



11 October 2021

## Joint call by business, consumer and civil society organisations on the Digital Services Act (DSA): Effective and unambiguous rules are needed to tackle illegal activities and rogue traders

Hosting services, such as online platforms that are consumer facing, are now a part of the everyday life of consumers and professional customers shopping for products and services online. These include traditional marketplace services and social media networks that allow traders to show ads to consumers and once consumers click on an ad, it takes them to another site, or it allows consumers to purchase products directly on their social media networks. Whilst these services can improve consumer and business choice, they also open a backdoor for traders who do not play by the EU's rules.

### The evidence calling for ambitious rules is overwhelming

Authorities, civil society organisations and businesses consistently find [evidence](#) of EU and non-European third-parties using online platform services to sell illegal products and services. Problems identified range from illegal products (that are dangerous or counterfeit, products that do not comply with energy labelling laws, or do not contribute to waste recovery and recycling fees)<sup>1</sup> to illegally traded animals<sup>2</sup>, fraud and scam ads<sup>3</sup>, misleading information (such as [fake reviews](#)), failure to state whether the seller is a trader

<sup>1</sup> For example, a market sweep by ICRT and [six consumer organisations](#) found two-thirds of 250 products purchased from marketplaces [fail safety tests](#). A [survey of non-branded toys](#) sold by third-party sellers via some of the EU's most popular marketplaces found that 97% did not comply with EU laws. EucoLight found a 78%-100% scale of non-compliance for LED bulbs in ten EU countries. An online mystery shopping exercise ran by LightingEurope in the Netherlands showed the lamps purchased via platforms either did not have an energy efficiency label at all or it was not used correctly. In June 2021, the OECD and the EUIPO [warned](#) that there is robust growth in the supply of fakes on all types of online platforms.

<sup>2</sup> [Illegal Pet Trade: Game Over Report](#)

<sup>3</sup> E.g. The UK consumer group Which? found that fraudsters can create fake ads [only within hours](#) and [nearly one in ten](#) consumers have fallen victim to scam adverts as platforms fail to adequately protect them. Arbeiterkammer reported that it takes [less than an hour](#) to find fake shops' ads on platforms.

or a genuine consumer such in the case of online ticket resales<sup>4</sup>, and other consumer-rights violations<sup>5</sup>. This highlights the urgent need for horizontal regulation under the DSA.

Current regulatory gaps do not harm only consumers and professional customers. Reputable businesses trying their best to comply with various EU laws on safety, sustainability, energy efficiency, consumer rights, animal welfare and environmental requirements to protect end-users also suffer. Both brick-and-mortar shops and other law-abiding businesses face unfair competition from rogue traders and online platform services that allow illegitimate traders, illegal services and illegal products to reach consumers and professional customers by facilitating the initiation of a transaction.

### **Why the DSA is the right instrument and should complement other EU laws**

Other laws, like the draft General Product Safety Regulation, can resolve only safety-specific issues. They cannot address situations where environment, sustainability, energy efficiency, animal welfare, counterfeiting or consumer rights laws are ignored. Moreover, these other issue-specific regulations cannot resolve how online marketplaces can be held liable either, if the DSA does not define sufficient conditions for liability and limits what can be regulated under other EU laws.

### **The DSA must hold accountable online platforms that facilitate the initiation of transactions between traders and end-users via a strong liability regime and firm obligations**

The undersigned organisations call on EU policy-makers to prevent such platforms from easily escaping liability. They should not be exempt from liability when:

- They are aware of an illegal activity on their interfaces and do not take immediate action; or
- They exert a decisive influence on the trader or the transaction; or
- There is no party based in the EU that can be held liable for an illegal activity online on their platform; or
- They do not comply with their own DSA due diligence obligations, such as the know-your-business customer obligation.

In addition, the DSA needs effective and unambiguous obligations, including a know-your-business-customer obligation, and an obligation to conduct random mystery shopping exercises and visual inspections of products and services (just as authorities, industry, consumer and other civil society organisations frequently do). This is important because it can take just [a few minutes](#) to list unsafe goods previously notified to an online marketplace service provider.

We are asking for the implementation of a robust verification system by which traders are not allowed to trade on their services unless their information is regularly verified and up to date, and the services and products they sell comply with Union law - which is again information checked by the service provider based on best efforts prior to the product or service being made available online. Self-regulation efforts by online platforms have proved insufficient to address the issues highlighted. Without correcting the legal framework, the above mentioned problems are doomed to continue.

We remain at your disposal to continue our constructive discussions to reach an ambitious DSA. The protection and safety of consumers, customers and the environment, as well as fair competition of industry, are at stake.

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<sup>4</sup> <http://www.feat-alliance.org/european-secondary-ticketing-legal-cases/>

<sup>5</sup> E.g. German consumer association vzbv found that [four out of ten](#) German consumers who ordered from a third-party seller based outside Europe via a platform experienced problems ranging from non-delivery of the order to finding it difficult or impossible to exercise their right of withdrawal.

Yours faithfully,

AIM - European Brands Association  
ANEC – The European consumer voice in standardisation  
The Anti-Counterfeiting Group (ACG)  
BEUC – The European Consumer Organisation  
COFACE – Families Europe  
Dansk Erhverv - the Danish Chamber of Commerce  
Deutsche Umwelthilfe e.V.  
EBPC – the European Balloon & Party Council  
EucoLight - The voice of European lighting WEEE compliance schemes  
EUEW - European Union of Electrical wholesalers  
Eurogroup For Animals  
The European Environmental Bureau (EEB)  
EXPRA – the Extended Producer Responsibility Alliance  
FEAT – the Face-value European Alliance for Ticketing  
FESI – Federation of the European Sporting Goods Industry  
Four Paws  
Kaupan liitto / Finnish Commerce Federation  
Legebranchen  
Lighting Europe – the voice of the lighting industry  
Markenverband e.V. / The German Brands Association  
Natural Resources Defense Council  
SACG – the Swedish Anti-Counterfeiting Group  
Svensk Handel / the Swedish Trade Federation  
Swedish Society for Nature Conservation (SSNC)  
TIE – Toys Industries of Europe  
Together Against Counterfeiting (TAC) Alliance  
UNIFAB  
Virke / Federation of Norwegian Enterprises in Commerce  
WEEE Forum  
Zero Waste Europe