A risk-based and proportionate approach to VLOP definition

Suggested amendments on art. 25 (based on the Council’s proposed DSC designation procedure)

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<tr>
<th>Council compromise text</th>
<th>Proposed Amendment</th>
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<td><strong>Article 25 - Paragraph 4</strong>&lt;br&gt;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.</td>
<td><strong>Article 25 - Paragraph 4</strong>&lt;br&gt;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.</td>
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**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.*

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| **Article 25 - paragraph 4a (new)**<br>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: | **Article 25 - paragraph 4a (new)**<br>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-
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.

Explanatory note

The stringent VLOP obligations foreseen in the DSA are meant to address systemic risks. However, the DSA currently identifies VLOPs solely on the basis of a single quantitative criterion, i.e. the 45 million users threshold.

The logic behind the value proposed for the threshold seems arbitrary (e.g. no explanations in the IA) and disconnected from both a platform's ecosystem and its way of working. Such a low threshold is easily met by a large number of medium sized platforms, from Europe and elsewhere, that don’t cause any wide scale harm.

User numbers alone do not imply systemic risk to consumers or society. The current approach inevitably misses some of the reasons why and how a platform may disseminate illegal content. By assuming that all the very large platforms generate the same type and scale of harm, the current approach is likely to create disproportionate unnecessary burdens on many non-problematic platforms and possibly jeopardise their future ability to compete, grow and innovate in the EU digital single market.

The DSA should take a more proportionate and risk-based approach to identify VLOPs. Platforms meeting the quantitative threshold would qualify as VLOPs only if they can create systemic risk.

As part of the VLOP designation procedure envisaged by the Council, the Digital Service Coordinator could verify, as an additional condition to designate a VLOP, that a platform meeting the quantitative threshold also has the ability to create systemic risks based on a number of qualitative criteria.