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Developers Alliance Position On The Digital Services Act (DSA)

Founded in January 2012, the Developers Alliance is a global industry association that supports software developers as entrepreneurs, innovators, and creators.

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In summary, the Developers Alliance supports a Digital Services Act that...

...is a horizontal and harmonized framework.

...provides legal clarity and certainty.

...sets out the right incentives to tackle illegal content.

I. A Horizontal Regulation On A Single Market For Digital Services

1. The Digital Services Act represents an opportunity to have an updated and **harmonized framework** for providing digital services across the EU. This will benefit all internet businesses, including those of software developers.

   The aims of the regulation, as set out by art. 1.2, should guide the co-legislators in their efforts to reach a common agreement on the text. European startups and small and medium businesses depend on a cohesive Single Market to operate cross-border and to scale up. The DSA should help them overcome the diverse landscape of national legislation on content regulation and intermediary liability. In this regard, we are also concerned about new pieces of legislation being introduced across the EU (France, Germany, Austria, Poland, Hungary, and others), as this development goes against the idea of the EU's single market.

2. We support a **horizontal approach** and the objective to use **technology-neutral** requirements. A **principle-based framework** is the most efficient for regulating all digital services across the EU.

   However, the due diligence obligations are wide-ranging for different categories of services intermediaries, depending on their size and type. Many provisions seem quite prescriptive, while others are imprecise.

   While we recognize the need to avoid overburdening micro and small enterprises, and we welcome the proposed exceptions from certain obligations, the regulation should preserve a principle-based approach applicable to all current and future online services intermediaries and all issues (including the migration of bad actors from large platforms to smaller ones).

   The DSA should provide general principles and obligations and maintain flexible implementation guidelines for regulatory, co-, and self-regulatory measures. In this way, the Digital Services Act will serve as a stable, technology-neutral legislative framework for the next decade(s).

II. A Clear Scope

1. It is currently **not clear how the provisions would apply to certain types of services**. Therefore the text could be amended to make clear the nature of the services within the scope. The provisions related to the KYBC principle ("Know your business customer") are intended for specific online platforms, mostly e-commerce providers, though the scope of art. 22 seems broader.

2. The scope of the regulation should be **explicitly limited to illegal content** and provide a **clear legal basis to remove it**. The ambiguous definition of art. 2.g), combined with other provisions on due diligence obligations (Chapter III) and enforcement (Chapter IV) would pose difficulties for services intermediaries when deciding which content should be removed and would lead to unintended consequences. The regulation should provide legal clarity, especially when it comes to tackling content that is not illegal in all Member States.

3. While we appreciate the advantages of an **extraterritorial scope** to capture off-shore content and foreign entities, the approach risks driving SMEs to leave the EU. Rather than risk conflicting content laws from inside and outside the EU, intermediaries might simply remove themselves from the EU's jurisdiction. The regulation's proposed obligation for a **legal representative** (art. 11) adds further uncertainty as to whose laws will be in play for global developers.

III. A Plain Set Of Rules

1. The **country of origin principle** is a keystone in preserving the ability of small and medium businesses to operate cross-border and benefit from the Single Market. The proposed text affirms the principle but fails to offer guarantees that it would be viable in practice. The provisions on crossborder removal rules and the governance and oversight mechanism should be adjusted in this respect.

2. The rules should provide **legal clarity and certainty**, so to avoid the implementation of the DSA driving interminable legal disputes. Throughout the text, a series of terms and provisions require clarification (for ex. art. 2(g) - tightening the definition of illegal content by removing the "reference to an [illegal] activity", art. 14(3) - clarifying that notice formalities do not automatically give rise to knowledge and adding much-needed safeguards for data access).

3. We welcome the **harmonized notice and action mechanism** as a suitable framework for the notification of illegal content by third parties. While some provisions are prescriptive, including technical details which risks the future-proofness of the regulation (e.g. art.14.para 2 and 3), others are imprecise and lead to legal uncertainty (e.g. art. 14.3 - the exact moment when the provider is presumed to have "actual knowledge or awareness", relevant for art. 4.1.e) and art. 5.1.b)). Moreover, more legal clarity is required for provisions around out-of-court dispute settlement (art. 18) and statements of reasons (art. 15), which could open up avenues for abuse and weaken content moderation systems of online platforms.

4. The **Voluntary own-initiative investigations** (art. 6) and the **interdiction of general monitoring obligation** (art. 7) are two essential principles that will allow proactive and efficient content moderation while preserving the fundamental rights of users, especially freedom of speech. Both articles should be strengthened by unambiguous language and additional provisions concerning the enforcement and oversight mechanisms under Chapter IV.

   The providers of intermediary services should have clear legal protection for any of their voluntary efforts to moderate content and to prevent the proliferation of harmful and illegal content.

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The implementation of the obligations imposed by the regulation and the enforcement authorities should not lead to excessive use of automation (e.g. in many cases the obligation to "act expeditiously" or "without delay" can be fulfilled solely by utilising automated tools), or to unintended censorship of legal content. We welcome the policy option for self-regulation and co-regulation for addressing emerging risks. However, the text should be clear to prevent unintended consequences of undermining fundamental rights by pushing platforms to remove harmful but legal content (art. 26 - Risk Assessment, art. 35 - Codes of conduct).

5. The implementation of obligations should be **coherent with the requirements of other EU legal acts**, which are also mentioned by art. 1.5 and recitals 9 and 10. The transparency obligations should be correlated with the requirements of Regulation 2019/1150 (Platform to Business Regulation) and the Directive 2019/2161 on better enforcement and modernisation of Union consumer protection rules. National authorities' data gathering powers (art. 9) should contain necessary safeguards for national authorities to access user data and match the standards of the e-Evidence Regulation.

6. With regard to **online advertising, we suggest a different approach to political versus commercial advertising**, due to their different nature and potential risks. We fully support more transparency in the online advertising markets. However, the additional transparency obligations in art. 30 could lead to unintended consequences (potential risk of facilitating collusion), and therefore should be carefully assessed from the perspective of preserving healthy competition.

   Concerning the European Parliament's call for a ban on targeted online advertising, we emphasize that **the benefits of personalized advertising for both small businesses and consumers can be preserved while respecting privacy**. In-app advertising not only represents the main method of monetization for many developers, driving significant revenues but also an opportunity for free/low-cost access to diverse and high-quality digital products and services for users and the comfort of receiving the ads that respond to their preferences. Users should be able to make their choice.

IV. Coherent Enforcement

1. The institution of "trusted flaggers", as well as the powers of enforcement authorities, should be subject to a proportional approach, with careful consideration for preserving democratic oversight and judicial scrutiny. Additional guarantees in this sense should be added.

2. The **cooperation mechanisms** between the Digital Services Coordinators, the European Commission and other authorities should be streamlined and clarified, to ensure efficient enforcement of the regulation. We reiterate the importance of preserving the country of origin principle.

3. We welcome the proposal to **facilitate the drawing up of codes of conduct**, including for online advertising. For the latter, we suggest that art. 36 should fully reflect recital 70, regarding "the involvement of a wide range of stakeholders".

4. The date of application should be set with due consideration of the necessary arrangements that both economic operators and relevant authorities need to pursue to implement the regulation.

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