

Contribution to Digital Services Act consultation (January 2024)

[News Media Europe](#) is the voice of the progressive news media industry in Europe, representing over 2,700 news brands in print, online, radio and TV, through national associations from sixteen countries. Together, we defend key principles which are vital to us: protecting the freedom of the press, championing the digital future of our industry, and ensuring that the value of content is properly protected.

News Media Europe is replying in its capacity as representative of the European news publishing sector. As part of the digitalisation and diversification of press publishers' activities, in addition to news media publishers' core business (i.e. publishing of news media press publications online, mobile and in print), some news media companies operate intermediary services such as marketplaces, discussion forums, video-sharing platforms and classified ads websites (qualifying as "online platforms" under the DSA) or host advertising content on their websites (qualifying as "hosting services"). Therefore, we take the point of view of intermediary services that form part of the commercial activities of press publishers.

General feedback

News Media Europe strongly supports a thorough enforcement of the Digital Services Act and considers the regulation to be a game-changer for internet safety and transparency. This is particularly true when it comes to making very large online platforms/search engines more responsible and accountable. The European Commission's investigations against some big tech companies already shows concrete value in this area.

That being said, the Regulation also proves to be dense and complex, particularly for players like press publishers' intermediary services, who are not small enough to be exempted, nor big enough to afford hiring more resources for the purpose of compliance. The publication of transparency reports represents a challenge for these services.

Detailed feedback about Annex I (template) and Annex II (instructions)

Our members think that the template is useful for the purpose of reporting about moderation decisions. Yet it is probably too detailed and complex for our sector. It is important to understand that the resources, both financial and human, in the press publishing sector in general are typically scarce compared to big tech companies or other industries.

1. On the one hand, it makes sense to have a harmonized basis for transparency reports. Especially at the beginning, we feel that intermediaries need guidance on how to break down information.
2. However, the exercise can prove burdensome for press publishers' platform services that have little resources, especially as the template is quite extensive. Hence, we need to make sure that only information that is strictly necessary is required in the transparency report.

- For instance, the monthly breakdown requirement represents a clear administrative burden.
 - We fear the number of unnecessary entries will lead to an incomprehensible and heavy file. For instance, rows that do not apply are supposed to remain, yet empty, while rows that do apply but have not been reported on should be filled in with '0' (Part I, point 1). In some instances, it is also required to provide extensive written explanations. In addition, all fields should be filled in per month and per member state. We are concerned that the granularity of the information provided will make the table unreadable.
 - We recommend simplifying the categories and layout for intermediaries that are not VLOPs/VLOSEs. For example, if the number of orders from member states to act against illegal content (point 1.2.1) amounts to '0', then further breakdown by month/category/member state etc, is superfluous.
 - Median time indication “in seconds” to reply to administrative authorities seems unreasonable (point 1.2.2, part M). The same goes with the time to give effect to orders to act against illegal content (part 1.2.1, parts J and K). We recommend making the time indication less restrictive.
 - The reporting on the use of automated means for content moderation seems too complex (part 1.6). The distinction must be made between 'solely' (processed by automated means), 'partly' and 'not'. In accordance with Article 15 of the DSA, we believe one category suffices, namely the “number of items processed by automated means”.
 - As far as items are processed by automated means, our members find it difficult to report about the “accuracy rate” and “error rate” (part 1.6), as this information might not be available.
 - Properly filling in transparency reports is a learning curve. The first iteration will be the most difficult to issue. Therefore, we ask for assistance from digital services coordinators.
3. It would be useful if the digital services coordinators would set up national workshops to inform and help companies using the final template. The Commission could support this type of approach. Also, the digital services coordinators should focus during the first 12 to 24 months on providing guidance to those online platforms that do not qualify as VLOPs/VLOSEs. This type of approach could be supported by the European Commission too.
 4. The publication deadline and reporting periods should be clarified. For instance: *“The first publication is expected by 28 February 2025 for the reporting period 17 February – 31 December 2024. The second publication is expected by 28 February 2026, for the reporting period 1 January – 31 December 2025.”* And so on.
 5. Reports applicable to very large online platforms/search engines should reflect the impact on media freedom, e.g. number of take downs affecting online press publications or suspension of accounts of press titles, press publishers and journalists. The transparency reports and the transparency databases could be instruments to gain insight into the treatment of recognized media content and support the enforcement of the Media Freedom Act.

Protection of newsrooms' independence and interaction with the European Media Freedom Act

We find it important that the European Commission works closely with national regulators, through the Board of digital services coordinators. Digital services coordinators are not necessarily specialists in media and press freedom. Hence, the interpretation of the DSA can be challenging with regards to the news media sector. Hence, it is crucial that:

- The concept of “hosting services” is not loosely interpreted, to not regulate the editorial part of news websites and online press publications. In other words, the regulation of digital services should not encroach on the editorial responsibility nor the independence of newsrooms.
- By extension, the decision-making powers of the editor-in-chief - e.g. why some content is published or not published, the form under which it is published - should be protected.
- This includes readers' comments related to individual press articles whenever they are pre-moderated (e.g. reviewed prior to their publication or decision not to be published at all). Some press publishers do not allow in their online press publications the automatic upload of readers' comments. Instead, readers' comments are pre-moderated, reviewed and eventually published, left unpublished, or published in a revised or shorter form under the responsibility of the editor-in-chief. In fact, the press publication is not considered a place to “host” views. A reader's request to post a comment does not amount to a right to have his or her comment published. In this case, the reader's comment that will be reviewed and moderated equals to any content (e.g. articles by journalists, content by news agencies) under the decision-making powers of the responsible editor-in-chief.
- In this case, the editor-in-chief should not be obliged to provide a statement of reasons for not publishing the reader's comment or for publishing it in a revised form. It is an established practice that the responsible editor-in-chief is not obliged to state reasons why some content is not published or why it is published in a revised form. This would otherwise dilute the editor's role and independence, and threaten editorial freedom, which is clearly not the intention of the DSA.
- The situation is different when press publishers run discussion forums that are separate from their online press publications and decision-making regime by the editor-in-chief. In this case, the service is not a press publication and user comments are automatically uploaded – and eventually reviewed, ex-post.
- Finally, the interpretation of the DSA should not go against the objective of the European Media Freedom Act, such as the editorial independence of newsrooms, the role of the editor-in-chief and citizens' access to professional information online. In particular, we trust that transparency reports will be the opportunity for newsrooms to understand whether and why the visibility of press content or press titles' accounts are restricted by very large online platforms. In addition, we ask that the crisis mechanism of the DSA is not interpreted too broadly and does not deprive news media of an opportunity to reach out to very large online platforms.
- News Media Europe is happy to continue discussion and explain in more detail, if needed, how the objectives of the European Media Freedom Act could be achieved in this respect.

Conclusion

All in all, we recommend the European Commission to simplify the templates for intermediaries that do not qualify as “very large online platforms”. Attention should be paid to news websites such as online press publications operating under a sole decision-making power of a responsible editor-in-chief, which do not qualify as hosting services when they pre-moderate user comments (no automatic upload). We also call for digital services coordinators to accompany intermediaries during the compliance journey, making sure they keep an open door towards companies that require support and guidance. We see the transparency reports as an opportunity for our members’ platform services to monitor content moderation decisions, keep track of relevant data and improve their services. Yet, transparency should not turn into over-complex reporting and red tape. This would dissuade press publishers from developing platform services, some of which actually cross-fund the editorial side of the business, nor from innovating.

We thank you for your consideration and remain at your entire disposal.

Sincerely,
The NME Secretariat, on behalf of its members.

Contact

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