

European Commission recommendations to accelerate DSA governance to enhance response to online illegal content

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At the end of August 2023, the Digital Services Act (DSA) became legally enforceable for designated Very Large Online Platforms (VLOPs) and Very Large Online Search Engines (VLOSEs). For more information, refer to IRIS 2023-5:1/2 and IRIS 2023-9:1/7. The designated platforms have now completed the first annual risk assessment exercise to examine risks such as how illegal content might be disseminated through their services.

On 18 October 2023, the European Commission published a set of recommendations for member states to coordinate their response to the spread and amplification of illegal content, such as terrorist content or unlawful hate speech. This Recommendation was also introduced in view of the unprecedented period of conflict and instability affecting the European Union. The aim is for member states to support the Commission in ensuring full compliance by VLOPs and VLOSEs, with their new obligations under the DSA, ahead of the deadline for member states to play their role in its enforcement.

The Recommendation focuses in particular on three elements: the Digital Service Coordinators, incident protocols and the instruments to tackle illegal content.

Digital Service Coordinators

Under the DSA, member states have to designate a Digital Services Coordinator (DSC), an independent authority to supervise the compliance of the online services established on their territory, by 17 February 2024. The Commission is encouraging them to designate one already now, ahead of the 2024 deadline, and to coordinate their actions through an Informal Network in relation to the dissemination of illegal content on VLOPs and VLOSEs that have already been designated. The effective monitoring and enforcement of the DSA by the Commission in relation to those designated VLOPs and VLOSEs indeed requires the assistance of and active cooperation with member state national authorities.

Incident protocols

The Commission further recommends cooperation with the Information Network in case of incidents, in particular arising from the dissemination of illegal content,

posing a clear risk of intimidating groups of population and destabilising political and social structures in the Union or parts thereof, including those which risk leading to a serious threat to public security or public health in the Union or in significant parts of it. Where extraordinary circumstances justify it, the Commission therefore recommends that the Informal Network of prospective DSCs meets on a regular basis to achieve a coordinated understanding of the development of the extraordinary circumstances at national level and to propose a framework for any follow-up action that may be considered necessary in view of the identified extraordinary circumstances.

Instruments to tackle illegal content online

According to the Commission, the multiplicity of national and Union legislation and different forms of coordination in relation to illegal content increases the need to ensure coordination between member states in the phase leading up to the full application of the DSA. In this context, it also recalls that several voluntary cooperation frameworks already exist to address the dissemination of illegal content online and encourages member states' participation thereto. These include in particular the EU Crisis Protocol, which provides for a voluntary mechanism to respond to a suspected crisis in the online space, stemming from a terrorist or a violent extremist act. Member states are encouraged to coordinate via international fora for counter terrorism, such as the Christchurch Call and the industry-led Global Internet Forum to Counter Terrorism. In addition, the Commission refers to the powers conferred on member states by the different instruments under European Union law, such as the Regulation on addressing the dissemination of terrorist content online, in force since June 2022.

The Recommendation will apply until 17 February 2024. After that date, the enforcement framework established in the DSA will apply fully, including the Board for Digital Services, which will be composed of independent Digital Service Coordinators of the member states.

Commission recommendation of 20.10.2023 on coordinating responses to incidents in particular arising from the dissemination of illegal content, ahead of the full entry into application of Regulation (EU) 2022/2065 (the 'Digital Services Act')

<https://ec.europa.eu/newsroom/dae/redirection/document/99469>

