). Its provisions are constructed in a way that always entails their protection, fairness among the society and proportionality.

1. Determining the liability of the providers of intermediary services

1.1 Rules on exemptions

Providers of platforms hold an important position in the dissemination of illegal content and as such pose a high risk in the society. Therefore, their responsibility in this area needs to be regulated and limited in specific cases. This stems from the reasoning of the Impact Assessment of the DSA which provides that platform service providers show up as rule-setters and can shape the public space for information⁵⁷. The DSA establishes rules which give exemptions to the providers of online services when they cannot be held liable for dissemination of illegal content, but not for when they can be⁵⁸. This provides continuity of the liability exemptions that the Directive 2000/31/EC placed. Any form of liability for any type of illegal content is determined by applicable Union or national law (Recital 17 DSA). Liability is not excluded if the provider actively contributes to the processing and publishing of the information instead of neutrally processing it technically and automatically⁵⁹ (Recital 18 DSA).

Generally, platforms are considered to be exempt when they do not have an active role in the dissemination like in the ‘mere conduit’, ‘caching’ and ‘hosting’ activities^{60 61}. A platform can hold the ‘mere conduit’ and ‘caching’ exemption when it is not involved in the creation or modification of the illegal content in any way, except for technical manipulations that don't compromise the information's integrity. For the provider to benefit from such an exemption, it should take necessary action for the removal of the illegal content through its own actions or through the system of notices, submitted by individuals under the DSA (Art. 4 - 6 DSA).

The liability exemptions under the DSA are the following:

Mere conduit: Providers of information society services transmitting information or providing access to a

⁵⁷ European Commission, ‘Impact Assessment Report’, SWD(2020) 348 final (15 December 2020), paras. 33, 38, 40

⁵⁸ Thomas Weck, ‘The DSA and Digital Violence: Entrepreneurial Freedom and Special Responsibility’, 3 (30 November 2023) <<https://ssrn.com/abstract=4667280>> accessed 24 April 2024

⁵⁹ Ibid

⁶⁰ Andrej Savin, ‘The EU Digital Services Act: Towards a More Responsible Internet’, 5 (2021) Copenhagen Business School Law Research Paper 21-04

⁶¹ Heiko Richter and others, ‘To Break Up or Regulate Big Tech? Avenues to Constrain Private Power in the DSA/DMA Package’ (2021) Max Planck Institute for Innovation & Competition Research Paper 21-25, 101 <<https://ssrn.com/abstract=3932809>> accessed 24 April 2024

communication network will not be liable for the transmitted or accessed information, provided that: they do not initiate the transmission, they do not select the receiver of the transmission and they do not select or modify the information in the transmission. This exemption includes the automatic, intermediate, and transient storage of transmitted information for the sole purpose of transmission, as long as it is not stored for a period longer than reasonably necessary (Art. 4 DSA). It basically signifies that the providers shall not be liable for the illegal information even if they possessed knowledge of illegal information that is present, in case they remain passive. This provision covers services that “transmit” information in or provide “access” to a “communication network”⁶².

Caching: Providers of information society services transmitting information will not be liable for the automatic, intermediate, and temporary storage of information, performed to make transmission more efficient or secure, provided that they do not modify the information, they comply with conditions on access and updating of the information, they do not interfere with the lawful use of technology to obtain data on the information's use and they act expeditiously to remove or disable access to the stored information upon obtaining knowledge of its removal or disablement by the initial source or by a judicial or administrative authority⁶³ (Art. 5 DSA).

Hosting: Providers of information society services storing information at the request of a recipient will not be liable for the stored information, provided that they do not have actual knowledge of illegal activity or content, or in claims for damages, are unaware of facts indicating such illegal activity or content and upon obtaining knowledge or awareness, they act expeditiously to remove or disable access to the illegal content⁶⁴ (Art. 6 DSA).

1.2 Other liability connected provisions

The DSA introduced also the “Good Samaritan Clause”, which was inspired by section 230 of the US Communications Act of 1934. This clause, which lies in Art. 7 DSA, allows the providers to detect and

⁶² Martin Husovec and Irene Roche Laguna, ‘Digital Services Act: A Short Primer’ (5 July 2022), 3 <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4153796> accessed 24 April 2024

⁶³ Florence G’sell, ‘The Digital Services Act (DSA): A General Assessment’ in Antje von Ungern-Sternberg (ed.), *Content Regulation in the European Union – The Digital Services Act* (SCHRIFTEN DES IRDT - TRIER STUDIES ON DIGITAL LAW, Volume 1, Verein für Recht und Digitalisierung e.V., Institute for Digital Law (IRDT), Trier April 2023), 7 <<https://ssrn.com/abstract=4403433>> accessed 24 April 2024

⁶⁴ Caroline Cauffman and Catalina Goanta, ‘A New Order: The Digital Services Act and Consumer Protection’ (2021) 12(4) *European Journal of Risk Regulation*, 764

combat illegal content on their own without losing the exemption of liability that the Act provides⁶⁵. What is most important to note is that the Act does not oblige the intermediary service providers to monitor their platforms for illegal content in a general sense^{66 67 68 69 70} (Art. 8 DSA). Depending on national laws, providers of intermediary services may be ordered to act against illegal content or provide specific information. But, these orders should meet certain conditions to ensure they can be efficiently complied with, especially in cross-border situations. Providers should inform the authority issuing an order about any actions taken in response to the order, in accordance with the time limits set by relevant Union or national law (Art. 9 DSA). National authorities can also order the intermediaries to provide information about one or more specific individual recipient of the service. The order needs to include a few elements and to fulfill other conditions too. The intermediaries are obliged to inform the recipient of the service of the received order and the effect given to it (Art. 10 DSA).

2. Due Diligence obligations

2.1 Provisions applicable to all providers of intermediary services

a. Single point of contact and legal representative

Providers of intermediary services should provide a single point of contact for efficient two-way communications and to publish and update relevant information relating to that point of contact^{71 72 73}. This point

⁶⁵ Florence G'sell, 'The Digital Services Act (DSA): A General Assessment' in Antje von Ungern-Sternberg (ed.), *Content Regulation in the European Union – The Digital Services Act* (SCHRIFTEN DES IRDT - TRIER STUDIES ON DIGITAL LAW, Volume 1, Verein für Recht und Digitalisierung e.V., Institute for Digital Law (IRDT), Trier April 2023), 4, 6, 7, 8 <<https://ssrn.com/abstract=4403433>> accessed 24 April 2024

⁶⁶ Thomas Weck, 'The DSA and Digital Violence: Entrepreneurial Freedom and Special Responsibility', 11 (30 November 2023) <<https://ssrn.com/abstract=4667280>> accessed 24 April 2024

⁶⁷ Florence G'sell, 'The Digital Services Act (DSA): A General Assessment' in Antje von Ungern-Sternberg (ed.), *Content Regulation in the European Union – The Digital Services Act* (SCHRIFTEN DES IRDT - TRIER STUDIES ON DIGITAL LAW, Volume 1, Verein für Recht und Digitalisierung e.V., Institute for Digital Law (IRDT), Trier April 2023), 10 <<https://ssrn.com/abstract=4403433>> accessed 24 April 2024

⁶⁸ Caroline Cauffman and Catalina Goanta, 'A New Order: The Digital Services Act and Consumer Protection' (2021) 12(4) *European Journal of Risk Regulation* 765, 769

⁶⁹ Martin Husovec and Irene Roche Laguna, 'Digital Services Act: A Short Primer' (5 July 2022), 3 <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4153796> accessed 24 April 2024

⁷⁰ Ethan Shattock, 'Self-regulation 2.0? A critical reflection of the European fight against disinformation', 2021 2(3) *Harvard Kennedy School Misinformation Review*, 3

⁷¹ Florence G'sell, 'The Digital Services Act (DSA): A General Assessment' in Antje von Ungern-Sternberg (ed.), *Content Regulation in the European Union – The Digital Services Act* (SCHRIFTEN DES IRDT - TRIER STUDIES ON DIGITAL LAW, Volume 1, Verein für Recht

of contact can be also used for requirements of the Act as well as for other acts of Union law (Art. 11 DSA). The providers should also provide a single point of contact for its recipients of service, such as telephone numbers, email addresses, electronic contact forms, chatbots or instant messaging, allowing swift, direct, and efficient communication (Art. 12 DSA). Sufficient resources should be allocated to ensure timely and efficient communication. Providers of intermediary services established outside the Union, but offering services within the Union, should designate a legal representative in the Union with sufficient mandate and resources to cooperate with relevant authorities^{74 75 76}. Designating a legal representative does not constitute an establishment in the Union (Art. 13 DSA).

b. Terms and conditions

The DSA provides some general rules regarding the terms and conditions of the intermediaries that need to be published⁷⁷. The Act contains obligations for the intermediaries to publish the terms regarding the ground on restriction of their services, especially information on any policies, procedures, measures and tools used for the purpose of content moderation, including algorithmic decision-making and human review, the rules of procedure of the internal complaint-handling system as well as information on the right to terminate the use of the service, which have the incentive to protect fundamental rights. The wording of the provision resembles the GDPR by requesting that the terms and conditions are expressed in a clear, unambiguous way⁷⁸. They are obliged to notify their users about any changes to the terms and

und Digitalisierung e.V., Institute for Digital Law (IRDT), Trier April 2023), 4 <<https://ssrn.com/abstract=4403433>> accessed 24 April 2024

⁷² Ethan Shattock, 'Self-regulation 2.0? A critical reflection of the European fight against disinformation', 2021 2(3) Harvard Kennedy School Misinformation Review, 3

⁷³ Heiko Richter and others, 'To Break Up or Regulate Big Tech? Avenues to Constrain Private Power in the DSA/DMA Package' (2021) Max Planck Institute for Innovation & Competition Research Paper 21-25, 106 <<https://ssrn.com/abstract=3932809>> accessed 24 April 2024

⁷⁴ Martin Husovec and Irene Roche Laguna, 'Digital Services Act: A Short Primer' (5 July 2022), 5 <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4153796> accessed 24 April 2024

⁷⁵ Rekha Dwivedi, 'WILL THE DSA FIX IT? A critical analysis of transparency obligations under the Digital Services Act', University of Oslo, Faculty of Law, 2022, 75 <<https://www.duo.uio.no/handle/10852/97974>> accessed 24 April 2024

⁷⁶ Andrej Savin, 'The EU Digital Services Act: Towards a More Responsible Internet' (2021) Copenhagen Business School Law Research Paper 21-04, 7

⁷⁷ Rekha Dwivedi, 'WILL THE DSA FIX IT? A critical analysis of transparency obligations under the Digital Services Act' (University of Oslo, Faculty of Law, 2022), 77 <<https://www.duo.uio.no/handle/10852/97974>> accessed 24 April 2024

⁷⁸ Heiko Richter and others, 'To Break Up or Regulate Big Tech? Avenues to Constrain Private Power in the DSA/DMA Package' (2021) Max Planck Institute for Innovation & Competition Research Paper 21-25, 31 <<https://ssrn.com/abstract=3932809>> accessed 24 April 2024

conditions. The services that are intended for minors need to give dedicated explanation of their terms and conditions for the minors (Art. 14 DSA).

c. Transparency reporting obligations

The providers need to publish easily comprehensible reports on the content moderation they engaged in the last year. There are different reporting requirements for the different types of providers – providers of hosting services and providers of intermediary services^{79 80} (Art. 15 DSA).

2.2 Provisions applicable to providers of hosting services, including online platforms

a. Notice and action mechanism

Hosting service providers play a crucial role in addressing illegal content online, as they store and provide access to information on a large scale. All hosting service providers, regardless of their size, are required to establish easily accessible and user-friendly notice and action mechanisms^{81 82 83}. These mechanisms enable individuals to report specific items of information deemed illegal content to the hosting service provider. The notice and action mechanisms should be prominently placed, located close to the relevant information, and as easy to find and use as mechanisms for reporting content violations.

Multiple specific items of allegedly illegal content can be reported through a single notice to ensure effective operation. The identity of the notifier may or may not be required, depending on the type of information reported, as it can assist in determining the legality of the content. Illegal content as such is not

⁷⁹ Rekha Dwivedi, 'WILL THE DSA FIX IT? A critical analysis of transparency obligations under the Digital Services Act' (University of Oslo, Faculty of Law, 2022), 78 <<https://www.duo.uio.no/handle/10852/97974>> accessed 24 April 2024

⁸⁰ Thomas Weck, 'The DSA and Digital Violence: Entrepreneurial Freedom and Special Responsibility' (30 November 2023), 6 <<https://ssrn.com/abstract=4667280>> accessed 24 April 2024

⁸¹ Florence G'sell, 'The Digital Services Act (DSA): A General Assessment' in Antje von Ungern-Sternberg (ed.), *Content Regulation in the European Union – The Digital Services Act* (SCHRIFTEN DES IRDT - TRIER STUDIES ON DIGITAL LAW, Volume 1, Verein für Recht und Digitalisierung e.V., Institute for Digital Law (IRDT), Trier April 2023), 9 <<https://ssrn.com/abstract=4403433>> accessed 24 April 2024

⁸² Jacob Mchangama, Natalie Alkiviadou and Raghav Mendiratta, THOUGHTS ON THE DSA: Challenges, Ideas and the Way Forward through International Human Rights Law, 7 <https://futurefreespeech.org/wp-content/uploads/2022/05/Report_thoughts-on-DSA.pdf> accessed 24 April 2024

⁸³ Joan Barata, The Digital Services Act and Its Impact on the Right to Freedom of Expression: Special Focus on Risk Mitigation Obligations (DSA Observatory, 27 July 2021), 15 <<https://dsa-observatory.eu/2021/07/27/the-digital-services-act-and-its-impact-on-the-right-to-freedom-of-expression-special-focus-on-risk-mitigation-obligations/>> accessed 24 April 2024

defined by the DSA and may be represented in many different manifestations. This includes manifestly illegal and criminally penalized content, illegal content that is defined by sources of national legislation, defamatory content that is considered as such upon a judicial decision, or content that depicts illegal activities that take place in the physical world (which is not considered ordinarily as illegal). Notices given under Art. 16 DSA shall be considered to give rise to actual knowledge and awareness that can be reached without a detailed legal examination nullify liability exemptions on hosting services providers. However, the statement alone by a user that content is considered as illegal should not be considered as to create knowledge or awareness of the provider, unless the content reaches a threshold of obviousness of illegality⁸⁴.

Any action taken by a hosting service provider upon receiving a notice should be focused and targeted. The provider should remove or disable access to the specific items of information considered illegal content without unduly infringing the freedom of expression and information of the service recipients. These mechanisms must facilitate the timely, diligent, and non-arbitrary processing of notices, with transparent and clear rules (Art. 16 DSA).

b. Statement of reasons

Providers of hosting services must provide a clear and specific statement of reasons to affected recipients of the service when imposing restrictions due to information representing illegal content or being incompatible with terms and conditions. The statement of reasons must include the measure being taken, facts and circumstances, the legal provisions being violated, any third-party notification, how the decision was made, and possibilities of legal remedies⁸⁵. Hosting service providers should act promptly, considering the type of illegal content reported and the urgency of taking action^{86 87 88}(Art. 17 DSA).

⁸⁴ Ibid

⁸⁵ Florence G'sell, 'The Digital Services Act (DSA): A General Assessment' in Antje von Ungern-Sternberg (ed.), *Content Regulation in the European Union – The Digital Services Act* (SCHRIFTEN DES IRDT - TRIER STUDIES ON DIGITAL LAW, Volume 1, Verein für Recht und Digitalisierung e.V., Institute for Digital Law (IRDT), Trier April 2023), 25 <<https://ssrn.com/abstract=4403433>> accessed 24 April 2024

⁸⁶ Alexander Peukert and others, 'European Copyright Society – Comment on Copyright and the Digital Services Act Proposal' (2022) 53 International Review of Intellectual Property and Competition Law, 362 <<https://link.springer.com/article/10.1007/s40319-022-01154-1>> accessed 24 April 2024

⁸⁷ Laura Edelson, Inge Graef and Filippo Lancieri, 'Access to Data and Algorithms: For an Effective DMA and DSA Implementation' (16 March 2023), 25 <<https://cerre.eu/publications/access-to-data-and-algorithms-for-an-effective-dma-and-dsa-implementation/>> accessed 24 April 2024

⁸⁸ Caroline Cauffman and Catalina Goanta, 'A New Order: The Digital Services Act and Consumer Protection' (2021) 12(4) European Journal of Risk Regulation, 770

c. Notification of suspicions of criminal offences

Immediate action is expected when there is suspicion of illegal activity that poses a threat to life or safety. The providers are required to inform the relevant authorities of place of establishment as soon as possible. This takes part in the privatized enforcement trend that is present in the DSA, which refers to the possibilities that the DSA gives the platforms to hold the primary decisions on fundamental rights and speech governance⁸⁹ (Art. 18 DSA).

2.3 Additional provisions applicable to providers of online platforms

a. Exclusion for micro and small enterprises

The Section regarding obligations to providers of online platforms shall not apply to micro and small enterprises, if they do not fall under the category of VLOPs or VLOSEs (Art. 20 DSA).

b. Internal complaint-handling systems and out-of-court dispute settlements

Providers of online platforms must implement internal complaint-handling systems to allow recipients of the service to contest decisions related to content illegality or incompatibility with terms and conditions⁹⁰
⁹¹ ⁹² ⁹³. Recipients can use the complaint mechanism to contest decisions on their notices or complaints, including when they believe the provider's action was inadequate. Parties should have the option to en-

⁸⁹ Heiko Richter and others, 'To Break Up or Regulate Big Tech? Avenues to Constrain Private Power in the DSA/DMA Package' (2021) Max Planck Institute for Innovation & Competition Research Paper 21-25, 13 <<https://ssrn.com/abstract=3932809>> accessed 24 April 2024

⁹⁰ Thomas Weck, 'The DSA and Digital Violence: Entrepreneurial Freedom and Special Responsibility' (30 November 2023), 6 <<https://ssrn.com/abstract=4667280>> accessed 24 April 2024

⁹¹ Florence G'sell, 'The Digital Services Act (DSA): A General Assessment' in Antje von Ungern-Sternberg (ed.), *Content Regulation in the European Union – The Digital Services Act* (SCHRIFTEN DES IRDT - TRIER STUDIES ON DIGITAL LAW, Volume 1, Verein für Recht und Digitalisierung e.V., Institute for Digital Law (IRDT), Trier April 2023), 13 <<https://ssrn.com/abstract=4403433>> accessed 24 April 2024

⁹² Martin Husovec and Irene Roche Laguna, 'Digital Services Act: A Short Primer' (5 July 2022), 7 <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4153796> accessed 24 April 2024

⁹³ Jacob Mchangama, Natalie Alkiviadou and Raghav Mendiratta, THOUGHTS ON THE DSA: Challenges, Ideas and the Way Forward through International Human Rights Law, 7 <https://futurefreespeech.org/wp-content/uploads/2022/05/Report_thoughts-on-DSA.pdf> accessed 24 April 2024

gage in out-of-court dispute settlement, even after using the internal complaint-handling system⁹⁴. Out-of-court settlement outcomes are not binding, and parties should retain the right to seek judicial redress (Art. 20, 21 DSA).

c. Trusted flaggers

The DSA provides for the option for entities that have particular expertise and competence in tackling illegal content to be named “trusted flaggers” by the Digital Services Coordinators in the country of their establishment. Online platforms must prioritize and process notices from trusted flaggers promptly^{95 96 97}. Trusted flaggers should publish easily understandable annual reports on their notices and actions taken⁹⁸. Reports should include information on categorized notices, types of content, and the provider's action (Art. 22 DSA).

d. Measures against misuse, transparency obligations and design of online Interfaces

Providers of online platforms have an obligation to temporarily suspend their services towards users that provide illegal content. The suspension obligation also applies to the notice and action mechanism and complaint handling system against users that misuse it^{99 100 101}(Art. 23 DSA). Combined with the internal

⁹⁴ Caroline Cauffman and Catalina Goanta, ‘A New Order: The Digital Services Act and Consumer Protection’ (2021) 12(4) European Journal of Risk Regulation, 769

⁹⁵ Ethan Shattock, ‘Self-regulation 2.0? A critical reflection of the European fight against disinformation’, 2021 2(3) Harvard Kennedy School Misinformation Review, 3

⁹⁶ Jacob Mchangama, Natalie Alkiviadou and Raghav Mendiratta, THOUGHTS ON THE DSA: Challenges, Ideas and the Way Forward through International Human Rights Law, 10 <https://futurefreespeech.org/wp-content/uploads/2022/05/Report_thoughts-on-DSA.pdf> accessed 24 April 2024

⁹⁷ Martin Husovec and Irene Roche Laguna, ‘Digital Services Act: A Short Primer’ (5 July 2022), 5, 7 <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4153796> accessed 24 April 2024

⁹⁸ Rekha Dwivedi, ‘WILL THE DSA FIX IT? A critical analysis of transparency obligations under the Digital Services Act’ (University of Oslo, Faculty of Law, 2022), 80 <<https://www.duo.uio.no/handle/10852/97974>> accessed 24 April 2024

⁹⁹ Florence G’sell, ‘The Digital Services Act (DSA): A General Assessment’ in Antje von Ungern-Sternberg (ed.), *Content Regulation in the European Union – The Digital Services Act* (SCHRIFTEN DES IRDT - TRIER STUDIES ON DIGITAL LAW, Volume 1, Verein für Recht und Digitalisierung e.V., Institute for Digital Law (IRDT), Trier April 2023), 14 <<https://ssrn.com/abstract=4403433>> accessed 24 April 2024

¹⁰⁰ Heiko Richter and others, ‘To Break Up or Regulate Big Tech? Avenues to Constrain Private Power in the DSA/DMA Package’ (2021) Max Planck Institute for Innovation & Competition Research Paper 21-25, 66 <<https://ssrn.com/abstract=3932809>> accessed 24 April 2024

¹⁰¹ Rekha Dwivedi, ‘WILL THE DSA FIX IT? A critical analysis of transparency obligations under the Digital Services Act’ (University of Oslo, Faculty of Law, 2022), 79 <<https://www.duo.uio.no/handle/10852/97974>> accessed 24 April 2024

complaint system and the statement of reasons obligations, the suspension of account possibility should incite good behavior on all sides¹⁰².

Online platforms are subject to more transparency reporting obligations in addition to the obligations for all intermediary service providers. Reporting obligations for online platforms include publishing information regarding out of court dispute settlements, the number of suspensions regarding misuse of the platform's services, the number of their active users etc. (Art. 24 DSA). Online platforms should design their interfaces in a way that does not mislead users (Art. 25 DSA).

e. Online advertisement

Online advertisement is recognized by the DSA as a very important part of the online services. However, online advertising can pose risks, including illegal content, financial incentives for illegal activities and discriminatory presentation of ads.

Online platforms presenting advertisements must ensure that recipients can clearly identify the advertisements, including the advertiser's identity, who is financing the advertisement and access meaningful information about the parameters used for targeting. Platforms must provide a functionality for recipients to declare if their content represents commercial communication, and this declaration must be visible to other recipients¹⁰³ (Art. 26 DSA).

The DSA provides that every recipient of a service needs to have information on the methods that are used in order to receive specific advertisement. This information needs to be directly accessible from the online interface where the advertisement is presented and it should cover the method used for presenting the advertisement and the main profiling criteria used. Presenting advertisements based on profiling using special categories of personal data is prohibited for providers of online platforms. This prohibition is in line with Union law on personal data protection (Recital 68 DSA).

Codes of conduct should complement transparency obligations for providers of online platforms and search engines regarding advertising (Art. 46 DSA).

¹⁰² Martin Husovec and Irene Roche Laguna, 'Digital Services Act: A Short Primer' (5 July 2022), 7 <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4153796> accessed 24 April 2024

¹⁰³ Florence G'sell, 'The Digital Services Act (DSA): A General Assessment' in Antje von Ungern-Sternberg (ed.), *Content Regulation in the European Union – The Digital Services Act* (SCHRIFTEN DES IRDT - TRIER STUDIES ON DIGITAL LAW, Volume 1, Verein für Recht und Digitalisierung e.V., Institute for Digital Law (IRDT), Trier April 2023), 17 <<https://ssrn.com/abstract=4403433>> accessed 24 April 2024

f. Recommender systems transparency

Recommender systems used by online platforms play a significant role in facilitating access to information. Providers should inform recipients about the parameters used in the recommender systems and their ability to influence them¹⁰⁴. Parameters for recommender systems should be clearly presented and easily understandable, including the criteria used and the reasons for their importance. The users need to have options to select and modify the information that they will receive (Art. 27 DSA).

g. Protection of minors

As the protection of minors represents an important policy objective of the Union, the Act provides that online platforms accessible to minors should implement measures to ensure their privacy, safety and security. Providers should not present profiling-based advertisements to minors^{105 106}. The obligation should not incentivize collecting personal data on age prior to use and should comply with Union law on personal data protection (Art. 28 DSA).

2.4 Provisions applicable to providers of online platforms allowing consumers to conclude distance contracts with traders

Provisions applicable to providers of online platforms allowing consumers to conclude distance contracts with traders shall not apply to micro and small enterprises which have not been designated as VLOPs or VLOSEs (Art. 29 DSA).

a. Traceability of Traders

Online platforms facilitating distance contracts should ensure traders are traceable¹⁰⁷. Traders must provide essential information regarding their identification, payment details, excerpt from the trade register

¹⁰⁴ Martin Husovec and Irene Roche Laguna, 'Digital Services Act: A Short Primer' (5 July 2022), 8 <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4153796> accessed 24 April 2024

¹⁰⁵ Florence G'sell, 'The Digital Services Act (DSA): A General Assessment' in Antje von Ungern-Sternberg (ed.), *Content Regulation in the European Union – The Digital Services Act* (SCHRIFTEN DES IRDT - TRIER STUDIES ON DIGITAL LAW, Volume 1, Verein für Recht und Digitalisierung e.V., Institute for Digital Law (IRDT), Trier April 2023), 18 <<https://ssrn.com/abstract=4403433>> accessed 24 April 2024

¹⁰⁶ Martin Husovec and Irene Roche Laguna, 'Digital Services Act: A Short Primer' (5 July 2022), 8 <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4153796> accessed 24 April 2024

¹⁰⁷ Martin Husovec and Irene Roche Laguna, 'Digital Services Act: A Short Primer' (5 July 2022), 9 <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4153796> accessed 24 April 2024

where they are registered and they also need to certify that they will only offer products that comply with the applicable rules of the Union. The information should be stored securely for a specified duration. This requirement allows public authorities and interested parties to access the information for legitimate purposes. Online platforms should make best efforts to assess the reliability of trader-provided information. They can use official online databases, request supporting documents, or rely on other reliable sources (Art. 30 DSA).

b. Compliance by design

The online interfaces need to be designed in a way that enables traders to comply with relevant Union laws. The interfaces should be specifically designed in order to allow the traders to provide information regarding their identification, identification of their products, connected trademarks and symbols and any labelling and marking connected to product safety and compliance¹⁰⁸. Platforms should assess if traders have uploaded complete information and prevent offering incomplete products or services. This does not impose a general monitoring obligation on platforms or require them to assess information accuracy (Art. 31 DSA).

c. Right to information

In cases where these providers have obtained information that some of the products that are offered on the platform are illegal, they are obliged to inform the consumers who purchased the product about that fact and they need to also share the trader's identity and the available means of amendment (Art. 32 DSA).

3. Enforcement of the Regulation and cooperation

The articles which form the final part of the Regulation regarding all providers of online platforms collectively establish a framework for effective supervision, enforcement, and cooperation among Member States, the Commission, and Digital Services Coordinators to ensure compliance with the Regulation.

The allocation of supervisory and enforcement powers under the Regulation lies in the Member State of establishment and the Commission has exclusive powers in supervision of the act concerning providers of very large online platforms and search engines. When a provider lacks an establishment in the Union, jurisdiction extends to the Member State where its legal representative resides or to the Commission.

¹⁰⁸ Florence G'sell, 'The Digital Services Act (DSA): A General Assessment' in Antje von Ungern-Sternberg (ed.), *Content Regulation in the European Union – The Digital Services Act* (SCHRIFTEN DES IRDT - TRIER STUDIES ON DIGITAL LAW, Volume 1, Verein für Recht und Digitalisierung e.V., Institute for Digital Law (IRDT), Trier April 2023), 18 <<https://ssrn.com/abstract=4403433>> accessed 24 April 2024

Failure to appoint a legal representative can trigger supervision and enforcement actions by Member States or the Commission. There should also be close cooperation between Member States and the Commission in enforcing the regulation (Art. 56 DSA). Mutual assistance between Digital Services Coordinators and the Commission is emphasized for consistent and efficient regulation application. This involves information exchange, notification of investigations, and decision-making processes, ensuring transparency and collaboration (Art. 57 DSA). Cross-border cooperation among Digital Services Coordinators allows them to request investigations into suspected infringements affecting recipients in their respective Member States. The Board may also intervene upon request from multiple Coordinators, ensuring a coordinated approach to enforcement (Art. 58 DSA). In case of disagreements or inadequate enforcement measures, the Act provides for the option for referral to the Commission. The Commission assesses the matter and may request the Digital Services Coordinator to review their actions to ensure effective enforcement (Art. 59 DSA). Joint investigations led by the Digital Services Coordinator of establishment can be launched at their own initiative or upon the recommendation of the Board involving other concerned Coordinators. Cooperation among Coordinators is essential, with the obligation for communication of preliminary positions and the option for potential referral to the Commission in case of disagreements or delays (Art. 60 DSA).

3.1 Digital Services Coordinator

The Member States need to appoint one or more competent authorities to supervise the providers of intermediary services and enforcement of the Act. Each State should appoint one of those authorities as a Digital Services Coordinator which will be the single contact point for matters related to the Regulation. The Coordinator should coordinate and cooperate with other authorities in the Member State.

The Digital Services Coordinators should have the necessary means, including financial and human resources, to supervise all relevant intermediary service providers. Competent authorities should act independently without seeking or receiving instructions, except for cooperation purposes (Art. 50 DSA).

The Digital Services Coordinator is responsible for overseeing all matters related to the supervision and enforcement of the Regulation within that Member State, unless certain specific tasks or sectors have

been assigned to other competent authorities^{109 110}. The Digital Services Coordinator is responsible for ensuring coordination at the national level, contributing to effective and consistent supervision and enforcement of the Regulation across the European Union (Art. 49 DSA).

Digital Services Coordinators have certain investigative powers concerning providers of intermediary services falling within their jurisdiction to carry out their tasks under the Regulation. These powers include the authority to request information from providers and other relevant persons, carry out inspections and record explanations. Digital Services Coordinators also have enforcement powers concerning providers of intermediary services falling within their jurisdiction. These powers include accepting commitments offered by providers, ordering the cessation of infringements, imposing remedies, imposing fines, imposing periodic penalty payments and adopting interim measures to avoid serious harm. The measures taken by Digital Services Coordinators exercising their powers must be effective, dissuasive and proportionate to the nature, gravity, recurrence and duration of the infringement or suspected infringement, as well as the economic, technical, and operational capacity of the provider of intermediary services (Art. 51 DSA).

Recipients of the service and any authorized body, organization, or association acting on their behalf have the right to lodge a complaint against providers of intermediary services, alleging an infringement of the Regulation, with the Digital Services Coordinator of the Member State where the recipient is located or established (Art. 53 DSA).

3.2 Penalties

The maximum amount of a fine for failure to comply with the obligations laid down in the Act can be 6% of the annual worldwide turnover of the provider of intermediary services, while the maximum amount of a fine for supply of incorrect information and other similar lesser offences can be 1% of the annual worldwide turnover. The maximum amount of a periodic penalty payment can be 5% of the average daily worldwide turnover. It is provided that the Member States shall determine the rules on the applicable penalties (Art. 52 DSA).

3.3 European Board for Digital Services

¹⁰⁹ Anna-Katharina Meßmer and Martin Degeling, 'Auditing Recommender Systems – Putting the DSA into practice with a risk-scenario-based approach' (Cornell University, arXiv:2302.04556, 9 February 2023) <<https://arxiv.org/abs/2302.04556>> accessed 31 March 2024

¹¹⁰ Martin Husovec and Irene Roche Laguna, 'Digital Services Act: A Short Primer' (5 July 2022), 12 <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4153796> accessed 24 April 2024

The DSA provides for the establishment of a European Board for Digital Services. The Board should ensure a common Union perspective in terms of developing Union expertise and capabilities in the application of the Regulation (Recital 137 DSA). It cooperates with other Union bodies, offices, agencies, and advisory groups as necessary and alongside the Commission can engage experts for inspections, consideration, and other functions related to monitoring and enforcement¹¹¹. The Act has provided the Commission and the Board wide convening power as a means of overview and implementation of its objectives, through the processes of assessment, auditing and monitoring. Establishing the equilibrium and failure point for the risk areas detected by the DSA should be developed through a determination process with broad possibilities for feedback¹¹².

The Board's objectives are to contribute to the consistent application of the Act, to coordinate and contribute to guidelines, analysis, and reports on emerging issues across the internal market regarding matters covered by the Act and to assist Digital Services Coordinators and the Commission in the supervision of very large online platforms (Art. 61 DSA).

In order to achieve this, the Board performs the following tasks:

- Supports the coordination of joint investigations;
- Assists relevant authorities in the examination of reports and audit outcomes concerning VLOPs or VLOSEs;
- Delivers formal opinions, recommendations, or guidance to Digital Services Coordinators in adherence to the provisions of the Act;
- Provides advisory input to the Commission on measures under Article 66 and adopts opinions concerning VLOPs or VLOSEs;
- Supports the development and implementation of European standards, guidelines, reports, templates, and codes of conduct in cooperation with relevant stakeholders, including issuing opinions or recommendations on matters related to Article 44 and identifying emerging issues regarding matters covered by the Act (Art. 63 DSA);
- Publishes annual reports on the identification and assessment of systemic risks, including best

¹¹¹ Broughton Micova, S. and Calef A., (2023). Feedback on draft EU Delegated Regulation Ares (2023) 3171302 on the Performance of Audits of Very Large Online Platforms and Very large Search Engines, Centre for Competition Policy, University of East Anglia, June 2023, 6

¹¹² Sally Broughton Micova and Andrea Calef, 'Elements for Effective Systemic Risk Assessment Under the DSA' (July 2023) <<https://ssrn.com/abstract=4512640>> accessed 24 April 2024, 47

practices for mitigating these risks, alongside with the Commission (Article 35(2))^{113 114};

- Supports the development of Codes of Conduct together with the Commission to contribute to the proper application of the Regulation^{115 116}.

The Board consists of Digital Services Coordinators, who are represented by high-level officials. The Commission chairs the Board, convenes meetings, and prepares the agenda in accordance with the Board's tasks and rules of procedure, according to requests from its members and its duties¹¹⁷. When the Board is requested to adopt a recommendation, it must make the request available to other Digital Services Coordinators through the information sharing system (Art. 62 DSA).

3.4 Professional secrecy and Information sharing system

Under Art. 84 DSA, the Commission, the Board, the Member States' competent authorities and employees connected to them are bound not to disclose any confidential information collected pursuant to the Act (Art. 84 DSA). The Commission will establish and maintain a reliable and secure information sharing system supporting communications between Digital Services Coordinators, the Commission, and the Board. Other competent authorities may be granted access to this system where necessary for them to carry out the tasks conferred on them in accordance with the Regulation. The Digital Services Coordinators, the Commission, and the Board will use the information sharing system for all communications pursuant to the Regulation (Art. 85 DSA).

VI. Conclusion

¹¹³ Florence G'sell, 'The Digital Services Act (DSA): A General Assessment' in Antje von Ungern-Sternberg (ed.), *Content Regulation in the European Union – The Digital Services Act* (SCHRIFTEN DES IRDT - TRIER STUDIES ON DIGITAL LAW, Volume 1, Verein für Recht und Digitalisierung e.V., Institute for Digital Law (IRDT), Trier April 2023), 16 <<https://ssrn.com/abstract=4403433>> accessed 24 April 2024

¹¹⁴ Laura Edelson, Inge Graef and Filippo Lancieri, 'Access to Data and Algorithms: For an Effective DMA and DSA Implementation' (16 March 2023), 27 <<https://cerre.eu/publications/access-to-data-and-algorithms-for-an-effective-dma-and-dsa-implementation/>> accessed 24 April 2024

¹¹⁵ Martin Husovec and Irene Roche Laguna, 'Digital Services Act: A Short Primer' (5 July 2022), 12 <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4153796> accessed 24 April 2024

¹¹⁶ Caroline Cauffman and Catalina Goanta, 'A New Order: The Digital Services Act and Consumer Protection' (2021) 12(4) *European Journal of Risk Regulation*, 768

¹¹⁷ Heiko Richter and others, 'To Break Up or Regulate Big Tech? Avenues to Constrain Private Power in the DSA/DMA Package' (2021) Max Planck Institute for Innovation & Competition Research Paper 21-25, 26 <<https://ssrn.com/abstract=3932809>> accessed 24 April 2024

Taking the place as the first regulation that governs online platforms, the DSA marks the beginning of a new era in the EU and worldwide law. As such, its impact will be evaluated in the future as time unfolds. However, it can be observed that it is an ambitious piece of work that comprehensively tackles the risk areas that the digital services pose in the society.

Under the DSA, the requirement for uniform compliance across all member states reinforces the law's robustness, directly impacting the entire EU digital ecosystem. Platforms of all sizes are mandated to meet obligations such as cooperation with inspections, provision of complete information, adherence to interim measures, fulfilment of legally binding commitments, and the use of secure information sharing systems. All of these aim to foster transparency, accountability, and ultimately, trust among users. Participation in codes of conduct and maintaining the confidentiality of proprietary information are also mandated, fostering both industry-wide cooperation and competition. These provisions also balance the need for regulatory oversight with the preservation of business secrets, which is critical in the fast-paced digital sector.

In addition to these comprehensive obligations, the DSA includes mechanisms to ensure adherence and evaluate platforms' compliance, allowing the EU Commission to adopt delegated acts and permitting decisions to be reviewed by the Court of Justice of the EU. Platforms are further granted the right to submit their observations on preliminary findings, ensuring a fair and balanced legal process. Specifically for very large online platforms, the DSA proposes a more stringent set of obligations, acknowledging their broader reach and potential societal impact. A structured approach that includes enhanced supervision, obligatory action plans, independent audits, regular reporting, and penalties for non-compliance is conceived to curtail potential abuses of power. The DSA is notable for its proactivity and adaptability. It establishes content moderation, liability guidelines, periodic risk assessments, and mechanisms to ensure market fairness as key obligations for very large online platforms. The intention is to ensure these platforms proactively tackle illegal content, address potential risks, and maintain a competitive digital ecosystem.

Underpinning this all, the DSA emphasizes the importance of a safe, responsible, and inclusive digital environment. By enhancing transparency in content moderation, promoting fair competition, and placing user rights at the forefront, the DSA is set to democratize the digital landscape, mitigating risks while preserving the benefits of innovation and economic growth. The regulation's importance cannot be overstated as the digital landscape continues to evolve at an unprecedented pace. Its ambitious approach offers a model that could potentially be replicated in other jurisdictions. However, the DSA's practical

effectiveness remains to be seen and will likely be contingent upon careful implementation, consistent enforcement, and periodic review.

As we move forward, the legal and regulatory dynamics of the digital marketplace will inevitably continue to evolve. It is hoped that the insights and analyses presented here can aid in ensuring the continued growth and sustainability of the EU's digital marketplace.

In conclusion, the DSA represents a significant stride in the EU's pursuit of a balanced, fair, and responsible digital ecosystem, setting a compelling precedent for other regions.

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Abstract

Abstract (English)

This Master Thesis aims to investigate the relevant regulation of very large online platforms in the EU. As this represents a new area in the legislation, this Thesis gives a thorough analysis of the newly adopted

Digital Services Act by the EU with special focus on the obligations of the providers of VLOPs‘ which were established by it.

The Digital Services Act stands as a landmark regulation, establishing a new era of governance for online platforms within the EU and potentially beyond. The multifaceted implications and effectiveness of the DSA are explored in addressing the risks created by providers of VLOPs and other platforms as well. Emphasizing uniform compliance across member states, the DSA imposes comprehensive obligations on platforms of all sizes, fostering transparency, accountability, and trust among users. This includes regulatory oversight, participation in codes of conduct, safeguarding of business secrets etc. Notably, the DSA introduces mechanisms for evaluating compliance and adjudicating disputes, with special provisions tailored for very large online platforms to mitigate their broader societal impact. Proactive measures, including enhanced supervision and regular risk assessments, aim to uphold content moderation standards and ensure market fairness. Central to the DSA is its commitment to creating a safe, responsible, and inclusive digital environment, prioritizing user rights and fair competition. This thesis contributes to the ongoing discourse surrounding digital regulation by critically analyzing the DSA's impact and offering insights for its continued evolution.

The methods used for this Thesis were legal analysis, comparative and historical analysis, literature review of relevant scientific articles, papers, reports etc. The DSA's true impact will depend on careful implementation and ongoing evaluation, signaling a significant advancement towards a balanced and responsible digital ecosystem with potential implications for regulatory frameworks worldwide.

Abstact (Deutsch)

Diese Masterarbeit untersucht die relevante Regulierung von sehr großen Online-Plattformen in der EU. Da dies einen neuen Bereich in der Gesetzgebung darstellt, wird in dieser Masterarbeit eine gründliche Analyse des von der EU jüngst verabschiedeten Gesetzes über digitale Dienste vorgenommen, mit be-

sonderem Augenmerk auf die Verpflichtungen der Anbieter sehr großer Online-Plattformen, die durch dieses Gesetz eingerichtet wurden.

Das Gesetz über digitale Dienste ist eine richtungsweisende Verordnung, die eine neue Ära der Verwaltung von Online-Plattformen innerhalb der EU und möglicherweise auch darüber hinaus einleitet. Die vielfältigen Auswirkungen und die Wirksamkeit des Gesetzes über digitale Dienste werden beim Umgang mit den Risiken untersucht, die von Anbietern von sehr großen Online-Plattformen und anderen Plattformen geschaffen werden. Das Gesetz über digitale Dienste legt den Schwerpunkt auf eine einheitliche Einhaltung der Vorschriften innerhalb der Mitgliedstaaten und erlegt Plattformen jeder Größe umfassende Verpflichtungen auf, um Transparenz, Verantwortlichkeit und Vertrauen unter den Nutzern zu fördern. Dazu gehören die Regulierungsaufsicht, die Beteiligung an Verhaltenskodizes, die Wahrung von Geschäftsgeheimnissen usw. Das Gesetz über digitale Dienste führt insbesondere Mechanismen zur Bewertung der Einhaltung der Vorschriften und zur Beilegung von Streitigkeiten ein, wobei besondere Bestimmungen auf sehr große Online-Plattformen zugeschnitten sind, um deren breitere gesellschaftliche Auswirkungen abzumildern. Proaktive Maßnahmen, einschließlich verstärkter Aufsicht und regelmäßiger Risikobewertungen, sollen die Standards für die Moderation von Inhalten aufrechterhalten und Marktgerechtigkeit gewährleisten. Ein Kernpunkt des Gesetzes über digitale Dienste ist die Verpflichtung, eine sichere, verantwortungsvolle und integrative digitale Umgebung zu schaffen, in dem Nutzerrechte und gerechter Wettbewerb im Vordergrund stehen. Diese Masterarbeit leistet einen Beitrag zum laufenden Diskurs über die digitale Regulierung, indem sie die Auswirkungen des Gesetzes über digitale Dienste kritisch analysiert und Erkenntnisse für seine weitere Entwicklung bietet.

Die Methoden, die für diese Masterarbeit verwendet wurden, waren eine rechtliche Analyse, eine vergleichende und historische Analyse, eine Literaturübersicht über einschlägige wissenschaftliche Artikel, Arbeiten, Berichte usw. Die tatsächliche Wirkung des Gesetzes über digitale Dienste wird von der sorgfältigen Umsetzung und der fortlaufenden Bewertung abhängen und stellt einen bedeutenden Fortschritt auf dem Weg zu einem ausgewogenen und verantwortungsvollen digitalen Ökosystem dar, mit potenziellen Auswirkungen auf die rechtlichen Rahmenbedingungen weltweit.