CONFEDERATION OF INDUSTRY
OF THE CZECH REPUBLIC

PRAGUE, DECEMBER 2021

Committee on the Internal Market and Consumer Protection

Joint letter from European industry players:

The Digital Services Act must support growth and competitiveness without stifling innovation

Dear MEPs,

As trade organisations representing companies from across Europe we, the undersigned, call on policymakers to ensure that the Digital Services Act provides a clear legal framework that continues to support growth and competitiveness without stifling innovation.

We welcome the progress achieved on the Digital Service Act (DSA), which we strongly believe can contribute to strengthening the European digital single market. That is why we welcomed the European Commission's proposal as a very important step in this direction. After months of discussions among EU Member States and in the European Parliament, policymakers on both sides are close to reaching their final positions on substantive issues that will determine the success of this regulation. In these steps, we reiterate our openness to engaging with all relevant stakeholders, in particular on issues we see as critical to striking the right balance within the DSA as described below:

- **Strengthening the Country of Origin principle**: Key to achieving the objectives of the proposal, including a stronger and more competitive digital single market, is adhering to and further strengthening the Country-of-Origin principle. Any proposals that would erode this principle, by shifting power to national regulators or national laws, risk fragmentation of the market that can inhibit rather than facilitate the growth and competitiveness of the European digital economy.

- **Protecting SMEs**: Fostering a competitive environment for small and medium sized enterprises (SMEs) is one of the key goals of this proposal. This is to be achieved by an asymmetric approach that assigns obligations and responsibilities based on the category of service and the size of the provider. Following this further, the definition of very large online platforms shall be based on the number of users, as a direct and objective proxy for their potential impact. Any threshold lower than 30 million users would be greatly disproportionate to the respective obligations and would capture smaller companies by measures designed for major players and discourage SMEs and start-ups service providers from further growth. It is also important to remember that SMEs are also users of most services provides by very large platforms and as such will be affected by measures that may reduce the availability or functionality of these services or generate increased administrative/information requirements. This also needs to be considered in narrowing the definition of "recommender

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systems" to preserve their utility for consumers and SMEs outside the context of content "filter bubbles".

- **Avoid unnecessary and inapplicable obligations to services that are not meant to be offered to consumers:** we are concerned that additional obligations proposed by some policymakers, and drafted with consumer services in mind, would be neither proportionate for nor applicable to hosting services that are not directed at consumers and do not disseminate content to the public, such as B2B cloud services. It is crucial that legislators consider the diversity of the online ecosystem when proposing harmonized rules for all intermediary services (notably articles 10 to 15). We would specifically caution policymakers against extending the scope of Know-Your-Business-Customer provisions beyond online platforms and/or marketplaces (as in the proposed new Articles 13a and b). Such measures would impose inappropriate constraints on many digital services, such as B2B cloud, that play little to no role in the proliferation of illegal content and would place significant barriers to the delivery of cloud services in Europe, impeding the smoothness and speed of online business operations.

- **Recognising the value of targeted advertising**: We are particularly concerned by proposals coming from some policymakers that seek to significantly limit or even ban targeted advertising. For companies and entrepreneurs, especially SMEs, the ability to effectively reach existing and new consumers and stimulate further growth is absolutely essential. This has become more evident than ever during the pandemic. At this time, undercutting this ability would jeopardise not only their growth but broader economic recovery. Moreover, targeted advertising holds benefits for a much broader group of stakeholders, including consumers. Therefore, while we clearly recognise the need for and support efforts aimed at achieving greater transparency and regaining user trust, we caution against disproportionate steps and rushed political compromises that could have broader negative impacts on the digital economy.

- **Recognising the value of recommender systems:** Many innovative services used today by business and consumers alike are primarily or wholly built around tailored recommendations. Turning these off by default, as some propose, would fundamentally undermine the value of these services and user experience without any clear benefits to users' experience and/or privacy. Moreover, existing legislation, namely the GDPR and the e-Privacy Directive, already covers user consent. Instead, clear information on how these recommender systems work along with user system controls that allow for disabling or modifying personalisation settings would be more effective in giving users control while protecting their experience.

- **Avoiding the risk of stay down obligations:** Another concerning area where we see important risks of eroding the core principles of the eCommerce Directive, upon which the DSA is built, are proposals calling for stay down obligations. Platforms are already incentivised in the DSA to act proactively where they can in order to minimise their exposure to the high penalties for the regulated

obligations. A specific additional obligation requiring platforms to prevent the reappearance of illegal content would effectively force them to carry out general monitoring, which the proposal itself prohibits, while mis-incentivising over-removal to avoid fines, which would in turn risk undermining fundamental rights including free expression and the freedom to do business.

- **Setting a workable out of court redress mechanism:** We support the aim of protecting users and giving them more effective tools for recourse when it comes to content moderation decisions. As currently written, however, the out of court redress mechanism not only overlaps with existing legislation but could lead to confusion and ineffectiveness for both users and platforms. We urge policymakers to ensure that the intended effect of the measure is achieved, by introducing appropriate safeguards. These include limiting the scope of Article 18 to a narrow set of decisions (e.g. termination of account, service provision) that are best suited to benefitting from such a mechanism, requiring users to use to internal appeals procedures before turning to out of court redress, or deter abuse of the system via penalties.

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