

Risk Report Digital Services Act 2024

In line with Art. 34, 35, 36, Recitals 79-85, 86-90, 91 DSA

1 Introduction

The Digital Services Act (DSA) is a piece of European Union legislation¹ which aims to regulate online intermediaries and online platforms such as marketplaces, social networks, content-sharing platforms, app stores or accommodation platforms, among many others. Its main goal is to prevent illegal and harmful activities and the spread of disinformation online, thereby creating a more trustworthy online environment. All online intermediaries falling in the scope of the DSA and offering their services in the EU, whether they are established in the EU or outside, have to comply with these new rules. The DSA also establishes a new category of "Very Large Online Platform" (VLOP) and "Very Large Online Search Engines" (VLOSE), which are subject to additional rules, including the obligation to conduct specific DSA-related risk assessments. Zalando was designated by the European Commission as a Very Large Online Platform on 25 April 2023.

Zalando operates a hybrid business model focusing on fashion and lifestyle products which comprises a retail business complemented by a partner business. In its retail business, Zalando offers its own content and products, with no storage or dissemination of third-party content. Therefore, this segment of Zalando's operations does not fall under the DSA Regulation. Zalando's partner business involves facilitating the sale of products provided by third-party partners. This includes making available product information, such as images and descriptions, which are partly provided by these partners. Due to our partner business, the European Commission considers Zalando as being within the scope of the DSA.

To comply with Art. 34 of the DSA (Risk Assessment), Zalando identifies, analyses and assesses any systemic risks in the European Union stemming from the design or functioning of its service and its related systems, including algorithmic systems, or from the use made of its services. Such an assessment needs to be conducted both on an annual basis and before deploying new functionalities likely to have a critical impact on the risks mentioned below. Therefore, this 2024 assessment addresses potential DSA-relevant risks arising from or influenced by a wide range of services offered as part of Zalando's partner business, to ensure compliance with the DSA and to mitigate potential harms to consumers. The period considered in this assessment is September 2023 to July 2024.

2 Approach

To comply with the DSA requirements relevant to VLOPs under Art. 34 and 35 of the DSA, Zalando has to diligently identify, analyse and assess any systemic risks in the European Union arising from the design or functioning of their service. The risk assessment shall cover the four systemic risk categories²

¹The Digital Services Act: Regulation (EU) 2022/2065 of the European Parliament and of the Council L of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC

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.

defined by DSA and shall consider in particular whether and how the risk factors³ defined by the DSA affect any of the systemic risks.

The DSA includes in its scope numerous VLOPs or VLOSEs 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.

Article 34 of the DSA specifically states that “*VLOPs shall diligently identify, analyse and assess any systemic risks in the Union stemming from the design or functioning of their service and its related systems, including algorithmic systems, or from the use made of their services. They shall carry out the risk assessments [...] at least **once every year** thereafter [...]. This risk assessment shall be **specific to their services** and proportionate to the systemic risks, taking into consideration their severity and probability.*”

To comply with Art. 34, Zalando has created the following annual risk assessment. This assessment focuses on identifying the systemic risks related to the design, services and functionalities correlating with its partner business model. The mitigation measures in place to reduce the respective risks are also outlined to explain the risk assessment.

The systemic risk categories defined by the DSA which need to be assessed by Zalando, as a result of its designation as a VLOP, are:

“[...]”

- a. *The dissemination of illegal content through the service;*
- b. *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;*
- c. *Any actual foreseeable negative effect on civic discourse and electoral processes, and public security;*
- d. *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.”*

The risk assessment shall cover the four systemic risk categories listed above and shall consider, in particular, whether and how those systemic risks are affected by the below mentioned risk factors defined by the DSA.

“[...]”

- a. *the design of their recommender systems and any other relevant algorithmic system;*
- b. *their content moderation systems;*

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.

- c. *the applicable terms and conditions and their enforcement;*
- d. *systems for selecting and presenting advertisements;*
- e. *data related practices of the provider;*
- f. *intentional manipulation of the service”.*

Zalando therefore developed a methodology to **assess the potential inherent risk related to its partner business**. This assessment is based on specific criteria identified by Zalando (see Section 3) which will be reassessed at least on an annual basis to ensure that any major changes in the nature of Zalando’s 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 4)**. 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 5) and assessed whether these risk factors have any potential significant impact on Zalando’s partner business with regard to the four systemic risk categories** of Art. 34 DSA.

Zalando, therefore, focused on evaluating the systemic risks defined by the DSA arising from Zalando’s partner business model regarding design, functionalities, and third party content. This risk assessment has been performed in collaboration with experts from the responsible business units to understand the processes and measures in place to prevent or reduce any risks related to the DSA systemic risk categories. All risks are assessed considering their probability⁴ of occurrence as well as their potential impact⁵ with due consideration given to currently implemented mitigation measures, such as guidelines and processes.

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, a conservative approach⁶ was applied based on expert judgement, numbers generated through the Notice & Action mechanism in place since August 2023 or numbers provided by relevant departments.

Impact was assessed in a qualitative manner considering the potential 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, single risks are classified into five risk classes: very low, low, medium, high, very high. The assessment of each of the four systemic DSA risk categories as well as the DSA risk factors is determined by the aggregated risk level of the single risks evaluated in each category or attributed to each risk factor.

The DSA risk assessment is re-assessed on an annual basis in line with the requirements of Art. 34 DSA to ensure that any major changes in Zalando’s business are adequately reflected and addressed.

The results of the risk assessment conducted by Zalando and presented in this report include:

⁴ Considering the probability of occurrence as well as the number of people affected.

⁵ Considering the physical or psychological impact of customers as well as the reversibility of the caused negative effect.

⁶ In case more than 1 per mille of our articles would be affected, the probability would already be assessed as medium.

- In chapter 3, the characteristics and risks of Zalando business model, with a specific focus on Zalando's partner business, are addressed to provide a holistic assessment of its position within the digital landscape, particularly in relation to other VLOPs.
- In chapter 4, the aggregated assessment for the systemic risk categories are mapped out as well as the single risks contained therein to understand their applicability, risk and impact.
- In chapter 5, the relevance of the risk factors specified by the DSA are assessed to understand if and how they potentially influence the systemic risk categories when taking into consideration Zalando's partner business model.
- In chapter 6, the mitigation measures put in place by Zalando and their effectiveness in preventing or reducing the applicable risks are highlighted to support the assessment considerations on how the identified risks are currently mitigated.

The risk assessment framework outlined above ensures a systematic and thorough risk evaluation of Zalando's partner business. This comprehensive approach reflects Zalando's commitment to regulatory compliance and proactive risk management.

The cut-off date for the considerations and data included in this annual DSA risk assessment is set as of July 31, 2024. Any events or developments occurring after this date have not been factored into this assessment.

3 Characteristics of Zalando's partner business model

This section is intended to provide a holistic assessment of the inherent risks that Zalando's partner business may carry. It also provides a comparison with other online platforms in the scope of the DSA and generally other actors in today's digital environment. Zalando's online platform focuses on fashion, beauty and lifestyle articles. The following assessment demonstrates that given the (partner) business model and the mitigation measures already in place, **Zalando's partner business model presents a very low inherent risk to consumers compared to other online platforms under the scope of the DSA.**

- a. **Zalando's online shop:** What is Zalando? Could users be dependent on the services provided by Zalando? Are there other online shops catering to the same needs?

Zalando offers and distributes fashion and lifestyle articles and content through its localised websites and apps. The company operates a hybrid business model that encompasses both a retail and a partner services business. The partner business offers a **highly curated product assortment** featuring registered partners, comprising legitimate brand owners, retailers, and well-established offline stores, who - big or small - play a significant role in the competitive market environment of fashion, beauty and lifestyle. There are numerous other online platforms and Zalando therefore operates in a highly competitive environment. This leads to a dynamic market and provides consumers and partners with multiple options.

- b. **Sales from private persons vs. companies:** Are private persons able to offer or sell products directly to other users via Zalando's online platform? Are the offered products supplied by credible partners?

Zalando does not provide an online platform for private persons to sell their products. Only **legitimate fashion and lifestyle partners**, in the form of registered companies or professionals, may engage in

offering products and providing related content on Zalando (i.e. corresponding product descriptions and product pictures). Each partner is subject to a **due diligence process** and goes through an extensive onboarding process containing KYC (Know Your [Business] Customer) checks. Partners have to agree to a comprehensive **partner contract and 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 in order to ensure quality, safety and authenticity of products.

- c. **Access restriction for content:** Can content in Zalando’s online shop be uploaded directly by users unmoderated? Are users able to directly interact with each other?

There is no additional or specific risk resulting from the content associated with Zalando’s partner products or offers: For Zalando’s partner content (i.e. **product descriptions and product pictures**), a **moderation process is in place**. All content provided by Zalando’s partners 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**.

Shortly before the cut-off date of this report, Zalando launched its Ratings & Reviews (hereafter referred to as R&R) functionality for parts of its assortment (beauty products) which provides syndicated content originating from User-Generated Content (UGC) in textual form. The aim is to provide additional product content for potential buyers, thus enabling them to make more informed decisions and thereby enhancing customer satisfaction and trust in Zalando’s online platform. Syndicated content means content that is shared across a contracted service providers’ network of retail and brand websites. Syndicated content does not originate from recipients of the Zalando service, but from recipients of other platforms, whereas the service provider distributes the content to Zalando. Zalando re-integrated this feature into the platform through the engagement of a **reputable service provider**. Syndicated reviews run through a **strict technical and human moderation process** operated by a contracted service provider before getting approved for upload and becoming visible on the Zalando online platform. **This moderation process is suitable to ensure that only content which is in line with Zalando’s moderation guidelines and in compliance with the applicable law is being made publicly visible on the online platform.**

- d. **Influence on people and their decisions:** Is the content of Zalando’s services likely to influence people’s inner beliefs and consequently major decisions?

Zalando does not provide a forum for public discussions. Zalando’s aim is to inspire customers with fashion and beauty products and related content, constantly adjusting and adapting the websites and apps to remain relevant in the industry.

As mentioned above, any reviews published on Zalando will run through a strict technical and human moderation process before getting approved for display on the online platform. The content will be approved against defined criteria or rejected as being inappropriate or not deemed relevant to the experience with the purchased product. **The purpose of the R&R functionality is solely to enhance item descriptions, product information and overall customer experience. It is not intended to provide a forum for public discussions between users.** Furthermore, **Zalando does spread any political information or news content and it does not stir public sentiment in any other way than providing inspiring content related to fashion, beauty and lifestyle.**

- e. **Origin of products:** Have the products on Zalando's online shop been sourced within the European Union?

Zalando partners' products can be sourced from within the European Union as well as from other geographies. **Regardless of the origin, the same principles apply uniformly to all types of products and partners.** As previously mentioned, each partner undergoes a thorough due diligence process and an extensive **onboarding process** containing comprehensive KYC (Know Your [Business] Customer) checks and is obliged to only offer products complying with product quality and safety standards in line with European Union regulation. The same holds true for products sold directly by Zalando.

- f. **Risk associated with sold products:** Does the Zalando online shop sell high-risk products (e.g. pharmaceutical products or other highly regulated products)?

At Zalando, we are committed to offering only original products, ensuring that our strict product quality and safety requirements are uniformly applied across our entire assortment, whether through our retail business or partner business. This commitment guarantees that Zalando customers can find and purchase genuine and safe fashion, beauty, and fashion-related articles from legitimate partners.

We do not offer any products with increased consumer risks, such as food and beverage, on the Zalando online platform. While certain product categories might present a relatively low risk to customers' physical well-being in the event of quality defects or malfunctions, the overall risk associated with consumer products marketed by Zalando remains consistently low across both our retail and partner businesses.

Our rigorous standards and stringent safety protocols ensure that the general risk level associated with consumer products on our platform is not elevated by the inclusion of partner-sourced items. This approach provides our customers with the assurance that all products, regardless of their source, meet our high standards of quality and safety.

4 DSA Systemic Risk Categories

As mentioned in the introduction, the DSA establishes a legal framework to address the challenges posed by the digital economy and to ensure a safe and accountable online environment for consumers. As a designated VLOP, Zalando is required to perform annual risk assessments pursuant to Art. 34 DSA and to **identify, analyse and assess as well as mitigate systemic risks associated with its services.** According to the analysis performed, some of the risk categories specified by the DSA do not fit Zalando's business activities, as demonstrated in the following subsections.

Considering the current mitigation measures influencing the net risk level of Zalando's partner business, **the aggregated risk position of all risk categories was assessed as very low.**

4.1 The dissemination of illegal content through the service

The DSA is designed to ensure a safe and trustworthy online environment by preventing illegal and harmful activities and the spread of disinformation online. In this context, Zalando's online platform could be subject to the risk of spreading illegal content through either products themselves, products' presentation, advertising or communication content as well as customer reviews. These risks include, but are not limited to, intellectual property right (IP) violations, inaccurate or incomplete product information, incorrect product safety information, and potential environmental issues related to the

products offered on the Zalando platform. Furthermore, Recital 80 of the DSA lists examples of categories which can pose a risk associated with the dissemination of illegal content. Zalando has reviewed each of these examples to assess its applicability:

- a. *Dissemination of child sexual abuse material* - **This subcategory is not applicable to Zalando's partner business model.** Zalando does not allow customers or users to share any picture or video content with each other or make it otherwise publicly available via any functionalities. Zalando collaborates exclusively with third parties and partners - in the fashion, beauty and lifestyle sectors - who adhere to and comply with our company's values, code of conduct, ethics, and standards, which strictly prohibit the dissemination of child abuse material. For the syndicated R&R functionality specifically, Zalando has contracted a third party to moderate, control and monitor all (textual) content of the submitted reviews in line with Zalando's strict moderation principles which avoids dissemination of child sexual abuse material.
- b. *Illegal hate speech or other types of misuse of their services for criminal offences* - This example of dissemination of illegal content **may apply to Zalando's partner business model** in cases where consumers may consider content on the Zalando platform to be harassing, discriminatory or pornographic. All partner products and content undergo rigorous KYC and onboarding processes to ensure compliance with Zalando's code of conduct and principles to meet product and content standards before being available in Zalando's platform for sale. The relatively low number of relevant notice & action cases submitted via the Notice & Action mechanism available on each Product Page, confirmed that the likelihood of Zalando spreading illegal or inappropriate content is negligible.

With the new syndicated R&R functionality, Zalando aims to provide better product information for customers to enhance their shopping experience. Zalando has decided to contract a third party service provider to moderate, control and monitor all (textual) content of the reviews in line with Zalando's strict moderation principles to avoid hate speech or other types of misuse of the reviews functionality for criminal offences.

- i. *The content insults, harasses or discriminates against people or groups* - very low impact and probability;
 - ii. *The content features political extremism, like banned symbols or organisations* - very low impact and probability;
 - iii. *The content objectifies or exploits people, or is pornographic* - very low impact and probability.
- c. *Conduct of illegal activities, such as the sale of products or services prohibited by Union or national law, including dangerous or counterfeit products, or illegally-traded animals* - **This subcategory may apply to Zalando's partner business model** when items on the Zalando platform could e.g. contain restricted chemicals or be counterfeit. Zalando has identified this risk and, therefore, developed mitigation measures to prevent the sale of prohibited, illegal or counterfeit products. Every partner needs to undergo very strict KYC and onboarding processes alongside our Animal Welfare Policy, Quality and Safety Manual and other standards that partners must adhere to.

Zalando's risk owners have also included a list of risks deemed relevant for this category with the following impacts and probabilities derived from the Notice & Action cases applicable and reported since August 2023.

- i. *The item is not from the brand shown* - very low impact and probability;
 - ii. *The item seems to be fake or a copy* - low impact and very low probability;
 - iii. *The item may contain restricted chemicals* - low impact and very low probability;

Additional risks which do not fit the above mentioned risk sub-categories and associated examples but still fall under the overall risk category “dissemination of illegal content” as defined by the DSA and have been identified by the relevant risk owners and incorporated into the assessment. By identifying and evaluating these risks, we aim to mitigate any adverse effects on our users and maintain the integrity and trustworthiness of our platform.

- i. *The name and/or description of the item contains terms that violate third party trademark rights - very low impact and probability;*
- ii. *The photos or illustrations violate someone’s rights, like artists or models - very low impact and probability;*
- iii. *The item violates third party rights, like design rights or copyrights - very low impact and probability;*
- iv. *People are featured without the right usage consent - very low impact and probability;*
- v. *Advertisements violate third-party rights, like copyrights - very low impact and probability;*
- vi. *Something in the review violates third-party rights, like copyrights - very low impact and probability.*

In general, if Zalando receives any information about illegal content, Zalando deactivates the concerned content or product, investigates the case and, depending on the nature of the content, initiates a recall. Users can report any of the above concerns on the Zalando’s product page, triggering a DSA Notice that will be reviewed, and following actions will be taken by expert teams to deactivate the product if deemed necessary.

Moreover, Zalando has a strong compliance framework in place with a set of measures to avoid illegal services/products. On the product quality and safety side, there are strict requirements, checks and corresponding measures in place to ensure that all products meet safety and quality standards. Brand partners that use Zalando’s platform go through an onboarding process where they undergo a KYC (Know Your [Business] Customer) check and accept and meet the requirements of various Zalando’s policies and guidelines, such as platform rules, Quality assurance manual or product and content guidelines, to name some examples.

Zalando’s commitment to these principles ensures that we not only adhere to regulatory requirements but also uphold the highest standards of safety and reliability for our users. As such, Zalando will continue to monitor and address any emerging risks in a proactive and systematic manner.

Considering the current mitigation measures to determine the net risk level for the subcategories applicable to Zalando, **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.**

4.2 Negative effects for the exercise of fundamental rights

A second category concerns the actual or foreseeable impact of the service on the exercise of fundamental rights, as protected by the Charter of Fundamental Rights of the European Union, including but not limited to human dignity, freedom of expression and of information, including media freedom and pluralism, the right to a private life, data protection, the right to non-discrimination, the rights of the child and consumer protection.

While the DSA outlines various subcategories in this specific section, only a few are applicable to Zalando’s business model, specifically, those risks related to **data protection and consumer**

protection. Below, each risk as specified in Article 34 and Recital 81 DSA has been outlined, along with its applicability to Zalando's services and its risk assessment, if applicable.

- a. *Human dignity* - **This subcategory is not applicable to Zalando's partner business model.** All Zalando products and services are offered to all customers without favouring certain customer groups. Also, Zalando treats all customers with respect and equal concern.
- b. *Freedom of expression and of information, including media freedom and pluralism* - **This subcategory is not applicable to Zalando's partner business model.** Zalando does not allow user-generated content on the platform. All content on the platform is moderated in line with Zalando's strict moderation principles to avoid hate speech or other types of misuse of the reviews functionality for criminal or otherwise inappropriate offences.
- c. *The right to a private life* - **This subcategory is not applicable to Zalando's partner business model.** None of the third-party content will infringe on the right to a private life, more specifically to a change in civil status or to acquire a new identity, nor will it enable a state's security service to infringe on the privacy of consumers.
- d. *Data protection* - **This subcategory may be applicable to Zalando's partner business model** as risks can potentially arise from improper handling, processing and filtering of personal data, potentially resulting in breaches of the GDPR, by Zalando itself, its service providers (e.g. for the R&R functionalities) or its partners. In principle, both the controller (Zalando) and the processor (third-party service provider) can be held liable for damages due to a breach of the GDPR. At the same time, Zalando is not able to retain full control over all data processing activities conducted by service providers on its behalf. For this reason, Zalando concluded a service contract with its service providers tailored to Zalando's needs to restrict the exchange and use of personal data.

Consequently, the following risks in this category were identified by the respective risk owners and included in the assessment with low impact and low probability estimates.

- i. *Forbidden internal handling, processing and storage of personal data (not in accordance with GDPR and/or ePrivacy)* - Data Protection is a topic prioritised across Zalando with various measures in place to ensure privacy and compliance with all applicable regulations when handling personal data. **Zalando has established Data Privacy and Confidentiality Principles that apply to Zalando and its affiliated companies.**
 - ii. *Illegal external access to personal data (not in accordance with GDPR and/or ePrivacy)* - As previously mentioned, protecting our customers' data is of high priority for Zalando. Zalando deems the **additional risk posed by our partner business model** of losing control of customer data (e.g. through account takeovers) as **low**.
 - iii. *Targeted advertising on online platforms by profiling customers based on special categories of personal data such as age, ethnicity, political views or sexual orientation* - Zalando does not possess data from its customers that could indicate their political views, sexual orientation or affiliation with minority groups for the purpose of algorithm processing and targeted advertising. Zalando offers its services to customers above the age of 18, according to Zalando's Purchase Terms & Conditions which also apply to the sale of partner products.
- e. *The right to non-discrimination* - **This subcategory is not applicable to Zalando's partner business model.** Both partner content and R&R will be offered to all customers without discrimination of certain customer groups. If users leave reviews that reflect personal biases and prejudices with discriminatory content, the strict moderation practices defined by Zalando and applied by a service provider will ensure those comments are not displayed on the online

platform. The moderation principles are based on clear guidelines and policies that promote fair and unbiased content.

- f. *The rights of the child, especially with regards to the design of online interfaces which intentionally or unintentionally exploit the weaknesses and inexperience of minors or which may cause addictive behaviour* - **This subcategory is not applicable to Zalando's partner business model.** According to Zalando's Purchase Terms & Conditions, purchases are only allowed for customers above the age of 18.
- g. *The right of consumer protection* - **This subcategory may apply to Zalando's partner business model** since partners are offering their products and provide related information that is being displayed by Zalando. However, Zalando is very transparent when displaying products and content from its partners. During the whole shopping journey it is made clear to customers the source as well as all product details and information deemed relevant for each item and shopping experience. In particular, Zalando holds its partners contractually responsible for and checks compliance with consumer protection legislation. In fact, the newly implemented R&R functionality can be seen to add a layer of additional consumer protection as the R&R functionality is designed to help potential buyers make more informed decisions. Misinformation and misleading reviews will be monitored through Zalando's review verification processes.

Zalando's risk owners have also included a list of risks deemed relevant for this category with the following impacts and probabilities derived from the Notice & Action cases applicable and reported since August 2023.

- i. *The item's description is wrong or misleading* - low impact and very low probability;
- ii. *Mandatory information is missing* - low impact and very low probability;
- iii. *The seller's information is wrong or incomplete* - very low impact and low probability;
- iv. *The item or its description don't have mandatory information or warnings* - very low impact and probability;
- v. *The item is not labelled correctly* - very low impact and probability;
- vi. *Mandatory environmental information is wrong or missing* - very low impact and probability;
- vii. *The item's description contains false information or claims about sustainability-related attributes* - very low impact and probability;
- viii. *The item doesn't meet mandatory Eco-Design requirements* - low impact and very low probability.

Considering the current mitigation measures to determine the net risk level for the subcategories applicable to Zalando, **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.**

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

This category explores the impact of Zalando's business activities on the political and public security landscape. As stated in the DSA, VLOPs or VLOSEs should not undermine trust in institutions, exacerbate social divisions, and compromise the safety and stability of societies.

At Zalando, we focus on offering and distributing fashion, beauty and lifestyle articles on our online platform. Due to the fact that no third party, including contracted partners, can individually and independently upload any content on the website, we do not foresee any risks related to this systemic risk category.

Nevertheless, each of the negative effects has been reviewed to assess its applicability.

- a. *Democratic Processes* - Manipulation of public opinion **is not applicable to Zalando's partner business model** as it is designed to share only content relevant to the products and the overall shopping experience.
- b. *Civic discourse* - Polarisation and misinformation spread leading to fragmented civic discourse **do not apply to Zalando's partner business model** as it is designed to share only content relevant to the products and the overall shopping experience at Zalando.
- c. *Electoral Processes* - Influence on voting decisions **is not applicable to Zalando's partner business model** as it is designed to share only content relevant to the products and the overall shopping experience at Zalando.
- d. *Public Security* - Endangering public security and safety **is not applicable to Zalando's partner business model** as it is designed to share only content relevant to the products and the overall shopping experience at Zalando.

Zalando's aim is not to provide a forum for public discussions between platform users, nor to disseminate political information, news content, or to influence public sentiment in any other way.

Based on the considerations described above, **the overall risk category is not applicable to Zalando.**

4.4 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

A fourth category of risks stems from concerns related to the design, functioning or use, including through manipulation, of VLOPs potentially causing an actual or foreseeable negative effect on the protection of public health, minors and serious negative consequences to a person's physical and mental well-being, or on gender-based violence.

According to Article 34 and Recital 83 DSA, such risks may also stem from coordinated disinformation campaigns related to public health, or from online interface design that may stimulate behavioural addictions among recipients of the service.

Each of the negative effects outlined by the DSA in this category have been reviewed to assess whether or not they apply to Zalando.

- a. *Public Health* - **This subcategory is not applicable to Zalando's partner business model.** Zalando does not promote or encourage the consumption of products that endanger public health or stimulate behavioural addictions. Zalando collaborates exclusively with legitimate partners who adhere to its ethics, conduct and standards. Specifically, there are stringent product quality and safety requirements that partners must follow. Measures such as the Quality Assurance Manual and the Restricted Substances List are outlined in Chapter 6. In fact, the Notice & Action mechanism can be seen to add a layer of additional protection for the public health as it enables customers to raise safety concerns in connection with products offered on the Zalando website (in addition to customer care channels). This measure is in place to safeguard public health and ensure that all shared content adheres to Zalando's standards of promoting safe and healthy consumer choices.
- b. *Minor's physical and mental well-being* - **This subcategory is not applicable to Zalando's partner business model.** Zalando does not promote or encourage the consumption of products that endanger a minor's physical or mental well-being in any way or stimulate behavioural addictions. Zalando collaborates exclusively with legitimate partners who adhere to its ethics,

conduct and standards. According to Zalando's Purchase Terms & Conditions, purchases are only allowed for customers from the age of 18 and Zalando does not target its offers to certain age groups.

- c. **Person's physical and mental well-being - This subcategory may be applicable to Zalando's partner business model** in cases where consumers feel that the content promotes violence or a product causes allergic reactions. Zalando is committed to protecting individuals' physical and mental well-being and we oblige all Partners to apply and adhere to the same strict Product Safety standards that Zalando applies for products offered through its own retail services. Comprehensive proactive and reactive measurements are in place which are executed by expert Product Safety specialists which are coordinated by a central Corporate Product Compliance Team. Therefore, Zalando does not promote or sell products that endanger a person's health or mental well-being. Any reference to such products or activities on the platform and specifically in the reviews will be considered a violation of the moderation principles and will not be permitted. The notice & action cases submitted in relation to the risk confirmed that the likelihood of spreading content that may impact individuals' physical and mental well-being is negligible.
 - i. *The content suggests or promotes physical or mental violence* - very low impact and probability.
 - ii. *The item caused an allergic reaction or accident* - medium impact and very low probability;
- d. **Gender-based Violence - This subcategory is not applicable to Zalando's partner business model.** Zalando is committed to promoting a diverse and inclusive culture based on equality where any form of violence or discrimination is strictly prohibited. The automatic and human moderation process defined by Zalando ensures that any content, be it products, visual content, marketing campaigns or reviews, promoting stereotypical gender roles perpetuating harmful gender norms and gender-based discrimination and potentially causing gender-based violence will be rejected and not be displayed on Zalando.⁷

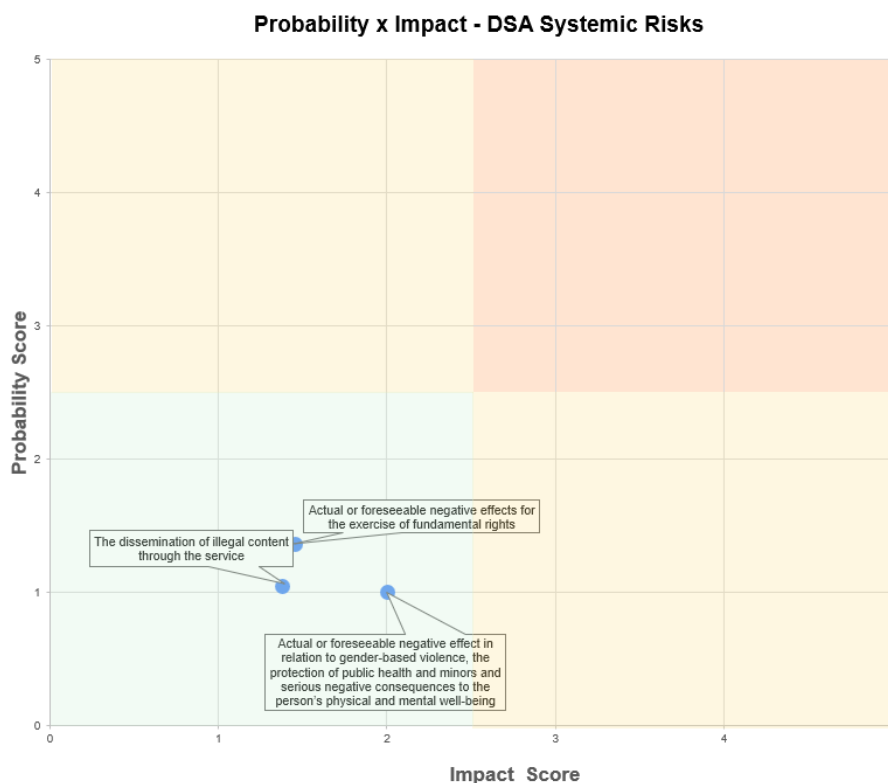
Considering the current mitigation measures to determine the net risk level for the subcategory "negative effects on a person's physical or mental well-being" applicable to Zalando and based on the characteristics of DSA Notices & Actions submitted to Zalando or potential safety cases examined, the **aggregated risk position of this category was assessed as very low. The average probability is assessed as very low while the impacts for the risk category are assessed as low.**

4.5 Conclusion

The existing mitigation measures, along with the nature of the content available on Zalando, contribute to a net risk level that is **very low**. The heatmap below illustrates Zalando's position on the very low scale for both probability and impact of the three applicable DSA systemic risks.

More details on the mitigation measures can be found in chapter 6.

⁷ On the contrary, Zalando promotes (body) empowerment and personal confidence, through fashion and beauty. For example, Zalando Visionary Award 2024: <https://corporate.zalando.com/en/fashion/sinead-odwyer-sets-bar-inclusive-design-zalando-visionary-award-2024-win>



5 Risk Factors specified by the DSA

Having assessed the **potential systemic risks as defined in the DSA**, we now turn to the DSA-specific risk factors. The DSA mandates that designated VLOPs consider in their risk assessments whether and how the following factors influence any of the systemic risks referred to in the chapter 4:

- a. *“the design of their recommender systems and any other relevant algorithmic system;*
- b. *their content moderation systems;*
- c. *the applicable terms and conditions and their enforcement;*
- d. *systems for selecting and presenting advertisements;*
- e. *data related practices of the provider;”*
- f. *“influence by intentional manipulation of the service”.*

By thoroughly evaluating these risk factors and their potential influence on the systemic risk categories, we aim to ensure that our platform operates responsibly and ensures a safe and accountable online environment. The assessment in the following sub-chapters shows that **no potential negative implications stem from the risk factors specified by the DSA.**

5.1 Recommender systems

Recommender systems are defined in the DSA as algorithms suggesting, ranking and prioritising or otherwise curating information. To prevent such information bias, the DSA requires that customers should be able to understand how recommender systems impact which information and how the information is displayed to them.

Zalando's business model focuses on offering fashion, beauty and related lifestyle articles, through a retail business or a partner business with legitimate brands or businesses, with limited (syndicated) user-generated content confined to the newly implemented low-risk R&R functionality. The platform's algorithms are transparent and designed to enhance user experience without the intent to disseminate or amplify misleading or deceptive content, including disinformation. Furthermore, robust monitoring and moderation practices ensure adherence to strict guidelines. This proactive approach maintains user safety and minimises potential risks.

On Zalando's platform, the **risk of influencing customers negatively through the use of recommender systems is very low** as Zalando does not attempt to shape political or social views and as the use of personalised information is merely aimed at making the customer experience more attractive and relevant through providing style recommendations in line with previous searches or purchases on Zalando's website and app. Transparency in the ranking criteria is crucial and is ensured in line with the requirements of the DSA. Additionally, customers have the option to opt out of personalised recommendations, providing greater control over their user experience. Therefore, these measures **decrease and/ or avoid potential DSA systemic risks**.

5.2 Content moderation systems

Content moderation is an important component for Zalando to effectively manage and control the content provided by partners. As outlined in Chapter 3, **Zalando has implemented an extensive onboarding and content moderation process that encompasses all content available from partners to customers**. The onboarding and content moderation process is aimed at ensuring compliance with the partner contract and associated content guidelines including annexes. Consequently, the onboarding processes applied to the partner business significantly reduce or eliminate systemic risks outlined by the DSA, such as the conduct of illegal activities that include dangerous or counterfeit products. Additionally, customer reviews undergo a rigorous technical and human moderation process before being approved and displayed on the platform. After being published, all reviews can be reported by customers if still deemed inappropriate or harmful. The two layers of moderation processes ensure that only appropriate content is published. By maintaining these stringent content moderation practices, Zalando not only adheres to regulatory requirements but also upholds the integrity and safety of its platform.

Therefore, the **content moderation processes in place at Zalando actually decrease and/ or avoid DSA systemic risks**, such as the dissemination of illegal content through partners or customers reviews.

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

The customer-facing T&C apply to all purchases of Zalando customers on the website and app regardless of whether the purchased items are offered by Zalando or partners. This ensures a reliable and a consistent customer experience, since the actual purchase, delivery and warranty conditions are the same across the assortment, ensuring that customers have the same rights and conditions regardless of who they buy from on the Zalando website. Since partners do not apply their own customer-facing T&C, the customers have the same high level of consumer protection regardless of the seller. The T&C are set up in accordance with the relevant applicable local law of the respective market website and are constantly reviewed by external legal advisors in order to reflect the applicable current law of the respective country.

The partner-facing T&Cs applied to our partner business comprise a comprehensive set of contractual documents, such as the partner contract and the "platform rules", including the mandatory Quality Assurance Manual and content guidelines. They are the baseline for the contractual relationship

between Zalando and its 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.

Zalando T&Cs applied to partner business are designed to comply with all relevant legal and regulatory standards, ensuring that they are both fair and transparent, thus mitigating the risk of legal challenges or unclarity. Moreover, the enforcement of these terms and conditions is carried out consistently and transparently. Zalando has established clear processes and guidelines for enforcing its policies, which helps to maintain a trustworthy, safe and accountable online environment for Zalando customers. This transparency and consistent enforcement build user trust and reduce the likelihood of disputes or controversies. Additionally, the terms and conditions are designed to protect both users and the platform from potential risks, including the dissemination of illegal content, intellectual property violations, and other harmful activities. By clearly outlining acceptable cornerstones for collaboration and the consequences of violations, Zalando can effectively manage and mitigate these risks.

Conformity with the respective contractually agreed requirements, in particular with the safety, intellectual property and sustainability requirements, is monitored by a dedicated team. Furthermore, regular reviews and updates of the T&C ensure that they remain relevant and effective in addressing emerging risks and regulatory changes.

To sum up, the carefully designed and consistently enforced terms and conditions, along with regular updates and transparent processes, ensure that Zalando minimises any potential risks to its business. Therefore, Zalando's **T&Cs and their enforcement decrease and/ or avoid potential DSA systemic risks.**

5.4 Systems for selecting and presenting advertisements

By indicating the term “sponsored” and displaying the “i-information icon”, Zalando highlights the nature of advertising content prominently and in direct proximity to the display of the advertisement itself. Upon engagement with the i-information icon, additional information on the selection and parameters for the advertisements are displayed to the customers. Additionally, Zalando is publishing an advertising repository allowing the recipients of the service to obtain information about previous advertising content displayed on the website. These measures ensure a high degree of transparency and enable customers to easily differentiate between Zalando content and advertising content.

Zalando uses advanced algorithms to display personalised advertisement content to its customers. These algorithms are consistently applied across our website and app to all advertisement content, learning from customer behaviour to enhance the user experience. Zalando provides users with options to manage their advertisement preferences, including the ability to opt-out of personalised advertisements. This feature enhances transparency and trust, reducing the likelihood of user dissatisfaction or complaints related to advertising practices.

By prioritising user safety and satisfaction, Zalando maintains a positive reputation and strong user trust. Additionally, Zalando's commitment to ethical advertising practices, including the avoidance of misleading or deceptive ads, further reduces the risk of consumer harm or fundamental rights violations.

In summary, Zalando's sophisticated, compliant, and transparent systems for selecting and presenting advertisements, combined with user control options and rigorous vetting processes, ensure that the company effectively manages and mitigates any potential risks. As Zalando ensures the appropriateness of all content displayed on the platform, **there are no DSA systemic risks being**

significantly influenced by the selection and presentation of advertisements on Zalando's platforms.

5.5 Data related practices

Zalando aspires to be the European ecosystem for fashion and lifestyle products. This vision entails a focused approach on offering a wide range of products, providing inspiration, style advice, and ensuring convenience through diverse payment options, fast delivery, and easy returns, all tailored to meet our customer needs. Consequently, Zalando has established a robust organisational structure, procedures, and rules to ensure the privacy and trust of its customers. Zalando has formulated a customer promise and designed privacy principles, endorsed by the management board, which apply across the entire Zalando group. The dedicated functions responsible for safeguarding customer privacy actively collaborate with and support the teams at Zalando that develop products and services utilising customer data. These functions encompass privacy law, privacy governance support, privacy product enablement, as well as privacy security guidance and practices. Zalando also signed and committed to the code of 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. Zalando could not identify any specific cases where data related practices at Zalando have had negative implications on the identified systemic risks of the DSA. Thus, due to comprehensive data protection related measures, the **DSA systemic risks are not negatively influenced by Zalando's data related practices**

5.6 Influence by intentional manipulation of the service

Designated VLOPs must evaluate how the design and functionality of their services, along with the intentional and often coordinated manipulation and misuse, contribute to the four systemic risk categories defined in the DSA. These risks can stem from systemic violations of terms of service, such as the creation of fake accounts, the use of bots, or other deceptive practices. Automated manipulative mechanisms can lead to rapid and uncontrolled dissemination of illegal content or information that violates the platform's terms and conditions, contributing significantly to disinformation campaigns.

Zalando's services and functionalities are designed and implemented with robust processes to ensure platform integrity and to protect users from fraudulent activities such as bots and fake accounts creation.

Zalando is operating a closed platform in the sense that no third party, including contracted Partners, can individually and independently upload any content on the website. It always takes an activity initiated by Zalando before content is published online.

Zalando's platform is primarily focused on fashion, beauty and lifestyle products rather than facilitating broad social interactions or political discourse. This focus inherently limits the potential for malicious acts to manipulate the platform for harmful purposes. The content provided by its service providers is subject to strict moderation processes. This ensures that any attempts to manipulate the service through fake reviews or misleading information are quickly identified and mitigated, in the vast majority of cases even before they are uploaded. The moderation system combines both automated and human review processes, ensuring a high standard of content quality and integrity.

Zalando does not launch marketing campaigns that create the perception of pressure or an urgency to buy, such as manipulative or deceptive sales countdowns or manipulative marketing claims.

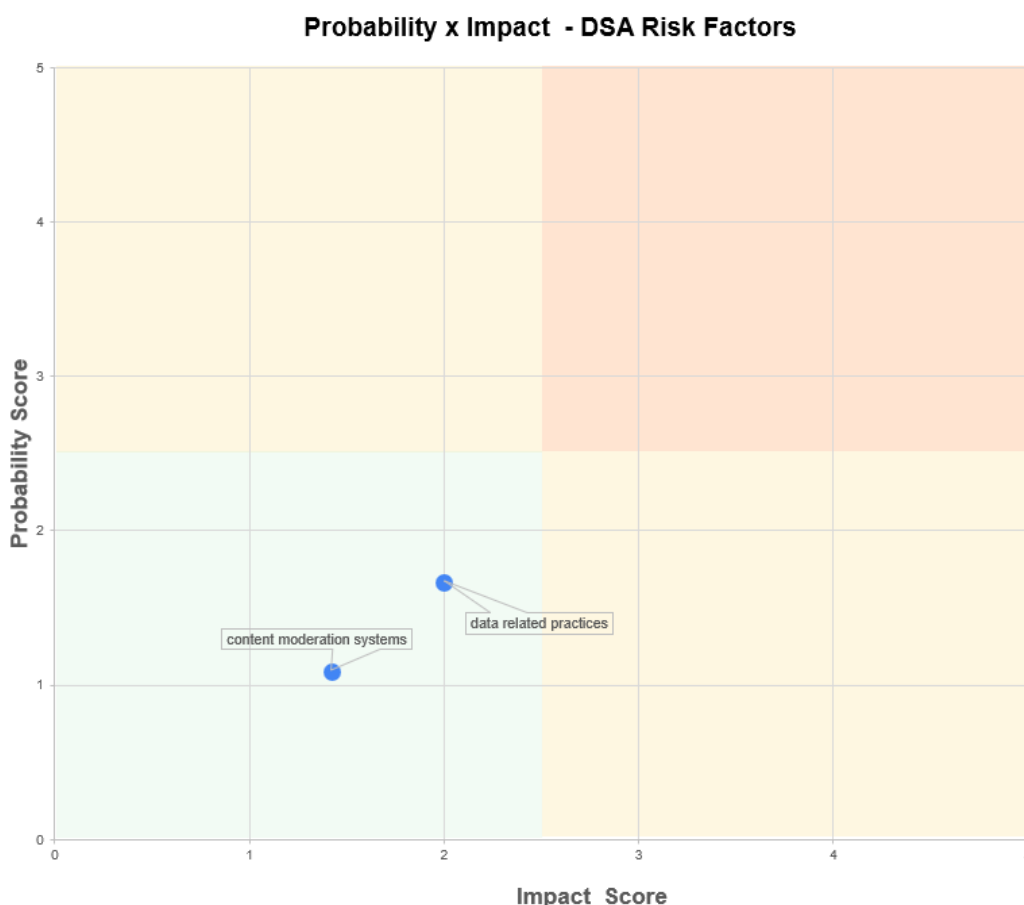
⁸ <https://cdr-initiative.de/en/initiative>

Zalando has a transparent and robust system for reporting and addressing suspicious activities. Users and partners are encouraged to report any irregularities, which are promptly investigated and addressed by dedicated teams. Therefore, Zalando’s adherence to stringent data protection, privacy standards and transparent algorithmic systems **actually decrease and/ or avoid DSA systemic risks**, such as the risk of illegal or inappropriate content due to manipulation or dark patterns.

5.7 Conclusion

In summary, the combination of a focused platform scope, rigorous content moderation, advanced detection algorithms, transparent reporting mechanisms, and stringent data protection practices ensures that **no potential negative implications stem from the risk factors specified by the DSA. Thus, Zalando can be positioned as a VLOP with very low risk in influencing the systemic risk categories specified by the DSA.**

In fact, only two risk factors were identified as relevant to the services provided by Zalando: content moderation systems and data related practices. However, based on the characteristics of the notice & action cases submitted to Zalando and due to the robust mitigation measures in place, Zalando maintains a position of very low risk in these areas, as illustrated in the heatmap below.



6 Mitigation Measures

According to Article 35 DSA, VLOPs must implement reasonable, proportionate, and effective mitigation measures tailored to the specific systemic risks of their service(s), identified under Article 34 DSA, with particular attention to the impact on fundamental rights.

Zalando has always proactively addressed and implemented relevant and required measurements to ensure an adequate level of control and oversight when implementing new features or functionalities into its platform. During the design phase of any new feature, Zalando's legal team collaborates with relevant stakeholders and operational teams to ensure that all applicable regulations are met and potential risks are thoroughly assessed and managed. In Zalando's interpretation of Art. 35 DSA, there is consequently **no need to implement further risk mitigation measures**.

Zalando's commitment to fostering a safe and accountable digital environment for both customers and partners, grounded in the company's values and ethical standards, is crucial for ensuring business continuity, achieving success and building trust. In alignment with this commitment, every entity seeking collaboration with Zalando must undergo a thorough due diligence process before entering into a Partner Agreement. The following policies and guidelines constitute Zalando's most relevant mitigation measures incorporated into the onboarding process for collaboration with third parties.

- **Zalando's Code of Conduct** - provides binding principles to Zalando's Business Partners for a partnership with Zalando;
- **Zalando's Product & Content Guidelines** - outlines Zalando's mandatory and optional product standard requirements;
- **Animal Welfare Policy** - lists the Principles to which Business Partners must adhere when supplying products made from animal-derived materials for sale through Zalando;
- **Sustainable Sourcing Policy** - defines minimum requirements for the use of specific fibers, materials and manufacturing methods for products sold through Zalando;
- **Quality Assurance Manual** - outlines Partners' product-related quality assurance obligations to comply with;
- **Restricted Substances list** - document to outline product safety requirements, Zalando Chemical Policy and restricted substances;
- **Brand Protection DSA Process** - process to review and take actions for all reported cases in the platform triggering a DSA notice;
- **Partner Onboarding with KYC Process** - Know Your Customer/Business Partner process with extensive checks in place to onboard partners;
- **Zalando Privacy Program** - outlines how the Zalando Group protects the personal information of its customers, employees, and partners;
- **Data Privacy and Confidentiality Principles** - provides guidance on how to handle customers' data;
- **Moderation Guidelines** - provides a set of rules and examples of content that would make a review ineligible for publication.
- **Moderation Guidelines for Ratings & Reviews** - outlines the requirements for reviews to be accepted on the platform. The moderation process, managed by a service provider, is designed to adhere to these principles and to enforce the guidelines rigorously during the review moderation process.
