Positive to see that the compromise text largely builds on the Commission's draft proposal, adopts a largely balanced approach and attempts to clarify a number of important issues, including among other things:

- The explicit exclusion of cloud infrastructure services from the online platforms category, given the technical, regulatory and contractual constraints under which they operate;
- The need to safeguard fundamental rights, and in particular freedom of expression, by providing for flexible turn-around-times and requiring sufficiently substantiated notices, taking into account the type of illegal content concerned;
- The methodology for calculating fines in case an intermediary infringes its DSA obligations;
- The potential for very large online platforms to have recourse to the Court of Justice of the EU to contest the exercise of the European Commission's enforcement powers, in line with the rule of law; and
- The endorsement of a strong country-of-origin model for the regulation of intermediary services, while still providing for enhanced cooperation amongst national regulators, in line with the objective to contribute to the proper functioning of the internal market for digital services. As explained in our non-paper in more detail, we support both a strong country-of-origin principle and enhanced cooperation mechanisms amongst regulators.

At the same time, the compromise text includes a number of proposed amendments to the Commission's proposal that raise concerns which we kindly ask you to carefully examine:

- The **definition of "online marketplace"** in Article 2(ia) of the compromise text does not bring about the required legal certainty as to the types of online platforms it captures. In particular, it does not state that the distance contract must be concluded on the online platform itself, for it to be considered an online marketplace. Such a clarification would be in line with the recently adopted EU Omnibus Regulation. It is also necessary in order to ensure that online platforms (such as certain ads) that redirect users to third-party trader websites are not considered online marketplaces. A combined reading of Articles 5, 22 and 24 of the DSA proposal indicates that it is not the intention of the legislature to capture these services, too, under the notion of online marketplaces, so this should be made explicit in the legislative text.
- The **scope of the out-of-court dispute settlement mechanism** under Article 18 of the compromise text is extended to users who submit notices, and to decisions taken by an online platform not just to remove or disable content, but also to restrict its visibility or demonetise it. These extensions not only do not take account of concerns previously voiced around legal certainty, proportionality, scale and integrity of content

moderation efforts; they, moreover, further exacerbate them. We explain our concerns and suggestions in further detail in this non-paper.

- Whereas we welcome clarifications around the *lex specialis* nature of the draft e-Evidence Regulation and the Regulation on Judicial Cooperation in Civil Matters in the compromise text, **Article 9 of the compromise text lacks consideration of cross-border issues that may arise in practice**. For example, should authorities from one Member State be able to request data on residents of other Member States? Which national law should be applied in examining the validity of an order by a national authority? Similarly, Article 9 of the compromise text **does not contain the necessary safeguards for national authorities across the EU to access user data**, as would be required for European Production Orders under the draft e-Evidence Regulation and in line with the General Data Protection Regulation.
- As regards proactive data disclosure to authorities under Article 15a of the compromise text, besides the fact that criminal offences do not need to be "serious" to proactively disclose data to law enforcement or judicial authorities, this Article now applies to providers of all hosting services instead of online platforms (i.e. providers of hosting services that disseminate to the public). We believe that **proactive data disclosures to authorities should be limited to content involving an imminent threat to life and only apply to online platforms** (in line with the recently adopted Terrorist Content Online Regulation). This would ensure the DSA reflects Europe's strong tradition of protecting privacy as a fundamental right.
- The **removal of the reference to "collective interests" for Trusted Flaggers** in Article 19 of the compromise text may result in bias in the motivation of the flagging entity and related equity issues (why would notifications of one entity be granted priority over notifications of another entity?). If the reference to "collective interests" is removed, we would suggest that a disclosure provision be included on the source of the applicant's funds in order to ensure that no single company contributes more than a certain percentage to the flagging entity's annual budget.
- T**he additional wording in recital 13 of the compromise text would unequivocally qualify the hosting of comments as an online platform service**, even if this is an ancillary function to the publishing of users' posts. It could also have a knock-on effect on other ancillary features of online platform services. We would urge policymakers to opt for a case-by-case assessment that would recognise differences in business models, support innovation and be in line with the legal principle of proportionality.