

**A joint statement
on Digital
Services Act
implementation
at the national
level**

An open letter to Member States of the EU





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Introduction

As the political process of negotiating the landmark new set of EU rules for a safer and more accountable online environment has concluded, civil society organisations from across Europe joined forces to offer suggestions on how to strengthen the harmonisation of the DSA implementation process across EU member states.

We recognise the urgency of setting up the Commission's oversight system for very large online platforms, however, this should not come at the cost of sidelining the member states' role; they have to set up independent Digital Services Coordinators (DSCs), which have significant oversight tasks to fulfil. Therefore, we would like to contribute to the debate with a set of recommendations representing a common position of 14 European civil society organisations and independent experts.

Main challenges and opportunities of implementing the DSA at the national level

Members of the network gathered in December to discuss the situation in individual countries and to identify the fundamental challenges shared across national borders. The main issues perceived by civil society across the EU are:

1. Designating the DSCs and ensuring their effectiveness;
2. Guaranteeing political independence of the DSCs;
3. Including civil society via strong links between DSCs and CSOs;
4. Raising awareness among citizens regarding the rights brought by the DSA and awareness of digital services providers about the new obligations; and
5. Ensuring a transparent and inclusive DSA implementation process.





While the challenges of DSA implementation are significant, they also present member states with a unique opportunity to reform their platform oversight regimes.

Recommendations

Considering the above-mentioned challenges, we make the following recommendations:

1. Designating the DSCs and ensuring their effectiveness

Sufficient technical, financial and human resources

The role of the DSCs will go beyond mere coordination of national regulators and communication with the European Commission and the European Board for Digital Services. Selected institutions will need to possess sufficient capacities in data analysis, expertise in law, human rights, sociology, psychology, UX design, online advertising, digital technology R&D, and other disciplines as well as other practical experiences (e.g., regarding content moderation, the certification of out-of-court dispute settlement bodies or trusted flaggers).

Therefore, we encourage member states to establish strong data science and data analysis capabilities at the DSCs. Existing and emerging organisations such as the French PEReN or data science units at competition and data protection authorities can serve as examples of both good and bad practices in this field.





Aside from ensuring sufficient capacity in data science, the DSCs will depend on the ability to recruit qualified experts from other areas. National administrations must be able to attract talented individuals to fill these positions in order for the DSCs to fulfil their obligations.

Recruiting enough qualified and experienced professionals is the crucial step. However, the future DSCs will also have to create an environment where multidisciplinary work can effectively take place.

Finally, newly designated institutions should have sufficient budgetary resources to invest in personnel and the overall functioning of the institution since the ability of DSCs to function effectively is directly linked to the funds available.

Harmonisation of national procedural practices and laws

The weak and often criticised enforcement record of the EU in regard to another regulation, the General Data Protection Regulation (GDPR), serves as a stark reminder of the importance of adequately funded authorities and harmonised national procedures in the enforcement of European legislation. To pre-empt similar problems with DSA implementation, member states should pay particular attention to setting up internal DSC processes compatible with those of their counterparts across the EU.

Efficient communication

A crucial element of the DSA national implementation process will be the ability of the institution chosen to become the DSC and other involved regulators to efficiently communicate among themselves. Additionally, the national systems must be compatible with the international information-sharing system, as described by article 85 of the DSA.





- Member states should design a robust communication system and foster a collaborative mindset of regulators involved in DSA compliance oversight. Additionally, member states must continuously evaluate communication systems as well as monitor and adopt good practices from around the EU.
- Organising roundtable discussions and workshops for involved authorities could be beneficial in avoiding disputes and building a cooperative environment.

Safeguarding the DSCs in the future

Another dimension of DSA implementation is the longevity of the new framework. Considering the amount of new legislation in the digital policy area that is being prepared, it is essential not to look at the DSA in isolation. Especially new and upcoming EU legislation on data governance, digital markets and “artificial intelligence” can offer links to the DSA and its enforcement regime¹.

DSCs should be set up as an early-warning monitoring system for emerging issues, e.g., regarding DSA rules on transparency and deceptive design, but also issues not yet covered under the DSA.

- Member states should continuously evaluate their DSCs’ work beyond the regular evaluation periods provided for in the DSA to check whether digital platform regulation can be streamlined.
- The DSCs should actively seek exchanges with regulators in other fields to identify potential overlaps and learning opportunities.

¹ [New EU rules for digital services](#), pp. 39-40





2. Ensuring political independence of the DSCs

Complete independence is one of the central requirements for the DSCs. Consequently, we underline the importance of choosing an institutional design which makes a clear division between governmental institutions and the DSCs to guarantee that the DSCs do not become subject to undue influence from government officials, politicians, industry representatives and other interest groups. The following general principles for securing the independence of regulatory bodies should be observed when designating the DSCs²:

- Providing the regulator with a distinct statutory authority, free of ministerial control;
- Prescribing well-defined professional criteria for appointments;
- Appointing the head of the DSC for a fixed period and prohibiting their removal (subject to formal review), except for clearly defined due cause;
- Providing the agency with a reliable and adequate source of funding;
- Exempting the regulator from civil service salary limits to attract and retain the best-qualified staff and to ensure adequate good governance incentives;
- Prohibiting the executive from overturning the agency's decisions, except through carefully designed channels such as new legislation or appeals to the courts based on existing law; and
- Requiring regular reporting to the public and the legislature.

² [ICT Regulation Toolkit](#), p.9





3. Inclusion of civil society and ensuring strong links between DSCs and CSOs

Advisory councils composed of civil society representatives

Connected to the previously mentioned issue of building strong and effective digital services coordinators is the question of preventing DSA misuse to further political agendas.

The DSA explicitly mentions civil society organisations as important actors in DSA enforcement, for instance, as trusted flaggers, as expert consultants for the Board or as vetted researchers. More generally, the DSA requires a mix of private and regulatory enforcement that should include civil society expertise³.

For this reason, we deem it necessary to establish advisory expert councils within the DSA enforcement framework. In addition to providing expert input, they could also provide an additional layer of supervision of the DSCs. If these councils are designed with a clear structure, responsibility and purpose, they can provide valuable inputs on good practices for DSC processes and governance.

Increasing transparency of the new environment for private actors outside of the digital policy bubble

In the future enforcement of the DSA obligations, there is an important role for private entities in actively using the options provided by the DSA such as out-of-court settlements and notice and action mechanisms as well as by going to the courts as plaintiffs. From our discussions, it is clear that the new regulatory landscape is difficult to navigate for actors outside of the digital policy bubble. For that reason, we believe that member states should focus on increasing the

³ <https://verfassungsblog.de/dsa-money-effort/>





accessibility of tools brought by the DSA and capitalise on the contributions of an active private sector.

Support for non-state actors involved in DSA enforcement

There is also a need for a support system for non-state actors who play a role in DSA enforcement, e.g., trusted flaggers or out-of-court dispute settlement bodies. At the same time, member states should be mindful of the risk of creating a dependency of involved non-state actors on the DSCs.

4. Awareness raising

Boosting public awareness of the effects and benefits of the DSA

Another great opportunity for DSCs to take a strong role in DSA enforcement is educating people about their rights as users and about platforms' obligations. The current lack of awareness among citizens about the DSA and their rights is a serious shortcoming. To raise awareness about the EU's platforms rules, we recommend the following:

- Educating and engaging with the public via informative, accessible publications, events and campaigns;
- Establishing a science communication unit to collaborate with researchers and relate their findings as well as the DSC's own findings to the public;
- Actively engaging media outlets to draw attention to users' rights, ways to enhance safety and transparency online as well as emerging systemic risks;
- Encouraging online platforms to inform their users about the DSA. This information should be easily accessible, clear in nature, and written in language that is accessible to the audience; and
- Organising workshops aimed at facilitating the interaction between civil society and DSA enforcement processes.





5. Ensuring a transparent and inclusive DSA implementation process

Consultations preceding the adoption of national-level implementing legislation

We view the inclusion of a wide array of not-for-profit, non-state expert actors into the implementation process as vital to provide additional input and expertise as well as to build a society-wide sense of ownership towards the new regulatory framework.

We advocate for regular, accessible consultations before any secondary legislation is passed, including but not limited to representatives of academia, sectoral NGOs, tech companies and other stakeholders.





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