



12 November 2021

Dear Members of the European Parliament,

We represent a broad coalition of leading startups, SMEs, technology, advertising, and media organisations of all different sizes. We are writing to you together because we believe it is crucial to call on the European Parliament to make its mark in developing a robust regulatory digital framework for the EU. We refer especially to the Digital Services Act (DSA) which we view as a major opportunity to create a strong up-to-date legislative framework that will strengthen the EU internal market and create much needed legal certainty. We fully stand behind the ambition of the DSA proposal to update and clarify the rules for digital intermediary service providers. With the upcoming vote in the Internal Market and Consumer Protection Committee approaching we would like to draw your attention to areas we believe need to be taken into account if the DSA is to be given a chance to go through the co-legislative process in a timely manner and to be effective.

### **1. Maintain the horizontal approach of the Digital Services Act**

The proposed DSA was intended to be “a horizontal framework for all categories of content, products, services and activities on intermediary services”. This horizontal framework legislation was not intended to address every concern online but rather to build the foundation and to be complemented by vertical and sector-specific initiatives where needed. Sectoral legislation tends to be more detailed and hence requires frequent updates whereas the DSA should set horizontal principles and remain future-proof for a long time.

So far debates in the European Parliament, though interesting, have diverted attention from the task at hand, namely to strengthen the DSA where needed and instead have diluted the discussion to cover a lot of ground that has not been properly assessed and should not be added to this horizontal piece. Such amendments include elements that have not been subject to proper impact assessments, e.g., a possible ban on targeted advertising, an extension of “know-your-business-customer” requirements to hosting providers, extending marketplace obligations, a strict deadline to remove illegal content or introducing an exemption of removal for editorial content. These additions risk:

- Delaying the process to get this essential legislation in place as it makes the starting points of the co-legislators entering into trialogues too far apart;
- Tackling areas that are better left to more nimble, more detailed vertical legislations, some of which are already in the pipeline; and
- By-passing proper impact assessment and thus introducing unsubstantiated opinions into the legislation instead of evidence-based policy-making.

## **2. Preserve and build on the cornerstones of the e-Commerce Directive**

As suggested by the European Commission's proposal, the DSA should maintain the cornerstones of rights protection from the [e-Commerce Directive](#), namely the conditional liability exemption for hosting providers, the prohibition on general monitoring and the country of origin principle.

We therefore ask to:

- Maintain a strong country of origin principle for all players to remove unnecessary administrative burdens and to strengthen the internal market;
- Ensure that amendments introduced do not prescribe measures that, in practice, run counter to the principle of the ban on general monitoring; and
- Encourage good faith efforts to address illegal content within an appropriate legal framework.

## **3. Build a workable, balanced, future-proof Regulation**

A workable framework, applicable to many different types of services, must be balanced and proportionate. It is essential that the variety of platform services in the EU is taken into account when setting liability and responsibility rules. Enough space to design tailor-made safeguards should be given to online service providers that are most appropriate to their services. The total cost of compliance with the DSA can turn into a market entry barrier for the smallest providers and deter them from launching and scaling in the Digital Single Market.

It is essential that state of the art is taken into account to allow for the best means to be used per service; this might include trusted flagger systems but should not prescribe just one option. The DSA should contain safeguards against potential abuse of the trusted flagger system.

## **4. Ensure consistency with the EU's existing legal framework**

The Digital Services Act should avoid duplication and ensure consistency with existing European frameworks, e.g., the General Data Protection Regulation, the Copyright Directive, the Platform to Business Regulation, and the Directive on better enforcement and modernisation of Union consumer protection rules (Consumer Omnibus).

## **5. Assess personalised advertising to avoid unintended consequences**

We fully support requirements in the DSA proposal that seek to improve the overall transparency of digital advertising.

The General Data Protection Regulation (GDPR) and the ePrivacy Directive (EPD) set out extensive rules on the collection and processing of individuals' personal information as well as nine distinct users' rights, e.g., right to receive transparent information about the processing, right to object to the processing, right to rectification and erasure, right not to be subject to profiling or other automated decision-making. We believe a coherent interpretation and enforcement of GDPR across the EU would alleviate many of the concerns which MEPs have addressed in the context of the DSA. We caution against any new rules that would create further confusion, or tensions with EU privacy and data protection *acquis*.

We encourage the European Parliament to carefully assess the impact of any measures on targeted advertising, before imposing severe limitations or bans. Advertising plays an important role for businesses

operating in Europe. Advertising enables millions of small businesses to reach local customers. Overall, more nuance should be brought to the debate around online advertising.

We hope that you, like us, will try to make sure that the DSA can become a reality in a timely manner that will ensure its relevance and impact to bolster EU digital policy-making.

Thank you for your consideration. We are at your disposal should you wish additional information and to meet with you whenever useful.

Signatories (Alphabetical order)

ACT | The App Association

Advertising Information Group

Allied for Startups

Computer and Communications Industry Association (CCIA)

Developers Alliance

Digital Future for Europe Coalition

eco - Association of the Internet Industry

European Gaming and Betting Association (EGBA)

EuroISPA

Federation of European Data and Marketing (FEDMA)

IAB Europe

Infobalt

International Advertising Association - Italy Chapter

Netcomm

ZIPSEE Digital Poland

ZPP