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Sustainability Growth Innovation*

Position Paper

SGI Europe position on the Digital Services Act

31 March 2021

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SGI Europe welcomes the Digital Services Act (DSA) by the European Commission and the opportunity to reflect on the proposal for a regulation again in the public feedback consultation. At SGI Europe, we are optimistic that Europe can set and lead the global standard for a more competitive, non-discriminatory, responsible, and fairer online environment with the DSA. The EU has a unique opportunity to show digital leadership, highlighting the positive aspects of a modern digital single market that makes societies more inclusive, benefits European citizens and companies of all sizes and establishes a level playing field. At the same time, this will also be the time to address challenges that might hamper the development of a functional and fair competitive digital market.

For this reason, SGI Europe will outline its position on the DSA, presenting further recommendations to reach for a true and fair European Digital Age.

Digital Services Act - creating a trustworthy online environment

The DSA has the potential to restore citizens' trust online, bring more transparency to the online environment and become a steppingstone to protect EU citizens and businesses from illegal content by requiring all intermediaries – regardless of their place of establishment – to abide by certain rules if they want to offer their services within the European Union.

SGI Europe supports meaningful and ambitious rules for online platforms which can no longer be considered as passive hosts when they actively engage by using algorithms; organise, rank or moderate content, goods and services. In this context, SGI Europe welcomes the Commission's recognition that some digital online platforms have an increased responsibility to keep their services free from illegal material and ensure that fundamental rights and freedoms are respected with the same rigour online than offline.

SGI Europe is convinced that it is possible to achieve these goals whilst respecting the basic principles enshrined in the eCommerce Directive (i.e., country of origin; limited liability for online intermediaries; prohibition of general monitoring obligations).

Provide further and clear definitions on obligation criteria for online Platforms

The liability of intermediaries in chapter 2 should further acknowledge the diversity between the increasing numbers of services falling within the hosting definition. As it stands, the due diligence obligations would risk applying to cloud services (when they should not), social networks, content sharing platforms, apps stores, online marketplaces, online travel and accommodation platforms, etc. whilst it should be recalled that these 'online platforms' have very different market activities. **SGI Europe therefore recommends further consideration should be given to the different types of hosting services.** In this regard, **we consider that the notion of dissemination to the public (Article 2(h)) and sheer scale (Article 25) are indeed relevant factors to define online platforms and Very Large Online Platforms (VLOPs)**, as indicative of the public reach of a given platform. Nevertheless, equal consideration should be given to other qualitative criteria to achieve a proportionate and future-proof framework.

When going beyond provisions applicable to all hosting services providers, SGI Europe suggests the following non-cumulative criteria to establish obligations for online platforms:

- **Dissemination to the Public:** where the actual risk results from a specific online platform, such as the sharing of illegal user-generated content to the public. We consider that further guidance should be provided as to what obligations apply for hyperlinking and clarify that cloud service providers do not perform an act of dissemination to the public within the meaning of the DSA.
- **Interaction with user-generated content:** building on the notion of active hosting providers developed by the jurisprudence of the CJEU, regulatory focus should be given to those online platforms that have knowledge of, or exert control over, the content stored at users' request. We believe the criteria of "active host" is helpful to determine providers that are best placed to take action to address illegal content and it should be taken into account, at least when establishing additional obligations for online platforms.
- **Available technical capabilities:** where platforms retain (or can easily put in place) the means to address the problem in the most expedient and proportionate manner, closest to its source. This may include the abilities to identify and remove users' specific content on a piece-by-piece basis where technically feasible.

Think beyond SME Definition

SGI Europe finds it as inappropriate to use the application of SME Definition, that is by its current Recommendation excluding local public service enterprises, **on the digital economy as some platforms might not require e.g., the threshold number of employees to hold significant power.** In the latest SGI Europe Opinion on "[Rethinking the SME Definition](#)" we once again stress that the Local Public Services Enterprises (LPSEs) in particular are affected by this definition, which restricts their ability to fulfil their mission of general interest as public services and services of general interest providers. Given their strategic role in the European territories and the digital world, these public SMEs need to be supported, particularly in the context of the economic recovery following the Covid-19 related crisis.

Secure the application of sector-specific law and the Member States' ability to regulate cultural issues

As the DSA will impose horizontal rules on all types of online platforms, the regulation runs the risk of overlapping with sector-specific instruments. For instance, video-sharing platforms must already respect certain rules laid down in the Audiovisual Media Services Directive (AVMSD). Sector-specific instruments, such as EU and national media regulation, should therefore not be affected by the DSA and, in case of conflict, always trump the general rules laid down in the DSA. They play a key role in securing public interest objectives, such as cultural diversity, plurality, or prominence of general interest content.

SGI Europe considers it important to clarify that the DSA will not deprive Member States from their prerogative to regulate cultural issues. National governments should be able to continue adopting measures, with a view to promote cultural and linguistic diversity, media freedom and pluralism in the online environment. **The DSA should clearly and explicitly recognise Member States' competence in the cultural sphere.**

Protect editorial media content and services from interference by online platforms

The DSA needs to ensure that online platforms cannot interfere, based on their corporate/content policies, with editorial media content and services which are already regulated and subject to specific oversight in Europe. Public service media have encountered, on several occasions, some of their content items/apps being removed by platforms, or their logo/branding disappearing, sometimes even without warning or explanation. The DSA should prohibit such practices so that future generations have continued access to trusted news and the rich plurality of views that media offer. **Media service providers must remain solely responsible for the content and services** once they have been made available on online platforms. Online platforms should not exercise additional layers of control over editorial media content.

Enhance the transparency of platforms' recommender systems

SGI Europe advocates for the **adoption of strong provisions on more transparency and accountability of online platforms' recommender systems in the DSA**. The platforms' ability to control what content appears and when, in full opacity, may have implications on the freedom of expression and information as well as diversity of opinions. Citizens using online platforms and businesses relying on platforms to provide their content, goods and services need to better understand the reasons behind ranking results and news feeds.

What is illegal offline should be illegal online

Clear instructions for Individuals and Entities to improve security on illegal activities

Article 14 on Notice and Action should clarify that the notifying individual or entity should at first direct its notice to the entity that has a clear view about the illegal activity according to the principle of removing illegal content as close to source as possible. Moreover, **SGI Europe supports a standardised and harmonised form of reporting to empower users, ensure transparency, and increase the possibility for redress for wrongly flagged content**. Regarding identification of the person who sends the report, some disclosure of identity is important for the sake of tackling potential misuse (e.g., attempts to "silence other users") but it should remain voluntary.

Clear definition on Safety that is in line with Human Rights Law

SGI Europe supports more and better procedural safeguards and rules (e.g., reporting systems and transparency) for online platforms to act against illegal content online.

Additionally, SGI Europe noticed that when online platforms have the duty to report immediately to the official law enforcements and judicial authorities when they come across serious criminal offence involving a 'threat to the life or safety of a person' there is still a lack of clarity on the definition under the word 'safety'. **It will be crucial to ensure that this will be not misunderstood, clear and in line with existing laws on human rights**.

Clear definition on Very Large online Platforms (VLOPs)

The DSA proposal introduces heavier obligations on 'VLOPs. However, the methodology to calculate the 'average monthly active recipients of the service will be set in delegated acts. **SGI Europe therefore asks for more clarity at this stage as it could affect a large number of platforms, depending on the methodology**.