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Re: Feedback on the European Commission's draft procedures on conducting independent audits of Very Large Online Platforms (VLOPs) and Very Large Online Search Engines (VLOSEs) as required under Article 37 of the Digital Services Act

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The Commission has requested [feedback](#) on the [Delegated Regulation](#) supplementing the Digital Services Act (Reg. 2022/2065) and [annex](#). The Delegated Regulation lays down the framework for conducting an audit as mandated by art. 37 DSA. All VLOPs and VLOSEs must be subject to an external independent audit ensuring they comply with the various commitments of the Digital Services Act. The Delegated Regulation is an effort to harmonise and guide platforms and auditors in this process, setting the rules, standards, methodologies and procedures around the audit of the VLOP/VLOSE. The need for such guidance is rooted in the fact that audits for social media platforms are by necessity different from 'standard' audits taking place in any other branch. The scope and opacity of VLOPs/VLOSEs exceed anything in today's society, creating a tension with the tools any organisation seeking to audit would have. This tension is reflected in some of the points and questions marked below.

- **Article 2(1)** provides the definition for 'auditing organisation' ('auditing organisation' means an individual organisation, a consortium or other combination of organisations, including any sub-contractors, that the audited provider has contracted to perform an independent audit in accordance with Article 37 of Regulation (EU) 2022/2065;) Auditors have been regulated in different branch organisations (e.g. [Netherlands](#)) across the European Union. How do the procedures enshrined in the Delegated Regulation, interpreted together with the DSA, ensure the quality of the auditing organisation, given the overly broad scope of Article 37(3) DSA?
- In **Article 2(17)**, 'test' is defined as applying auditing methodologies. The issue arising when seeking to go beyond a cursory superficial audit (e.g. verifications of content moderation processes) is that very few, if any, organisations have the computing power and know-how to fully oversee or test platform activity. This connects to concerns relating to Article 10 referring to appropriate audit

methodologies. Given the broad range of risks which may be posed by VLOPs and VLOSEs, scientific methodologies may range widely across different disciplines and practices. It is essential to consider where methodological harmonisation may be beneficial to the consistency of auditing across different industries where VLOPs and VLOSEs operate.

- **Article 5(2)** of the Delegated Regulation (accompanied by recital 13) stipulates that the auditor should be provided an array of information, including personal data, for the purpose of conducting the audit to the best of the auditors' ability. This raises questions relating to the specific data in question (e.g. does this refer to personal data gathered from platform users? Can it include the personal data of the platform's employees)? The Delegated Regulation does not seem to take over the terminology of 'adequate level of confidentiality and professional secrecy' (Article 37(2) DSA), nor does it seem to propose any standardisation of procedures for data handling or sharing.
- Accompanying the audit report is an audit risk analysis, laid down in **Article 9**. The purpose of the audit risk analysis is to ensure the level of assurance of the audits findings (Recital 19). The audit risk analysis addresses the potential shortcomings and certainty of the auditor in writing the audit report, which may be considered a meta-level critique of the audit report. It considers inherent risks, control risks and detection risks (Articles 2(8)-(11)). The detection risk is the risk of the auditor not detecting non-compliance, the control risk is the risk of a miscompliance not being submitted by the VLOP in time to be part of the auditors control. The inherent risk is any non-compliance that is part of the nature of the service provided. However, we consider the use of the concept (including the definition) of 'inherent risk' to be confusing and in need of further elaboration. Inherent risks such as the availability of illegal content on social media platforms are supposed to be part of the risks detected through auditing. It is not clear why these risks are so distinctively defined.
- Linked to the second point above is the question of whether the Delegated Regulation truly provides us with enough tools to properly assess the risks laid down in Article 34 DSA. **Articles 13-15** provide the list of methodologies and points that the audit should address. One question that this raises, which is related to the point on the entities that can perform the auditor role, is who is able to effectively conduct such an audit. Some of the points featured in Article 13-15 require expert knowledge. In addition to the argument that VLOP/VLOSE platform power reflects a monopoly on computing resources and architectural knowledge, we can also underline that a lot of the risks indicated under Article 34 DSA reflect complex social, economic, legal and political realities. While large platforms have developed the underlying architecture and technology, investigating risks will undoubtedly require multidisciplinary and multi-method approaches. Such high-level, complex expertise remains rare even in the academic field, and there are justified concerns about its existence in the typologies of stakeholders who will likely end up performing auditing tasks. Due to this reason, the Delegated Regulation should support and reflect collaborative approaches in the matching of expertise that will be necessary in the provision of auditing tasks.