



Diana VLAD-CÂLCIC
DG CONNECT
European Commission

Brussels, 2 June 2023

Dear Ms Vlad-CÂLCIC

PwC response to the EC request for feedback on the draft delegated regulation on the methodology for the audits of very large online platforms and very large online search engines.

PwC International Ltd (PwC), on behalf of the PwC network, welcomes the opportunity to provide feedback on the draft delegated regulation on the methodology for the audits of very large online platforms (VLOPs) and very large online search engines (VLOSEs) as required under the Digital Services Act (Article 37).

The DSA is an important piece of legislation, in many ways unprecedented in its aims and impact. The range of stakeholders and their objectives is similarly diverse and we commend the Commission for their diligence and investment in bringing all parties to this point. We welcome the important role that the legislation assigns to assurance as a way to build trust in the quality and robustness of reporting on, and compliance with, the DSA.

We expect that in the first years of application, complying with the DSA will be a significant investment and journey for VLOPs and VLOSEs because for many organisations, the systems and processes required to achieve compliance are still being implemented and refined. Consistent with other newly introduced regulations, consensus with regards to what constitutes effective compliance with elements of the DSA will naturally take time and require ongoing dialogue amongst stakeholders and participants.

The audit requirements have a role to play in building stakeholder trust in organisations' compliance with the DSA. However, in our view, the DSA and the draft audit methodology in its current form may not achieve high quality and consistent outcomes as they relate to audit performance. We suggest that further work may be needed to create a framework of appropriate interpretations and thresholds that will facilitate the effective measurement of compliance and ultimately independent assurance over that compliance.

These are our three principal recommendations and suggested solutions:

1. Create a framework of suitable criteria to measure compliance

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As currently drafted, the delegated regulation incorporates many positive suggestions based on extensive discussions and consultation from a range of stakeholders who will have views on what constitutes compliance and what should be expected of VLOPs and VLOSEs. However, in some areas, the regulation then leaves it in the auditors' hands to decide "how much is enough" to achieve compliance, describing this as the auditor's "methodology". From the auditor's perspective, making the auditor the judge of what constitutes compliance will likely result in variability as well as potentially creating disagreements amongst stakeholders as to who has set the 'bar' at the right level and whether different entities are being treated fairly. Further, we are concerned that the choice of auditor might be driven by who has the easiest benchmark.

We recommend that the Commission invite a wide range of stakeholders (including those outside the VLOPs, VLOSEs, and the audit providers, such as NGOs), to contribute to the creation of a detailed compliance framework that will establish a common understanding of what is required from a VLOP or VLOSE in order to comply with the DSA. For many areas of the DSA there is little extra detail needed if anything (Articles 11 and 12 are good examples) but there are complex areas such as Articles 15 and 17 where such broad consensus and further granularity is critical. PwC would welcome the opportunity to be one of the contributors to the creation of this compliance framework.

For clarity, the auditor's methodology would typically be defined as the auditor's in-house approach to testing the subject matter against a set criteria and forming a view/opinion. This will differ from provider to provider within the restrictions of the applicable assurance framework that has been adopted. However, the Commission may choose to set certain minimum expectations as to this methodology and approach, as noted in point 3 below.

2. Revise the form of the opinion and the audit report

The Delegated Regulation describes an overarching compliance opinion but the breadth of the VLOP and VLOSE obligations means that this opinion could be a complicated combination of opinions over the effectiveness of controls, binary compliance and the application of legal judgement. Combining these different areas into a single overarching statement of compliance may not be meaningful or useful to the reader.

Ideally, we suggest that the audit report should have separate but complementary opinions, specific to the relevant Articles:

- (i) an opinion as to compliance (where the relevant Articles are binary, e.g. appointment of a Chief Compliance Officer); and
- (ii) an opinion as to the design and operation of systems to achieve compliance (where the relevant Articles describe a system of processes and controls).

We draw comparison to financial statement opinions and "Sarbanes-Oxley" opinions covering internal controls over financial reporting. The former assesses preparation in relation to detailed general accepted and accounting principles such as IFRS whereas the latter assesses the design

and operation of controls against control objectives. The opinions are designed according to the subject matter. By contrast, the proposed DSA compliance opinion tries to simplify the broad spectrum of what is being assured and in doing so, may reduce understandability.

If a nuanced/split opinion according to the nature of the Article obligation is not possible, we suggest that as a minimum, clarity is added to the delegated regulations so that an opinion as to compliance is not deemed to be a legal opinion.

In the interest of usability of the audit report, we would also recommend to reduce the list of attachments and disclosures in the proposed form of the auditor's report, which currently requires a copy of the auditor's contract and a list of all tests and substantive analytical procedures and audit evidence used to assess compliance. We believe that resolving the matter of suitable criteria, as discussed in point 1 above, will make this additional explanatory material unnecessary. Comparability and understandability will instead be improved through the enhanced assessment criteria, rather than through the provision of detailed information.

3. **Leverage existing assurance frameworks where possible**

We strongly recommend that the Commission bases the regulation on existing frameworks wherever practicable - the most relevant international assurance framework here is the IAASB's ISAE 3000 (Revised) 'Assurance engagements other than audits or reviews of historical financial information', which may be applied by any practitioner, not just traditional financial audit firms. That standard in turn mandates the IESBA Code of Ethics for independence and ISQM 1 ('International Standard on Quality Management') in terms of overarching quality management systems within the audit provider, all of which will be explicitly referenced in the audit report. These standards can be supplemented with specific additional requirements as the Commission deems necessary, however these should be proportionate, again with an eye to future assurance requirements and any unintended implications that narrow the choice of assurance provider. This will ensure consistency of quality across all providers, which is much better for the user and in the public interest. This type of approach is also recognised and considered in other EU contexts, such as in the context of the CSRD.

We look forward to continuing to share our perspectives with EU legislators. If you would like to discuss our response, please contact me (gillian.lord@pwc.com), Tim Clough at tim.clough@pwc.com or Mary-Jane Kellaway at mary-jane.kellaway@pwc.com.

Yours sincerely



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PwC Global Leader for public policy and regulation

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