



EUTA's feedback on the DSA Delegated Regulation on Conducting Independent Audits

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Conducting independent audits enables the identification of potential corporate weaknesses, mitigates societal risks and contributes to European citizens' benefits. The European Tech Alliance (EUTA) acknowledges the advantages of third-party audits for companies, citizens, and society as a whole. At the same time, it emphasises the need to carry out these audits under a balanced and clear framework that ensures consistency in approach, particularly in view of the wide ranging business models in scope. The obligations must be reasonable and achievable. The upcoming DSA Delegated Act should provide better guidance regarding auditors' data access, the standards that should be met, and incorporate safeguards to ensure audits are proportionate, feasible, and aligned with the essence of the DSA.

In this regards, the EUTA recommends to:

1. Clarify the required data VLOPs/VLOSEs should disclose to auditors

- The future Delegated Act (Article 5) should clearly define which data auditor can get access to, and how to resolve disputes if there is a disagreement between the interested parties. The draft currently grants access to a broad range of data which will likely create confusion or disagreement about what information should be provided to external auditors.
- In line with other EU legislation, very large online platforms (VLOPs) and very large online search engines (VLOSEs) must be able to protect their users' and customers' personal data and the security of their services, as well as confidential information, in particular trade secrets and intellectual property.

2. Prevent audit reports exposing VLOPs and VLOSEs' confidential information

- Auditors should only publicly disclose a condensed outline of the key components of the audit agreement (Art. 7). Otherwise, VLOPs and VLOSEs' confidential and sensitive information could be at risk.

3. Ensure that the audit opinion reflects the whole compliance effort

- The future Delegated Act (Article 8(6)) suggests that VLOPs and VLOSEs could potentially receive a "negative" audit opinion even if they adhere to all obligations outlined in the DSA, except for one. This approach is disproportionate and carries the risk of distorting the overall compliance status, subsequently impacting the market. The European Commission should adopt a higher threshold for issuing a negative opinion, such as requiring multiple unfavourable findings rather than just one.
- In order to ensure consistency in how a "positive with comments" outcome and a "negative" outcome is applied, it would be helpful if the Delegated Act could include additional examples (to the two currently provided in Recital (16) of the types of situations in which an auditing organisation might be expected to categorise compliance as "positive with comments". This would help establish a clearer distinction between the two categories.
- The Commission should also assess the possibility of introducing a materiality threshold for non-compliance. For example, to align with the co-legislators DSA



intention, companies shouldn't face a negative opinion for minor administrative mistakes.

4. Provide legal certainty by staying consistent with the DSA text

- The future Delegated Act (Article 9) refers to "audit risk analysis," while Article 37 of the DSA mentions "risk assessments". An audit risk analysis may have a broader scope compared to a risk assessment. Consequently, if the Delegated Act is adopted as such, it would extend beyond the requirements outlined in the DSA, thereby introducing new obligations on VLOPs and VLOSEs, and creating legal uncertainty.

5. Set clearer guidance to auditors and industry

- The standard set in the Delegated Act for auditors to meet is a "reasonable level of assurance" that the VLOP has met the obligation in question. In view of the novel form of audit introduced under the DSA, we believe the Delegated Act could benefit from additional guidance regarding the standard's definition and application. Additional guidance around what is meant by a "high but not absolute" standard would help establish more consistent application across the wide range of services subject to an audit.

6. Balance the prohibition on interference with redress rights

- The Delegated Act would benefit from confirming that any objections or points of clarification raised by audited services relating to the audit should not be considered "interference" with the performance of the audit or its conclusions. Audited services should have the ability to voice concerns with the EC or the DSC relating to the audit process of audit report, without contravening the prohibition on interference.

Lastly, we urge the European Commission to establish standards that reflect the diverse business models and capacities of all VLOPs and VLOSEs - both current and potential. We invite the European Commission to acknowledge the need for some tailoring to ensure that the risk categories make sense when they apply to the various business models. Ongoing regulatory dialogue with European platforms is therefore necessary to identify challenges and set appropriate expectations of compliance.

To conclude, independent audits bring advantages to companies, citizens, and society. It is, however, crucial to ensure fair conduct and attainable obligations. The forthcoming Delegated Act should provide clarity on various obligations and introduce supplementary safeguards.

We thank you for taking our concerns into consideration. Do not hesitate to let us know if you need any additional information from the EUTA and European digital champions.



About the EUTA

The EUTA gathers major European digital champions and scaleups successfully built across Europe, with a total of 30 companies from 14 European countries.

Our Mission is to create a better future for Europe through technology, based on our shared EU values. We aim to contribute to our local European economies and build a sustainable, green, innovative and inclusive Europe for future generations.

Our Vision is to develop smart policies promoting European tech innovation, investments and competitiveness. We believe it is important to create the right regulatory conditions which both enable European tech champions to grow and empower consumers in the EU.

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