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## Key aspects of the Digital Services Act proposal that need to be preserved in a final Council agreement.

Brussels, 5<sup>th</sup> November 2021

Mr Minister Anders Ygeman,

cc. His Excellency Ambassador Lars Danielsson,

cc. Deputy Ambassador Torbjörn Haak,

DOT Europe, the trade association representing a broad range of leading internet companies in Europe, would like to take the opportunity to write you with regards to the proposed Regulation on a Single Market for Digital Services (Digital Services Act, or 'DSA').

As the proposal is considered by the European Parliament and the European Council, we want to remain a constructive stakeholder and help support your work on this crucial piece of legislation. It is in that spirit would like to share with you the following comments for your consideration on matters which we believe to be crucial for the future of the European Single Market and the digital ecosystem as a whole.

### **An opportunity to strengthen the EU Internal Market**

The DSA offers the opportunity to update the horizontal rules governing the online ecosystem originally set-out in the e-Commerce Directive (eCD), adopted 20 year ago. Such an update requires a lot of care as the eCD managed to strike a delicate balance, enabling the digital sector to flourish over the EU. The European Commission's proposal has the potential to preserve the important principles of the eCD while providing a more robust legislative framework to provide legal certainty and strengthening the Internal Market at the same time. It lays out a set of common rules and principles which will allow companies to operate more smoothly across Member States and better act against illegal content while enabling a better level of protection for users and consumers.

The DSA was not drafted with the intention to solve all issues encountered online, but to put in place a framework where more nimble and detailed pieces of legislation could fit. Adding into the DSA a number of issues not foreseen by the European Commission's draft could run counter the objectives of the text, contribute to the fragmentation of the Single Market and ultimately impact EU businesses. We therefore ask Member States to ensure that the text remains focused and principles-based with the full understanding that additional vertical legislation might be needed to complement this framework legislation on particular issues.

### **Preserving the country of origin principle is of the utmost importance**

The Country-of-Origin principle (COO) is another crucial feature of the EU internal market. It allows companies to liaise with a single primary regulator in its Member State of establishment rather than



multiple ones across the EU. Such an approach guarantees that legislation is interpreted consistently in a cross border context, while lowering administrative burdens for businesses of all sizes. Companies can more easily offer their services across the EU and grow at scale. The COO principle is also crucial to foster the emergence of EU champions. It is therefore that the European Commission chose this approach as the most relevant one for the DSA.

Some Member States call for more involvement of national regulators on all companies operating on their territory, we would like to point out that such measures will complicate the governance of the online ecosystem, and could potentially disincentivise businesses to operate across borders. The COO principle needs to remain a cornerstone of the DSA to ensure a strong internal market.

### **Coherence between the DSA and other pieces of legislation will be key to the future of tech regulation**

As previously mentioned, the DSA is meant to update the rules around which our online ecosystem revolves. A lot of vertical, sectoral legislation was enforced in the past few years at EU and national level, and there is a lot more to come. At this stage, it is very important to ensure that the DSA does not contradict or create inconsistencies with other legislation already in place. The more new concepts are being introduced into the draft text, the bigger the risk is to inadvertently create legal uncertainty. The consequences of legal uncertainty are clear: years of litigation for companies and a de facto impossibility to innovate and operate certain services until the cases are solved while slowing down the fight against illegal content online. We ask Member States to ensure that the DSA remains coherent with other pieces of legislation by focusing on the core objectives of the draft text.

We hope that you share the views that we have highlighted in this letter and request that you consider these as the discussions in Council continue and later-on in the negotiations with the co-legislators.

Kind regards,



Siada El Ramly  
Director General

