European Tech Alliance

# EU 2030 digital policy

## Blueprint to complete the EU Single Market

**MAY 2024**

**The European Union (EU)'s single market stands as a cornerstone of economic growth, yet its full potential remains untapped. Strengthening the single market is imperative for the EU's continued competitiveness on the global stage.**

**To complete the EU's single market, the European Tech Alliance (EUTA) recommends ensuring that EU rules fit together, strengthening the EU's harmonised approach and removing regulatory growth barriers for EU tech companies.**

## Make laws fit together like puzzle pieces, instead of creating a messy patchwork

The digital world is a fully regulated sector with a wide range of new and updated rules. European, national, and regional measures should complement each other, not clash or duplicate efforts.

EU policymakers must resist the temptation to address enforcement gaps by hastily introducing new regulations. Rather, their focus should be on strengthening existing enforcement mechanisms.

Where EU rules are needed, policymakers should focus on concrete problems and be mindful of different tech business models. Rules should tackle problems specific to business models instead of taking a one-size-fits-all approach. Any proposed solution should also be proportionate to the problem identified.

Allow us to illustrate this further with concrete examples of this patchwork of rules:

### Misleading and deceptive practices

Being confronted with problematic practices by some rogue actors (e.g. non-compliant Asian actors operating in the EU single market) and/or issues related to specific business models (e.g. online addictions on social media), authorities have the temptation to impose additional cross-sectorial rules or impose a general one-size-fits-all ban on some practices or business models, on top of the existing solid "*consumer acquis*".

Misleading and deceptive practices are already regulated by (non exhaustive list):

- The Directive on unfair commercial practice, so called UCPD, (Directive 2005/29/EC) and its guidance (C/2021/9320),
- The "omnibus Directive" (Directive (EU) 2019/2161),
- The digital services act, so called DSA, (Regulation (EU) 2022/2065),
- The Directive on financial services contracts concluded at a distance (Directive (EU) 2023/2673),

- The data act (Regulation (EU) 2023/2854),
- The Regulation on the transparency and targeting of political advertising (Regulation (EU) 2024/900),
- The Directive empowering consumers for the green transition (Directive (EU) 2024/825).

See Annex I for more details on the provisions.

## Profiling

The use of consumers' data for profiling or targeted advertising is heavily regulated. EU legislators have employed various instruments, ranging from horizontal pieces of legislation to sector-specific rules, as well as imposing limitations on products or even outright prohibitions on certain advertising practices.

Profiling is subject to regulation through (non exhaustive list):

- ePrivacy Directive (Directive 2002/58/EC),
- The general data protection Regulation, so called GDPR, (Regulation (EU) 2016/679),
- The guidance on the unfair commercial practice Directive (C/2021/9320),
- The digital services act, so called DSA, (Regulation (EU) 2022/2065),
- The Regulation on the transparency and targeting of political advertising (Regulation (EU) 2024/900),
- The AI Act (Regulation 2024/----).

See Annex I for more details on the provisions.

## Online marketplaces' liability

Liability obligations for online marketplaces have been extensively addressed through both horizontal and sector-specific legislation. This includes provisions under (non exhaustive list):

- The Market Surveillance Regulation (Regulation (EU) 2019/1020),
- "DAC7" (Council Directive 2021/514/EU),
- The digital services act, so called DSA, (Regulation (EU) 2022/2065),
- The general product safety Regulation (Regulation (EU) 2023/988),
- The batteries & waste batteries Regulation (Regulation (EU) 2023/1542),
- The product liability Directive (Directive 2024/----),
- The ecodesign for sustainable products Regulation (Regulation 2024/----),
- The packaging & packaging waste Regulation (Regulation 2024/----),
- The construction products Regulation (Regulation 2024/----).

See Annex I for more details on the provisions.

## Ranking transparency

Online platforms are mandated to maintain transparency regarding the criteria defining the rankings on their interfaces. This obligation applies to both business users and consumers/users. This requirement is articulated through the following measures (non-exhaustive list):

- The digital services act, so called DSA, (Regulation (EU) 2022/2065), requires transparency of recommender systems,
- The platforms to business Regulation, so-called P2B, (Regulation (EU) 2019/1150) outlines the requirement for platforms towards their business users;
- The "omnibus Directive" (Directive (EU) 2019/2161) addresses the requirement for platforms towards their consumers.

See Annex I for more details on the provisions.

Harmonising the criteria and information provided would ensure consistency, thereby reducing administrative burdens.

### Use of AI in task allocation

The allocation of tasks using AI and algorithms is subject to regulation across various pieces of legislation, each with its own enforcing authority. Consequently, the rules may vary slightly, and the interpretation by these authorities could exacerbate these differences, imposing additional administrative and compliance burdens on EU tech companies.

- The Directive on improving working conditions in platform work (Directive 2024/----) requires extensive transparency of systems to those interacting with them.
- The AI Act (Regulation 2024/----) requires extensive transparency obligations and due diligence on high-risk systems.

See Annex I for more details on the provisions.

### Disparate requirements

The misalignment of EU regulation can also be illustrated by the complexities of tax and VAT reporting. For instance, DAC7 consolidates data reporting at the headquarters' member state level, while the Cross-Border Tax Information Sharing (CESOP) framework necessitates separate reporting in each member state. This lack of alignment unnecessarily complicates compliance.

## Enhance harmonisation to overcome EU fragmentation

### EU rules for an EU single market

Developing an EU framework that empowers individual EU capitals to make decisions according to their wishes won't contribute to EU tech companies' growth, as they will be caught by administrative and compliance burdens.

For instance, the platform work Directive (PWD), intended to establish common criteria for the presumption of employment across the EU. At the end of the process, negotiators now require individual member states to define the details or the criteria. Such an approach will likely result in continued disparities, favouring large actors over smaller ones and contributing to further fragmentation of the single market.

### Same rules, same interpretation and coherent enforcement

Regulations aim to create a European framework. It's regrettable that the authorities implementing the rules create fragmentation by having diverse and varied interpretations.

The implementation of the General Data Protection Regulation (GDPR) exemplifies the disjointed approach to regulation enforcement across EU member states. For instance, the French data protection authority unilaterally interpreted GDPR to mandate explicit consent for storing payment information, applying this requirement solely to French companies initially. This disparate enforcement not only created uneven playing fields within the market but also led to legal uncertainties for businesses operating across borders. It wasn't until the European Data Protection Board (EDPB) reached a consensus that other member states followed suit, showcasing the delayed harmonisation process.

This fragmented regulatory landscape presents substantial challenges for European scale-ups, while providing larger non-European competitors with a distinct advantage due to their superior resources – proportionately European scale-ups are hit harder than global businesses operating on much bigger scale.

## Enable EU tech companies' growth

European tech companies grapple with an array of challenges that hinder their ability to thrive in a competitive global environment. Understanding the nature of these growth barriers is crucial for devising effective strategies to overcome them and unlock the untapped potential of the EU's single market. Please allow us to share some concrete examples:

### Excessive costs of compliance

Up to 30%, and sometimes 60%, of EU tech companies' resources can be taken up by compliance. More than half of European startups indicated that compliance-related tasks are the primary threat to their operations, and two-thirds of businesses name tax compliance as a major growth impediment.

Each euro spent navigating legal complexities represents a missed opportunity for investing in innovation. In an era marked by intense global competition for tech talent, this diversion poses a threat to the attractiveness of EU companies.

The key to unlocking untapped potential lies in streamlining compliance procedures, empowering businesses to diversify products and enter new markets.

### Disproportionate regulatory burdens

Numerous EU tech businesses are caught by regulatory frameworks, despite not being the primary targets. This unintended consequence stems from a cross-sectoral approach, whereas the rules were intended for specific behaviours or companies.

For instance, delivery platforms predominantly feature minimal user-generated content, operating within closed networks primarily comprising brick-and-mortar shops subject to extensive EU, national, and local regulations. The risk associated with the content and products sold through these platforms is notably low. However, this distinction has been overlooked in EU regulations, such as the DSA and the GPSR, which mandate platforms to respond to notices from authorities for content removal, imposing the same obligations on both delivery and social media platforms alike. As a result, the substantial time and cost of compliance are incurred despite the comparatively insignificant risk profile.

Another example involves second-hand platforms, which are mandated under DAC 7 to collect and transmit sensitive tax data from individuals who sell more than 30 items or items valued over 2000 Euros. The scope of this data collection appears disproportionate and excessively broad. It imposes a heavy burden on second-hand marketplaces, diverting significant resources from their primary objectives. This misalignment emphasises the necessity for legislation to be targeted and proportionate, facilitating the growth of EU tech companies. It's crucial to avoid transforming platforms into enforcement authorities.

**In conclusion**, the European Union's single market is a vital asset for fostering economic integration and competitiveness on a global scale. However, its full potential remains untapped due to regulatory fragmentation and disproportionate burdens on businesses.

To realise the benefits of a cohesive single market, policymakers must prioritise harmonisation and proportionality in regulations, ensuring they address specific problems without imposing unnecessary obstacles to growth. Streamlining compliance procedures, particularly in areas such as taxation and digital regulation, is essential for unlocking the untapped potential of European businesses and fostering innovation. By addressing these challenges and promoting greater consistency across member states, the EU can further strengthen its single market and cement its position as a global economic powerhouse.

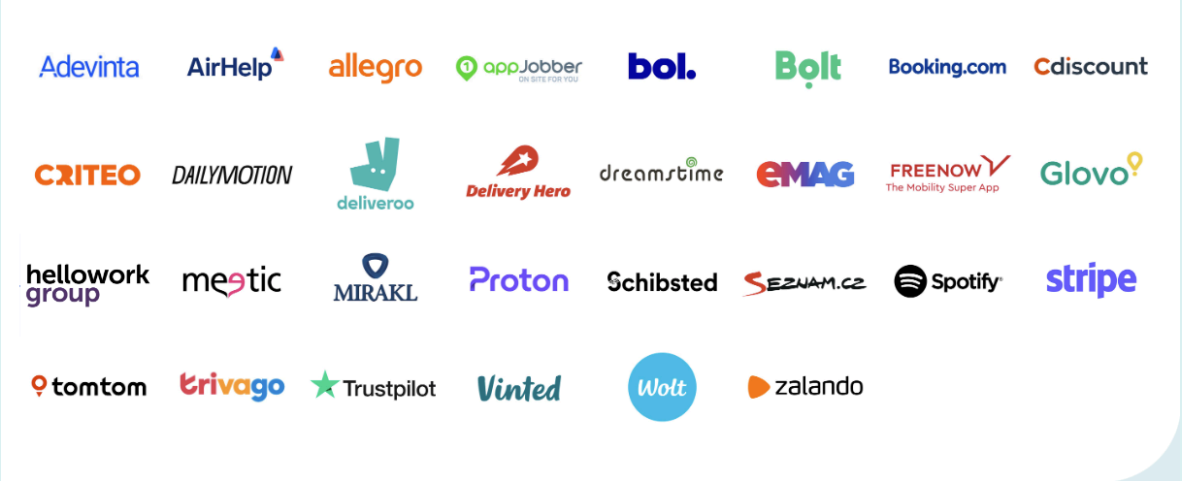
# About the European Tech Alliance

EUTA represents leading European tech companies that provide innovative products and services to 500 million users[1]. Our 30 EUTA member companies from 14 European countries are popular and have earned the trust of consumers. As companies born and bred in Europe, for whom the EU is a crucial market, we have a deep commitment to European citizens and values.

With the right conditions, our companies can strengthen Europe's resilience and technological autonomy, protect and empower users online, and promote Europe's values of transparency, rule of law and innovation to the rest of the world.

The EUTA calls for boosting Europe's tech competitiveness by having an ambitious EU tech strategy to overcome growth obstacles, making a political commitment to clear, targeted and risk-based rules, and enforcing rules consistently to match the globalised market we are in.

# Our members

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[1] It reflects users, consumers and business customers from EUTA member companies, per year. It includes overlaps but illustrates the reach and impact of our services.

# Annex

## Misleading and deceptive practices

The Unfair Commercial Practice Directive (Directive 2005/29/EC)

Article 6 on misleading actions

1. A commercial practice shall be regarded as misleading if it contains false information and is therefore untruthful or in any way, including overall presentation, deceives or is likely to deceive the average consumer, even if the information is factually correct, in relation to one or more of the following elements, and in either case causes or is likely to cause him to take a transactional decision that he would not have taken otherwise:
(a) the existence or nature of the product;
(b) the main characteristics of the product, such as its availability, benefits, risks, execution, composition, accessories, after-sale customer assistance and complaint handling, method and date of manufacture or provision, delivery, fitness for purpose, usage, quantity, specification, geographical or commercial origin or the results to be expected from its use, or the results and material features of tests or checks carried out on the product;
(c) the extent of the trader's commitments, the motives for the commercial practice and the nature of the sales process, any statement or symbol in relation to direct or indirect sponsorship or approval of the trader or the product;
(d) the price or the manner in which the price is calculated, or the existence of a specific price advantage;
(e) the need for a service, part, replacement or repair;
(f) the nature, attributes and rights of the trader or his agent, such as his identity and assets, his qualifications, status, approval, affiliation or connection and ownership of industrial, commercial or intellectual property rights or his awards and distinctions;
(g) the consumer's rights, including the right to replacement or reimbursement under Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees (8), or the risks he may face.

2. A commercial practice shall also be regarded as misleading if, in its factual context, taking account of all its features and circumstances, it causes or is likely to cause the average consumer to take a transactional decision that he would not have taken otherwise, and it involves:
(a) any marketing of a product, including comparative advertising, which creates confusion with any products, trade marks, trade names or other distinguishing marks of a competitor;
(b) non-compliance by the trader with commitments contained in codes of conduct by which the trader has undertaken to be bound, where
(i) he commitment is not aspirational but is firm and is capable of being verified, and
(ii) the trader indicates in a commercial practice that he is bound by the code.

Article 7 on misleading omissions

1. A commercial practice shall be regarded as misleading if, in its factual context, taking account of all its features and circumstances and the limitations of the communication medium, it omits material information that the average consumer needs, according to the context, to take an informed transactional decision and thereby causes or is likely to cause the average consumer to take a transactional decision that he would not have taken otherwise.

2. It shall also be regarded as a misleading omission when, taking account of the matters described in paragraph 1, a trader hides or provides in an unclear, unintelligible, ambiguous or untimely manner such material information as referred to in that paragraph or fails to identify the commercial intent of the commercial practice if not already apparent from the context, and where, in either case, this causes or is likely to cause the average consumer to take a transactional decision that he would not have taken otherwise.

3. Where the medium used to communicate the commercial practice imposes limitations of space or time, these limitations and any measures taken by the trader to make the information available to

consumers by other means shall be taken into account in deciding whether information has been omitted.

4. In the case of an invitation to purchase, the following information shall be regarded as material, if not already apparent from the context:
(a) the main characteristics of the product, to an extent appropriate to the medium and the product;
(b) the geographical address and the identity of the trader, such as his trading name and, where applicable, the geographical address and the identity of the trader on whose behalf he is acting;
(c) the price inclusive of taxes, or where the nature of the product means that the price cannot reasonably be calculated in advance, the manner in which the price is calculated, as well as, where appropriate, all additional freight, delivery or postal charges or, where these charges cannot reasonably be calculated in advance, the fact that such additional charges may be payable;
(d) he arrangements for payment, delivery, performance and the complaint handling policy, if they depart from the requirements of professional diligence;
(e) for products and transactions involving a right of withdrawal or cancellation, the existence of such a right.

5. Information requirements established by Community law in relation to commercial communication including advertising or marketing, a non-exhaustive list of which is contained in Annex II, shall be regarded as material.

Unfair Commercial Practice Directive's Guidance (C/2021/9320)

4.2.7. Data-driven practices and dark patterns

[...] Within the category of manipulative practices, the term 'dark pattern' is used to refer to a type of malicious nudging, generally incorporated into digital design interfaces. Dark patterns could be data-driven and personalised, or implemented on a more general basis, tapping into heuristics and behavioural biases, such as default effects or scarcity biases[2].

The term 'dark pattern' does not have a legal definition in the Directive. The UCPD applies to any 'unfair commercial practice' that meets the requirements of the material scope of the Directive, regardless of their classification. If dark patterns are applied in the context of business-to-consumer commercial relationships, then the Directive can be used to challenge the fairness of such practices, in addition to other instruments in the EU legal framework, such as the GDPR.

As explained above, any manipulative practice that materially distorts or is likely to distort the economic behaviour of an average or vulnerable consumer could breach the trader's professional diligence requirements (Article 5), amount to a misleading practice (Articles 6-7) or an aggressive practice (Articles 8-9), depending on the specific dark pattern applied. The UCPD does not require intention for the deployment of the dark pattern. The standard of professional diligence in Article 5 UCPD in the area of interface design may include principles derived from international standards and codes of conduct for ethical design. As a general principle under the requirements of professional diligence in Article 5 UCPD, traders should take appropriate measures to ensure that the design of their interface does not distort the transactional decisions of consumers.

Manipulative practices may include visually obscuring important information or ordering it in a way to promote a specific option (e.g. one button very visible, another hidden; one path very long, another shorter), as well as using trick questions and ambiguous language (e.g. double negatives) to confuse the consumer. Such practices are likely to qualify as a misleading action under Article 6 UCPD or as a misleading omission under Article 7 UCPD by making the information unintelligible or ambiguous. Furthermore, using emotion to steer users away from making a certain choice (e.g. 'confirm shaming' the consumer into feeling guilty) could amount to an aggressive practice under Article 8 UCPD for using undue influence to impair the consumer's decision-making.

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| For example:<br>During the ordering process in an online marketplace, the consumer is asked several times to choose 'yes' and 'no': 'Would you like to be kept informed about similar offers? Would you like to |

[2] The 'default effect' refers to the tendency of individuals to stick with options that are assigned to them by default due to inertia. The 'scarcity bias' refers to the tendency of individuals to place a higher value on things that are scarce.

subscribe to the newsletter? Can we use your details to personalise our offer?' Halfway through the click sequence, the buttons 'yes' and 'no' are reversed intentionally. The consumer has clicked 'no' several times, but now clicks 'yes' and accidentally subscribed to a newsletter.

Default interface settings have a significant impact on the transactional decision of an average consumer. Traders could not only influence consumers to take certain actions, but also take specific actions in their place, for example by using pre-ticked boxes, including to charge for additional services, which is prohibited under Article 22 of the CRD. Such practices can also breach the UCPD as well as data protection and privacy rules[3].

Certain practices that are often labelled as 'dark patterns' are already expressly prohibited in all circumstances in the Annex I to the UCPD:

- So-called 'bait and switch' practices, which include offering products at a specified price while not disclosing the existence of reasonable grounds for not being able to provide the product or offering the product and then refusing to take orders for it or deliver it within a reasonable time, with the intention of promoting a different product instead (No 5 and 6 Annex I);
- Creating urgency by falsely stating that a product will only be available for a very limited time, or that it will only be available on particular terms for a very limited time (No 7 Annex I). For example, this includes fake timers and limited stock claims on websites;
- Giving inaccurate information on market conditions or on the possibility of finding the product with the intention of inducing the consumer to buy the product at less favourable conditions (No 18 Annex I);
- Claiming that the consumer has won a prize, without awarding the prizes described or a reasonable equivalent (No 19 and 31 Annex I) or falsely describing a product as 'free' (No 20 Annex I);
- Making repeated intrusions during normal interactions in order to get the consumer to do or accept something (i.e. nagging) could amount to a persistent and unwanted solicitation (No 26 Annex I)[4].
- Furthermore, various misleading practices that breach Articles 6 and 7 UCPD are also labelled as 'dark patterns', such as misleading free trials and subscription traps which were further discussed in section 2.9.6. In designing their interfaces, traders should follow the principle that unsubscribing from a service should be as easy as subscribing to the service, for example by using the same methods previously used to subscribe to the service or differing methods, as long as the consumers are presented with clear and free choices, proportionate and specific to the decisions they are being asked to make.

For example:
In order to unsubscribe from a digital service, the consumer is forced to take numerous non-intuitive steps in order to arrive at the cancellation link. These steps include 'confirmshaming', whereby the consumer is prompted, without reasoned justification, to reconsider their choice through emotional messages several times ('We're sorry to see you go', 'Here are the benefits you will lose') and 'visual interference', such as prominent images that encourage the user to continue with the subscription instead of cancelling[5]. Such practices could breach Article 7 and Article 9(d) UCPD.

The "Omnibus Directive" (Directive (EU) 2019/2161)

Recital 47

Consumers increasingly rely on consumer reviews and endorsements when they make purchasing decisions. Therefore, when traders provide access to consumer reviews of products, they should inform consumers whether processes or procedures are in place to ensure that the published reviews originate from consumers who have actually used or purchased the products. If such processes or

[3] For example, pre-ticked boxes to purportedly consent to the processing of personal data are not allowed under GDPR. Similarly; the ePrivacy Directive requires the consent of the end-users to the placing of cookies and other identifiers in their terminal equipment, except under very specific circumstances. Additionally, where consent was given, it must be as easy to revoke as it was to give it.

[4] See also the pending Case C-102/20 *StWL Städtische Werke Lauf a.d. Pegnitz*, which will probably clarifythe application of this prohibition to advertising displayed in the email inbox.

[5] Forbrukerrådet, You can log out, but you can never leave, 14 January 2021.

procedures are in place, traders should provide information on how the checks are made and provide clear information to consumers on how reviews are processed, for example, if all reviews, either positive or negative, are posted or whether those reviews have been sponsored or influenced by a contractual relationship with a trader. Moreover, it should therefore be considered to be an unfair commercial practice to mislead consumers by stating that reviews of a product were submitted by consumers who actually used or purchased that product when no reasonable and proportionate steps were taken to ensure that they originate from such consumers. Such steps could include technical means to verify the reliability of the person posting a review, for example by requesting information to verify that the consumer has actually used or purchased the product.

Recital 54

While off-premises sales constitute a legitimate and well-established sales channel, like sales at a trader's business premises and distance-selling, some particularly aggressive or misleading marketing or selling practices in the context of visits to a consumer's home or excursions as referred to in point (8) of Article 2 of Directive 2011/83/EU can put consumers under pressure to make purchases of goods or services that they would not otherwise buy or purchases at excessive prices, often involving immediate payment. Such practices often target elderly or other vulnerable consumers. Some Member States consider those practices undesirable and deem it necessary to restrict certain forms and aspects of off-premises sales within the meaning of Directive 2011/83/EU, such as aggressive and misleading marketing or selling of a product in the context of unsolicited visits to a consumer's home or excursions. Where such restrictions are adopted on grounds other than consumer protection, such as public interest or the respect for consumers' private life protected by Article 7 of the Charter, they fall outside the scope of Directive 2005/29/EC.

Recital 56

As regards aggressive and misleading practices in the context of events organised at places other than trader's premises, Directive 2005/29/EC is without prejudice to any conditions of establishment or of authorisation regimes that Member States can impose on traders. Furthermore, that Directive is without prejudice to national contract law, and in particular to the rules on validity, formation or effect of a contract. Aggressive and misleading practices in the context of events organised at places other than trader's premises can be prohibited on the basis of a case-by-case assessment under Articles 5 to 9 of that Directive. In addition, Annex I to that Directive contains a general prohibition of practices where the trader creates the impression that the trader is not acting for purposes relating to the trader's profession, and practices that create the impression that the consumer cannot leave the premises until a contract is formed. The Commission should assess whether the current rules provide an adequate level of consumer protection and adequate tools for Member States to effectively address such practices.

Digital Services Act (Regulation (EU) 2022/2065)

Recital 67:

"Dark patterns on online interfaces of online platforms are practices that materially distort or impair, either on purpose or in effect, the ability of recipients of the service to make autonomous and informed choices or decisions. Those practices can be used to persuade the recipients of the service to engage in unwanted behaviours or into undesired decisions which have negative consequences for them. Providers of online platforms should therefore be prohibited from deceiving or nudging recipients of the service and from distorting or impairing the autonomy, decision-making, or choice of the recipients of the service via the structure, design or functionalities of an online interface or a part thereof. This should include, but not be limited to, exploitative design choices to direct the recipient to actions that benefit the provider of online platforms, but which may not be in the recipients' interests, presenting choices in a non-neutral manner, such as giving more prominence to certain choices through visual, auditory, or other components, when asking the recipient of the service for a decision.

It should also include repeatedly requesting a recipient of the service to make a choice where such a choice has already been made, making the procedure of cancelling a service significantly more cumbersome than signing up to it, or making certain choices more difficult or time-consuming than others, making it unreasonably difficult to discontinue purchases or to sign out from a given online platform allowing consumers to conclude distance contracts with traders, and deceiving the recipients of the service by nudging them into decisions on transactions, or by default settings that

are very difficult to change, and so unreasonably bias the decision making of the recipient of the service, in a way that distorts and impairs their autonomy, decision-making and choice. However, rules preventing dark patterns should not be understood as preventing providers to interact directly with recipients of the service and to offer new or additional services to them. Legitimate practices, for example in advertising, that are in compliance with Union law should not in themselves be regarded as constituting dark patterns. Those rules on dark patterns should be interpreted as covering prohibited practices falling within the scope of this Regulation to the extent that those practices are not already covered under Directive 2005/29/EC or Regulation (EU) 2016/679."

Article 25 on online interface design and organisation

1. Providers of online platforms shall not design, organise or operate their online interfaces in a way that deceives or manipulates the recipients of their service or in a way that otherwise materially distorts or impairs the ability of the recipients of their service to make free and informed decisions.
2. The prohibition in paragraph 1 shall not apply to practices covered by Directive 2005/29/EC or Regulation (EU) 2016/679.
3. The Commission may issue guidelines on how paragraph 1 applies to specific practices, notably:
(a) giving more prominence to certain choices when asking the recipient of the service for a decision;
(b) repeatedly requesting that the recipient of the service make a choice where that choice has already been made, especially by presenting pop-ups that interfere with the user experience;
(c) making the procedure for terminating a service more difficult than subscribing to it.

Directive on financial services contracts concluded at a distance (Directive (EU) 2023/2673)

Recital (41)

Dark patterns on traders' online interfaces are practices that materially distort or impair, either on purpose or in effect, the ability of consumers who are recipients of the financial service to make autonomous and informed choices or decisions. This is particularly true for financial services contracts concluded at a distance. Such practices can be used by traders to persuade the consumers who are recipients of their service to engage in unwanted behaviours or to take undesired decisions which may have negative consequences for them. Traders should therefore be prohibited from deceiving or 'nudging' consumers who are recipients of their service and from distorting or impairing their autonomy, decision-making, or choice via the structure, design or functionalities of an online interface or a part thereof. This can include, but is not limited to, exploitative design choices to direct the consumer to choices or actions that benefit the trader, but which may not be in the consumer's interests, by presenting choices in a non-neutral manner, such as giving more prominence to certain choices through visual, auditory, or other components, when asking the consumer for a decision. While Regulation (EU) 2022/2065 of the European Parliament and of the Council prohibits intermediary service providers operating online platforms from using dark patterns in the design and organisation of their online interfaces, this Directive should oblige Member States to prevent traders offering financial services at a distance from using such patterns when concluding contracts for such services. The provisions of that Regulation and this Directive are therefore complementary, since they apply to traders acting in different capacities. Since, by reason of their complexity and inherent serious risks, financial services might necessitate further detailed requirements regarding dark patterns, Member States, by way of derogation from the full level of harmonisation, should be allowed to maintain or introduce more stringent provisions, provided that such provisions are in conformity with Union law. That possibility is in line with Article 3(9) of Directive 2005/29/EC of the European Parliament and of the Council, with regard to unfair commercial practices related to financial services, which provides that Member States can also impose requirements which are more restrictive or prescriptive in the framework of financial services.

Data Act (Regulation (EU) 2023/2854)

Recital (38)

In line with the data minimisation principle, third parties should access only information that is necessary for the provision of the service requested by the user. Having received access to data, the third party should process it for the purposes agreed with the user without interference from the data holder. It should be as easy for the user to refuse or discontinue access by the third party to the data as it is for the user to authorise access. Neither third parties nor data holders should make the exercise of choices or rights by the user unduly difficult, including by offering choices to the user in a non-neutral manner, or by coercing, deceiving or manipulating the user, or by subverting or impairing

the autonomy, decision-making or choices of the user, including by means of a user digital interface or a part thereof. In that context, third parties or data holders should not rely on so-called 'dark patterns' in designing their digital interfaces. Dark patterns are design techniques that push or deceive consumers into decisions that have negative consequences for them. Those manipulative techniques can be used to persuade users, in particular vulnerable consumers, to engage in unwanted behaviour, to deceive users by nudging them into decisions on data disclosure transactions or to unreasonably bias the decision-making of the users of the service in such a way as to subvert or impair their autonomy, decision-making and choice. Common and legitimate commercial practices that comply with Union law should not in themselves be regarded as constituting dark patterns. Third parties and data holders should comply with their obligations under relevant Union law, in particular the requirements laid down in Directives 98/6/EC and 2000/31/EC of the European Parliament and of the Council and in Directives 2005/29/EC and 2011/83/EU.

Transparency and targeting of political advertising (Regulation (EU) 2024/900)

Recital (75)

In accordance with Union law, controllers, as defined in Article 4, point 7, of Regulation (EU) 2016/679, should ensure that individual decision-making is not affected by dark patterns which materially distort or impair, either on purpose or in effect, the autonomous and informed decision-making of the individuals, including through the use of pre-ticked boxes and other biased and non-transparent techniques which drive or prompt individuals to make particular decisions which they might otherwise not have made. The systematic use of dark patterns, unclear consent agreements, misleading information, and insufficient time to read terms and conditions are common practices to make it difficult for individuals to have clear information and control in the context of the online advertising industry. Rules preventing dark patterns should not be understood as preventing controllers from interacting directly with individuals. However, controllers should refrain from repeatedly requesting an individual to make a choice where such a choice has already been made, from making the withdrawal of consent significantly more cumbersome than giving it, from making certain choices more difficult or time-consuming than others or from using default settings that are very difficult to change and which unreasonably bias the decision-making of the individuals in a way that distorts and impairs their autonomy, decision-making and choice. The mechanism for obtaining decisions from individuals should be clear and easy to use, and the relative prominence of the alternatives should not seek to influence the individual's decision. Information provided to individuals in this regard should be succinct and drafted in plain and intelligible language and made easily, prominently and directly available.

Empowering Consumers for the Green Transition Directive (Directive (EU) 2024/825).

Recital 1

In order to contribute to the proper functioning of the internal market, based on a high level of consumer protection and environmental protection, and to make progress in the green transition, it is essential that consumers can make informed purchasing decisions and thus contribute to more sustainable consumption patterns. That implies that traders have a responsibility to provide clear, relevant and reliable information. Therefore, specific rules should be introduced in Union consumer law to tackle unfair commercial practices that mislead consumers and prevent them from making sustainable consumption choices, such as practices associated with the early obsolescence of goods, misleading environmental claims ('greenwashing'), misleading information about the social characteristics of products or traders' businesses, or non-transparent and non-credible sustainability labels. Those rules will enable competent national bodies to effectively address such practices. Ensuring that environmental claims are fair, understandable and reliable will allow traders to operate on a level playing field and will enable consumers to choose products that are genuinely better for the environment than competing products. This will encourage competition leading to more environmentally sustainable products, thereby reducing the negative impact on the environment.

Recital 2

Those new rules should be introduced through amending Articles 6 and 7 of Directive 2005/29/EC of the European Parliament and of the Council (3) with regard to commercial practices that are considered to be misleading, and therefore prohibited, on the basis of a case-by-case assessment, and through amending Annex I to Directive 2005/29/EC, with the addition of specific misleading practices which are in all circumstances considered unfair, and therefore prohibited. As already laid down in Directive 2005/29/EC, it should still be possible to consider that a commercial practice is

unfair on the basis of Articles 5 to 9 of that Directive, even though that particular practice is not listed as an unfair commercial practice in Annex I to Directive 2005/29/EC.

Recital 3

In order for consumers to be empowered to take better-informed decisions and thus stimulate the demand for, and the supply of, more sustainable goods, they should not be misled about a product's environmental or social characteristics or circularity aspects, such as durability, reparability or recyclability, through the overall presentation of a product. Article 6(1) of Directive 2005/29/EC should therefore be amended by adding environmental and social characteristics and circularity aspects to the list of the main characteristics of a product in respect of which a trader's practices can be considered misleading, following a case-by-case assessment. Information provided by traders on the social characteristics of a product throughout its value chain can relate, for example, to the quality and fairness of working conditions of the workforce involved, such as adequate wages, social protection, the safety of the work environment and social dialogue. Such information can also relate to respect for human rights, to equal treatment and opportunities for all, including gender equality, inclusion and diversity, to contributions to social initiatives or to ethical commitments, such as animal welfare. The environmental and social characteristics of a product can be understood in a broad sense, encompassing the environmental and social aspects, impact and performance of a product.

## Profiling

ePrivacy Directive (Directive 2002/58/EC).

Article 5 on confidentiality of the communications

1. Member States shall ensure the confidentiality of communications and the related traffic data by means of a public communications network and publicly available electronic communications services, through national legislation. In particular, they shall prohibit listening, tapping, storage or other kinds of interception or surveillance of communications and the related traffic data by persons other than users, without the consent of the users concerned, except when legally authorised to do so in accordance with Article 15(1). This paragraph shall not prevent technical storage which is necessary for the conveyance of a communication without prejudice to the principle of confidentiality.

2. Paragraph 1 shall not affect any legally authorised recording of communications and the related traffic data when carried out in the course of lawful business practice for the purpose of providing evidence of a commercial transaction or of any other business communication.

3. Member States shall ensure that the use of electronic communications networks to store information or to gain access to information stored in the terminal equipment of a subscriber or user is only allowed on condition that the subscriber or user concerned is provided with clear and comprehensive information in accordance with Directive 95/46/EC, inter alia about the purposes of the processing, and is offered the right to refuse such processing by the data controller. This shall not prevent any technical storage or access for the sole purpose of carrying out or facilitating the transmission of a communication over an electronic communications network, or as strictly necessary in order to provide an information society service explicitly requested by the subscriber or user.

The general data protection Regulation (Regulation (EU) 2016/679)

Article 22 on automated individual decision-making, including profiling

1. The data subject shall have the right not to be subject to a decision based solely on automated processing, including profiling, which produces legal effects concerning him or her or similarly significantly affects him or her.

2. Paragraph 1 shall not apply if the decision:
(a) is necessary for entering into, or performance of, a contract between the data subject and a data controller;

(b) is authorised by Union or Member State law to which the controller is subject and which also lays down suitable measures to safeguard the data subject's rights and freedoms and legitimate interests; or
(c) is based on the data subject's explicit consent.

3. In the cases referred to in points (a) and (c) of paragraph 2, the data controller shall implement suitable measures to safeguard the data subject's rights and freedoms and legitimate interests, at least the right to obtain human intervention on the part of the controller, to express his or her point of view and to contest the decision.

4. Decisions referred to in paragraph 2 shall not be based on special categories of personal data referred to in Article 9(1), unless point (a) or (g) of Article 9(2) applies and suitable measures to safeguard the data subject's rights and freedoms and legitimate interests are in place.

Unfair Commercial Practice Directive's Guidance (C/2021/9320)

4.2.7. Data-driven practices and dark patterns

The digital environment is increasingly characterised by the generation, accumulation and control of an enormous amount of data about consumers, which can be combined with the use of algorithms and AI to turn this into usable information for commercial purposes. Among other purposes, this data can give valuable insights to socio-demographic characteristics, such as age, gender or financial situation, as well as personal or psychological characteristics, such as interests, preferences, psychological profile and mood. This enables traders to learn more about consumers, including about their vulnerabilities.

Data-driven personalisation practices in the business-to-consumer relationship include personalisation of advertising, recommender systems, pricing, ranking of offers in search results, etc. The principle-based provisions and prohibitions in the UCPD can be used to address unfair data-driven business-to-consumer commercial practices in addition to other instruments in the EU legal framework, such as the ePrivacy Directive, the GDPR or sector-specific legislation applicable to online platforms. Existing decisions by data protection authorities concerning a trader's compliance or non-compliance with data protection rules should be taken into account when assessing the overall fairness of the practice under the UCPD.

The UCPD covers the advertising, sales and contract performance stages, including the agreement to the processing of personal data and the use of personal data for delivering personalised content, and the termination of a contractual relationship. Moreover, the Directive has a broad scope of application: it covers all business-to-consumer commercial practices and does not require the existence of a contractual relationship or the purchase of a product. For example, the Directive would also cover commercial practices such as capturing the consumer's attention, which results in transactional decisions such as continuing to using the service (e.g. scrolling through a feed), to view advertising content or to click on a link.

Persuading consumers to engage with the trader's content is an essential part of commercial practices and of advertising in particular, both in the online and offline world. However, the digital environment enables traders to employ their practices more effectively on the basis of consumer data, with high scalability and even dynamically in real time. Traders can develop personalised persuasion practices because they benefit from superior knowledge based on aggregated data about consumer behaviour and preferences, for example by linking data from different sources. Traders can also have the possibility to make adjustments to improve the effectiveness of their practices, as they continuously test the effects of their practices on consumers and thereby learn more about their behaviour (e.g. through A/B testing). Furthermore, such practices could often be employed without the full knowledge of the consumer. It is the presence of these factors and their opaqueness that distinguishes, on the one hand, highly persuasive advertising or sales techniques from, on the other hand, commercial practices that may be manipulative and, hence, unfair under consumer law. In addition, they may be in breach of transparency obligations under GDPR or the ePrivacy Directive.

Any business-to-consumer practice that materially distorts or is likely to distort the economic behaviour of an average or vulnerable consumer could breach the trader's professional diligence requirements (Article 5), amount to a misleading practice (Articles 6-7) or an aggressive practice

(Articles 8-9), depending on the specific circumstances of the case.

For the purposes of this assessment, the benchmark of an average or vulnerable consumer can be modulated to the target group and, if the practice is highly personalised, even formulated from the perspective of a single person who was subject to the specific personalisation.

These practices may also have a more significant effect on vulnerable consumers. As explained in section 2.6, the characteristics that define vulnerability in Article 5(3) are indicative and non-exhaustive. The concept of vulnerability in the UCPD is dynamic and situational, meaning, for instance, that a consumer can be vulnerable in one situation but not in others. For example, certain consumers may be particularly susceptible to personalised persuasion practices in the digital environment, while less so in brick-and-mortar shops and other offline environments.

The use of information about the vulnerabilities of specific consumers or a group of consumers for commercial purposes is likely to have an effect on the consumers' transactional decision. Depending on the circumstances of the case, such practices could amount to a form of manipulation in which the trader exercises 'undue influence' over the consumer, resulting in an aggressive commercial practice prohibited under Articles 8 and 9 of the UCPD. When assessing the presence of undue influence, according to Article 9(c) one should take into account the exploitation of any specific misfortune or circumstance of such gravity as to impair the consumer's judgement, of which the trader is aware.

Moreover, if the practice is targeting children, then point No 28 of Annex I is particularly relevant as it prohibits direct exhortations to children. The potential adverse impacts of targeting children also warrant specific protection under the GDPR[6].

For example
A trader is able to identify that a teenager is in a vulnerable mood due to events in their personal life. This information is subsequently used to target the teenager with emotion-based advertisements at a specific time.
A trader is aware of a consumer's history with financial services and the fact that they have been banned by a credit institution due to the inability to pay. The consumer is subsequently targeted with specific offers by a credit institution, with the aim of exploiting their financial situation.
A trader is aware of a consumer's purchase history with respect to games of chance and random content in a video game. The consumer is subsequently targeted with personalised commercial communications that feature similar elements, with the aim of exploiting their higher likelihood of engaging with such products.

The Digital Services Act (Regulation (EU) 2022/2065)

Article 26 on advertising on online platforms

1. Providers of online platforms that present advertisements on their online interfaces shall ensure that, for each specific advertisement presented to each individual recipient, the recipients of the service are able to identify, in a clear, concise and unambiguous manner and in real time, the following:
(a) hat the information is an advertisement, including through prominent markings, which might follow standards pursuant to Article 44;
(b) the natural or legal person on whose behalf the advertisement is presented:
(c) the natural or legal person who paid for the advertisement if that person is different from the natural or legal person referred to in point (b);
(d) meaningful information directly and easily accessible from the advertisement about the main parameters used to determine the recipient to whom the advertisement is presented and, where applicable, about how to change those parameters.

2. Providers of online platforms shall provide recipients of the service with a functionality to declare

[6] See European Data Protection Board Guidelines 8/2020 on the targeting of social media users: https://edpb.europa.eu/system/files/2021-04/edpb_guidelines_082020_on_the_targeting_of_social_media_users_en.pdf. See also Article 29 Data Protection Working Party Guidelines on Automated individual decision-making and Profiling for the purposes of Regulation (EU) 2016/679, chapter V on children and profiling: https://ec.europa.eu/newsroom/article29/items/612053.

whether the content they provide is or contains commercial communications.
When the recipient of the service submits a declaration pursuant to this paragraph, the provider of online platforms shall ensure that other recipients of the service can identify in a clear and unambiguous manner and in real time, including through prominent markings, which might follow standards pursuant to Article 44, that the content provided by the recipient of the service is or contains commercial communications, as described in that declaration.

3. Providers of online platforms shall not present advertisements to recipients of the service based on profiling as defined in Article 4, point (4), of Regulation (EU) 2016/679 using special categories of personal data referred to in Article 9(1) of Regulation (EU) 2016/679.

Article 28 on online protection of minors

1. Providers of online platforms accessible to minors shall put in place appropriate and proportionate measures to ensure a high level of privacy, safety, and security of minors, on their service.

2. Providers of online platforms shall not present advertisements on their interface based on profiling as defined in Article 4, point (4), of Regulation (EU) 2016/679 using personal data of the recipient of the service when they are aware with reasonable certainty that the recipient of the service is a minor.

3. Compliance with the obligations set out in this Article shall not oblige providers of online platforms to process additional personal data in order to assess whether the recipient of the service is a minor.

4. The Commission, after consulting the Board, may issue guidelines to assist providers of online platforms in the application of paragraph 1.

Regulation on the transparency and targeting of political advertising (Regulation (EU) 2024/900)

Recital (75)

In accordance with Union law, controllers, as defined in Article 4, point 7, of Regulation (EU) 2016/679, should ensure that individual decision-making is not affected by dark patterns which materially distort or impair, either on purpose or in effect, the autonomous and informed decision-making of the individuals, including through the use of pre-ticked boxes and other biased and non-transparent techniques which drive or prompt individuals to make particular decisions which they might otherwise not have made. The systematic use of dark patterns, unclear consent agreements, misleading information, and insufficient time to read terms and conditions are common practices to make it difficult for individuals to have clear information and control in the context of the online advertising industry. Rules preventing dark patterns should not be understood as preventing controllers from interacting directly with individuals. However, controllers should refrain from repeatedly requesting an individual to make a choice where such a choice has already been made, from making the withdrawal of consent significantly more cumbersome than giving it, from making certain choices more difficult or time-consuming than others or from using default settings that are very difficult to change and which unreasonably bias the decision-making of the individuals in a way that distorts and impairs their autonomy, decision-making and choice. The mechanism for obtaining decisions from individuals should be clear and easy to use, and the relative prominence of the alternatives should not seek to influence the individual's decision. Information provided to individuals in this regard should be succinct and drafted in plain and intelligible language and made easily, prominently and directly available.

AI Act (Regulation (EU) 2024/----)

Recital (53)

It is also important to clarify that there may be specific cases in which AI systems referred to in pre-defined areas specified in this Regulation do not lead to a significant risk of harm to the legal interests protected under those areas because they do not materially influence the decision-making or do not harm those interests substantially. For the purposes of this Regulation, an AI system that does not materially influence the outcome of decision-making should be understood to be an AI system that does not have an impact on the substance, and thereby the outcome, of decision-making, whether human or automated. An AI system that does not materially influence the outcome of decision-making could include situations in which one or more of the following conditions are fulfilled. The first such condition should be that the AI system is intended to perform a narrow

procedural task, such as an AI system that transforms unstructured data into structured data, an AI system that classifies incoming documents into categories or an AI system that is used to detect duplicates among a large number of applications. Those tasks are of such narrow and limited nature that they pose only limited risks which are not increased through the use of an AI system in a context that is listed as a high-risk use in an annex to this Regulation. The second condition should be that the task performed by the AI system is intended to improve the result of a previously completed human activity that may be relevant for the purposes of the high-risk uses listed in an annex to this Regulation. Considering those characteristics, the AI system provides only an additional layer to a human activity with consequently lowered risk. That condition would, for example, apply to AI systems that are intended to improve the language used in previously drafted documents, for example in relation to professional tone, academic style of language or by aligning text to a certain brand messaging. EN United in diversity EN The third condition should be that the AI system is intended to detect decision-making patterns or deviations from prior decision-making patterns. The risk would be lowered because the use of the AI system follows a previously completed human assessment which it is not meant to replace or influence, without proper human review. Such AI systems include for instance those that, given a certain grading pattern of a teacher, can be used to check ex post whether the teacher may have deviated from the grading pattern so as to flag potential inconsistencies or anomalies. The fourth condition should be that the AI system is intended to perform a task that is only preparatory to an assessment relevant for the purposes of the AI systems listed in an annex to this Regulation, thus making the possible impact of the output of the system very low in terms of representing a risk for the assessment to follow. That condition covers, inter alia, smart solutions for file handling, which include various functions from indexing, searching, text and speech processing or linking data to other data sources, or AI systems used for translation of initial documents. In any case, AI systems used in high-risk use-cases listed in an annex to this Regulation should be considered to pose significant risks of harm to the health, safety or fundamental rights if the AI system implies profiling within the meaning of Article 4, point (4) of Regulation (EU) 2016/679 or Article 3, point (4) of Directive (EU) 2016/680 or Article 3, point (5) of Regulation (EU) 2018/1725. To ensure traceability and transparency, a provider who considers that an AI system is not high-risk on the basis of the conditions referred to above should draw up documentation of the assessment before that system is placed on the market or put into service and should provide that documentation to national competent authorities upon request. Such a provider should be obliged to register the AI system in the EU database established under this Regulation. With a view to providing further guidance for the practical implementation of the conditions under which the AI systems listed in an annex to this Regulation are, on an exceptional basis, non-high-risk, the Commission should, after consulting the Board, provide guidelines specifying that practical implementation, completed by a comprehensive list of practical examples of use cases of AI systems that are high-risk and use cases that are not.

Article 6 on High Risk AI Systems on classification rules for high-risk AI systems

1. Irrespective of whether an AI system is placed on the market or put into service independently of the products referred to in points (a) and (b), that AI system shall be considered to be high-risk where both of the following conditions are fulfilled:
(a) the AI system is intended to be used as a safety component of a product, or the AI system is itself a product, covered by the Union harmonisation legislation listed in Annex I;
(b) the product whose safety component pursuant to point (a) is the AI system, or the AI system itself as a product, is required to undergo a third-party conformity assessment, with a view to the placing on the market or the putting into service of that product pursuant to the Union harmonisation legislation listed in Annex I.

2. In addition to the high-risk AI systems referred to in paragraph 1, AI systems referred to in Annex III shall be considered to be high-risk.

3. By derogation from paragraph 2, an AI system referred to in Annex III shall not be considered to be high-risk where it does not pose a significant risk of harm to the health, safety or fundamental rights of natural persons, including by not materially influencing the outcome of decision making. The first subparagraph shall apply where any of the following conditions is fulfilled:
(a) the AI system is intended to perform a narrow procedural task;
(b) the AI system is intended to improve the result of a previously completed human activity;
(c) the AI system is intended to detect decision-making patterns or deviations from prior decision-making patterns and is not meant to replace or influence the previously completed human

assessment, without proper human review; or
(d) the AI system is intended to perform a preparatory task to an assessment relevant for the purposes of the use cases listed in Annex III.

Notwithstanding the first subparagraph, an AI system referred to in Annex III shall always be considered to be high-risk where the AI system performs profiling of natural persons.

## Online marketplace liability

Market surveillance Regulation (Regulation (EU) 2019/1020)

Article 34 on Information and communication system

1. The Commission shall further develop and maintain an information and communication system for the collection, processing and storage of information, in a structured form, on issues relating to the enforcement of Union harmonisation legislation, with the aim of improving the sharing of data among Member States, including for the purpose of requests for information, providing a comprehensive overview of market surveillance activities, results and trends. The Commission, market surveillance authorities, single liaison offices, and authorities designated under Article 25(1) shall have access to that system. The Commission shall develop and maintain the public user interface of this system, where key information for end-users about market surveillance activities shall be provided.

2. The Commission shall further develop and maintain electronic interfaces between the system referred to in paragraph 1 and national market surveillance systems.

3. Single liaison offices shall enter the following information in the information and communication system:
   (a) the identity of the market surveillance authorities in their Member State and areas of competence of those authorities pursuant to Article 10(2);
   (b) the identity of the authorities designated under Article 25(1);
   (c) the national market surveillance strategy drawn up by their Member State under Article 13 and the results from the review and assessment of the market surveillance strategy.

4. Market surveillance authorities shall enter into the information and communication system in relation to products made available on the market for which an in-depth check of compliance has been carried out, without prejudice to Article 12 of Directive 2001/95/EC and Article 20 of this Regulation, and where applicable, in relation to products entering the Union market for which the process for the release for free circulation has been suspended in accordance with Article 26 of this Regulation, in their territory, the following information concerning:
   (a) measures according to Article 16(5) taken by that market surveillance authority
   (b) reports of testing carried out by them
   (c) corrective action taken by economic operators concerned
   (d) readily available reports on injuries caused by the product in question
   (e) any objection raised by a Member State in accordance with the applicable safeguard procedure in the Union harmonisation legislation applicable to the product and any subsequent follow-up;
   (f) where available, failures by authorised representatives to comply with Article 5(2);
   (g) where available, failures by manufacturers to comply with Article 5(1).

5. Where market surveillance authorities consider it useful, they may enter into the information and communication system any additional information related to the checks they perform and results of testing carried out by them or at their request.

6. Where relevant for the enforcement of Union harmonisation legislation and for the purpose of minimising risk, customs authorities shall extract from national customs systems information on products placed under the customs procedure 'release for free circulation' related to the enforcement of Union harmonisation legislation and transmit it to the information and communication system.

7. The Commission shall develop an electronic interface to enable the transmission of data between

national customs systems and the information and communication system. This interface shall be in place within four years from the date of adoption of the relevant implementing act referred to in paragraph 8.

8. The Commission shall adopt implementing acts specifying the details of implementation arrangements for paragraphs 1 to 7 of this Article, and in particular the data processing to be applied on data collected in accordance with paragraph 1 of this Article, and defining the data to be transmitted in accordance with paragraphs 6 and 7 of this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 43(2).

"DAC7" (Council Directive 2021/514/EU)

Article 8 ac on the scope and conditions of mandatory automatic exchange of information reported by Platform Operators.

1. Each Member State shall take the necessary measures to require Reporting Platform Operators to carry out the due diligence procedures and fulfil reporting requirements laid down in Sections II and III of Annex V. Each Member State shall also ensure the effective implementation of, and compliance with, such measures in accordance with Section IV of Annex V.

2. Pursuant to the applicable due diligence procedures and reporting requirements contained in Sections II and III of Annex V, the competent authority of a Member State where the reporting in accordance with paragraph 1 took place shall, by means of automatic exchange, and within the time limit laid down in paragraph 3, communicate to the competent authority of the Member State in which the Reportable Seller is resident as determined pursuant to paragraph D of Section II of Annex V and, where the Reportable Seller provides immovable property rental services, in any case to the competent authority of the Member State in which the immovable property is located, the following information regarding each Reportable Seller:
    a. the name, registered office address, TIN and, where relevant, individual identification number allocated pursuant to the first subparagraph of paragraph 4, of the Reporting Platform Operator, as well as the business name(s) of the Platform(s) in respect of which the Reporting Platform Operator is reporting;
    b. the first and last name of the Reportable Seller who is an individual, and legal name of the Reportable Seller that is an Entity;
    c. the Primary Address
    d. any TIN of the Reportable Seller, including each Member State of issuance, or, in the absence of a TIN, the place of birth of the Reportable Seller who is an individual;
    e. the business registration number of the Reportable Seller that is an Entity;
    f. the VAT identification number of the Reportable Seller, where available
    g. the date of birth of the Reportable Seller who is an individual
    h. the Financial Account Identifier to which the Consideration is paid or credited, insofar as it is available to the Reporting Platform Operator and the competent authority of the Member State where the Reportable Seller is resident in the meaning of paragraph D of Section II of Annex V has not notified the competent authorities of all other Member States that it does not intend to use the Financial Account Identifier for this purpose
    i. where different from the name of the Reportable Seller, in addition to the Financial Account Identifier, the name of the holder of the financial account to which the Consideration is paid or credited, to the extent available to the Reporting Platform Operator, as well as any other financial identification information available to the Reporting Platform Operator with respect to that account holder
    j. each Member State in which the Reportable Seller is resident determined pursuant to paragraph D of Section II of Annex V
    k. he total Consideration paid or credited during each quarter of the Reportable Period and the number of Relevant Activities in respect of which it was paid or credited
    l. any fees, commissions or taxes withheld or charged by the Reporting Platform during each quarter of the Reportable Period;

    Where the Reportable Seller provides immovable property rental services, the following additional information shall be communicated
    (a) the address of each Property Listing, determined on the basis of the procedures set out in paragraph E of Section II of Annex V and respective land registration number or its equivalent

under the national law of the Member State where it is located, where available
(b) the total Consideration paid or credited during each quarter of the Reportable Period and number of Relevant Activities provided with respect to each Property Listing
(c) where available, the number of days each Property Listing was rented during the Reportable Period and the type of each Property Listing

3. The communication pursuant to paragraph 2 of this Article shall take place using the standard computerised format referred to in Article 20(4) within two months following the end of the Reportable Period to which the reporting requirements applicable to the Reporting Platform Operator relate. The first information shall be communicated for Reportable Periods as from 1 January 2023.

4. For the purpose of complying with the reporting requirements pursuant to paragraph 1 of this Article, each Member State shall lay down the necessary rules to require a Reporting Platform Operator within the meaning of point (b) of subparagraph A(4) of Section I of Annex V to register within the Union. The competent authority of the Member State of registration shall allocate an individual identification number to such Reporting Platform Operator.
Member States shall lay down rules pursuant to which a Reporting Platform Operator may choose to register with the competent authority of a single Member State in accordance with the rules laid down in paragraph F of Section IV of Annex V. Member States shall take the necessary measures to require that a Reporting Platform Operator within the meaning of point (b) of subparagraph A(4) of Section I of Annex V, whose registration has been revoked in accordance with subparagraph F(7) of Section IV of Annex V, can only be permitted to re-register on the condition that it provides to the authorities of a Member State concerned appropriate assurances as regards its commitment to comply with the reporting requirements within the Union, including any outstanding unfulfilled reporting requirements.
The Commission shall, by means of implementing acts, lay down the practical arrangements necessary for the registration and identification of Reporting Platform Operators. Those implementing acts shall be adopted in accordance with the procedure referred to in Article 26(2).

5. Where a Platform Operator is deemed to be an Excluded Platform Operator, the competent authority of the Member State where the demonstration in accordance with subparagraph A(3) of Section I of Annex V was provided to, shall notify the competent authorities of all other Member States accordingly, including any subsequent changes.

6. The Commission shall, by 31 December 2022, establish a central register where information to be notified in accordance with paragraph 5 of this Article and communicated in accordance with subparagraph F(2) of Section IV of Annex V shall be recorded. That central register shall be available to the competent authorities of all Member States.

7. The Commission shall, by means of implementing acts, following a reasoned request by a Member State or on its own initiative, determine whether the information that is required to be automatically exchanged pursuant to an agreement between competent authorities of the Member State concerned and a non-Union jurisdiction is, within the meaning of subparagraph A(7) of Section I of Annex V, equivalent to that specified in paragraph B of Section III of Annex V. Those implementing acts shall be adopted in accordance with the procedure referred to in Article 26(2).
A Member State requesting the measure referred to in the first subparagraph shall send a reasoned request to the Commission.
If the Commission considers that it does not have all the information necessary for the appraisal of the request, it shall contact the Member State concerned within two months of receipt of the request and specify what additional information is required. Once the Commission has all the information it considers necessary, it shall, within one month, notify the requesting Member State and it shall submit the relevant information to the Committee referred to in Article 26(2).
When acting on its own initiative, the Commission shall adopt an implementing act as referred to in the first subparagraph only after a Member State has concluded a competent authority agreement with a non-Union jurisdiction that requires the automatic exchange of information on sellers deriving income from activities facilitated by Platforms.
When determining whether information is equivalent within the meaning of the first subparagraph in relation to a Relevant Activity, the Commission shall take into due account the extent to which the regime on which such information is based corresponds to that set out in Annex V, in particular with regard to:
(i) the definitions of Reporting Platform Operator, Reportable Seller, Relevant Activity
(ii) the procedures applicable for the purpose of identifying Reportable Sellers

(iii) the reporting requirements; and
(iv) the rules and administrative procedures that non-Union jurisdictions are to have in place to ensure effective implementation of, and compliance with, the due diligence procedures and reporting requirements set out in that regime.
The same procedure shall apply for determining that the information is no longer equivalent

9. Article 8b is amended as follows
   (a) paragraph 1 is replaced by the following:
   1. Member States shall provide the Commission on an annual basis with statistics on the volume of automatic exchanges under Articles 8(1), 8(3a), 8aa and 8ac and with information on the administrative and other relevant costs and benefits relating to exchanges that have taken place and any potential changes, for both tax administrations and third parties.';
   (b) paragraph 2 is deleted;

10. Article 11 is amended as follows
   (a) paragraph 1 is replaced by the following:
   1. With a view to exchanging the information referred to in Article 1(1), the competent authority of a Member State may request the competent authority of another Member State that officials authorised by the former and in accordance with the procedural arrangements laid down by the latter
   (a) be present in the offices where the administrative authorities of the requested Member State carry out their duties
   (b) be present during administrative enquiries carried out in the territory of the requested Member State
   (c) participate in the administrative enquiries carried out by the requested Member State through the use of electronic means of communication, where appropriate.
   The requested authority shall respond to a request in accordance with the first subparagraph within 60 days of the receipt of the request, to confirm its agreement or communicate its reasoned refusal to the requesting authority.
   Where the requested information is contained in documentation to which the officials of the requested authority have access, the officials of the requesting authority shall be given copies thereof.

   (b) in paragraph 2, the first subparagraph is replaced by the following
   where officials of the requesting authority are present during administrative enquiries, or participate in the administrative enquiries through the use of electronic means of communication, they may interview individuals and examine records subject to the procedural arrangements laid down by the requested Member State.';

11. in Article 12, paragraph 3 is replaced by the following
The competent authority of each Member State concerned shall decide whether it wishes to take part in simultaneous controls. It shall confirm its agreement or communicate its reasoned refusal to the authority that proposed a simultaneous control within 60 days of receiving the proposal.'

The Digital Services Act (Regulation (EU) 2022/2065)

Article 11 on points of contact for Member States' authorities, the Commission and the Board

1. Providers of intermediary services shall designate a single point of contact to enable them to communicate directly, by electronic means, with Member States' authorities, the Commission and the Board referred to in Article 61 for the application of this Regulation.

2. Providers of intermediary services shall make public the information necessary to easily identify and communicate with their single points of contact. That information shall be easily accessible, and shall be kept up to date.

3. Providers of intermediary services shall specify in the information referred to in paragraph 2 the official language or languages of the Member States which, in addition to a language broadly understood by the largest possible number of Union citizens, can be used to communicate with their points of contact, and which shall include at least one of the official languages of the Member State in which the provider of intermediary services has its main establishment or where its legal

representative resides or is established.

Article 30 on traceability of traders

1. Providers of online platforms allowing consumers to conclude distance contracts with traders shall ensure that traders can only use those online platforms to promote messages on or to offer products or services to consumers located in the Union if, prior to the use of their services for those purposes, they have obtained the following information, where applicable to the trader:
(a) name, address, telephone number and email address of the trader;
(b) copy of the identification document of the trader or any other electronic identification as defined by Article 3 of Regulation (EU) No 910/2014 of the European Parliament and of the Council (40);
(c) the payment account details of the trader;
(d) where the trader is registered in a trade register or similar public register, the trade register in which the trader is registered and its registration number or equivalent means of identification in that register;
(e) a self-certification by the trader committing to only offer products or services that comply with the applicable rules of Union law.

2. Upon receiving the information referred to in paragraph 1 and prior to allowing the trader concerned to use its services, the provider of the online platform allowing consumers to conclude distance contracts with traders shall, through the use of any freely accessible official online database or online interface made available by a Member State or the Union or through requests to the trader to provide supporting documents from reliable sources, make best efforts to assess whether the information referred to in paragraph 1, points (a) to (e), is reliable and complete. For the purpose of this Regulation, traders shall be liable for the accuracy of the information provided.
As regards traders that are already using the services of providers of online platforms allowing consumers to conclude distance contracts with traders for the purposes referred to in paragraph 1 on 17 February 2024, the providers shall make best efforts to obtain the information listed from the traders concerned within 12 months. Where the traders concerned fail to provide the information within that period, the providers shall suspend the provision of their services to those traders until they have provided all information.

3. here the provider of the online platform allowing consumers to conclude distance contracts with traders obtains sufficient indications or has reason to believe that any item of information referred to in paragraph 1 obtained from the trader concerned is inaccurate, incomplete or not up-to-date, that provider shall request that the trader remedy that situation without delay or within the period set by Union and national law.
Where the trader fails to correct or complete that information, the provider of the online platform allowing consumers to conclude distance contracts with traders shall swiftly suspend the provision of its service to that trader in relation to the offering of products or services to consumers located in the Union until the request has been fully complied with.

4. Without prejudice to Article 4 of Regulation (EU) 2019/1150, if a provider of an online platform allowing consumers to conclude distance contracts with traders refuses to allow a trader to use its service pursuant to paragraph 1, or suspends the provision of its service pursuant to paragraph 3 of this Article, the trader concerned shall have the right to lodge a complaint as provided for in Articles 20 and 21 of this Regulation.

5. Providers of online platforms allowing consumers to conclude distance contracts with traders shall store the information obtained pursuant to paragraphs 1 and 2 in a secure manner for a period of six months after the end of the contractual relationship with the trader concerned. They shall subsequently delete the information.

6. Without prejudice to paragraph 2 of this Article, the provider of the online platform allowing consumers to conclude distance contracts with traders shall only disclose the information to third parties where so required in accordance with the applicable law, including the orders referred to in Article 10 and any orders issued by Member States' competent authorities or the Commission for the performance of their tasks under this Regulation.

7. The provider of the online platform allowing consumers to conclude distance contracts with traders shall make the information referred to in paragraph 1, points (a), (d) and (e) available on its online

platform to the recipients of the service in a clear, easily accessible and comprehensible manner. That information shall be available at least on the online platform's online interface where the information on the product or service is presented.

Article 31 on compliance by design

1. Providers of online platforms allowing consumers to conclude distance contracts with traders shall ensure that its online interface is designed and organised in a way that enables traders to comply with their obligations regarding pre-contractual information, compliance and product safety information under applicable Union law.
   In particular, the provider concerned shall ensure that its online interface enables traders to provide information on the name, address, telephone number and email address of the economic operator, as defined in Article 3, point (13), of Regulation (EU) 2019/1020 and other Union law.
2. Providers of online platforms allowing consumers to conclude distance contracts with traders shall ensure that its online interface is designed and organised in a way that it allows traders to provide at least the following:
   (a) The information necessary for the clear and unambiguous identification of the products or the services promoted or offered to consumers located in the Union through the services of the providers;
   (b) any sign identifying the trader such as the trademark, symbol or logo; and,
   (c) where applicable, the information concerning the labelling and marking in compliance with rules of applicable Union law on product safety and product compliance

3. Providers of online platforms allowing consumers to conclude distance contracts with traders shall make best efforts to assess whether such traders have provided the information referred to in paragraphs 1 and 2 prior to allowing them to offer their products or services on those platforms. After allowing the trader to offer products or services on its online platform that allows consumers to conclude distance contracts with traders, the provider shall make reasonable efforts to randomly check in any official, freely accessible and machine-readable online database or online interface whether the products or services offered have been identified as illegal.

The General Product Safety Regulation (Regulation (EU) 2023/988)

Article 22 on specific obligations of providers of online marketplaces related to product safety

1. Without prejudice to the general obligations provided for in Article 11 of Regulation (EU) 2022/2065, providers of online marketplaces shall designate a single point of contact allowing for direct communication, by electronic means, with Member States' market surveillance authorities in relation to product safety issues, in particular for the purpose of notifying orders issued pursuant to paragraph 4 of this Article.
Providers of online marketplaces shall register with the Safety Gate Portal and shall indicate on the Safety Gate Portal the information concerning their single contact point.

2. Without prejudice to the general obligations provided for in Article 12 of Regulation (EU) 2022/2065, providers of online marketplaces shall designate a single point of contact to enable consumers to communicate directly and rapidly with them in relation to product safety issues.

3. Providers of online marketplaces shall ensure that they have internal processes for product safety in place in order to comply without undue delay with the relevant requirements of this Regulation.

4. As regards powers conferred by Member States in accordance with Article 14 of Regulation (EU) 2019/1020, Member States shall confer on their market surveillance authorities the necessary power, as regards specific content referring to an offer of a dangerous product, to issue an order requiring the providers of online marketplaces to remove such content from their online interface, to disable access to it or to display an explicit warning. Such orders shall be issued in accordance with the minimum conditions set out in Article 9(2) of Regulation (EU) 2022/2065.
Providers of online marketplaces shall take the necessary measures to receive and process orders issued pursuant to this paragraph and they shall act without undue delay, and in any event within two working days from receipt of the order. They shall inform the issuing market surveillance authority of the effect given to the order by electronic means using the contact details of the market surveillance authority published in the Safety Gate Portal.

5. Orders issued pursuant to paragraph 4 may require the provider of an online marketplace, for the prescribed period, to remove from its online interface all identical content referring to an offer of the dangerous product in question, to disable access to it or to display an explicit warning, provided that the search for the content concerned is limited to the information identified in the order and does not require the provider of an online marketplace to carry out an independent assessment of that content, and that the search and the removal can be carried out in a proportionate manner by reliable automated tools.

6. Providers of online marketplaces shall take into account regular information on dangerous products notified by the market surveillance authorities in line with Article 26, received through the Safety Gate Portal, for the purpose of applying their voluntary measures aimed at detecting, identifying, removing or disabling access to the content referring to offers of dangerous products on their online marketplace, where applicable, including by making use of the interoperable interface to the Safety Gate Portal in accordance with Article 34. They shall inform the authority that made the notification to the Safety Gate Rapid Alert System of any action taken by using the contact details of the market surveillance authority published in the Safety Gate Portal.

7. For the purpose of compliance with Article 31(3) of Regulation (EU) 2022/2065, as regards product safety, providers of online marketplaces shall use at least the Safety Gate Portal.

8. Providers of online marketplaces shall, without undue delay and in any event within three working days from the receipt of the notice, process the notices related to product safety issues with regard to the product offered for sale online through their services, received in accordance with Article 16 of Regulation (EU) 2022/2065.

9. For the purpose of compliance with the requirements of Article 31(1) and (2) of Regulation (EU) 2022/2065 as regards product safety information, providers of online marketplaces shall design and organise their online interface in a way that enables traders offering the product to provide at least the following information for each product offered and that ensures that the information is displayed or otherwise made easily accessible by consumers on the product listing:

(a) name, registered trade name or registered trade mark of the manufacturer, as well as the postal and electronic address at which the manufacturer can be contacted;
(b) where the manufacturer is not established in the Union, the name, postal and electronic address of the responsible person within the meaning of Article 16(1) of this Regulation or Article 4(1) of Regulation (EU) 2019/1020;
(c) information allowing the identification of the product, including a picture of it, its type and any other product identifier; and;
(d) any warning or safety information to be affixed on the product or to accompany it in accordance with this Regulation or the applicable Union harmonisation legislation in a language which can be easily understood by consumers as determined by the Member State in which the product is made available on the market;

10. The internal processes referred to in paragraph 3 shall include mechanisms which enable traders to provide:

(a) Information in accordance with paragraph 9 of this Article including information on the manufacturer established in the Union or, where applicable, the responsible person within the meaning of Article 16(1) of this Regulation or Article 4(1) of Regulation (EU) 2019/1020; and
(b) their self-certification committing to offer only products that comply with this Regulation and additional identification information, in accordance with Article 30(1) of Regulation (EU) 2022/2065, where applicable.

11. For the purpose of compliance with Article 23 of Regulation (EU) 2022/2065 regarding product safety, providers of online marketplaces shall suspend, for a reasonable period of time and after having issued a prior warning, the provision of their services to traders that frequently offer products which are non-compliant with this Regulation.

12. Providers of online marketplaces shall cooperate with the market surveillance authorities, with traders and with relevant economic operators to facilitate any action taken to eliminate or, if that is not possible, to mitigate the risks presented by a product that is or was offered online through their services.

In particular, providers of online marketplaces shall:

(a) ensure that they provide appropriate and timely information to consumers including by:
(i) directly notifying all affected consumers who bought through their interfaces the relevant product in the event of a product safety recall of which they have actual knowledge or where certain information has to be brought to the attention of consumers to ensure the safe use of a product (the 'safety warning') in accordance with Article 35 or 36, or both;
(ii) publishing information on product safety recalls on their online interfaces;

(b) Inform the relevant economic operator of the decision to remove or disable access to the content referring to an offer of a dangerous product;

(c) cooperate with market surveillance authorities and with relevant economic operators to ensure effective product recalls, including by abstaining from obstructing product recalls;

(d) immediately inform, through the Safety Business Gateway, the market surveillance authorities of the Member States in which the relevant product has been made available on the market about dangerous products that were offered on their online interfaces, of which they have actual knowledge, by providing the appropriate details available to them of the risk to the health and safety of consumers, of the quantity by Member State of products still circulating on the market, if available, and of any corrective measure that, to their knowledge, has already been taken;

(e) cooperate with regard to accidents notified to them, including by:
(i) informing the relevant traders and economic operators without delay about the information they have received regarding accidents or safety issues, where they have knowledge that the product in question was offered by those traders through their interfaces;
(ii) notifying without undue delay through the Safety Business Gateway of any accident, of which they have been informed, resulting in a serious risk or actual damage to the health or safety of a consumer, caused by a product made available on their online marketplace and inform the manufacturer thereof;

(f) cooperate with law enforcement agencies at Union and national level, including the European Anti-Fraud Office (OLAF), through regular and structured exchange of information on offers that have been removed on the basis of this Article by providers of online marketplaces

(g) allow access to their interfaces for the online tools operated by market surveillance authorities to identify dangerous products;

(h) cooperate in identifying, as far as possible, the supply chain of dangerous products by responding to data requests where the relevant information is not publicly available;

(i) upon a reasoned request of the market surveillance authorities, when providers of online marketplaces or online sellers have put in place technical obstacles to the extraction of data from their online interfaces (data scraping), allow the scraping of such data only for product safety purposes based on the identification parameters provided by the requesting market surveillance authorities.

Article 35 on information from economic operators and providers of online marketplaces to consumers on product safety

1. In the case of a product safety recall, or where certain information has to be brought to the attention of consumers to ensure the safe use of a product ('safety warning'), economic operators, in accordance with their respective obligations as provided for in Articles 9, 10, 11 and 12, and providers of online marketplaces in accordance with their obligations as provided for in Article 22(12), shall ensure that all affected consumers that can be identified are notified directly and without undue delay. Economic operators and, where applicable, providers of online marketplaces that collect their customers' personal data shall make use of that information for recalls and safety warnings.

2. Where economic operators and providers of online marketplaces have in place product registration systems or customer loyalty programs enabling the identification of products bought by consumers for purposes other than contacting their customers with safety information, they shall offer the possibility to their customers to provide separate contact details only for safety-related purposes. The personal data collected for that purpose shall be limited to the necessary minimum and shall only be used to contact consumers in the event of a recall or safety warning.

3. The Commission may, by means of implementing acts, set out, for specific products or categories of products, requirements to be met by economic operators and providers of online marketplaces to provide the possibility for consumers to register a product they have purchased in order to be

notified directly in the case of a product safety recall or safety warning in relation to that product, in accordance with paragraph 1 of this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 46(3).

4. Where not all of the affected consumers can be contacted under paragraph 1, economic operators and providers of online marketplaces, in accordance with their respective responsibilities, shall disseminate a clear and visible recall notice or safety warning through other appropriate channels, ensuring the widest possible reach including, where available, the company's website, social media channels, newsletters and retail outlets and, as appropriate, announcements in mass media and other communication channels. Information shall be accessible to persons with disabilities.

Batteries & Waste Batteries Regulation (Regulation (EU) 2023/1542);

Recital (104)

This Regulation should specify how the traceability of traders' obligations laid down in Regulation (EU) 2022/2065 of the European Parliament and of the Council (28) is to be applied to online platforms allowing consumers to conclude distance contracts with producers offering batteries, including batteries that are incorporated in appliances, light means of transport or other vehicles, and to consumers located in the Union in relation to the registers of producers established pursuant to this Regulation. For the purposes of this Regulation, any producer offering batteries, including those incorporated in appliances, light means of transport or other vehicles, by means of distance contracts directly to consumers located in a Member State, whether established in a Member State or a third country, should be considered to be a trader as defined in Regulation (EU) 2022/2065. Pursuant to that Regulation, providers of online platforms, falling within the scope of Section 4 of Chapter III thereof and who allow consumers to conclude distance contracts with producers, should obtain from those producers information on the register of producers where they are registered as well as their registration number and a self-certification committing to comply with the extended producer responsibility requirements laid down in this Regulation. The implementation of the rules on the traceability of traders for the sale of batteries online are subject to the enforcement rules laid down in Regulation (EU) 2022/2065."

Article 62 on obligations of distributors

1. Distributors shall take back waste batteries from the end-user free of charge and without imposing an obligation on the end-user to buy or to have bought a new battery, regardless of their chemical composition, brand or origin as follows

(a) for waste portable batteries, at or in the immediate vicinity of the distributor's retail outlet;

(b) for waste LMT batteries, waste SLI batteries, waste industrial batteries and waste electric vehicle batteries, at or in the vicinity of the distributor's retail outlet.

2. The take back obligation laid down in paragraph 1:

(a) shall not apply to waste products containing batteries;

(b) shall be limited to the categories of waste batteries which the distributor has or had as batteries in its offer and, for waste portable batteries, to the quantity that non-professional end-users normally discard.

3. Distributors shall hand over waste batteries that they have taken back to the producers or producer responsibility organisations who are responsible for collecting those waste batteries in accordance with Articles 59, 60 and 61 respectively, or to a waste management operator selected in accordance with Article 57(8) with a view to their treatment in accordance with Article 70.

4. The obligations under this Article shall apply mutatis mutandis to distributors that supply batteries by means of distance contracts to end-users. Those distributors shall provide for a sufficient number of collection points covering the whole territory of a Member State and taking into account population size and density, expected volume of waste portable batteries, waste LMT batteries, waste SLI batteries, waste industrial batteries and waste electric vehicle batteries respectively, and accessibility for and proximity to end-users, allowing end-users to return batteries.

5. In the case of sales with delivery, distributors shall offer to take back waste portable batteries, waste LMT batteries, waste industrial batteries, waste SLI batteries and waste electric vehicle

batteries free of charge at the point of delivery to the end-user or at a local collection point. The end-user shall be informed when ordering a battery of the take back arrangements for a waste battery.

6. For the purposes of compliance with Article 30(1), points (d) and (e), of Regulation (EU) 2022/2065, providers of online platforms, falling within the scope of Section 4 of Chapter III of that Regulation, that allow consumers to conclude distance contracts with producers shall obtain the following information from producers offering batteries, including batteries incorporated in appliances, light means of transport or other vehicles, to consumers located in the Union:

(a) details concerning the register of producers referred to in Article 55 and the producer's registration number or registration numbers in that register;

(b) a self-certification by the producer committing to only offer batteries, including those incorporated in appliances, light means of transport or other vehicles, with regard to which the extended producer responsibility requirements referred to in Article 56(1), (2), (3) and (4), Article 57(1) and Article 58(1), (2) and (7) are complied with.

Product Liability Directive (Directive 2024/----)

Recital (28)

Online selling has grown consistently and steadily, creating new business models and new actors in the market such as online platforms. Regulation (EU) 2022/2065 on a Single Market for Digital Services (Digital Services Act) of the European Parliament and of the Council and Regulation (EU) 2023/98811 of the European Parliament and of the Council on General Product Safety] regulate, inter alia, the responsibility and accountability of online platforms with regard to illegal content, including products. When online platforms perform the role of manufacturer, importer, authorised representative, fulfilment service providers or distributor in respect of a defective product, they should be liable on the same terms as such economic operators. When online platforms play a mere intermediary role in the sale of products between traders and consumers, they are covered by a conditional liability exemption under Regulation (EU) 2022/2065. However, Regulation (EU) 2022/2065 establishes that online platforms that allow consumers to conclude distance contracts with traders are not exempt from liability under consumer protection law where they present the product or otherwise enable the specific transaction in question in a way that would lead an average consumer to believe that the product is provided either by the online platform itself or by a trader acting under its authority or control. In keeping with this principle, when online platforms do so present the product or otherwise enable the specific transaction, it should be possible to hold them liable, in the same way as distributors under this Directive. Therefore, provisions of this Directive relating to distributors should apply analogously to such online platforms. That means that they would be liable only when they do so present the product or otherwise enable the specific transaction, and only where the online platform fails to promptly identify a relevant economic operator based in the Union.

Article 8 on economic operators liable for defective products

1. Member States shall ensure that the following economic operators are liable for damage pursuant to this Directive:

(a) the manufacturer of the defective product;

(b) the manufacturer of a defective component, where that component has been integrated into, or inter-connected with, the product within the manufacturer's control has caused the product to be defective, and without prejudice to the liability of the manufacturer under point (a); and

(c) in the case of a manufacturer of a product or a component established outside the Union, and without prejudice to its own liability:

(i) the importer of the defective product or component;

(ii) the authorised representative of the manufacturer; and

(iii) where there is no importer established within the Union or authorised representative, the fulfilment service provider.

The liability of the manufacturer under the first subparagraph, point (a) shall also cover any damage caused by a defective component if it was integrated into, or inter-connected with, the product within that manufacturer's control.

2. Any natural or legal person that substantially modifies a product outside the manufacturer's control and thereafter makes it available on the market or puts it into service shall be considered a

manufacturer of the product for the purposes of paragraph 1.

3. Member States shall ensure that, where an economic operator under paragraph - 1 established in the Union cannot be identified, each distributor of the defective product dis liable where:

(a) the injured person requests that distributor to identify an economic operator as referred to in paragraph -1 and established in the Union, or its own distributor who supplied it with that product; and

(b) that distributor fails to identify an economic operator or its own distributor, as referred to in point (a), within one month of receiving the request referred to in point (a).

4. Paragraph 5 shall also apply to any provider of an online platform that allows consumers to conclude distance contracts with traders and that is not an economic operator, provided that the conditions set out in Article 6(3) of Regulation (EU) 212022/2065 are fulfilled.

5. Where victims fail to obtain compensation because none of the economic operators referred to in paragraphs 1 to 6 can be held liable under this Directive, or because the liable economic operators are insolvent or have ceased to exist, Member States may use existing national sectoral compensation schemes or establish new ones under national law, which should preferably not be funded by public revenues, to appropriately compensate injured persons who suffered damage caused by defective products.

Ecodesign for Sustainable Products Regulation (Regulation 2024/----)

Recital 59

It is essential that online marketplaces cooperate closely with the market surveillance authorities. An obligation of cooperation with market surveillance authorities is imposed on information society service providers under Article 7(2) of Regulation (EU) 2019/1020 of the European Parliament and of the Council1 in relation to products covered by that Regulation, including products for which ecodesign requirements are set. For this purpose, the general obligations as laid down under Chapter IV of Regulation (EU) 2022/2065 should apply, in particular the obligation related to compliance by design for providers of online marketplaces in Article 31 of Regulation (EU) 2022/2065. In view of providing the information required by Article 25 and 30(1) of this Regulation, providers of online marketplaces should make use at least of the information and communication system referred to in Article 34 of Regulation (EU) 2019/1020. Online marketplaces should also cooperate with market surveillance authorities to tackle illegal content related to noncompliant products. Actions within the framework of this cooperation should include the establishment of regular and structured exchange of information on action taken by online marketplaces, including removal of offers. Online marketplaces should also grant access to their interfaces to help market surveillance authorities to identify non-compliant products sold online. Moreover, market surveillance authorities may also need to scrape data from the online marketplaces. 1. Regulation (EU) 2019/1020 of the European Parliament and of the Council of 20 June 2019 on market surveillance and compliance of products and amending Directive 2004/42/EC and Regulations (EC) No 765/2008 and (EU) No 305/2011 (OJ L169, 25.6.2019, p. 1). 1a. Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act) (OJ L 277, 27.10.2022, p. 1).

Article 29 on Obligations of online marketplaces and online search engines

1. The general obligations foreseen in Article 11 of Regulation (EU) 2022/2065 and Article 30 of Regulation (EU) 2022/2065 shall apply for the purpose of this Regulation. Without prejudice to the general obligations referred to in the first subparagraph online marketplaces shall cooperate with the market surveillance authorities, at the request of the market surveillance authorities and in specific cases, to facilitate any action taken to eliminate or, if that is not possible, to mitigate non-compliance presented by a product that is or was offered for sale online through their services.

2. As far as powers conferred by Member States in accordance with Article 14 of Regulation (EU) 2019/1020 are concerned, Member States shall confer on their market surveillance authorities the power, for all products covered by a relevant delegated act adopted pursuant to Article 4, to order an online marketplace to act against one or more specific items of content referring to a non-compliant product, including by removing it. Such content shall be considered as illegal content within the

meaning of Article 3, point (h) of Regulation (EU) 2022/2065. Market surveillance authorities may, in accordance with Article 9 of Regulation (EU) 2022/2065, issue such orders .
Online marketplaces shall establish a single contact point allowing for direct communication with Member States' market surveillance authorities in relation to compliance with this Regulation.
This contact point may be the same contact point as the one referred to in Article 22(1) of Regulation (EU) 2023/988 or Article 11(1) of Regulation (EU) 2022/2065.

Packaging & packaging waste Regulation (Regulation 2024/----)

Article 40 on Extended Producer Responsibility

1. Producers shall have extended producer responsibility under the schemes established in accordance with Articles 8 and 8a of Directive 2008/98/EC and with this Section for the packaging or packaged product that they make available for the first time on the market of a Member State.

2. In addition to the costs referred to in Article 8a, paragraph 4 (a) of Directive 2008/98/EC, the financial contributions paid by the producer shall cover the following costs:
(a) costs of labelling waste receptacles for the collection of packaging waste as referred to in Article 12;
(b) costs of carrying out compositional surveys of collected mixed municipal waste under Commission Implementing Regulation (EU) 2023/595 and under the implementing acts to be adopted pursuant to Article 50 paragraph 7 (a) of this Regulation in case those implementing acts provide for an obligation to carry out such surveys.
The costs to be covered shall be established in a transparent, proportional, nondiscriminatory and in an efficient way.

3. A producer as defined in Article 3, point (10) (iii) shall appoint, by written mandate, an authorised representative for the extended producer responsibility in each Member State other than the Member State where it is established where it makes packaging available for the first time. Member States may provide that producers established in third countries shall appoint, by written mandate, an authorised representative for the extended producer responsibility when making packaged products available on their territory for the first time.

4. Member States may provide that, when an automated data reconciliation with the national register is provided for within that Member State, this shall be applicable for verification of a) and b).

5. For the purpose of compliance with Article 30, paragraph 1, points (d) and (e), of Regulation (EU) 2022/2065, providers of online platforms, falling within the scope of Section 4 of Chapter III of Regulation (EU) 2022/2065, allowing consumers to conclude distance contracts with producers shall obtain the following information from producers offering packaging to consumers located in the Union, prior to allowing them to use their services:
(a) information on the registration of the producers referred to in Article 39 in the Member State where the consumer is located and the registration number(s) of the producer in that register;
(b) a self-certification by the producer confirming that it only offers packaging with regard to which the extended producer responsibility requirements referred to in
paragraphs 1 and 2 of this Article are complied with in the Member State where the consumer is located.
Where a producer sells its products via the online marketplace, obligations set out in Article 40(1a) may, on behalf of producers by written mandate, be met by the provider of the online platform.

6. Upon receiving the information referred to in paragraph 3 and prior to allowing producers to use its services, the provider of online platforms shall make best efforts to assess whether the received information are complete and reliable."

Construction Products Regulation (Regulation 2024/----).

Article 27a on obligation of online marketplaces

1. . An online marketplace shall:
(a) for the purpose of the requirements of Article 31(1) of Regulation (EU) 2022/2065 of the European Parliament and of the Council , design and organise its online interface in such a way

that it allows economic operators to fulfil their obligations under Article 32(1a) of this Regulation;
(b) establish a single contact point for direct communication with Member States' competent national authorities in relation to compliance with this Regulation. This contact point may be the same as the one referred to in [Article 20(1)] of Regulation (EU) 2023/988 or Article 11(1) of Regulation (EU) 2022/2065;
(c) give an appropriate answer to notices related to notification of accidents and other incidents with products received in accordance with [Article 14] of Regulation (EU) [.../...] on a Single Market for Digital Services (Digital Service Act) and amending Directive 2000/31/EC;
(d) cooperate to ensure effective market surveillance measures, including by abstaining from putting in place obstacles to such measures;
(e) inform competent national authorities of any action taken with regard to non-compliance or suspected non-compliance concerning products covered by this Regulation;
(f) establish a regular and structured exchange of information on content that has been removed by online marketplaces on the request of competent national authorities;

2. As far as powers conferred by Member States in accordance to Article 14 of Regulation (EU) 2019/1020 are concerned, Member States shall confer on their market surveillance authorities the power, for all products covered by this Regulation, to order an online marketplace to remove specific illegal content referring to a non-compliant product from its online interface, to disable access to it or to display an explicit warning to end users when they access it. Such orders shall comply with [Article 9] of Regulation (EU) .../... [the Digital Services Act].

3. An online marketplace shall take the necessary measures to receive and process in accordance with Article 9 of Regulation (EU) .../...[the Digital Services Act] the orders referred to in paragraph 4.

4. This article shall also apply to manufacturers, importers, or distributors offering products online without involvement of an online marketplace.

5. A fulfilment service provider shall ensure that the conditions during warehousing, packaging, addressing or dispatching, do not jeopardise the products' conformity with its declared performance or its compliance with other applicable requirements in this Regulation. The manufacturer or importer of construction products shall provide the fulfilment service providers with the detailed information necessary for ensuring the safe storage, packaging, addressing or dispatch and further functioning of the product.

## Ranking transparency

Digital Services Act (Regulation (EU) 2022/2065)

Article 27 on recommender system transparency

1. Providers of online platforms that use recommender systems shall set out in their terms and conditions, in plain and intelligible language, the main parameters used in their recommender systems, as well as any options for the recipients of the service to modify or influence those main parameters.

2. The main parameters referred to in paragraph 1 shall explain why certain information is suggested to the recipient of the service. They shall include, at least:
(a) the criteria which are most significant in determining the information suggested to the recipient of the service;
(b) the reasons for the relative importance of those parameters.

3. Where several options are available pursuant to paragraph 1 for recommender systems that determine the relative order of information presented to recipients of the service, providers of online platforms shall also make available a functionality that allows the recipient of the service to select and to modify at any time their preferred option. That functionality shall be directly and easily accessible from the specific section of the online platform's online interface where the information is being prioritised.

Platforms to Business Regulation (Regulation (EU) 2019/1150)

Article 5 on ranking

1. Providers of online intermediation services shall set out in their terms and conditions the main parameters determining ranking and the reasons for the relative importance of those main parameters as opposed to other parameters.

2. Providers of online search engines shall set out the main parameters, which individually or collectively are most significant in determining ranking and the relative importance of those main parameters, by providing an easily and publicly available description, drafted in plain and intelligible language, on the online search engines of those providers. They shall keep that description up to date.

3. Where the main parameters include the possibility to influence ranking against any direct or indirect remuneration paid by business users or corporate website users to the respective provider, that provider shall also set out a description of those possibilities and of the effects of such remuneration on ranking in accordance with the requirements set out in paragraphs 1 and 2.

4. Where a provider of an online search engine has altered the ranking order in a specific case or delisted a particular website following a third party notification, the provider shall offer the possibility for the corporate website user to inspect the contents of the notification.

5. The descriptions referred to in paragraphs 1, 2 and 3 shall be sufficient to enable the business users or corporate website users to obtain an adequate understanding of whether, and if so how and to what extent, the ranking mechanism takes account of the following:
(a) the characteristics of the goods and services offered to consumers through the online intermediation services or the online search engine;
(b) (he relevance of those characteristics for those consumers;
(c) as regards online search engines, the design characteristics of the website used by corporate website users.

6. Providers of online intermediation services and providers of online search engines shall, when complying with the requirements of this Article, not be required to disclose algorithms or any information that, with reasonable certainty, would result in the enabling of deception of consumers or consumer harm through the manipulation of search results. This Article shall be without prejudice to Directive (EU) 2016/943.

7. To facilitate the compliance of providers of online intermediation services and providers of online search engines with and the enforcement of the requirements of this Article, the Commission shall accompany the transparency requirements set out in this Article with guidelines.

Omnibus Directive (Directive (EU) 2019/2161)

Article 3.4.(b)

4a. When providing consumers with the possibility to search for products offered by different traders or by consumers on the basis of a query in the form of a keyword, phrase or other input, irrespective of where transactions are ultimately concluded, general information, made available in a specific section of the online interface that is directly and easily accessible from the page where the query results are presented, on the main parameters determining the ranking of products presented to the consumer as a result of the search query and the relative importance of those parameters, as opposed to other parameters, shall be regarded as material. This paragraph does not apply to providers of online search engines as defined in point (6) of Article 2 of Regulation (EU) 2019/1150 of the European Parliament and of the Council.

## Use of AI in task allocation

Directive on improving working conditions in platform work (Directive 2014/----)

Article 9 on transparency on automated monitoring or decision-making systems

1. Member States shall require digital labour platforms to inform persons performing platform work, platform workers' representatives and, upon request, competent national authorities, of the use of automated monitoring or decision-making systems.
That information shall concern:

(a) all types of decisions supported or taken by automated decision-making systems, including when such systems support or take decisions not affecting persons performing platform work in a significant manner;

(b) as regards automated monitoring systems:

(i) the fact that such systems are in use or are in the process of being introduced;

(ii) the categories of data and actions monitored, supervised or evaluated by such systems, including evaluation by the recipient of the service;

(iii) the aim of the monitoring and how the system is to achieve it;

(iv) the recipients or categories of recipients of the personal data processed by such systems and any transmission or transfer of such personal data including within a group of undertakings;

(c) as regards automated decision-making systems:

(i) the fact that such systems are in use or are in the process of being introduced;

(ii) the categories of decisions that are taken or supported by such systems;

(iii) the categories of data and main parameters that such systems take into account and the relative importance of those main parameters in the automated decision-making, including the way in which the personal data or behaviour of the person performing platform work influence the decisions;

(iv) the grounds for decisions to restrict, suspend or terminate the account of the person performing platform work, to refuse the payment for work performed by them, as well as for decisions on their contractual status or any decision of equivalent or detrimental effect.

2. Digital labour platforms shall provide the information referred to in paragraph 1 in the form of a written document, which may be in electronic format. The information shall be presented in a transparent, intelligible and easily accessible form, using clear and plain language.

3. Persons performing platform work shall receive concise information about the systems and their features that directly affect them, including their working conditions where applicable, at the latest on the first working day, prior to the introduction of changes affecting working conditions, the organisation of work or monitoring work performance, or at any time upon their request. Upon their request, they shall also receive comprehensive and detailed information about all relevant systems and their features.

4. Workers' representatives shall receive comprehensive and detailed information about all relevant systems and their features. They shall receive that information prior to the use of those systems or to the introduction of changes affecting working conditions, the organisation of work or monitoring work performance or at any time upon their request. Competent national authorities shall receive comprehensive and detailed information at any time upon their request.

5. Digital labour platforms shall provide the information referred to in paragraph 1 to persons undergoing a recruitment or selection procedure. That information shall be provided in line with paragraph 2, shall be concise and only concern the automated monitoring or decision-making systems used in that procedure and shall be provided before the start of that procedure.

6. Persons performing platform work shall have the right to the portability of personal data generated through their performance of work in the context of a digital labour platform's automated monitoring and decision-making systems, including ratings and reviews without adversely affecting the rights of the recipient of the service under Regulation (EU) 2016/679. The digital labour platform shall provide persons performing platform work, free of charge, with tools to facilitate the effective exercise of their portability rights, referred to in Article 20 of Regulation (EU) 2016/679 and in the first sentence

of this paragraph. At the request of the person performing platform work, the digital labour platform shall transmit such personal data directly to a third party.

AI Act (Regulation 2024/----)

Annex III 4 on employment, workers management and access to self-employment.

(a) AI systems intended to be used for the recruitment or selection of natural persons, in particular to place targeted job advertisements, to analyse and filter job applications, and to evaluate candidates;
(b) AI systems intended to be used to make decisions affecting terms of work-related relationships, the promotion or termination of work-related contractual relationships, to allocate tasks based on individual behaviour or personal traits or characteristics or to monitor and evaluate the performance and behaviour of persons in such relationships.

## Disparate requirements for tax reporting

"DAC7" (Council Directive 2021/514/EU)

Article 8ac on the scope and conditions of mandatory automatic exchange of information reported by Platform Operators

1. Each Member State shall take the necessary measures to require Reporting Platform Operators to carry out the due diligence procedures and fulfil reporting requirements laid down in Sections II and III of Annex V. Each Member State shall also ensure the effective implementation of, and compliance with, such measures in accordance with Section IV of Annex V.

2. Pursuant to the applicable due diligence procedures and reporting requirements contained in Sections II and III of Annex V, the competent authority of a Member State where the reporting in accordance with paragraph 1 took place shall, by means of automatic exchange, and within the time limit laid down in paragraph 3, communicate to the competent authority of the Member State in which the Reportable Seller is resident as determined pursuant to paragraph D of Section II of Annex V and, where the Reportable Seller provides immovable property rental services, in any case to the competent authority of the Member State in which the immovable property is located, the following information regarding each Reportable Seller:

(a) the name, registered office address, TIN and, where relevant, individual identification number allocated pursuant to the first subparagraph of paragraph 4, of the Reporting Platform Operator, as well as the business name(s) of the Platform(s) in respect of which the Reporting Platform Operator is reporting;
(b) the first and last name of the Reportable Seller who is an individual, and legal name of the Reportable Seller that is an Entity;
(c) the Primary Address;
(d) any TIN of the Reportable Seller, including each Member State of issuance, or, in the absence of a TIN, the place of birth of the Reportable Seller who is an individual;
(e) the business registration number of the Reportable Seller that is an Entity;
(f) the VAT identification number of the Reportable Seller, where available;
(g) the date of birth of the Reportable Seller who is an individual;
(h) the Financial Account Identifier to which the Consideration is paid or credited, insofar as it is available to the Reporting Platform Operator and the competent authority of the Member State where the Reportable Seller is resident in the meaning of paragraph D of Section II of Annex V has not notified the competent authorities of all other Member States that it does not intend to use the Financial Account Identifier for this purpose;
(i) where different from the name of the Reportable Seller, in addition to the Financial Account Identifier, the name of the holder of the financial account to which the Consideration is paid or credited, to the extent available to the Reporting Platform Operator, as well as any other financial identification information available to the Reporting Platform Operator with respect to that account holder;
(j) each Member State in which the Reportable Seller is resident determined pursuant to paragraph D of Section II of Annex V;
(k) the total Consideration paid or credited during each quarter of the Reportable Period and the number of Relevant Activities in respect of which it was paid or credited;

(l) any fees, commissions or taxes withheld or charged by the Reporting Platform during each quarter of the Reportable Period.

Where the Reportable Seller provides immovable property rental services, the following additional information shall be communicated:

(a) The address of each Property Listing, determined on the basis of the procedures set out in paragraph E of Section II of Annex V and respective land registration number or its equivalent under the national law of the Member State where it is located, where available;

(b) the total Consideration paid or credited during each quarter of the Reportable Period and number of Relevant Activities provided with respect to each Property Listing;

(c) where available, the number of days each Property Listing was rented during the Reportable Period and the type of each Property Listing.

3. The communication pursuant to paragraph 2 of this Article shall take place using the standard computerised format referred to in Article 20(4) within two months following the end of the Reportable Period to which the reporting requirements applicable to the Reporting Platform Operator relate. The first information shall be communicated for Reportable Periods as from 1 January 2023.

4. For the purpose of complying with the reporting requirements pursuant to paragraph 1 of this Article, each Member State shall lay down the necessary rules to require a Reporting Platform Operator within the meaning of point (b) of subparagraph A(4) of Section I of Annex V to register within the Union. The competent authority of the Member State of registration shall allocate an individual identification number to such Reporting Platform Operator.

Member States shall lay down rules pursuant to which a Reporting Platform Operator may choose to register with the competent authority of a single Member State in accordance with the rules laid down in paragraph F of Section IV of Annex V. Member States shall take the necessary measures to require that a Reporting Platform Operator within the meaning of point (b) of subparagraph A(4) of Section I of Annex V, whose registration has been revoked in accordance with subparagraph F(7) of Section IV of Annex V, can only be permitted to re-register on the condition that it provides to the authorities of a Member State concerned appropriate assurances as regards its commitment to comply with the reporting requirements within the Union, including any outstanding unfulfilled reporting requirements.

The Commission shall, by means of implementing acts, lay down the practical arrangements necessary for the registration and identification of Reporting Platform Operators. Those implementing acts shall be adopted in accordance with the procedure referred to in Article 26(2).

5. Where a Platform Operator is deemed to be an Excluded Platform Operator, the competent authority of the Member State where the demonstration in accordance with subparagraph A(3) of Section I of Annex V was provided to, shall notify the competent authorities of all other Member States accordingly, including any subsequent changes.

6. The Commission shall, by 31 December 2022, establish a central register where information to be notified in accordance with paragraph 5 of this Article and communicated in accordance with subparagraph F(2) of Section IV of Annex V shall be recorded. That central register shall be available to the competent authorities of all Member States.

7. The Commission shall, by means of implementing acts, following a reasoned request by a Member State or on its own initiative, determine whether the information that is required to be automatically exchanged pursuant to an agreement between competent authorities of the Member State concerned and a non-Union jurisdiction is, within the meaning of subparagraph A(7) of Section I of Annex V, equivalent to that specified in paragraph B of Section III of Annex V. Those implementing acts shall be adopted in accordance with the procedure referred to in Article 26(2).

A Member State requesting the measure referred to in the first subparagraph shall send a reasoned request to the Commission.

If the Commission considers that it does not have all the information necessary for the appraisal of the request, it shall contact the Member State concerned within two months of receipt of the request and specify what additional information is required. Once the Commission has all the information it considers necessary, it shall, within one month, notify the requesting Member State and it shall submit the relevant information to the Committee referred to in Article 26(2).

When acting on its own initiative, the Commission shall adopt an implementing act as referred to in the first subparagraph only after a Member State has concluded a competent authority agreement with a non-Union jurisdiction that requires the automatic exchange of information on sellers deriving income from activities facilitated by Platforms.

When determining whether information is equivalent within the meaning of the first subparagraph in relation to a Relevant Activity, the Commission shall take into due account the extent to which the regime on which such information is based corresponds to that set out in Annex V, in particular with regard to:
(i) the definitions of Reporting Platform Operator, Reportable Seller, Relevant Activity;
(ii) the procedures applicable for the purpose of identifying Reportable Sellers;
(iii) the reporting requirements; and
(iv) the rules and administrative procedures that non-Union jurisdictions are to have in place to ensure effective implementation of, and compliance with, the due diligence procedures and reporting requirements set out in that regime.
The same procedure shall apply for determining that the information is no longer equivalent.';

The Cross-Border Tax Information Sharing (CESOP) framework

Amendment of the VAT directive in Article 243b(4)(b), section 4.4 of CESOP

4.4 Where should the data be reported?

The rules regarding where the data shall be reported are laid down in Article 243b(4)(b) of the amended VAT directive.

> Where the requirement for payment service providers laid down in paragraph 1 applies, the records shall:
>
> (b) be made available in accordance with Article 24b of Regulation (EU) No 904/2010 to the home Member State of the payment service provider, or to the host Member States when the payment service provider provides payment services in Member States other than the home Member State.

According to this Article, payment service providers shall report the payment data to their home Member State or, when they provide payment services in several Member States, to the host Member State(s).
The definition of home and host Member State are included in Article 243a of the Directive, which refers directly to the relevant Article of the PSD2.
According to the definition of the PSD2, the home Member State will be the Member State where a payment service provider has requested and obtained its payment licence, which should correspond to the Member State in which it has its registered office or head office.
The host Member State on the other hand will be any Member State other than the home in which the payment service provider is providing payment services either via an agent, a branch or directly.
It should be noted that the flexibility of using proxies for determining the location of the payer or payee in line with the cross-border rules of Article 243c cannot be used for the purpose of circumventing the obligation to report in the host Member State(s) in accordance with Article 243b(4)(b). As highlighted in section 3.1.1, payment service providers must use the strongest data available to them to locate their clients. Payment service providers must follow their payment licence to determine where they are providing their payment services and confirm where they must report.

> Example: a payment service provider has a payment licence from Member State 1 and also supplies payment services in Member State 2 via a branch, and Member State 3 via an agent.
>
> In application of the rules, this payment service provider will have to report the payments it executes in Member State 1 to Member State 1, the payments it executes in Member State 2 to Member State 2, and the payments it executes in Member State 3 to Member State 3.
>
> Example 2: an E-money provide has a payment licence to provide payment services from Member State 1. It then uses passporting rules to provide payment services in all other Member States of the Union. According to the rule of Article 243b(4), it will report data in all Member States for the respective payments it executes in each one of them.