



Digital Services Act: ARTICLE 19 proposed amendments to Articles 26, 27 and 43

30 June 2021

ARTICLE 19’s concerns about the lack of clarity and democratic oversight in the implementation of due diligence obligations in the DSA

Articles 26 and 27 require Very Large Online Platforms to carry out risk assessments in three areas, namely the dissemination of illegal content, any negative effects on some fundamental rights including freedom of expression and privacy and the intentional manipulation of their service by automated means with a foreseeable negative effect on public health, public safety, civic discourse and electoral processes.

ARTICLE 19 is concerned that Articles 26 and 27 are currently drafted in overly broad terms that give wide discretion to companies and regulators to adopt risk mitigation measures that may be incompatible with the protection of fundamental rights. The DSA is also silent on mechanisms that would enable interested parties or groups to bring complaints before the regulator about the negative impacts on fundamental rights of risk mitigation measures adopted by companies following a risk assessment under Article 26. Our proposed amendments below seek to address these concerns, including by adding new complaint mechanism to Article 43. For a more detailed analysis of Articles 26-27, please see our briefing here.

Proposed amendments

Text proposed by the Commission	ARTICLE 19’s proposed amendment
Article 26 Risk assessment	Article 26 Risk assessment
1. Very large online platforms shall identify, analyse and assess, from the date of application referred to in the second subparagraph of Article 25(4), at least once a year thereafter, any significant systemic risks stemming from the functioning and use made of their services in the Union. This risk assessment shall be specific to	1. Very large online platforms shall identify, analyse and assess, from the date of application referred to in the second subparagraph of Article 25(4), at least once a year thereafter, any significant systemic risks stemming from the functioning and use made of their services in the Union. This risk assessment shall be specific to

<p>their services and shall include the following systemic risks:</p> <p>(a)the dissemination of illegal content through their services;</p> <p>(b)any effects for the exercise of the fundamental rights to respect for private and family life, freedom of expression and information, the prohibition of discrimination and the rights of the child, as enshrined in Articles 7, 11, 21 and 24 of the Charter respectively;</p> <p>(c) intentional manipulation of their service, including by means of inauthentic use or automated exploitation of the service, with an actual or foreseeable negative effect on the protection of public health, minors, civic discourse, or actual or foreseeable effects related to electoral processes and public security.</p>	<p>their services and shall include the following systemic risks:</p> <p>(a)the dissemination of illegal content through their services;</p> <p>(b)any negative impacts for the exercise of the fundamental rights, including to respect for private and family life, freedom of expression and information, the prohibition of discrimination and the rights of the child, as enshrined in Articles 7, 11, 21 and 24 of the Charter respectively;</p> <p>(c) intentional manipulation of their service, including by means of inauthentic use or automated exploitation of the service that could lead to a significant risk of violence or discrimination or that could illegally interfere with the integrity of electoral processes.</p>
<p>2.When conducting risk assessments, very large online platforms shall take into account, in particular, how their content moderation systems, recommender systems and systems for selecting and displaying advertisement influence any of the systemic risks referred to in paragraph 1, including the potentially rapid and wide dissemination of illegal content and of information that is incompatible with their terms and conditions.</p>	<p>2.When conducting risk assessments, very large online platforms shall take into account, in particular, how their content moderation systems, recommender systems and systems for selecting and displaying advertisement influence any of the systemic risks referred to in paragraph 1, including the potentially rapid and wide dissemination of illegal content and of information that is incompatible with their terms and conditions, as well as their impact on the availability of information in the public interest, including journalistic content, and on exposure diversity.</p>
<p>Article 27</p> <p>Mitigation of risks</p>	<p>Article 27</p> <p>Mitigation of risks</p>

<p>1. Very large online platforms shall put in place reasonable, proportionate and effective mitigation measures, tailored to the specific systemic risks identified pursuant to Article 26. Such measures may include, where applicable:</p> <p>(a) adapting content moderation or recommender systems, their decision-making processes, the features or functioning of their services, or their terms and conditions;</p> <p>(b) targeted measures aimed at limiting the display of advertisements in association with the service they provide;</p> <p>(c) reinforcing the internal processes or supervision of any of their activities in particular as regards detection of systemic risk;</p> <p>(d) initiating or adjusting cooperation with trusted flaggers in accordance with Article 19;</p> <p><i>(e) initiating or adjusting cooperation with other online platforms through the codes of conduct and the crisis protocols referred to in Article 35 and 37 respectively.</i></p>	<p>1. Very large online platforms shall put in place necessary, proportionate and effective mitigation measures, tailored to the specific systemic risks identified pursuant to Article 26. Such measures may include, where applicable:</p> <p>(a) adapting content moderation or recommender systems, their decision-making processes, the features or functioning of their services, or their terms and conditions;</p> <p>(b) targeted measures aimed at limiting the display of advertisements in association with the service they provide;</p> <p>(c) reinforcing the internal processes or supervision of any of their activities in particular as regards detection of systemic risk;</p> <p>(d) initiating or adjusting cooperation with trusted flaggers in accordance with Article 19;</p>
	<p><i>2. Such measures shall respect fundamental rights, be necessary and proportionate to address the level of risk and seriousness of the illegal content or negative impacts identified under Article 26 and ensure that lawful information in the public interest is not unduly removed or de-prioritised in recommending systems.</i></p>
<p>2. The Board, in cooperation with the Commission, shall publish comprehensive reports, once a year, which shall include the following:</p>	<p>32. The Board, in cooperation with the Commission, shall publish comprehensive reports, once a year, which shall include the following:</p>

<p>(a) identification and assessment of the most prominent and recurrent systemic risks reported by very large online platforms or identified through other information sources, in particular those provided in compliance with Article 31 and 33;</p> <p>(b) best practices for very large online platforms to mitigate the systemic risks identified.</p>	<p>(a) identification and assessment of the most prominent and recurrent systemic risks reported by very large online platforms or identified through other information sources, in particular those provided in compliance with Article 31 and 33;</p> <p>(b) best practices for very large online platforms to mitigate the systemic risks identified.</p>
<p>3. The Commission, in cooperation with the Digital Services Coordinators, may issue general guidelines on the application of paragraph 1 in relation to specific risks, in particular to present best practices and recommend possible measures, having due regard to the possible consequences of the measures on fundamental rights enshrined in the Charter of all parties involved. When preparing those guidelines the Commission shall organise public consultations.</p>	<p>3. The Board, in cooperation with the Digital Services Coordinators, may issue general guidelines on the application of paragraph 1 in relation to specific risks, in particular to present best practices that are compatible with fundamental rights enshrined in the Charter of all parties involved. When preparing those guidelines the Board shall organise public consultations and seek the opinion of the Fundamental Rights Agency on the compatibility of proposed remediation measures with fundamental rights.</p>
<p>Article 43 - Right to lodge a complaint</p>	<p>Article 43 - Right to lodge a complaint</p>
<p>Recipients of the service shall have the right to lodge a complaint against providers of intermediary services alleging an infringement of this Regulation with the Digital Services Coordinator of the Member State where the recipient resides or is established. The Digital Services Coordinator shall assess the complaint and, where</p>	<p>1. Recipients of the service shall have the right to lodge a complaint against providers of intermediary services alleging an infringement of this Regulation with the Digital Services Coordinator of the Member State where the recipient resides or is established. The Digital Services Coordinator shall assess the complaint and, where</p>

<p>appropriate, transmit it to the Digital Services Coordinator of establishment. Where the complaint falls under the responsibility of another competent authority in its Member State, the Digital Service Coordinator receiving the complaint shall transmit it to that authority.</p>	<p>appropriate, transmit it to the Digital Services Coordinator of establishment. Where the complaint falls under the responsibility of another competent authority in its Member State, the Digital Service Coordinator receiving the complaint shall transmit it to that authority.</p>
	<p>2. (1) Any interested entity may make a complaint to the relevant Digital Services Coordinator that the proposed mitigation measures implemented by a service provider under Article 27 appears to, or presents a material risk of—(a) significantly adversely affecting the rights to freedom of expression of users of the services or members of the public, or of a particular group of such users or members of the public;(b) causing significant infringements of privacy, in relation to users of the services or members of the public, or a particular group of such users or members of the public; (c) causing significant infringements of other fundamental rights, including the right to non-discrimination, in relation to users of the services or members of the public, or a particular group of such users or members of the public.</p> <p>(2) In order for the complaint to be deemed admissible, the Digital Services Coordinators should consider whether (a) the complaint raises an issue of particular importance; (b) the complaint relates to human rights impacts on a particularly large number of users of the service or members of the public.</p>

	<p>3. Digital Services Coordinators must prepare guidance about complaints under Article 43 (2), including about:</p> <p>(a) admissibility criteria for such complaints;</p> <p>(b) the relevant procedure before the Digital Services Coordinator for such complaints;</p> <p>(c) any other aspect of such complaints.</p> <p>Digital Services Coordinators must publish the guidance about the complaints procedure under Article 43.</p>