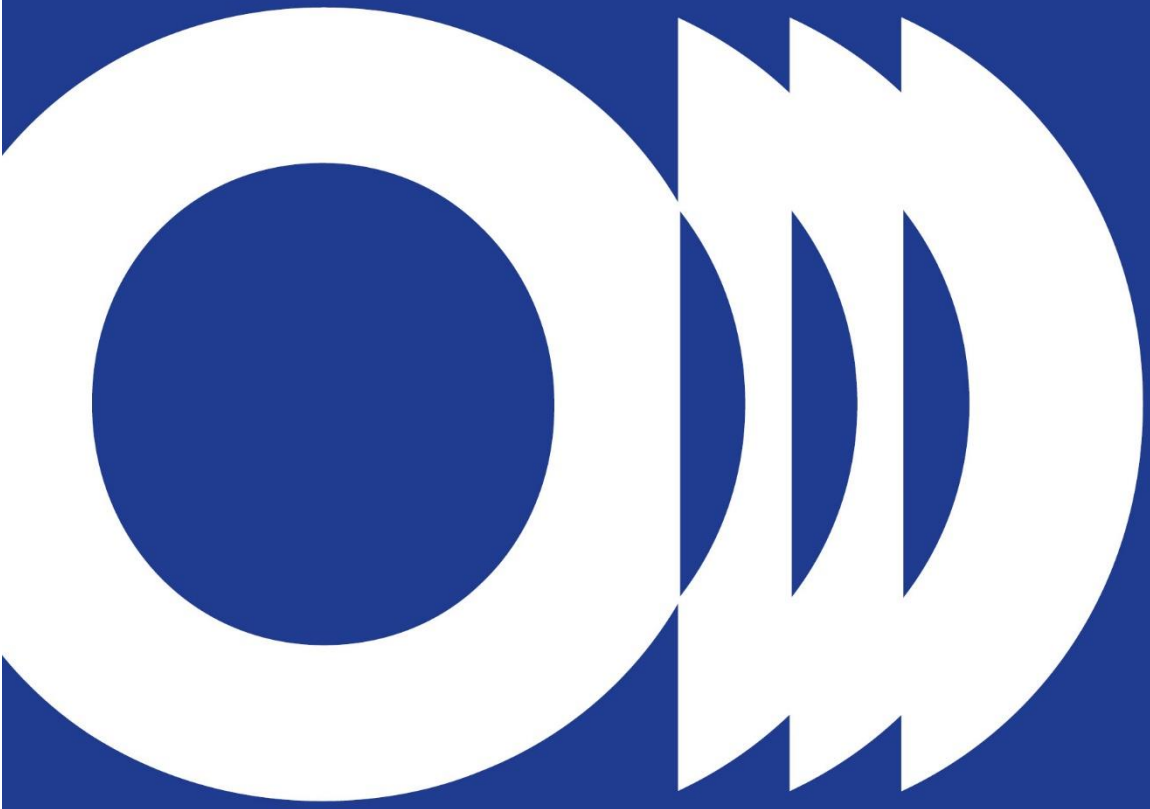
EBU

OPERATING EUROVISION AND EURORADIO

UNESCO DRAFT GUIDELINES ON REGULATING DIGITAL PLATFORMS - A MULTISTAKHOLDER APPROACH

EBU CONTRIBUTION



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Introduction:

Digital platforms constitute powerful gatekeepers between media services and their audiences. Citizens increasingly rely on these platforms to access media services to understand and engage with the world around them. As a result, a small number of private companies control the digital public sphere: They decide who can speak, which ideas get heard, and, most importantly, which ideas get traction. However, their interests are not at all aligned with those of their users, let alone with the interests of the democratic public. Driven by commercial considerations, their recommender systems and algorithms create filter bubbles and promote sensational and even harmful content, while restricting access to a plurality of trustworthy media content that adheres to the highest journalistic standards. To preserve freedom of expression and information – for which media freedom and pluralism plays a vital role – digital platforms must be regulated in a way that preserves the social and democratic role of the media in the digital age.

The European Broadcasting Union (EBU) – representing public service media in Europe and beyond[1] – supports the objective of regulating digital platforms to ensure that these gatekeepers become more transparent and accountable and follow rules that promote the people's access to reliable information and capacity for self-determination.

General remarks on the draft Guidance:

The EBU generally supports the aspirations of the UNESCO to produce a Guidance for regulating digital platforms (hereinafter "Guidance"). Our association has closely followed and contributed to the legislative process on the European Union's Digital Services Act[2] – the EU's regulatory framework for digital platforms, which was adopted in autumn 2022. Our Members work closely with digital platforms to ensure that they serve all audiences – especially young audiences – in accordance with their public service mission. Informed by their experience and the challenges they face we would like to propose the following improvements to the current draft Guidance.

Need for structural and content-neutral approach to diminish the risks posed by harmful content

While the EBU shares UNESCO's concern regarding "content that damages human rights and democracy", we are even more concerned about the risks of targeting such content directly through content-based rules. Any guidance which seeks to regulate digital platforms and promote freedom of expression and information online, should aim to regulate the content moderation and curation mechanisms of platforms through structural and content-neutral rules. Thus, we welcome the Guidance's stated focus on "structures and processes" (para. 6). At the same time, we are concerned about various references to types of speech that are considered to be undesirable but not further defined in the Guidance (e.g., "harassment", "conspiracy theories", "misinformation", "disinformation", "hate speech", "content that is threatening or intimidatory", "potentially damaging

[1] The EBU is the world's leading alliance of public service media. The EBU has 112 member organisations in 56 countries who operate nearly 2 000 television, radio and online channels/services, reaching an audience of more than one billion people in 153 languages.

[2] See for example the EBU position paper on the proposed Digital Services Act and the EBU press release following its adoption by the European co-legislators.

to democracy and human rights"). We suggest avoiding those references throughout the Guidance while strengthening its structural focus through content-neutral rules.

Harmful content, such as misinformation, disinformation or hate speech, does of course pose a substantial and urgent threat to societies worldwide. Yet, these risks stem foremost from the reckless spread and amplification of such content by digital platforms in pursuit their commercial interests. Meanwhile, protecting and promoting access to reliable information – for instance, content of public service media that adheres to the highest journalistic standards – would build resilience of citizens to misinformation, disinformation and hate speech, thereby minimizing their harmful effects while avoiding the threats stemming from giving even more power to a small number of private corporations that are not accountable to the public.

Focusing on restricting harmful content as such, rather than regulating the platforms' mechanisms for content moderation and curation, also risks investing governments with broad authority to distort, constrain, and censor public discourse in the digital sphere. Likewise, trying to promote "accurate and reliable information" as such risks inviting governments to check editorial content and disseminate propaganda. These risks are real. All around the world today, governments are using laws that criminalize "fake news" to suppress legitimate dissent and censor critical media.

In its current form, the Guidance gives too much power to governments and private companies to decide which type of content they consider to be harmful (e.g., "potentially damaging to democracy and human rights") or desirable ("accurate and reliable information"). We propose that the Guidance should avoid principles or rules that are based on different types of content and focus on promoting a healthy and vibrant digital public sphere through structural and content-neutral principles and rules.

Preserving media freedom and access to a plurality of reliable information in the digital age

One of the declared aims of the Guidance is "supporting freedom of expression and the availability of accurate and reliable information in the public sphere" (para. 6, see also para. 16). Supporting freedom of expression and information in the digital age crucially entails fostering an open and pluralistic media landscape online. Today, digital platforms are where a significant share of the speech that is most important to individuals and societies take place. To fulfill their distinctive social and democratic role, media services – and especially public service media – must be able to reach audiences without arbitrary or unjustified interferences, neither from governments nor from private companies. Therefore, any Guidance on regulating digital platforms should contain media-specific protections against such interferences.

Likewise, availability of accurate and reliable information in the public sphere presupposes access to a pluralistic media offer on digital platforms. The content moderation and curation mechanisms of these platforms cannot replace the editorial decisions made by media services in accordance with journalistic standards. Therefore, to ensure that people can find accurate and reliable information that is relevant to them, it is crucial that a diversified media offer is not only available on digital platforms, but prominently placed to enable users to discover a plurality of media content and services. A change in terminology from "availability" to "discoverability" might better express the general concern that users find it increasingly difficult to discover and identify accurate and reliable information on digital platforms, even though it is generally available.

The EU's approach to regulating the digital sphere illustrates that the special role media play in the digital public sphere. While the Digital Services Act fails to provide media-specific protections, the EU has recently set out to rectify this shortcoming through the proposed European Media Freedom Act (EMFA). Article 17 EMFA provides additional procedural safeguards to regulated media services when digital platforms restrict access to their content. Moreover, Article 15(2) sets out to ensure the appropriate prominence of media services of general interest, that is, promoting the discoverability of media services that promote general interest objectives, such as media pluralism and cultural diversity.[3] The Guidance should include such media-specific protections from the outset.

As UNESCO's mandate to regulate digital platforms centers on defending media independence and pluralism and promoting access to accurate and reliable information in the digital sphere, we would expect the Guidance to expand on the EU's approach and take more ambitious steps to protect and promote the content and services of regulated media outlets on digital platforms.

Give sufficient time for consultations and deliberations on the Guidance

Finally, we would like to encourage the UNESCO to take sufficient time for stakeholder consultations and deliberations among States on the Guidance. Considering that it has taken the European Union almost three years to consult stakeholders, discuss on and adopt the Digital Services Package, a transparent process which does justice to the complexity of the issues at stake should be established.

Comments on specific paragraphs of the draft Guidance:

In addition to our general remarks, the EBU would like to submit the following comments and concrete rewording / drafting suggestions in relation to the different sections and paragraphs of the draft Guidance.

Paragraph 1:

The EBU recommends defining the digital platforms to which the Guidance is supposed to apply more clearly and to specifically refer to app stores as an example of such services. EBU Members have encountered arbitrary decision-making of app stores[4] in relation to their offerings many times in the past:

[3] This objective is also reflected in Paragraph 12 of the Annex of the UNESCO Universal Declaration on Cultural Diversity: "12. Encouraging the production, safeguarding and dissemination of diversified contents in the media and global information networks and, to that end, promoting the role of public radio and television services in the development of audiovisual productions of good quality, in particular by fostering the establishment of cooperative mechanisms to facilitate their distribution."

[4] The Children's app Ramasjang of our Danish Member DR was removed by Google from its app store in 2020, because the tech giant considered parts of the programmes contained in the app as incitement to drugs and violence: https://www.dr.dk/nyheder/kultur/google-slettede-drs-app-til-boern-nu-boejer-techgiganten-sig

> "digital platform services that ~~***can disseminate***~~ ***allow their users to disseminate*** ~~***users'***~~ content to the wider public, including social media networks, search engines***, app stores*** and content sharing platforms".

To increase legal certainty, it should be clarified that other digital platforms that do not fulfill the condition of allowing their users to disseminate content to the wider public, such as video-on-demand platforms or cloud services, do not fall under the Guidance's scope.

Finally, we would delete the reference to 'safety' when describing the "minimum ~~***safety***~~ requirements" for all platform (see as well paragraph 47). In our view, the Guidance does not lay down "safety requirements", but rather transparency requirements and procedural safeguards and rights for the benefit of users.

Paragraph 2:

The EBU recommends clarifying that the intention of the Guidance is not "to regulate online content" as such but "to regulate digital platform services and the way they manage, moderate and recommend content of and to their users". Further to our general remarks (see above), we take the view that online content should be regulated in the same way than content made available offline and does thus not necessitate a specific regulatory framework.

Paragraph 5:

We welcome that UNESCO wants to build on its work in the domain of broadcast regulation for the development of the Guidance. Since broadcast media and the content they disseminate are traditionally highly regulated in comparison to content disseminated by other users, it is necessary that digital platforms recognize, respect and promote existing media standards. Specific safeguards in relation to the way platforms manage, moderate and curate regulated media content should therefore be considered.

Paragraph 8:

As explained above, "online content" as such does not represent a new regulatory challenge. Rather the way in which digital platforms manage, moderate and curate content and in particular systems and processes which lead to promoting and amplification of certain sensational content is problematic and requires regulatory intervention and oversight by independent authorities.

Paragraphs 11 to 12:

In our view, paragraphs 11 and 12 very well describe the objective of the Guidance.

Paragraph 15.1:

In line with the comments provided on other paragraphs, we advocate for clarifying the objective and scope of the Guidance through the following targeted changes:

> **15.1.** provide guidance in developing regulation that can help Member States address moderation and curation processes of content ***by digital platform services, tackle the availability of illegal content and content*** that potentially damages democratic discourses and structures and human rights, while protecting freedom of expression and other human rights ***and content standards developed in other fields, such as broadcasting***;

Paragraph 16:

We recommend to further specify the objective of the Guidance. It should be made clear that "freedom of expression" also entails the freedom to receive and impart information and ideas through any media. We would further advocate for mirroring paragraphs 11 and 12 with a view to clarify that the Guidance focuses on structures and processes used by digital platforms to manage, moderate and curate content made available by their users.

Paragraph 17:

The terminology "content issues" is rather broad and leaves a lot of room for interpretation. We would recommend replacing it by "content moderation, management and recommendation", which is more specific and in line with the objective of the Guidance.

Paragraph 18:

The Guidance should not only outline "government responsibilities to be transparent and accountable about the requirements they place upon digital platform services". It should equally incite States to require digital platforms in their regulatory frameworks to be more transparent and accountable towards their users for their content moderation, management and recommendation decisions.

Paragraph 19:

We are surprised that this paragraph but also others only refer to "potentially harmful content". The availability of illegal content is equally an issue which should be tackled by digital platforms. We would hence advocate for targeted changes:

> "This will also require finding a means to deal with the ***availability of illegal content and spread of*** potentially harmful content that may damage democracy and human rights […]."

Paragraph 20:

In line with the European Union's draft European Media Freedom Act,[5] we would suggest to also initiate structured dialogues and cooperation between digital platforms and relevant stakeholders, in particular the media, to ensure that arbitrary platform behavior and commercial interests of platforms do not undermine media standards, editorial integrity and ultimately media freedom and pluralism.

Paragraphs 21 to 22.5

The proposals in this section are broadly in line with the EU's Digital Services Act and its provisions on the transparency of terms and conditions, statement of reasons, internal complaint-

[5] Article 18 of the proposed European Media Freedom Act requires the organization of "a structured dialogue between providers of very large online platforms, representatives of media service providers and representatives of civil society to discuss experience and best practices in the application of Article 17 of [the European Media Freedom Act], to foster access to diverse offers of independent media on very large online platforms and to monitor adherence to self-regulatory initiatives aimed at protecting society from harmful content, including disinformation and foreign information manipulation and interference".

handling mechanisms and transparency of recommender systems. However, we would suggest adding further clarity to the sub-paragraphs.

It should be made clear that digital platforms should not solely rely on algorithms for content governance policies and practices. Algorithms are oftentimes immune to social, cultural and linguistic contexts. Platforms should therefore not hide behind algorithmic decision-making, but invest sufficient resources in human review, in particular when interacting with their users on the basis of an allegedly erroneous restriction or removal of content.

> **21.1 Platforms have content governance policies and practices consistent with human rights standards**, implemented algorithmically or through human means (with adequate protection for the well-being of human moderators); ***human review should be the standard whenever a platform deals with complaints by users about decisions, including restrictions and removals, made in relation to their content;***

It should be specified what digital platforms should be transparent about and towards whom.

> **22.2 Platforms are transparent** ***towards their users, in particular about the terms and conditions they use to moderate content and the recommender systems they use to curate content,*** being open about how they operate (taking into account commercial confidentiality) with policies being ~~***explainable***~~ ***set out in clear, plain, intelligible, user-friendly and unambiguous language, publicly available in an easily accessible and machine-readable format;***

Platforms regularly change their terms and conditions. If users are not informed about these changes, they could encounter restrictions and removals of their content. Platforms should therefore be encouraged to inform their users about any changes they make to their terms and conditions and content moderation policies.

> ***Platforms inform their users of any significant change to content governance policies and practices.***

Rather than specifying that independent oversight should consider the impact that regulation has on companies' rules and practices, the focus should be on the actual compliance by the companies with the regulation.

> **22.5 There is independent oversight** and assessment of the ***compliance of companies with the*** ~~**impact that**~~ regulation ~~***has on companies' rules and practices***~~, with a view to adjusting regulation to more effectively protect information as a public good.

Paragraphs 25 to 25.6:

In addition to setting out principles in relation to the transparency, explicability, and reporting on potential restrictions, removals or blocking of content by digital platforms, it should be considered to add further principles on other kinds of processes that might affect access to and findability of content or negatively affect human rights, such as recommender systems used by digital platforms to curate content in the form of promoting or down-grading certain content.

Paragraph 25.4:

We welcome that the Guidance acknowledges that content moderation practices of digital platforms can negatively affect fundamental rights and freedoms, such as freedom of expression, and that safeguards are put in place to protect these.

As already explained, media organisations, including public service media, regularly encounter restrictions by platforms of their content and services. This may negatively affect citizens' access to editorial content which abides by journalistic standards and is overseen by national media regulators, the ability of media organizations to reach their audiences, the integrity of editorial content and ultimately media freedom and pluralism.

Broadcast media, and in particular public service media, are traditionally heavily regulated to ensure media independence and adherence to the journalistic standards. Whenever they disseminate their content through digital platforms, their content may be presumed to abide by relevant media standards. It should therefore be clarified that digital platforms should grant safeguards to regulated media outlets for the purpose of protecting media freedom and safeguarding media standards in relation to any content moderation.

> **25.4** Any safeguards applied in relation to any content moderation that are put in place to safeguard ***media freedom and relevant media standards,*** freedom of expression and the right to information, including in response to government demands/requests, particularly in relation to matters of public interest, so as to ensure a plurality of views and opinions;

Such safeguards might take the following approach: Regulated media organizations, such as public service media, should be informed in advance if platforms want to tamper with their content and services. Whenever a platform intends to interfere with media content and services, there must be a dialogue with the media service prior to suspending or restricting content – since the content already meets certain standards. Complaints by media should be dealt with priority. This is important given the time-sensitive nature of media content and services.

Paragraphs 27 to 27.2:

It should be clarified that digital platforms should not be obliged by States to constantly monitor user activity to detect allegedly illegal or harmful content. At the EU level, a so-called "no general-monitoring obligation" applies, which prevents governments from putting such an obligation on digital platforms. We also think that a clarification is needed regarding the kind of content, notably illegal content, against which platforms should take quick and decisive action.

> **27.1** Platforms should, in policy and practice, through adequately trained and staffed personnel, ensure ***whenever they become aware of the availability of illegal content*** that~~***, at a minimum,***~~ there is quick and decisive action against ***it, in particular against*** child sexual abuse materials, promotion of terrorism, promotion of genocide, clear threats of violence, gender-based violence and incitement to hatred based on protected characteristics, ***and in accordance with the national laws,***

Moreover, it is necessary to clarify that an obligation for platforms to take action against illegal content should not lead to restrictions of editorial content, which is already regulated, and reports

for example on terrorism or child sexual abuse. The Guidance could take inspiration from the European Union's Terrorist Content Online Regulation.[6]

Paragraph 30:

We welcome that the Guidance seeks to oblige platforms to establish processes for users to appeal content moderation decisions. Since platforms regularly take calls on content, including broadcast content, which are erroneous because they are unaware of the national, historic or cultural contexts, it is necessary to equip users with an opportunity to challenge their content moderation decisions.

We would however welcome further specifications on how such complaint processes should work:

> ***Such processes must provide for effective recourse mechanisms, meaning that digital platform services should deal with user complaints in a timely, non-discriminatory, diligent and non-arbitrary manner. Complaint processes should be easy to access, user-friendly and enable and facilitate the submission of sufficiently precise and adequately substantiated complaints.***

Paragraphs 32 to 32.3:

We welcome that the Guidance seeks to enable users to report / flag / notify digital platforms of the availability of certain types of content, which could be considered harmful for other users. We are however surprised that the current draft does nowhere refer to the availability of allegedly illegal content which can constitute a serious risk.

Furthermore, we take the view that digital platforms should not be incited to give priority to user notices of "threatening or intimidatory" content. Platforms should take rapid action against in particular against illegal content. We also do not consider it realistic that platforms should give high priority to notices submitted by any ordinary user.

We therefore plead for the following targeted changes:

> **32. User reporting.** In supporting freedom of expression and the availability of accurate and reliable information in the public sphere, it is critical to empower users of digital platforms. In this regard, all, companies, governments, civil society organisations and academic institutions have a roll to play. Companies in particular, in addition to the platform providing information about its policies accessible in a digestible format and in all relevant languages, it should show how it allows users to report ***the availability of allegedly illegal content,*** potential abuses of the policies, whether that be the unnecessary removal of

[6] Recital 12 of the Regulation (EU) 2021/784 of the European Parliament and of the Council of 29 April 2021 on addressing the dissemination of terrorist content online states "Material disseminated for educational, journalistic, artistic or research purposes or for awareness-raising purposes against terrorist activity should not be considered to be terrorist content. When determining whether the material provided by a content provider constitutes 'terrorist content' as defined in this Regulation, account should be taken, in particular, of the right to freedom of expression and information, including the freedom and pluralism of the media, and the freedom of the arts and sciences. Especially in cases where the content provider holds editorial responsibility, any decision as to the removal of the disseminated material should take into account the journalistic standards established by press or media regulation in accordance with Union law, including the Charter. Furthermore, the expression of radical, polemic or controversial views in the public debate on sensitive political questions should not be considered to be terrorist content."

content, the presence of violent or threatening content, or of any other content which is in breach of the policies. Where possible, users should have access to a platform representative in their own country.

32.1 The user reporting system should ***allow users to notify digital platform services of the availability of*** ~~***give high priority to***~~ content that is allegedly ***illegal, harmful or*** threatening or intimidatory, particularly to groups with protected characteristics, ensuring a rapid response and, if necessary, by providing specific means of filing the report. This is particularly important when it to comes to gendered online violence and harassment. A pre-set template would allow the aggregation of similar complaints that would help identify systemic failings on the platform. At the same time, this guidance recognises that much of this will depend upon local and regional contexts.

Paragraphs 34 and 34.1:

Regulatory solutions can only be one side of the coin. User empowerment through media and digital literacy is equally important. We therefore welcome that the Guidance seeks to incite digital platforms to be transparent about and pay particular attention to equipping their users with the necessary skills to navigate their services.

Paragraph 37:

Globally active digital platforms that make profits thanks to their users in different countries should also allow these users to address them or at least to understand their content governance policies in their national or local languages. We deem it insufficient that the Guidance only refers to the 6 UN languages or to the 10 languages spoken by more than 200 million people. The EU's Digital Services Act, for example, obliges the largest digital platforms to make their terms and conditions available in all official languages of the Member States of the EU in which they offer their services.[7]

Paragraph 38:

Users, in particular business users, that disseminate content through digital platforms, should equally have access to non-personal, anonymized and aggregated data. Data is the currency of the platform economy. If media organizations, including public service media, do not have access to the data generated by the digital platforms with the media's content, it gives the platforms a competitive advantage.

38. Data access. Platforms should provide ***their users with*** stable access, wherever safe and practicable, to non-personal data and anonymised data ***generated by the platforms on the basis of the content posted by the user***. Access should be provided to data that is aggregated, ~~***or manifestly made public data for research purposes***~~ through automated means such as application programming interfaces (APIs) or other open and accessible technical solutions allowing its analysis.
38.1. They should ***also*** provide access to ***this*** data ***for research purposes, for example*** ~~***necessary to undertake research***~~ on content that is potentially damaging to democracy and human rights and support good faith research that involve their services.
38.2. There need to be safeguards with providing data access that ensures the

[7] Paragraph 6 of Article 14 Digital Services Act states "Very large online platforms and very large online search engines within the meaning of Article 33 shall publish their terms and conditions in the official languages of all the Member States in which they offer their services."

protection of privacy and respect of commercial confidentiality. For platforms to build reliable interfaces for data access, there will need to be alignment among regulators that can determine what is useful, proportionate and reasonable for research and regulatory purposes.

Paragraphs 41 to 45:

We welcome principles on independence of regulatory bodies. Regulatory systems can only be effectively overseen if the independence of the regulators is guaranteed, whether from the governments, politicians, the regulated industry, or other interest groups.

Paragraph 52:

Users of digital platforms should not be obliged to go first through the platforms' own internal complaint-handling mechanisms whenever they feel that a content moderation decision was erroneous or unjustified. If users feel restricted in exercising their right to freedom of expression, they should always be able to take legal recourse before a court.

The EU's Digital Services Act provides for the possibility to establish so-called out-of-court dispute settlement bodies[8] that users can call on when they disagree with a content moderation decision of a digital platforms. The Guidance should recognize such bodies as additional recourse mechanisms.

The majority of global online platforms already have internal complaint-handling mechanisms in place. Against this background, we do not think that the Guidance should seek to justify that platforms may struggle with unmanageable workload.

> **52.** O***therne*** option***s*** as ***an*** additional protection for users is for there to be an ombudsman for complaints about platforms ***and out-of-court dispute settlement bodies***. While ***users should be enabled to file in the first instance,*** complaints ***should be made*** directly to the digital platform service itself, in the event of no or an inadequate response, the user could go directly to the ombudsman ***or an out-of-court dispute settlement body***. ***This may result in an unmanageable workload, and an alternative for digital platform services with large volumes of content is for them to have independent complaints/appeals/redress processes, which the regulatory system can then evaluate.***

[8] Article 21 of the Digital Services Act establishes out-of-court dispute settlement bodies.