

DSA - Why creating a regime for giant platforms if it is to include everyone ?

The DSA contains a chapter dedicated to “systemic risk mitigation” which targets **Very Large Online Platforms (VLOPs)**. Any platform with more than 45 million “**active recipients of the service**” can be considered a VLOP. We strongly support this idea of raising customer protection in the EU.

However, the Council general approach defines an “active recipient” as any person accessing a platform’s interface, regardless of the purpose or the service offered by the platform. Such a definition makes no difference between a social media user and a transaction-based e-commerce or classifieds platform visitor: all visitors are deemed active, regardless of whether they actually take part in a transaction exposing them to a potential risk.

This logic denies the very notion of “being active” and will create an ill-grounded presumption of systemic risk on every mid-sized platform. Indeed, considering that the conversion rate in e-commerce is around 3%, it is roughly 97% of traffic that would wrongly be deemed “active”.

What does being a VLOP involve?

- Costly annual risk assessment for systemic risks and developments of mitigations measures with annual reporting to the Commission;
- Annual audit by independent party to assess compliance with VLOPs regime;
- Report and transparency obligations on recommender systems;
- Extra reporting obligations on advertising including a register listing all advertisers on the platforms, criterias for targeting ads and the actual audience reached by the ad;
- Access for the Commission or the Digital Service Coordinator to any data related to compliance, upon request;
- Hiring at least one compliance officer independent from operational functions;
- Extra reporting obligations (HR dedicated to content moderation, transparency over the traffic...).

These obligations have been designed for dominant actors.

What to expect from generalised suspicion of systemic risk for all EU fast growing intermediation platforms ?

- Current European promising tech companies will be forced to concentrate financial and HR resources on compliance instead of growth and innovation, preventing them from becoming actual EU tech giants any time soon;
- Retailers leveraging the hybrid marketplace model would all qualify as they’d have to include in the counting all visitors on their own eCommerce website;
- This won’t help with the EU tech talents shortage as, understandably they would rather work on innovation instead of compliance;
- Extra reporting obligations and transparency requirements will benefit competition;
- The EU won’t be fostering the next generation of innovative platforms.

We ask the definition of “active recipient of the service” to be defined by a delegated act, as originally intended by the Commission’s proposal. Only a delegated act will reach the level of granularity required to define what makes a user “active” in relation with the service offered by each intermediary, respecting specificity of each current and future models.

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