

Questions and Answers on identification and counting of active recipients of the service under the Digital Services Act

Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services and amending Directive 2000/31/EC (the “DSA”) requires providers of online platforms and of online search engines to publish for each online platform or online search engine they operate, by 17 February 2023 and at least once every six months thereafter, information on the average monthly active recipients of their service in the Union, calculated as an average over the period of the past six months, in a publicly available section of their online interface. The DSA further establishes a threshold of 45 million average monthly active recipients of the service in the Union as the criterion to designate the services of such providers as very large online platforms (“VLOPs”) and as very large online search engines (“VLOSEs”).

Since the adoption and entry into force of the DSA, a number of providers of intermediary services have contacted the Commission services in preparation for the entry into application of the DSA. In this context, given the novel nature of the obligations laid down by the DSA, practical questions have been raised on the provisions of the DSA concerning the obligation to publish information on the average monthly active recipients of the service in the Union, which is also relevant for the designation of VLOPs and VLOSEs. This concerns in particular Article 24(2) and recital 77 DSA, as well as Article 3(m), (p) and (q) DSA and Article 33 DSA.

Against this background, this document provides answers to a number of questions that the Commission services have received from providers of intermediary services in light of the deadline of 17 February 2023, laid down in Article 24(2) DSA, for the first publication of information on the number of average monthly active recipients of the service. The guidance provided in this document is compiled on the basis of the information available to the Commission services on the date of its publication. This guidance may be subject to review based on practical experience acquired in the months to come.

This document expresses the views of the Commission services and does not commit the European Commission. It does not contain any authoritative interpretation of the DSA and is without prejudice to any decision or position of the Commission, or of any delegated acts which the Commission may

adopt in the future pursuant to Article 33(3) DSA¹. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

1. *What is the scope of the obligation under the DSA concerning the identification and counting of average monthly active recipients of the service?*

- Pursuant to Article 24(2) DSA, providers of online platforms and of online search engines are obliged to publish for each online platform or online search engine they operate, by 17 February 2023 and at least once every six months thereafter, information on the average monthly active recipients of their service in the Union in a publicly available section of their online interface.
- Pursuant to that same provision, such average monthly active recipients of the service in the Union must be calculated as an average over the period of the past six months and in accordance with the delegated acts referred to in Article 33(3) DSA, where those delegated acts have been adopted.
- In the absence of such a delegated act, the relevant provisions of the DSA and its recitals will have to be taken into account for the purpose of complying with the obligation laid down in Article 24(2) DSA.
- Article 3(p) and (q) DSA contain clear and detailed definitions of “active recipient of an online platform”² and “active recipient of an online search engine”³, respectively. Furthermore, recital 77 clarifies the main elements of both definitions.

2. *What does “publish [...] information on the average monthly active recipients of the service in the Union” in Article 24(2) DSA mean? Do providers of online platforms or of search engines have the obligation to publish the actual number of active recipients of their service on their online interface?*

- Pursuant to Article 24(2) DSA providers of online platforms and of online search engines have to publish information on the average monthly active recipients using their services, as calculated in accordance with the relevant provisions of the DSA and in light of guidance

¹ The adoption of such a delegated act requires the consultation of the European Board of Digital Services. The Digital Services Coordinators that will constitute the Board must be designated by 17 February 2024 at the latest.

² According to Article 3(p) DSA ‘active recipient of an online platform’ means a recipient of the service that has engaged with an online platform by either requesting the online platform to host information or being exposed to information hosted by the online platform and disseminated through its online interface.

³ According to Article 3(q) DSA ‘active recipient of an online search engine’ means a recipient of the service that has submitted a query to an online search engine and been exposed to information indexed and presented on its online interface.

provided in recital 77. Those providers must make that information publicly available, by publishing it on their online interfaces.

3. *Does the DSA require providers of online platform and of online search engine service(s) to notify the published numbers to the Commission?*

- The DSA does not require providers of online platform and of online search engine service(s) to notify the information on the average monthly active recipients of their online platform(s) or online search engine(s) in the Union to the Commission or to the competent Digital Service Coordinator, or any other competent national authority, unless they are specifically requested to do so pursuant to Article 24(3) DSA.
- In the interest of transparency and in order to facilitate the monitoring of compliance with the DSA during the initial period of its application, all such providers are encouraged to communicate that information to the Commission by using the dedicated functional mailbox: CNECT-DSA-Registry@ec.europa.eu [and to the competent Digital Services Coordinator of the Member State of their establishment once designated by the Member State concerned] spontaneously, as well as the methodology that they used for the purposes of determining the average monthly active recipients of their online platform(s) or their online search engine(s) in the Union, at the same time that they publish that information on their online interfaces. This is without prejudice to Article 24(3) DSA, which empowers the Commission and the competent Digital Services Coordinator to request that information from those providers.
- Such spontaneous communication will facilitate and accelerate the process of designating online platforms and online search engines as VLOPs and VLOSEs pursuant to Article 33(4) DSA, thus increasing legal certainty.
- Pursuant to Article 33(4) DSA, the Commission, for the purpose of designating an online platform or an online search engine as a VLOP or a VLSE, may use other available data on the number of average monthly active recipients as a source of information, in addition to the information published by the provider pursuant to Article 24(2) DSA or information requested pursuant to Article 24(3) DSA, provided that the provider's right to be heard is respected.

4. *Where does a provider of online platform or of online search engine need to publish information on average monthly active recipients of its service in the Union?*

- Pursuant to Article 24(2) DSA, providers need to publish such information on a publicly accessible section of the online interface of their online platform or their online search engine.
- To facilitate the automated identification of published information and any updates to that information, the provider would need to ensure that that information is easily available and accessible on their online interfaces.

5. *When does a recipient of an online platform service need to be considered as an “active recipient” of that service?*

- Recital 77 DSA explains that the information that a provider of an online platform publishes on its online interface should reflect all recipients that have actually engaged with the service at least once in the previous six month period.
- Such an engagement could be established when the recipient of the service is exposed to content disseminated on the online interface of the online platform or provides content for display on the platform. In other words, in relation to multi-sided online platforms, the recipients on each side of the online platform, including consumers, business users and traders, are potentially relevant for the purposes of counting the number of average monthly active recipients of the service.
- This means that all recipients engaging with the service -, for instance, by viewing or listening to content disseminated on the online platform - or by providing such content, for instance, in view of selling or advertising a product or service – will have to be counted as active recipients of the service for the purpose of the DSA.
- The concept of active recipient of the service does not necessarily coincide with that of a registered user of a service or a user that has carried out a transaction on the online platform.
- For instance, a user viewing listings displayed on an online platform allowing consumers to conclude distance contracts with traders has to be counted as an active recipient of the service, even where that user does not ultimately purchase a product or service on that online platform.

6. *When does a recipient of an online search engine service need to be considered an “active recipient” of that service?*

- In light of the definition provided by Article 3(q) DSA, providers of online search engines are only obliged to include in their calculations of average monthly active recipients of their

service those recipients that actively submit a query and are exposed to the content indexed and presented on the provider's online interface.

7. Do providers of online platforms that allow consumers to conclude distance contracts with traders need to count only consumers as active recipients or also traders offering their products or services on those platforms?

- Article 3(b) DSA defines a recipient of the service as any natural or legal person who uses an intermediary service, in particular for the purposes of seeking information or making it accessible. That definition includes both consumers that use online platforms allowing consumers to conclude distance contracts with traders to search for and purchase goods, as well as traders that offer products or services on those online platforms.
- Traders will be considered to engage with those services, for instance, where they request the provider to store their listings or offers on the provider's online interface.
- Consequently, providers of online platforms allowing consumers to conclude distance contracts with traders will have to count all recipients interacting with their services, including both consumers and traders, when calculating the average monthly active recipients of their service.

8. Do providers of online platforms also need to count third party advertisers using those platforms to advertise products or services?

- Providers of online platforms will also need to count recipients that interact with their services by requesting the provider to store and present their advertisement on their online platform to other recipients of their services.

9. Do only recipients of the service that have purchased a product or a service through an online marketplace need to be counted as "active recipients" of the service?

- No. Recipients of the service are to be counted as engaging with the service at any moment, when they interact with and are exposed to the information contained in an online interface of an online platform, including illegal content, even if they do not end up buying the product or contracting the service.
- Recipients can be exposed to such information already when searching for a product, clicking on search results or merely scrolling over search results irrespective of whether they do so by being logged-in or not, and not only at the moment when they purchase a product or service.

- As explained in recital 77 of the DSA, engagement is not limited to interacting with information by clicking on, commenting, linking, sharing, purchasing or carrying out transactions on an online platform. All recipients exposed to the information on the online interface of an online platform have to be counted as active recipients. This means that not only buyers or registered users are to be counted as active recipients.

10. Do only registered recipients of the service need to be counted as “active recipients” of the service?

- Recital 77 clarifies that the concept of active recipient of the service does not necessarily coincide with that of a registered user of a service. Depending on the design of the relevant online platform’s or online search engine’s interface, where recipients can have access to content without being registered or logged-in, they can be exposed to information disseminated on its online interface irrespective of whether they do so by being logged-in or not.

11. Do users that click on a link by mistake or that make incidental visits to the online platform or to the online search engine need to be counted as “active recipients” of the service?

- Recital 77 of the DSA clarifies that the concept of active recipient of the service should not include incidental use of the service by recipients of the services of other providers of intermediary services that indirectly make content hosted by the provider of the relevant online platform available through linking or indexing by a provider of online search engine.

12. Are providers of online platforms and of online search engines obliged to avoid double counting or counting inauthentic users (e.g. bots)?

- Recital 77 DSA explains that providers of online platforms and of online search engines should avoid double-counting where possible. Such providers are only obliged to count a recipient of their service once that uses different online interfaces, such as websites or software applications, or different devices to access that service, including where that user accesses the service through different uniform resource locators (URLs) or domain names.
- The obligation to count active recipients of the service does not require nor permit providers to profile and track users in order to avoid “double counting”. The DSA may not be understood as providing a ground to process personal data or track users.
- Providers that have the technical means to identify inauthentic users, such as bots or scrapers, may discount such users when calculating the average monthly active recipients of its service.

13. Should providers of hybrid online platforms allowing consumers to conclude distance contracts with traders, i.e. those providers that offer their own products or services alongside third-party products and services, be required to count all visitors to their platforms as “recipients of the service”?

- Recital 77 DSA explains that the information on active recipients of the service must reflect the number of all recipients actually engaging with the service by being exposed to content disseminated on the online interface of the online platform, such as by viewing or listening to that content or by providing content, regardless of the origin of that content.
- Consequently, even where that online interface contains content unrelated to the intermediary service, such as the provider’s own content, all recipients of the service must be counted. If those two categories of content are presented on the same online interface, any recipient that accesses that interface for the purpose of engaging with the provider’s own content will necessarily be exposed to third-party content by merely visiting the online interface.