BEUC The European Consumer Organisation

The Consumer Voice in Europe

DIGITAL SERVICES ACT

BEUC recommendations for the trilogue negotiations

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Why it matters to consumers

Today our lives are increasingly spent online. We shop, socialise, find entertainment, work, and communicate through the internet and online platforms. We expect our online environment to therefore be safe. But the reality is that consumers are regularly exposed to dangerous products and scams in online marketplaces. These platforms are insufficiently regulated because legislation has not kept pace with the digitalised world. There are countless problematic products sold online, ranging from dangerous chargers and dysfunctional children's car seats to illegal cosmetics and unsafe toys. The current legal framework fails to effectively protect consumers online and hold platforms to account. The proposed Digital Services Act (DSA) is an opportunity to maximise the benefits of the online economy, while finally addressing some of the serious problems that consumers encounter online.

Summary

The European Commission proposed the Digital Services Act (DSA) in December 2020 to upgrade the EU's legal framework for digital services. The Council reached a general approach at the end of November 2021, while the European Parliament adopted its first reading position in January 2022.

The **amendments proposed by the co-legislators bring several improvements** to the Commission's proposal from a consumer perspective, for example the new prohibitions of dark patterns, the strengthening of the "Know your business customer principle", the enforcement and redress mechanisms, and the restrictions regarding the processing of data concerning minors and sensitive information for the purposes of surveillance-based advertising. **However, there are also aspects of concern**, notably the **'waiver' for medium platforms (Article 16)**, which could significantly lower the level of protection afforded by the DSA.

As we enter the final legislative stage, BEUC calls on legislators to go the extra mile to ensure that consumers benefit from a truly high level of protection when using digital services. To this end, **BEUC recommends**:

1. Ensure a **broad scope and clear definitions** which strengthen the application of the DSA, for example by clarifying key definitions to include all relevant players, drawing clear lines on the territorial scope, enshrining the promotion of a high level of consumer protection as one of the legal objectives of the DSA (Articles 1 and 2, new Article 1a).

2. Clearly define the limits of the **exemption of intermediary liability for online marketplaces**, given the very high proportion of illegal activities online, such as unsafe products (Article 5(3)).

3. Ensure that the basic **consumer protection and due diligence obligations apply to all intermediaries, regardless of their size**. This includes refraining from

extending exemptions for small and medium-sized companies, such as introducing a "waiver" system, which is bound to create legal uncertainty, fragmentation and potentially compromises the application of the DSA as a whole (article 16).

4. Establish a **clear obligation on marketplaces to verify traders and conduct random checks** on services and products they offer (Article 22).

5. Include a **clear ban on the use of "dark patterns" by all intermediaries**, not only the very large ones (new Article 13a).

6. Ensure **strong provisions on advertising and recommender systems,** including a **ban on the use of sensitive data and children's data** for behaviourally targeted advertising (Article 24 and 29).

7. Provide for **swift and more effective enforcement and means of redress for consumers** when obligations under the DSA are not respected (Articles 44a (new) to 68).

1. An inclusive scope and clear definitions

1.1. Scope and objectives (Article 1, new Article 1a)

For BEUC, it is paramount that **consumer protection and online safety** should feature prominently as guiding objectives of the DSA.

Therefore, we support the **European Parliament amendments to recital 4 (AM 4) and article 1(2) (AM 102)**, which enshrine the **promotion of a high level of consumer protection as one of the legal objectives of the DSA.** In addition, we welcome the **explicit mentioning of consumer protection** when referring to the Charter of Fundamental Rights of the EU (e.g., **AM 3 to recital 3, AM 19 to recital 22**).

We also support the necessary clarification provided by the European Parliament in its proposed **new article 1a (AM 106) on the territorial scope of the DSA (Article 1a (1) and (2)).**

Moreover, we welcome the clarification of the **relationship and interplay of the DSA with other legislation, as proposed by the European Parliament (AM 106 to Article 1a(3), AM 8 to recital 9)**. These amendments further clarify that the DSA is **without prejudice to other laws**, including "**Union law on consumer protection and product safety**" (**AM 106 to Article 1a(3)**) and tasks the Commission with issuing **guidelines** on how to "interpret the interaction and complementary nature between different EU legal acts" and "avoid duplication of any requirements on providers or potential conflicts in interpretation" (**AM 8 to recital 9)**. **On the contrary, Council amendment to Recital 9 should be rejected** as it would introduce a **push towards full harmonisation and have a dangerous preclusionary effect**.

The DSA should fit into the regulatory framework without prejudice of both existing and upcoming rules. Therefore, it should be clear that the **application of the DSA does not preclude any other EU legislation** which regulates specific aspects of intermediary services - and thus constitutes *lex specialis* to the DSA. In particular, **it should not preclude or supersede rules which can be crucial for the effective protection of consumers** in online marketplaces, including the e-Commerce Directive, consumer, product safety, privacy and data protection laws.

1.2. Definitions (Article 2)

We support **several European Parliament[1] and Council amendments[2]** which provide necessary clarification of key definitions for the application of the DSA, namely the following:

- Definition of **"consumer": both the Council and the European Parliament (AM 109 to article 2 (c))** aim to align the current wording with the definition provided in the Consumer Rights Directive (Directive 2011/83/EU)[3].

[1] European Parliament, Amendments adopted on 20 January 2022 on the proposal for a regulation of the European Parliament and of the Council on a Single Market For Digital Services (Digital Services Act) and amending Directive 2000/31/EC (COM(2020)0825 – C9-0418/2020 – 2020/0361(COD), available at: https://www.europarl.europa.eu/doceo/document/TA-9-2022-0014_EN.html

[2] Council General Approach, adopted by the Competitiveness Council of 25 November 2022, available at: https://data.consilium.europa.eu/doc/document/ST-13203-2021-INIT/en/pdf

[3] Article 2(1), Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32011L0083

- Definition of "**illegal content": European Parliament's AM 12 to recital 12, and amendment 117 to article 2 (g)** clearly cover the sale of products and the provision of services: "what is illegal offline should also be illegal online".

- Definition of **"advertising": European Parliament's AM 121 and AM 122 to Article 2 (n)** provide for a more inclusive definition, now clearly including advertising which is also indirectly remunerated.

- Definition of **"recommender system": European Parliament's AM 123 to Article 2 (o)** provides for alignment with the wording which is presented in **recital 62**.

Legislators should also ensure that non-EU companies that target their activities to one or several Member States cannot escape from the scope and enforcement of the DSA. Therefore, we support the **European Parliament's amendments to clarify this in article 2 (AM 109 to 113) and recital 8 (AM 7) which cover the territorial scope of the DSA**. The key criterion to fall within the territorial scope would be that providers direct their activities towards one or more Member States, regardless of their place of establishment or respective number of users.

Moreover, we **welcome the Council proposal to add "online search engines" to the definition of intermediary services in Article 2(f)**, thus bringing search engines clearly under the scope of the Regulation.

We also acknowledge the commitment of the Council position to **adopt a new definition of online marketplaces,** adding a new point (ia) in Article 2: "an online platform which allows consumers to conclude distance contracts with traders".

However, we believe this definition, as proposed by Council, to be **too narrow** and not aligned with existing consumer protection legislation. Moreover, it is **unclear whether the Council definition would cover advertising services by search engines, social media platforms or messaging services**.

As BEUC previously pointed out[4], **where one intermediary company provides a service that fulfils the criteria to be considered as a marketplace, the rules should fully apply to that part of the business**. These would not only include platforms that directly facilitate the selling of goods, but platforms where suppliers can place advertisements (i.e., social media services such as *Instagram, TikTok*) and platforms which offer comparison, advisory or reputational services (e.g., *Booking.com* or *Yelp*). This is because they facilitate ("allow") the conclusion of Business-to-Consumer (B2C) contracts as well. It is important that the DSA is flexible enough to cover those relevant services to ensure companies would not try to circumvent its key provisions.

Therefore, **BEUC recommends** legislators **reach a compromise by resorting to the already existing definition of 'online marketplaces' under the Omnibus Directive,** Directive (EU) 2019/2161[5] (i.e., "a service using software, including a website, part of a website or an application, operated by or on behalf of a trader which

[4] BEUC, Position paper on the Digital Services Act proposal: https://www.beuc.eu/publications/beuc-x-2021-032_the_digital_services_act_proposal.pdf

[5] Directive (EU) 2019/2161 of the European Parliament and of the Council of 27 November 2019 amending Council Directive 93/13/EEC and Directives 98/6/EC, 2005/29/EC and 2011/83/EU of the European Parliament and of the Council as regards the better enforcement and modernisation of Union consumer protection rules.

allows consumers to conclude distance contracts with other traders or consumers")[6], instead of the definition proposed by Council.

Should the definition proposed by Council be kept, **we recommend that it is at least clarified via a new recital** which clearly states that e-commerce services by social media platforms (such as *Instagram, TikTok*, etc.) fall within the scope of marketplace obligations.

2. Clear limits to the exemption of intermediary liability for online marketplaces

BEUC has defended a **stricter liability regime for online marketplaces**, given the very high proportion of illegal activities on these platforms.[7] Unfortunately, neither the European Parliament nor Council positions contain proposals to introduce positive civil law liability of marketplaces. In the current circumstances, we strongly recommend that legislators at least secure much-needed clarifications and limitations to the existing intermediary liability exemption.

Therefore, in Article 5(3), we welcome the changes introduced both by **the European Parliament (AM 135) and the Council**, which replace the expression "reasonably well informed consumer" simply with "consumer". However, Council's proposal reintroduces the problematic wording in **recital 23**, an addition which we **recommend excluding** from the final text.

Moreover, **we support the European Parliament and Council clarifications to recitals 20 to 26** regarding when the liability exemption does not apply for online marketplaces.

In particular, we welcome that **Council proposes a new recital 22a**, which states that the liability exemption does not apply where the platform has a predominant influence or control over the recipients of the service, for example, where the "online marketplace determines the price of the goods or services offered by the trader"[8].

We also partially support **Council amendment to recital 23**. We welcome the clarification by the Council that marketplaces can also confuse consumers when they conceal the identity of the trader or their contact details until the contract is concluded. However, as mentioned above, the **wording referring to 'reasonably well informed' consumer should be deleted** to keep coherence with Article 5(3).

[6] Article 2.1 n) of the Unfair Commercial Practices Directive, as amended by Directive 2019/2161: https://eur-lex.europa.eu/eli/dir/2019/2161/oj

[7] BEUC, Unsafe and Illegal Activities Online: Research and evidence from BEUC member organisations (updated 24 January 2022): https://www.beuc.eu/publications/unsafe_and_illegal_activities_online.pdf

[8] An indicative criterion based on the European Law Institute Model Rules for Online Platforms, article 20: https://www.europeanlawinstitute.eu/fileadmin/user_upload/p_eli/Publications/ELI_Model_Rules_on_Online_Platforms.pdf

3. Consumers must be adequately protected regardless of the size of the platform whose services they are using

3.1. Provisions on SMEs: exemption and waiver (Article 16)

As a general rule, the DSA should ensure that all providers guarantee a high level of consumer protection. Fundamental consumer protection and due diligence obligations should be applicable regardless of the size of a platform. Thus, **BEUC regrets that Article 16 still excludes micro or small enterprises from the additional obligations applicable to online platforms, both in the European Parliament and Council positions.**

However, **we welcome the Council proposal to amend article 16,** to state that such an exemption shall not apply to "very large online platforms in accordance with Article 25", which is an improvement in relation to the original proposal of the Commission.

On the other hand, we are seriously concerned regarding the European Parliament **proposal to introduce an additional waiver system for medium enterprises in Article 16 (EP AM 221).** BEUC, together with several organisations representing businesses and consumer and civil society groups, have consistently warned **a waiver system** for medium-size platforms from certain due diligence obligations **would significantly lower the level of protection afforded by the DSA**[9].

Creating a two-tier system of consumer protection, which would require a case-by-case evaluation of individual companies, would create legal uncertainty and foreseeable enforcement loopholes. In addition, it would lead to confusion for consumers regarding their legitimate expectations of legal protection, as it would for example be very difficult for them to know whether they are dealing with a small company or a medium-size company that has obtained such a waiver. When shopping online, consumers remain just as exposed, regardless of the size or nature of platforms.

Therefore, BEUC **strongly recommends that the waiver system for medium-sized companies proposed by the Parliament is rejected.**

3.2. Provisions on Very Large Online Platforms (VLOPs)

BEUC welcomes the Council amendments to Section 4, which enshrines additional obligations for providers of **"Very Large Online Platforms" (VLOPs), as well as "Very Large Online Search Engines".**

In article 25, Council proposes to confer powers on the Commission to designate "very large online platforms", after hearing the Digital Service Coordinator of establishment. Moreover, **Article 25(5) clarifies** that the designation is terminated if a provider rests one year below the threshold, and the overall designation process is simplified.

Following the addition of "online search engines" to the definition of intermediary services in Article 2(f), **Council also introduces a new Article 33a** identifying "very large online search engines" as an additional category of providers that need to abide by extra obligations, just like VLOPs.

[9] See DSA Joint Statement by business, consumer and civil society organisations (3 December 2021), available at: https://www.beuc.eu/publications/beuc-x-2021-114_dsa_joint_industry-consumer-ngo_statement.pdf

As BEUC has previously pointed out[10], **the definition of VLOPs in article 25 requires close scrutiny.** In the Commission proposal, **it is not clear** what "active recipients" would mean. Moreover, such imprecise concepts may not be the most appropriate qualitative criterion to indicate whether a platform poses systemic or significant risks. Any uncertainties as to how this is calculated would create loopholes. These loopholes could be used to benefit companies which are trying to prevent falling under the scope of the obligations, thus undermining the application and enforcement of the DSA.

Council's proposal to enshrine the basic methodology on how to calculate the number of active users in Recital 54 rather than a delegated act (article 25(3)) adds **greater certainty and clarifies key concepts**, providing an overall improvement. Recital 54 now clarifies that to determine the reach of a given online platform or online search engine, "it is necessary to establish the average number of active recipients of such service, **represented by any recipient actually engaging with the service at least once in a given period of time**", presenting several examples such as "viewing content by scrolling through an online interface". As regards **online search engines**, "the concept of active recipients of the service should cover those who view content on their online interface".

Nonetheless, Council amends Article 25(3) to allow the Commission to provide **additional specifications for this methodology**, "in order to regularly adapt such specifications for the methodology to market and technological developments". BEUC would **support additional clarification of this amendment to also include the need to assess emerging companies** (companies that do not yet qualify as VLOPs yet, but which have registered a significant exponential growth and therefore represent increased risks for consumers, such as Tik Tok).

4. A strong obligation to verify traders and conduct random checks

BEUC **welcomes that both the European Parliament and Council have proposed improvements** to the Commission proposal regarding the traceability of traders ('Know Your Business Customer' obligation). Even though the Council position proposes to move article 22 to a specific section for marketplaces (new articles 24a, 24b and 24c), the content of the provisions remains similar.

In particular, we **support** that both the amendments by the **European Parliament and the Council**:

- **Agree** that the traceability of traders should be a **'best efforts' assessment obligation** (European Parliament AM 268 to article 22(2) and Council amendment for a new article 22a(2) and 24b(3), respectively).

- **Clarify article 22(3),** which now requires marketplaces to act if they have "sufficient indications" (and not only "indications") that the information provided by the trader is incomplete or incorrect. However, we would favour the **wording of the Council amendment, which goes slightly further than Parliament: in a new article 24a(3)**, requires marketplaces to act if it has sufficient indications that the information provided by the trader is also "**not up-to-date"**.

[10] BEUC, Position paper on the Digital Services Act proposal: https://www.beuc.eu/publications/beuc-x-2021-032_the_digital_services_act_proposal.pdf

However, we do not support the Council proposal to reduce the number of trader information items which should be made public under Article 22(3). **In particular, we reject the deletion of paragraph 1, d)** which includes the requirement to provide "the name, address, telephone number and electronic mail address of the economic operator".

We also welcome the commitment from both legislators to provide consumers with a **"right to information". Council proposal adds a new article 24c** which requires marketplaces to inform recipients of the service that purchased something illegal and inform them about their ways to seek redress. The European Parliament also proposes **a new article 22a (AM 227)**, which sets out a more detailed **obligation to inform consumers and authorities about illegal products and services**. Considering that the latter provides for a more comprehensive and detailed obligation, **we recommend the adoption of AM 277** of the European Parliament.

We also support the European Parliament's AM 265, which enlarges the information that platforms would need to obtain from economic operators and introduces a clear reference **to product safety in article 22(1)d).** Therefore, online platforms would need to obtain "the name, address, telephone number and electronic mail address of the economic operator, within the meaning of Article 3(13) and Article 4 of Regulation (EU) 2019/1020 of the European Parliament and the Council or any relevant act of Union law, **including in the area of product safety"**.

Moreover, **BEUC strongly supports the European Parliament amendments to article 22 (AM 269), recitals 49 and 50 (AM 49 and 50),** which introduce an obligation on marketplaces **to conduct random checks on services and products they offer,** in a similar fashion to the checks already done by authorities and consumer organisations[11]. Such an obligation would contribute to stop the online dissemination of offers for products or services which do not comply with EU law.

5. A ban on "dark patterns" in all intermediary services

BEUC **welcomes that both the European Parliament and Council have proposed improvements** to the Commission proposal regarding the prohibition on the use of the so called "dark patterns"[12].

However, the approach that was taken by the co-legislators on this ban of dark patterns is different. **Council proposes a new Article 24b,** introducing a new provision on interface design and compliance by design limited only to online **marketplaces**[13], as well as to amend Article 29 to add a ban limited to VLOPs concerning recommender systems. The **European Parliament's amendment 102** introduces a **new article 13a,** which establishes a **prohibition on the use of dark patterns which would apply for all intermediary services.**

The use of dark patterns is not limited to VLOPs or to online marketplaces, so **we recommend the adoption of European Parliament's amendment 102,** to ensure

[11] BEUC, Unsafe and Illegal Activities Online: Research and evidence from BEUC member organisations (updated 24 January 2022): https://www.beuc.eu/publications/unsafe_and_illegal_activities_online.pdf

[12] "Dark patterns" can be described as "...features of interface design crafted to trick users into doing things that they might not want to do, but which benefit the business in question" or, in short, nudges that may be against the user's own interest." How Dark Patterns Trick You Online, available at: https://www.youtube.com/watch?v=kxkrdLI6e6M

[13] "Providers of online marketplaces shall not design, structure, or organise their online interface in a way that either purposefully or in effect deceives or manipulates recipients of the service, by subverting or impairing their autonomy, decision making or choices".

that **consumers are protected against these practices, regardless of the type of intermediary service they use**.

Nonetheless, should a compromise prove difficult during trilogue negotiations, such a **prohibition should, at the very least, apply to hosting service providers** (i.e., introducing the prohibition in Section 2 of Chapter III).

In addition, to ensure that the scope of such a prohibition is correctly interpreted, **Parliament amendment for a new recital 39a (AM 40) should be rejected.** The proposed wording contains several examples which, as it stands, could be interpreted as a closed list. Moreover, it would allow companies to contact consumers "even if the user had denied consent for specific data processing purposes".

6. Strong provisions on advertising and recommender systems, including a ban on the use of sensitive data and children's data for behaviourally targeted advertising

BEUC welcomes that both the European Parliament and the Council positions have strengthened transparency obligations and requirements for online platforms with regards to online advertising and recommender systems, **in articles 24, 29 and 30**.

While **we regret** that legislators have failed to propose an outright ban on surveillance advertising[14], **we strongly welcome and support the European Parliament amendments to Article 24 (AM 499 and 500)** which aim to **introduce a ban on the processing of personal data of minors or personal data of sensitive nature[15] for targeted advertising purposes**.

We also support the European Parliament amendments to article 24, which aim to improve the transparency of online advertising towards consumers. This amendment requires online platforms to ensure "for each specific advertisement, displayed to each individual recipient, in a clear, concise, and unambiguous manner and in real time", a display of advertising with **prominent and harmonised marking (AM 285)**, and **the disclosure of the financers of the advertising (AM 286).**

In addition, we also point out the importance of the **Council amendments to article 29(1),** which state that the information on the parameters affecting recommender systems should be "directly and easily accessible" to consumers.

7. Effective enforcement and means of redress for consumers

7.1. Enforcement

The unsatisfactory experience of tackling cross-border infringements under the EU's data protection law (GDPR) has demonstrated that giving the **main competence for enforcement to authorities in the intermediary service providers' country of origin**, as is the case in the DSA proposal, **risks undermining effective public enforcement**. It is therefore fundamental to **introduce safeguard mechanisms to**

[14] See article "Why it's time to ban surveillance ads", available at BEUC blog Consumer Corner: https://www.beuc.eu/blog/why-its-time-to-ban-surveillance-ads/
[15] As defined by Article 9(1), GDPR.

ensure enforcement and **prevent any shortcomings** arising from application of the '**country of origin' principle**.

For this reason, **we support the Council proposal for a new centralised enforcement framework, as laid out in a new Article 44a.** Council attempts to prevent enforcement bottlenecks by granting more powers to the Commission to act and broadening the possibilities for cooperation and intervention by the Digital Services Coordinators of destination, and not only the Digital Services Coordinators of the country of establishment of the providers in question.

Therefore, while the country-of-origin principle is still preserved**, the Commission would be placed in charge of supervising and enforcing additional obligations that are only applicable to VLOPs and very large online search engines**. The Digital Services Coordinator of establishment would still be competent vis-à-vis these services for the remaining obligations, but the Commission would have the power to intervene as well.

Consequently, we also support the following elements proposed by Council:

- **Article 44b** introduces the principle of mutual assistance between Digital Services Coordinators and between them and the Commission. **New article 45a introduces a referral procedure to the Commission**, where the European Board for Digital Services may still refer a matter to the Commission "failing a response in the time (…), or in case of disagreement with the assessment or the measures taken or envisaged", which is to be assessed within two months.

- Crucially, **article 50(2)** states that any Digital Service Coordinator can request the Commission to intervene, when it has "reasons to suspect" that a provider of a very large online platform or search engines does not respect the additional obligations that apply to them (section 4 of Chapter III) or do not systematically abide by other obligations under the DSA and this stands to seriously affect the recipients of the service in their respective country.

- **Article 51 empowers the Commission to act and initiate proceedings** when providers of the very large online platforms or search engines are "**suspected** by the Commission of having infringed any of the provisions" in the DSA. The Commission is required to notify and share information with Digital Services Coordinators and may request their cooperation in investigations.

Regarding the **imposition of fines**, we welcome the **European Parliament amendments to Article 43(3) and (4) (AM 393 and 394),** which introduce a clarification that the threshold for maximum amount of fines (penalties for failure to comply with the DSA obligations, procedural penalties as well as periodic penalties) concerns the **"worldwide"** turnover of the provider in question.

7.2. Means of redress for consumers

The DSA must include effective complaint procedures and civil law remedies for consumers, in cases where platforms fail to comply with their obligations. Therefore, **BEUC welcomes that both the European Parliament and Council proposals have expanded the means of redress available to consumers**.

In particular, we support the following amendments:

- **Article 17 (Internal complaint mechanism against platforms)**: **Council amendments** on this article would allow for the possibility for consumers to bring a complaint before a platform also when the content is not removed. **On the side of the European Parliament,** its amendments (**AM 49 to Recital 44, AM 277 to Article 17(3)**) would introduce a clear deadline of ten working days for platforms to respond to complaints. **Council amendments to recital 44 and European Parliament AM 228 to Article 17(5)** would allow users the possibility to require human intervention in the process, while **AM 228** would also require that any decisions by the online platform need to be taken by qualified staff.

- **Article 18 (Out-of-court dispute settlement)**: While the Council clarifies that out-of-court dispute settlement mechanisms need to be certified by the Digital Services Coordinators, **European Parliament amendments provide needed clarification** that the process is to apply without prejudice to the **Consumer Alternative Dispute Resolution Directive** (ADR Directive)[16]. Moreover, the European Parliament takes inspiration from the ADR Directive to introduce improvements such as increased independence **(AM 233, 234)** improved accessibility **(AM 231, 236, 237)**, free-of-charge services or under a nominal fee **(AM 242)**, prevention of conflicts of interests **(AM 235)**. However, as BEUC has previously pointed out[17], requirements falling on ADR entities under the DSA are weaker than those under the ADR Directive. We also support **AM 239** which requires Digital Service Coordinators to "draw up a report every two years listing the number of complaints the out-of-court dispute settlement body has received annually, outcomes of decisions delivered, any systematic or sectoral problems identified, and average time taken to resolve the disputes".

- **Article 43 (Right to lodge complaint):** We support the Council amendments which further clarify that not only "recipients of the service" but also organisations representing them can lodge a "complaint with the Digital Services Coordinator of the Member State where the recipient is located or is established." Although this wording was already previously included in recital 81, it was not part of the respective article.

- **Article 43a (Compensation):** Although the Council proposal does not foresee a specific article on consumer remedies against intermediary services for breaching the DSA obligations, the **European Parliament introduced a new Article 43a on compensation (AM 398)**, which should allow consumers, as well as organisations representing them **(article 68)**, to seek compensation for "direct damage or loss" against all intermediary services for infringing DSA obligations. While this is a positive addition, we note that **this amendment is extremely limited to "direct damage or loss".** Consumers and organisations representing them should be able to seek remedies from providers of intermediary services, including when it comes to repair, replacement, price reduction, contract termination or reimbursement of the price paid, compensation for material and immaterial damages. Therefore, we **recommend that this provision is further clarified, to ensure that compensation under the DSA is aligned with EU consumer law and, more importantly, that it is made completely clear that article 43a does not**

[16] Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32013L0011

[17] BEUC, Position paper on the Digital Services Act proposal: https://www.beuc.eu/publications/beuc-x-2021-032_the_digital_services_act_proposal.pdf

preclude or supersede any redress actions under existing EU consumer law, especially under the Unfair Commercial Practices Directive[18].

- **Article 68 (Representation):** We welcome Council amendments that allow consumers to get representation to exercise their rights in the event of infringement of any provision of the DSA - no longer just those under articles 17 to 19 - and clarifies that the DSA is without prejudice to other representation rights afforded under other EU and national laws.

8. Other relevant aspects

Lastly, we also **welcome several amendments by the European Parliament and the Council** which introduce significant improvements throughout the original Commission proposal on different aspects. In this sense, BEUC calls on the co-legislators to ensure that the final agreement also includes the following:

- **Strong protection for minors (article 12): Council** has introduced further protections for minors **in article 12**: for example, when an intermediary service is primarily aimed at minors or is pre-dominantly used by them, "the provider of intermediary service shall explain the conditions and restrictions for use of the service in a way that minors can understand" in their terms and conditions.

- **Trusted flaggers (article 19(1), recital 46):** European Parliament amendments **46 and 244** which clarify that trusted flaggers should act "within their designated area of expertise".

- **Risk assessment (article 26):** European Parliament **amendment 296**, adds an express mention of **consumer protection** as one the elements that VLOPs need to consider when doing their risk assessments and risk mitigations (Risk assessment should include systemic risks such as "any actual and foreseeable negative effects for the exercise of the fundamental rights, including consumer protection") and **amendment 300** which states that "when conducting risk assessments, very large online platforms **shall consult**, where appropriate, **representatives of the recipients** of the service, **representatives of groups** potentially impacted by their services, **independent experts and civil society organisations"**.

- **Mitigation of risks (article 27):** European Parliament **amendment 309** would also require VLOPs to "**design their risk mitigation measures** with the **involvement of representatives** of the recipients of the service, **independent experts and civil society organisations**".

- **Independent audits (article 28):** European Parliament amendments **317 to 323** which introduce additional safeguards against conflicts of interest.

- **Data access and scrutiny (Article 31):** European Parliament amendments **241 to 347**, which extend the scope of Article 31, granting access to the data of VLOPs to **NGOs and civil society organisations** representing the public interest.

[18] Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32005L0029

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