



Joint final recommendations by European Media Associations for the concluding stage of the Digital Services Act trilogue negotiations

Brussels, 21 April 2022

In light of the imminent conclusion of the Digital Services Act (DSA) inter-institutional negotiations, the undersigned European media associations reach out to the negotiating teams to share their final comments and recommendations, in a last call to safeguard freedom of expression online as well as the sustainability of digital editorial media offerings. Media provides an essential service to European citizens and it must be ensured that it is able to do so freely, broadly and fairly, safeguarded from interferences that would restrict their dissemination online, either by allowing removals of legal content or by limiting their sources of revenue.

Considering the aim to set a standard of regulation for the digital age, the stakeholders directly involved and affected by the DSA should have been taken into account all through the process. Instead, we regret that during the trilogues it has proved particularly difficult to reach the co-legislators, and we fear that this might result in shortcomings in the final text. Furthermore, political deadlines should not prevail over legislative quality. This might lead to legal uncertainty and jeopardise the objectives and the future-proofness of the regulation. As the original purpose of the Digital Services Package was to regulate the Digital Single Market so that all players would be able to thrive and to address the unprecedented gatekeeping power of global online platforms, we would like to draw your attention to remaining critical points of the DSA.

- **Online advertising**

Online advertising, and in particular personalised advertising, remains an indispensable source of revenue for the media sector. It is a way, in particular for commercial media, to keep online content open and accessible to all. A general piece of legislation like the DSA is not the appropriate place to introduce new data protection rules, that would lead to legal uncertainty against the already high data protection standard of the EU. Nonetheless, it is our understanding that the institutions have discussed compromises on online advertising and dark patterns during the negotiations. Regarding dark patterns, non-prescriptive indications as proposed by the Council compromise should be supported, as they strike the right balance and would not openly override the General Data Protection Regulation (GDPR) or pre-empt the negotiations on the e-Privacy regulation.

In relation to online advertising rules, the correct approach would be to limit the prohibition to targeting minors or on the basis on sensitive data to the Very Large Online Platforms (VLOPs), which

have the resources to comply and a reach that justifies such measures. If the intention of the co-legislators is to restrict the collection of data in the online advertising ecosystem, it must focus on those who cause the most harm, namely the digital gatekeepers via their data supremacy. VLOPs with their extensive use of log-in systems would be able to target advertising to adults, while the media and many other service providers would de facto be affected by a blanket ban to personalised advertising for all users introduced through the backdoor, especially if the prohibition would apply also in cases where platforms have doubts about the age of a user. As such, we ask you to limit the provision to the services where the issues are, namely with VLOPs.

- **Safeguard for fundamental rights**

The European Parliament had introduced a safeguard for fundamental rights in Article 12(1) of its report, which provided a minimum protection against unilateral removals of legal editorial content from the global online platforms on the basis of their terms and conditions (T&C). We understand that the institutions are discussing the option not to include such a safeguard, but instead to opt for a simple reference to fundamental rights in the context of the enforcement of the T&C in paragraph 2. Regrettably, this would not provide any protection but rather confirm the right for global online platforms to write their T&C without being bound to the respect of fundamental rights, turning private companies into gatekeepers of freedom of expression online. The criterium for removals would not be whether content complies with the law, but if it complies with the T&C. In order to not completely hand over to global online platforms the right to determine the limits of freedom of expression online, we ask you to support the fundamental rights safeguard as proposed by the European Parliament report in Article 12(1).

- **Know-Your-Business-Customer and Brand Attribution**

We understand that co-legislators still have to agree on the scope of important transparency provisions, notably the Know-Your-Business-Customer principle (currently discussed under Article 24a) and the brand attribution rule (currently discussed under Article 24b). Many Member States have indicated their support for Italy and Spain's Joint Statement, calling for Know-Your-Business-Customer provisions to be addressed during the interinstitutional negotiations. The European Parliament has also demonstrated majority support for a broad KYBC provision (see also corrected RCV on amendment 514). We urge policy makers to ensure that all intermediary service providers – not just online marketplaces – know who their business customers really are. At the same time, we point to the fact that a brand attribution rule can only benefit the media sector and users consuming editorial content online if its scope is extended beyond online marketplaces. When consumers access media content through social networks, news aggregators, or search engines, they must be able to easily identify who bears the editorial responsibility. The DSA should therefore ensure that the identity (e.g. logos/branding) of media organizations as well as all other business users is clearly visible alongside the content, goods and services offered on global online platforms.

AER – Association of European Radios

EBU – European Broadcasting Union

EGTA – Association of Television and Radio Sales Houses

EMMA – European Magazine Media Association

ENPA – European Newspaper Publishers' Association

EPC – European Publishers Council

NME – News Media Europe