

Shortlist/ Main consideration of the DSA Amendments by IMCO rapporteur Schaldemose:

Nordic proposal for amendments to the DSA proposal – in order to restore consumer safety and level playing field on the internal market

The Nordic commerce sector welcomes the Digital Service Act (DSA) since it is an important legislative act for sufficient handling of problems with dangerous, unsafe and non-compliant products from third country sellers and distortions of competition. With the DSA-initiative, we finally have a chance to improve consumer safety while putting an end to distorted 3rd country competition for the European commerce sector.

In the New consumer agenda the Commission promises, that the DSA will ensure, that consumers are protected effectively against illegal products on online platforms and marketplaces as they are offline¹. However, the DSA includes a horizontal exemption from liability which includes – among other things – EU product safety rules.

We believe that the IMCO rapporteur have tabled amendments that rightly emphasized the challenge with online marketplaces and the lack of consumer protection and uneven level playing field. We urge the Members of the IMCO Committee and the European Parliament to support such a direction of the DSA-proposal.

We, the Nordic retail organizations are happy to provide our enclosed list of main points and considerations. *For amendments on the Commissions proposal please see the ANNEX 1.*

The Nordic retail organizations especially want to emphasize the following amendments by IMCO rapporteur Schaldemose:

- The IMCO rapporteur's **amendment 5** *Clarification on the legal status of search engines*: We support this amendment and believe that this is sufficient and well balanced.
- The IMCO rapporteur's **amendment 10** which clarifies, that the exemption from liability should not apply for products from third countries if there is no liable economic operator in the EU.
- The IMCO rapporteur's **amendment 63** *Expanded definition of business user*: We believe that a clarification and an introduction of the definition of *business user* is necessary in the DSA, hence we support this amendment. This definition is in line with P2B regulation and makes the Know Your Business Customer obligation, KYBC, sufficient.
- The IMCO rapporteur's **amendment 73** *Intermediary liability*: **The Nordic Retail Sector consider this the most important proposal in the DSA and strongly support this**

¹ New Consumer Agenda 2020: “The DSA will ensure that consumers are protected effectively against illegal products, content and activities on online platforms as they are offline.”

amendment. We believe that this is sufficient, well balanced and necessary to ensure a safe online environment for consumers, sustainable consumption (less returns and impact on the environment) and to be able to create level playing field between different business models and a well-functioning single market.

- There should be **liability for online marketplaces** when they intermediate the sale of goods between a seller in a third country and a buyer in the EU, where there is no manufacturer or importer in EU. This should apply regardless of how passive the online marketplace is. This is in line with the applicable legislation on product safety in EU.
- The proposal is balanced because the rapporteur's amendment introduce the right to recourse/ the possibility to seek redress for the online marketplace from the trader, **art 5a.6.**
- **The IMCO rapporteur's amendment 89 *Display of identity of business users*:** We believe that it is proportionate that an obligation to display the identity of the business user alongside the good is introduced and therefore support this amendment.
 - The proposed obligation is in line with P2B regulation art 3.5.
- **The IMCO rapporteur's amendment 90 *Expanded transparency requirements*:** The principle of *know your business customer* should be amended so that it also mirrors the obligations of a distributor and an importer, cf. the NLF and the GPSD.
- **The IMCO rapporteur's amendment 96 *stay down*:** This is more sufficient and effective than the proposal of the Commission, against this background we support this amendment . In order to have an effective legislation for illegal products online marketplaces need to have an obligation to prevent the illegal products from repapering on the online marketplace. This is very important for both consumers and level playing field.
- **The IMCO rapporteur's amendment 106 *Repeat infringers*:** We believe this is a good aim and an important amendment. We do though believe that online marketplaces **shall ensure** that suspended recipients of the service shall not be able to use the service again until the suspension has been lifted.
- **The IMCO rapporteur's amendment 111 *Traceability of traders, products and services*** We believe that this amendment is important since the scope of the KYBC obligation is larger than only traceability of traders. Products and services should also be included.
- **The IMCO rapporteur's amendment 117 *Self-certification*** We support deleting this amendment since self-certification has been proved not being sufficient to ensure consumer protection and level playing field.
- **The IMCO rapporteur's amendment 118 *Identifications of the products*** We believe this to be an important clarification which is in line with obligations for other retailers.
- **The IMCO rapporteur's amendment 119 *Know you business customer principle*:** We welcome the this amendments because it is straight forward, clear and gives the platform obligations to act proactively. This addition ensures the safety **before** the product is offered on the online marketplace. We have added special tasks for the online marketplaces to perform when they allow sellers from third countries to sell products to EU consumers (important because there is no other economic operator in the EU to do this in these cases contrary to the situations where the seller is based in the EU).
- **The IMCO rapporteur's amendment 120 *Random checks*:** To create a sufficient handling of products and to prevent illegal products from third-countries entering into the Union we need checks and controls on the marketplaces.

This amendment is proportionate since these kind of adequate measures like random checks is something retailers do on their websites regularly.

- **The IMCO rapporteur's amendment 122 Storage of information** This is important to create a cooperation between online marketplaces and authorities, in case of market surveillance.
- **The IMCO rapporteur's amendment 132 Expanded definition of VLOPs** : Very important amendment because for online marketplaces the number of active users per month is not as sufficient as for social media. If this definition is not changed no marketplaces would be included of the scope of Very Large Online Platforms. The Nordics therefor think it is important to include the annual turnover as an indicator of whether you define as a VLOP or not.

The Nordic retail organizations have following comments on amendments by IMCO rapporteur Schaldemose:

The IMCO rapporteur's amendment on article 2 – definition

In the proposal we lack a definition on a stay down mechanism. We think this should be explained already in the definitions to make sure to emphasize the importance of implementations of such mechanism on online marketplaces.

The IMCO rapporteur's amendment on article 5- Liability for online marketplaces

The rapporteur's proposal within the DSA is very welcomed since it is make clear distinction on what type of platform falls under the scope of article 5.a. In the article 5.a a Due Dilligence obligation is more or less introduced.

The Nordics welcome this approach but are still in the favor of introducing the concept **digital importer**. The gap should be closed by amending the structure of the DSA and adding a new article stating that online marketplaces that are established in EU and which allow consumers (or others) to conclude distance contracts concerning tangible goods with traders from third countries, should be obligated to either

1) make sure that there is an importer of the products in EU before the products are put up for sale or

2) take the responsibility and liability as an importer themselves.

The IMCO rapporteur's amendment 14- Summary of information

This amendment risk to create an information overload for consumers. It is not desirable to propose additional obligations on information requirements in the digital environment. There are already a widespread information-fatigue among European consumers. It risks to create legal uncertainty if the consumer don't read the terms and conditions. It is unclear who decides which points should be included in a summary. If such a requirement is included the DSA should describe which information should be given in the summary.

The Nordic Retail Sector propose this amendment to be **deleted**.

The IMCO rapporteur's amendment 19- Online advertising

The Nordic Retail Sector has argued that online advertising should not be in the scope of the DSA. In the proposed amendment by Schaldemose, the focus is on the *significant risk* with online advertisements. This is a too narrow perspective to undertake and once again a differentiation between illegal content such as political messages, and illegal goods, such as dangerous toys or electronic, are very different.

The Nordic Retail Sector sympathy with the need of restrict the possibility to create filter-bubbles for example when it comes to political messages or messages including hate speech. But in general advertisements – and online advertisements – are the way companies inform potential costumers about their products and services.

When it comes to products online advertisements have very many positive aspects such as:

- Make the website clear and consumer friendly to use. It is almost impossible to find a product if there are no algorithms that filter the information on the website.
- Can give the consumer better prices
- Can give the consumers inspiration
- Is an important factor for sustainability: correct information to the consumer will lower the returns of products.

The amendment is also unclear in defining, which actor that will actually be the one required to provide the correct information towards consumers.

On the positive note we welcome the aim to create a better transparency between the online marketplaces and the sellers when it comes to advertisement.

But overall, the Nordic Retail Sector propose this amendment to be **deleted**.

The IMCO rapporteur's amendment 20- Online advertising

In this amendment the rapporteur propose a requirement of consent, when it comes to targeting advertisement. This is already regulated in the GDPR and in the upcoming e-Privacy regulation.

Within the advertisement industry there are already many voluntary measures taken, and companies work very transparent on why a certain consumer get certain promotions and deals. This lays also within the interest of the consumer, example within the membership of a loyalty club.

Consequently, The Nordic Retail Sector propose this amendment to be **deleted**.

The IMCO rapporteur's amendment 30- Ranking

Today there is a clear unbalance between online marketplaces and the sellers when it comes to ranking on the marketplace. It is the online marketplace which sets the rules, and the user, the seller, either accept it or not. In other words this is take it or leave-it situations.

There are investigations showing that the online marketplaces premier their own products without transparency to the seller or the consumer. This is problematic.

All though we see this as a huge problem, the proposed amendment will only result in more strict contracts between the sellers and the online marketplace, and a worsen situations for retailers. When introducing obligations such as requirements for the consumers to be appropriate informed on what they are being informed about etc, there is a clear risk that the online marketplace will put these information obligations on the retailer to provide.

When creating systems such as the online marketplace should present **main parameters** they will be the only part deciding these parameters which can result in that they create systems that will only benefit their own brands and products.

Consequently, The Nordic Retail Sector propose this amendment to be **deleted**.

The IMCO rapporteur's amendment 31 – Tackling climate change

The platform economy comes with many opportunities when it comes to sustainability and the opportunity to tackling climate change. However, new information obligations in the DSA is not the right place to solve this important task. These rules should be harmonized within the whole supply chain. There is a new regulation coming up on Due Dilligence, and also new consumer rights are expecting to be introduced. The amendment is not specific enough for interpretations and implementations for businesses and will consequently lead to more complications.

As mentioned on previous articles as well, consumers do not wish for more information. The digital environment is already an overload of information. To introduce specific obligations for the online marketplace will create confusion for the consumer. And it also risks contractual problems between the sellers and the online marketplace in the case the information towards the consumers turn out to be wrong or misleading- who is responsible then? The DSA allows online marketplaces and platforms to exempted from liability from EU environmental legislation. It would be better for the climate to make sure, online platforms and marketplaces should comply.

The Nordic Retail Sector therefore propose this amendment to be **deleted**.

The IMCO rapporteur's amendment 36 – Automated decision making

This amendment does not present the positive aspects of AI. It is highly important that AI as such is not pictured as something dangerous for society and consumers. Most techniques *can* create risk when they are used in an unethical way. It is therefore important that focus lays with what the AI-service in practice actually uses for.

The rapporteurs statement *it is therefore of utmost importance to mitigate those risks and ensure that the design of automated decision-making does not create **any** risk for users or our society.*

Since there is a new AI-act presented, which is based on high-risk assessments The Nordic Retail Sector propose this amendment to be **deleted**.

