



Mr Roberto Viola
Director General
DG CONNECT
European Commission

Brussels, 2 June 2023

Dear Mr Viola

EC request for feedback on the draft Delegated Regulation laying down rules on the performance of audits for very large online platforms and very large online search engines

On behalf of the European Contact Group (ECG), which brings together the six largest accounting networks in the EU, I am pleased to send you our feedback on the draft delegated regulation on the methodology for the audits of very large online platforms and very large online search engines as required under the Digital Services Act (Article 37).

Firstly, we would like to formally recognise the level of thought and diligence that has gone into both the Digital Services Act (DSA) and the draft Delegated Regulations (DR). This is a challenging and emerging area of regulation and the associated reporting, audit/assurance and oversight requirements and we recognise that we are all on a journey. We appreciate that the European Commission (EC) understands that different types of expertise will be required to execute against the DR requirements and we welcome choice and competition in this area. We are aware that where we collectively land in relation to the DSA may set a precedent for other non-financial reporting assurance frameworks currently in contemplation by the EC, hence our constructive suggestions to assist the EC to establish a workable and sustainable solution.

In terms of our detailed feedback, there is a consensus amongst our working group respondents that many of the Articles are clear and auditable, particularly in relation to what is expected of the auditor in relation to a VLOP's/VLOSE's processes and controls over governance, oversight and the appointment of a Chief Compliance Officer. Our concerns are more focused on those areas where the subject matter is more complex and potentially subject to interpretation, such as the interplay between tools and decision making.

The table we have included below is intended to provide specific reference to sections of the Delegated Regulation, a summary of the potential audit considerations and concerns that need to be considered and we have provided an indicative solution. We have focused these examples on three sections of the Delegated Regulation that we consider to be potentially more contentious.

We would be happy to work together with the EC and others over the coming months to support the development of the necessary compliance framework at a detailed level, article by article, that would facilitate both the delivery of high-quality audits and enable transparent reporting that is understandable and consistent and delivers on its intended purpose. The DSA was created to help solve an important problem and we believe the establishment of a high quality compliance framework (with input from many stakeholders) will accelerate the impact of the DSA and the delivery of its intended purpose.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'M. Donvito', with a stylized flourish at the end.

Maurizio Donvito
Chairman of the European Contact Group (ECG)

The ECG is registered in the EU Transparency Register under number 0633841538-63

DSA related transparency reporting – reference to Delegated Regulation	Audit considerations and concerns	Proposed solutions
<p>1. Reduce risk and improve by acknowledging auditors may use already recognized standards and frameworks.</p>		
<p><i>Explanatory Memorandum – Section 3 as well as Sections III and IV</i></p> <p>Section III sets out the rules for the performance of the audits.</p> <p>Section IV lays down the requirements for the audit methodology. It specifies principles for the choice and use of appropriate audit methodologies, the quality of the audit evidence used in the conclusions of the auditing organisation, including as regards sampling methods.</p>	<p>The Delegated Regulations establish specific requirements for the performance of the audits alongside guidance on the certain audit strategies, but as drafted, the proposals give rise to potentially incomplete, confusing, and even contradictory, direction to auditors. These concerns are so significant they risk undermining the ability for any auditor to perform an effective independent assessment as required by Article 37 DSA.</p>	<p>Auditors applying the pronouncements of the IAASB have consistent standards for planning and performing assurance engagements – we suggest that the draft Delegated Regulations be simplified to refer to ISAE 3000 (Revised), or equivalent, with supplementary guidance in terms of ‘as a minimum, this should include...’ More specifically, within Section III of the Delegated Regulation, we suggest inserting an additional Article preceding Article 6. This additional Article could acknowledge that consistent with Article 44(1) of the Act, the auditing organization should apply ISAE 3000 (Revised) or equivalent professional assurance framework may make use and adapt existing widely accepted international standards set by appropriate independent standard setting bodies in meeting its obligations under the DSA and the Delegated Regulation.</p> <p>As ISAE 3000 (Revised) and its equivalents will specify the relevant professional independence standard, again we believe this would help further reinforce the independence and objectivity of the auditing organization from the VLOP/VLOSE as per Article 37(2) DSA. The draft Delegated Regulation can specify, whether required by the assurance framework or not, that the independence and quality management frameworks applied must be explicitly stated in the assurance report. If necessary, this can be supplemented as before with ‘in addition...’ or ‘as a minimum...’ if the EC has particular expectations of independence that exceed those in the relevant independence rules, however we would caution that such supplementary measures need to be weighed in terms of</p>

		<p>the impact on competition and availability of assurance providers.</p> <p>We believe this better achieves the objectives of Article 37 by providing a more comprehensive, already tested framework that is well understood. Such standards also provide sufficient and comprehensible explanation of the role of the audit, the approaches undertaken and the conclusion reached. If the Commission felt it to be useful, the Delegated Regulation could require that any standards chosen need to meet certain criteria, e.g., standards that are publicly available at no cost and established by a recognised independent body or group that has followed due process, including the broad distribution of the framework for public comment..</p>
<p>2. The impact on auditor independence of developing the criteria</p>		
<p>Recital 16 (extract with emphasis added)</p> <p>“Where the auditing organisation deems the audited provider compliant with an audited obligation or commitment, but the definition of audit criteria established by the auditing provider – i.e. <u>the benchmark against which the auditing organisation assessed compliance with the audited obligation or commitment</u> – is substantively different from the benchmark used by the audited provider to monitor its own compliance, the audit conclusion</p>	<p>The Delegated Regulation describes the definition of audit criteria is established by the auditor and compared to that of the VLOP/VLOSE in order to determine whether the audited obligation or commitment has been met.</p> <p>The proposals dilute the responsibility of the VLOP/VLOSE, as the DSA regulated entity, to develop their own criteria and benchmarks and instead place undue reliance on the auditor in areas that can be highly subjective, prone to widely differing views and potentially subject to legal interpretation. Most importantly, such an approach is unlikely to result in comparability and consistency of criteria</p>	<p>Within recital 16 of the Delegated Regulation, we suggest removing reference to the concept of the auditing organization developing their own benchmarks against which the VLOP/VLOSE is measured to determine compliance with the obligation and commitment. Having the auditor set the benchmark or threshold against which the VLOP is measured is an inherent threat to the auditor’s objectivity and independence and risks conflicting with what is rightfully expected of auditors under the DSA. In other words – the DSA may fail to meet its objectives, despite all the investment of time and effort which led us to this point.</p> <p>We discuss in point 3 below the importance of a supplemental compliance framework in relation to the more complex and problematic areas of the DSA and we look forward to working with the Commission in the development of that framework along with other key stakeholders. We would then encourage the inclusion of language that describes that the auditing organization should perform audit procedures to obtain sufficient and appropriate audit evidence to determine whether the VLOP/VLOSE’s</p>

<p>should be ‘positive with comments’, since such an indication could usefully inform the provider’s own benchmarks in the future, or <i><u>point to differences of interpretation of the audited obligation or commitment.</u></i></p>	<p>used by auditors. Moreover, the requirement to develop proprietary criteria and benchmarks potentially threatens the auditor’s objectivity and independence.</p>	<p>identification and description of their performance against that detailed compliance framework is consistent with the policies, processes and controls provided by the VLOP/VLOSE and whether such descriptions are free from material error or omission which might otherwise render them misleading.</p> <p>Article 37 DSA does not include references to such benchmarks and as such the replacement of the language described above would not cause inconsistency or otherwise alter the original requirements.</p> <p>In addition, to help address these issues and risks, the Commission could encourage the development of an independent expert body tasked with the creation of acceptable and consistent industry standards and criteria and benchmarks that can enhance the value of these independent assessments in the future. We recognize this would be challenging to achieve in time for the first audit reports due by Summer 2024, but as acknowledged by Recital 16 the evolution of such information “could usefully inform the provider’s own benchmarks in the future”. A helpful example is a recent communication of the central bank of Ireland to further clarify the nature of the specific audit of compliance with the safeguarding requirements under the Payment Services Regulations (PSR)/ Electronic Money Regulations (EMR) (see link here).</p>
<p>3. Clarify the understanding of what represents compliance with the obligations and requirements of the Act and support consistent application and high quality audits.</p>		
<p>Article 11</p> <p>The audit conclusions and audit opinions shall be based on audit evidence which fulfils both of the following requirements:</p>	<p>A key concern is how the auditor’s methodology would assess the evidence to support a compliance opinion in the absence of a clear indication of what compliance looks like in practice. In many areas it comes down to a question of</p>	<p>We suggest adding language within Article 11 of the Delegated Regulation that clarifies that when a VLOP/VLOSEs obligation consists of providing reporting on certain matters the audit conclusion is a determination of whether such disclosures are free from material error or omission which might otherwise render them misleading.</p>

<p>(a) it is relevant and sufficient to reduce audit risks identified in accordance with Article 9, and to enable the auditing organisation to provide audit conclusions and opinions in accordance with Article 8;</p> <p>(b) it is reliable, according to the auditing organisation’s professional judgment and skepticism.</p>	<p>existence vs effectiveness of a compliance activity – an auditor can attest that something is in place but that in itself gives no indication as to whether the activity is making the expected impact because the intended user’s expectation is unclear. Here are some examples:</p> <p><i>Example 1</i></p> <p>Article 15(c) DSA describes the transparency reporting obligations for providers of intermediary services. These obligations include requiring that the VLOP/VLOSE report on matters such as the use of automated tools and the measures taken to provide training and assistance.</p> <p>Some of the practical challenges raised include:</p> <ul style="list-style-type: none"> ● Is the auditor responsible for obtaining sufficient evidence to opine that the statements made in the transparency report are materially accurate or is there also an expectation of there been a requirement to opine on completeness (e.g., all use of automated tools has been disclosed)? ● Does the term “automated tools” include only automated decision making systems or does it include 	<p>In addition, we suggest adding language within Article 11 that clarifies that where obligations consist of implementing mechanisms, processes or controls to satisfy compliance with an obligation, such audit conclusions and audit opinions are based upon obtaining sufficient and appropriate evidence of their design and operation to a level of effectiveness that mitigates to a material level the risks identified by the VLOP/VLOSE in their risk assessment process. In making this suggestion, we highlight our earlier comment regarding referencing the standards of the IAASB and note the availability of material to draw from in ISAE 3402 that would be helpful to the auditor.</p>
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rules based management of queues, prioritization etc.?

- Is the presence of the automated tool or training sufficient? Does the auditor need to see such tools or training operate and conclude that they do so effectively?
- What represents “training”? For example, if the VLOP/VLOSE have a knowledge article posted on an internal website that is accessible to content moderators, does that equate to satisfactory training?

Example 2

Article 15(e) describes the transparency reporting obligations for providers of intermediary services. These obligations include requiring that the VLOP/VLOSE report on use made of automated means for the purpose of content moderation, including a qualitative description and the indicators of accuracy and possible error rates.

Some of the practical challenges raised include:

- How do you audit a qualitative description? Is the presence of the description enough or is there a standard of scope and specificity?
- Is the auditor simply confirming that the VLOP/VLOSE has

	appropriately described indicators of accuracy or is there an expectation to assess if the indicators of accuracy are sufficient?	
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