

February 2024 · Julian Jaursch

The Digital Services Act is in effect – now what?

What the establishment of Digital Services Coordinators across the EU means for platform users, researchers, civil society and companies



Think Tank at the Intersection of Technology and Society



Executive summary

The time when online platforms could mostly make up their own rules, with little external oversight, is coming to an end in the European Union (EU). Starting on February 17, 2024, the Digital Services Act (DSA) will apply in its entirety to services such as search engines, online marketplaces, social media sites and video apps, which are used by millions of people every day. This will bring about changes not only for tech companies but also platform users, researchers and civil society organizations.

Exploring each of these groups' roles and interactions within the EU's new platform oversight structure, the paper provides a resource on changes ahead and the accompanying short- and long-term responsibilities. It highlights the opportunities and open questions related to such DSA provisions as complaint mechanisms, access to platform data for researchers, trusted flaggers and oversight structures for small and medium-sized platforms.

The benchmark for the DSA is how well it helps people understand and be safe in online spaces. This means improved consumer protection, empowered users in their standing towards tech companies, better safeguards for minors and a clearer grasp of algorithmic systems. Whether people experience such benefits in their daily lives or the DSA becomes only an exercise in bureaucracy with few improvements for platform users now hinges on a novel oversight structure meant to enforce the rules.

The European Commission plays a significant role in enforcing the DSA. In addition, every member state must designate a specific platform oversight agency, the Digital Services Coordinator (DSC). Crucially, beyond these regulators, a network of other organizations is supposed to help enforce the DSA. Civil society groups are explicitly mentioned in the DSA to support enforcement in numerous ways, from consulting regulators to representing consumers. Platform users have new complaint mechanisms that they can use to bring DSA violations to light. Researchers now have a legally guaranteed pathway to request data from platforms to study potential risks. Platforms are encouraged to work together on industry codes of conduct.

Making the DSA work requires the development of a community of practice that encompasses not only regulators but also platform users, researchers, civil society and companies. One way to advance the creation of a community of practice is to build a permanent advisory body at the European Board for Digital Services. The Board brings together all DSCs and the Commission and may consult with outside experts. Having a pluralistic, specialized advisory body there could be particularly helpful in finding suitable risk mitigation measures, which is a task already



Julian Jaursch

February 2024

The Digital Services Act is in effect – now what?

assigned to the Board. Funding should be made available for this and generally for researchers and advocates to fulfill their roles in the consistent enforcement of the DSA throughout the EU. At the national level, DSCs should also embrace exchanges with non-regulatory organizations to advance their understanding of different types of platforms and associated risks.

DSCs, individually and via the Board, can thus serve as connectors between different groups. However, several obstacles stand in their way. One potential obstacle to a user-friendly and public interest-oriented DSA enforcement is abuse of the rules by either governments or platforms to suppress voices. This risk must be addressed by, for example, establishing parliamentary oversight for regulators, whistleblower protections and transparency reporting. Yet, in addition to preventing the DSA from being too censoring, it is at least equally important to prevent it from becoming a dud – merely creating piles and piles of data that regulators and researchers are too overwhelmed to use because of cumbersome and performative bureaucracy and a lack of resources. DSCs, while not solely responsible, are in a good position to counter such tendencies if they are well-staffed but remain lean, independent yet accountable to the public and embracing their role as a node in an emerging community engaged in DSA enforcement.

Moreover, in the long run, DSCs should be in a good position to contribute to a meaningful and thorough evaluation of the DSA. They not only will have gained first-hand enforcement experience but also can collect feedback and ideas from their network by the time of the first full evaluation in 2027. This must include a review of the DSA's governance structure, including the Commission's role, and potential gaps such as coverage of new platforms or ad tech businesses.



Table of Contents

| | |
|------------------------------------------------------------------------------|-----------|
| Executive summary | 2 |
| Introduction | 5 |
| 1. Platform users: DSCs as the central hub for complaints | 8 |
| How platform users and DSCs can work together | 8 |
| Short-term responsibilities for DSCs and platform users | 11 |
| Long-term responsibilities for DSCs and platform users | 12 |
| 2. Researchers: DSCs as the point of contact for data access at VLOPs | 13 |
| What is in store for researchers and DSCs working together | 13 |
| Short-term responsibilities for DSCs and researchers | 16 |
| Long-term responsibilities for DSCs and researchers | 17 |
| 3. Civil society: DSCs accrediting trusted flaggers | 18 |
| What is in store for civil society and DSCs working together | 18 |
| Short-term responsibilities for DSCs and civil society | 22 |
| Long-term responsibilities for DSCs and civil society | 22 |
| 4. Platforms: DSCs overseeing non-VLOPs' compliance | 24 |
| What is in store for platforms and DSCs working together | 26 |
| Short-term responsibilities for DSCs and platforms | 28 |
| Long-term responsibilities for DSCs and platforms | 29 |
| Outlook: Making the DSA work in practice | 31 |
| Innovation versus inertia | 32 |
| Public interest versus corporate interest | 33 |
| Compromise versus conflict | 34 |
| Continuous learning versus closed doors | 35 |
| From evaluating the DSA to adapting it | 36 |
| Acknowledgements | 39 |



Introduction

Throughout the European Union (EU), a new breed of platform regulators will take up their work soon, becoming contact points not only for companies but also for people as citizens, consumers and researchers. According to the Digital Services Act (DSA) – the EU’s rulebook for online platforms, marketplaces and search engines – every member state must designate a Digital Services Coordinator. These DSCs perform two major roles: For one, they need to ensure a well-run coordination among national regulators, with the European Commission and with scholars and civil society representatives. Another role concerns a distinct set of oversight tasks for online services based in their respective countries, which might include their own data-driven research and enforcement.

These dual tasks – of coordinating and enforcing – can be considered bread-and-butter business for many existing regulators. Still, DSCs will stick out among other regulatory bodies. Having dedicated platform oversight bodies in each member state is a novel approach in and of itself: Platform oversight had long been left to corporate self-regulation, flanked only by some sector-specific national rules. Now, with the breadth of services covered by the DSA and the various procedural rules applied to them, the remit for the new regulators is quite broad. Moreover, contrary to many other laws, the DSA directly calls for DSCs to collaborate not only with other regulatory agencies but also with academia and civil society, another unique feature of this new type of regulator.¹

This paper takes these new regulatory bodies, the DSCs, as a point of departure to provide an overview of the changes to come with the implementation of the DSA, over both the short and long terms. To do so, each of the following four chapters is meant for platform users, researchers, civil society organizations and companies, respectively, to understand how they might benefit from their relationship with the DSC and what pitfalls remain. The outlook chapter offers pathways to avoid potential failures regarding DSA enforcement, primarily the risk that the rules will lead to lots of transparency reports and databases but will not translate into palpable benefits for people.

Centering the DSCs to understand DSA enforcement is useful for two main reasons. First, only with the establishment of the DSCs can enforcing the DSA start in earnest. The time for this is now. By February 17, 2024, member states have to designate

¹ For detailed SNV analyses of DSCs and their tasks, see Julian Jaursch, [New EU Rules for Digital Services: Why Germany Needs Strong Platform Oversight Structures](#) (Berlin: Stiftung Neue Verantwortung, October 10, 2022); Julian Jaursch, [Platform Oversight: Here Is What a Strong Digital Services Coordinator Should Look Like](#), *Verfassungsblog*, October 31, 2022.



Julian Jaursch

February 2024

The Digital Services Act is in effect – now what?

their DSCs. This is also the day the DSA will be applied in its entirety to platforms of all sizes. After two years of negotiations and another year of the rules only being in place for the biggest platforms, the full oversight structure must now be put into place in the EU. There are still many loose ends: Some DSCs will not be up and running by February², the hiring of staff is still ongoing both in Brussels and in the member states and complementing legal texts on key rules such as data access for researchers have not been finalized. However, there is no way around the fact that this date marks the start of the DSA's full enforcement phase. DSCs must immediately deliver at least a basic menu of services, for instance, being able to handle users' complaints. With a long-term view, now is the time to start developing the infrastructure and networks necessary to oversee platforms in the EU.

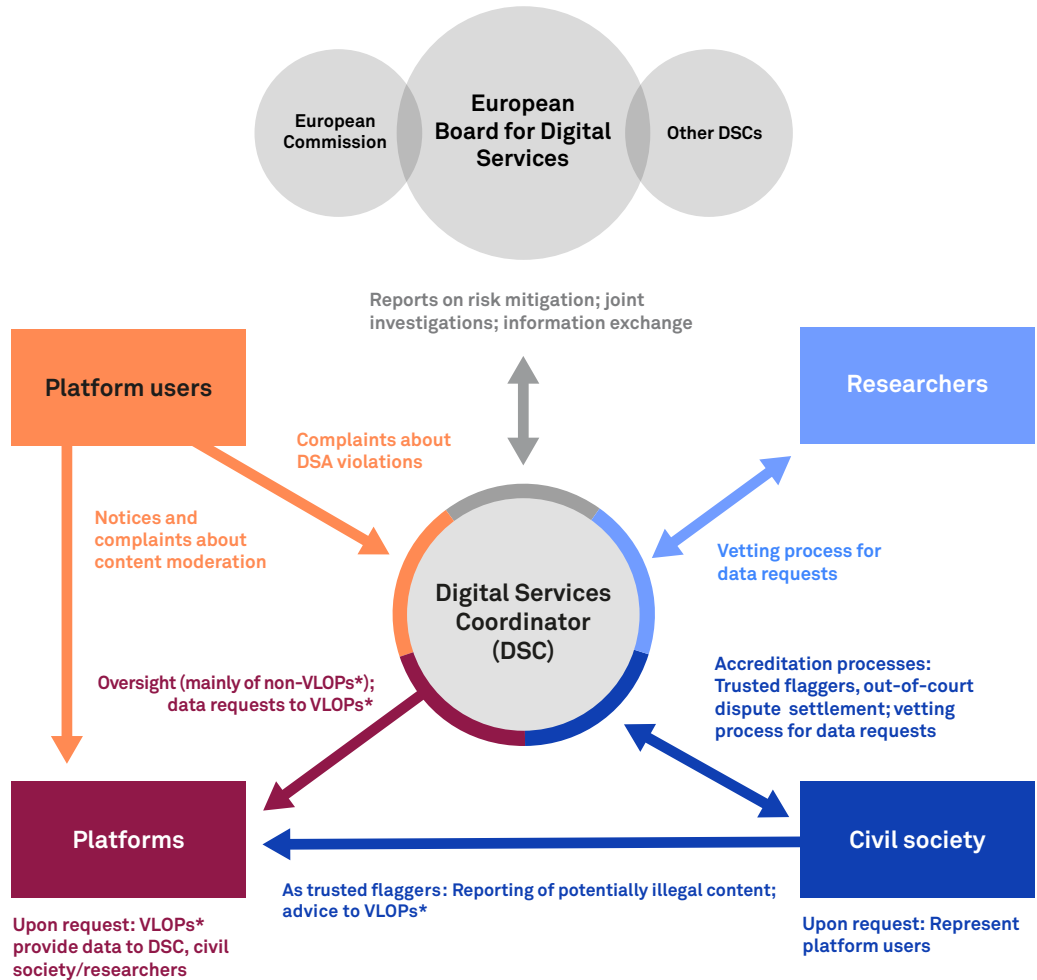
Second, centering DSCs reflects that these bodies are meant to become the primary point of contact on matters related to the DSA for small and medium-sized platforms, for other regulators, for users of all types of platforms and for researchers. Individual DSCs are tasked not only with overseeing thousands of online platforms across the EU, but they are also researchers' conduit to receive platform data and the central hub for users to complain about potential infringements of the DSA. Together, they form the European Board for Digital Services, which is a forum to support EU-wide platform oversight. Thus, they play a key role in the DSA's enforcement structure which will rely on a "vibrant community"³ of platform users, researchers, civil society organizations and regulatory authorities (see figure 1 on the next page).

² While some member states were relatively early with their designations, such as France and Ireland, it was clear that delays in several countries would lead them to miss the February deadline.

³ Martin Husovec, [Will the DSA Work? On Money and Effort](#), *Verfassungsblog*, September 11, 2022; for an early critical stance on the DSA's "Communications Oversight Bureaucracy", see Alexander Peukert, [Five Reasons to be Skeptical About the DSA](#), *Verfassungsblog*, August 31, 2021.



Figure 1. The DSC's coordinating and enforcing roles in EU platform oversight



*VLOPs = very large online platforms and search engines, that is, those with more than 45 million monthly users in the EU

1. Platform users: DSCs as the central hub for complaints

This section explains the changes that platform users can expect from the DSA and DSCs, using the example of the complaint mechanism. This case highlights potential benefits and drawbacks for people as well as the more general need to build strong DSCs with enough expertise and resources.

The European Commission is the main oversight agency for many widely known, global services such as Amazon, TikTok and YouTube. These are called “very large online platforms and search engines” (VLOPs), having at least 45 million users per month in the EU (see table 1 in chapter 2). Smaller platforms under this threshold are overseen by national DSCs. However, if people want to complain about potential violations of the DSA, their contact point is the DSC – no matter what platform is concerned. The DSCs’ roles as complaint collectors underline how they could become the primary user-facing organization with which people communicate on issues relating to the DSA.

How platform users and DSCs can work together

The DSA’s basic approach to supporting platform users is to enhance transparency around corporate content moderation and recommender systems. People should be able to hold platforms accountable through reporting mechanisms offered by companies and established at regulators. The DSA sets certain standards for platforms, often transforming into EU-wide mandates what used to be national rules or self-regulatory efforts. Some of the rules for platforms that users and, indirectly, the public are supposed to benefit from are as follows⁴:

- Terms and conditions must explain content moderation/deletion in a comprehensible way.
- Reporting channels for potentially illegal content must be available.
- Mechanisms must be available to complain about content that was (not) deleted.

⁴ For more consumer-focused overviews of the DSA, see these “user guides” in English and German: Claire Pershan and Rita Jonusaite, [User-Guide to the EU Digital Services Act](#), *EU DisinfoLab*, July 6, 2022; Verbraucherzentrale Bundesverband, [Neue Regeln für digitale Dienste: Was regelt der Digital Services Act?](#), September 25, 2023; HateAid, [DSA User Guide: Melde Hass auf Social Media](#), 2023; on users’ rights, including the option for out-of-court dispute settlements, see also Husovec, [Will the DSA Work? On Money and Effort](#); the full legal text can be found here: [Regulation \(EU\) 2022/2065 of the European Parliament and of the Council on a Single Market For Digital Services \(Digital Services Act\) and Amending Directive 2000/31/EC \(2022\)](#).



- Recommender systems must be explained.
- Advertising must be labeled as such.
- Online marketplaces must randomly check products for legality.
- Profiling for online ads cannot use highly sensitive personal data and for minors, any personal data.
- Very large platforms must assess and mitigate the risks of their services and will be subject to independent audits.

If platforms fail to live up to these standards, users can file complaints with the DSCs. For example, people might find that terms and conditions are not explained well enough, online advertising is not labeled correctly or efforts to protect minors online are lacking. Platform users should familiarize themselves with such rules in the DSA so they can benefit from them. Ideally, this should be aided by public awareness-raising campaigns. Slovakia, for example, has plans to do this.⁵

For platform users, it is especially crucial to understand that the DSA only indirectly deals with content moderation and content removal. This is a hotly debated topic often associated with platform regulation, for instance, when it comes to removing illegal content such as counterfeit goods or incitement to violence. National and some EU laws determine what content is illegal, not the DSA. The DSA does not contain any definition of illegal content. When the DSA is described as a law tackling illegal content, this alludes to new rules on reporting illegal content or clear terms and conditions. For instance, before the DSA, it was largely up to platforms to decide how they provided ways for users to send notices about potentially illegal content and how they deal with such notices. Now, there is an EU-wide minimum standard in the form of the “notice-and-action mechanism”, requiring online services to deal with notices in a timely and non-arbitrary manner.⁶ Before, platforms could mostly decide on their own if and how they allow users to report content that is maybe not illegal but against the platforms’ own rules. With the DSA, there is an obligation to establish such reporting channels for users. So, the framework to report and deal with content are defined in the DSA, but not what content violates platforms’ terms or the law. Illegal content remains mostly a matter of national law and law enforcement agencies. The DSA kicks in when a platform’s reporting system itself is not set up in accordance with the rules or when its content moderation is arbitrary and slow. This is what DSCs would deal with.

⁵ Centre for Law, Technology and Digitization, [Roundtable on the Digital Services Act](#), October 2, 2023, p. 4.

⁶ For analyses on the notice-and-action mechanism, see Pieter Wolters and Raphaël Gellert, [Towards a Better Notice and Action Mechanism in the DSA](#), *JIPITEC – Journal of Intellectual Property, Information Technology and E-Commerce Law* 14, no. 3 (November 11, 2023); Pietro Ortolani, [If You Build It, They Will Come: The DSA’s ‘Procedure Before Substance’ Approach](#), *Verfassungsblog*, July 11, 2022.



Another aspect of the complaint mechanism that users should be aware of is that not all complaints will be handled by the DSC. The DSC can either work on a complaint itself or forward it to other national regulators. This arrangement will differ from country to country, depending on how countries set up their authorities. It is up to member states to determine where to establish their respective DSCs. Many countries choose existing telecommunications or media regulators such as France's Arcom or Ireland's Coimisiún na Meán, although DSCs might also be set up at other regulators, for instance, the Dutch consumer protection and competition authority ACM. To stick with the example above, complaints concerning terms and conditions or channels to report content will likely fall within the DSCs' remit. Yet, if some complaints concern advertising in relation to data protection and the national data protection agency is not the DSC, the DSC might forward the complaints to that agency.

Moreover, a DSC can forward complaints to another country. This is the case if the platform addressed in the complaint is headquartered somewhere else. Here is an example: A person complains to the Italian DSC that a platform does not have a user-friendly single point of contact. The platform is located in Austria, though. The Italian DSC will then forward the complaint to the Austrian DSC, which will handle it or forward it to another Austrian regulator. All the while, the person filing the complaint must be informed about the status of the complaint. The forwarding procedures again highlight how important it is that DSCs make clear – either in public campaigns and/or as responses to individual complaints – where the limits of their mandates lie so that people can know how the complaint mechanism works.

In each member state, DSCs must collect and analyze complaints, no matter what national regulator deals with them. This effort will enable DSCs to recognize where platforms appear to be missing the DSA's mark and to identify cross-cutting risks. If such risks concern VLOPs, this information-gathering is particularly beneficial for the Commission, which can use it for its oversight of these larger platforms. In turn, people can then benefit from such a collection and analysis if it leads to the early detection of risks and implementation of countermeasures. On the flip side, people would not benefit from the DSA if the complaint system were too complicated, the forwarding did not work or gathering and analyzing all complaints failed.

To make the complaint mechanism work, coordination among regulators is key. It is also important that DSCs have the staff, budget and infrastructure to handle many complaints. This speaks to a more general need for resources at the DSC to enable them to fulfill their tasks. It is a prerequisite for most of the considerations in this paper that member states equip their regulators with enough funds and that DSCs find and retain motivated and capable staff. There are promising signs from member



states that are planning to invest in platform oversight, such as Ireland’s recruitment campaign.⁷ Still, regulators in many places have been overstretched in the past and now face additional tasks as DSCs, and there is already a general disparity between member states in funding enforcement agencies.⁸

Ensuring funding for DSCs will therefore be a long-term task for member states, along with ensuring DSCs’ independence. People stand to lose when their interests diverge from state or corporate interests and the DSC is heavily influenced by governments or companies. This might take the form of political pressure on staff and leadership, opaque lobbying or (in extreme cases) bribes. For instance, this could lead to DSCs arbitrarily disregarding or emphasizing some complaints, providing preferential treatment to certain companies or trusted flaggers or making it more difficult for independent researchers to file data access requests (see the following chapters).

Short-term responsibilities for DSCs and platform users

- **DSCs:** Set up a user-friendly complaint mechanism.
 - Components include easy-to-use, electronic means to submit complaints and a robust information exchange system with other regulators to forward complaints.
- **DSCs:** Raise awareness about the DSA, especially users’ rights such as the complaint mechanism and the scope of the DSCs’ mandate.
 - Regulators, including the DSCs, and non-regulatory organizations could provide educational material or launch know-your-rights campaigns.
- **Platform users:** Get familiar with EU platform oversight.
 - The DSA offers some new avenues for users to better understand how platforms work and to hold companies to account. Learning about the options and limitations of the DSA will be useful for platform users to benefit from the rules. This includes understanding the roles of the DSCs and how complaint handling in the EU works.

⁷ Coimisiún na Meán, [Coimisiún Na Meán Launches Recruitment Campaign for a Range of Roles](#), July 19, 2023.

⁸ Cf. Jenny Orlando-Salling and Louisa Bartolo, [The Digital Services Act as Seen from the European Periphery](#), *DSA Observatory*, October 5, 2023.



Julian Jaursch

February 2024

The Digital Services Act is in effect – now what?

Long-term responsibilities for DSCs and platform users

- **DSCs:** Build networks with consumer groups as well as civil society and academia.
 - DSA enforcement would benefit from a community of practitioners and experts from various backgrounds, including usually underrepresented groups or groups known to face particular issues on platforms such as activists or ethnic minorities. The DSCs, with their national and EU-level coordination tasks, are well-placed to support such network-building efforts.
- **DSCs:** Continuously monitor complaints to help identify systemic shortcomings and evaluate the complaints mechanism itself to spot bottlenecks and gaps in the DSA.
 - Monitoring results could feed into the DSC's own transparency reports, which they are required to produce annually, and into the DSA's evaluation.

2. Researchers: DSCs as the point of contact for data access at VLOPs

This section is mainly useful for researchers, both from academic institutions and from civil society organizations. It focuses on new rules on access to platform data.

For researchers studying platforms, the DSA could potentially offer a rich treasure trove of data. Not only does it require companies, trusted flaggers and regulators to produce all kinds of documents to use as sources for research such as transparency reports, content moderation databases, risk assessments, audit reports, DSC activity reports and advertising repositories. There is also an explicit, legally guaranteed way to request data from VLOPs via the DSCs. Certainly, not every data request will be granted and not every research question can be addressed but the DSA's data access provisions have the potential to be an improvement over previous voluntary systems some platforms had.

What is in store for researchers and DSCs working together

Researchers need platform data to better understand how online services work, for instance, looking at measures to promote or slow the spread of certain content or what settings and affordances affect user behaviors in what way. Before the DSA, companies could choose whether to share internal data with researchers or not and if so, how and to what extent. With the DSA, the biggest change for researchers is that it promises a more legally sound framework, with clear structures and timelines, albeit also with limitations. For instance, one limitation is that data access requests must be connected to studies concerning the EU and any of the “systemic risks” mentioned in the DSA, including the spread of illegal content and negative effects on fundamental rights.

This framework only works with strong DSCs in place. The DSCs in the countries where VLOPs have established their EU headquarters are ultimately responsible for researchers' data access requests. These DSCs can also request data from VLOPs for their own enforcement work. In practice, this means that especially the Irish DSC will work on data access requests, as most VLOPs have their EU headquarters in Ireland (see table 1 on the next page). However, researchers can also submit requests to the DSC in their own country, which then forwards it to the DSC of establishment. For example, a Polish research team might want to request data from TikTok, which is based in Ireland. It could send a data access request to the



Polish DSC, which then passes it along to the Irish DSC. Also considering the breadth of databases and reports to be analyzed under the DSA, it is therefore desirable to have DSCs with strong research and data analysis capabilities.⁹

Table 1. DSCs of establishment for VLOPs

| DSC of establishment | Company (VLOP(s)) |
|----------------------|------------------------------------------------------------------------------|
| Ireland | Alphabet (Google Maps, Google Play, Google Search, Google Shopping, YouTube) |
| | Apple (App Store) |
| | ByteDance (TikTok) |
| | Meta (Facebook, Instagram) |
| | Microsoft (Bing, LinkedIn) |
| | Pinterest |
| | X |
| Netherlands | Alibaba (AliExpress) |
| | Booking (Booking.com) |
| | Snap (Snapchat) |
| Cyprus | Aylo (Pornhub) |
| | Technius (Stripchat) |
| Czechia | WebGroup Czech Republic (XVideos) |
| Germany | Zalando* |
| Luxembourg | Amazon* (Amazon Marketplace) |
| (pending) | Wikimedia (Wikipedia) |

Source: European Commission¹⁰; company names refer to the global parent companies or, in Wikipedia's case, nonprofit parent organization

*Amazon and Zalando have challenged their respective designations.¹¹

9 Julian Jaursch, [Here Is Why Digital Services Coordinators Should Establish Strong Research and Data Units](#), *DSA Observatory*, October 3, 2023.

10 European Commission, [Supervision of the designated very large online platforms and search engines under DSA](#), December 21, 2023.

11 Jess Weatherbed, [Amazon Feels 'Unfairly Singled out' by EU's Digital Services Act](#), *The Verge*, July 11, 2023; Zalando Corporate, [Zalando Files Legal Action against the European Commission to Contest Its Designation as a 'Very Large Online Platform' as Defined by the Digital Services Act](#), June 27, 2023.

Spelling out the details of the DSA's data access system will be a key task that the DSCs and Commission face. Expectations are understandably high, considering the big change the rules promise for researchers. However, many questions remain open, regarding, for example, the particulars of how researchers can be “vetted” to submit data requests, the type of data that can be requested, the process if a proposal is rejected or the availability of public data even for researchers that have not been vetted.¹² Inclusion of non-academic and non-EU researchers must be ensured, along with a user-friendly and ideally free means to submit requests. Some of these questions will be answered in a delegated act, a secondary piece of legislation that adds to the DSA provisions and is expected in 2024. DSCs play a significant role in the development of this delegated act because before adopting it, the Commission needs to consult with the Board, which is made up of representatives from each DSC. Some DSCs have already sought advice from researchers and other external stakeholders to feed into the Commission's considerations on the delegated act.

Without functioning data access mechanisms, the DSA's positive effects for researchers would diminish dramatically. Consequently, users and policymakers would also be weakened since their understanding of platforms would be impeded. Therefore, it is crucial that DSCs – in the Board and individually – develop and enforce sensible vetting processes. The risks of excluding certain researchers, burdening them with impractical vetting procedures or allowing companies too much leeway to claim exceptions to share data should be minimized as far as possible.

An issue underlying any researcher engagement on the DSA is money:¹³ Without adequate funding, researchers, especially from smaller organizations, might have a hard time accessing data under the DSA rules. As discussed in more detail in the following chapter, legislators and researchers should explore new funding mechanisms by, for example, combining state subsidies, philanthropic money and corporate fees to dilute the risk of potential governmental or corporate interference and/or by finding new revenues that can be partly used to support public interest studies.

¹² For a detailed discussion on the open questions regarding the DSA's data access rules from researchers' perspectives, see Julian Jaursch and Philipp Lorenz-Spreen, [Researcher Access to Platform Data under the DSA: Questions and Answers](#), originally published on July 28, 2023.

¹³ Husovec, [Will the DSA Work? On Money and Effort](#).



Short-term responsibilities for DSCs and researchers

- **DSCs:** Cooperate to set up a researcher-friendly vetting process.
 - Consistent, EU-wide application of the DSA's vetting rules is crucial. A memorandum of understanding or similar agreements among DSCs might help, for instance, to ensure a common standard on how researchers can meet the vetting criteria, what form an application can take and how researchers' independence can be shown. An independent intermediary body could support DSCs with the vetting process.¹⁴ Various organizations have already made concrete suggestions for the DSA's data access regime, including for a vetting process that is accessible, free and open to different organizations, not just universities, and for how to share what data in what way or with what tiered access model.¹⁵
- **DSCs:** Start building a network with researchers, both from academia as well as civil society.
 - Engagement with external experts from various disciplines and with diverse backgrounds can serve two major functions for DSCs: illuminating current research methodologies and findings as well as learning about potential downsides of the data access provisions. Regular exchanges, conferences, consultations and/or a permanent advisory structure could be beneficial for DSCs (see the next chapter).
- **Researchers:** Develop the capacity to request and analyze platform data.
 - Some universities and research organizations might be interested in using the DSA's data access rules but not yet ready to do so. The specific legal and privacy regime needs preparation, along with having the staff and infrastructure in place to analyze data.
- **Researchers:** Build networks both within and across disciplines and countries.
 - To avoid duplicate data access requests or to combine research questions across countries, it is useful for researchers to coordinate as best as possible. For instance, some German researchers have created an informal working group and jointly developed suggestions for the data access

¹⁴ European Digital Media Observatory, [Launch of the EDMO Working Group for the Creation of an Independent Intermediary Body to Support Research on Digital Platforms](#), May 15, 2023.

¹⁵ Claire Pershan, [The Digital Services Act Must Ensure Public Data for Public Interest Research](#), Mozilla Foundation, June 27, 2023; Ulrike Klinger and Jakob Ohme, [What the Scientific Community Needs from Data Access under Art. 40 DSA: 20 Points on Infrastructures, Participation, Transparency, and Funding](#) (Berlin: Weizenbaum Institute for the Networked Society, 2023); Chris Riley and Susan Ness, [A Module Playbook for Platform-to-Researcher Data Access](#), Tech Policy Press, November 20, 2022; for more, see the submissions to the European Commission's call for evidence on the data access rules, [Have Your Say: Delegated Regulation on Data Access Provided for in the Digital Services Act](#), April 26, 2023.



system.¹⁶ Examples of community- and capacity-building measures could be joint efforts on sharing experiences on the data access rules, building country-wide and EU-wide networks of researchers for specific platforms or risks, developing an independent intermediary body that can help DSCs vet researchers or advising regulators.

Long-term responsibilities for DSCs and researchers

- **DSCs:** Build capacity to vet researchers.
 - Once the delegated act puts the vetting and data access process in place, DSCs will become the primary point of contact for researchers. To vet proposals and answer questions from applicants, specific legal and topical expertise as well as budget and staff are necessary. An independent intermediary body could be one option to support DSCs.¹⁷
- **DSCs:** Build the capacity to request and analyze data.
 - Some DSCs can request data from VLOPs themselves, namely those with VLOPs in their countries. This will only be possible in practice if regulators are motivated to do so (because they do not have to), possess adequate budget and infrastructure, and have expertise to handle the data.
- **DSCs, civil society, researchers, legislators:** Explore funding options for civil society and researchers to fulfill their roles in the DSA.
 - See the next chapter.
- **DSCs:** Continuously monitor uptake, bottlenecks and gaps in the data access system in practice.
 - This could feed into the required transparency reporting and the DSA's evaluation.

¹⁶ Ulrike Klinger and Jakob Ohme, [What the Scientific Community Needs from Data Access under Art. 40 DSA: 20 Points on Infrastructures, Participation, Transparency, and Funding](#) (Berlin: Weizenbaum Institute for the Networked Society, 2023).

¹⁷ European Digital Media Observatory, [Launch of the EDMO Working Group for the Creation of an Independent Intermediary Body to Support Research on Digital Platforms](#).

3. Civil society: DSCs accrediting trusted flaggers

This section provides an overview of the roles that civil society organizations can play in DSA enforcement, focusing on trusted flaggers. It also discusses the need for support for civil society in fulfilling these roles.

Civil society organizations are explicitly mentioned in the DSA as participants in oversight and enforcement. While civil society will certainly consult and advocate at the EU level, national DSCs play a particular role for organizations from various fields such as human rights, child protection, privacy or consumer protection. Of course, their activities can also go beyond legal mandates or options to work with regulators.

What is in store for civil society and DSCs working together

Along with journalists, academics and whistleblowers, civil society has long been at the forefront of studying online platforms and the digital public sphere. Users' rights groups have helped people facing discrimination from other users or platforms. Public-interest researchers have tried to pry open opaque algorithmic recommender systems with methods such as data donations and scraping. Privacy advocates have pointed out the pervasive surveillance conducted by many online platforms.

With the DSA, the hope is that civil society will find it easier to continue and expand this work. The big general change in this regard is that contrary to many other laws, civil society organizations are explicitly considered actors in enforcement (see table 2 on the next page).¹⁸

¹⁸ These are not the only links between DSCs and civil society. Another area of necessary cooperation is the accreditation of out-of-court dispute settlement bodies, see Martin Husovec, [Certification of Out-of-Court Dispute Settlement Bodies under the Digital Services Act](#), June 2023; Daniel Holznagel, [Art. 21 DSA – What to expect?](#), *CR-online.de Blog*, September 21, 2023; for more on the various roles civil society organizations can take in DSA enforcement, see Suzanne Vergnolle, [Putting Collective Intelligence into the Enforcement of the Digital Services Act: Report on Possible Collaborations between the European Commission and Civil Society Organizations](#), May 2023; Michael Meyer-Resende and Richard Kuchta, [The EU's Digital Services Act: What's in It for Civil Society?](#) (Berlin: Democracy Reporting International, May 4, 2023); Niklas Eder, [Making Systemic Risk Assessments Work: How the DSA Creates a Virtuous Loop to Address the Societal Harms of Content Moderation](#), June 26, 2023.



Table 2. Several roles for civil society organizations in the DSA

| | | |
|-------------------------------|--------------------------------------------------------------------------------------------------------|-------------------------------------------------|
| Consulting | very large online platforms on risk assessments | Rec. 90 DSA; Art. 13(1) delegated act on audits |
| | the Commission on codes of conducts, crisis protocols | Art. 45(2), 46(1), 47(1), 48(3) DSA |
| | the European Board for Digital Services (= all DSCs and the Commission) | Art. 62(5) DSA |
| | potentially as member states' experts on delegated acts (usually done by member state representatives) | Art. 87(4) DSA |
| Representing users | as out-of-court dispute settlement bodies (accredited by a DSC) | Art. 21 DSA |
| | as "trusted flaggers" (accredited by a DSC) | Art. 22 DSA |
| | during complaint process | Art. 53 DSA |
| | to exercise users' rights; during lawsuits | Art. 86, 90 DSA |
| Researching | as "vetted researchers" (accredited by a DSC) | Art. 40(8) DSA |
| Supporting enforcement | as "experts" for the Commission during inspections, monitoring of very large online platforms | Art. 69(3), 72(2) DSA |

For instance, research-focused civil society organizations are eligible to request data from VLOPs (see the previous chapter). This inclusion of civil society is already a success because the data access rules were originally meant only for academic institutions. Still, the vetting process might be geared more towards universities. Along with overly burdensome requirements, this could be an obstacle especially for smaller civil society organizations. That is why in the Commission's consultation on the data access rules, several groups advocated for a more nuanced approach.¹⁹

Another example that highlights the DSA's potential and risks for civil society is the idea of "trusted flaggers." The DSA requires platforms to have a mechanism for users to report – or "flag" – content that users think is illegal. Based on these flags, platforms must decide whether to delete a particular piece of content. A trusted flagger is essentially an organization whose flags are handled faster than regular users'.

¹⁹ Paddy Leerssen, [Call for Evidence on the Delegated Regulation on Data Access Provided for in the Digital Services Act: Summary & Analysis](#) (Brussels: European Commission, November 24, 2023), p. 16.

Civil society organizations can become trusted flaggers, accredited by a DSC. Many have already been trusted flaggers, albeit according to the platforms' own voluntary measures. Such private systems can continue to be in place but in parallel to an "official" DSA trusted flagger system. DSCs award the status of a trusted flagger to organizations, according to certain criteria laid out in the DSA.

While there is some experience with trusted flaggers and the overall rules in the DSA seem straightforward, key questions for DSCs, platforms and trusted flaggers remain open. For instance, the criteria are rather vague and need to be spelled out in more detail. In particular, the potential roles for government trusted flaggers require attention to prevent politically motivated overreach. It is also unclear how platforms will comply with the rules, especially considering the wide variety of platforms (and their respective content moderation approaches) covered by the DSA. Some – likely larger – platforms might favor a technical solution, that is, providing a separate notice channel only for trusted flaggers. It might work to let trusted flaggers self-identify in the regular notice channel. Platforms could also introduce a more personal system, having a dedicated person or hotline for trusted flaggers to reach out to. For platforms that rely on community content moderation, any of these approaches might have to be brought in line with their existing user moderator systems.

Developing some common guidelines on trusted flaggers is necessary, which is a task reserved for the Commission but requires input from DSCs. More generally, to prevent the trusted flagger system from becoming either dominated by governments or merely symbolic²⁰, DSCs must work together with civil society and platforms. Ensuring a transparent trusted flagger mechanism is critical to minimizing the risk of instrumentalization by specific interests. If a government or DSC itself was interested in having only certain types of content flagged, it could only accredit trusted flaggers working on this. Civil society has the responsibility to earn the "trusted" status not only from DSCs but also from users and the public. At the same time, those who do have a proven track record of expertise and responsible flagging need structural and financial support, in the form of easy-to-use flagging mechanisms and an adequate budget.²¹

DSCs should monitor not only trusted flaggers' own reports but also platforms' content takedown reports to detect potentially suspicious flagging. Meaningful transparency around the DSCs' work, coupled with parliamentary oversight and whistleblower protections, could help prevent or at least expose regulators'

²⁰ Naomi Appelman and Paddy Leerssen offer an analysis of trusted flagger systems, including risks of overreach and symbolism, see [On "Trusted" Flaggers](#), December 7, 2022; further analysis can be found in Martin Husovec, [Rising Above Liability: The Digital Services Act as a Blueprint for the Second Generation of Global Internet Rules](#), *Berkeley Technology Law Journal* 38, no. 3 (2024).

²¹ Husovec, [Will the DSA Work? On Money and Effort](#).

attempts to exploit the trusted flagger system. Platforms themselves need to be diligent in their checks and the potential removal of content. After all, a notice from a trusted flagger does not automatically lead to the deletion of that piece of content. A thorough analysis according to laws as well as corporate terms and conditions is necessary in any case.

Beyond flagging and requesting data, civil society organizations' expertise and involvement will be in demand in the member states and at the EU level. To facilitate a meaningful, permanent and structured exchange, regulators should consider building advisory bodies. Once questions about the selection process, transparency rules, specific tasks for the advisory body and its funding are solved, both sides – regulators and civil society – stand to benefit from such a set-up.²² These bodies would not be directly involved in regulatory decisions but could provide outside expertise and practical experiences. An advisory body at the national DSC is under discussion in Germany, which might include members from civil society, academia, consumer protection and industry.²³ At the EU level, the Board could be a good place to build an advisory body. It brings together all DSCs, is chaired by the Commission and has the explicit mandate to consult with outside experts. As such, it could embrace its role as a convening forum. Considering also that the Board must check VLOPs' risk assessments every year, there is a clearly defined task opening up for an advisory body: It could support the Board's annual check by providing expertise on systemic risks and risk mitigation measures. This could be mentioned in the Board's rules of procedure. At the very least, the Board should have a dedicated outreach person or unit so that civil society representatives, researchers and companies have a single point of contact to reach all DSCs. Any such permanent structure should not preclude regulators from continuing engagement through other means as well, for instance, in the form of consultations or stakeholder events.

Any potential inroads that civil society organizations might have with the DSA, be it regarding trusted flaggers, data access or other matters, hinge on their funding.²⁴ In addition to topical knowledge and networks, civil society needs legal expertise to navigate the DSA and infrastructure to deal with reporting obligations and data access requests. The DSA demands a lot from civil society, which in one way is welcome and necessary, but in another way risks outsourcing enforcement to

²² For open questions and potential pitfalls of an advisory body, see Julian Jaursch, [Public comment: How Germany's draft DSA implementation law can be improved](#) (Berlin: Stiftung Neue Verantwortung, August 21, 2023); a discussion of "expert groups" at the EU-level can be found at Vergnolle, [Putting Collective Intelligence into the Enforcement of the Digital Services Act: Report on Possible Collaborations between the European Commission and Civil Society Organizations](#).

²³ § 21 in the German draft law on the DSC, Bundesministerium für Digitales und Verkehr, [Regierungsentwurf des Digitale-Dienste-Gesetzes](#) (2023).

²⁴ Husovec, [Will the DSA Work? On Money and Effort](#); Niklas Eder also makes the point about finding new modes of funding when discussing his idea of inclusion of civil society in risk assessment cycles, see [Making Systemic Risk Assessments Work](#), p. 21.



underfunded entities. The continuous search for money is nothing new for not-for-profit organizations, but the DSA's emphasis on civil society engagement amid governments, regulators and companies makes it even trickier. State subsidies can be compromising, as is money from tech companies. Philanthropic funds are limited and might also come with strings attached. Thus, new financing mechanisms might be necessary in the future. It could be explored whether a pooled fund combining VLOPs' DSA fees, philanthropic contributions and governmental subsidies, set up under the auspices of the European Parliament, is possible.²⁵ Over the long term, a tax on segments of the platform industry such as online advertising could be discussed, with the money partly to be used to support public interest research.

Short-term responsibilities for DSCs and civil society

- **DSCs:** Set up a transparent system to accredit trusted flaggers.
 - This means that DSCs build an easy-to-use format to apply to become trusted flaggers and that they contribute to the database of trusted flaggers in a timely fashion. Together, DSCs should work on a common understanding on the open questions regarding the criteria and application process for trusted flaggers.
- **DSCs:** Set up a researcher-friendly vetting process that considers civil society's needs.
 - See the previous chapter.

Long-term responsibilities for DSCs and civil society

- **DSCs:** Build permanent advisory and/or outreach structures in the member states and at the Board.
 - This would allow regulators and civil society (and academic) organizations to have a continuous, structured exchange. Other forms of engagement such as conferences or consultations should be maintained in addition.
- **DSCs:** Suggest the development of guidelines on trusted flaggers.
 - While only the Commission can issue guidelines on trusted flaggers, DSCs could push for this via the Board.

²⁵ Ideas for funds to support journalism and news literacy programs have been around for some time and could be adapted to the needs of DSA enforcement, cf. Emily Bell, [Do Technology Companies Care about Journalism?](#), *Columbia Journalism Review*, March 27, 2019; Ethan Zuckerman, [The Case for Digital Public Infrastructure](#), *Knight First Amendment Institute*, January 17, 2020; Lisa Macpherson, [The Pandemic Proves We Need A 'Superfund' to Clean Up Misinformation on the Internet](#), *Public Knowledge*, May 11, 2020.



- **DSCs:** Build capacity to vet researchers, accredit trusted flaggers and analyze data and reports.
 - See the previous chapter.
- **Civil society:** Critically assess the DSA generally and its enforcement in particular.
 - This might include educating people about the benefits and limitations of the DSA, engaging with regulators on emerging platform risks or scrutinizing the performance of regulators.
- **Civil society:** Building and expanding capacity to act as trusted flaggers.
 - Some civil society groups might consider becoming trusted flaggers, if only as a counterweight to potential governmental/law enforcement bodies. This entails some documentation duties. As the financial and organizational burdens would largely be left with these organizations, preparation to become trusted flaggers is necessary.
- **Civil society:** Build and expand the capacity to act as vetted researchers and coordinate efforts on requests.
 - To make use of data access options, expertise in legal matters and data science will be necessary, in addition to basic financial stability. Moreover, with good coordination amongst themselves, civil society organizations could help prevent overwhelming the DSCs with duplicate data access requests.
- **DSCs, civil society, researchers and legislators:** Explore funding options for civil society and researchers to fulfill their roles in the DSA.
 - The wider DSA enforcement community should have a structured debate on how to create dedicated budget lines to ensure that research and other engagement related to the DSA is free from corporate and governmental interference.
- **DSCs:** Continuously monitor uptake, bottlenecks and gaps in engagement with civil society.
 - This could feed into required transparency reporting and the evaluation of the DSA.

4. Platforms: DSCs overseeing non-VLOPs' compliance

This section offers a view on how small and medium-sized platforms will be affected by the DSA and how this might be related to oversight of VLOPs at the EU level.

Political and media focus regarding the DSA has been mostly on VLOPs, especially services such as Instagram, TikTok or YouTube. A total of 22 VLOPs have hundreds of millions of users combined in the EU, for which the Commission mainly performs oversight duties (see table 1 in chapter 2). However, there are also thousands of services with millions of users combined that are not considered “very large” (see table 3 on the next page).²⁶ For smaller platforms, DSCs will be the primary oversight agencies. DSCs will have to check compliance with a host of rules regarding terms and conditions, explanations of recommender systems, notice-and-action mechanisms on illegal content and transparency of online advertising. Exemptions from the DSA only apply to some platforms with fewer than 50 employees and a turnover of less than ten million euros.

²⁶ The European Commission's impact assessment on the DSA provided an estimate of 10,000 platforms in the EU, which was in turn based on an estimate from a data company, see [SWD\(2020\) 348 Final 1/2 - Impact Assessment Report on the Digital Services Act](#) (Brussels: European Commission, December 15, 2020), p. 24.



Table 3. Estimated number of platforms in selected member states

| Country | VLOPs | Non-VLOPs |
|-------------|-------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Austria | 0 | ~ a few hundred platforms |
| Czechia | 1 | ~1,800 mere conduit services; ~ 130 online platforms; ~45 webhosting providers |
| Denmark | 0 | ~ 400 intermediary services |
| Germany | 1 | 5,258 intermediary services, of which 200 are online platforms, of which 180 are online marketplaces |
| Latvia | 0 | ~ 1,331 companies engaged in data processing, hosting and related activities, web portals (mostly micro or small); ~ 300 platforms, ~122 electronic communications merchants (mere conduit) |
| Luxembourg | 1 | ~ 240 |
| Malta | 0 | ~ less than 20 |
| Netherlands | 3 | 1,114 |
| Norway | 0 | ~ 290 intermediary services, of which ~ 45 are online platforms |
| Slovakia | 0 | ~ 2-5 platforms; 10-200 hosting providers; 500-2,000 mere conduits/caching providers |

Notes and sources: This table is only meant as a rough point of reference for estimating non-VLOPs. It seems that there are no common EU-wide statistics on various types of intermediaries/platforms. Therefore, the numbers for each country cannot be compared, as member states might count services differently and the numbers cover different years. Furthermore, the data includes many small or micro online platforms, for which some DSA obligations might not apply. The numbers are taken from responses to written requests to designated/potential DSCs or national governments or from public governmental documents. The latter was the case for Germany²⁷, Luxembourg²⁸ and partly, Latvia²⁹. The Dutch statistical office CBS published a survey on online platforms, which is the source for the number given. However, its definition does not match the one from the DSA.³⁰ The Norwegian Communications Authority had a study commissioned on platforms targeting Norwegian users³¹, from which the statistics are drawn based on estimates of how many platforms are based in Norway (the DSA applies to Norway as well, even though it is not an EU member).

27 Bundesministerium für Digitales und Verkehr, [Regierungsentwurf des Digitale-Dienste-Gesetzes](#), p. 61.

28 Ministère de l'Économie, [Franz Fayot a présenté la mise en œuvre nationale du paquet européen visant à réguler l'espace numérique européen](#), November 9, 2023.

29 Oficiālās statistikas portāls, [Key Entrepreneurship Indicators of ICT Sector Enterprises 2008 – 2022](#); Sabiedrisko pakalpojumu regulēšanas komisija, [Reģistrēti elektronisko sakaru komersanti](#).

30 Centraal Bureau voor de Statistiek, [Monitor online platformen 2022](#), August 28, 2023.

31 Harald Wium Lie, Amund Kvalbein, and Tiril Ruud Mageli, [A Survey of Internet-Based Services and Platforms in the Norwegian Market](#) (Oslo: Analysys Mason, August 31, 2023), p. 21.

What is in store for platforms and DSCs working together

Many companies, both small and big, have already started preparing for the DSA by, for instance, instituting new or reworking existing reporting mechanisms and building structures for trusted flaggers. Some VLOPs have sent their first risk assessments to the European Commission and opened up to outside research³² (see chapter 2). Moreover, specialized consulting firms have sprung up, promising platforms of all sizes to help them get ready for the DSA.

DSCs will have to develop expertise on both types of services – the gigantic, globe-spanning ones with a lot of financial power and institutionalized compliance structures as well as the local or niche ones with less money and staff devoted to regulatory affairs. For example, DSCs might have to deal with VLOPs on data access matters and they might have to work on VLOP topics with the Commission or Board. At the same time, they must enforce DSA rules for smaller online marketplaces, internet forums or gaming companies based in their respective countries. Across all platform sizes, DSCs must also appreciate the variation in business models, compliance efforts, resources, approaches to content moderation³³, resources as well as experience with EU lawmaking and relationship-building with regulators. As all DSCs will be established at experienced regulators, knowledge transfer regarding the regulation of industries with varying business models should be possible.

Accounting for this variance among platforms will be a key task for DSCs and for the small and medium-sized platforms headquartered in their respective countries. Such companies should embrace or push for information exchanges with DSCs to help regulators better understand their business models, how their services relate to the DSA and how they differ from VLOPs. While many small and large online services have been touched by national or EU regulation before, the DSA does create a new situation for both platforms and regulators, with expanded transparency rules and a novel oversight regime. Dedicated open communication channels might make it easier to navigate this for both parties. This is especially important for small and medium-sized companies, since they might have limited resources compared to VLOPs and thus find it more difficult to engage with regulators on their own. Ideally, such mutual learning would support the development of the DSCs into companies' single points of contact within the member state, leading to a consistent application of the DSA. This would ultimately benefit regulators, companies and users alike. A meaningful lobbying registry and parliamentary scrutiny of regulators could contribute to making any exchanges transparent.

³² Democracy Reporting International, [Data Access](#), 2023.

³³ Christina Dinar, [\(Nischen-\)Plattformen als Experimentierräume für Content Moderation](#), *Hans-Bredow-Institut*, October 11, 2021; Daphne Keller, [The DSA's Industrial Model for Content Moderation](#), *Verfassungsblog*, February 24, 2022.

An area where non-VLOPs and DSCs could work together to strengthen the enforcement of the DSA is risk mitigation. According to the DSA, only VLOPs have to carry out risk assessments and adopt corresponding risk mitigation measures.³⁴ The Board must assess best practices for risk mitigation. This analysis should inform and be informed by DSCs' oversight of other platforms, too: Risks that emanate from bigger platforms are also present on some smaller ones, for instance, regarding fake or defective products, arbitrary content moderation or privacy violations in advertising. Conversely, smaller platforms might voluntarily have implemented some risk assessments or mitigation measures that might be useful to consider for larger ones as well.

There is some acknowledgment in the DSA that this kind of cross-platform consideration of risks and mitigation measures is desirable. For example, the DSA foresees the possibility for industry codes of conduct. Platforms are not required but can be encouraged to develop such codes on specific risks. The Commission and the Board would monitor the achievements of the codes. If the codes and monitoring works well, this could be a good way for companies to show and improve their compliance, especially in areas not covered thoroughly by the DSA. Importantly, the rules around voluntary codes explicitly mention smaller platforms and other services also being involved in the codes' developments, in addition to VLOPs.

Emphasizing risk mitigation, not only via codes of conduct, is particularly useful because this is what users will most directly benefit from. To be sure, the steps foreseen in the DSA to even identify risks, including internal risk assessments, audit reports and academic studies, are all necessary and valuable in and of themselves. Yet, they are more removed from people's daily experiences online, whereas the mitigation measures are what platform users should notice most clearly. Therefore, DSCs and platforms should center their enforcement and compliance efforts around risk mitigation.

To build knowledge on risk mitigation, DSCs need to engage with platforms but also consult with other groups such as academic and civil society researchers and people with practical experience in corporate "trust and safety" teams³⁵. They have studied risk mitigation measures for years and have both developed tried-and-true approaches (such as diverse content moderation teams covering multiple languages) as well introduced ideas to test under the DSA (such as using the rules to address the negative environmental impacts

³⁴ For an overview of current and potential risk mitigation measures, see Julian Jaursch and Josefine Bahro, [DSA Risk Mitigation: Current Practices, Ideas and Open Questions](#), *Stiftung Neue Verantwortung*, December 13, 2023.

³⁵ For an overview of the emerging "trust and safety" organizations, see Beatriz Botero Arcila and Rachel Griffin, [Social Media Platforms and Challenges for Democracy, Rule of Law and Fundamental Rights](#), (Brussels: European Parliament, April 2023), p. 88-89.



platforms might have³⁶, adopting prosocial design³⁷ or establishing protections for content creators³⁸). Crucially, involving a diverse and pluralistic group of people in risk assessments and risk mitigation can help to prevent mis- or abuse of this DSA provision. Various risks need to be weighed against each other and mitigation measures should be tested as best as possible for potential unintended consequences to ensure that risk mitigation is done in users' interest and not primarily out of political and corporate considerations (similar to issues regarding trusted flaggers discussed in chapter 3 and corporate or political influence discussed in chapter 1).³⁹

Understanding the platforms in their respective countries also means that DSCs must have a grasp of the number of companies covered by the DSA. So far, statistics on this do not seem to be available everywhere (see table 3 at the beginning of this chapter). Monitoring the emergence of new platforms is important to ensure that all services required to comply with the DSA do so. Over the long term, combining such monitoring and potential work on risk mitigation, DSCs should be in a good position to judge whether the current VLOP designation threshold proves valuable. As of now, VLOPs are only determined by user numbers. This is a useful and obvious starting point for EU-wide platform regulation, but user numbers have so far turned out to be difficult to count and could be a rather rigid measurement that does not account for risks on smaller services. Moreover, DSCs could use their experiences from working with various platforms and with complaints (see chapter 1) to add to the scheduled evaluation of the DSA in 2027 (see the next chapter).

Short-term responsibilities for DSCs and platforms

- **Platforms:** Put mechanisms and internal processes in place to comply with the DSA.
 - Some services have long since started to implement changes in light of the DSA, concerning, for instance, reporting mechanisms, recommender system choices or online advertising. Such preparatory steps are necessary because users (and regulators) expect full compliance by the deadline, particularly for this set of rules that received relatively high political and media attention.

³⁶ Rachel Griffin, [Climate Breakdown as a Systemic Risk in the Digital Services Act](#) (Berlin: Hertie School, September 7, 2023).

³⁷ Prosocial Design Network, [Restoring the Web's original promise for meaningful connection](#), 2024; Jesse McCrosky et al., [Prototyping User Empowerment - Towards DSA-Compliant Recommender Systems](#), (Warsaw: Panoptykon Foundation, December 8, 2023); Tech Policy Design Lab, [Develop and Adopt Trusted Design Norms](#), 2023.

³⁸ Martin Husovec, [Trusted Content Creators](#), December 1, 2022.

³⁹ For further important caveats regarding risk mitigation, using the example of tackling disinformation, see Martin Husovec, [The Digital Service Act's Red Line: What the Commission Can and Cannot Do About Disinformation](#), January 2024.

- **DSCs:** Develop expertise on various types and sizes of platforms.
 - By engaging with businesses in a transparent manner, also consulting with non-corporate experts and exchanging views among themselves, DSCs can learn about the characteristics of various platforms.
- **DSCs:** Monitor the emergence of new services.
 - DSCs should develop an understanding of platforms in their countries and what new companies are emerging that might fall under the DSA. This would allow for an early outreach that would ideally help new services address DSA compliance from the beginning.
- **DSCs:** Establish transparency and accountability measures for lobbying.
 - A transparency registry, whistleblower support and parliamentary and public scrutiny could be helpful in ensuring that DSCs can be held accountable.

Long-term responsibilities for DSCs and platforms

- **Platforms, DSCs:** Identify potential areas for codes of conduct.
 - Together with the Commission, DSCs and platforms could discuss the development of codes of conduct. Once it has become clearer where the DSA has shortcomings or what risks have newly emerged, such codes might add to the formal legal framework.
- **DSCs:** Understand risk mitigation measures.
 - Through the Board, DSCs will be tasked to analyze and evaluate VLOPs' risk assessments and mitigation measures. Therefore, it will be necessary for them to understand such measures, even though overseeing VLOPs mostly falls to the Commission. A permanent advisory body could support the DSC with this task (see the previous chapter). DSCs could also bring in the expertise gained from working with smaller platforms, all the while acknowledging the different expectations that the DSA has for smaller and bigger platforms.
- **DSCs:** Engage in dialogues with the Commission and platforms of all sizes to implement risk mitigation measures.
 - DSCs should find formats to discuss which risk mitigation measures are in place and could be put in place.⁴⁰ The better their knowledge of the specific circumstances of VLOPs and non-VLOPs and how their technologies and policies change, the easier it will be to determine what measures could

⁴⁰ Cf. Jaursch and Bahro, [DSA Risk Mitigation: Current Practices, Ideas and Open Questions](#).



Julian Jaursch

February 2024

The Digital Services Act is in effect – now what?

be transferred. Exchanges with platforms should be transparent and be documented.

- **DSCs:** Continuously monitor and review platform designations and blind spots in DSA enforcement.
 - This could feed into the required transparency reporting and the evaluation of the DSA.

Outlook: Making the DSA work in practice

This section presents four potential areas of tension for DSA enforcement and how DSCs can address these tensions. It closes with a call to embrace the upcoming evaluation of the DSA and, if needed, to adapt the rules in the future.

With the DSA, online users are supposed to be protected from counterfeit goods, be able to challenge platforms' content moderation decisions and receive easy-to-understand terms and conditions.⁴¹ It is now up to regulators to check compliance with the corresponding rules, which leads to high expectations for the DSCs and the Commission. At the start of the full application period of the DSA, it is not yet clear how this will be achieved. Will the oversight regime succeed in affecting substantive changes at the platforms through regulatory dialogues, in a kind of public-private-partnership to minimize risks? Will only financial sanctions, after a lengthy process and potential legal battles with corporations, lead to improvements for platform users? Could some services decide to leave the EU market instead of complying with (parts of) the DSA and if so, would this be in people's interests? How can undue corporate or political pressure be avoided that hinders open, user-friendly enforcement?

The latter question is of particular importance, considering that the DSA faces criticism from multiple angles. One side is concerned that the rules do not go far enough to curtail platforms' powers over online spaces and speech. Another side is concerned that the DSA and its governance structure could lead to governmental overreach by granting bureaucrats, political parties and states too much power. These risks should be addressed, in part with some of the accountability measures discussed in this paper. However, another negative outcome beyond state and corporate censorship might even be more realistic, based on past experiences with EU legislation in, for instance, anti-trust and data protection. Instead of being too lax or censoring, the bigger danger is that the DSA will come to stand for piles and piles of data in the form of transparency reports, audits and repositories, which regulators and researchers are too overwhelmed to grapple with because of cumbersome bureaucracy and a lack of resources. The result would be performative EU-level and national enforcement that perpetuates the status quo, just with more paperwork, likely benefiting companies and governments rather than people.

To prevent the DSA from becoming a pointless bureaucratic exercise, public-interest regulators are needed, not just in Brussels but also in the member states. They

⁴¹ These are some of the examples highlighted by an official Commission promotion of the DSA, see [DSA: Making the Online World Safer](#), August 24, 2023; see also Thierry Breton, [Sneak peek: how the Commission will enforce the DSA & DMA](#), European Commission, May 7, 2022.



must be strong and independent enough to stand up to platforms and governments and to critically assess where DSA enforcement might hit some bureaucratic hurdles. This paper provided examples of how DSCs are far from the only actors necessary for strong enforcement but still play a key role in ensuring that people benefit from the DSA and trust its enforcement, researchers can enhance people's understanding of various platforms and companies themselves face consistent, reliable implementation of the rules. Conversely, with weak, non-transparent DSCs, not only is there a danger of the DSA being a dud but also that governmental or corporate overreach is made easier.

The previous chapters each touched upon a relationship that the DSC has to build with platform users, researchers, civil society and platforms, respectively. This relationship-building will take some time, as will strong DSA enforcement generally. During this process, DSCs could face several areas of tension, which are presented in the following. From this, some overarching points on how to make the DSA work can be drawn for DSCs across the EU.

Innovation versus inertia

DSCs – individually and collectively through the Board – could become a strong force for innovative, user-friendly, research-focused platform oversight: Based on their direct contact with platform users, their ability to request platform data and their mandate to oversee a diverse set of companies, they will gather considerable knowledge and experience. The more DSCs acknowledge and welcome the diversity of their tasks (coordinating and enforcing), the diversity of the platforms they oversee (smaller and bigger ones; for-profit and not-for-profit ones; from marketplaces to search engines to social media) and the diversity of the groups they need to engage with (users, researchers, civil society and other regulators), the better their understanding of DSA enforcement will be. This could put them in a good position not only to ensure enforcement of current DSA rules but also to detect and analyze emerging trends with platforms, which in turn allows them to improve and expand due diligence and risk mitigation measures in the future.

Moreover, this should allow them to address the gaps left in the DSA. For instance, stronger protections on tracking people's online behavior for ad profiling were left out of the DSA. In fact, the extent to which some of the services making up the "ad tech industry" even are or should be covered by the rules is unclear. This is a key question that legislators will face in the future and answering it could be informed by experiences with the DSA. Similarly, DSCs could explore innovative ideas floated

by researchers and advocates regarding platform oversight and test whether they work for people's benefit. For example, can the DSA be used to mitigate the negative environmental impacts of tech platforms? What are ways to support content creators? What are alternatives to deceptive design practices? What new financing models for research and civil society could work? Addressing, or even posing, such questions will require motivated and well-staffed DSCs that are willing to critically assess the DSA and its limitations. If this is not the case, enforcement itself might still work but an inert oversight structure and a lack of forward-looking initiative could loom large.

Public interest versus corporate interest

The establishment of a new type of regulator, particularly in a sensitive field related to fundamental rights, offers the opportunity to prove to people that oversight structures work in their favor – and not in companies' and governments' interests when those diverge from the public interest. Instead of hoping that users will blindly trust this to be true or issuing empty promises, DSCs can work to build this trust from the get-go: They can be open about industry and government (and civil society) contacts through a transparency registry, embrace accountability measures such as annual reports and parliamentary oversight, publicly explain their work and have it scrutinized and, crucially, make it easy for users to enforce their rights. All of this could help to gain and maintain users' confidence.

Trust can also be built by being honest about what tech regulation cannot achieve. Even when this is not said outright, it is at times implied or misconstrued that the DSA is supposed to (re-)create an idealized internet. However, no "internet" or "content moderation" law on its own will present tenable solutions to discriminatory, racist, inflammatory and illegal content online. DSCs are not meant to and cannot address the underlying societal issues driving this. They can only be part of a broader effort to solve tricky issues regarding deceptive design online, scam websites or defining disinformation. Yet, even communicating this clearly and acknowledging not only the benefits, but also the limits and potential risks of regulation, could be a trust-building exercise.

Efforts such as developing a public lobbying registry or open, accessible communication channels for platform users should be early actions taken by DSCs. Once governmental or corporate interests have overtaken public interests at the regulators, countermeasures such as these might not work or might even seem disingenuous.



Compromise versus conflict

Beyond building trust with people and external organizations, DSCs have to do the same among themselves. Promisingly, even before the DSA was fully applicable, there were signs that designated and potential DSCs are keen to work together. For instance, they formed working groups on various aspects of the DSA, such as data access rules. Together and individually, they also engaged with the Commission in developing delegated acts. Such efforts to build ties and start creating common approaches (for example, about how to vet researchers or accredit trusted flaggers) will help ensure consistent application of the DSA. This spirit of collaboration is vital for enforcing the DSA and should be carried over into the Board.

Especially the work in the Board will be a test of how far the DSCs and the Commission can take their early cooperation. The Board does not have many regulatory powers but it still plays two key roles. First, it is a convening forum. It brings together regulators from various fields, the Commission and, crucially, external experts. Thus, the Board is an important avenue for civil society or other outside observers to address emerging issues at the EU level, ideally, in a permanent advisory body. Second, the Board can shape DSA enforcement through its task of consulting with the Commission on guidelines and regulatory questions. As just one example, without the Board, the Commission cannot adopt a crisis response mechanism, which are rules that might put additional obligations on platforms for limited periods. The important delegated act on data access rules also requires Board involvement.

Other tests for the cooperative spirit among regulators are joint investigations, efforts for mutual assistance and cross-border cooperation. Along with the work on the Board, these are the areas where regulators have to come together and where turf wars might lead to gridlock if, for instance, a DSC does not communicate findings or refuses to act on alerts from other countries. The DSA has some rules in place to help avoid such gridlock. For example, there are timelines for potential issues regarding cross-border cooperation and joint investigations. Generally, the Board can also play a mediating role.

Member states and oversight agencies, of course, have some experience with cross-border cooperation because this is standard practice for many existing EU rules. However, this usually happens within a regulatory field, that is, telecommunications regulators collaborate in the Body of European Regulators for Electronic Communications (BEREC) and media regulators come together in the European Regulators Group for Audiovisual Media Services (ERGA). The DSA's wide-ranging scope means that in the Board or on joint investigations,



regulators with different backgrounds might be paired together (for instance, some will be more rooted in telecommunications regulation, others in media or competition regulation). Examples from ERGA, which agreed on a memorandum of understanding among its members⁴², and the European Data Protection Board, which pressured the Irish data protection authority to impose a higher fine than the authority wanted⁴³, show that consensus-building and conflict-resolution mechanisms are important and can work, but are tedious, even among regulators with relatively similar histories and tasks. Especially because DSA enforcement issues can become politicized and can be linked to ongoing crises, it is essential to build on the open communication and collaborative efforts that characterized some of the earliest DSA enforcement period.

Continuous learning versus closed doors

The way DSA enforcement is set up could ideally inspire an EU-wide network of regulatory and non-regulatory organizations that contribute to an open and pluralistic oversight system. DSCs can be a driving force in the enforcement network if they embrace this community-building element of the DSA. As the previous chapters have shown, this means developing connections with other regulators, platform users, researchers, civil society representatives and regulated services. Being in touch with many different organizations can be challenging and requires resources but would hopefully benefit individual DSCs and people in the end: Regulators could learn about good and bad practices from other organizations, receive first-hand accounts of concerns from consumers and companies, and be at the cutting edge of platform research.

Conversely, taking a narrow and close-minded view of the enforcement tasks might seem less costly but would undermine the DSA's goals because it would make it more difficult to ensure consistent, user-friendly oversight. The same goes for the big future task of evaluating the DSA: Instead of treating it as a chore, the DSCs and the Commission could view the upcoming first review in 2027 as a learning experience, avoiding an evaluation theater that does not support enforcement and reform efforts.

⁴² European Regulators Group for Audiovisual Media Services, [Memorandum of Understanding between the National Regulatory Authority Members of the European Regulators Group for Audiovisual Media Services](#), March 12, 2020.

⁴³ European Data Protection Board, [1.2 Billion Euro Fine for Facebook as a Result of EDPB Binding Decision](#), May 22, 2023; Clothilde Goujard and Mark Scott, [EU Hits Meta with Record €1.2B Privacy Fine](#), *POLITICO*, May 22, 2023.



From evaluating the DSA to adapting it

Politicians and policymakers should not shy away from an honest evaluation of the DSA. More consequentially, neither should they shy away from major changes to the rules if that is deemed necessary after the review. For the first evaluation, it might be tempting to present more successes than failures to prove that the trendsetting, first-of-its-kind regulatory effort worked. It would also be easy to adopt a “wait-and-see” approach, arguing that the first years of enforcement cannot be taken as a good measure for long-term accomplishments. Yet, precisely because it is a first-of-its-kind effort and because new enforcement structures were developed, lawmakers and regulators must identify bugs and be open to adapting the DSA. They need to determine which reporting and transparency mechanisms have actually supported regulators’ and researchers’ efforts to spot and mitigate infringements and which ones have turned into exercises in transparency-for-transparency’s-sake.

DSCs are well-placed to contribute to such a review and to make suggestions for improvements. For the first time ever across the EU, there are now regulators specifically tasked to grapple with content moderation processes and risk management across a range of platforms, not only with individual content removals or sectoral approaches. Moreover, the DSA’s horizontal approach necessitates that DSCs cannot be focused on a single fundamental right. They might have to weigh various rights and freedoms against each other. This should ideally lead to new expertise on platforms and to new networks with other organizations, which can be a helpful starting point for evaluating the DSA and identifying gaps.

A thorough evaluation concerns the Board, which is explicitly mentioned in the evaluation mandate. Basic questions could be whether the information exchange system works well or the Board’s role is fitting. A general evaluation should also question the Commission’s role as enforcement body, with an inquiry into whether an independent EU agency would be beneficial.⁴⁴ Situating VLOP oversight at the EU level is sensible, yet it can be questioned whether the Commission is the right spot over the long term. Concerns with the Commission as a regulator stem from its (geo)political role (although the institution is independent on paper), potentially conflicting policy goals within the Commission that undermine the DSA and the fact that it is desirable to avoid the same institution proposing a law

⁴⁴ The DSA provides a fitting opening for this: The article calling for an evaluation of the regulation specifically mentions a review of the Board, even before other major parts of the DSA are to be evaluated (Article 91(3)). This could be used to discuss whether the Commission’s enforcement team, the Board structure and the information exchange system with national DSCs could and should be spun out into its own agency.

and then enforcing it.⁴⁵ Instead, separate regulatory bodies (with varying degrees of independence) are typically in charge of overseeing industries and companies. As DSCs will have gained first-hand experience in enforcing the DSA, they can bring in this expertise on the benefits of independent, public interest oversight into the evaluation as well.

On a national level, DSCs' work could be reviewed. This might encompass the actual enforcement work and structural questions such as whether precautions against corporate and governmental meddling suffice. An evaluation of the cooperation between national authorities and the designation of other competent authorities could be conducted, as is planned in Germany⁴⁶ and Sweden⁴⁷. Moreover, the decision to build the DSCs at existing regulators should be revisited. In Germany, for example, the regulator historically in charge of telecoms, postal services, railroads and energy has recently taken on more and more roles concerning platform regulation, including housing the DSC. This might lead to the question of whether in Germany or elsewhere, it could make sense to build stand-alone, dedicated platform or digital services agencies, particularly considering future regulation. For instance, the AI Act touches upon similar topics and companies as the DSA and the political advertising regulation even specifically mentions DSCs as potential oversight bodies. Any evaluation should include opinions from platform users, outside experts such as academics and civil society representatives as well as regulated entities. To go a step further, the Board could develop a common basis for such a multi-stakeholder evaluation process.

After some years of the DSA being in force, it should also be possible for regulators and outside observers to identify blind spots of what aspects of digital markets and the digital public sphere the DSA does not address adequately. The DSA purposefully does not challenge the basic idea of online platforms and their business models, it just adds a security layer. For example, the online ad business model is not significantly altered. The DSA only puts in place some additional restrictions on platforms' data use for advertising. It is unclear whether its scope covers companies in the wider ad tech industry at all, even though this industry

45 Ilaria Buri, [A Regulator Caught Between Conflicting Policy Objectives](#), *Verfassungsblog*, October 31, 2022; Center for Democracy & Technology, [Feedback to the European Commission's Consultation on the Draft Proposal on the Digital Services Act](#) (Brussels: Center for Democracy & Technology, March 31, 2021), p. 2; Suzanne Vergnolle, [A New European Enforcer? Why the European Commission Should Not Stand Alone in the Enforcement of the Digital Services Act](#), *Verfassungsblog*, May 23, 2023; oral statement by Jürgen Kühling at Bundestagsfraktion Bündnis 90/Die Grünen, [Der Digital Services Coordinator zwischen Bund, Ländern und Europa: Wie gelingt die Zusammenarbeit?](#), June 26, 2023.

46 § 34 in the German draft law on the DSC, Bundesministerium für Digitales und Verkehr, [Regierungsentwurf des Digitale-Dienste-Gesetzes](#) (2023).

47 Ulrika Ihrfelt, Helena Bäckström, and Maria Wieslander, [En inre marknad för digitala tjänster – ansvarsfördelning mellan myndigheter. Delbetänkande av Utredningen om kompletterande bestämmelser till EU:s förordning om en inre marknad för digitala tjänster](#) (Stockholm: Regeringen och Regeringskansliet, January 31, 2023), p. 20.

was specifically discussed in the impact assessment accompanying the DSA⁴⁸. The early enforcement focus was certainly not on this industry, which many platforms rely on and which is characterized by similar oligopolistic and opaque structures that the DSA and the Digital Markets Act want to address for online platforms. These industries are connected. A thorough evaluation of the DSA should therefore also include an examination of the underlying financial incentives that drive many platforms' businesses. DSCs could use the insights they gained from complaints, platforms' risk assessments and their own (data) analyses to contribute to such an evaluation. In this way, regulators at the national and EU levels can detect gaps to help lawmakers decide if further action is needed. The evaluation mandate already includes a check on whether other existing or planned EU rules align with the DSA (such as those on data use for political advertising). Yet, it should additionally be checked whether the basic structures of commercial online spaces, including ad tech services, need more public-interest oversight.

The DSA covers a wide range of platforms and touches on different topics from the technicalities of data-driven advertising to individual fundamental rights protection to compliance practices at global corporations. This multitude of perspectives should also guide the evaluation and adaptation of the rules. Technical details and overarching reform proposals could be discussed when trying to improve the DSA. For such a discussion to happen, a community of practice on EU platform oversight is necessary, which DSCs, the Commission and other interested parties should start building now that the DSA is fully applicable.

⁴⁸ European Commission, [SWD\(2020\) 348 Final 2/2 - Impact Assessment Report on the Digital Services Act - Annexes](#) (Brussels: European Commission, December 15, 2020), p. 196-207.



Julian Jaursch

February 2024

The Digital Services Act is in effect – now what?

Acknowledgements

Thank you very much to the many experts who were kind enough to talk to me about the DSA and DSCs, whether at conferences, for specific interviews and surveys or as part of SNV workshops. I am grateful to have received a lot of insights this way from academia, administration, civil society and businesses. Thanks to the officials responding to my questions about platform statistics and DSA enforcement. For inspiring and thoughtful feedback on this particular paper, I thank Aline Blankertz, Rachel Griffin, Martin Husovec, Agne Kaarlep, Laureline Lemoine, Martin Madej, Oliver Marsh, Claire Pershan, Suzanne Vergnolle and Richard Woods.

The opinions expressed in the paper do not necessarily reflect those of the experts I talked to or of their organizations. Any remaining mistakes are mine.

Many thanks also to the entire SNV team for their support, especially to:

Josefine Bahro

Dr. Anna-Katharina Meßmer

Dr. Martin Degeling

Alexander Hohlfeld

Edited by:

Luisa Seeling

with Josefine Bahro

Layout:

me+Gestaltung

with Alina Siebert

Visual:

Hà Thanh Thư Nguyễn

with Alina Siebert

Dissemination:

Ernesto Oyarbide-Magaña

with Sebastian Rieger

The paper is part of a project on German and European platform regulation funded by Stiftung Mercator and Reset.



Julian Jaursch

February 2024

The Digital Services Act is in effect – now what?

About Stiftung Neue Verantwortung

Think tank at the intersection of technology and society

Stiftung Neue Verantwortung (SNV) is a not-for-profit think tank working on current political and societal challenges posed by new technologies. We do 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.

About the author

Julian Jaursch is project director in the field of “Strengthening the Digital Public Sphere”. He analyzes approaches to platform regulation in the German, European and transatlantic context and develops policy recommendations in this field.

Dr. Julian Jaursch

Project director “Platform regulation and strengthening the digital public sphere”

jjjaursch@stiftung-nv.de

PGP: 03F0 31FC C1A6 F7EF 8648 D1A9 E9BE 5E49 20F0 FA4C

+49 (0)30 81 45 03 78 93

<https://mastodon.social/@jjjaursch>



Imprint

Stiftung Neue Verantwortung e. V.
Ebertstraße 2
10117 Berlin

T: +49 (0) 30 81 45 03 78 80

F: +49 (0) 30 81 45 03 78 97

www.stiftung-nv.de/en

info@stiftung-nv.de

Design:

Make Studio

www.make-studio.net



This paper is published under Creative Commons License (CC BY-SA). This allows for copying, publishing, citing and translating the contents of the paper, as long as the Stiftung Neue Verantwortung is named and all resulting publications are also published under the license “CC BY-SA”. Please refer to <http://creativecommons.org/licenses/by-sa/4.0/> for further information on the license and its terms and conditions.