Digital Services Act transparency reports: focus on simplicity and usefulness

Executive summary

Transparency is important for boosting users' trust in the internet, improving understanding of content moderation practices and ensuring accountability. Reports should be clear and ensure meaningful transparency. However, they should not be unnecessarily detailed at a time when President von der Leyen has promised to reduce companies' reporting burdens by 25 per cent.[1]

Under the Digital Services Act (DSA), providers of intermediary services are required to publish, at least once a year, easily comprehensible and detailed reports on any content moderation they engaged in during the previous period.[2]

The Commission has published a draft implementing act with two reporting templates and proposed harmonised reporting periods.[3] This provides helpful guidance to companies. However, providers should have greater flexibility to publish reports which best reflect their business operations and moderation efforts. As it stands, the draft implementing regulation goes beyond the material scope of the DSA's transparency reporting obligations, requires too much granularity, lacks flexibility in the templates, and provides too short a timeline for preparation of reports:

▸▸ The template should remain closely aligned with the DSA and not expand the requirements beyond what the law mandates;

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[1] European Commission initiative on reducing reporting by 25 per cent, available at https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13990-Administrative-burden-rationalisation-of-reporting-requirements_en.

[2] Art. 15, Regulation (EU) 2022/2065.

[3] https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/14027-Digital-Services-Act-transparency-reports-detailed-rules-and-templates-_en.

▶▶ The focus should be on proportionality and the usefulness of the information for the intended audience, ensuring the possibility of providing context to readers; and

▶▶ Reporting guidelines should seek to simplify and harmonise reporting obligations, not generate additional engineering work that could be better deployed to improve content moderation practices.

Table of contents

Clarify the intended audience and allow room for context

It is essential to consider the transparency reports' intended audience, so they are useful and proportionate.

As proposed, the templates for transparency reporting are oriented towards researchers and public agencies conducting statistical reporting and analysis, as evidenced by the breakdown of standardised categories and machine-readable formats. They are not user-friendly or understandable for the customers or users of the individual services, nor do they naturally integrate with other transparency reporting requirements, such as those detailing requests from law enforcement or other government agencies for access to customer data.

Even the qualitative reporting template is unsuitable for most users. Including details of detection methods, terms and conditions updates, moderator training, and various aspects of automated reporting will not produce a succinct report giving transparency to end-users or business customers. As a result, the templates are likely to be conducted in addition, and in parallel, to user- or customer-facing reports.

The template also provides no room for contextualisation to ensure that the data reported is accurately represented and interpreted. Without this contextualisation, there is a risk the nuances between services will be lost, and information will be misinterpreted or taken out of context by both researchers and end users.

The Commission has previously indicated that it would be possible to submit commentary voluntarily. Still, there is no guarantee that this will be considered, as there is no specific allowance for it in the templates. For example, under the EU Code of Practice on Disinformation,[4] the template allows for a 1.5-page introduction and some short text field explanations alongside data. Given the wide range of providers and business models captured and the broader use of this template, much more space for contextual information should be provided.

> **Recommendation:** Allow space for providers to provide context to their responses to ensure the data is accurately interpreted. The template should draw on the EU Code of Practice on Disinformation template, which allows for an introduction and short explanations alongside data.

Reporting periods and publication timings

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[4] https://digital-strategy.ec.europa.eu/en/library/2022-strengthened-code-practice-disinformation.

Currently, different providers publish reports at various times throughout the year. The draft implementing regulation proposes aligning the reporting periods with the calendar year following the first year, which will begin on 17 February 2024. We support the proposal to align reporting periods as it will allow for easier comparison of moderation practices between different providers.

The draft implementing regulation proposes that providers of intermediary services shall make the reports publicly available within two months from the conclusion of each reporting period.[5] The data collection and analysis necessary for the reporting outlined in the template is extensive, and this timeline is hugely challenging, especially for small companies, as year-end is one of the busiest periods and is the peak season for e-commerce. A six-month period to make the report available following the conclusion of the reporting period is more reasonable, thereby giving intermediaries greater opportunity to provide meaningful and accurate information.

Recommendation: *'Providers of intermediary services, providers of hosting services, providers of online platforms, providers of very large online platforms and providers of very large online search engines shall make the reports referred to in this article publicly available at the latest by ~~two~~ six months from the date of the conclusion of each reporting period.'*

Granularity of reporting

The DSA's transparency reporting requirements capture many intermediary service providers who do not have significant problems with illegal or harmful content. Most providers receive a handful of content moderation requests and have small-scale, manual content moderation practices in place. For these services, the level of granularity in reporting required in the template is disproportionate, and there should be a better distinction between different types of intermediary services.

For example, for most providers, even those with large-scale content moderation operations, most of the reporting fields of the quantitative reporting table will be left empty or marked '0,' as appropriate, which introduces unnecessary complexity to reporting and will not be easily digested by end-users.

Going beyond the DSA's material scope

Several requirements go beyond what is required by the primary text, adding additional burden to companies in a manner that was not contemplated by the co-legislators. For example, and non-exhaustively:

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[5] Art. 2(3) of the draft Implementing Regulation.

▶▶ The quantitative template requires providers to report data under 15 main categories and 70 sub-categories, which go beyond the definition of illegal content. For example, 'misinformation' and 'risk of environmental damage,' which are not always illegal. For many providers, the notice and action mechanisms in place are not set up to capture data in this way. By requiring this breakdown, the Implementing Regulation would force providers to incorporate these categories into their notice and action mechanisms. Aside from going beyond the primary text, there are large practical ramifications.

▶▶ Greater detail of reporting own-initiative content moderation efforts. Several categories are unhelpful because they are not sufficiently linked to the most common reasons for moderation due to violations of intermediaries' terms and conditions. For example, harassment and spam are not listed as options despite being common reasons for moderation. If some additional breakdown is required, a small number of general categories should be added rather than unworkable sub-categories.

▶▶ The qualitative template requires providers to report a summary of updates to terms and conditions during the reporting period.

Proposed monthly breakdown

It is proposed that providers must break down the data by month. However, the DSA only requires annual reports (or six-month reports for VLOPs) and does not require a monthly breakdown of data. Requiring a monthly breakdown significantly increases the administrative burdens associated with reporting for providers, diverting resources that could be focused on user safety. For most providers who engage in very little content moderation, there will be very little data for the entire year, so there is no benefit to breaking it down by month. The monthly breakdown is disproportionate and incompatible with the Commission's commitment to reduce reporting requirements for European companies.

The same concerns apply to the requirement in Annex 2 to express the median reporting time in seconds.

Recommendation: Align reporting requirements with the original DSA text and ensure a proportionate approach, particularly for providers without a significant problem with harmful and illegal content.

The template should not mandate a monthly breakdown of content moderation actions, which would significantly increase reporting burdens with little additional value.

Definitions

To help providers develop their transparency reports, guidance or clarity over the definitions would be welcome to determine which moderation types fall into which categories. This would also have the added benefit of ensuring that reports are comparable. Otherwise, there is a risk that different providers lump the same actions into different categories.

More definitions should be provided for the following terms:

- ▶▶ Category 10(b): risk for environmental damage.[6]
- ▶▶ Category 15, content in violation of the platform's terms and conditions:[7]
    - Age-specific restrictions;
    - Geographical restrictions;
    - Goods/services not permitted to be on the platform;
    - Language requirements; and
    - Nudity.
- ▶▶ Visibility restriction: removal vs visibility restriction: disable.[8]
- ▶▶ Provision of the service: suspension/termination vs. account restriction: suspension/termination.[9]

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[6] P. 6, Annex II.

[7] P. 8, Annex II.

[8] P. 13, Annex II.

[9] P. 14, Annex II.

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