Position paper on the Digital Services Act

1. Introduction

The e-Commerce Directive 2000/31/EC (ECD) has been instrumental in setting up a digital infrastructure which enabled millions of digital retail businesses in the EU, and it has also helped them to profit from a more harmonised Digital Single Market for information society services. This has helped foster growth in the EU furthering European-based businesses to compete digitally not only on a European scale but also on a global scale. The ECD has fostered the development of online platforms in Europe, such as e-commerce marketplaces. These have been giving e-retailers, especially SMEs, easier access to consumers across the Union, around the world and greater choice to consumers, often at lower prices. At the same time, the increasing globalisation of digital services has also created some challenges, in particular related to ensuring that all products coming from third countries are fully compliant with EU legislation and the consequences for the level playing field between EU-based and third country-based traders.

Due to its minimum level of harmonisation, the e-Commerce Directive has been implemented in different ways in the various Member States, resulting in diverging provisions across the Union and case law. Moreover, Member States are also introducing national initiatives to regulate intermediary services, for instance in Germany, Austria and France. In light of these ongoing efforts by national governments to regulate illegal content, Ecommerce Europe strongly encourages the Commission's ambition to introduce a harmonised framework for regulating online content and intermediary liability. Full harmonisation will enhance legal certainty for businesses of all sizes active (or wishing to be active) cross-border in the EU and, through reducing and simplifying the regulatory burden for businesses, it will lower compliance costs.

In this paper, Ecommerce Europe outlines its position on the various elements of the Proposal for a Regulation on a Single Market for Digital Services (Digital Services Act or DSA)[1]. Given that Ecommerce Europe is comprised of 24 national e-commerce associations (and some direct company members i.e., digital/omnichannel shops and online marketplaces), the membership base is highly diverse. While this makes Ecommerce Europe very representative of the sector, it also means that from the different actors involved there may be different views on specific elements of the Commission's DSA proposal. Regardless, all members of Ecommerce Europe are committed to cooperating in an open and constructive way towards the best suitable solution for e-commerce in Europe.

2. Scope

2.1. Futureproof & proportionate approach

In the 20 years since the ECD came into force, the role of digital service providers, platforms and online intermediaries has drastically changed and expanded. The distinction between online and offline sales is rapidly fading away, with a transition towards an omnichannel shopping ecosystem, which Ecommerce Europe fully supports and embraces.

Given the complex landscape the digital sphere has turned into, and the broad range of intermediary services present in the Single Market, Ecommerce Europe supports the DSA to be the one horizontal framework for all online intermediary services targeted at EU based consumers. We welcome the horizontal regulatory approach adopted by the European Commission in the proposal and the fact that it maintains the country-of-origin principle. Notwithstanding our support for the broad scope, we would like to stress that obligations placed on intermediary services (e.g., marketplaces in an e-commerce context) should be proportionate to their capabilities, knowledge, and the role they play in the value chain. The concept of "digital services" on which the DSA proposal focuses is very broad and encompasses both different business models as well as services with varying levels of involvement in the offering of goods, services and content online. It is important to be mindful of the nature of these differences, including their technical capability to access specific content hosted, their ability to communicate to their users and end-users, or their role in disseminating certain content, when applying the various provisions of the DSA. In this context, Ecommerce Europe has always stressed that the DSA should be principle-based, technology- and channel-

[1] Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on a Single Market For Digital Services (Digital Services Act) and amending Directive 2000/31/EC

neutral (omnichannel), and proportionate, to be designed to adapt and resist to the evolution of the fast-digitalising economy.

2.2. Legal consistency with other legislation

In the past years, the EU has created new legislation that targets, among others, also online platforms (e.g., VAT E-commerce Reform, Consumer Rights Directive[2] - as amended by the Omnibus Directive[3], Platform-to-Business Regulation[4], Directive on Administrative Cooperation 7[5], etc.). Most of the recently adopted legislation still has to enter into application. At the same time, the revision of several relevant legislative texts, such as the General Product Safety Directive[6] and the Product Liability Directive[7] are anticipated for later this year.

Therefore, in order to ensure legal certainty for businesses, Ecommerce Europe stresses the need to ensure coherence between the DSA framework and already existing and upcoming legislation. In that perspective, the DSA should regulate what is necessary, take into consideration eventual non-legislative tools and a proportionate, targeted, risk-based approach that differentiates, if and when needed, for the allocation of legal obligations and responsibilities depending on the type of service provider and the type of information society service provided.

2.3. Very Large Online Platforms (VLOPs)

Linking certain obligations of the Regulation to threshold values such as the 'number of active recipients' generally reflects the proportionate nature of the proposal. However, it is crucial that the concept on which such a threshold is based is sufficiently clear. The distinction between VLOPs and other intermediary services is made based on the number of 'active recipients of the service'. Ecommerce Europe stresses that it is important to consider the difference between the business models of online intermediaries and the different levels and frequency of activity recipients of the different services will usually deploy. We believe the calculation method should recognise that an active user of an e-commerce marketplace can be very different from an active user of a search engine or social media platform. In a marketplace context, Ecommerce Europe would not consider as 'active users' those that simply visit, browse or log in on the platform without making a purchase. Moreover, Art. 25.3 states that the *"Commission shall adopt delegated acts […] to lay down a specific methodology for calculating the number of average monthly active recipients of the service in the Union"*. The current lack of clarity on the definition of 'active recipients of the service' creates legal uncertainty for businesses about the threshold. Furthermore, considering the differences between users of various types of intermediary services, and the potential debate this could create, Ecommerce Europe would suggest not to leave the definition to delegated acts and provide for a clear definition of active recipient in the DSA itself. In our view, it should also be considered to align the definition to the definitions used in the proposed Digital Markets Act Regulation[8], which uses the concepts 'business user' and 'end user', instead of the term 'recipient', but considers an identical initial figure of 45 million.

[2] Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council
[3] Directive (EU) 2019/2161 of the European Parliament and of the Council of 27 November 2019 amending Council Directive 93/13/EEC and Directives 98/6/EC, 2005/29/EC and 2011/83/EU of the European Parliament and of the Council as regards the better enforcement and modernisation of Union consumer protection rules
[4] Regulation (EU) 2019/1150 of the European Parliament and of the Council of 20 June 2019 on promoting fairness and transparency for business users of online intermediation services
[5] Council Directive (EU) 2021/514 of 22 March 2021 amending Directive 2011/16/EU on administrative cooperation in the field of taxation
[6] Directive 2001/95/EC of the European Parliament and of the Council of 3 December 2001 on general product safety
[7] Council Directive 85/374/EEC of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products
[8] Proposal for a Regulation of the European Parliament and of the Council on contestable and fair markets in the digital sector

Ecommerce Europe would note that besides quantitative criteria, potential other criteria, such as a risk-based approach, could also be considered.

2.4. Illegal content

Ecommerce Europe welcomes that the DSA applies to intermediary services that provide services to recipients in the EU, regardless of whether the services are established in the EU themselves. This is an important aspect as it contributes to ensuring a level playing field between EU based and non-EU based players. However, Ecommerce Europe remains mindful of potential enforcement issues and asks that the phrase “to offer services in the Union” (Art. 2(d)) should be further clarified. It is important here to consider the different types of business models of online intermediaries and what “to offer services” would mean. Within the EU, this question is often solved by offering translations or country-specific websites. However, at international level, it is unclear when this would be the case. In addition, for some international companies it may be unclear which legal entity is considered to be “offering” the services in the context of the DSA. In particular as it can be that a different entity operates the service than the entity that actually has a contract with users in the EU in order to provide the services to them. Furthermore, in terms of definitions, given the broad range of intermediary services covered by the DSA, and the different forms of engagement they have with their users, Ecommerce Europe also calls for a clarification of the concepts of “significant number of users” and “user”.

Ecommerce Europe welcomes the focus of the DSA on illegal rather than harmful content. Further, we support that the DSA overall takes a harmonised approach with regards to “illegal content” as defined in Art. 2(g), given the variety of intermediary services in scope and the different subject matter impacted. We recognize however, that the lack of harmonisation between Member States with regards to relevant legislation, makes ‘illegal content’ a complex principle. We would therefore like to reiterate that, beyond the DSA, Ecommerce Europe always encourages Member States to strive for more uniform and harmonised interpretation of legislation. The DSA currently does not seem to focus on the harm or losses caused by non-compliant goods themselves. Nevertheless, the scope should be further clarified to avoid any misunderstandings.

3. Intermediary liability

3.1. Limited liability

Ecommerce Europe welcomes the clarifications that have been made in the DSA with regards to the liability regime and overall recognises that the DSA makes important steps towards further protecting consumers against illegal content and improving the level playing field between EU and non-EU based actors.

Limited liability for goods sold by EU-based sellers

Ecommerce Europe believes that for goods sold by EU-based sellers via online marketplaces, the liability regime as proposed by the European Commission in its proposal offers sufficient safeguards, as consumers are always able to address a company established in an EU Member State in case of non-compliance.

Goods sold by non-EU based sellers

Ecommerce Europe generally welcomes the clarifications that have been made in the DSA proposal on the liability regime and the codification of case law of the Court of Justice of the European Union in Article 5(3). With regards to sales of goods intermediated by online marketplaces between a seller in a third country and a consumer in the EU, we share the Commission's goal to aim to promote a level playing field and to protect consumers against illegal content. The current debate on this issue may be considered a good starting point to analyse and review the possibility of establishing, if any, further necessary obligations, which should always be accompanied with the proper impact assessment.

Concluding remarks

It should be noted that Ecommerce Europe represents e-commerce associations from 21 countries, and consequently 21 inherently different markets. It is therefore important to point out that Ecommerce Europe's national members can provide further feedback on the proposed liability framework, taking into account the characteristics of their national markets and the various business models active within the e-commerce sector. Overall, Ecommerce Europe strongly values a diverse e-commerce landscape and recognises that, in a modern retail world, using and mixing various sales channels is crucial to be able to adapt to consumer needs, but most important is that we create an e-commerce landscape that ensures consumers' safety across all business models.

3.2. Voluntary actions & no general monitoring obligation

Ecommerce Europe generally welcomes the inclusion of Article 6 and believes that it could be a good way to foster good practices and encourage voluntary actions against illegal content. Despite the fact that, under the current e-Commerce Directive, intermediaries have no general monitoring obligation, intermediaries often engage in voluntary monitoring activities to trace illegal content.

4. Due diligence obligations

4.1. Legal representative

It is a good development that intermediary services which do not have an establishment in the EU need to appoint a legal representative (Art. 11). Ecommerce Europe considers this an important step towards a level playing field between EU based and non-EU based players. We welcome that the legal representative needs to be provided with the necessary resources and powers (Art. 11.2) and that it can be held liable for non-compliance with the obligations of the DSA (Art. 11.3). It is important to ensure coherence with the Market Surveillance Regulation's concept of economic operator, which has not yet entered into application. Overall, Ecommerce Europe supports the introduction of the legal representative.

4.2. Terms & conditions

Article 12 on terms and conditions states that intermediary services "shall include information on any policies, procedures, measures and tools used for the purpose of content moderation, including algorithmic decision-making and human review. It shall be set out in clear and unambiguous language and shall be publicly available in an easily accessible format." This Article should be aligned with Art.3 of the P2B Regulation[9] on terms and conditions. Moreover, the disclosure of such detailed information on content moderation policy, procedures, measures and tools could be abused by actors seeking to sell illegal products. In addition, it could be considered business secrets or be taken advantage of by competitors.

The term 'any' in this article is overly broad, and Ecommerce Europe suggests replacing it by 'the information necessary'. Alternatively, a safeguard should be introduced to ensure that sensitive information would not have to be published in case it is deemed harmful or could support abuse. We would therefore suggest including something along the lines of the following to Article 12 (and potentially also to Articles 13 and 15): *"12.3. Providers of intermediary services shall, when complying with the requirements of this Article, not be required to disclose information that, with reasonable certainty, would result in public harm through the manipulation of content moderation procedures or the disclosure of trade secrets, in line with Directive (EU) 2016/943[10]."*

[9] Regulation (EU) 2019/1150 of the European Parliament and of the Council of 20 June 2019 on promoting fairness and transparency for business users of online intermediation services

[10] Directive (EU) 2016/943 of the European Parliament and of the Council of 8 June 2016 on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure

4.3. Notice and action mechanisms & trusted flaggers

We generally welcome the introduction of EU-wide standards in Article 14 for the notice and action mechanisms, which are currently highly fragmented across the EU, and we support making these procedures more uniform, transparent, and efficient. Ecommerce Europe is cautious of Art. 14.3 as it seems to suggest that a notice that fulfills all elements under Art. 14.2 gives rise to actual knowledge or awareness, and thereby assumes that such a notice is automatically valid. This has certain practical implications, as products could be notified by individuals that do not violate any legislation, based on ill-intent (for instance individuals flagging competing products) or simply because the individual does not have direct experience or expertise on the notified content. We would therefore like to ask the Commission to include a clarification in Article 14 as provided in Recital 22, stating that actual knowledge or awareness is obtained "in so far as those notices are sufficiently precise and adequately substantiated to allow a diligent economic operator to reasonably *identify, assess and where appropriate act* against the allegedly illegal content". It could also be considered to clarify that while Article 5 refers to "actual knowledge of illegal activity or illegal content", this actually refers to *alleged* illegal content. We would therefore like to raise the issue that the Article in its current form may push marketplaces, which are concerned by the fact that they will be held liable due to actual knowledge, to take down legitimate content. Additionally, clarifying that Article 14.3 does not automatically lead to actual knowledge is also necessary in light of notice abuse. The safeguards provided in Article 20 are not sufficient to remedy the problem as they provide an ex-post solution. For instance, if a seller were to notify the products of a competitor one day ahead of an important day (e.g., Black Friday, Christmas), and the marketplace would have to consider that the notice automatically gives rise to actual knowledge leading to a take-down, the harm to the seller will be done regardless of sanctions imposed on the notifier afterwards.

Article19 introduces a system for trusted flaggers. While Ecommerce Europe welcomes the fact that the process of designating trusted flaggers will be structured, we would still like to raise a few points of concern. First, it is imperative to ensure that the trusted flagger status is awarded to entities that have the relevant expertise and competence on a specific type of digital content or services. Art. 19 states that a trusted flagger must have "particular expertise and competence", however, selection criteria should be added that guarantee that they are qualified. It is important to note the variety of content available on online platforms, for instance a trusted flagger with expertise on hate speech may not be qualified to flag counterfeit products. Trusted flagger status should, in our view, be directly connected to competence over certain types of infringements, and even more granular in IP cases, over IP rights owned by the flagger in question.

Furthermore, having to give priority to the notice of the trusted flagger could be problematic as this means platforms have to stop prioritising the notices of the trusted flaggers they are working with currently. Prioritisation in relation to the type of infringement and the associated level of risk are not dealt with in the DSA, while there could be cases where a notice not coming from a trusted flagger should be treated with greater priority due to a greater level of risk. The processing of notice by trusted flaggers with priority should therefore not be an absolute obligation, priority should always be given to notices which flag the highest or most urgent risks. We would welcome safeguards to be put in place against awarding trusted flagger status to unreliable entities and we underline the importance of transparency in the process of validating these entities in each Member State as officially accepted bodies. Article 19.6 should therefore include a clear procedure on the circumstances in which the trusted flagger status can be revoked, the exact timeframe and on whether there are limits to the number of trusted flaggers. Finally, the various national administrations should share their official list of trusted flaggers with the other Member States and update them regularly, so that their actions are valid and legitimate when they act at European level. EU Member States should further improve cooperation, both between EU Member States and with third parties in order to contribute to swift action against illegal content.

4.4. Measures and protection against misuse

Ecommerce Europe welcomes the measures and protection against misuse presented in Article 20. However, the use of the term 'recipient of the service' is unclear in the context of e-commerce, as it could refer to both the end-user as the business user. Furthermore, clarification could also be provided of what

'manifestly illegal content', 'frequently' and 'gravity' refer to. Similar to the comment raised with regard to the terms and conditions, the disclosure of the policy referred to in Article 20.4, should be general enough to prevent the information from being misused by actors seeking to circumvent the procedure. Ecommerce Europe would recommend the DSA to address a specific type of notice abuses in a marketplace context, namely those intended for anti-competitive practices. For instance, business users could use the notice mechanism to take down the listings of a competitor prior to an important event (e.g., Black Friday, Christmas etc). Finally, if a user is suspended multiple times as they frequently and repeatedly provide illegal content, platforms should be free to terminate the services permanently. The restriction, suspension and termination of business users should be aligned with the P2B Regulation.

4.5. Out of court dispute settlements

Ecommerce Europe generally welcomes alternative dispute mechanisms, as they can be good and fast solutions to finding an agreement out of court. However, the proposed system for out-of-court dispute settlement in Article 18 is insufficiently clear and should be more aligned with the P2B Regulation and existing national out-of-court dispute settlement mechanisms. We would suggest bringing wording of Article 18 in line with the P2B Regulation and thereby making it a voluntary system similar to the one in the P2B Regulation. This would allow online platforms to refuse out-of-court dispute settlements in the case of obvious abuse. The current inclusion that online platforms have to engage "in good faith, with the body selected" is not clear, as online platforms have the obligation to participate in the settlement process anyway. Finally, it is unclear what a certified out-of-court settlement body is. Could this for instance be carried out by the same actors that operate as mediators under the Alternate Dispute Resolution Directive or P2B Regulation, or would only public bodies qualify as such settlement bodies? For this article, it is also important to consider the different types of content and actors involved. Finally, Ecommerce Europe would welcome the introduction of a safeguard allowing parties involved to challenge the certification of the OOC in case there are doubts about their independence or impartiality.

4.6. Algorithms and automated decision making

The DSA includes many requirements for platforms to be transparent about the use of algorithmic and automated decision making (Art. 12.1, 14.6, 15.2(c), 17.5, 23.1(c), 57.2). The right balance has to be found between providing sufficient transparency and protecting business secrets of online platforms. With regards to the recommender system proposed in Article 29, Ecommerce Europe would welcome further clarity on what could be considered a "recommender system" in an e-commerce marketplace context and how to avoid overlap of the obligations with the P2B Regulation and the Consumer Rights Directive[11] on ranking.

[11] Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council

5. Traceability: 'Know Your Business Customer'

Ecommerce Europe welcomes Article 22 on traceability to make sure that traders operating on marketplaces can be more easily traced and identified. We encourage this introduction and believe it can lead to greater transparency and help marketplaces prevent misuse and reduce the offering of non-compliant products by ill-intentioned sellers. The introduced KYBC-principle is especially important when it comes to the case of third country-based traders, because this could help consumers to get redress and competent authorities to identify a real and contactable entity in the form of the trader to resolve or address non-compliance. The traceability system in the DSA can however be further aligned with existing legislation (e.g., Anti-Money Laundering Directive[12], Transfer of Funds Regulation[13], DAC7[14]).

With regards to the information that needs to be collected, it is important to focus on the data that is relevant for identifying the trader, without overburdening the trader himself, or the platform (i.e., marketplace). It should also be clarified, for the different types of information to be collected, whether they are meant for consumers, authorities or should be public. It is also unclear what the self-certification process entails and how it can be ensured that it does not remain an empty promise by the trader, in particular as terms and conditions of marketplaces generally already include a term that the seller should commit to offering for sale only products that are compliant with applicable laws.

Ecommerce Europe would also welcome a clarification of the reference to the economic operator in Art. 22.1(d), in particular as economic operators are connected to products rather than traders, meaning that each trader does not necessarily only have one economic operator on one hand, and that certain traders may have no economic operator at all, either because they are themselves based in the Union, or because they do not sell any product falling under the scope of the Market Surveillance Regulation.. In Article 22.4, which requires the online platform to delete the obtained information when the contractual relationship with the trader has ended, it has to be added that the data can only be deleted if no contradicting obligation for data retention exists under the GDPR[15] or other applicable legal obligation that the online platform must comply with. It should also be considered that for greater consumer protection it may be advisable to keep the information for a longer period. In particular consumer protection authorities may require the identification of business users on product compliance issues after the consumer has made the purchase. Finally, the DSA does not specify how this article can be enforced towards third country-based marketplaces or if there are procedures in place in case consumers discover the information provided is incorrect.

6. Advertising

Articles 24 and 30 create quite burdensome obligations for online platforms in terms of transparency on online advertising, while the information could also be considered overwhelming for the recipient. Overall, the obligations seem to be aimed at political advertisements, leaving some uncertainties with regards to advertisements for products and services offered on e-commerce marketplaces. It is also unclear what constitutes an advertisement in a marketplace context. Article 2(n) states that *"advertisement' means information designed to promote the message of a legal or natural person, irrespective of whether to achieve commercial or non-commercial purposes, and displayed by an online platform on its online interface against remuneration specifically for promoting that information"*. This definition would seem to

[12] Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC
[13] Regulation (EU) 2015/847 of the European Parliament and of the Council of 20 May 2015 on information accompanying transfers of funds and repealing Regulation (EC) No 1781/2006
[14] Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC
[15] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC

include promoted product listings as advertisements as well. Ecommerce Europe would welcome a clarification on how an 'advertisement' can be defined in a marketplace context, how to separate them from promoted product listings and a clear statement that promoted product listings will not be considered as online advertising. Additionally, for online platforms such as marketplaces, it is not clear what the purpose is behind these transparency obligations, in particular as misleading advertising of products and services is already covered by the Unfair Commercial Practices Directive[16].

Furthermore, it is important to note that, for the advertisements displayed on online marketplaces by third-party advertisers, programmatic advertising is often used. This means that predetermined parameters are used by advertisers to purchase digital advertising space. Consequently, advertisements are displayed passively on the website of the marketplace/publisher, and the publisher does not have any ability to control the content, meaning to pre-screen the main parameters or interact with the content or targeting parameters. The actual advertiser and the publisher do not have a direct relationship. The requested information can therefore not be provided by the online marketplace, but the advertising intermediary would be better suited to fulfil this obligation, as it has access to the advertiser and the data being used to display the ads.

Targeted advertising
Following the publication of the DSA proposal with its new transparency obligations on online advertising, concerns have been raised in the European Parliament about targeted advertising. The proposal states that the requirements of the DSA on the provision of information relating to advertisement is without prejudice to the application of the relevant provisions of Regulation (EU) 2016/679. However, it also highlights "the need to obtain consent of the data subject prior to the processing of personal data for targeted advertising". Ecommerce Europe would like to stress the importance of alignment with the GDPR. While consent is one of the legal grounds used for the processing of user data, there appears to be an unjustified reluctance to accept all the grounds for legal processing of Article 6 GDPR in an equal way.

The Draft Report of IMCO Rapporteur Christel Schaldemose, adds a new article stating that providers of intermediary services "shall, by default, not make the recipients of their services subject to targeted, microtargeted and behavioural advertisement unless the recipient of the service has expressed a freely given, specific, informed and unambiguous consent." While Ecommerce Europe generally welcomes increased transparency in online advertising, we would like to provide some nuance to the discussion on targeted advertising. It is important to note that targeted advertisements and audience services are an important tool for especially SMEs to be able to reach consumers to offer their products and services. In particular following the outbreak of COVID-19 and the subsequent acceleration of digitalisation, a shift has taken place in which customer interactions have increasingly moved from an offline to an online environment. In that perspective, online advertising is essential for smaller retail businesses to interact with consumers that no longer visit physical stores to the same extent as before. To be able to compete on a European and global market with larger companies, the use of targeted advertisements is essential for online retail, notably for the smaller players, as consumers increasingly find retail companies and their products/services online. We would also like to add that targeted advertising for products and services can also be beneficial for consumers, as they can be more tailored to consumer needs.

Ecommerce Europe would therefore like to point out that restricting targeted advertising would have a significant negative impact on the competitiveness of smaller retailers and SMEs vis-a-vis larger platforms. Instead, legislation should focus on abusive data practices, and creating safeguards for the protection of fundamental rights of citizens and equal competitive opportunities for businesses.

[16] Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council

7. Enforcement

Ecommerce Europe welcomes the transparency and traceability requirements proposed in the DSA, but would like to stress the importance of effective enforcement. While we are confident that the new rules will contribute to a safer online environment, for instance through the Know Your Business Customer principle and the introduction of a legal representative for intermediary services based outside of the EU, we recognize that enforcement is key to prevent non-compliant products from entering the EU market. Market surveillance (and customs) authorities seem to be in the best position to prevent non-compliant products from entering the EU market in these situations. However, as market surveillance (and customs) authorities have only limited resources to verify product safety compliance of such an overwhelming amount of imported goods, a major part of these imports will not be controlled, thus leading to substantial risk of non-compliant or unsafe products entering the EU market. Therefore, Ecommerce Europe generally finds that the upcoming revision of the General Product Safety Directive (GPSD) should empower market surveillance (and customs) authorities, by providing them with more resources and more efficient instruments to enforce EU rules, in order to efficiently check products and block non-compliant goods before they enter the EU market. More efficient enforcement will increase EU consumers' protection and restore the level playing field for EU-based operators.

7.1. Digital Services Coordinators & European Board for Digital Services

Ecommerce Europe welcomes the introduction of the Digital Services Coordinator (DSC) and the European Board for Digital Services (EBDS), as well as the various provisions aimed to enhance collaboration with the Commission. We believe they can provide the basis for uniform enforcement of the regulation across the EU. With regards to the DSCs, it is important to ensure they have the right competences and skills adapted to various types of intermediary service providers. With regards to the EBDS, although we welcome its introduction, we would like to stress that it should not take a regulatory approach as it happened with the European Data Protection Board (EDPB) and its activities. Also taking into account the experience with the EDPB, we call on the European Commission to ensure that the EBDS will be transparent with regards to its activities and formally allow stakeholders' involvement for instance by means of open consultations, stakeholder meetings and so on.

7.2. Fines & penalties

Given that the form decided upon for this legislation is a Regulation and not a Directive, maximum harmonisation should be achieved in all respects. In order to promote consistency across the European Union, Member States should harmonise as much as possible the rules on penalties for the same infringements, similar to Article 83 of the GDPR. Furthermore, while Ecommerce Europe agrees that effective penalties can be helpful, the maximum level of the proposed fines and penalties is very high. Regardless, we would always like to stress that before giving a company a fine, authorities should always attempt to help businesses with compliance with complex legal obligations. Furthermore, as the fines are based on turnover, it is important that the DSA clarifies what 'annual income or turnover' (Art. 42) and 'total turnover' (Art. 59) refer to, in particular whether it is global or only related to the market where the infringement took place.

7.3. Application period

Considering the variety of businesses in scope of the DSA and the extensive nature of the transparency and traceability obligations, it is not feasible to expect compliance after a three-month transition period. Ecommerce Europe would propose at least 12 months of transition time and would like to add that any implementing guidance accompanying the adoption of the DSA should be provided at least 6 months before the application date, to give online service providers sufficient time for implementation.

8. Closing remarks

Ecommerce Europe and its members are willing to constructively cooperate with EU policymakers and other EU stakeholders on creating a proportionate EU legislative framework that would be fit for the future and which will enable the rise of EU champions in the digital sector.

For any questions, please feel free to contact Maike Jansen (maikejansen@ecommerce-europe.eu).