

Risk Report Digital Services Act 2023

Pursuant to Art. 34, 35, 36, Recitals 79-85, 86-90, 91

1 Introduction

The Digital Services Act (DSA) is a new piece of European Union (EU) legislation regulating digital intermediary services, such as hosting service providers and any online platforms operating within the EU. Very Large Online Platforms (VLOPs) are a specific new legal category under the DSA, which are assumed to have a significant impact on the EU's internal market. Platforms are considered VLOPs if they reach over 45 million monthly average “active recipients of the service” in the sense of the DSA. VLOPs have additional obligations under the DSA, such as conducting risk assessments to identify and mitigate systemic risks associated with their intermediary services.

Zalando offers a highly curated range of products and respective content in the sectors of fashion, beauty and related products and content. Zalando has a hybrid business model: Zalando primarily operates a retail business, complemented by a partner business (“Partner Program” and “Connected Retail Program”). For the retail business there is no storage or dissemination of any third party content, as it is Zalando’s own content and products. This constellation is not covered by the DSA. For the partner business, Zalando makes available information on products (in particular product pictures and descriptions) that are sold by partners. Due to our partner business, the European Commission considers Zalando to fall within the scope of the DSA and additionally has designated Zalando as a VLOP on April 25, 2023¹.

To meet the requirements that VLOPs identify and mitigate systemic risks associated with their intermediary services, Zalando prepared the present risk report. Since the DSA only applies to intermediary services and not to retail services, we focused on our partner business in this risk assessment. Therefore, this assessment covers relevant potential risks emerging from or influenced by the partner business as well as potential impacts on our customers.

This report states the relevance of these risk categories defined by the DSA for Zalando and our approach to risk assessment and mitigation.

2 Methodology

The DSA includes in its scope numerous online platforms with various business models and different risk profiles, and consequently does not specify any method for identifying or assessing risks or for preparing corresponding risk assessment reports.

Art. 34 DSA requires VLOPs to diligently identify, analyse and assess any systemic risks in the EU arising from the design or functioning of their service. The risk assessment must cover the four systemic risk categories² defined by the DSA and consider in particular whether and how the risk factors³ defined by the DSA affect any of the systemic risks.

Zalando therefore developed a methodology to **first assess the potential inherent risk related to our partner business compared to other online platforms within the scope of the DSA**. This assessment is based on specific criteria we have identified as influencing such risk (see Section 3.1).

¹ On June 27, 2023 Zalando filed a legal claim at the Court of Justice of the European Union to contest its designation by the European Commission as a “Very Large Online Platform” (VLOP) under the Digital Services Act (DSA). This lawsuit however does not suspend our obligations to comply with the DSA, including the rules for VLOPs.

² The four systemic risk categories defined by the DSA are 1) the dissemination of illegal content through the service of the VLOP, 2) actual or foreseeable negative effects for the exercise of fundamental rights, 3) negative effect on civic discourse and electoral processes and public security and 4) negative effect in relation to gender-based violence, the protection of public health and minors and serious negative consequences to a person's physical and mental well-being.

³ The risk factors specified by the DSA are Recommender Systems, Content Moderation, Applicable Terms & Conditions and their enforcement, systems for selecting and presenting advertisements, data related practices and influence by intentional manipulation of the service.

These criteria will be reassessed at least on an annual basis to ensure that any major changes in the nature of our business are adequately reflected and addressed.

Building on this, we conducted a **risk assessment of our partner business with regard to the four systemic risk categories specified in Art. 34 of the DSA (see Section 3.2)**. We used a more detailed risk catalogue developed internally based on the different selection criteria that Zalando customers can choose from when reporting potentially illegal or unwanted content under the “notice and action mechanism” required by the DSA. The individual risks contained in this risk catalogue were then assigned to the systemic risk categories defined by the DSA for VLOPs.

In a last step, we turned to the **six risk factors specified by the DSA (see Section 3.3) and assessed whether these risk factors have any potential significant impact for Zalando’s partner business with regard to the four systemic risk categories** of Art. 34 DSA.

To appropriately assess the identified risks in Sections 3.2 and 3.3, an initial risk assessment was performed in collaboration with experts from the respective responsible business areas, particularly considering how our partner business influences those risks. All risks are assessed in terms of their **probability of occurrence** as well as their **potential impact**, taking into account the currently implemented measures irrespective of DSA requirements.

The probability of occurrence considers the number of cases reported or the number of people affected by a certain risk. When developing the probability scale, we applied a conservative approach⁴ based on expert judgement or numbers provided by relevant departments. Impact was assessed in a qualitative manner considering the physical or psychological impact on customers as well as the reversibility of the caused negative effect. Based on the assessment results for probability of occurrence and impact, individual risks are classified into five risk classes⁵. The assessment of each of the four systemic DSA risk categories is determined by the aggregated risk level of the individual risks evaluated.

While this initial assessment is based on the expert judgement of the responsible business areas within Zalando, further assessments will be complemented at least once a year (as per Art. 34 DSA). Additional information such as feedback from the “notice and action” mechanism recently implemented in line with the DSA requirements will be included in the assessment.

3 Assessment Results

Overall, we assess Zalando's partner business as a very low risk service.

Out of the four systemic risk categories under the DSA, the risk category “Negative effect on civic discourse and electoral processes and public security” **does not apply to Zalando**.

For the **other three categories, the average probability and the average impact range between very low and low**.

We operate a responsible partner business with legitimate partners that must go through a stringent partner and product onboarding process. We have strict product quality and safety requirements and content guidelines in place that need to be accepted by our partners at the onboarding stage, as well as dedicated teams for product safety and Intellectual Property (IP) protection to validate, ensure and enforce compliance with these requirements and guidelines.

Products and content are uploaded by Zalando only, and content is moderated strictly. Moreover, if we receive any information about inappropriate, potentially unsafe or illegal content, we deactivate the concerned content or product directly. We investigate the case, which may include requesting further information related to product safety from the partner or sending the partner product for testing in laboratories, and depending on the nature of the content, we initiate a product recall.

⁴ In the event that more than 1 in every thousand (0.1%) of our products was affected, the probability would already be assessed as “medium”.

⁵ Very low, low, medium, high, very high.

Consequently, the products sold and content published on Zalando present a low risk profile, further reinforced by the fact that products are mainly fashion and beauty related. The high level of control we have built into our partner business is also reflected in the very low numbers of IP related cease-and-desist notices, product recalls, and safety notifications.

Our partner business does not impact potential risks connected with data protection. Data protection has our highest attention, ranging from dedicated privacy principles to our company privacy program that constantly monitors the way we conduct our business, and identifies and mitigates potential risks from a data privacy point of view.

The assessment results are described in more detail in the following sections.

3.1 Risks related to our partner business compared to other online platforms

In our risk assessment, we decided to not only assess the risks for the four systemic risk categories as defined by the DSA in Art. 34, but to start with an additional **risk assessment on the inherent potential risks relating to our partner business**⁶. The purpose is a more holistic assessment of the risks that Zalando's partner business may carry **compared to other online platforms within the scope of the DSA**.

For the respective risk assessment of our partner business model, we defined the following risk influencing criteria and rated each of these on a scale from very low (risk) to very high (risk):

- i. **Dependency on Zalando's online shop:** How dependent are users on the services provided by Zalando? Are there other online shops catering to the same needs?
- ii. **Sales from private persons vs. companies:** Are private persons able to offer or sell products directly to other users via Zalando's online shop? Are the offered products supplied by credible partners?
- iii. **Access restriction for content:** Can content in Zalando's online shop be uploaded directly by users without moderation or with limited control by the service provider? Are users able to directly interact with each other?
- iv. **Influence on people and their decisions:** Is the content of Zalando's services likely to influence people's inner beliefs and consequently major decisions?
- v. **Origin of products:** Have the products on Zalando's online shop been sourced within the European Union?
- vi. **Risk associated with sold products:** Does the Zalando online shop sell high-risk products (e.g. pharmaceutical products or other highly regulated products)?

Our respective risk assessment demonstrates that Zalando's partner business has a very low risk profile compared to other online platforms under the DSA.

Zalando offers and distributes fashion, beauty and similar style-related products and content through its localised websites and apps. We operate a retail business that contributed 64% of the company's gross merchandise value (GMV) in 2022, and a partner business with well-established partners (brand owners, retailers and brick-and-mortar stores) amounting to 36% of the company's GMV in 2022.

Zalando operates a highly curated partner business in a **competitive market environment**. Both customers and partners rely on multiple market participants (and not just Zalando) to buy or sell fashion, beauty and similar style-related articles.

Zalando only works with **legitimate partners**: Only **fashion and beauty partners** in the form of registered companies or professionals have the right to offer products and provide related content (i.e. corresponding product descriptions and product pictures) to our customers. Each partner is **subject to a due diligence process** and goes through an extensive onboarding process containing KY[B]C (Know Your [Business] Customer) checks. They have to accept a comprehensive partner contract and

⁶ Zalando's retail or off-season stock business activities were not included in the scope of this assessment. Similar mitigation measures to the measures described in section 3.1 may apply to these activities.

associated policies, annexes and guidelines, such as our “platform rules”, our quality assurance manual and our content guidelines, which specify the marketability standards and legal requirements for the products offered by partners and determine mandatory requirements for each product category.

There is **no additional or specific risk resulting from the content associated with Zalando’s partner products or offers**: All content provided by Zalando’s partners (i.e. product descriptions and product pictures) is checked, moderated and finally uploaded by Zalando to ensure its correctness and appropriateness. In many instances, partners use Zalando’s own product descriptions and images. The **product presentation and content associated with partner products** is thus **owned and managed by Zalando**.

Zalando does not provide a forum for public discussions: We aim to inspire our customers with our fashion and beauty products and related content, constantly adjusting and adapting our website and app to remain relevant in the industry. We do not provide a forum for public discussions between our users, we do not provide a forum for customers to interact and share content between one another or to sell any products to other customers. We also do not offer the functionalities of free text comments or photo uploads to our customers. We further do not use our reach to spread any political information or news content, or stir public sentiment in any other way than the inspiring content on fashion, beauty and an inclusive lifestyle.

Only genuine products are offered and we apply the same **strict product safety requirements to our entire range of products**, regardless of whether they are sold under the retail or the partner business. Zalando customers can find and buy genuine and safe fashion, beauty and fashion-related articles from legitimate partners. We do not offer any high risk products on our website and app. Certain product categories might potentially present a (comparably low) risk to the physical well-being of customers in case of quality defects or malfunctions, however, the general risk associated with all kinds of consumer products are not increased by our partner business compared to our retail business.

3.2 DSA Systemic Risk Category Assessment

In this section, we examine the following systemic risk categories as defined in Art. 34, section 1 DSA:

- i. The dissemination of illegal content through the service;
- ii. Any actual or foreseeable negative effects for the exercise of fundamental rights, in particular the fundamental rights to human dignity enshrined in Article 1 of the Charter, to respect for private and family life enshrined in Article 7 of the Charter, to the protection of personal data enshrined in Article 8 of the Charter, to freedom of expression and information, including the freedom and pluralism of the media, enshrined in Article 11 of the Charter, to non-discrimination enshrined in Article 21 of the Charter, to respect for the rights of the child enshrined in Article 24 of the Charter and to a high-level of consumer protection enshrined in Article 38 of the Charter;
- iii. Any actual foreseeable negative effect on civic discourse and electoral processes, and public security;
- iv. Any actual or foreseeable negative effect in relation to gender-based violence, the protection of public health and minors and serious negative consequences to the person’s physical and mental well-being.

As detailed in Section 3.1, we assessed the inherent risk of our partner business to be “very low” compared to other online platforms. Building on this “very low” risk level for our partner business, we then evaluated the potential risks identified for Zalando in the four systemic risk categories as defined by the DSA.

The aggregated risk of each systemic risk category as well as the individual risks contained therein range between “very low” and “low”, due to the current mitigation measures that were implemented

irrespective of the DSA requirements. We therefore do not see the need to implement specific risk mitigation measures pursuant to Art. 35 DSA.

3.2.1 The dissemination of illegal content through the service

The DSA aims to ensure a secure, predictable and trustworthy online environment that counteracts the dissemination of illegal content. VLOPs are considered to play an important role in preventing the publication of illegal or otherwise harmful content. Potentially illegal content on our website and app, as described above and in this section, could be related to either products or advertisement content. We assessed risks of IP related violations, incorrect or incomplete product information, incorrect product safety information, and potential environmental issues on Zalando.

Considering the current mitigation measures to determine the net risk level, **the aggregated risk position of this category was assessed as very low. Both, the average probability and average impact for the risk category is assessed as very low.**

3.2.2 Actual or foreseeable negative effects for the exercise of fundamental rights

The DSA further aims to provide protection in the online environment of the fundamental rights mentioned in the Charter of Fundamental Rights of the European Union. We assessed the risks related to Zalando's effects on the exercise of the fundamental rights specified by the DSA and specifically considered risks related to data protection and consumer protection as most relevant to our business model.

Considering the current mitigation measures to determine the net risk level, **the aggregated risk position of this category was assessed as low. Both the average probability and average impact for the risk category are assessed as low.**

3.2.3 Negative effect on civic discourse and electoral processes, and public security

The DSA requires VLOPs to ensure that recipients of the services are not exposed to "echo chamber effects" or "filter bubbles" on their online platforms which may narrow the worldviews of users and create an information bias. For example, social media VLOPs should monitor user-generated content to avoid disinformation campaigns aimed to negatively influence electoral processes.

Due to the nature of Zalando's online fashion business and the missing opportunity for recipients to upload content directly on the website and app as described in Section 3.1 and 3.3.2, **we do not see any relevant negative effects on civic discourse, electoral processes and public security caused by using or buying on Zalando.** Therefore, this risk category does not apply to Zalando's partner business.

3.2.4 Negative effect in relation to gender-based violence, the protection of public health and minors and serious negative consequences to a person's physical and mental well-being

This risk category defined by the DSA contains a materiality threshold ("serious") for the consequences to a person's physical and mental well-being.⁷ Potentially harmful content as described in this section could be related to either products or advertisement content published on our website and app. We assessed potential risks related to insults, harassment, discrimination, objectification, exploitation or pornographic content and product safety.

Considering the current mitigation measures to determine the net risk level, **we did not identify any risk exceeding a low risk level. The average probability for the risk category is assessed as very low and the average impact as low.**

⁷ For negative effects in relation to gender-based violence and the protection of public health and minors, this materiality threshold does not apply.

3.3 Risk Factors specified by the DSA

Having assessed (1) the **inherent potential risks** relating to our partner business compared to other online platforms within the scope of the DSA and (2) the **potential systemic risks as defined in the DSA**, we now turn to the DSA specific risk factors. The DSA states the following six risk factors:

- i. Recommender systems;
- ii. content moderation systems;
- iii. applicable terms and conditions and their enforcement;
- iv. systems for selecting and presenting advertisements;
- v. data related practices and
- vi. influence by intentional manipulation of the service.

These are to be taken into account regarding whether and how they influence any of the four systemic risk categories of the DSA with regard to Zalando's partner business.

For Zalando, we did **not identify any significant negative influence of these six risk factors on the four systemic risk categories of the DSA**.

3.3.1 Recommender systems

Recommender systems are defined in the DSA as algorithms suggesting, ranking and prioritising or otherwise curating information. To prevent information bias, the DSA requires that customers should be able to understand (i) how recommender systems impact which information is displayed to them and how this information is displayed to them, and (ii) how to influence which information is presented to them and how this information is presented to them. On Zalando's website and app, we generally see a **very low risk of influencing customers negatively through the use of recommender systems**, as we are **not attempting to shape political or social views** and as our personalised information is merely aimed at making the customer experience more attractive through providing style recommendations in line with previous searches or purchases on Zalando's website and app.

We provide transparency in our ranking criteria in line with the requirements of the DSA and we allow customers to opt out from personalised recommendations. We do not see a risk of illegal content being recommended disproportionately, considering Zalando's partner business and our current risk mitigation measures.

3.3.2 Content moderation systems

Content moderation is an important prerequisite for Zalando to effectively manage and control the content that partners provide. As described in section 3.1, we have an extensive onboarding and content moderation process in place. The onboarding and content moderation process is aimed at ensuring compliance with the partner contract and associated content guidelines including further annexes. Therefore, the **content moderation processes applied to the partner business actually decrease and/ or avoid DSA systemic risks**, such as the dissemination of illegal content through partners.

Hypothetically, there is a risk that illegal or inappropriate content may (1) enter the platform due to human error and (2) remain online longer than necessary on our website and app. This potential risk only applies in the unlikely event that the content moderation team is not adequately staffed or funded. However, our DSA internal risk workshops with business experts have not shown any signs that our content moderation teams are not adequately set up to handle the requests to investigate concerns and potentially remove inappropriate content.

3.3.3 Applicable terms and conditions (T&Cs) and their enforcement

The T&Cs applied to our partner business are a comprehensive set of contractual documents, such as our partner contract and the "platform rules", including the quality assurance manual and content

guidelines. They are the baseline for our contractual relationship with our partners and are agreed and shared with them as part of the onboarding process. These contractual documents contain details on sustainability, IP, product quality and safety, ranking algorithms and data access, but also business-related information like order processing and labelling of seasonal articles. Conformity with the respective contractually agreed requirements, in particular with the safety, intellectual property and sustainability requirements, is monitored by a dedicated team. Therefore, **our T&Cs and their enforcement decrease and/ or avoid potential DSA systemic risks** of our partner business.

The T&C applied to our partner business have no potential negative effects on the freedom of expression. Neither partners nor customers are able to articulate illegal, discriminatory or otherwise harming expressions or opinions on our website or app. This is due to the fact that there is no functionality provided on our website or app to directly upload content. In case customers communicate concerns towards our customer care service, we carefully review customer concerns and allegations of potential legal violations on an individual case by case basis and do not rely on automated enforcement. Furthermore we do not operate a service that provides a space for public discussion, as described in 3.1 and consequently do not see a relevant impact on our risk landscape resulting from the enforcement of our T&Cs.

3.3.4 Systems for selecting and presenting advertisements

Zalando uses algorithms to show personalised advertisement content to customers in the fields of fashion and beauty. These algorithms are applied consistently throughout our website and app to all advertisement content and they learn from customer behaviour on our website and app in an effort to provide a better experience to our customers. However, we allow customers to opt out from those personalised recommendations.

Only active partners that offer products for sale on our website and app (either through our retail business or our partner business) are able to advertise on Zalando. All published advertisement content on our website and app is moderated and uploaded by Zalando. Internally, we follow detailed guidelines and processes when publishing advertisement content. As we ensure the appropriateness of our content we do **not see any of the DSA systemic risks being significantly influenced by the selection and presentation of advertisements regarding partner products on Zalando.**

3.3.5 Data related practices

Zalando aims to be the starting point for fashion and beauty. This entails a key focus on an offer of products, inspiration, style advice and convenience (e.g. payment options, speed and easy delivery and returns) relevant to our customers. As a consequence, Zalando has implemented an organisation, procedures and rules to ensure our customers' privacy and trust. We created a respective customer promise and designed privacy principles endorsed by the management board applicable to the entire Zalando group. The functions entrusted with ensuring our customers' privacy directly engage with and support those teams at Zalando that are building products and services using customer data. These functions comprise in particular privacy law, privacy governance support, privacy product enablement as well as privacy security guidance and practices. From a strategic perspective, Zalando implemented the "Do.Privacy.Better" strategy as a proactive approach regarding customers' privacy needs and concerns. We could not identify any specific cases where data related practices at Zalando have had negative implications on the identified systemic risks of the DSA. Zalando also signed and committed itself to the code of conduct maintained by the "Corporate Digital Responsibility (CDR) Initiative" established by the German government⁸, which notably requires a proactive approach to ensuring ethical and responsible handling of data. The data related practices apply holistically to both Zalando's retail and partner business. Regarding the latter, **we thus see no additional risk specifically stemming from the partner business which is not covered by our comprehensive data protection related measures.**

⁸ <https://cdr-initiative.de/en/initiative>

3.3.6 Influence by intentional manipulation of the service

This risk factor refers to any manipulation by creating fake accounts or by using bots to abuse an offer through automatic or inauthentic behaviour. VLOPs need to assess how the functionalities of their services as well as any intentional manipulation might contribute to the four risk categories defined in the DSA.

Due to the described set-up of our partner business, our strict content moderation and the fact that only Zalando can publish or upload any content on the website and app, we do not see that our partner business influences the risk of disseminating illegal content due to intentional manipulation of the service or malicious acts such as account takeovers or fake accounts.

Additionally, VLOPs need to evaluate if the set-up of their services is designed in a way to reduce the risk of dark patterns or deceptive designs to ensure that users can make free and informed choices. We do not operate marketing campaigns that create the perception of pressure or an urgency to buy, such as manipulative or deceptive sales countdowns or manipulative marketing claims. In our assessment we could thus **not identify any dark pattern with potential negative implications on any of the four systemic risks identified by the DSA.**

3.4 Mitigation Measures

According to Art. 35 DSA, providers of very large online platforms must put in place reasonable, proportionate and effective mitigation measures, tailored to the specific systemic risks identified pursuant to Art. 34, with particular consideration to the impacts of such measures on fundamental rights.

In our DSA Risk Category Assessment in Section 3.2, we have determined that the aggregated risk of each systemic risk category as well as the individual risks contained therein range between “very low” and “low”. This is due to the specificities of our partner business as set out above. Furthermore, Zalando had already implemented numerous processes and mitigation measures, e.g. with regard to data protection or protection of IP rights, before the DSA was enacted.

In our interpretation of Art. 35 DSA, we therefore do not see the need to implement further risk mitigation measures.
