

EVALUATION: 100 DAYS OF THE DSA

7 December 2023

METHOD

For the past 100 days now, certain providers have been obliged to comply with the regulations of the Digital Services Act (DSA). The Federation of German Consumer Organisations (Verbraucherzentrale Bundesverband – vzbv) evaluated twelve online platforms and search engines (Amazon, Apple App Store, Booking.com, Facebook, Google Shopping, Google Search, Instagram, Snapchat, TikTok, X (previously Twitter), YouTube, and Zalando) to see how they are implementing the regulations. The evaluation focused on Article 14 (GTCs), Article 25 (online interfaces /dark patterns), and Article 26 Paragraphs 1 and 2 (transparency about advertising). Following an initial assessment in August 2023, vzbv also looked again at the implementation of Article 12 (Points of contact) and Article 27 in connection with Article 38 (Recommender systems).

The service providers in question belong to the group of “very large online platforms” (VLOP) or “very large online search engines” (VLOSE) that the European Commission defined as such on 25 April 2023. The DSA regulations have applied to them as of 25 August 2023.

vzbv carried out the evaluation on the basis of information available on the providers’ websites or apps¹ between 12 October and 17 November 2023.²

FINDINGS FROM THE EVALUATION OF ARTICLE 14 (1) AND (5) (GENERAL TERMS AND CONDITIONS)

According to Article 14 (1) DSA, providers’ general terms and conditions (GTCs) must explain in clear, simple, and user-friendly language any restrictions imposed on users as well as providing information on content moderation and internal complaint handling systems. In addition, providers must present users with a concise summary of the GTCs in clear and unambiguous language (Article 14 (5)).

vzbv assessed the GTCs of the websites of Booking.com and Google Search as well as the TikTok and X (Twitter) apps.

All the providers in question either include introductions or summaries to their GTCs or provide a link to them. While the GTCs on the Booking.com and Google Search websites were accessible via a single click from the main website, from vzbv’s point of view the GTCs found in the TikTok and X (Twitter) apps were harder to access and not self-explanatory. In both instances, several clicks were

¹ Insofar as the evaluation required customer or user accounts, vzbv used basic versions of accounts as opposed to creator or similar accounts.

² vzbv assessed the results using a system of pre-established categories based on the legal regulations. vzbv randomly selected which VLOPs and VLOSEs to evaluate with respect to the individual DSA articles. Within the scope of Article 26, the pre-selection was limited to social media VLOPs, see *Grisse*, in: Hofmann/Raue (Ed.), Digital Services Act, 2023, Art. 26 (50). The random selection followed from this pre-selection.

necessary to access the GTCs via the profile and legal information (X (Twitter)) or under “settings and data privacy” (TikTok).

In general, vzbv found that the companies provided comprehensible GTCs and incorporated emphases and links in a clear manner. This is particularly the case regarding Booking.com and Google Search. When it comes to TikTok, however, the user friendliness suffers due to the strikingly large number of linked cross-references to other regulations (sometimes in English, despite the fact that the originally examined GTCs were in German). Long sentences and paragraphs rendered the GTC of X (Twitter) linguistically complex. vzbv was unable to find any direct printing and saving functions for the GTCs in the two apps TikTok and X (Twitter).

TikTok has included the obligatory information about procedures and measures for content-related restrictions imposed by the provider, including content moderation and possible legal remedies for users, in its GTCs and in the summary. Booking.com referred to “Standards and guidelines for content” in the summary and via a link in the GTCs; however, when vzbv tested this link, the system displayed an error message, meaning that the information was not accessible. Regarding the two other providers (X (Twitter) and Google Search), the obligatory information was either completely or partially lacking in the GTCs and in the summary.

The summaries were between half and a full standard A4 page in size, or five A4 pages in the case of TikTok. When the providers use numerous cross-references to include other regulations and directives (some of them in English, which creates an additional hurdle for German consumers), it can greatly increase the relevant number of texts relevant to the use of such a service can increase considerably. The evaluation showed that the providers’ individual texts can run to a total of 40 to 50 standard A4 pages. This makes clearly structured and comprehensible summaries particularly important for users.

RESULTS OF THE EVALUATION OF ARTICLE 25 (ONLINE INTERFACES/DARK PATTERNS)

Article 25 prohibits providers of online platforms from using “dark patterns”. These are manipulative or deceptive practices on the user interface of digital applications. Companies use them to encourage users to take actions that may not be in their own interests but serve the interests of the company.³

vzbv’s evaluation shows that all four providers assessed (Amazon, Booking.com, Google Shopping, YouTube) either completely or partially fail to comply with the DSA’s prohibition of dark patterns.⁴ They design their website interfaces in such a way that, in vzbv’s view, consumers are deceived, manipulated, or prevented in other ways from making free decisions.

The design trick of using colours to highlight certain options is very common. All four providers that were assessed highlight certain choices – presumably those that benefit the company – when users are asked to make a decision.

Amazon, for example, uses a striking yellow to highlight the button to conclude an Amazon Prime Subscription (which may entail costs) during the order process. The

³ A detailed definition of dark patterns can be found in Recital 67 of the DSA.

⁴ In addition to the design tricks described, the providers evaluated also use dark patterns such as: company-friendly default settings, scarcity tactics, time pressure, forced continuity patterns, and hidden subscriptions/services. vzbv also noted other practices that presumably do not fall under the DSA’s scope of application. vzbv will not elaborate on them in this report. Furthermore, dark patterns are not always distinct from one another and may overlap. vzbv therefore cannot rule out other classifications to those used.

button to continue the process without Prime remains white. In another instance, Amazon uses only text to denote the option to continue the process without concluding Prime membership. This might lead consumers to click on one of the highlighted buttons and thus enter a paid subscription.

One provider repeatedly asked users to choose from options they had already selected: YouTube users can activate playback history in order to get personalised music suggestions. Even if consumers who use the service with their Google account have already rejected this setting when creating their Google account, YouTube repeatedly and in different places asks them to make the selection. In some instances, the provider emphasises certain options that aim to encourage users to activate the setting. The repeated prompting might lead users to consent to the processing of their personal data (videos viewed, search terms used, other activities, possibly across devices).

Three of the four providers assessed make it more difficult to end a service or delete an account than to register for a service or set up an account. They are relying on users tiring of the amount of clicks or the time involved in deleting an account and therefore possibly abandoning their action.

In vzbv's view, users have to navigate a particularly confusing menu to delete their Booking.com account. They also have to select a reason for the deletion. Registration, on the other hand, is more straightforward. Even rather subtle tricks like these can prevent people from acting on their desire to delete their account.

FINDINGS FROM THE EVALUATION OF ARTICLE 26 (1) AND (2) (TRANSPARENT ADVERTISING)

Article 26 ensures that consumers can easily recognise advertising content on online platforms and receive information as to why they are shown a certain advertisement. vzbv assessed the social media VLOPs Instagram, Snapchat, TikTok, and X (Twitter) regarding implementation of Article 26 (1) and (2).⁵

All assessed VLOPs label content as advertising in accordance with the requirements set out in Article 26 (1). Instagram, Snapchat, TikTok, and X (Twitter) also named the companies in whose name the advertising is shown, as required.⁶

Correction:

“In the first published version of this evaluation it was stated that Snapchat does not label advertising as such. This statement was inaccurate and has been corrected. According to its own information, Snapchat labels relevant content as advertising and identifies both the advertiser and the advertising parameters.”

Only Instagram allows users to discover who funds the advertising, via the menu item “Beneficiary and Payer”. However, at least four clicks were needed to access the information.⁷ Additionally, it was possible to document one specific case of

⁵ vzbv evaluated TikTok for advertising in videos, Instagram for advertising in the feed and in Stories, X (Twitter) for advertising in the feed, and Snapchat for advertising in Spotlights.

⁶ Our evaluation only looked at advertising from legal persons/entities.

⁷ TikTok and X (Twitter) featured no menu item or similar option for users to access information about the funding person. However, this might be because in the examples documented the advertiser and the funding person were identical.

false advertising featuring a famous person who on her own Instagram account had already drawn attention to these illegal advertisements.

The biggest issue with respect to implementing Article 26 (1) concerns the transparency of target groups for advertising. The regulation states that the parameters for the advertising target group must be directly and easily accessible via the respective advertisement. None of the assessed VLOPs complied with this requirement.⁸ Furthermore, this information must be, among other things, clear and unambiguous. There is considerable room for improvement in this area. All the VLOPs evaluated do list parameters to show how they define the users to whom they show a specific advertisement (e.g. age, main location, or system information).⁹ However, clarity is compromised by the use of vague terms such as “possible”, “one possible reason”, “potentially”, etc. Thus which factors are decisive remains unclear to users. Only Snapchat adds “Higher weight”/“Lower weight” to the parameters – however without reference to specific advertisements. Due to the above-mentioned vague wording used by all assessed VLOPs, it is unclear whether the named parameters are the most important factors determining why users see certain advertisements.

Some of the parameters are themselves very open to interpretation. They include phrases such as “your activities and other factors” (Instagram), “additional user data” (TikTok), “recent web activity” (X (Twitter)), and “information [...] about you provided by our partners and advertisers” (Snapchat).

All assessed VLOPs provide information about how advertising parameters can be adjusted; however, the options are not directly and easily accessible. Only TikTok offers a comparatively simple process: by clicking on “About this advertisement” in the menu, users can directly access settings for personalised advertising.

Article 26 (2) instructs providers of online platforms to offer their users a function with which users can declare their own content a form of commercial communication. The provider is then obliged to clearly and in real time label the content as such for other users. TikTok is the only social media company vzbv evaluated that meets this obligation.

RE-EVALUATION RESULTS FOR ARTICLE 12 (SINGLE POINTS OF CONTACT) AND ARTICLES 27 AND 38 (RECOMMENDER SYSTEMS)

Back in August 2023, vzbv first assessed the implementation of Article 12 (by Amazon, Apple App Store, Facebook, and TikTok) and Articles 27 and 38 (by Amazon, Booking.com, Google Search, and Zalando). vzbv noted various issues. For example, contact options were not always easily accessible. Furthermore, the platforms' recommender systems were either insufficiently or not at all transparent.¹⁰

The more recent evaluation of the same providers showed some improvements.

Regarding Article 12, Apple and TikTok now provide an email address that they label a single point of contact in accordance with DSA requirements. Facebook offers a contact form as a “Single point of contact for users in EU member states”. In

⁸ At least two clicks were always required to receive even part of the information. See *Grisse* in: Hofmann/Raue (Ed.), Digital Services Act, 2023, Art. 26 (33).

⁹ No paid advertisements were played in the Snapchat test account during the evaluation period (12 October to 17 November 2023). On 6 December 2023, Snapchat sent vzbv the following information: “Snapchat identifies advertisements as such and in every Spotlight there is a link to a menu that says “Why am I seeing this content?” and that, with three clicks, leads users through an explanation of the advertising parameters.”

¹⁰ Cf. <https://www.vzbv.de/pressemitteilungen/verbraucherschutz-kommt-bei-grossen-online-plattformen-weiter-zu-kurz>.

vzbv's view, however, these points of contact are not easily accessible, as all three providers require users to first click through the subpages of the respective GTCs or help sections. Also problematic, from a (German) consumer perspective, is the fact that some of the information about the point of contact is only available in English (TikTok) or the fact that the provider only accepts English for communication (Apple).

Amazon also provides a contact email address for users. It is relatively easy to find in the platform's legal information. However, it is unclear whether it represents a single point of contact as set out by the DSA, as the provider does not label it as such and the platform's customer service area proposes other ways of making contact.

All four of the providers evaluated with respect to Articles 27 and 38 (Amazon, Booking.com, Google Search, Zalando) now offer information about essential aspects of their recommender systems and explain why users are shown certain information. However, the extent and comprehensibility of this information varies.

The four platforms also now offer an option for their recommender systems that is not based on profiling, as required by Article 38 DSA. These options function in different ways and, from vzbv's point of view, are not always easy to find. For example, while Booking.com provides a permanently accessible link at the foot of its website for users to "Manage personalised recommendations", Amazon users must first log into their customer account and select "Recommendation preferences" under "My account" to access the relevant option.

vzbv also notes that three of the four providers evaluated (Amazon, Booking.com, Zalando) activate profiling as a default setting, meaning consumers must deactivate it themselves if they do not desire it. Only Google Search does not activate profiling as a default setting. When users first open the site they can choose to accept or reject "Search customisation" from the cookie banner that appears.

Contact

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The Federation of German Consumer Organisations (Verbraucherzentrale Bundesverband e.V.) is registered in the German Lobby Register and in the European Transparency Register. You can view the relevant entries [here](#) and [here](#).