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**Resolution on Regulating Digital Services**

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**Introduction**

On 15 December 2020, the EU issued 'the Digital Services Act' (DSA), a bill to update the rules applying to online intermediary services. TACD considers that the DSA is a much-needed step into the right direction, but we suggest changes to the current draft to improve the digital environment.

Consumers rely more and more on multiple online platforms to facilitate their day-to-day activities and deliver services. While platforms create numerous benefits, they also pose challenges for consumer protection, safety, and human rights. Many online platforms have adopted business models and practices that are based on data exploitation and enable discrimination, manipulation, and disinformation.

In addition, authorities, consumer groups and other NGOs keep finding illegal activities on platforms, notably marketplaces that enable third parties to offer goods and services.

**Recommendations**

- 1. Ensure fundamental rights, freedoms, and principles as explicit objectives of the DSA to guide the whole text.** The DSA must ensure a high level of consumer protection, product safety and respect freedom of expression and the rights to privacy and personal data protection.
- 2. Require prompt action.** Online intermediaries should take prompt action upon receipt of a sufficiently substantiated notice. At the same time, the DSA should put safeguards in place to ensure legal content is not removed.
- 3. Hold marketplaces and traders liable:**
  - 1) For damages, when failing to act upon obtaining credible evidence of illegal activities, without incurring a general duty to monitor the activity of platform users.
  - 2) For damages, contract performance and guarantee issues:
    - a. for failure to inform consumers about the supplier of the goods or services
    - b. for providing misleading information, guarantees, or statements
    - c. where the platform has a predominant influence over suppliers or a transaction.

To ensure proportionality, marketplaces should enjoy a right to redress towards the party at fault.

Online marketplace services must be held liable for products and services they facilitate offering under certain circumstances, but not for other user-generated content. Consumers should be able to get redress and compensation for wrongdoings on these type of platforms as a last resort. This, together with our fifth recommendation, will be an incentive to reduce illegal activity online. Consumer organisations keep uncovering illegal activities on online platforms such as fake reviews, fake and fraudulent digital content that leads to a scam, and sales of dangerous products such as toys that contain chemical levels 200 times above the legal limit and smoke alarms that do not detect smoke<sup>1</sup>.

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<sup>1</sup> [https://www.beuc.eu/publications/unsafe\\_and\\_illegal\\_activities\\_online.pdf](https://www.beuc.eu/publications/unsafe_and_illegal_activities_online.pdf)

**4. Protect consumers from surveillance-based digital advertising and recommender systems.** While welcoming further transparency on how content is promoted, TACD believes the DSA should

- Prohibit the cross-site combination of personal data, particularly ‘off platform’ for both digital advertising and recommender systems.
- Prohibit profiling users for both digital advertising and recommender systems unless consumers genuinely opt in.
- Consider the introduction of additional restrictions including a phase-out leading to a ban of digital advertising based on pervasive profiling and/or tracking of consumers within and outside the platform ecosystem.

Digital ads can function very well without being targeted to a specific consumer profile, individual, or group of individuals. In fact, progressive publishers and advertisers have shown that successful online advertising does not necessarily require personal data but use contextual solutions that are proven to protect privacy and do not encourage further data collection.

**5. Oblige the largest online platforms to allow core service interoperability with users of competing providers of similar services.** The EU should empower consumers to digitally connect with one another across different online platforms and services, in the Digital Markets Act (DMA) or the DSA. This is particularly important for consumer-facing services such as messaging services and social networks.

Interoperability is a technical mechanism for computing systems to work together – even if they are from competing providers. The policy goal is to increase choice and quality for consumers, and the ability of competitors to compete on the merits rather than failing due to the impossibility to win against network effects.

**6. Require platforms to implement robust authentication of traders and verify the services and products they offer ahead of the publication of the content online, while allowing for consumer anonymity.**

While individual users should have a right to anonymity online, businesses should not be able to conceal their identity. Platforms should aim at ensuring only legal products and services are placed on their online interfaces. Currently, fraudsters can create fake and fraudulent digital content that leads to a scam on Facebook and Google within hours<sup>2</sup>. It only takes a few minutes to list an unsafe child car seat on Amazon Marketplace<sup>3</sup>, despite the fact that Which?, the UK consumer organisation, flagged this type of product in 2014<sup>4</sup>, in 2017<sup>5</sup> and in 2019<sup>6</sup>, and it was uncovered again by a BBC investigation in 2020<sup>7</sup>. Random checks should be conducted ahead of the publication of services and

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<sup>2</sup> Fraudsters can create scam Facebook and Google ads within hours, Which? reveals, July 2020, <https://press.which.co.uk/whichpressreleases/fraudsters-can-create-scram-facebook-and-google-ads-within-hours-which-reveals/>

Which?, fake ads; real problems: how easy is it to post scam adverts on Facebook and Google?, July 2020, <https://www.which.co.uk/news/2020/07/fake-ads-real-problems-how-easy-is-it-to-post-scram-adverts-on-google-and-facebook/>

<sup>3</sup> Dangerous toys and killer car seats listed for sale at online marketplaces like Amazon and eBay, November 2019, <https://www.which.co.uk/news/2019/11/dangerous-toys-and-killer-car-seats-listed-for-sale-at-marketplaces-like-amazon-and-ebay/>

<sup>4</sup> ‘Killer car seat’ alert issued by Trading Standards, September 2014, <https://www.which.co.uk/news/2014/09/killer-car-seat-alert-issued-by-trading-standards-379870/>

<sup>5</sup> Watch out for ‘killer car seats’ on sale this Christmas, December 2017, <https://www.which.co.uk/news/2017/12/watch-out-for-killer-car-seats-on-sale-this-christmas/>

<sup>6</sup> <https://www.which.co.uk/news/2019/02/why-are-ebay-and-amazon-still-selling-killer-car-seats/>

<sup>7</sup> Dangerous child car seats sold via Amazon flagged by BBC Panorama, February 2020, <https://www.which.co.uk/news/2020/02/dangerous-child-car-seats-sold-via-amazon-flagged-by-bbc-panorama/>

products online. While some platforms may offer voluntary authentication after the fact, the harm to the consumer may already be in effect.

**7. Put swift, effective, and efficient redress and enforcement mechanisms in place.** Rules are as good as their enforcement. Failure to abide by certain obligations introduced by the DSA should allow consumers or organisations representing them to seek remedies and compensation for damages. In addition, the country of affected consumers should be the preferred jurisdiction for consumer complaints.

Failure to comply with some obligations of the DSA should allow consumers to seek remedies in the country where consumers are affected. It is not only important to lodge a complaint where the consumer resides, but also that the dispute is resolved where the consumer is affected. Otherwise, consumers would be obliged to follow costly legal fees in a foreign country in a language they may not understand and not enjoy the same procedural rights as in their country.

### **Background resources**

Further information can be found in the individual contributions of TACD members:

- The European Consumer Organisation (BEUC) [position paper on the Digital Services Act proposal](#).
- European Digital Rights (EDRI) [position paper on the EU Digital Services Act](#).
- Electronic Frontier Foundation (EFF) [policy paper on the Digital Services Act](#).