

# Response to the European Commission's Consultation on Guidelines for Providers of Very Large Online Platforms and Very Large Online Search Engines on the Mitigation of Systemic Risks for Electoral Processes

March 2024



Stiftung Neue Verantwortung (SNV) is a not-for-profit think tank working on current political and societal challenges posed by new technologies. We not only invite government officials but everyone seeking information to engage with our work whether through giving us feedback on publications, participating in our events or seeking direct advice. Our experts work independently from partisan interests or political affiliations.

For questions and comments, please contact the author [Dr. Julian Jaursch](#). The response to the consultation includes input from colleagues from SNV as well as other European academic and civil society experts, whose work we gratefully acknowledge. We thank the European Commission for the opportunity to provide feedback and look forward to engaging further with the Commission as well as other interested stakeholders.

## Responses to selected questions from the consultation

Please note: Not all questions from all sections are addressed in this contribution. For questions without responses, this does not necessarily mean no clarifications and improvements are useful in those cases, but that other individuals and organizations are better equipped to provide feedback.

### 2. Scope of the guidelines

#### **Question Q2: How can the Commission further clarify the purpose and scope of these guidelines to better address systemic risks in electoral processes?**

Overall, the draft guidelines are a comprehensive document covering many important aspects of very large online platforms' (VLOPs') and very large online search engines' (VLOSEs') efforts to address systemic risks for electoral processes, including their cooperation among each other and with outside experts.

The final guidelines would benefit from a clearer statement at the beginning on its intentions and limitations. With the guidelines, the Commission needs to strike the right balance between (1) holding VLOPs/VLOSEs to account for their role in safeguarding electoral processes regarding the online spaces they provide and (2) preventing companies as well as governments and regulators from shaping these online spaces to their liking in the name of election integrity. The draft guidelines contain various important features to find this balance, which should be strengthened and spelled out more clearly (for instance, checks by outside organizations and the media (paragraphs 18, 24); support for researchers (paragraphs 19, 30); rigorous testing of mitigation measures (paragraph 17); transparency around mitigation measures (paragraphs 20, 44-46); references to fundamental rights (paragraphs 21, 29)). To have an overarching consideration of such guardrails at the beginning of the guidelines, it would be useful to include a dedicated, clear description of corporations' and governments' roles in safeguarding election integrity and what limitations they must face. An acknowledgement is necessary that VLOPs/VLOSEs have a responsibility and partially a legal obligation under the Digital Services Act (DSA) to minimize risks for electoral processes but that neither they nor governments/regulators should understand this responsibility to mean that they have unchecked power to ostensibly fight electoral interference with their own interference. This is especially pertinent because the guidelines contain concepts that are important but not defined in the DSA (or the guidelines), such as voter turnout, political participation and disinformation.

In practical terms, this could mean splitting section 1 into a short part on the "legal basis", referencing the DSA, the Code of Practice on Disinformation and other legal texts or industry codes, and another part on "purpose"/intention that contains a broader consideration of VLOPs/VLOSEs in election integrity. It is important to have such a consideration and acknowledgement to clearly delineate what is asked of VLOPs and other services and what cannot or should not be asked of them.

Part of this delineation at the beginning of the guidelines and/or in Section 3.1 must include a more concrete statement for what elections the guidelines are in place. Section 3.1 outlines the practices for identifying risks related to electoral processes but it does not specify if this covers all elections and referenda at all political levels. It can be justified that the Commission asks VLOPs/VLOSEs to assess risks for all electoral proceedings across the EU. Still, it seems impractical to have all internal processes, contacts and mitigation measures in place for every voting process. In this case, any guidelines for elections would be moot because the recommended measures would practically be in place at all times. Without diminishing VLOPs/VLOSEs responsibilities and legal obligations at all, the Commission should therefore clarify for what cases it expects the guidelines to be of the highest importance (see also response to Q15). Otherwise, the guidelines might merely become a list running the gamut of potential mitigation measures that are, in reality, not put into place.

## 3.2. Elections-specific risk mitigation measures

### Question Q3: Do you agree with the recommended best practices in this section?

The overall approach of section 3.2 to combine internal, structural practices within companies (such as paragraph 13 on internal teams), their collaboration with outside experts (such as paragraphs 14, 18, 20 and 24 on cooperation with researchers) as well as concrete examples of technical measures (such as paragraph 16 with recommendations for labels and media literacy initiatives) could be beneficial. In particular, the following aspects seem promising:

- The outside checks on VLOPs/VLOSEs and regulators by researchers, journalists and civil society advocates mentioned in paragraphs 16b i, 20, 21 and 24 should be kept, with the caveat mentioned below.
- The need for evidence-based interventions mentioned in paragraph 17 is crucial and should be kept.

However, important improvements to section 3.2 should be considered:

- The reference to due regard for fundamental rights in paragraph 21 should come before the list in paragraph 16, as it covers all following examples and practices. The specific reference to data protection in section 3.1 (paragraph 11) should be repeated here in relation to the Charter of Fundamental Rights and the General Data Protection Regulation to underline the importance of this issue.
- The involvement of outside, non-regulatory bodies to support the goal of election integrity is crucial but should come with substantive checks and transparency requirements. It should be clear with whom VLOPs/VLOSEs (as well as regulators) interact on what topics and why.
- The Commission should strive for a similar level of detail for all mitigation measures mentioned. Some of the measures in this list are rather specific and detailed (such as paragraph 16a on various kinds of information provision), others are rather vague (such as paragraph 16g on “targeted policies” to demonetize disinformation).
- The reference to the coming EU regulation on political advertising transparency should also be made regarding influencers (paragraph 16e), not just political advertising generally (paragraph 16f).

Overall, section 3.2 highlights the need for a clearer statement of purpose (see response to Q2). For instance, it is not readily understood why VLOPs/VLOSEs have a (legal) obligation to “improve voter turnout” (paragraph 16a). It needs to be explained whether this can be deducted from the DSA or the Code of Practice for Disinformation, whether this a central aspect introduced by the guidelines or whether it should instead just better read “improve information provision on electoral processes such as voting times and procedures”. Otherwise, the guidelines and section 3.2 in particular, risk overreliance or even just the appearance of overreliance on VLOPs/VLOSEs to maintain election integrity.

### **3.3. Mitigation measures linked to Generative AI**

**Question Q8: Which risks of Generative AI for electoral processes should additionally be considered in this section?**

The recommendation in paragraph 28c asking VLOPs/VLOSEs to introduce tools for advertisers to label ads if they contain content generated with AI should be formulated in stronger terms. This would align paragraph 28c with the recommendations on other AI generated content in paragraphs 27b and 28b.

### **3.4. Cooperation with national authorities, independent experts and civil society organisations**

**Question Q12: Do you agree with the recommended best practices in this section?**

Generally, the practices recommended can be helpful because they aim at collaboration and information exchanges between VLOPs/VLOSEs, national authorities and outside experts from academia and civil society.

However, the role of various regulators and networks and, by extension, VLOPs’/VLOSEs’ contact points to them could be clarified. It is useful that the draft guidelines recommend member states strengthen their national election networks (paragraph 33). Still, as paragraphs 31 and 32 on election governance structures highlight, there are many more actors involved in elections. To avoid a confusing web of contacts, it should be considered whether the Digital Services Coordinators (DSCs) “should” (instead of “may”) serve as a contact point for VLOPs/VLOSEs (paragraph 31). This is not to preclude VLOPs’/VLOSEs’ contacts with other authorities but to encourage better coordination, which is a key role of DSCs anyways. Yet, such an arrangement can only work if DSCs are well-equipped, have expert staff, enough budget and are prepared for heightened activity around key elections.

Moreover, it is vital that any cooperation, whether formal or informal, is made transparent. It could undermine the DSA’s overall goal for “safe and transparent” online spaces if VLOPs/VLOSEs interact with state and private actors without the opportunity for public scrutiny. Record-keeping is one potential option (paragraph 34) but additionally, a continuously updated transparency registry on institutions involved in the measures covered by the guidelines, including their funding, could be useful.

In the final guidelines and in the Commission’s communication around them, it should be clearly explained how the DSCs’ involvement was ensured and their views taken into account,

as Article 35(3) DSA specifically states that guidelines on risk mitigation measures must be developed “in cooperation” with DSCs.

### 3.5. During an electoral period

#### **Question Q15: Do you agree with the recommended best practices in this section?**

The recommendations in this section are partly useful but could benefit from refinement. As mentioned in response to Q2, however, it should be clarified when the recommended actions are desired and for what electoral periods. Specifically, the recommendation to have mitigation measures around elections in place one to six months before the election date seems impractical if it covers every local, regional and national election (paragraph 37). Thus, paragraph 37 should make it explicit that defining the “period” for election-related mitigation measures also means defining the election under scrutiny in the first place. The European External Action Service's second report on foreign information manipulation and interference cited in paragraph 37 mostly references studies on national elections, which are likely most often the focus of attention. VLOPs'/VLOSEs' internal risk assessments (also using outside expertise) might point to high risks with other, non-national elections as well. Yet, even this wider understanding would not cover every single election and the final guidelines should avoid an intended or unintended inclusion of this.

### 3.7. Specific guidance for the elections to the European Parliament

#### **Question Q22: What are your views on the best practices proposed in this section?**

While it can be useful to recommend VLOPs/VLOSEs to be in touch with EU-level institutions and political parties (paragraph 50), this should be accompanied by clear requirements for transparency around any such meetings. This could take the form of an enhanced specialized contact registry around elections and could be incorporated into stock-taking and evaluations of elections (mentioned in paragraphs 43-46 and 51).

## 5. Conclusion

#### **Question Q24: What additional feedback or suggestions do you have regarding these guidelines?**

The reference to “non-VLOPs” potentially using, learning from and helping with improving the guidelines is crucial and should be kept.

It is highly useful to acknowledge the dynamic and changing landscape of actors and mitigation measures regarding election integrity (sections 4 and 5). The planned evaluation and reference to the guidelines evolving over time is also welcome (section 5). These aspects should be kept in the final guidelines and could even be mentioned at the beginning of the guidelines, in a rewritten section on their purpose (see response to Q2). Overall, the final guidelines should not read as an exhaustive collection of good practices but rather as a dynamic framework (with concrete examples) for VLOPs/VLOSEs to operate with.