

ECG FAQs on the Delegated Regulation on Audits related to the Digital Services Act

NOTE - The European Contact Group (ECG)¹, which is an informal regulatory and policy working group of six large audit networks in the EU (BDO, Deloitte, EY, Grant Thornton, KPMG and PwC), has produced this FAQ document on the Delegated [Regulation](#) (EU) 2024/436 of 20 October 2023 (“Delegated Act”) which sets out certain requirements for independent audits to assess the compliance of Very Large Online Platforms (VLOPs) and Very Large Online Search Engines (VLOSEs) with Regulation (EU) 2022/2065 on the [Digital Services Act](#) (DSA). Although the Delegated Act has been adopted, the language is unclear in certain instances and the first years of DSA reporting will still require certain judgments of auditors to assess compliance with the DSA due to its novel nature. These FAQs are designed to help assurers and their organisations understand and apply the legislation in a consistent manner. The content is provisional and will be updated on a regular basis, as needed. It has been prepared to provide general guidance on matters of interest only and does not constitute professional advice.

Additional observations may be communicated at a later date.

We welcome the opportunity to meet the EU audit requirements under DSA, to promote comparable reports and to continue to support high standards for executing reasonable assurance engagements.

Question #1: The Delegated Act does not refer to specific assurance standards, such as *ISAE 3000 (Revised) Assurance Engagements Other than Audits or Reviews of Historical Financial Information* (“ISAE 3000”). Would it be possible for the auditor to use this (or an equivalent professional) standard in conjunction with the Delegated Act, to execute and report on the VLOP’s/VLOSE’s compliance with the DSA?

Answer: Yes, auditors will be able to make appropriate judgments to comply with both the Delegated Act and ISAE 3000, both in terms of performance and reporting (including the template in Annex 1).

Reasons:

- The DSA does not refer to specific assurance standards for the auditor to follow. Article 44 1 (e) of the DSA references the potential use of international standards pertaining to DSA audits, and Annex I Section 5 of the Delegated Act says that the auditing organisations should mention “any auditing standards applied in the audit, as applicable”.
- Although the DSA contains significant requirements, it does not include, or incorporate by reference, all components which most assurance standards have (e.g., Quality Control aspects).
- Professional accountants traditionally perform assurance engagements in accordance with publicly available and market accepted assurance standards.
- ISAE 3000 is:
 - commonly used globally, including in the European Union, to execute reasonable assurance engagements and report on them; and,

¹ The ECG is registered in the EU Transparency Register ([link](#))

- a robust assurance standard which incorporates by reference other key standards such as Independence and Quality Control.

Question #2: If ISAE 3000 (or equivalent) is used, how would the conclusions in the auditor's report be aligned with the Delegated Act?

Answer: The Delegated Act conclusions can be mapped as following to the ISAE 3000 conclusion types:

1. Positive = Unmodified
2. Positive with Comments = Unmodified with Emphasis of Matter
3. Negative = Modified

Reasons:

- The Delegated Act has three specific conclusion types
- ISAE 3000 has two categories of conclusions – unmodified and modified. The unmodified option is available when the subject matter, on which a report is made, materially complies with the criteria (or individual criterion). The modified option provides additional context as to how the criteria (or criterion) was not materially met (and if so, if the matter was pervasive) or if it was not possible to conclude on whether the subject matter is in accordance with the criteria (or criterion).
- The definitions of the assurance standard and the DSA are not contradictory and can both be met.

Question #3: How does the auditor address ambiguity in the audited provider's audited obligations?

Answer: The criteria used to assess the audited provider's compliance with DSA includes the requirements of the DSA Articles together with the benchmarks/definitions that the audited provider relies upon to ensure compliance. As set out in Paragraph 22 of the Recitals of the Delegated Act, to the extent that there is ambiguity the audit criteria should be based on the information submitted by the audited provider as regards benchmarks used by the audited provider for monitoring compliance. This could also include definitions developed by the audited provider.

Reasons:

- The DSA includes several undefined terms. For example, Article 20 uses the following undefined terms: 'easy to access', 'user friendly', 'sufficiently precise', 'adequately substantiated', 'timely', 'non-discriminatory', 'diligent', 'non-arbitrary' and 'without undue delay'.
- Per the Delegated Act, the audited provider should make available to the auditing organisation the benchmarks it relies upon to ensure compliance with the DSA so that the auditing organisation can base the audit criteria on this information (Paragraph 12 of the Recitals of the Delegated Act).
- Benchmarks are interpreted to also include definitions of terms such as 'prompt', 'timely' and 'without undue delay'.

- The auditor is expected to make comments on the audited provider's benchmarks, as warranted.
- ISAE 3000, and supporting guidance, provides a framework for practitioners to determine whether criteria exhibit the characteristics of suitability (relevance, completeness, reliability (measurability), neutrality and understandability) and steps a practitioner may follow when criteria (including those prescribed by law or regulation) is lacking in any of these characteristics. Specifically, the audited provider is expected to take responsibility for the additional criteria. Furthermore, ISAE 3000 requires that criteria be made available to intended users of the report.

Question #4: Article 37(1)(b) of the Act describes assurance in relation to compliance with codes of conduct referred to in Articles 45 (general) and 46 (online advertising).

- **Is it correct that such codes will be subject to assurance under Article 37 at the later of the relevant code's application date and the date specified by the EC?; and if so**
- **That no codes and no dates have yet been specified by the EC and hence none fall to be assessed as part of the DSA obligations in the first reporting period?**

Answer: At this point in time, no such codes have been determined to be in scope for assurance in the first year. Until the codes have been determined, the relevant part of the form should state 'Not applicable'.

Reasons:

- The applicable codes will be determined jointly by the Digital Coordinators representing each of the Member States. The deadline for nomination of those coordinators is 17 February 2024.
- Even if an audited provider has voluntarily adopted a code, it doesn't meet the conditions bringing the code into scope for assurance.