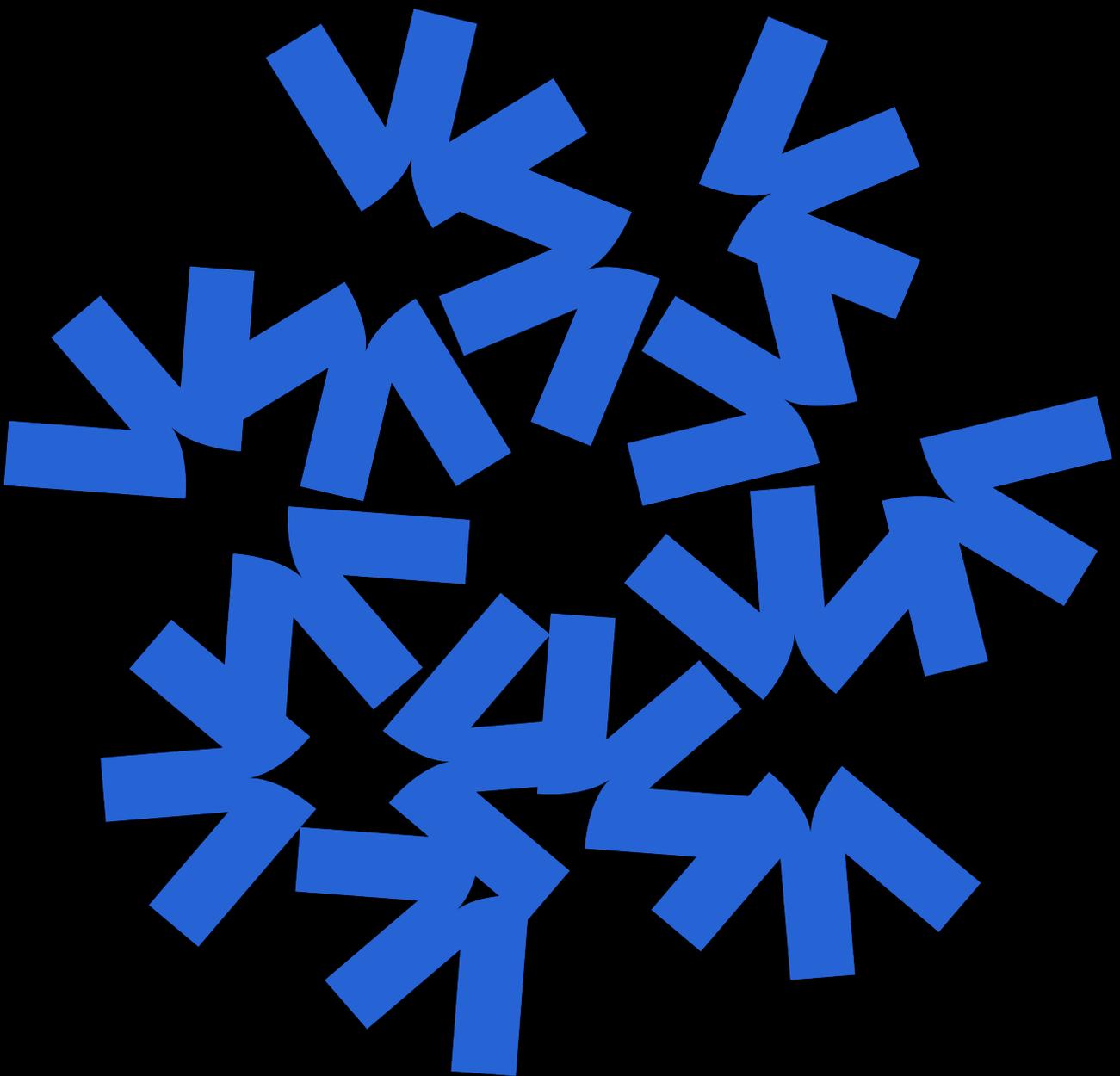


Expanding the reach and impact of the EU digital regulatory and co-regulatory framework relevant for improving the information integrity, media credibility and protection of human rights of citizens in the Western Balkans countries

Digital Services Act DSA and the Code of Practice on Disinformation

(1.) European Union Institutions

Advocacy Brief





The citizens of the Western Balkan countries (WB6) are significantly exposed to illegal, harmful and fraudulent content online. The decline of media freedom and information integrity, as well as the growing impact of disinformation and external malign influences, continue to pose a serious threat to democratic processes, rule of law and European integration in the region.

Major online platforms are perceived as having a very limited interest in the region, failing to provide systematic, adequate and functional mechanisms for cooperation and reporting/acting on illegal content. They are also not seen taking accountability for allowing and incentivizing dissemination of harmful content which further deepens the disinformation disorder.

The existing legislation in WB6 does not provide an adequate regulatory response to the challenges of the digital environment. Political, social, and economic instability and fragile institutions which are often politically captured, under-resourced and undercapacitated, hinder the establishment and implementation of the standards necessary for advancement toward EU membership. In addition, lack of transparency and inclusiveness of the legislative process poses a particular risk for adopting new legislation that might negatively impact freedom of expression. Currently, there are regulatory and media policy initiatives that have demonstrated precisely this tendency.

Against such a background, the only way to ensure platform accountability, improve information integrity and online safety and ensure protection of fundamental digital rights for the WB6 citizens is through **appropriate, meaningful and enforceable** level of alignment with the EU digital services package. Alignment with the DSA, as well as the Digital Markets Act (DMA), is also the candidate countries' obligation in the accession process.

However, given the current political and administrative complexities in the region, as well as previous experiences with harmonization (most notably the General Data Protection Regulation, GDPR) there is a risk that the process of gradual alignment will be too slow, lack clear incentive, and/or depart from the DSA principles of systemic and multistakeholder approach to online platforms regulation.

As part of the overall efforts of civil society organizations from the WB6 in this field, and based on extensive consultations with various regional and EU-based organizations, stakeholders and individual experts, we have identified several **key alignment principles and priority interventions in which the support and assistance of the European Union and its institutions is needed:**

1. Close monitoring and scrutiny of DSA-enabling national legislation

- **Scope of DSA-enabling legislation should not diverge from the DSA**

Transitory regimes legally diverging from the DSA should be strongly discouraged. Interim solutions applying to the period before the accession might be misused in a way that is not respectful of fundamental rights or democratic processes, or in order to control information and censor critical voices online.

- **National regulation of VLOPSEs should be discouraged**

Risks of abuse and/or misinterpretation are even higher in case of national legislation that would apply to Very Large Online Platforms and Search Engines (VLOPSEs). The DSA-like risk-based approach cannot be implemented in a context that does not have the regulatory infrastructure and capacities to support it. This could further exacerbate the risk of implementing content-focused rather than a system-focused approach.



- **Transparency and inclusiveness of the legislative process should be insisted upon**

Active involvement of EU institutions in the alignment process is crucial not only as a legislative impetus, but also to ensure that national DSA-implementing legislation mirrors its scope and principles. The EU is called upon to:

- Use the accession instruments, with clear timelines and milestones, to keep the DSA alignment process in check
- Insist on safeguards of independence of future Digital Services Coordinators
- Insist on active involvement and consultations of experts and CSOs in the drafting process

2. Support for the regional approach in the Western Balkans

WB6 governments should be encouraged to coordinate their alignment scopes and approaches (e.g. to national regulation of VLOPSEs). An aligned approach would facilitate closer regional integration within the common regional market for electronic commerce and enable greater predictability of the business environment and protection of users and consumers. A larger market would also be likely to contribute to better enforcement of policies by the online platforms.

Furthermore, diverging national laws could lead to fragmented and inconsistent regulatory landscapes and thus have a negative effect on the integration of candidate countries into the single market.

3. Creating an enabling environment for indirect effects and benefits of the DSA before accession

In addition to assisting the accession of WB6 countries in the alignment process, the support of EU institutions is needed in order to create an enabling environment for “extended compliance”. This would help the region feel some indirect effects and benefits of the DSA (particularly with regard to VLOPSEs), discourage diverging legislation, and pave the way for full enforcement upon accession.

- **Cooperation arrangements**

National competent authorities should participate in cooperation and exchange of information mechanisms envisaged at the EU level. This cooperation could be beneficial in cases of e.g. malign campaigns negatively affecting the accession process, the EU or its individual Member States. At the same time, the authorities from the candidate countries would gain significant leverage in their communication with the large online platforms.

Non-state actors such as CSOs should be included in the structured dialogues and exchanges at the EU level. These stakeholders can bring local expertise and insights valuable for the implementation, including by collecting and providing evidence related to risk assessment and mitigation obligations, as well as contributing to understanding and assessing the nature of risks.

- **Signals towards VLOPSEs in support of the alignment process**

Reluctance by VLOPSEs to extend some of the DSA-like obligations to candidate countries can be expected, even if there is national legislation in place. There should be a clear signal in support of the DSA alignment as a process being done in the wake of EU enlargement and pending accession.



Priority areas in which provisions of national legislation could be backed up by EU demands towards VLOPSEs, having a positive impact on the alignment process itself include:

- Appointment of legal representatives and points of contact
 - Safeguards against illegal content, such as a functioning notice-and-action mechanism, as well as recognizing the full-fledged status of trusted flaggers as envisaged under the DSA
 - Access to data for vetted researchers
 - Transparency of content moderation through publishing statements of reasons
 - Protection of minors
- **Extension of risk mitigation efforts to fight disinformation**

VLOPSEs should be urged to extend their risk mitigation obligations to some of the most pressing risks in WB6, such as disinformation and other negative effects on democratic and electoral processes, through compliance with commitments under the Code of Practice on Disinformation. The unhindered spreading of narratives such as geopolitically motivated disinformation challenging EU credibility arguably presents a systemic risk affecting the EU and its citizens and not only this region.

Even though the demands towards platforms in this sense cannot be enforced by the European Commission, any effort to mitigate risks originating from the Western Balkans could be counted towards platforms' overall compliance efforts on fulfilling the risk mitigation obligations and thus contributing to DSA's overall effectiveness.

DISCLAIMER:

This document is produced by UG Zašto ne - Why Not in the framework of the IGNITA initiative, funded by Open Society Foundations—Western Balkans.

Views and opinions expressed are those of the author(s) only and do not necessarily reflect those of the Open Society Foundations—Western Balkans.