

Fundamentals of the Online Responsibility Framework:

Introduction of a Governance Body

Executive summary

In a landmark publication in January 2020, DOT Europe (previously called EDiMA) called on the European Commission to introduce an Online Responsibility Framework to help internet companies in their efforts to do more to tackle illegal content online.

After extensive member and stakeholder consultation, we are now publishing a series of papers aimed at developing the fundamentals of this Framework and exploring how it can fit into ongoing discussions on the Digital Services Act (DSA).

This fourth paper in the series focuses on the potential need for an oversight structure to ensure the effectiveness of the Online Responsibility Framework for internet users. We believe that a robust governance system is required and that oversight is not just advisable, but is a necessary component of the DSA.

Why is a governance body needed?

The online responsibility framework is built on the basis that all stakeholders in the online ecosystem have a responsibility to tackle illegal content online. Of course, each service provider is different, as is their service offering, meaning that different measures and tools are required for different services to reduce the prevalence of illegal content effectively. One-size-fits-all will not work.

Under the Online Responsibility Framework, service providers are empowered to implement tools which are best suited to their services in an effort to live up to their responsibility. Examples include algorithms to remove or demote certain content, repeat offender policies, the deployment of human review or a database of hashes.

Allowing internet companies to determine which tools and systems will best meet the responsibility required allows flexibility and encourages them to introduce the most effective measures for their specific services. However, bad actors do exist and given that not all services will necessarily step up to this responsibility, there is also a need for accountability. To ensure that internet companies meet their responsibility in a fair and transparent manner and to help ensure that illegal activity does not simply migrate from responsible internet companies to less responsible ones, it is essential that an independent governance body or structure is in place. Any such governance body should also oversee other stakeholders in the online ecosystem (such as rightsholders, law enforcement, trusted flaggers), each of which have a role to play and should bear responsibility for their action or inaction.

While this oversight should apply to all actors, this paper focuses solely on DOT Europe's vision for the interaction between service providers and the governance body.

What should the governance body do?

The governance body should oversee the degree to which the systems and tools put in place by internet companies meet the level of responsibility demanded of them. The governance body should assess the level of systemic breaches and level of observed harm on given services, and measure the effectiveness of the efforts undertaken by the service providers to tackle the observed harm arising from the presence of illegal content or activity. In this way, the effectiveness and proportionality of the measures implemented by each service can be assessed.

We propose that the governance body be responsible for assessing the overall effectiveness of the systems put in place by service providers under the Responsibility Framework, as opposed to assessing individual failures. It is impractical for any pan-European governance body to be charged with assessing the legality of specific activities or pieces of content, as the resources required would be immense and it would detract focus from systemic – and therefore more serious – breaches of responsibility.

In addition, the legality of individual pieces of content and the actions and activity related to that content are currently executed by national courts – and this should remain to be the case.

What would the governance body need?

DOT Europe's members operate in many different countries and so have experience operating within a variety of legal structures and oversight models. In our collective experience, the governance models which work most effectively are those which:

- Have the requisite technical and sector expertise
- Are resourced appropriately to carry out their missions
- Take a consultative approach to the work
- Work within a system of strict procedural rules and judicial oversight
- Have concrete, clear and transparent missions, objectives and guiding principles

In order for a governance body to be effective, it should be empowered to meet these key criteria.

What should the mission of the governance body be?

The governance body should have three central objectives:

To monitor:

The governance body should be required to monitor and observe the efforts, systems and tools put in place by internet companies to ensure that they are appropriate for them to meet their responsibilities.

To oversee:

Having assessed the effectiveness of the efforts, systems and tools, the governance body should identify systematic breaches and bad faith failures to meet responsibilities in order to identify and weed out bad actors.

To advise:

The governance body should be required to keep policy-makers updated on the efforts, systems and tools put in place by service providers and other relevant actors.

In executing its mission, the governance body should be bound by a series of principles in order to ensure that its activity is balanced against fundamental rights, with a view to keeping a balance between the freedom of expression, the freedom of information, and the freedom to conduct a business.

What form should the governance body take?

The specific set-up for the governance body is ultimately a matter for policy-makers. However, our members have experience of the variety of existing oversight models across the world and can offer insight into models which are more likely to achieve the objective of keeping people safe online while encouraging growth and innovation in the EU Internal Market. Below are three potential options which we believe are most likely to be successful:

- The establishment of a new and independent EU-level body with a unified approach across all Member States. A new body can have its missions, staff and expertise tailored to the online ecosystem, whereas existing bodies already have a specific administrative culture and are specialised on other fields (networks, audiovisual, etc.). However, the establishment of a new body at EU level will be a very lengthy and complicated initiative, not just from a resourcing and staffing point of view (particularly vis-à-vis expertise) but also to take account of the different Member State cultural and legal nuances for content and activity online, as well as languages.
- The empowerment of coordinated national bodies operating within the country of origin principle. These bodies would oversee the implementation of the framework by service providers established in their Member State for activity across the EU. This system could be operational quickly but the potential variance in the authorities selected by each Member State risks resulting in differences in enforcement, an uneven distribution of enforcement across Member States and potentially a lack of required expertise.
- The empowerment of national governance bodies to oversee the implementation of the framework within their Member State. A strong level of EU coordination should then be added, similar to structures such as BEREC or ERGA for example. Under this specific framework, the expertise and bandwidth of existing national governance bodies as well as the feasibility of establishing new national governance bodies should then be assessed. This approach risks creating a challenging operating environment for smaller companies less adept at dealing with multiple regulatory environments and risks seeing varying levels of enforcement across different Member States. It could likely be operational more quickly than the creation of an EU-wide governance body but could lack the required expertise if building on existing national bodies, rather than creating new ones.

- DOT Europe (previously called EDiMA) is the voice of the leading internet companies in Europe. DOT Europe's mission is to develop ideas and support policy initiatives that foster an innovative, open and safe internet for Europe's citizens and businesses. More information is available here: <https://doteurope.eu/>
- DOT Europe represents 19 of the leading internet companies. Its members produce and manage a variety of products, services and applications including browsers, entertainment platforms, social networks, marketplaces and review sites. More information is available here: <https://doteurope.eu/members>

• *In January, DOT Europe launched a new position paper calling for a new framework for Responsibility Online in the context of the Digital Services Act. More information is available: <https://doteurope.eu/policy-areas/online-responsibility-framework/>*

• *DOT Europe's feedback on the Digital Services Act Roadmap Consultation can be found here: <https://doteurope.eu/wp-content/uploads/2020/09/EDiMA-response-to-Digital-Services-Act-public-consultation.pdf>*