

To: BEHRNDT Nils (JUST); [REDACTED] (JUST); [REDACTED] (JUST); [REDACTED] (JUST); [REDACTED] (JUST); [REDACTED] (JUST)

Cc: [REDACTED] (JUST); [REDACTED] (JUST); [REDACTED] (JUST); [REDACTED] (JUST)

Subject: Today's call with [REDACTED] (BEUC) on the DSA

Attachments: DSA - article in CONTEXTE 30 Sep 2020.docx

BEUC explained its priorities for DSA package's workstrand related to the revision of the E-commerce Directive. They broadly endorsed IMCO's draft DSA Report as recently amended. Against the background of a recently leaked document from CNECT (see attached article in 'CONTEXTE'), BEUC raised the concern that governance and enforcement architecture envisaged by that document should be fully articulated with the well-functioning existing enforcement architecture for consumer law, notably the CPC system. Equally, the new rules should not negatively affect the EU acquis on consumer ADR.

Participants: [REDACTED] BEUC); [REDACTED] (JUST)

Details:

- The call focused on the DSA package's workstrand related to the revision of the E-commerce Directive (ECD). In line with its relevant position papers and contribution on the OPC on the DSA, BEUC highlighted four priorities:
 1. Liability for online marketplaces
 - Harmonised liability exemptions under Articles 12-14 ECD and prohibition of general monitoring obligation in Art. 15 ECD generally to be maintained
 - Exception for online marketplaces (functional definition; aligned to that in Omnibus Directive) for which a specific liability regime should be established in four scenarios: (1) failure to inform who the trader is; (2) provision of misleading information; (3) platform plays a key role in the value chain; (4) platform becomes aware of illegal activities, but stays inactive
 - Distinction between commercial and non-commercial activities
 2. 'Know-your-business-user-principle'
 - Obligation to collect information on business users needs to be complemented by relevant liability
 3. Random compliance checks
 - Obligation for platforms to carry out random compliance checks regarding third-party content, listings and activities
 4. Non-EU platforms and retailers
 - Obligation for both non-EU platforms and retailers to designate a representative within the EU.
- With regard also to the recently leaked document from CNECT, BEUC underlined the importance of an effective governance and enforcement architecture for the DSA that should be fully articulated with existing well-functioning enforcement frameworks, notably the CPC system for the public enforcement of EU consumer law. The three-layered system envisaged in the CNECT document would appear too cumbersome. The following elements should be considered when designing an effective enforcement architecture for the DSA:
 - enforcement authorities should be independent and sufficiently resourced
 - clear allocation of enforcement powers
 - clear and binding deadlines for taking action

- inspiration could be taken from the governance architecture under the GDPR: the lead authority should have the power to take binding decisions that need to be implemented by all authorities. As opposed to the GDPR enforcement architecture, for determining the lead authority the country of origin principle should be abandoned. The lead authority should be in the MS not where the trader is established, but where the consumers are affected.
- clear cooperation obligations for national authorities
- BEUC furthermore underlined that importance of ensuring that any rules on out-of-court dispute resolution in the DSA should be fully coherent with the EU acquis on consumer ADR

Follow-up:

- BEUC and JUST [REDACTED] agreed to continue cooperating closely on the file, including on the issue of an effective and articulated governance and enforcement architecture for the DSA.
 - JUST [REDACTED] is currently requesting CNECT [REDACTED] to share the above-mentioned leaked document with us.
 - A Unit-level discussion with CNECT [REDACTED] on the DSA is scheduled for Monday, 5 October 2020.
- [REDACTED]