

**From:** Berfin Eken  
**Sent:** Fri, 15 Oct 2021 11:23:26 +0200  
**To:** I Registrator  
**Subject:** VB: EU Digital Services Act  
**Attachments:** DSA suggestions.docx  
**Categories:** LF

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**Från:** Eleanor Flanagan <[eleanorkatef@spotify.com](mailto:eleanorkatef@spotify.com)>  
**Skickat:** den 13 oktober 2021 11:02  
**Till:** Berfin Eken <[berfin.eken@regeringskansliet.se](mailto:berfin.eken@regeringskansliet.se)>  
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<[helene.engellau@regeringskansliet.se](mailto:helene.engellau@regeringskansliet.se)>  
**Ämne:** Re: EU Digital Services Act

Hi Berfin and Helene,

Thank you very much for our discussion on the DSA last week.

As discussed, I attach our suggestions regarding Article 2 (definitions) and Article 25 (VLOPs identification).

As we explained, it is essential for us to clarify the application of the DSA to "hybrid" platforms that offer a mix of licensed content and UGC content, and that it is only those users who consume user-generated content who should be calculated in the designation of VLOPs.

We also believe a more nuanced approach is needed to identify VLOPs, encompassing qualitative risk assessment criteria. Only examining user numbers is likely to lead to an over-broad legislation, capturing many companies that should not be the target of such obligations. A risk-based approach would be consistent with the general graduated structure of the DSA and the notion of a risk assessment that is already included in Article 26, and is also being examined in the European Parliament.

Lastly, we believe more flexibility and proportionality is needed in the obligations regarding recommender systems, knowing that the DSA is a horizontal legislation that will apply to very different business models. We are reflecting on ways to do this and will come back to you with suggestions, if that's ok.

Please do not hesitate to let us know if you have any questions or comments, and thank you again for your time.

Kind regards,  
Eleanor

On Fri, 1 Oct 2021 at 14:38, Eleanor Flanagan <[eleanorkatef@spotify.com](mailto:eleanorkatef@spotify.com)> wrote:

Hi Berfin,

Coming back to you on this and as we discussed separately, we provide below some initial remarks on the DSA.

We will be very happy to explain Spotify's position in more detail on our call on Monday. Of course, we are also very interested in understanding your priorities for the legislation.

Please do not hesitate to let us know if you have any questions, and we look forward to our discussion.

Best regards,  
Eleanor

- The DSA will apply in part to our service, namely to some of our podcasts that are uploaded by individual creators. In this context, we very much support the goals of the DSA to clarify what platforms need to do to address illegal content and to harmonise the rules at the EU level. We also welcome the preservation of the core principles of the e-Commerce Directive, notably COO enforcement.
- However, we are concerned that the number and scope of the proposed obligations will disproportionately affect medium-sized European platforms, at a time when they should be focused on international growth and innovation. We believe that certain changes to the DSA are needed in order to ensure the legislation is proportionate and manageable for the wide array of businesses to which it will apply. This will help to ensure that platforms' resources are focused on the key issue at hand, i.e. addressing illegal content that harms consumers and society at large.
- We are particularly worried about the proposed approach to identify Very Large Online Platforms (Art.25), which is based on a simple user threshold. User numbers alone do not imply systemic risks to consumers or society, and this approach is likely to result in an over-broad Regulation capturing many companies that should not be the target of the additional obligations. We suggest a more nuanced designation approach, including qualitative risk assessment criteria. This would be consistent with the general graduated structure of the DSA and the notion of a risk assessment already included in Article 26.
- In addition, the broad application of certain obligations which have been crafted with specific business models in mind is likely to have wide-ranging implications for the digital economy. For example, Art.29 on recommender systems is highly problematic for personalised digital services offering cultural content such as Spotify. We also believe certain transparency and reporting obligations - such as those in Art.15 - are overly prescriptive and could be counterproductive from the point of view of making the platform safer for consumers.

On Mon, 27 Sept 2021 at 11:32, Berfin Eken <[berfin.eken@regeringskansliet.se](mailto:berfin.eken@regeringskansliet.se)> wrote:

Hi Eleanor,

Thank you for your e-mail! It was forwarded to me through Marcus as we work with the DSA together.

A video-conference sounds like a good idea. The beginning of next week would suit us the best if it works for you too. Would you be available at for example 14:00 the 4<sup>th</sup> or 10:00 the 5<sup>th</sup> of October?

Kind regards,

**Berfin Eken**

Ministry of Infrastructure

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**Regeringskansliet**

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**Från:** Eleanor Flanagan <[eleankatef@spotify.com](mailto:eleankatef@spotify.com)>

**Skickat:** den 20 september 2021 14:36

**Till:** Marcus Boklund <[marcus.boklund@regeringskansliet.se](mailto:marcus.boklund@regeringskansliet.se)>

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**Ämne:** EU Digital Services Act

Dear Marcus,

I hope you and your colleagues are doing well.

We were in touch last year regarding the EU Digital Markets Act. We continue to follow the file with interest and are supportive of the overall direction in the institutions.

I am getting in touch now to ask if you would be available for a meeting to discuss the EU Digital Services Act (DSA), as the evolution of the discussions is creating growing concerns within Spotify. We would be grateful for the opportunity to share these concerns and some suggestions for how we think they could be addressed. They relate in particular to the designation of Very Large Online Platforms (VLOPs), obligations regarding recommender systems, and certain transparency and reporting requirements.

Would you be available for a video-conference this or next week?

Thank you in advance.

Kind regards,

Eleanor

Eleanor Flanagan

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