

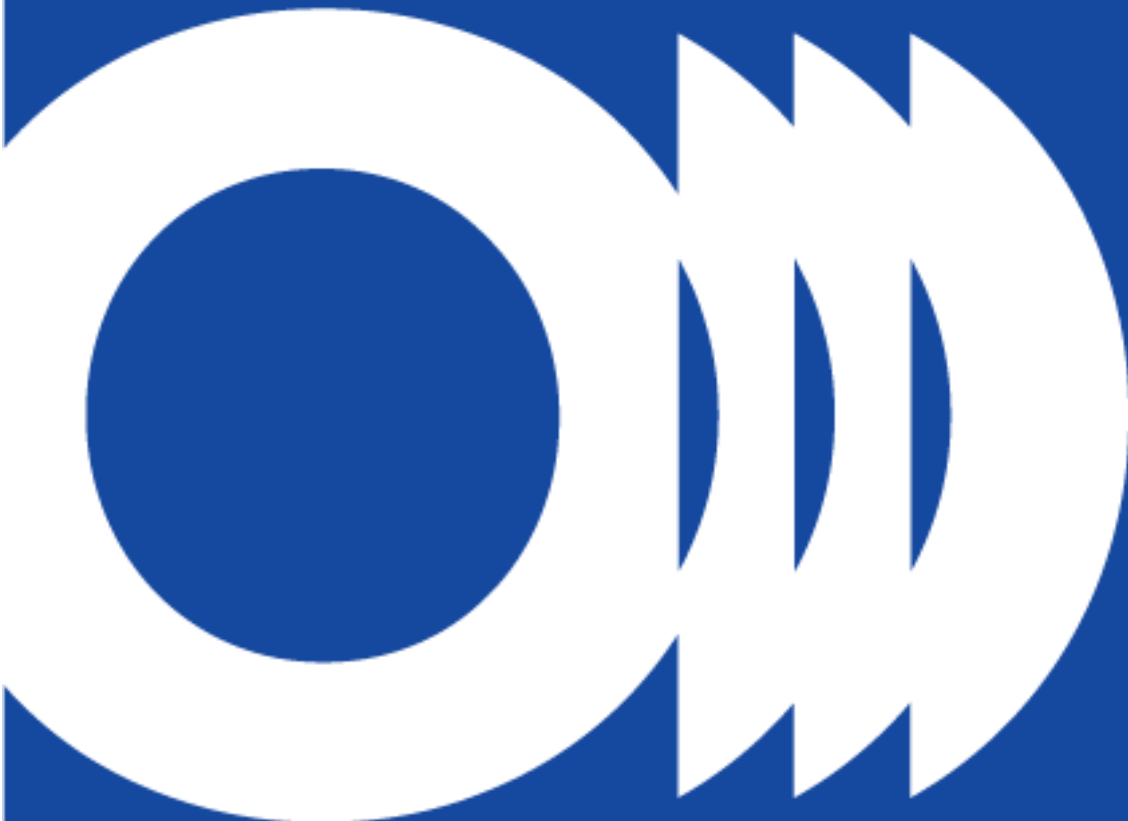
EBU

OPERATING EUROVISION AND EURORADIO

POSITION PAPER

EBU Contribution to the Consultation on Guidelines for Providers of VLOPs and VLOSEs on the Mitigation of Systemic Risks for Electoral Processes

11 MARCH 2024



DSA Election Guidelines

Fields marked with * are mandatory.

Introduction

CONSULTATION on Guidelines for Providers of Very Large Online Platforms and Very Large Online Search Engines on the Mitigation of Systemic Risks for Electoral Processes

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* First name

Thomas

* Surname

Bergmann

* Email (this won't be published)

bergmann@ebu.ch

* Organisation name

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Questions to stakeholders

The questions in this survey relate to the background document attached "Guidelines for Providers of Very Large Online Platforms and Very Large Online Search Engines on the Mitigation of Systemic Risks for Electoral Processes".

Questions are listed in the order as they appear in the background document for each section of the Guidelines.

FR and DE version are machine translated.

Outline of the Guidelines

Section 1 sets out the purpose and structure of the guidelines, as well as references to relevant initiatives;

Section 2 sets out the scope of these guidelines;

Section 3 sets out the main mitigation measures the Commission proposes providers of VLOPs and VLOSEs to adopt to address election-related systemic risks.

Specific subsections cover: the identification of election-related systemic risks; the main mitigations measures to address those risks; specific mitigations measures linked to Generative AI content; cooperation with authorities and other stakeholders; the process of putting into place risk mitigation measures before or after an electoral event; and specific guidance for elections to the European Parliament;

Section 4 sets out the general modalities for a dialogue with the Commission on systemic risks for electoral processes;

Section 5 sets out that these guidelines will be reviewed one year from adoption.

2. SCOPE OF THE GUIDELINES

Q1: Are there any documents, reports, guidelines, academic studies or relevant independent research you recommend as further input for these guidelines?

Yes. The draft Guidelines lack understanding of the important role of the media, journalists and their editorial outputs, including news and current affairs programmes, for citizens to inform themselves about elections specifically and politics in general. The draft Guidelines also lack understanding of the impact of platforms algorithms on the availability and discoverability of such content. We therefore invite the Commission to consider the following two studies, which were either commissioned or co-funded by the Commission itself:

(1) Study on “Digital Services Act: Application of the Risk Management Framework to Russian disinformation campaigns”, published in 2023 (<https://op.europa.eu/en/publication-detail/-/publication/c1d645d0-42f5-11ee-a8b8-01aa75ed71a1/language-de>).

The study analyses how large online platforms mitigated Russian disinformation campaigns during the first year of Russia’s illegal war in Ukraine and evaluates how the DSA’s rules, in particular the risk assessment and mitigation obligations, can be used to guard against such disinformation campaigns and protect the dignity, safety and free expression of EU citizens.

Although the platforms were not yet obliged under the DSA to assess and mitigate risks, when the study was published, the platforms already took mitigation measures (as signatories of the EU’s Code of Practice on Disinformation). The study concludes, however, that “the mitigation measures applied by the platforms were largely ineffective” (see p. 64). The study even finds that “the reach of Kremlin-sponsored disinformation inside the EU has grown since February 2022” (see p. 8). The study suggests that adapting algorithmic recommender systems, if done correctly, can play a significant role in fighting disinformation campaigns (see p. 59ff).

(2) Study on “Media plurality and Diversity Online”, published in 2022 (<https://op.europa.eu/en/publication-detail/-/publication/475bacb6-34a2-11ed-8b77-01aa75ed71a1/language-en/format-PDF/source-266745163>).

The study describes, analyses and evaluates the existing regulatory and business practices in relation to media plurality and diversity in today’s digital ecosystem, and elaborates policy recommendations, which could be relevant for the Commission guidelines on election integrity and any future Guidelines and Codes the Commission may develop to inform the implementation of the Digital Services Act. The study “reiterates the importance of media plurality for the fulfilment of fundamental rights and the functioning of contemporary liberal democratic societies” and stresses that “[...] media plurality requires [...] protection in today’s digital media systems” where online platforms and social networks are of increased relevance for the production, distribution and consumption of media (see p. 41).

The study considers the notion of “exposure diversity” a central concern and takes a closer look at how so-called “public interest content”, meaning “media and information content that is produced by organisations or providers that strive to achieve wider social objectives” surfaces online. The study looks at how content moderation, rankings and recommendation systems by actors in the online media ecosystem affect the diverse consumption of media content. In that regard, the study highlights “some aspects of the DSA that could be further strengthened with complementary actions in order to specifically encourage the prioritisation of defined categories of services”. The study suggests a “tiered approach [...] for VLOPs that constitute the key gatekeepers of specific providers, such as news and journalistic content providers” with certain clarifications that are provided in Commission “Guidelines, Communications or Codes of conduct that might derive from the implementation of the DSA, and [...] could refer to the importance of the existing best practice standards, such as the Council of Europe’s Guidance note on Prioritisation, or directly to the principles contained therein” (see p. 181). Considering that they have a considerable effect on what content is made accessible, discoverable, and prominent to the users, the study stresses that recommender systems, content curation and prioritisation measures should be included in the risk assessment and mitigation under the DSA (see p. 185). This means in turn that these aspects should also play a crucial role for these draft Guidelines.

We agree that the Council of Europe’s Guidance Note on Prioritisation of Public Interest Content Online (<https://rm.coe.int/cdmsi-2021-009-guidance-note-on-the-prioritisation-of-pi-content-e-ado/1680a524c4>) could indeed be a source of inspiration for these draft Guidelines. The Note underlines the importance of prominence regimes for promoting trusted news and authoritative information, as well as for widening the diversity of content consumed online, and recommends introducing new obligations for platforms and intermediaries in that regard.

Q2: How can the Commission further clarify the purpose and scope of these guidelines to better address systemic risks in electoral processes?

We remind the Commission that the Digital Services Act requires providers of very large online platforms (VLOPs) and of very large online search engines (VLOSEs) to “assess the systemic risks stemming from the design, functioning and use of their services, as well as from potential misuses by the recipients of the service”, and to “take appropriate mitigating measures in observance of fundamental rights” (see Recital 79 of the DSA). The DSA invites VLOPs and VLOSEs to pay particular attention to their algorithmic systems that may be relevant, including their recommender systems, when assessing systemic risks, since algorithmic amplification of information may contribute to systemic risks (see Recital 84 of the DSA). The DSA further suggests that VLOPs and VLOSEs should, where necessary, adapt their algorithmic systems, not least their recommender systems (see Recital 88 of the DSA).

The draft Commission guidelines do, however, look primarily at the risks stemming from the use and potential misuse of the services, including the dissemination of illegal hate speech, foreign information manipulation, disinformation and content generated through AI, and potential mitigation measures to counter these. The draft Guidelines do not sufficiently take account of the risks stemming from the design and functioning of the platforms themselves, including VLOPs’ and VLOSEs’ algorithmic systems.

3. ELECTION SPECIFIC RISK MITIGATION MEASURES

3.1. Identification of systemic risks related to electoral processes

3.2. Elections-specific risk mitigation measures

Q3: Do you agree with the recommended best practices in this section?

No. The draft Guidelines do not adequately reflect on the key role that independent media, particularly public service media, and their journalists play in gathering, processing, and reporting fact-checked information on elections and politics in general. The reference to the "vital role" of journalists and media providers only at the very end of the first section of the draft guidelines in its paragraph 24 seems rather half-hearted, especially when the activity of journalists and media providers is only introduced as a "conceivable measure". When formulating guidelines for VLOPs and VLOSEs, the Commission should encourage them to meaningfully cooperate with the media, alongside civil society and fact-checking organisations, and to ensure that their recommender systems are adapted in a way that users can find, discover and access professionally produced editorial content about elections, instead of sensationalists and attention-seeking content. For more information, please see our detailed answers to questions 4 and 5 below.

Q4: What additional factors should be taken into account by providers of VLOPs and VLOSEs when detecting systemic risks related to electoral processes?

We would like to draw the Commission's attention to two important points:

(1) Adapting algorithms to fix fundamental problems related to online platforms' business models

Systemic risks do not only stem from the content, e.g., illegal content and harmful content such as disinformation, which is uploaded and shared on the platforms, but also from the design and functionalities of the platforms. The business model of online platforms relies heavily on algorithms that are trained to maximise engagement with content, often surfacing the most sensationalist content. This is not only problematic because such prioritization is made on commercial grounds and in a non-transparent manner, maximizing profits and gaining user data, but also from a socio-democratic perspective. The algorithms used by VLOPs and VLOSEs may lock users in information bubbles (or echo chambers) that essentially reinforce their own (or their closest friends') attitudes and behavioural patterns, thereby leading to further polarisation of society. They make users more vulnerable to disinformation and foreign interferences and can ultimately lead to election manipulation. While the DSA acknowledges the underlying deficiencies of the design and functioning of online platforms and provides that VLOPs and VLOSEs may adapt their algorithmic systems, including recommender systems, to mitigate systemic risks (Article 35(1)(d) DSA), the draft Guidelines do not. We call on the Commission to carefully consider recommender systems in the risk assessment and mitigation regarding the integrity of electoral processes.

(2) Engaging with domestic media service providers and surfacing trustworthy media content

Media pluralism is an essential pillar of democracy. A pluralistic media environment enables citizens to exercise their right to freedom of expression and information, which is a prerequisite for their participation in society. Ensuring access to diverse and trustworthy editorial content, such as news and current affairs programmes, that reflect pluralistic views, is not only a means to fight online disinformation and misinformation, but also key for citizens to meaningfully take part in democratic processes and make informed political decisions. Given its significance, media pluralism must be protected and promoted online. In that regard, the draft Guidelines should be more specific about the engagement of VLOPs and VLOSEs with domestic media service providers, including regarding the recommended measures under paragraphs 12, 13, 14, 16 (c)(i) and (iv).

While we think that VLOPs and VLOSEs, as private companies with purely economic objectives, should not assess the situation of media pluralism and media freedom in Member States, we demand that – should this recommendation be maintained and included in the final Guidelines (see paragraph 12 of the draft Guidelines) – media service providers are properly consulted and involved in this process, avoiding any

damage to their independence, credibility, and visibility online, which can impact media freedom and pluralism, and consequently, the user's access to independent and reliable information online. We would like to remind the Commission of the availability of independent analysis of the state of media freedom and pluralism in the EU and beyond, such as the World Press Freedom Index by RSF and the Media Pluralism Monitor by the Centre for Media Pluralism and Media Freedom. There is no need for VLOPs and VLOSEs to carry out their own assessments. Furthermore, the draft Guidelines should mention media service providers and journalists alongside fact-checking organisations and civil society in relation to all kinds of mitigation measures which involve fact-checking information and judging the veracity of information (see for example paragraphs 13, 14 and 16 (c)(i)). The draft Guidelines should not disregard the key role of the media and journalists in doing thorough research, driven by an impartial and fact-driven approach, and based on high editorial standards. Moreover, we do not consider it enough / remarkably effective to recommend VLOPs and VLOSEs to only point their users to official information on the electoral process provided by the competent electoral authorities (see point 16 (a) of the draft Guidelines). This is particularly relevant for countries where the Rule of Law is undermined. Instead, online platforms should also give prominence to general interest media services and their content (see our answer to Q5). As a matter of principle, VLOPs and VLOSEs should be reminded of the importance of ensuring the availability of trustworthy media content, such as news and current affairs programmes, related to politics in general and elections specifically, and the new obligations VLOPs will have to comply with under Article 17 of the EMFA (European Media Freedom Act). Part of the solution to tackle disinformation and misinformation is to ensure that quality and trusted news are available online.

Q5: Are there additional mitigation measures to be considered as best practices on the basis of their proven effectiveness mitigating risks to electoral processes?

The draft Guidelines do not adequately reflect the importance of safeguarding media pluralism online for the fulfilment of fundamental rights and the integrity of democratic processes. Pluralistic, independent, and trusted media are guardians and monitors of democracy and the rule of law, and a precondition for citizens' public participation. We therefore call on the Commission to include positive measures for VLOPs and VLOSEs to promote media pluralism and freedom of expression including the right to information online:

(1) Give prominence to general interest media services and their content

Public service media in particular play an important role in gathering, processing, and reporting information on politics, elections, and issues of general interest. They provide a "diverse content offer, including quality information and impartial and balanced media coverage" (Recital 18 EMFA) across platforms, catering to minorities, national, regional, and local audiences, in their own languages, while promoting pluralism and reinforcing political participation. They are among the most trusted media in Europe.

Ensuring the online presence and discoverability of general interest content made available by public service media and other trusted media service providers guarantees citizens' access to impartial, accurate and trustworthy information. This is indispensable for combating disinformation and protecting human rights and democratic values. VLOPs and VLOSEs should take measures to ensure the prominence of general interest media services and their content.

(2) Clear attribution of editorial responsibility

Similar to Article 19 (2a) of the EMFA, VLOPs and VLOSEs should be invited to ensure that the visual identity of media service providers, to whose services / content they give access, is consistently and clearly visible to the users. This would allow users to immediately determine the entity which bears the editorial responsibility over the news content they consume and allow them to judge the reliability and trustworthiness

of the editorial content. A clear brand attribution is instrumental in tackling disinformation. It helps citizens to decide for themselves if they can trust a certain news/source of information.

Q6: How should providers of VLOPs and VLOSEs measure effectiveness of their risk mitigation measures in a reliable and conceptually valid way for electoral processes?

3.3. Mitigation measures linked to Generative AI

Q7: Do you agree with the recommended best practices in this section?

The EBU agrees with the Commission that the misuse of artificial intelligence poses a risk to democracy, not only, but especially in the run-up to elections. Given that deceptive, false or misleading generative AI content, including deep fakes, is often disseminated via VLOPs and VLOSEs, particularly social networks and video-sharing-platforms, these platforms have a special responsibility to prevent the manipulation of elections through this type of content. The study “Fake Image Factories” by the Center for Countering Digital Hate published on 6 March 2024 (<https://counterhate.com/research/fake-image-factories/>) confirms these concerns.

That is why we would like to stress once again that part of the solution to tackle disinformation and misinformation, including through deceptive, false or misleading generative AI content, is to ensure that quality and trusted news are available online. Media service providers that apply high editorial standards, disseminate information after careful editorial scrutiny and take over the responsibility for the accuracy of the information effectively contribute to properly inform citizens and therefore make them less susceptible to manipulation.

Q8: Which risks of Generative AI for electoral processes should additionally be considered in this section?

Q9: What additional evidence-based best practices on risk mitigation for electoral processes related to the creation of Generative AI content should be considered?

Q10: What additional evidence-based best practices on risk mitigation for electoral processes related to the dissemination of Generative AI content should be considered?

Q11: What are best practices for providers of VLOPs and VLOSEs to ensure that their risk mitigation measures keep up with technological developments and progress?

3.4. Cooperation with national authorities, independent experts and civil society organisations

Q12: Do you agree with the recommended best practices in this section?

Q13: What other mechanisms should be considered to foster more effective collaboration with relevant stakeholders, such as national authorities and civil society organisations?

Q14: Are there any additional resources that could help providers of VLOPs and VLOSEs identify relevant organisations/experts at the national level?

3.5. During an electoral period

Q15: Do you agree with the recommended best practices in this section?

Q16: Are there any additional measures that providers of VLOPs and VLOSEs should take specifically during an electoral period?

Q17: How can rapid response mechanisms be improved for handling election-related incidents on VLOPs or VLOSEs?

Q18: What other mechanisms should be considered to foster more effective collaboration with national authorities and civil society organizations?

Q19: Are there any additional resources that help providers of VLOPS and VLOSEs identify relevant organisations/experts at the national level?

3.6. After an electoral period

Q20: Do you agree with the recommended best practices in this section?

Q21: What elements should be included in voluntary post-election review by providers of VLOPs or VLOSEs to assess the effectiveness of their risk mitigation strategies?

3.7. Specific guidance for the elections to the European Parliament

Q22: What are your views on the best practices proposed in this section?

Q23: What additional mitigation measures should be considered for the elections for the European Parliament present for online platforms?

5. CONCLUSION

Q24: What additional feedback or suggestions do you have regarding these guidelines?

Certain platform operators, which are considered VLOPs and VLOSEs under the DSA, have recently announced to take specific measures in view of upcoming political elections across the world. Meta said they would stop recommending “political content” to users from accounts users do not actively follow (<https://about.instagram.com/blog/announcements/continuing-our-approach-to-political-content-on-instagram-and-threads>).

We are concerned about the potential negative effects on the users’ ability to inform themselves properly about politics and elections. It is unclear whether these operators will consider news and current affairs programmes produced by public service media and other media service providers would be considered as “political content”. Should this be the case, the announced measures could seriously impede media freedom and pluralism.

We wonder, therefore, how such an announcement relates to the objectives of these draft Guidelines, in particular the recommendation that VLOPs and VLOSEs should point their users to official information on the electoral process provided by the competent electoral authorities (see point 16 (a) of the draft Guidelines), as well as the objectives and obligations of the soon-to-be adopted EMFA (European Media Freedom Act).

Background Documents

[Consultation version - DSA election guidelines.pdf](#)

[Consultation version - DSA election guidelines FR.pdf](#)

[Consultation version - DSA election guidelines clean DE.pdf](#)

Contact

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