Feedback on the Digital Services Act's Draft Implementing Act

Improving the Templates and Rules of Transparency Reports

January 2024

Introduction

The Computer & Communications Industry Association (CCIA Europe) is welcoming the opportunity to provide feedback to the European Commission on the draft implementing act (DIA)[1] laying down the detailed rules and templates of the transparency reports on the content moderation done by all providers of intermediary services, according to Articles 15(3) and 24(6) of the Digital Services Act (DSA).[2]

The detailed rules and templates of the transparency reports under consultation require several changes to avoid misleading comparisons between and account for the different business models of covered services. The transparency reports should also refrain from going beyond the DSA, as online intermediaries have been preparing this exercise in light of these requirements. The co-legislators chose an implementing act, so did not delegate any latitude to the Commission. The Commission has committed to cut 25% of reporting to ease burdens on business. The prescriptive and overbroad draft DIA here is not aligned with this goal. The European Commission should also make sure the transparency reports are feasible and do not create unnecessary administrative burdens for companies. Finally, the DIA should result in reports that are comprehensible to a lay reader.

Below you will find details on the necessary amendments to the DIA:

1. Allow transparency reports to be adapted to different business models and avoid false comparisons between services
2. Ensuring transparency reporting requirements do not go beyond the requirements of the DSA
3. Take into account the actionability and accessibility of the transparency reports

I. Allow transparency reports to be adapted to different business models and avoid false comparisons between services

The draft transparency reporting templates of the DIA impose a rigid structure that fails to accommodate the diverse needs and practices of intermediary service providers. This one-size-fits-all approach is ill-suited for a sector encompassing a wide spectrum of organisations, ranging in size, operational models, and organisational structures. It will also lead to misleading comparisons between such entities. First, the template's suggested actions for reporting (sections 1.4. to 1.7.) presume that all

[1] European Commission, Have your say, Digital Services Act – transparency reports (detailed rules and templates), available here.
[2] Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act), available here.

intermediary service providers have the capacity to implement the entirety of the proposed measures. However, this assumption overlooks the reality that some providers may only have access to one or a limited number of action options, such as terminating services, or that some providers do not engage in any content moderation in the first place due to the mere technical nature of their services that do not allow the recipients of the service to provide any content or information on the service. To ensure accuracy and equity, it would be more appropriate to provide flexibility within the reporting template to accommodate the varying capabilities and constraints of different service providers, by providing the ability to insert free text and commentary. For example, inapplicable sections of the templates for a service provider should be left blank or removed from the final reports. This is important for readability by users.

Additionally, the draft template's lack of provision for contextualising the data raises concerns about the risk of data being misinterpreted or taken out of context, potentially obscuring the accurate state of play. Further, it also defeats the overarching objective of the transparency reporting obligations within the DSA to provide more information on online platforms and intermediary services. As it stands, the CSV format for the template is overly prescriptive and leaves no room for explanation of metrics, interpretations or narrative descriptions. While the European Commission has suggested the possibility of submitting voluntary explanatory comments, the absence of explicit allowances for such contextualisation within the templates raises doubts about their consideration or utilisation. For comparison, the EU Code of Practice on Disinformation template, despite serving a narrower scope of content, accommodates a one-page and a half introduction and supplementary text fields to explain the data. Given the broader scope and significance of the DSA transparency reports template, it is imperative to provide increased space for contextual information. The reports are supposed to be easily comprehensible and detailed. The detail is already prescribed in the DSA, and the proposed templates prevent the reports from being easily comprehensible. Without such accommodation, readers will struggle to comprehend the nuanced differences between the reporting services, which undermines the overall objective of transparency.

II. Ensuring transparency reporting requirements do not go beyond the requirements of the DSA

The proposed template exceeds the DSA's provisions in several instances. The term “item” moderated, referred to throughout the draft template, is not defined in the DSA or the DIA. Leaving the decision to intermediaries to decide on what an item is to adapt to their specific services should be explained in the DIA’s Annex. The DIA dictates that the provided information be segmented on a monthly basis, a stipulation not mandated by the DSA. The transparency reports would present significant logistical challenges if monthly reporting were mandated. This is particularly true for data that cannot be automatically collated such as, for example, the language proficiency of content moderators. Beyond the DSA, this requirement would deviate from prevalent transparency reporting practices among numerous companies, which typically refrain from granular monthly breakdowns. The co-legislators chose not to mandate monthly reporting and did not delegate power to the Commission to do this.

Furthermore, the DIA’s Annex has mapped the categories of illegal content but additionally mandates that currently optional subcategories are populated, another requirement not

included in the DSA. The categories seem to be similar, but not identical, with the non-mandatory classification of the Transparency Database of content moderation decisions, which are very extensive and specific, though they are also unspecified in the DSA. It should also be noted that while the Transparency Database is designed with only online platforms in mind, the transparency reports are mandatory for all online intermediaries. Applying the same categorisation is not adapted to this different scope and should be made much less granular. In addition, as mentioned in CCIA Europe's comments on the Transparency Database, this categorisation does not reflect the current demands and requests addressed to online intermediaries, who are not able to review each to determine the correct category and subcategory. This categorisation also seems unnecessarily burdensome, since it requires redesigning trust and safety systems, in a manner that might not be appropriate for certain companies. Most crucially, the co-legislators did not settle on this level of granularity nor did they delegate powers to the Commission to mandate it.

The DIA's templates also deviate from the DSA in several sections. First, the templates require content decisions appeals in section 1.5. to be broken down by various categories, such as procedural grounds; interpretation of illegality or incompatibility; not diligent, objective or proportionate. This categorisation is not required by Articles 15(1)(d) nor 24(1)(a) of the DSA and is too burdensome. Article 15(1)(d) also does not require the type of restriction applied based on the complaint as is outlined in section 1.5.2. Similarly, Article 15(1)(a) of the DSA does not require any information about whether the orders received from Member States were "granted/complied with". The wording of such orders may differ widely between Member States and issuing authorities. This creates the possibility of real ambiguity when determining whether they have been "granted/complied with". As a further, stylistic point, intermediary services cannot "grant" orders. Therefore, those fields should be removed from the template as going beyond the scope of the DSA. The template should also include a provision for pending orders, namely those that are received at the end of one reporting period and have not yet been responded to.

The DIA's templates also extend the scope of the DSA on several occasions and prescribe reporting parameters that are not aligned with the actual functioning of content moderation activities. For example, in sections 1.6. and 1.8. on the accuracy of content moderation automated means, the templates require numbers and make a distinction between accuracy and error rates, whereas the DSA only refers to "indicators of the accuracy" and "possible rate of error". Section 1.6 also requires separate accuracy rates for internal complaints, own initiatives, notices, and trusted flagger notices—this level of differentiation is not required under the DSA. Similarly, the difference between content moderation done "fully" or "partly" via automated means has no basis in the DSA and misconstrues how moderation is conducted. The accuracy of the notice and action mechanism and breakdowns of the accuracy of internal complaint handling systems of online platforms are also not in the DSA and would be impractical and disproportionate to implement.

Another extension from the DSA can also be noted in section 1.7. where a distinction between internal and external moderators is introduced. Article 42 of the DSA only mentions the qualifications and linguistic expertise of the content moderators. The template also refers to the Common European Framework of Reference for Languages (CEFR) to indicate the qualifications of moderators. Both requirements exceed the DSA disproportionately and should be removed. The draft template should also specify that the

total number of moderators with sufficient linguistics is simply the addition of all moderators across languages.

An apparent inconsistency from the DSA is the annual reporting periods, necessary due to the entry into force of the DSA on 17 February 2024. While the DIA mentions a period from 1 January to 31 December, the Annex mentions a transition period for the time between 17 February to 31 December 2024. The expected reporting periods during the transition period, set out as dates, should be laid out in the body of the DIA. It should also be clear that in the DIA the use of the template should only start for the reporting period starting after 1 July 2024.

III. Take into account the actionability and accessibility of the transparency reports

Numerous requirements within the DIA pose practical difficulties for compliance. Again, the granularity of categories and subcategories of illegal content frequently fails to align with the way services currently record and address content moderation. While we understand the desire to provide additional categorical information for research purposes, a more practical approach would be to provide high-level categories that actually align with common moderation practices, per type of intermediaries, such as "spam" or "harassment" — categories which are often included in services' voluntary transparency reports but are excluded from the DIA's Annex. This uncertainty around the categories of illegal content is particularly concerning given the short implementation deadlines, as providers of online intermediaries would need to implement any necessary changes - which may include significant software engineering work - by 14 February 2024 (or 1 January 2024 for VLOPs) in order to include the data in their reports beginning 1 July 2024.

In the same vein, providers of intermediary services are required to publish their transparency reports within two months after the end of the reporting period. This places a significant burden on providers of intermediary services. Instead, a period of six months would be more appropriate.

Another practical difficulty posed by the DIA is the reporting of Member States Orders (under Article 15(1)(a) of the DSA). The wording of Article 15(1)(a) refers to reporting the number of orders received "***including*** *orders issued in accordance with Articles 9 and 10*" (emphasis added). This creates unnecessary and unhelpful ambiguity regarding which orders need to be included in the reported figures which is likely to lead to significant deviation between providers. The DIA and the reporting template have not served to dispel this uncertainty and we ask that the Commission provides further clarity on this point. Further, the draft templates do not clarify which orders should be reported, as this could pertain to only orders mentioning the DSA, or all illegal content removals or requests for information - regardless of whether they mention the DSA or follow the requirements of Articles 9 and 10. Finally, the draft templates ask for orders to use the granular categories mentioned above. That information is not always available in or relevant to orders. Indeed Member States' authorities may deliberately choose to omit such information in order not to, for example, prejudice an ongoing investigation. In these circumstances a provider would not be able to choose a meaningful category or subcategory and there is currently no provision to select an "other" category. For providers to report correctly, a template of

Member States Orders should be created to make sure the necessary information is available and categorised similarly to the transparency reports.

A set of similar questions arise from the reporting of notices submitted following article 16 of the DSA (under article 15(1)(b) of the DSA). Clarity on the need to report only on notices based on the DSA, any European legislation or also any non-European legislation is lacking.

The reporting period for online platforms and online search engines to publish average monthly active recipient numbers (under Article 24(2) of the DSA) should be aligned with the transparency reports in the DIA. This alignment would be appreciated given the overlap in data included in both types of reports.

Another impractical requirement is the need to indicate the median time to inform receipt or give effect to Member States Orders in seconds. This level of granularity is infeasible (very few IT systems track process flows in seconds), disproportionate and unlikely to be understood by the public reading the reports, thus undermining the objective of transparency. This requirement also seems inconsistent with the DSA, which requires providers to weigh countervailing considerations (e.g. risks vs. the EU Charter of Fundamental Rights). Requiring reporting in seconds tends to suggest that speed is more important than making accurate and informed decisions that factor in both considerations. An indication by hour should be sufficient.

The “report identification” tab at the beginning of the template already serves as a summary of the reporting period dates; it is redundant to replicate this information in a separate column for each reported category. Such duplication unnecessarily complicates the reporting process and adds avoidable data entry requirements.

Finally, the template should also allow for the inclusion of explanatory notes or free text to contextualise the figures reported. This would allow intermediaries to provide more information about the nature of their services while ensuring better accessibility to the reports for the public.

Conclusion

CCIA Europe appreciates the European Commission’s willingness to provide detailed rules and templates of the transparency reports on the content moderation required by all providers of intermediary services under the DSA. Our recommendations seek to make these templates flexible, aligned with the DSA and workable for all providers involved in the process. We remain available to further discuss our feedback with the European Commission.

About CCIA Europe

The Computer & Communications Industry Association (CCIA) is an international, not-for-profit association representing a broad cross section of computer, communications, and internet industry firms.

As an advocate for a thriving European digital economy, CCIA Europe has been actively contributing to EU policy making since 2009. CCIA's Brussels-based team seeks to improve understanding of our industry and share the tech sector's collective expertise, with a view to fostering balanced and well-informed policy making in Europe.

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For more information, please contact:

CCIA Europe's Head of Communications, Kasper Peters: kpeters@ccianet.org