

## Digital Services Act: Summary position of Independent Retail Europe

In light of the widespread presence of illegal content hosted on third-party marketplaces, new e-commerce rules are needed to protect consumers, and curb unfair competition suffered by legitimate EU traders, and in particular SMEs. We therefore welcome the ambition of the Digital Services Act (DSA). However, a proportionate approach is needed, to ensure that the DSA both achieves its goal of removing illegal content from platforms, and does not harm the competitiveness of SMEs in Europe.

### 1. Low risk Internal/closed platforms of groups of SMEs operating under one brand should benefit from lighter requirements

The Digital Services Act overlooks the existence of a low risk online business model widely used by European SMEs: the internal/closed service platforms operated by (cooperative/associative) groups of SMEs operating under one brand, set up exclusively for the benefit of their SME members/shareholders.

This closed/internal platform model is used by groups of independent retailers operating under one brand or similar cooperation/association of SMEs. It gives independent European SMEs the possibility to successfully compete online by means of closed service platforms reserved to their members (all established in the EU with brick & mortar shops or establishments). Third-party traders are NOT accepted on such internal/closed platform. This internal/closed model inherently presents a much lower risk of illegal content than open/third-party platforms.

In a [joint statement, Independent Retail Europe, SMEunited and HOTREC](#) recently called on the European Parliament to **ensure that the DSA recognises the specific low-risk nature of this closed/internal platform business model (operating under one brand) through lighter requirements under Chapter III of the DSA**. In particular, Chapter III of the DSA should not add unnecessary reporting/administrative burdens on this low-risk model (article 13, 19, 23), nor aim to regulate their internal governance (article 15-2 to 15-4, articles 17, 18)

- ➔ **Support amendments 1009, 1089, 1124 and 1137 tabled in the IMCO Committee on internal/closed platforms/marketplaces operated by (cooperative/associative) groups of independent retailers operating under one brand**
- ➔ **Support amendments 32 and 33 of the [ITRE Committee opinion](#) on closed platforms**

### 2. Banning/severely restricting targeted advertising for the sales of goods would harm SME retailers

SME retailers frequently use targeted advertising services to promote their products, successfully find new clients, and effectively compete against larger companies. Various studies show that SMEs find targeted advertising effective for this purpose, in particular given their limited advertisement budget.

While there are legitimate concerns to be addressed about the use of targeted advertisement to influence views on politics and/or societies, we believe that restricting targeted advertising (e.g. ban on behavioural ad or opt-in) for the sale of legal/legitimate products would seriously harm SMEs. As pointed out in a [joint retail industry statement](#), a ban or major restriction of targeted advertising possibilities would:

- **go beyond the objective and scope of the DSA proposal**, which was not designed to revise existing data protection rules.
- **impair SME retailers' ability to find new customers and enter new product markets dominated by large incumbent companies.**

We invite the European Parliament to **find other solutions to address some of the legitimate problems that targeted advertising may raise in specific contexts** (e.g. use for political purposes, or uncontrolled use of specific types of highly sensitive data) without depriving SME retailers from an effective tool to grow and compete online.

- ➔ **Do not ban or severely restrict targeted advertisement for the sale of goods**
- ➔ **Potential legitimate concerns (e.g. use for political purposes, uncontrolled use of highly sensitive data not necessary for the sale of goods) should be addressed differently than through a ban/restriction for the sale of legitimate goods**

### **3. Definition of active users: consistency is needed to exclusively cover the really very large platforms**

The definition of 'active user' is critical to delineate the scope of application of the obligations applicable to very large platforms in the DSA, and to the scope of application of the DMA.

The DSA should be consistent with the DMA and ensure that only really very large platforms are covered by the threshold used to define them. Therefore, we call on the European Parliament to **keep the '45 million active users' threshold used to define very large platforms in the DSA (as in the DMA).**

- ➔ **Keep the threshold used to define very large platforms at no less than 45 million monthly average active users (article 25 of the DSA)**

### **4. Terms & Conditions are better regulated by other consumer legislation**

Amendments relating to the presentation of terms and conditions in the DSA would create significant legal uncertainty, as they would apply only to marketplace services (and not to other online sales channels), and be uncertain in their legal effects. We suggest to delete these amendments.

- ➔ **Delete amendments regulating T&C on marketplaces**
- ➔ **If further regulation of T&C in online contracts is needed, this should be done through the Unfair Contract Terms Directive and/or Consumer Rights Directive.**

*Established in 1963, **Independent Retail Europe** (formerly UGAL – the Union of groups of independent retailers of Europe) is the European association that acts as an umbrella organisation for groups of independent retailers in the food and non-food sectors.*

*Independent Retail Europe represents retail groups characterised by the provision of a support network to independent SME retail entrepreneurs; joint purchasing of goods and services to attain efficiencies and economies of scale, as well as respect for the independent character of the individual retailer.*



*Our members are groups of independent retailers, associations representing them as well as wider service organizations built to support independent retailers.*

*Independent Retail Europe represents 24 groups and their over 386.600 independent retailers, who manage more than 753.000 sales outlets, with a combined retail turnover of more than 944 billion euros and generating a combined wholesale turnover of 297 billion euros. This represents a total employment of more than 6.603.000 persons.*

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