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**Sent:** Tue, 09 Mar 2021 15:21:48 +0100  
**To:** Linn Berggren; Berfin Eken  
**Subject:** DSA Summary Points

Dear Linn and Berfin

Thank you very much for the time you offered us today to set out some view on the EU DSA. Below are some key points that we touched upon during our conversation. I hope you find this summary useful.

Please do not hesitate to contact me should you have any further questions. My colleague Philip Eder Levacher and I really appreciate the dialogue with you!

With kind regards

Maija

#### **DSA POINTS**

**Limited liability:** We welcome that the DSA retains and builds on the existing limited liability regime and that no general monitoring obligation as enshrined in the eCommerce regime. Actual knowledge and ability and failure to act should remain at the core of determining liability. At the same time, we welcome the important clarification that service providers who have put in place proactive positive measures to detect illegal activity should not forfeit their liability protection. We believe this can provide the much needed legal certainty for platforms to assume more responsibility, while striking a balance between enabling growth and safeguarding fundamental rights.

**Due Diligence:** The proposal formalises a number of established good practices that service providers should have in place to effectively deal with illegal content. This includes accessible notice and action procedures, policies for repeat offenders, dispute mechanisms, traceability of traders, et al.. We welcome these measures and believe that all responsible platforms should have these processes in place. They should be easily accessible, properly resourced and efficient. However as the DSA is a horizontal framework that seeks to regulate all types of illegal content and business models, we strongly recommend a more outcome-based approach. Over-prescription may not lead to a better outcome and may sometimes hamper the ability for both those that seek to notify as well as for platforms to quickly and efficiently deal with the notified content. A use-generated “informational platform” (i.e. social media) works very differently than transactional services (i.e. marketplaces), where often the users are businesses. Equally issues around IP, where it is often difficult to determine whether an infringement has taken place, will need to be dealt with differently than content which is more obviously illegal. Platforms should be given some flexibility to implement the requirements in a way that leads to the most efficient way of dealing with the matter.

**More focus on “systemic risk” rather than size:** We recommend introducing a more risk-based approach in chapter 4 on very large platforms. Currently the chapter differentiates solely on the basis of size with specific rules obligations for very large platforms, irrespective of the business model or degree of exposure to illegal content. While we understand that reach can and should play an important role, it should not result in an automatic trigger to fall under the obligations of chapter 4. There will be platforms that may have a high number of active users, but because of the nature of the service they are not exposed to any significant amount of illegal content or pose any system risk to the safety and integrity of the digital eco-system and society. Imposing some of these additional requirements in such cases would be disproportionate to the risk of the service. Instead we would propose taking a more targeted, two step approach: when platforms hit a certain scale or have demonstrated broader impact, it should trigger a review, whereby they are assessed on the basis of additional criteria, including (but not limited to) the vulnerability of the business model to abuse, demonstrated systemic exposure to illegal activities/content, et al.. The

determination whether the platform should fall under chapter 4 could then be made by the Commission or the Digital Service coordinator.

**Oversight and country of origin:** We understand that the DSA regime needs to be complemented with a robust oversight and with a coordinated and coherent enforcement system that is efficient and provides legal certainty for everyone. It is however important that the regime does not undermine the country of origin principle, which remains a key pillar to the functioning of the EU internal market. The system should avoid a fragmented enforcement regime or competing and contradictory outcomes. There should be a single decision by the lead authority of the service provider's Member State of main establishment. Lessons on Member State cooperation should be taken from comparable regimes (i.e. GDPR, Consumer law).