

Statement on the DSA

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Statement on draft compromise amendments on the DSA

EucoLight, the European association of lighting WEEE¹ compliance schemes, is of the opinion that the Digital Service Act² (hereinafter referred to as the DSA) provides a unique opportunity to address the sales of non-compliant products in the Internal Market through online marketplaces. The DSA is the horizontal piece of legislation which could cover any sectorial development related to EU Law, such as the WEEE legislation.

EucoLight has been consistently advocating³ that the DSA should distinguish the liability of online platforms that allow consumers to conclude distance contracts with traders, including online marketplaces, from other providers of intermediary services. As a result, this type of platforms should comply with extra rules to benefit from the liability exemptions.

EucoLight is overly concerned about the direction of the compromise amendments in the IMCO Committee that risk undermining the level of ambition of the DSA. Those provisional compromise amendments do not include a specific liability regime for online platforms that allow consumers to conclude distance contract with traders, nor do they foresee strong due diligence obligations for online marketplaces.

In this short statement, we mention what is vital to be protected through the DSA and should be reflected in the final version of compromise amendments.

A definition of online marketplaces

The DSA refers to online platforms that allow consumers to conclude distance contracts with traders. However, even online marketplaces seem to be included within this category, there is no specification along the draft DSA neither on the provisional compromise amendments.

Consequently, with the aim of avoiding legal uncertainty, it is necessary to insert in article 2 of the DSA a definition of online marketplaces (in line with the amendments tabled by several IMCO members⁴) and the clarification that they are inside the category of platforms that allow consumers to conclude distant contract with traders.

A specific liability for online platforms that conclude distance contracts with traders

The exception to the limited liability regime for online platforms that allow consumers to conclude distance contract with traders included in article 5.3 of the draft DSA does not prevent the dissemination of illegal products on the Internal Market, although this should be a primary aim of the DSA. The current compromise amendments do not improve this situation.

How to address this issue? The conditions to be exempted from liability of online platforms that allow consumers to conclude distance contract with traders must be connected to specific due diligence obligations, such as the so-called "Know your business customer" obligation (art. 22 of the draft DSA). This is the approach that the rapporteur on the DSA⁵, Christel Schaldemose, has proposed and that EucoLight fully supports.

¹ Waste Electrical and Electronic Equipment.

² Proposal for a Regulation of the European Parliament and of the Council on a Single Market for Digital Services (Digital Services Act) and amending Directive 2000/31/EC.

³ As an example our [position paper on the DSA](#).

⁴ For instance amendments 704, 706, 707, 713, 736, and 744.

⁵ Amendments 6, 9, and 73.

Therefore, such online platforms would bear the liability as producers of the products for which they facilitate the access to the consumer in the European Union in case of failing with the correspondent obligations. This is the only way to ensure that there is an economic operator in the Union against whom enforcement action can be taken.

A strong “Know your business customer” obligation

The rapporteur's proposals to reinforce the dispositions relating to “Know your business customer” obligation should be supported, in the extend they request online platforms that allow consumers to conclude distance contract with traders, prior to the use of services, to:

- Not only obtain from the trader the type of products or services the trader intends to offer, but also the information allowing for the unequivocal identification of the product or the service to be offered, and the relevant information in line with the compliance requirements for products and services set out in the Union law⁶, which also includes environmental legislation.
- Check that the information provided by the trader is reliable, complete, up to date⁷.
- Take ex-ante measures, including random checks on the products, to identify and prevent the dissemination of illegal products⁸.

The current drafting of compromise amendments should be rejected because although improves the Commission proposal, it omits essential aspects:

- Online platforms allowing consumers to conclude distance contracts with traders should obtain from the trader the type of products or services the trader intends to offer on the online platform. However, the draft compromise amendments do not add the information allowing for the unequivocal identification of the product or the service to be offered, and the relevant information in line with the compliance requirements for products and services set out in the Union law, which is vital to assess the non-compliance of a product.
- The provisional compromise amendments also stipulate that online platforms allowing consumers to conclude distance contract with traders shall make “best efforts”:
 - To assess whether some of the information provided by the trader is reliable and complete.
 - To identify and prevent the dissemination, by traders using its service, of offers for products or services which do not comply with Union or national law through measures such as random checks on the products and services offered to consumer.

The wording “best efforts”, which is an uncertain concept, combined with the fact that this due diligence obligation is not connected to the liability regime is not sufficient to stop the flow of non-compliant product into the Union.

Stay-down obligations to prevent the reappearance of previously identified illegal products

Eucolight is alarmed by the absence of a stay-down obligation in the compromises amendments in IMCO.

The high number of transactions conducted via online marketplaces provokes that on several occasions when a notice and action procedure is resolved, the non-compliance product is already in the market.

For this reason, the last key element to address the proliferation of illegal products on online marketplaces is to include a stay-down obligation of previously identified illegal products instead of the current take-down mechanism (article 14 of the draft DSA).

⁶ Amendment 118.

⁷ Amendment 119.

⁸ Amendment 120.

About EucoLight:

EucoLight is the European association of collection and recycling organisations for WEEE lamps and lighting. On behalf of its 19 members, EucoLight engages with everything related to the WEEE Directive, legislations and standards affecting the collection and recycling of WEEE lighting. EucoLight members collect and recycle, in aggregate, 80% of the lamp waste collected in the 19 countries in which they operate.

EucoLight is the voice of European WEEE compliance schemes specialised in managing the collection and recycling of WEEE lighting, working to make the circular economy a reality for lighting products.

Founded mid-2015, EucoLight has quickly embarked into constructive dialogue with relevant stakeholders to provide expertise in the field of management and treatment of WEEE lighting and to promote the positive role of Extended Producer Responsibility schemes on the environment and society.

For more information, visit the EucoLight website www.eucolight.org, follow EucoLight on Twitter @EucoLight or contact the Secretary General, Marc Guiraud (marc.guiraud@eucolight.org).