

JOINT STATEMENT by Access Now, ARTICLE 19: Global Campaign for Free Expression (ARTICLE 19) and the Electronic Frontier Foundation (EFF)

Dear Commissioner Breton,

We are writing to you in response to your recent [letter](#) addressed to X, where you raised concerns in the context of far-right riots in the UK as well as the conversation between the US presidential candidate Donald Trump and X owner Elon Musk, which was live-streamed hours after your letter was posted on X.

It is clear that X has an obligation under the DSA to assess and adequately mitigate systemic risks stemming from its operations. We appreciate the EU Commission's efforts to ensure that all Very Large Online Platforms (VLOPs) comply with their obligations under the DSA.

However, your letter raises several issues we would like you to consider and clarify:

First, we express concern about [reports](#) that the regulatory warning letter was driven by political momentum rather than carefully considering the merits. As we raised previously, the EU Commission must enforce the DSA in a consistent and coordinated manner with the DSA enforcement team, which follows the letter of the law. Actions demonstrating the contrary raise concerns about politicising the enforcement of the DSA and using it as a pressure tool against online platforms during politically sensitive times and periods of high media attention.

Second, we note that the DSA is legally binding in all EU Member States and applies to all intermediary providers that offer their service to individuals in the EU. Hence, VLOPs, such as X, when disseminating content to EU users, must comply with the DSA's due diligence obligations, including to assess systemic risks in the Union stemming from their services' design or functioning and take appropriate measures while respecting fundamental rights. While events that take place outside the EU may certainly lead to serious negative consequences for those within the EU, we are concerned that your letter does neither specify whether or how the events in the UK have reached the threshold of systemic risks within the EU nor explain why a broadcast of an interview with a US presidential candidate on X requires "effective mitigation measures" in the EU.

We fully understand and [share](#) your concerns about the racist and Islamophobic violence in the UK and concerns about the dissemination of content that promotes hatred or incites violence. That said, we urge the EU Commission to be more transparent in their communication about how these events that occur outside the EU are linked to risks and societal harm to people who live and reside within the EU, as well as the expectation of the EU Commission about what actions VLOPs must take to address these risks. We would like to remind you again that there is a [great need to follow a human rights-centered enforcement of the DSA](#) that also considers the global effects of the DSA.

In this regard, we are particularly concerned about the assessment in your letter that a live interview with one of the two major presidential candidates in the US elections would contribute to a systemic risk under the DSA that would require specific mitigation measures to avoid non-compliance procedures. Indeed, your focus on a specific streaming event raises fundamental rights concerns. Freedom of expression and of information are core principles under the DSA, principles you note in your letter. Even if you have concerns about this specific event, the dissemination of information that is highly newsworthy, timely, and relevant to public discourse is not, in itself, a systemic risk, and we believe users have a right to receive such content. Risks related to such events must be carefully analysed, including

the actual or foreseeable negative effects on public discourse. It is further entirely unclear what ex-ante measures a VLOP should take to address a future speech event without resorting to general monitoring and disproportionate content restrictions.

We encourage the EU Commission to focus on whether VLOPs adequately assess systemic risks stemming from their systems and processes rather than enforcing broad mandates on them to combat “harmful content.” We are generally concerned about enforcement actions that do not correspond to the [EU Commission’s own understanding of the DSA](#) that harmful content should not be treated in the same way as illegal content. Indeed, the DSA only imposes measures to remove or encourage the removal of illegal content. We would, therefore, call on the EU Commission to [abstain](#) from generally demanding content-specific restrictions in the context of the systemic risk assessment and mitigation provisions.

For all these reasons, we strongly [recommend](#) that the EU Commission provide more clarity on their understanding of systemic risks under the DSA, including the granularity of required evidence or benchmarks VLOPs - as well as Very Large Online Search Engines (VLOSEs) - must follow when assessing if their systems and processes pose risks to public discourse. We urge the EU Commission to address these crucial elements of risk assessments in future guidelines foreseen by Article 34(1) of the DSA.

Finally, we also urge the EU Commission to let their enforcement work be guided by evidence rather than political sentiment and to set a [high standard](#) for protecting fundamental rights, including freedom of expression and of information.

Best regards,

Access Now
ARTICLE 19
Electronic Frontier Foundation (EFF)