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From: **Shea Brown, Ph.D.**
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To: **European Commission's DSA Team**
c/o Prabhat Agarwal,
Head of Unit "Digital Services and Platforms"
European Commission - DG CONNECT.

Re: **Recommendations on The Delegated Act on Auditing in the Digital Services Act**

January 20, 2023,

To Whom It May Concern:

On behalf of the team at BABL AI, we thank the Commission and AWO for the opportunity to provide our thoughts on The Delegated Act on Auditing in the Digital Services Act (DSA). As a firm that audits algorithms for ethical risk, bias, disparate impact, and effective governance, we believe that the audit requirements of the DSA are central to protecting EU citizens from harm and align with our mission to promote and protect human flourishing in the age of AI.

The team at BABL AI has conducted algorithm audits, risk/impact assessments, and is at the forefront of research¹ and policy² in the fields of AI audit, assurance, and governance. Below we offer our thoughts on how current standards can be leveraged in the Delegated Act, and what additional capabilities and guidance might be required beyond these standards (see the Appendix for questions posed during the workshop).

Current Standards

The fields of audit and regulatory assurance have a long history, and BABL believes that the majority of these practices can and should be adopted for auditing Very Large Online Platforms (VLOPs) and Very Large Online Search Engines (VLOSEs). In particular, the *ISAE*

¹ <https://journals.sagepub.com/doi/full/10.1177/2053951720983865> & <https://link.springer.com/article/10.1007/s44206-022-00017-z>

² <https://forhumanity.center/bok/taxonomy-ai-audit-assurance-assessment/> & <https://github.com/algorithmicbiaslab/public-resources/tree/main/policy>

3000, *Assurance Engagements Other than Audits or Reviews of Historical Financial Information*³ provides a standard that can be directly mapped onto the majority of procedures needed for auditing in the DSA. Adopting this standard as the base requirement for DSA auditors will ensure a pool of professionals and auditing firms capable of executing the audits. For example, all the “Big Four” auditing firms will have extensive experience executing regulatory assurance engagements within Europe using this standard, and with some additional guidance from the Delegated Act can apply this experience to the DSA.

From this standard, we recommend the following:

1. Audits engagements shall follow ISAE 3000 or an equivalent standard, except where it contradicts the DSA or Delegated Act on Auditing
2. Audit firms shall follow quality assurance practices at the level of *IAASB's International Standard on Quality Management 1*⁴, or an equivalent standard, except where it contradicts the DSA or Delegated Act on Auditing
3. Audit engagements shall aim to deliver “reasonable assurance”, however, until the standards and maturity of the algorithm auditing field have developed enough to deal with the complexity of VLOPs and VLOSEs, “limited assurance” should be allowed.
4. Audit engagements for the DSA shall be “attestation engagements”, where the VLOP/VLOSE is responsible for evaluating and demonstrating compliance with the DSA, and the auditor’s conclusion addresses whether these assertions are free from material misstatement. However, until the standards and maturity of the algorithm auditing field have developed enough to deal with the complexity of VLOPs and VLOSEs, auditors will likely need to include more “direct engagement” procedures to manage risk (see New Challenges). More “direct” audit procedures may include:
 - a. Interviewing VLOP/VLOSE employees to gain an understanding of the extent and rigor of the risk assessment (Article 34) and mitigation (Article 35)
 - b. observation and potentially re-calculation or re-performance of selected analytical procedures used by the VLOP/VLOSE in their technical testing of, e.g., recommender and advertising algorithms
 - c. Inspection of select samples of platform data and results referenced in the submitted reports
 - d. Inquiry of personnel responsible for the governance and oversight of the technical testing of algorithms, user experience, and risk assessments

New Challenges

Despite the applicability of current assurance standards to auditing for DSA compliance, there are some contextual adjustments and further guidance needed to deal with the complex sociotechnical systems that VLOPs and VLOSEs develop and govern. This

³ <https://www.iaasb.org/publications/international-standard-assurance-engagements-isae-3000-revised-assurance-engagements-other-audits-or-o>

⁴ <https://www.iaasb.org/publications/international-standard-quality-management-isqm-1-quality-management-firms-perform-audits-or-reviews>

guidance is needed because of a) the rapid advance of the underlying technology that these organizations deploy, b) our rapidly evolving understanding of the ways these systems can affect society (both negatively and positively), and c) the limited number of people that have sufficient knowledge of (a) and (b) to mitigate risk when evaluating compliance with the DSA.

To address these challenges, we recommend the following elements in the Delegated Act:

6. Audit engagements for the DSA shall follow a publicly available set of criteria (called “applicable criteria” in ISAE 3000)
7. The criteria should be created by an independent organization ⁵, guided by the DSA and Delegated Act, and subject to oversight/approval by the European Commission
8. Until such time as these criteria are developed and approved, vetted auditors may utilize other applicable criteria, so long as such criteria are agreed upon with the VLOP/VLOSE and made publicly available
9. Vetted auditors shall possess sufficient subject matter expertise in the areas of DSA compliance to evaluate the risks of material misstatement by the VLOP/VLOSE, including at least algorithm ethics, experience conducting algorithm impact/risk assessments, familiarity with data-science techniques used to construct and maintain common VLOP/VLOSE algorithms such as recommender systems, and user experience testing.

Central to the need for this additional guidance is the issue of “materiality” when evaluating these complex systems for compliance. There will inevitably be gaps, misstatements, and misalignments between what the VLOPs/VLOSEs say they’re doing, what they’re actually doing, and the extent to which what they’re actually doing satisfies the societal aims of the DSA. Understanding where these misalignments become material will require, at a minimum, all the above (6-9), and likely much more.

I would like to thank the Commission for providing us the opportunity to comment on the Delegated Act, and we would be happy to provide further clarification on any of the above comments.

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⁵ [ForHumanity](#) is one such organization that can potentially fill this void very quickly.

Appendix

The full list of questions proposed by AWO at the workshop is below:

- 1. What different methodologies should be considered to conduct the types of regulatory compliance audits that the DSA requires?**
- 2. What types of inspections should an auditor make under the DSA?**
- 3. What specificities are required for the different types of provisions in the DSA?**
- 4. When would an auditor need to do an 'algorithmic audit', for example, to test compliance with the risk management obligations?**
- 5. What types of algorithmic audits?**
- 6. What issues should be clarified between the auditor and the auditee prior to the conducting of the audit?**
- 7. What are the specific standards and/or benchmarks auditors could apply in determining whether or not companies are compliant with the DSA?**
- 8. What makes a difference between a 'positive', 'negative' or 'positive with comments' audit opinion?**
- 9. What levels of assurance should the auditor deliver? Are there specific challenges for the different types of provisions in the DSA?**
- 10. What types of expertise would qualify the DSA requirement that auditors have "proven expertise" in the area of "risk management, technical competence and capabilities"?**