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Centro de Estudios en Libertad de Expresión y Acceso a la Información

16

Documentos de posición

# Submission on European Commission Consultation on the draft Digital Services Act (DSA) guidelines on the integrity of electoral processes

March 7 2024

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Universidad de Palermo

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Centro de Estudios en Libertad de Expresión y Acceso a la Información

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March 7, 2024

*Nota* → Este documento presenta en formato PDF el feedback ofrecido por el CELE a través de un formulario en línea. El documento original puede encontrarse como anexo a este documento.

## 1 *Q1: Are there any documents, reports, guidelines, academic studies or relevant independent research you recommend as further input for these guidelines?*

We recommend the Inter-American Commission of Human Rights 2019 document on best practices to deal with disinformation (CIDH, 2019). That document contains several recommendations included in these guidelines. Referring to it as an antecedent could be the source of a productive global normative dialogue. Perhaps more important is the scientific literature that has studied the effects of disinformation. Sadly, and from the point of view of our review of it, this literature is inconclusive (Bakshy et al., 2015; Benkler et al., 2018; Boxell et al., 2017; Flynn et al., 2017; Ghosh & Scott, 2018; Lazer et al., 2018; Shao et al., 2018; Vosoughi et al., 2018). Evidence on decisive effects of disinformation on elections—as to shifting or decisively impacting outcomes—has not been found (Allcott & Gentzkow, 2017). Actions to curb disinformation and its effects have not significantly impacted underlying phenomena such as polarization (A. M. Guess et al., 2023). While some studies have produced some evidence of effects of disinformation on voters (*See* e.g. Budak, 2019; A. Guess et al., 2019), further research is still much needed.

The gap between what we know about disinformation and its effects on society and how we react to the phenomenon is—hence—important and should inform policy making around the world. It should thus inform these guidelines. The dissemination of fake news or content online is interlinked to other complex phenomena, such as political polarization and belief formation in said context. And it is also linked to the *epistemic* crisis in Western democracies (Benkler et al., 2018) that is ultimately related to poor delivery of public services and goods, lack of responsiveness to citizens' demands, a sense of futility of democratic procedures, and increasing inequality. None of these substantial challenges to democracy are easy to solve, nor are they necessarily linked to disinformation as their cause. On the contrary, it is possible that disinformation is a consequence of polarization and the current crisis of democracy and not the other way around. In any case, this background crisis should be considered when addressing the obvious impoverishing effects disinformation has on public discourse and our communication ecosystem.

## 2 Q2: How can the Commission further clarify the purpose and scope of these guidelines to better address systemic risks in electoral processes?

The guidelines should acknowledge the need for further research, and they do in several paragraphs. We would like to emphasize the importance of this stance: it serves as a cautionary tale against easy but misleading "fixes", it opens the door to further reflection and learning, and it may raise a useful healthy level of caution among the relevant actors trying to combat disinformation in ways that are both useful and proportional to the impact these measures may have on several fundamental rights that may be affected by them. From this standpoint, it seems important to better define the kind of risks that disinformation poses towards election, even if these are based on non conclusive research or insufficient data. The *integrity* of the election process is a concept well known in the literature and used in references used along the Guide, but we consider it should be defined in the guidelines themselves. This could set a clear groundwork and framework to distinguish between different phenomena, including the cognitive effects of disinformation, the dynamics of voters suppression, the impact disinformation may have on trust towards electoral authorities, and the reliability of electoral outcomes. Clearer definitions or descriptions of these different risks could provide better guidance for those the guidelines address.

## 3 Q3: Do you agree with the recommended best practices in this section?

We generally agree with the recommendations. We have, however, a couple of suggestions.

1. We would revisit the use of the disease metaphor implied in the *inoculation* language used in paragraph 16(b)ii. We believe this use is unfortunate: it presents disinformation as a disease of an unknown nature rather than a complex social phenomena caused—as all social phenomena—by the interlink between incentives of different actors who belong to complex ecosystems. Thus, the dissemination of knowledge to better prepare citizens to navigate an increasingly complex information environment should not be framed as part of developing biological antibodies to resist attacks by unknown external agents, but—rather—to build and develop the capabilities citizens need to fulfill their duties and exercise their rights in complex contexts, but as a fundamental building block of a functioning democratic *demos*.
2. To better understand the virality of content, as proposed in 16(d), is a fruitful endeavor. Virality is linked to the speed with which the information circulates on the Internet, and is also linked to its geographical reach. It is one of the features of the Internet as a technology, and assessing this feature normatively is content-dependent. The guideline is right in linking virality to content that threatens democratic integrity, for virality of other kind of content (e.g., the kind that reinforces integrity of elections) should be promoted and expanded. Virality is neither good nor bad *in and of itself*.
3. The guidelines are also right to clearly distinguish between deception and impersonation from the use of false information for parody or

satire (*see* e.g. paragraph 29). Disinformation that uses deception and impersonation has the *intent* to deceive; while parody and satire that relies on impersonation has not such intent. On the contrary, the main goal of impersonation when developing a parody or a satirical account of current events or public personae is to criticize, to mock, or to question public figures. This kind of political speech deserves full protection.

## 4 Q4: What additional factors should be taken into account by providers of VLOPs and VLOSEs when detecting systemic risks related to electoral processes??

VLOPs and VLOSEs should develop criteria to deal with electoral authorities who are not independent and who may compromise the integrity of electoral processes. While this is not the case in most countries of Europe, it is not a far fetched scenario to imagine a situation of institutional cooptation or decay that pushes some electoral authorities in the mentioned direction. Companies should develop criteria to act differently when that is the case, for in such an scenario relying on officious information or relying on state-led narratives may affect election integrity rather than guard against it.

## 5 Q13: What other mechanisms should be considered to foster more effective collaboration with relevant stakeholders, such as national authorities and civil society organizations?

This point is related to our previous comment regarding the possible scenario of a national electoral authority becoming a threat, rather than a guardian, of the integrity of elections. VLOPs and VLOSEs should develop criteria to deal with electoral authorities in that scenario. One useful way of doing that is not to rely *exclusively* on national authorities, and identify independent civil society organizations that can vouch for the electoral process as a whole. This is particularly important both to deal with rogue national electoral authorities but also to guard them against unfair attacks. Denying the fairness of elections, and even electoral outcomes, is—sadly—a common practice among populist movements all over the world, and VLOPs and VLOSEs should develop practices not only to be aware of those potential threats but to act upon them in ways that are respectful of fundamental rights.

## 6 Q16: Are there any additional measures that providers of VLOPs and VLOSEs should take specifically during an electoral period?

Our comment on the risk of non independent electoral authorities applies both before and during elections, but VLOPs and VLOSEs should especially consider instances of institutional capture or decay *during* elections.

## 7 Q17: How can rapid response mechanisms be improved for handling election-related incidents on VLOPs or VLOSEs?

Rapid response mechanisms should begin monitoring elections early on. Official electoral calendars are not always true to the electoral cycle: sometimes, campaigns start well before an electoral process is supposed to start and several key decisions are made before campaigns take place (such as e.g., registering candidacies and allowing them to run). Hence, rapid-response mechanisms should be active as early as possible even if with varying degrees of intensity depending on the context.

## 8 Q18: What other mechanisms should be considered to foster more effective collaboration with national authorities and civil society organizations?

VLOPs and VLOSEs should consider developing narrow, focused HRIAs and other due diligence processes especially crafted to deal with electoral process. In such a context, engaging relevant national authorities and local NGOs as part of the stakeholder engagement process should come naturally.

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# DSA Election Guidelines

Fields marked with * are mandatory.

## Introduction

**CONSULTATION on Guidelines for Providers of Very Large Online Platforms and Very Large Online Search Engines on the Mitigation of Systemic Risks for Electoral Processes**

## About you

*Language of my contribution

- ○ Bulgarian
- ○ Croatian
- ○ Czech
- ○ Danish
- ○ Dutch
- ● English
- ○ Estonian
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- ○ French
- ○ German
- ○ Greek
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○ Slovak
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○ Spanish
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* I am giving my contribution as

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○ Business association
○ Company/business
○ Consumer organisation
○ EU citizen
○ Environmental organisation
○ Non-EU citizen
○ Non-governmental organisation (NGO)
○ Public authority
○ Trade union
○ Other

* First name

Nicolas Daniel

* Surname

Zara

* Email (this won't be published)

nicolaszara.cele@gmail.com

* Organisation name

*255 character(s) maximum*

Centro de Estudios en Libertad de Expresión y Acceso a la Información (CELE)

* Organisation size

● Micro (1 to 9 employees)

○ Small (10 to 49 employees)
○ Medium (50 to 249 employees)
○ Large (250 or more)

Transparency register number

Check if your organisation is on the transparency register. It's a voluntary database for organisations seeking to influence EU decision-making.

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*This list does not represent the official position of the European institutions with regard to the legal status or policy of the entities mentioned. It is a harmonisation of often divergent lists and practices.*

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○ Algeria
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○ Andorra
○ Angola
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○ Antarctica
○ Antigua and Barbuda
● Argentina
○ Armenia
○ Aruba
○ Australia
○ Austria
○ Azerbaijan
○ Bahamas
○ Bahrain
○ Djibouti
○ Dominica
○ Dominican Republic
○ Ecuador
○ Egypt
○ El Salvador
○ Equatorial Guinea
○ Eritrea
○ Estonia
○ Eswatini
○ Ethiopia
○ Falkland Islands
○ Faroe Islands
○ Fiji
○ Finland
○ France
○ French Guiana
○ French Polynesia
○ Libya
○ Liechtenstein
○ Lithuania
○ Luxembourg
○ Macau
○ Madagascar
○ Malawi
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○ Mali
○ Malta
○ Marshall Islands
○ Martinique
○ Mauritania
○ Mauritius
○ Mayotte
○ Mexico
○ Micronesia
○ Saint Martin
○ Saint Pierre and Miquelon
○ Saint Vincent and the Grenadines
○ Samoa
○ San Marino
○ São Tomé and Príncipe
○ Saudi Arabia
○ Senegal
○ Serbia
○ Seychelles
○ Sierra Leone
○ Singapore
○ Sint Maarten
○ Slovakia
○ Slovenia
○ Solomon Islands
○ Somalia
○ South Africa

○ Bangladesh
○ Barbados
○ Belarus
○ Belgium
○ Belize
○ Benin
○ Bermuda
○ Bhutan
○ Bolivia
○ Bonaire Saint Eustatius and Saba
○ Bosnia and Herzegovina
○ Botswana
○ Bouvet Island
○ Brazil
○ British Indian Ocean Territory
○ British Virgin Islands
○ Brunei
○ Bulgaria
○ Burkina Faso
○ Burundi
○ Cambodia
○ Cameroon
○ Canada
○ French Southern and Antarctic Lands
○ Gabon
○ Georgia
○ Germany
○ Ghana
○ Gibraltar
○ Greece
○ Greenland
○ Grenada
○ Guadeloupe
○ Guam
○ Guatemala
○ Guernsey
○ Guinea
○ Guinea-Bissau
○ Guyana
○ Haiti
○ Heard Island and McDonald Islands
○ Honduras
○ Hong Kong
○ Hungary
○ Iceland
○ India
○ Moldova
○ Monaco
○ Mongolia
○ Montenegro
○ Montserrat
○ Morocco
○ Mozambique
○ Myanmar/Burma
○ Namibia
○ Nauru
○ Nepal
○ Netherlands
○ New Caledonia
○ New Zealand
○ Nicaragua
○ Niger
○ Nigeria
○ Niue
○ Norfolk Island
○ Northern Mariana Islands
○ North Korea
○ North Macedonia
○ Norway
○ South Georgia and the South Sandwich Islands
○ South Korea
○ South Sudan
○ Spain
○ Sri Lanka
○ Sudan
○ Suriname
○ Svalbard and Jan Mayen
○ Sweden
○ Switzerland
○ Syria
○ Taiwan
○ Tajikistan
○ Tanzania
○ Thailand
○ The Gambia
○ Timor-Leste
○ Togo
○ Tokelau
○ Tonga
○ Trinidad and Tobago
○ Tunisia
○ Türkiye

○ Cape Verde
○ Cayman Islands
○ Central African Republic
○ Chad
○ Chile
○ China
○ Christmas Island
○ Clipperton
○ Cocos (Keeling) Islands
○ Colombia
○ Comoros
○ Congo
○ Cook Islands
○ Costa Rica
○ Côte d’Ivoire
○ Croatia
○ Cuba
○ Curaçao
○ Cyprus
○ Czechia
○ Democratic Republic of the Congo
○ Denmark
○ Indonesia
○ Iran
○ Iraq
○ Ireland
○ Isle of Man
○ Israel
○ Italy
○ Jamaica
○ Japan
○ Jersey
○ Jordan
○ Kazakhstan
○ Kenya
○ Kiribati
○ Kosovo
○ Kuwait
○ Kyrgyzstan
○ Laos
○ Latvia
○ Lebanon
○ Lesotho
○ Liberia
○ Oman
○ Pakistan
○ Palau
○ Palestine
○ Panama
○ Papua New Guinea
○ Paraguay
○ Peru
○ Philippines
○ Pitcairn Islands
○ Poland
○ Portugal
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○ Romania
○ Russia
○ Rwanda
○ Saint Barthélemy
○ Saint Helena Ascension and Tristan da Cunha
○ Saint Kitts and Nevis
○ Saint Lucia
○ Turkmenistan
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○ Tuvalu
○ Uganda
○ Ukraine
○ United Arab Emirates
○ United Kingdom
○ United States
○ United States Minor Outlying Islands
○ Uruguay
○ US Virgin Islands
○ Uzbekistan
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Only organisation details are published: The type of respondent that you responded to this consultation as, the name of the organisation on whose behalf you reply as well as its transparency number, its size, its country of origin and your contribution will be published as received. Your name will not be published. Please do not include any personal data in the contribution itself if you want to remain anonymous.

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Organisation details and respondent details are published: The type of respondent that you responded to this consultation as, the name of the organisation on whose behalf you reply as well as its transparency number, its size, its country of origin and your contribution will be published. Your name will also be published.

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## Questions to stakeholders

The questions in this survey relate to the background document attached "Guidelines for Providers of Very Large Online Platforms and Very Large Online Search Engines on the Mitigation of Systemic Risks for Electoral Processes".

Questions are listed in the order as they appear in the background document for each section of the Guidelines.

FR and DE version are machine translated.

**Outline of the Guidelines**

Section 1 sets out the purpose and structure of the guidelines, as well as references to relevant initiatives;

Section 2 sets out the scope of these guidelines;

Section 3 sets out the main mitigation measures the Commission proposes providers of VLOPs and VLOSEs to adopt to address election-related systemic risks.

Specific subsections cover: the identification of election-related systemic risks; the main mitigations measures to address those risks; specific mitigations measures linked to Generative AI content; cooperation with authorities and other stakeholders; the process of putting into place risk mitigation measures before or after an electoral event; and specific guidance for elections to the European Parliament;

Section 4 sets out the general modalities for a dialogue with the Commission on systemic risks for electoral processes;

Section 5 sets out that these guidelines will be reviewed one year from adoption.

## 2. SCOPE OF THE GUIDELINES

### Q1: Are there any documents, reports, guidelines, academic studies or relevant independent research you recommend as further input for these guidelines?

We recommend the Inter-American Commission of Human Rights 2019 document on best practices to deal with disinformation (CIDH, 2019). That document contains several recommendations included in these guidelines. Referring to it as an antecedent could be the source of a productive global normative dialogue. Perhaps more important is the scientific literature that has studied the effects of disinformation. Sadly, and from the point of view of our review of it, this literature is inconclusive (Bakshy et al., 2015; Benkler et al., 2018; Boxell et al., 2017; Flynn et al., 2017; Ghosh & Scott, 2018; Lazer et al., 2018; Shao et al., 2018; Vosoughi et al., 2018). Evidence on decisive effects of disinformation on elections—as to shifting or decisively impacting outcomes—has not been found (Allcott & Gentzkow, 2017). Actions to curb disinformation and its effects have not significantly impacted underlying phenomena such as polarization (A. M. Guess et al., 2023). While some studies have produced some evidence of effects of disinformation on voters (See e.g. Budak, 2019; A. Guess et al., 2019), further research is still much needed.
The gap between what we know about disinformation and its effects on society and how we react to the phenomenon is—hence—important and should inform policy making around the world. It should thus inform these guidelines. The dissemination of fake news or content online is interlinked to other complex phenomena, such as political polarization and belief formation in said context. And it is also linked to the epistemic crisis in Western democracies (Benkler et al., 2018) that is ultimately related to poor delivery of public services and goods, lack of responsiveness to citizens' demands, a sense of futility of democratic procedures, and increasing inequality. None of these substantial challenges to democracy are easy to solve, nor are they necessarily linked to disinformation as their cause. On the contrary, it is possible that disinformation is a consequence of polarization and the current crisis of democracy and not the other way around. In any case, this background crisis should be considered when addressing the obvious impoverishing effects disinformation has on public discourse and our communication ecosystem.

### Q2: How can the Commission further clarify the purpose and scope of these guidelines to better address systemic risks in electoral processes?

The guidelines should acknowledge the need for further research, and they do in several paragraphs. We would like to emphasize the importance of this stance: it serves as a cautionary tale against easy but misleading "fixes", it opens the door to further reflection and learning, and it may raise a useful healthy level of caution among the relevant actors trying to combat disinformation in ways that are both useful and proportional to the impact these measures may have on several fundamental rights that may be affected by them. From this standpoint, it seems important to better define the kind of risks that disinformation poses towards elections, even if these are based on non conclusive research or insufficient data. The integrity of the election process is a concept well known in the literature and used in references used along the Guide, but we consider it should be defined in the guidelines themselves. This could set a clear groundwork and framework to distinguish between different phenomena, including the cognitive effects of disinformation, the dynamics of voters suppression, the impact disinformation may have on trust towards electoral authorities, and the reliability of electoral outcomes. Clearer definitions or descriptions of these different risks could provide better guidance for those the guidelines address.

### 3. ELECTION SPECIFIC RISK MITIGATION MEASURES

#### 3.1. Identification of systemic risks related to electoral processes

#### 3.2. Elections-specific risk mitigation measures

## Q3: Do you agree with the recommended best practices in this section?

We generally agree with the recommendations. We have, however, a couple of suggestions.

1. We would revisit the use of the disease metaphor implied in the inoculation language used in paragraph 16 (b)ii. We believe this use is unfortunate: it presents disinformation as a disease of an unknown nature rather than a complex social phenomena caused—as all social phenomena—by the interlink between incentives of different actors who belong to complex ecosystems. Thus, the dissemination of knowledge to better prepare citizens to navigate an increasingly complex information environment should not be framed as part of developing biological antibodies to resist attacks by unknown external agents, but—rather—to build and develop the capabilities citizens need to fulfill their duties and exercise their rights in complex contexts, but as a fundamental building block of a functioning democratic demos.
2. To better understand the virality of content, as proposed in 16(d), is a fruitful endeavor. Virality is linked to the speed with which the information circulates on the Internet, and is also linked to its reach. It is one of the features of the Internet as a technology, and assessing this feature normatively is content-dependent. The guideline is right in linking virality to content that threatens democratic integrity, for virality of other kind of content (e.g., the kind that reinforces integrity of elections) should be promoted and expanded. Virality is neither good nor bad in and of itself.
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## Q4: What additional factors should be taken into account by providers of VLOPs and VLOSEs when detecting systemic risks related to electoral processes?

VLOPs and VLOSEs should develop criteria to deal with electoral authorities who are not independent and who may compromise the integrity of electoral processes. While this is not the case in most countries of Europe, it is not a far fetched scenario to imagine a situation of institutional cooptation or decay that pushes some electoral authorities in the mentioned direction. Companies should develop criteria to act differently when that is the case, for in such an scenario relying on officious information or relying on state-led narratives may affect election integrity rather than guard against it.

Q5: Are there additional mitigation measures to be considered as best practices on the basis of their proven effectiveness mitigating risks to electoral processes?

Q6: How should providers of VLOPs and VLOSEs measure effectiveness of their risk mitigation measures in a reliable and conceptually valid way for electoral processes?

**3.3. Mitigation measures linked to Generative AI**

Q7: Do you agree with the recommended best practices in this section?

Q8: Which risks of Generative AI for electoral processes should additionally be considered in this section?

Q9: What additional evidence-based best practices on risk mitigation for electoral processes related to the creation of Generative AI content should be considered?

Q10: What additional evidence-based best practices on risk mitigation for electoral processes related to the dissemination of Generative AI content should be considered?

Q11: What are best practices for providers of VLOPs and VLOSEs to ensure that their risk mitigation measures keep up with technological developments and progress?

### 3.4. Cooperation with national authorities, independent experts and civil society organisations

Q12: Do you agree with the recommended best practices in this section?

Q13: What other mechanisms should be considered to foster more effective collaboration with relevant stakeholders, such as national authorities and civil society organisations?

This point is related to our previous comment regarding the possible scenario of a national electoral authority becoming a threat, rather than a guardian, of the integrity of elections. VLOPs and VLOSEs should develop criteria to deal with electoral authorities in that scenario. One useful way of doing that is not to rely exclusively on national authorities, and identify independent civil society organizations that can vouch for the electoral process as a whole. This is particularly important both to deal with rogue national electoral authorities but also to guard them against unfair attacks. Denying the fairness of elections, and even electoral outcomes, is—sadly—a common practice among populist movements all over the world, and VLOPs and VLOSEs should develop practices not only to be aware of those potential threats but to act upon them in ways that are respectful of fundamental rights.

Q14: Are there any additional resources that could help providers of VLOPS and VLOSEs identify relevant organisations/experts at the national level?

### 3.5. During an electoral period

Q15: Do you agree with the recommended best practices in this section?

Q16: Are there any additional measures that providers of VLOPs and VLOSEs should take specifically during an electoral period?

Our comment on the risk of non independent electoral authorities applies both before and during elections, but VLOPs and VLOSEs should especially consider instances of institutional capture or decay during elections.

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Rapid response mechanisms should begin monitoring elections early on. Official electoral calendars are not always true to the electoral cycle: sometimes, campaigns start well before an electoral process is supposed to start and several key decisions are made before campaigns take place (such as e.g., registering candidacies and allowing them to run). Hence, rapid-response mechanisms should be active as early as possible even if with varying degrees of intensity depending on the context.

Q18: What other mechanisms should be considered to foster more effective collaboration with national authorities and civil society organizations?

VLOPs and VLOSEs should consider developing narrow, focused HRIAs and other due diligence processes especially crafted to deal with electoral process. In such a context, engaging relevant national authorities and local NGOs as part of the stakeholder engagement process should come naturally.

Q19: Are there any additional resources that help providers of VLOPS and VLOSEs identify relevant organisations/experts at the national level?

**3.6. After an electoral period**

Q20: Do you agree with the recommended best practices in this section?

Q21: What elements should be included in voluntary post-election review by providers of VLOPs or VLOSEs to assess the effectiveness of their risk mitigation strategies?

**3.7. Specific guidance for the elections to the European Parliament**

Q22: What are your views on the best practices proposed in this section?

Q23: What additional mitigation measures should be considered for the elections for the European Parliament present for online platforms?

### 5. CONCLUSION

## Q24: What additional feedback or suggestions do you have regarding these guidelines?

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## Background Documents

Consultation_version_-_DSA_election_guidelines.pdf

Consultation_version_-_DSA_election_guidelines__FR.pdf

Consultation_version_-_DSA_election_guidelines_clean_DE.pdf

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