

## DSA.046 VLOP Independent Audit

Authors: Winfried Veil

Last update: 2023-06-06 16:51:42 | By: Winfried Veil

Created at: 2023-06-04 14:10:41

### Article 37

#### Independent audit

1. Providers of very large online platforms and of very large online search engines shall be subject, at their own expense and at least once a year, to independent audits to assess compliance with the following:

(a) the obligations set out in Chapter III;

(b) any commitments undertaken pursuant to the codes of conduct referred to in Articles 45 and 46 and the crisis

protocols referred to in Article 48.

2. Providers of very large online platforms and of very large online search engines shall afford the organisations carrying out the audits pursuant to this Article the cooperation and assistance necessary to enable them to conduct those audits in an effective, efficient and timely manner, including by giving them access to all relevant data and premises and by answering oral or written questions. They shall refrain from hampering, unduly influencing or undermining the performance of the audit.

Such audits shall ensure an adequate level of confidentiality and professional secrecy in respect of the information obtained from the providers of very large online platforms and of very large online search engines and third parties in the context of the audits, including after the termination of the audits. However, complying with that requirement shall not adversely affect the performance of the audits and other provisions of this Regulation, in particular those on transparency, supervision and enforcement. Where necessary for the purpose of the transparency reporting pursuant to Article 42(4), the audit report and the audit implementation report referred to in paragraphs 4 and 6 of this Article shall be accompanied with versions that do not contain any information that could reasonably be considered to be confidential.

3. Audits performed pursuant to paragraph 1 shall be performed by organisations which:

(a) are independent from, and do not have any conflicts of interest with, the provider of very large online platforms or of very large online search engines concerned and any legal person connected to that provider; in particular:

*(i) have not provided non-audit services related to the matters audited to the provider of very large online platform or of very large online search engine concerned and to any legal person connected to that provider in the 12 months' period before the beginning of the audit and have committed to not providing them with such services in the 12 months' period after the completion of the audit;*

*(ii) have not provided auditing services pursuant to this Article to the provider of very large online platform or of very large online search engine concerned and any legal person connected to that provider during a period longer than 10 consecutive years;*

*(iii) are not performing the audit in return for fees which are contingent on the result of the audit;*

(b) have proven expertise in the area of risk management, technical competence and capabilities;

(c) have proven objectivity and professional ethics, based in particular on adherence to codes of practice or appropriate

standards.

4. Providers of very large online platforms and of very large online search engines shall ensure that the organisations that perform the audits establish an audit report for each audit. That report shall be substantiated, in writing, and shall include at least the following:

(a) the name, address and the point of contact of the provider of the very large online platform or of the very large online search engine subject to the audit and the period covered;

(b) the name and address of the organisation or organisations performing the audit;

(c) a declaration of interests;

(d) a description of the specific elements audited, and the methodology applied;

(e) a description and a summary of the main findings drawn from the audit;

(f) a list of the third parties consulted as part of the audit;

(g) an audit opinion on whether the provider of the very large online platform or of the very large online search engine subject to the audit complied with the obligations and with the commitments referred to in paragraph 1, namely 'positive', 'positive with comments' or 'negative';

(h) where the audit opinion is not 'positive', operational recommendations on specific measures to achieve compliance and the recommended timeframe to achieve compliance.

5. Where the organisation performing the audit was unable to audit certain specific elements or to express an audit opinion based on its investigations, the audit report shall include an explanation of the circumstances and the reasons why those elements could not be audited.

6. Providers of very large online platforms or of very large online search engines receiving an audit report that is not 'positive' shall take due account of the operational recommendations addressed to them with a view to take the necessary measures to implement them. They shall, within one month from receiving those recommendations, adopt an audit implementation report setting out those measures. Where they do not implement the operational recommendations, they shall justify in the audit implementation report the reasons for not doing so and set out any alternative measures that they have taken to address any instances of non-compliance identified.

7. The Commission is empowered to adopt delegated acts in accordance with Article 87 to supplement this Regulation by laying down the necessary rules for the performance of the audits pursuant to this Article, in particular as regards the necessary rules on the procedural steps, auditing methodologies and reporting templates for the audits performed pursuant to this Article. Those delegated acts shall take into account any voluntary auditing standards referred to in Article 44(1), point (e).