DSA Election Guidelines – CMS overview

Online platforms and search engines have become important venues for civic discourse and for shaping public opinion and voter behaviour. The Digital Services Act (DSA) imposes obligations on providers of very large online platforms (VLOPs) and very large online search engines (VLOSEs), i.e. those with more than 45 million average monthly active recipients of their service in the European Union, to carry out specific risk assessments and put in place reasonable, proportionate and effective risk mitigation measures including for "any actual or foreseeable negative effects on civic discourse and electoral processes".

According to article 56 of the DSA, the European Commission is entrusted with the sole responsibility of supervising the VLOPs and VLOSEs and enforcing the provisions pertaining to systemic risks. For this, the Commission published, on February 8th, **draft guidelines on the risk mitigation measures the VLOPs and VLOSEs may adopt as part of their mandatory due diligence tasks**. In particular, these guidelines include best practices and industry standards touching upon:

- Identification of systemic risks related to electoral processes
- Elections-specific risk mitigation measures
- Risks posed by generative AI
- Cooperation with national authorities, independent experts and CSOs
- Mitigation measures to be taken specifically:
  - during the electoral period
  - after the elections
  - during the upcoming election to the European Parliament

As part of the drafting process, the European Commission sought input for the draft election guidelines and invited relevant stakeholders to respond to the **public consultation**. Council for Media Services, a designated proto-Digital Services Coordinator, provided the DSA enforcement team with a detailed **response**, drawing on its experience from leading the work of ERGA on disinformation and proto-DSCs on systemic risks. **For the sake of brevity, Council for Media Services prepared an overview of the recommendations included in the draft DSA election guidelines as well as an overview of its response to the European Commission.**

An overview of the proposed risk mitigation measures for the designated VLOPs and VLOSEs	
Area of risk mitigation measures	Recommendations in the guidelines
Identification of systemic risks related to electoral processes	The VLOPs and VLOSEs should reinforce their internal processes and develop election-specific risk profiles for each Member State. As part of this exercise, the VLOPs and VLOSEs are encouraged to collect and analyse information on local context-specific risks in each Member State.
Elections-specific risk mitigation measures	The VLOPs and VLOSEs should consider: • setting up a clearly identifiable internal team responsible for each election • Take measures promoting official information regarding electoral processes • Support local media literacy initiatives • Boosting their systems so as to provide more contextual information for their users, including fact-checking labels, prompts and nudges and verified checkmarks on profiles • Clearly distinguishing between commercial and political advertisement, including demonetisation measures against disinformation content
Generative AI	With regard to the creation of synthetic content, the services should: • Ensure that AI-generated content is watermarked • AI-generated information regarding elections relies on trustworthy sources of information • Integrate safeguards, including prompt classifiers and content moderation filters With regard to the dissemination of synthetic content, the services should: • Adapt their terms and conditions to ensure their effective enforcement • Label disseminated synthetic or manipulated content, including ads.

Cooperation with national authorities, experts and CSOs	The VLOPs and VLOSEs should establish contacts with relevant national authorities to promote effective and timely communication. The Commission recommends the services in question to organise meetings with non-state actors, including academic, experts and CSOs to acquire information regarding local context and independent expert insight.
During an electoral period	The VLOPs and VLOSEs are encouraged to pay attention to risks that may negatively impact the election outcome or turnout. In addition, the services are asked to put in place incident response mechanisms that would allow for prompt action and exchange of information with national authorities.
After an electoral period	It is recommended that VLOPs and VLOSEs conduct post-election reviews of their risk mitigation measures and consult their findings with independent researchers and national authorities.

An overview of Council for Media Services' response to the public consultation	
Area of risk mitigation measures	Recommendations in the guidelines
Identification of systemic risks related to electoral processes	**Media providers:** It seems appropriate to consider adding media (providers) to the list of elements to be considered for the election-specific risk profile. Currently, the list of elements focuses on political entities, which are, however, often aided by various media providers. Including media providers in risk profiles allows VLOPSEs to identify potentially problematic behaviour early on and appropriately tailor the subsequent risk mitigation measures with respect to fundamental human rights and media freedom standards.
Elections-specific risk mitigation measures	• **Silence periods:** Drawing on the practice of regulating linear media, it seems appropriate that VLOPSEs observe and are compliant with the electoral silence periods established by national legislation. As most VLOPSEs offer the possibility of paid promotion of political content, it is appropriate to consider VLOPSEs subject to national legislation prohibiting any such activities online. • **Terms of Service:** In our experience, content moderation standards applied by all major VLOPSEs seem to be constructed in a way that protects verified users from much of content moderation, especially when the content in question is published by a prominent political figure and features harassment or incitement to violence against another politically active entity. It is thus necessary that VLOPSEs adapt their terms and service and/or community content moderation standards as well as their enforcement to tackle the misuse of their services during electoral periods. • **Political advertising:** Prior investigations revealed notable deficiencies in the transparency of VLOPSEs' political advertising. For this reason, we recommend that VLOPSEs intensify their efforts to authenticate the identities of both sponsors and political advertising publishers and implement a more transparent labelling scheme for political ads. • **Access to data:** Considering the recent restrictions on data access for independent researchers, it seems appropriate to consider a temporary scheme under which VLOPSEs share data with independent researchers and/or the DSCs.
Generative AI	• **Hashing:** We recommend VLOPSEs use hashing to prevent the re-upload of content that violates either their terms of service or national legislation pertaining to illegal content online.

	• **Cross-platform cooperation:** It is important that VLOPSEs engage in good faith with other providers of intermediary services and address the problem of cross-platform sharing of manipulative and/or illegal AI-generated content jointly by, for example, taking part in hash-sharing initiatives (e.g. GIFCT's hash sharing database for terrorist content). • **Safeguards:** When developing policies and measures tackling the creation and dissemination of potentially harmful AI-generated content, it seems appropriate to suggest that such measures take into account not only their impact on fundamental human rights but also their impact on other areas, such as education. For this, we recommend VLOPSEs design their policies and measures in a way that does not preclude creators from using AI-generated content for educational or commercial purposes.
Cooperation with national authorities, experts and CSOs	**Timely communication and regular meetings:** It is recommended that VLOPSEs' dedicated units remain in touch and meet regularly in the days preceding and following the election day. Evidence suggests that the days preceding and immediately following the election day tend to be the source of potential risks to electoral processes. For this, it is necessary that the exchange of information between VLOPSEs and national authorities intensifies during this period so as to allow for a prompt response to any unforeseeable situations.
During an electoral period	**User empowerment:** It is foreseeable that an increase in highly polarising content available online creates space for the publication of potentially illegal content. For this, it is essential that VLOPSEs review their Notice and Action mechanisms (established under art. 16 DSA) and prioritise their user-friendly design and accessibility. This includes ensuring that these mechanisms are available in the national language of each Member State, thereby facilitating easy and efficient reporting for all users alike. By addressing such shortcomings and enhancing accessibility, VLOPSEs empower users to report electoral malpractices and effectively participate in safeguarding the electoral processes.
After an electoral period	**Bilateral review meetings:** We consider early bilateral meetings with VLOPs crucial to maintaining electoral integrity. In June 2023, CMS held bilateral meetings with representatives of the most widely used VLOPs and presented them with a set of "asks" pertaining to the elections. These requirements respected the current European and national legislation and took into account their commitments under the Code of Practice on Disinformation. These requirements were presented to the VLOPs in the form of a questionnaire that the VLOPs submitted in the weeks following the election day. These questionnaires, covering 5 areas of interest, significantly narrowed down the scope of oversight conducted by the national regulatory authority and facilitated the setting up of targeted and measurable metrics for post-election review.

	Stakeholders involved with VLOPSEs: As part of the post-election review process, VLOPSEs should provide a list of actors, stakeholders and organisations with which they cooperated during the elections so as to allow for an independent impact review. As part of this process, VLOPSEs should share with the DSCs the key metrics pertaining to the performance of each engagement with national actors (e.g. impact, reach, impressions, interactions, etc.).