

His Excellency, Fabrice Dubreuil,
Deputy Permanent Representative
of France to the European Union,

14 Place de Louvain,
1000 Brussels, Belgium

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12 April 2022

Subject: The Digital Services Act (DSA) must include strong provisions on tracking ads, dark patterns and online marketplaces

Your Excellency,

We address you on behalf of BEUC – The European Consumer Organisation – as the interinstitutional negotiations on the Digital Services Act reach their last stages. We call on you to ensure that the final agreement guarantees a high level of consumer protection and leads to substantial improvements in business practices.

The DSA is a crucial piece of legislation for consumer protection in the online world. It is with concern that we have seen important consumer relevant provisions watered down in recent compromise proposals put forward by the French Presidency, notably in relation to the obligations of online marketplaces, online advertising, and dark patterns. The co-legislators must be ambitious in their approach on these three key issues, or the DSA will not meet its stated objective of better protecting consumers and their fundamental rights online.

In particular, the final compromise on the DSA must include the following:

- 1) An obligation for online marketplaces to carry out random checks on the goods and services available via their platforms (Article 22 – Traceability of traders).

First, we find it regrettable that a stricter liability regime for online marketplaces has not been introduced in the DSA. In our opinion, this is a mistake and a missed opportunity to act more decisively against the lax approach that online platforms often take against illegal activities such as the sale of unsafe products.

In the absence of a strengthened liability regime, the due diligence obligations introduced by the DSA regarding the traceability of traders (Article 22) should also include a clear obligation for online marketplaces to conduct periodical, random checks on the services and products they offer.

Online marketplaces should be required to conduct periodical mystery shopping exercises, in addition to requesting and verifying all necessary trader information as appropriate, to ensure that only legitimate traders are present on their platforms. These periodical random checks would greatly help consumer protection and should be a relatively easy and affordable measure for online marketplaces to enact.

- 2) A prohibition of the use of 'dark patterns' that applies to all online intermediaries, not only very large platforms (Articles 13a and 23a, 23b).

Digital services should not use interface design to distort users' ability to make informed choices, regardless of the nature of the service. The prohibition on the use of 'dark patterns'

should not be limited to online platforms or very large online platforms. It should apply to all intermediaries falling under the scope of the DSA.

We would also like to echo the concerns of children's rights organisations regarding the weakening of the provisions regarding the protection of minors¹, which would be unacceptable.

We understand that a significant number of Member States would be open to extending the 'dark patterns' prohibition to all providers of intermediation services, as well as further supporting stricter measures to protect minors.² We therefore urge you to move in this direction.

3) A prohibition of the use of children's data and sensitive data for targeted online advertising (Article 24)

Commercial surveillance is one of the main problems that consumers and our society face in the digital world. Online targeted advertising based on the pervasive tracking and profiling of consumers, also referred to as 'surveillance advertising', lies at the heart of commercial surveillance business models. This type of advertising thrives on the exploitation of consumers' privacy and personal data. It facilitates systemic manipulation and discrimination and fosters disinformation.³

It is imperative to adopt strong measures to create a fairer and safer online environment.⁴ As a minimum, the DSA must include the prohibition on the processing of personal data of minors and data of sensitive nature for the purposes of behavioural targeted advertising. Such prohibitions should apply to all intermediary services. This would be an essential step forward to address some of the most harmful elements of the on-line environment for consumers.

We thank you in advance for taking our considerations into account and call on the French Presidency to strive for a compromise that ensures that the DSA adequately protects and benefits European consumers.

For more information on our positions, you can find our trilogue recommendations [here](#).

We remain at your disposal should you have any questions.

Yours sincerely,

Monique Goyens
Director-General

Ursula Pachl
Deputy Director-General

Cc Mr Mickaël Bazin, Attaché, Permanent Representation of France to the European Union

¹ Joint letter on Children's rights in the Digital Services Act: https://5rightsfoundation.com/uploads/Joint-letter-to-Rapporteurs-DSA,-5Rights,-Eurochild,-MCE,-ECPAT,-EPA---28-March.pdf?_cchid=3676faaa9bcff45f60cd106511145ce3

² Euractiv, DSA: France seeks compromise on targeted advertising, marketplaces, systemic risks, 29 March 2022: <https://www.euractiv.com/section/digital/news/dsa-france-seeks-compromise-on-targeted-advertising-marketplaces-systemic-risks/>

³ BEUC blog article "Why it's time to stop surveillance ads", available at <https://www.beuc.eu/blog/why-its-time-to-ban-surveillance-ads/>

⁴ BEUC Campaign #StopCommercialSurveillance, video available at https://youtu.be/x7_iYSjXl2s