DSA - Suggested amendments by SNAP Inc.

TARGETED ARTICLES:

1. **VLOP definition** (art. 25.4 + new 25.4a)
2. **Internal Complaint handling system** (art. 17.1)
3. **Independent audits** (art. 28)
4. **Data access and scrutiny** (art. 31.1 - 31.3)

- **Art. 25.4 (based on the Council's Compromise Text on proposed DSC designation procedure)**

Council Compromise Text	Proposed Amendment
Article 25 - Paragraph 4 The Digital Services Coordinator of establishment shall adopt a decision designating as a very large online platform for the purposes of this Regulation the online platform under their jurisdiction which have a number of average monthly active recipients of the service equal to or higher than the number referred to in paragraph 1. [...]	**Article 25 - Paragraph 4** 4. The Digital Services Coordinator of establishment shall adopt a decision designating as a very large online platform for the purposes of this Regulation the online platform under their jurisdiction which have a number of average monthly active recipients of the service equal to or higher than the number referred to in paragraph 1, ***and which are susceptible to systemic risks in the meaning of article 26 and based on the criteria set out in paragraph 4a.*** [...]
Justification *The Digital Services Coordinator of establishment is the best placed authority to assess whether a platform that meets the quantitative threshold qualifies as a very-large online platform and to designate them as such. The designation process increases legal certainty for companies who would clearly know whether they are subject to additional obligations. The decision of the DSC should take into account also qualitative criteria to allow for a case-by-case risk-based assessment. As proposed by the EC, the Digital Service Coordinator will continue to verify every 6 months whether the status of the platform has changed.*	

	Proposed Amendment
	Article 25 - paragraph 4a (new) **3 a. In determining whether an online platform is susceptible to system risk in the meaning of article 26, the Digital Service Coordinator shall take into account the following criteria:** **a) business model, namely: the nature of the platform and its role in facilitating public debate and viral dissemination of content;**

	b) operating model, namely the platform's ability to meet best-in-class standards in terms of safety-by-design, privacy-by-design, content curation, and pre-moderation in order to contain risks; **c) the historical prevalence of illegal content on the service.**
Justification *VLOPs should be designated not only on the basis of a quantitative threshold, but also by assessing whether they are likely to pose systemic risks. This will be evaluated based on qualitative criteria taking into account the platform's business model, the way it operates its business to prevent risks, as well as the relative lack of harms occurring on the platform. If a company achieves high scores in these areas, there will be no need to impose the burdensome VLOP obligations which are conceived to address systemic risk. The DSA should incentivize socially responsible companies that are building safer platforms for consumers by reducing their potential liability. If a company poses low systemic risk, there will be no need to consider it as a VLOP. The qualitative criteria will essentially constitute safety valves to avoid wrongful designation.*	

- **Article 17 - paragraph 1**

Commission	Proposed Amendment
Article 17 - paragraph 1 1.Online platforms shall provide recipients of the service, for a period of at least ***~~six~~*** months following the decision referred to in this paragraph, the access to an effective internal complaint-handling system, which enables the complaints to be lodged electronically and free of charge, against the following decisions taken by the online platform on the ground that the information provided by the recipients is illegal content or incompatible with its terms and conditions: (a)decisions to remove or disable access to the information; (b)decisions to suspend or terminate the provision of the service, in whole or in part, to the recipients; (c)decisions to suspend or terminate the recipients' account. [...]	1.Online platforms shall provide recipients of the service, for a period of at least ***three*** months following the decision referred to in this paragraph, the access to an effective internal complaint-handling system, which enables the complaints to be lodged electronically and free of charge, against the following decisions taken by the online platform on the ground that the information provided by the recipients is illegal content or incompatible with its terms and conditions: (a)decisions to remove or disable access to the information; (b)decisions to suspend or terminate the provision of the service, in whole or in part, to the recipients; (c)decisions to suspend or terminate the recipients' account. [...]
Justification *As stressed by the European Data Protection Supervisor, internal complaint handling mechanisms should not contradict the objective of data minimisation pursued by article 5 of the GDPR (Regulation (EU) 2016/679). The obligation for online platforms to provide users with an effective internal complaint-handling system means that platforms would have to retain the relevant elements referred to in sub-paragraphs a, b and c, therefore including personal data during the requested period of 6 months (at least). This appears disproportionate and might lead to an unbearable administrative burden for players who have embraced and incorporated key GDPR principles, such as privacy-by-design and data minimisation, in their product design and operation. A 3-month retention period would be more aligned with the GDPR principles.*	

- **Article 28**

Commission	Proposed Amendment
Article 28 Very large online platforms ~~***shall***~~ be ~~***subject***~~, ~~***at their own expense and at least once a year,***~~ *to audits to assess compliance with the following*: (a)the obligations set out in Chapter III; (b)any commitments undertaken pursuant to the codes of conduct referred to in Articles 35 and 36 and the crisis protocols referred to in Article 37. [...]	Very large online platforms ***may*** be ***required to be subject to audits performed by the Digital Service Coordinator of establishment or the European Commission*** to assess compliance with the following: (a)the obligations set out in Chapter III; (b)any commitments undertaken pursuant to the codes of conduct referred to in Articles 35 and 36 and the crisis protocols referred to in Article 37. [...]
Justification *A general requirement of independent annual audits to be conducted and paid for by VLOPs would be disproportionate. This obligation translates not only into significant costs and administrative burdens, but also requires deeply changing data retention and data governance practices, especially when such practices have been designed to incorporate privacy-by-design and safety-by-design principles. Moreover, the audit exercise would require disclosing very sensitive business information.* *Audit should be required on an ad-hoc basis only where there is a suspicion or a risk that VLOPs are infringing their obligations or commitments. The DSC of establishment and the European Commission are the best placed entities to perform such independent audits with the purpose of assessing compliance with this Regulation.*	

- **Article 31**

Commission	Proposed Amendment
Article 31 - paragraph 1 1.Very large online platforms shall provide the Digital Services Coordinator of establishment or the Commission, upon their reasoned request and within a reasonable period, specified in the request, access to data that are necessary to monitor and assess compliance with this Regulation. That Digital Services Coordinator and the Commission shall only use that data for those purposes.	1.Very large online platforms shall provide, the Digital Services Coordinator of establishment or the Commission, upon their reasoned request and within a reasonable period, specified in the request, access to ***available*** data that are necessary to monitor and assess compliance with this Regulation. That Digital Services Coordinator and the Commission shall only use that data for those purposes.
Justification *The right of the DSC and the EC to have access to data for the purpose of monitoring compliance with the regulation should be reconciled with the data minimisation and data protection obligations imposed by the GDPR. Many companies have already made important efforts to fully incorporate key GDPR principles into their platform architecture, operations and processes. Companies should be required to cooperate in good faith and provide all available information that might be relevant for the DSC and the EC.*	

Commission	Proposed Amendment
Article 31 - paragraph 2 2.Upon a reasoned request from the Digital Services Coordinator of establishment or the Commission, very large online platforms shall, within a reasonable period, as specified in the request, provide access to data to vetted researchers who meet the requirements in paragraphs 4 of this Article, for the sole purpose of conducting research that contributes to the identification and understanding of systemic risks as set out in-Article 26(1).	2.Upon a reasoned request from the Digital Services Coordinator of establishment or the Commission, very large online platforms shall, within a reasonable period, as specified in the request, provide access to data, ***which can be made public*****,** to vetted researchers who meet the requirements in paragraphs 4 of this Article, for the sole purpose of conducting research that contributes to the identification and understanding of systemic risks as set out in Article 26(1).
Justification	

The text proposed by the EC does not qualify the type of data that shall be disclosed to independent researchers. Granting unlimited data access to third parties poses a broad range of risks. Companies could be required to disclose sensitive information entailing business secrets, personal data, and IP rights, as well as sensitive commercial data and information which lay at the core of their business models and from which their survival depends.
We recommend clarifying in the text that vetted researchers should be able to have access to data that can be made public and thus disclosed without endangering companies' business model and operations.

Commission	**Proposed Amendment**
Article 31 - paragraph 3 3.Very large online platforms shall provide access to data pursuant to paragraphs 1 and 2 ~~***through online databases or application programming interfaces, as appropriate***~~.	3.Very large online platforms shall provide access to data pursuant to paragraphs 1 and 2.
Justification *VLOPs should cooperate with the DSCs and the European Commission to ensure they have access to the relevant information held by companies. The practicalities of how access will be granted and how information will be exchanged should be left with the companies, which will decide this on a case-by-case basis with the DSC.* *We thus recommend adopting a principle-based approach for this article and leaving the operational details to the case-by-case assessment.*	