

March 25, 2021

Via email only

Subject: Position of Belgian/Dutch industry regarding the Digital Services Act

The signatories to this letter ask for your attention and support to ensure that the Digital services Act (DSA) provides for the best possible framework for a safe and trusted digital ecosystem for European consumers and European businesses.

In September 2020, a coalition of Belgian and Dutch founded companies and associations issued a joint letter that you will find attached. Since last autumn, the draft DSA has been released by the EU Commission.

Today, Belgian and Dutch companies and associations together with various international companies that have a seat in Belgium or the Netherlands welcome the EU Commission's carefully drafted DSA. Within the framework of the DSA, the manufacturing industry embraces the broad definition of 'illegal content' to also include products that are not in compliance with Union law or the law of a Member State. In doing so the EU Commission underscores that the scope of the DSA encapsulates counterfeited as well as non-conforming products and all information and advertisements leading to such products.

As well as providing for a framework for a safe and trusted digital space, the DSA also has the potential to be an important enabler in the fight against the imports of counterfeited and non-conforming products into Europe. European consumers that intend to buy trusted, safe and innovative goods are too often misled and end up buying illicit goods. According to a recently published study by the OECD and EUIPO ¹ 56% of all seized goods are shipped by means of containerised traffic. This is particularly relevant for the signatories considering that many of these containers pass via the ports of Antwerp and Rotterdam.

Within this bigger framework, the DSA is a unique opportunity to ensure that:

- European consumers and businesses are **protected equally on- and offline** against rogue traders and (illegal) unfair competition;
- Online service providers, irrespective of their place of establishment or residence, play their part in maintaining a clean and fair online ecosystem, in particular by exercising appropriate control over those parts of the value chain that are within their purview. This includes:
 - reasonable due diligence to know with whom they enter business relationships ("**Know Your Business Customer**"). Such measures, which should not be considered as a 'general monitoring obligation', are essential to protect EU consumers and IP rights owners alike. It has to be clear for consumers whether they buy from an individual trader or from a commercial trader, or where to turn when seeking redress. Likewise, it should be possible for IP rights owners to properly initiate legal action against those sellers who violate their intellectual property rights;

¹ [Misuse of Containerised Maritime Shipping](#) – OECD/EUIPO (2021), Misuse of Containerized Maritime Shipping in the Global Trade of Counterfeits, Illicit Trade, OECD Publishing

- legal obligations to employ **proactive, including technical, measures to prevent offers for illegal goods** appearing on their sites. Voluntary measures have proven to be insufficient to tackle counterfeiting and noncompliance online. With respect for the notion of proportionality, one should expect such proactive measures from all platforms irrespective of their size. To enable the foregoing and like any brick-and-mortar retailer in the physical world, we should expect all digital intermediaries to collect and verify basic information from their customers;
- rapidly (and permanently) **removing illicit offers** when they are identified and **prohibiting repeat offenders** from accessing their services. Once identified as illegal content, by proactive measures or following a judicial decision or third party notice, that listing and identical or equivalent postings/content should be permanently removed and remain inaccessible thereafter.
- A service provider with **actual knowledge** does not benefit from the exemption from liability. To provide legal certainty, the signatories would welcome a clarification on what an active role and knowledge actually mean in practice. The signatories doubt whether the liability exemption would apply in case platforms offer paid-for services enabling sellers to promote their content or in case platforms' algorithms rank the various offers according to non-public criteria.

Further, and with respect for applicable data protection mechanisms, the signatories would appreciate that **information about illegal content** is provided by platforms on a proactive, proportionate and structural basis to law enforcement authorities, allowing for effective risk analysis and targeting. With effective risk profiling and risk analysis tools in place, EU law enforcement authorities would subsequently be able to address in a meaningful way the huge volume of counterfeits that is imported into Europe ². In the draft DSA, the sharing of information or data is essentially addressed in articles 9 ³ and 13 ⁴. These provisions provide for a retroactive and ad hoc data sharing mechanism. The signatories are of the opinion that these provisions will be ineffective and insufficient to properly protect EU consumers and EU business from the imports of counterfeited and non-conforming products into the EU.

Since any business, whatever its size and sector, must abide by both EU and national law, the signatories see no reason why the duty of care to protect EU consumers and EU businesses should be lower for online actors compared to the legal obligations that apply to offline actors.

While the momentum is there for Europe to show leadership in defining a sustainable and futureproof digital framework, the signatories that represent SMEs as well as international companies and various industry associations across different sectors **ask for your support** to ensure that the DSA facilitates the creation of an online ecosystem that can be trusted by, and that is safe for, EU consumers and EU businesses.

² According to a study carried out by the OECD and EUIPO in 2019, 6.8% of all imports into the EU (by value) is believed to be counterfeited. See [Trends in Trade in Counterfeit and Pirated Goods](#) for details.

³ Article 9 of the draft DSA stipulates: "Providers of intermediary services shall, upon receipt of an order to provide a specific item of information about one or more specific individual recipients of the service, issued by the relevant national judicial or administrative authorities on the basis of the applicable Union or national law, in conformity with Union law, inform without undue delay the authority of issuing the order of its receipt and the effect given to the order."

⁴ Article 13 of the draft DSA stipulates: "Providers of intermediary services shall publish, at least once a year, clear, easily comprehensible and detailed reports on any content moderation they engaged in during the relevant period."

The signatories (in alphabetic order)



adidas

ASML



CORSEARCH



PHILIPS



TOYOTA



About the Signatories

ABAC-BAAN

ABAC-BAAN is a not for -profit organization which defends the interests of intellectual property rights holders which was established in 1995. Located in Belgium, it was created by the owners of several well-known trademarks who had been the victim of counterfeiting in Belgium and Luxembourg. The association's anti-counterfeiting services include investigations and product verification, the organization of transport, storage and destruction of goods, filing criminal complaints. It also advises its members on legal issues. ABAC-BAAN assists its members in Anti-Counterfeiting matters initiated by customs administration, the police and economic police. The Association takes care of all the administrative follow-up of customs files. It implements the "simplified procedure" for the swift destruction of the counterfeit products. If required, it also involves judicial authorities.

www.abac-baan.be

ADIDAS

Adidas is a global leader in the sporting goods industry. Headquartered in Herzogenaurach/Germany, the company employs more than 62,000 people across the globe and generated sales of € 19.8 billion in 2020.

www.adidas-group.com

ASML

ASML is one of the world's leading manufacturers of chip-making equipment. We continuously raise the capabilities of our products, enabling our customers to increase the value and reduce the cost of chips. By helping to make chips cheaper and more powerful, we help to make semiconductor technology more attractive for a larger range of products and services, which in turn enables progress in fields such as healthcare, energy, mobility and entertainment. ASML is a multinational company with offices in more than 60 cities in 16 countries, headquartered in Veldhoven, the Netherlands. ASML supports protection by and respects intellectual property rights.

www.asml.com

ATLAS COPCO AIRPOWER

Atlas Copco is a global, industrial company based in Stockholm, Sweden, with almost 40 000 employees and customers in more than 180 countries. Our industrial ideas empower our customers to grow and drive society forward. We are pioneers and technology drivers, and industries all over the world rely on our expertise. Our market-leading compressors, vacuum solutions, generators, pumps, power tools and assembly systems can be found everywhere.

The Compressor Technique business area provides compressed air solutions; industrial compressors, gas and process compressors and expanders, air and gas treatment equipment, and air management systems. The business area has a global service network and innovates for sustainable productivity in the manufacturing and process industries. Principal product development and manufacturing units are located in Belgium, the United States, China, India, Germany, and Italy. Atlas Copco has many strong brands driving the success of our business.

www.atlascopco.com

BABM

BABM is the Belgilux Association of Branded products Manufacturers. It represents the branded Fast Moving Consumer Goods industry in Belgium and Luxembourg on key issues which affect the ability of brand manufacturers to design, distribute and market their brands.

BABM's mission: to create sustainable value in the Belgian FMCG market through a fair and collaborative commercial climate with efficient supply chains and inspirational consumer experiences. BABM is a member of AIM (European Brands Association) that groups similar organisations in different European countries.

Key figures:

- 90 members producing and distributing FMCG branded products in the BeLux area
- BABM members' turnover amounts to € 10 billion
- BABM members account for 52.572 direct and indirect jobs

www.babm.be

BELGIAN CYCLING FACTORY

Belgian Cycling Factory is the umbrella company of Ridley and Eddy Merckx, the two largest Belgian bicycle manufacturers, with CEO Jochim Aerts.

Eddy Merckx was founded by the Cannibal himself in 1980 and has a name known throughout the cycling world. Merckx is known for developing high-quality and stylish racing bikes. A fitting tribute to Eddy Merckx's extraordinary cycling career.

Ridley was founded by Jochim Aerts in 1990 and is known for high-tech sports bikes that are highly personalised. Ridley has been a top-level sponsor of professional cycling teams since 2005, a statistic that only 3 other brands worldwide can match and the absolute proof of the innovative spirit that propels the brand.

www.cyclingfactory.be

BMM

The Benelux Trademark Association (BMM or in Dutch 'Beneluxvereniging voor Merken- en Modellenrecht' and in French 'l'Association Benelux pour le droit des marques et des modèles') is the professional organization that defends the interests of all trademark professionals in the three Benelux countries (Belgium, the Netherlands and Luxembourg). The association has more than 700 members, which are active as trademark agents, in-house counsels, attorneys and academics. The BMM promotes trademark law and other forms of intellectual property law and guarantees the professional quality of the services rendered by its members, by organizing conferences and giving training. The organization imposes an ethical code to its members. The organization keeps close contacts with the Benelux Office for Intellectual Property Law and with EUIPO.

www.bmm.eu.

BUZZISPACE

BuzziSpace creates solutions for happy and healthy spaces around the world. With a mission to improve well-being through human-centric design, the Belgian design brand provides original acoustic solutions, lighting and furnishings to meet the needs of the modern workplace—and beyond. Founded in 2007, BuzziSpace has grown into an award-winning acoustics leader. The Antwerp-based company has established an international presence with showrooms in Antwerp, New York, and Chicago, and its own manufacturing facility in Bladel (NL)

www.buzzi.space

CORSEARCH

Corsearch Brand Risk and Performance solutions are revolutionizing how companies commercialize and protect their growth. Trusted by thousands of customers worldwide, Corsearch delivers data, analytics, and services that support brands to market their assets and reduce commercial risks. From IP clearance to brand protection and anti-piracy, Corsearch provides a comprehensive program that enables businesses to secure brand value and thrive commercially. Behind the world's best-known brands, there's Corsearch.

www.corsearch.com

FME

FME is the employers' organization for the technology industry. Our 2,200 members are technostarters, trading companies, medium and small industry (mki) and large industry / multinationals active in the metal, electronics, electrical engineering and plastics sectors. Our members have 220,000 employees. The combined turnover of the FME members is 108 billion and together they export 51 billion. This means that FME members realize one-sixth of what the Netherlands earns in total from exports. FME has partnerships with 30 industry associations and platforms.

www.fme.nl

GSK

A science-led global healthcare company with a special purpose to help people do more, feel better, live longer.

We have three global businesses that discover, develop and manufacture innovative pharmaceutical medicines, vaccines and consumer healthcare products. Every day, we help improve the health of millions of people around the world. Our goal is to become one of the world's most innovative, best performing and trusted healthcare companies. Our world-leading Consumer Healthcare business combines science and consumer insights to create innovative everyday healthcare brands that consumer trust and experts recommend for oral health, pain relief, cold, flu and allergy, digestive health and vitamins, minerals and supplements.

www.gsk.com

HEINEKEN

Heineken is the world's most international brewer. It is the leading developer and marketer of premium beer and cider brands. Led by the Heineken® brand, the Group has a portfolio of more than 300 international, regional, local and specialty beers and ciders. Heineken is committed to innovation, long-term brand investment, disciplined sales execution and focused cost management. Through "Brewing a Better World", sustainability is embedded in the business. Heineken has a well-balanced geographic footprint with leadership positions in both developed and developing markets. It employs over 85,000 employees and operates breweries, malteries, cider plants and other production facilities in more than 70 countries.

www.heineken.com

MODULAR LIGHTING INSTRUMENTS

Modular Lighting Instruments has been rewriting the rules for architectural lighting since 1980. It's in our DNA. We are renowned for innovative technology. Our outspoken bold and quirky designs. Our gutsy, creative and some might say "eccentric" campaigns. We don't think like any other lighting company. We don't act like any other lighting company.

Many of our prize-winning designs have become icons in the industry. We are always pushing forwards. How can a light fixture be better? Smarter? More beautiful? We are restless. Curious. And never ever satisfied.

The Modular way

Modularity is about creating one design that has multiple applications. Extending product families beyond what seems possible. Assisting, stimulating and inspiring interior designers and architects, with almost limitless options. Our fixtures and linear lighting strengthen the architecture of residential homes, hospitality venues, shops and offices.

www.supermodular.com

NIKE

NIKE, Inc. is the global leader in the sporting goods industry. NIKE, Inc.'s mission is to bring innovation and inspiration to every athlete(*) and fuel the passion for sport. NIKE, Inc. employs more than 75,000 people across the globe, out of which more than 18,000 employees in EMEA. NIKE, Inc.'s European Headquarters (EHQ) are located in Hilversum, The Netherlands, from where the company supports operations in over 75 countries in the EMEA region. NIKE Inc.'s state-of-the-art, renewable energy-powered European Logistics Campus (ELC) is located Laakdal, Belgium.

(*) If you have a body, you are an athlete. JUST DO IT.

www.nike.com

NXP SEMICONDUCTORS

NXP Semiconductors N.V. is a global semiconductor company creating solutions that enable secure connections and infrastructure for a smarter world, advancing solutions that make lives easier, better and safer. NXP focuses on research, development and innovation in its target markets. As the world leader in secure connectivity solutions for embedded applications, NXP is driving innovation in the automotive, industrial & IoT, mobile, and communication infrastructure markets.

www.nxp.com

KONINKLIJKE PHILIPS

Royal Philips of the Netherlands is a leading health technology company focused on improving people's health and enabling better outcomes across the health continuum from healthy living and prevention, to diagnosis, treatment and home care. Philips leverages advanced technology and deep clinical and consumer insights to deliver integrated solutions. The company is a leader in diagnostic imaging, image-guided therapy, patient monitoring and health informatics, as well as in consumer health and home care.

www.philips.com

REACT

React is a not-for-profit organization with over 30 years of experience in fighting counterfeit trade. One of our main objectives is to keep the costs of anti-counterfeiting actions affordable. Our network of offices and partners allows us to provide the support wherever needed (practically worldwide). Members pick and choose the React services they feel most comfortable with.

www.react.org

RECKITT

Reckitt exists to protect, heal and nurture in the relentless pursuit of a cleaner, healthier world. We believe that access to the highest-quality hygiene, wellness and nourishment is a right, not a privilege. Reckitt is the company behind some of the world's most recognisable and trusted consumer brands in hygiene, health and nutrition, including Air Wick, Calgon, Cillit Bang, Clearasil, Dettol, Durex, Enfamil, Finish, Gaviscon, Harpic, Lysol, Mortein, Mucinex, Nurofen, Nutramigen, Strepsils, Vanish, Veet, Woolite and more.

Every day, more than 20 million Reckitt products are bought globally. We always put consumers and people first, seek out new opportunities, strive for excellence in all that we do and build shared success with all our partners. We aim to do the right thing, always.

We are a diverse global team of more than 43,000 colleagues. We draw on our collective energy to meet our ambitions of purpose-led brands, a healthier planet and a fairer society.

www.reckitt.com

SIGNIFY

Signify (Euronext: LIGHT) is the world leader in lighting for professionals and consumers and lighting for the Internet of Things. Our Philips products, Interact connected lighting systems and data-enabled services, deliver business value and transform life in homes, buildings and public spaces. With 2020 sales of EUR 6.5 billion, we have approximately 38,000 employees and are present in over 70 countries. We unlock the extraordinary potential of light for brighter lives and a better world. We achieved carbon neutrality in 2020, have been in the Dow Jones Sustainability World Index since our IPO for four consecutive years and were named Industry Leader in 2017, 2018 and 2019.

www.signify.com

SPIRITSNL

SpiritsNL is the Dutch trade association for importers and producers of distilled spirits. The association represents 26 members together covering approximately 85 to 90 percent of the total Dutch market of spirits. SpiritsNL aims to achieve the best possible balance between the interests of the sector on the one hand and those of society on the other by acting in a socially responsible manner.

www.spiritsnl.nl

STUDIO 100

Studio 100 was founded in 1996 by Gert Verhulst and Hans Bourlon. The company has become a unique international company in family entertainment, with a very strong reputation. Studio 100 guarantees a wide range of quality productions in the field of family and child entertainment: television, movies, books, magazines, CD's, merchandising, own broadcasting channels, digital platforms, shows and theater productions ... everything is being developed in-house. The theme park division of Studio 100, runs seven popular theme parks: four in Belgium (Plopsaland and Plopsaqua at De Panne, Plopsa Indoor Hasselt and Plopsa Coö), one in the Netherlands (Plopsa Indoor Coevorden), one in Poland (Mayaland) and one in Germany (Holiday Park). The expansion of multiple complementary activities around the various Studio 100 characters is one of the strengths of Studio 100.

www.studio100.be

TOMTOM

TomTom is the leading independent location technology specialist, shaping mobility with highly accurate maps, navigation software, real-time traffic information and services.

To achieve our vision of a safer world, free of congestion and emissions, we create innovative technologies that keep the world moving. By combining our extensive experience with leading business and technology partners, we power connected vehicles, smart mobility and, ultimately, autonomous driving.

Headquartered in Amsterdam with offices in 30 countries, TomTom's technologies are trusted by hundreds of millions of people worldwide.

www.tomtom.com

TOYOTA MOTOR EUROPE

Toyota Motor Europe NV/SA (TME) oversees the wholesale sales and marketing of Toyota and Lexus vehicles, parts and accessories, and Toyota's European manufacturing and engineering operations. Toyota directly employs over 25,000 people in Europe and has invested over EUR 10 billion since 1990. Toyota's operations in Europe are supported by a network of 29 National Marketing and Sales Companies across 53 countries, a total of around 3,000 sales outlets, and 9 manufacturing plants. In 2020, Toyota sold 993,113 Toyota and Lexus vehicles in Europe.

www.toyota-europe.com

UNILEVER

Every day, 2.5 billion people use Unilever products to look good, feel good and get more out of life. This gives us the opportunity to build a better future. Unilever is the largest company in fast moving consumer goods in the Benelux. In the Netherlands we bring about 40 well-known brands to the market.

These well-known brands represent a diverse blend of products under brands such as Axe, Bertolli, Biotex, Calvé, Cif, Conimex, Dove, Glorix, Hertog, Knorr, Lipton, Neutral, OLA, OMO, Prodent, Unox, Zendium and Zwitsal.

www.unilever.com

Copy of the 1st Joint letter issued in September 2020

Subject: Position of Belgian/Dutch industry regarding the Digital Services Act

Belgian and Dutch companies need your support to protect consumers from illegal online products and to protect our legitimate businesses from unfair online trading practices. The below signatories make this call in view of the [Digital Services Act \(DSA\)](#), which is being prepared by the EU Commission.

There is no doubt that E-commerce is an important path to the market for legitimate Belgian and Dutch companies from a wide range of sectors, offering their conforming and trusted goods to European consumers. However the below signatories have serious concerns that various e-commerce platforms are making huge volumes of illegal goods available to the European market, which may create health and safety issues to European consumers, which is unfair to European businesses and has a serious impact on revenues for state budgets.

The current health crisis has accelerated the digitalization of consumers and businesses behavior and has put many challenges in the spotlight. Now more than ever consumers and businesses from all categories are relying on e-commerce platforms to address their needs. It is important to realise that uncertainty and lack of compliance should be firmly addressed by policy makers. The Covid-19 crisis has shown us that the current legal framework is insufficient to address the increasing volume of illegal goods available on online platforms, and that a clear set of strict obligations is the only solution.

Therefore, we are contacting you concerning the Digital Services Act (DSA) proposal. The DSA will be an important opportunity to ensure that Europe's consumers are better protected from the dangers of counterfeited, substandard and non-conforming products sold online, and that European businesses are guaranteed a level playing field against unfair competition and unfair trading practices online.

What is illegal offline should be illegal online

Your support:

We count on your support on sending a strong call to action to ensure that the European Union will, by the end of 2020, propose a DSA that will include clear, proactive and proportionate legal obligations on online platforms and to do more to prevent counterfeit, substandard and non-conforming products being sold to European consumers.

Below we outline suggestions for clear, practical due diligence measures that are standard in offline retail. Goods are sold on the basis of inventories and product codes, money is exchanged, taxes should be paid, delivery and logistics are organized. Current legislation clearly determines when goods are traded in a legitimate manner. There is no lack of definitions. We must ensure that the DSA establishes the responsibility of the parties who offer or sell counterfeit, non-conforming or substandard products, or that enable the offering or sale of such products.

It is short-sighted to believe that counterfeit, substandard and non-conforming products are imported into the EU by means of small consignments only. Some of the major e-commerce platforms (plan to) have large fulfilment centres in the EU to enable even faster deliveries to European customers. These fulfilment centres are replenished by means of large consignments. Further, we see a growing number of EU-based retailers that use the infrastructure that is made available to them by major e-commerce platforms to sell their goods to European customers online. The airports of Schiphol, Zaventem and Bierset and, even more so, the seaports of Rotterdam and Antwerp are increasingly important hubs in this respect.

To be efficient, we ask that the DSA defines clear proactive and proportionate measures that online platforms must implement to prevent the supply and sale of illegal goods and to address such actions, such as:

- Introduce clear requirements for proactive measures to prevent and tackle illegal goods on online platforms.
- Require online platforms to verify the identity of sellers through real identity verification mechanisms (Know Your Customer).
- Introduce obligations for platforms to share data enabling the identification of sellers trading illegal goods on platforms, which should enable authorities in the airports and seaports of The Netherlands and Belgium to properly tackle the imports of these illegal goods into the EU territory.
- Introduce transparency obligations for online platforms regarding the volume of illegal goods removed, accounts closed, action on notifications and other relevant parameters.
- Introduce the obligation for platforms to inform consumers when they have purchased illegal goods that have since been removed by the platform.

Counterfeit: a growing EU problem:

The EU Intellectual Property Office (EUIPO) in its [2020 Status Report on IPR Infringement](#) provides a detailed overview of the extent of the challenge. It highlights:

- The volume of counterfeits continues to increase and is estimated to be around 6.8 % of total EU imports (by value), or EUR 121 billion.
- The direct economic costs to legitimate industries in the EU arising from the presence of counterfeits in the EU marketplace amount to **EUR 50 billion per year in lost sales, corresponding to 416 000 jobs**. Adding the knock-on effects on other sectors, this yields a **total sales loss of EUR 83 billion**.
- We include links to specific infographics for The Netherlands ([here](#)) and Belgium ([here](#) for Dutch and [here](#) for French)

The current legal framework does not incentivize platforms to combat illegal goods beyond taking voluntary action. Contrary to what is claimed by various e-commerce platforms, the so-called “Good Samaritan” principle (also known as “voluntary measures”) has failed to prove its efficiency, as evidenced by the ever-growing numbers of counterfeits offered online. Millions of European consumers would continue to be exposed to a wide range of illegal goods should the Good Samaritan principle be adopted. The DSA is the opportunity for platforms to be part of the solution to address this challenge.

At a time when Europe needs a strong recovery following the Covid-19 crisis and to support the EU industry in contributing to the EU Commission’s Green Deal, we call upon you to lead an ambitious drive to action in Europe to address these losses to European businesses and jobs. [European IPR-intensive industries](#), which account for 45 % of the EU’s economic output (EUR 6.6 trillion annually) and 29 % of employment, **need your support** to ensure, through the DSA, that parties that enable the online trade in counterfeit, substandard and non-conform goods do not escape their responsibility.