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NOTE

From:	IE delegation supported by HR, CZ, EE, FI, MT, LV, LT, LU, RO, SK, SE delegations
To:	Delegations
Subject:	Joint Non-Paper of Croatia, Czech Republic, Estonia, Finland, Malta, Ireland, Latvia, Lithuania, Luxembourg, Romania, Slovakia and Sweden on the Effective supervision under the Digital Services Act

Joint Non-Paper of Croatia, Czech Republic, Estonia, Finland, Malta, Ireland, Latvia, Lithuania, Luxembourg, Romania, Slovakia and Sweden on the Effective supervision under the Digital Services Act

The Digital Services Act (DSA) proposal builds upon the core principles of the e-Commerce Directive, particularly “home country supervision” whereby enforcement action is taken by the Member State in which service providers are established. This enforcement mechanism supports the “country of origin principle” in Article 3 of the e-Commerce Directive, under which service providers are subject to the law of their country of establishment for matters covered by the Directive and with limited exceptions.

The country-of-origin principle is fundamental in providing businesses with the necessary legal certainty and understanding when engaging in cross-border trade as to the rules and regulations to which they must adhere and the competent authorities they need to deal with. It has allowed companies to grow and scale across the EU in an efficient and cost-effective way, especially for micro and small enterprises. This has taken on particular significance for digital services, by nature cross-border, because digital business models are typically large in scale but low margin, and country of establishment control avoids duplication of regulatory costs. It is crucial to preserve this logic in order to stimulate innovation and growth of these digital services, in particular for smaller service providers in Europe, while guaranteeing legal certainty and minimising burden by avoiding SMEs need to deal with 27 different national systems.

As set out in the Impact Assessment, one of the main objectives of the DSA is to establish a Single Market by ensuring the most effective supervision in order to safeguard the interests of all European citizens. The country of establishment is best placed to exercise effective jurisdiction and take corrective measures against a service provider, while accommodating the cooperation with and assistance to authorities from other Member States. As digital services are inherently cross-border, and therefore usually offered in all 27 Member States, a departure from the established jurisdictional rules would de facto mean an enforcement by 27 authorities. Therefore, any changes to this fundamental Single Market approach would inherently undermine the

development of digital services in Europe, allowing only the very large players to scale across the Single Market. Jurisdiction based on the country of establishment logic is the optimum model for ensuring that rules can effectively be enforced against services. The evaluation of the e-Commerce Directive in the Commission's Impact Assessment of the DSA¹ and other available evidence shows that the Single Market principle has been instrumental for the development of digital services in Europe.

We do not believe it is possible to adjust the current governance system without entirely eroding it; providers of online services are either subject to the supervision of the Member State in which they are established or they are subject to the authorities and enforcement rules of all 27 Member States as countries of destination. The latter will lead to fragmentation and legal uncertainty within the Single Market which will increase costs without adding tangible benefits for the users of online services. While closer cooperation among Member States is necessary, to convey rights of intervention upon the competent authorities of the country of destination would have a detrimental effect on the legal clarity and innovation for digital services in Europe.

We believe that the governance provisions contained in Chapter 4 of the DSA, particularly in Articles 41 and 45, which strengthen transparency and cooperation between national authorities, are appropriate and proportionate to allow for effective implementation. If we want to achieve a truly harmonised enforcement, based on Article 114 TFEU, the jurisdictional model based on country of establishment needs to remain intact.

1 ¹ Commission Impact Assessment on a Proposal for a Regulation on a Single Market for Digital Services (Digital Services Act) and amending Directive 2000/31/EC 15/12/2020 SWD(2020) 348 final P.49 Para 171 - *ibid.* Changes to the **single market principle** set in the E-Commerce Directive and the requirement for the country of establishment to supervise services would inherently undermine the development of digital services in Europe, allowing only the very large players to scale across the single market. The single market principle is also the optimum model for ensuring that rules can effectively be enforced against services. The evaluation of the E-Commerce Directive and all other available evidence shows that that the single market principle has been instrumental for the development of digital services in Europe. This principle increased legal certainty and reduced compliance costs significantly, which is crucial for smaller services in particular.