CONFEDERATION OF INDUSTRY
OF THE CZECH REPUBLIC

PRAGUE, 24 MAY 2021

Portuguese Presidency of the Council
Executive Vice-President Vestager
Vice-President Charanzová
Commissioner Breton
MEP Schaldemose
MEP Kokalari
MEP Basso
MEP Bielan
MEP Geese
MEP Schirdewan
MEP Virkkunen

Joint letter from European industry players:

The Digital Services Act must be future-proofed if Europe's digital businesses are to prosper

Dear Executive Vice President, dear Vice President, dear Commissioner, dear Ambassador, dear MEPs,

as trade associations representing online companies and platforms active in Europe we, the undersigned, welcome the initiative of the European Commission to develop a Digital Services Act.

Europe needs a strong, unified digital single market and this needs to be based on legislation that is clear, scalable and future-proof. Such an approach will nurture innovation, ensure fair competition and ultimately boost Europe's digital sovereignty as well as its economy.

There are a number of welcome innovations as well as sensible refinements of core principles within the proposed DSA, but also some elements which look set to create unnecessary burdens, and some which lack clarity. We are keen to engage with all relevant stakeholders to make the legislation more efficient and robust and in particular we urge policymakers to review the following areas.

1. **Strengthening the Country-of-Origin principle**

The Country-of-Origin principle is a cornerstone of the EU single market and needs to be preserved and strengthened in the DSA. As it stands, the DSA would undercut this principle by allowing any one of the 27 Member State authorities to issue an 'order to act' to an intermediary service like a search engine or social network. This would effectively bypass the Digital Service Coordinator from the country where the service is established and could result in platforms facing contradictory orders at national and EU level. This fragmentation of the principle could result in 27 different interpretations of the DSA and present a particular challenge for micro, small and medium-sized digital platforms,

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which could face new rules each time they enter a new market within the EU. Larger platforms may have the resources to manage these complexities, but the majority of European online platforms are start-ups and SMES and the certainty provided by the Country-of-Origin principle is crucial if they are to achieve scale across Europe. The DSA should also introduce necessary safeguards for national authorities to access user data while preserving the Country-of-Origin principle.

2. **Clearer categorization of online intermediaries**

While we support the Commission's goal to clarify the intermediary liability framework and introduce a graduated system of due diligence obligations for intermediaries, we believe there is space for further improvement. In particular:

- Online search engines should be explicitly categorised as caching services under the DSA, as their core function is to store temporary, incidental copies of web pages which they add to their indexes.
- Cloud services are not "online platforms" and the DSA should clarify this. The main purpose of cloud services is to store confidential content and allow people to share it within closed circles. They do not operate like social networks or other platforms that allow people to share information with the public. Asking them to moderate content would be like asking an email provider to moderate private messages. Such services are also limited in how far they can engage in content moderation, due to technical, regulatory and contractual constraints.
- The provisions referring to online platforms facilitating distant contracts between consumers and traders should be clarified, so that it is clear that they are aiming to capture online marketplaces in line with the Omnibus Directive.

3. **Reasonable and targeted transparency obligations**

Transparency and accountability are fundamental to successful content moderation efforts by 'online intermediaries`. There is however no one-size-fits-all approach suitable for all platforms, and radical transparency creates its own serious privacy and security risks.

Reporting obligations must therefore be reasonable, proportionate and tailored both to the needs of the audience and the wide variety of platform services and business models. They cannot be so detailed and onerous that they enable fraudsters to abuse the system, force platforms to divulge commercially sensitive information, or undermine user privacy.

4. **Workable user redress mechanisms**

The DSA requires online platforms to set up internal systems for receiving and handling user complaints and also engage in out-of-court dispute settlement mechanisms to resolve them. This provision overlaps with existing requirements. Already, online services are required to introduce similar dispute settlement systems under Regulation 2019/1150 on promoting fairness and transparency for business users of online intermediation services. Platforms have already invested heavily in implementing these processes, and the DSA should make clear that business users should rely on the mechanisms required by the existing Regulation.

5. **Preventing fragmentation of the digital single market**

One of the most serious risks associated with the DSA does not lie in the proposed draft, but rather in the politics around it. Any legislation designed to streamline and future-proof the digital single

market is simply ‘dead on arrival’ if member states press ahead with similar but conflicting legislation at national level. We call on all member states to commit to the process of the DSA and not to introduce more complexity, confusion and red tape for the European businesses of the future.

Yours

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