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OVERLAPS – SERVICES AND HARMS IN SCOPE

**(COMPARISON BETWEEN RECENT
INITIATIVES TARGETING DIGITAL
SERVICES)**

FINAL REPORT

Michèle Ledger and
Sally Broughton Micova





OUTLINE AND OBJECTIVE OF THE PAPER

- 1 Services in scope
- 2 Harms in scope
- 3 Journalistic content

Digital Services Act (DSA)

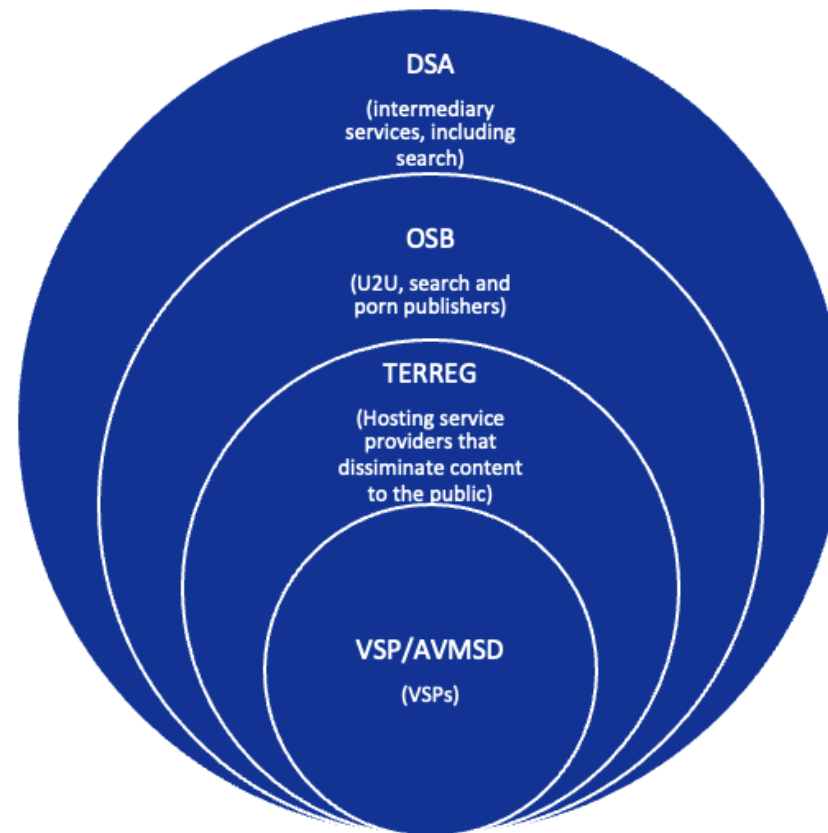
Audiovisual Services Directive (AVMSD) – rules for VSPs

Online Terrorist Content Regulation (TERREG)

Draft Online Safety Bill (OSB)



1. SERVICES (1) – GENERAL OVERVIEW





1. SERVICES (2) – OVERVIEW OF SPECIFIC SERVICES

	DSA	AVMSD	TERREG	OSB
Technical Internet services	Yes but grey zones	No	No	No
Search	Yes, but grey zones	No	Grey zone	Yes
Pure online storage	Yes	No	No	Grey zone
Online market places/app stores	Yes (special rules apply)	No	Yes	Yes
Online gaming	Not mentioned	Not mentioned	Not mentioned	Not mentioned
Porn publishers	No	No	No	Yes
Live streaming	Yes	Yes	Yes	Yes



1. SERVICES (3)

- ❖ All initiatives seek to capture non-established providers. The mechanisms are quite aligned, except the **AVMSD** for VSPs (which requires a connection with company established in EU)
- ❖ **None of the EU initiatives** contain a procedure to designate services in scope (except for VLOPS and VLOSES in the DSA), **whereas the OSB does**
- ❖ The **DSA/TERREG** do not contain rules to solve conflicts of jurisdiction between Member States (**whereas the AVMSD does**)
- ❖ How will the grey zones of the **DSA** be settled?
- ❖ Will the **DSA** and **OSB** be future proof?

2. HARMS (1) - ILLEGAL

- ❖ DSA covers all content that is illegal by EU and by MS law (if not in contradiction with EU law)
- ❖ AVSMD & TEREK cover a narrower set
- ❖ OSB creates new criminal offences – based on intention & effect of harm, rather than quality of content
- ❖ There are some hierarchies: DSA – “manifestly illegal”; OSB - “Priority illegal”



Relative breadth of illegal content in scope in each



2. HARMES (2)

- ❖ Only OSB contains a definition of “harm” – individual, psychological or physical
- ❖ DSA covers societal and collective harms from VLOPS and VLOSEs
- ❖ DSA addresses *public harms* or harm to public processes and institutions for VLOPs and VLOSEs
- ❖ All recognised relevant risks to freedom of expression
- ❖ AVMSD & OSB focus on negative intervention to prevent individual harms, balanced so as to not overly impinge on fundamental rights.
- ❖ DSA takes more protection of rights approach, including collective, so opens door to positive intervention or obligations



2. HARMS (3)

- ❖ AVMSD, DSA & OSB all aim to prevent harm to minors
- ❖ Commercial communications – AVMSD-identifiability, standards, protection of minors; DSA – transparency of sources; wider risk from ad systems; OSB – fraudulent ads
- ❖ Well-being – Mental and physical health; individual harm in OSB, commercial communication standards in AVMSD, and collective (gender-based violence; public health) and individual in DSA
- ❖ OSB – establishes criminal offences for content otherwise often legal but that negatively impacts well-being (psychological harm or serious distress)



3. JOURNALISTIC/MEDIA EXCEPTIONS (1)

- ❖ Prominence options and special derogation option
- ❖ AVMSD contains a rule allowing MS to ensure the appropriate prominence of audiovisual services of general interest but leaves a lot to be decided at Member State level
- ❖ TERREG specifies that it does not apply to certain categories of material (incl. journalistic), but no indication as to how the assessment needs to be made
- ❖ DSA does not include a special derogation but
 - ❖ all intermediaries need to apply T&C with due regard to rights and interests of parties, including pluralism of the media
 - ❖ VLOPS & VLOSES need to carry out risk assessments for 4 categories of risk, two of which relate to 'public interest' content



3. JOURNALISTIC/MEDIA EXCEPTIONS (2)

- ❖ OSB explicitly excludes news publishers and audiovisual media services from being considered to have committed specific communications offences
- ❖ OSB also requires large user-to-user services to have special systems and processes to ensure the importance of the free expression of “content of democratic importance” and of “journalistic content” when making decisions about how to treat such content
- ❖ Proposed European Media Freedom Act includes provisions on special treatment of content from “media services”
- ❖ Issues: how to define which content? What special treatment? What role for regulators?

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Centre on Regulation in Europe



Improving network and digital industries regulation

Avenue Louise 475 (box 10)

1050 Brussels, Belgium

+32 2 230 83 60

info@cerre.eu – www.cerre.eu

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