

## Position paper of the European Association of E-Pharmacies (EAEP) to the Digital Services Act (DSA)

*February 2021*

The European Association of E-Pharmacies (EAEP), formerly “EAMSP”, welcomes the Digital Services Act (DSA) published on 15 December 2020. The EAEP is of the opinion that the proposed Regulation on the DSA, together with the proposed Regulation on the Digital Markets Act, are intended as a comprehensive package of measures for the provision of digital services in the European Union which pursue the twofold aim to both protect the fundamental right of users of digital services while at the same time fostering innovation to create growth and competitiveness for Europe.

The Communication (2018)<sup>1</sup> on ‘enabling the digital transformation of health and care in the Digital Single Market’ clearly stipulates that Europe should rethink its health and care systems, to which a digital transformation is part and parcel, to ensure the continuation of health promotion, disease prevention and patient-centred care provision that meets citizens' needs. The digitalisation of healthcare has now been further spurred by the COVID-19 crisis, which has led to an accelerated pace of at least a decade, according to a recent Deloitte report<sup>2</sup>. This offers many opportunities as long as favourable conditions for innovation and competitiveness are created. As digital players, e-pharmacies have witnessed an increasing demand of their services and products over the years, fuelled by the simultaneous development at national and at European level of tele-medical and e-health services, as well as the introduction of electronic prescription in some countries. Below the EAEP will set out its main thoughts on the proposed Regulation on the DSA.

- As e-pharmacies, the needs of the patients and a patient-centric approach are at the heart of what we do. As trusted digital players, we find ourselves at the interface of healthcare, digitalisation and e-commerce. This means we need to comply with various national and European regulations and legislation. In the field of health for example, that is first and foremost the Community code relating to medicinal products for human use (2001/83/EC), though there is also EU legislation on patients' rights in cross-border healthcare (2011/24/EU), as well as legislation on medical devices, data protection, electronic identification and security of network and information systems. They are all aimed at offering a range of opportunities to facilitate the responsible use of digital technologies in the healthcare field. The EAEP would like to underline that the DSA remains complementary to such sector-specific legislation. However, the **coherence with existing legislation** should be ensured in order to avoid any kind of legal uncertainty due to coexisting legislation.
- E-pharmacies, complying with the highest safety and quality standards, believe that in order to further stimulate digitalisation and innovation, eventually aimed at improving access to medicines and healthcare, the **online provision of non-prescription and prescription-medicines** should be further supported. The EAEP sees the DSA as a potential enabler for this, since one of its key pillars is to provide **provisions against illegal content, conduct and practices**. We very much welcome these provisions as this allows the EAEP members to distance themselves from the

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<sup>1</sup> <https://ec.europa.eu/digital-single-market/en/news/communication-enabling-digital-transformation-health-and-care-digital-single-market-empowering>

<sup>2</sup> <https://www2.deloitte.com/content/dam/Deloitte/nl/Documents/public-sector/deloitte-nl-shaping-the-future-of-european-healthcare.pdf>

illegal sale of medicines online which poses a serious threat to public health. The EAEP pharmacies adhere to and promote the EU common logo for online pharmacies/retailers<sup>3</sup>. Our members, by guaranteeing patient safety and by contributing to the protection of public health, positively distinguish themselves herewith from self-proclaimed e-pharmacies.

- We believe that the DSA should promote its own digital, **European e-commerce champions** in the best way possible. Considering this, we support the approach of the DSA to differentiate between service providers depending on their size and their subsequent differing obligations. Where the current E-Commerce Directive does not provide for a mechanism to avert third countries that offer services unlawfully on the EU Market, the DSA proposes to introduce an obligation that providers of intermediary services established in a third country that offer services in the Union should appoint a legal representative in the EU. We support this approach.
- We highly appreciate that the DSA, in line with the current E-Commerce Directive, has maintained key principles which are still valid today, such as the **prohibition of the general monitoring obligation** as well as the **'country of origin principle'**. Especially the country of origin principle, which is fundamental to the functioning of the internal market, has been providing and will continue to provide legal certainty to the members of the EAEP. With the rule of the country of origin as a prevailing rule, while complying with specific rules in the respective country of destination, quality, compliance, safety and accessibility of both non-prescription and prescription medicines as well as the provision of professional pharmaceutical telemedical services can be guaranteed. We therefore do not subscribe to concerns mainly voiced by national incumbents that the related notification procedure would provide for a procedural burden that may impact the protection of public health. There is no evidence to substantiate such claims, and procedurally provisions do already provide for emergency cases. The notification mechanism is of crucial importance to the EAEP and should be kept, and the EAEP would be open to discuss how the DSA could be enforced to discuss various obligations under the notification procedure with the EC. The country of origin principle should also not be undermined by the oversight and enforcement regime.
- In regard to the proposed obligation on **online advertising transparency** we are in favour of an appropriate approach balancing interests of service providers as well as customers. Requiring detailed information from platforms for each piece of advertisement, as the DSA suggests, would potentially overburden customers. Furthermore, the DSA should reflect that rules on targeted advertising are already covered in existing regulation. In general, targeted advertising can have positive economic effects while ensuring users' privacy. We therefore do not support a ban on targeted advertisement.
- We believe that the internal market principle is the principle underpinning the Digital Services Act as it is also the case with the current E-Commerce Directive. Therefore, a member state of destination to whom the services are offered should not restrict those services provided from another member state. This also applies to obligations regarding online advertising. Recent developments in European Court of Justice (ECJ) case law underline the **free movement of information society services** related to the online sale of medicines without prescription<sup>4</sup>. The ECJ held that "a Member State of destination of an online sales service relating to medicinal products not subject to medical prescription may not prohibit pharmacies that are established in another Member State and sell such products from using paid referencing on search

<sup>3</sup> [https://ec.europa.eu/health/human-use/eu-logo\\_ni](https://ec.europa.eu/health/human-use/eu-logo_ni)

<sup>4</sup> <http://curia.europa.eu/juris/documents.jsf?oqp=&for=&mat=or&lgreg=en&jge=&td=%3BALL&jur=C%2CT%2CF&num=C-649%252F18&page=1&dates=&pcs=Oor&lg=&pro=&nat=or&cit=none%252CC%252CCJ%252CR%252C2008E%252C%252C%252C%252C%252C%252C%252C%252C%252C%252C%252C%252Ctrue%252Cfalse%252Cfalse&language=en&avg=&cid=3743260>



engines and price comparison websites.” Hence, online pharmacies may sell non-prescription medicines online in another member state and may advertise online by using paid referencing on search engines and price comparison websites.

#### About EAEP:

We strengthen the European healthcare system by ensuring better access to health-related products and services for people across the continent. As the Association of European E-Pharmacies (EAEP), we represent the interests of our members and safeguard the needs of our members’ patients and customers. We inform the public in a transparent manner, enter into a dialogue with politics, business and market partners and leverage our concepts to strengthen the European healthcare sector and lower costs through digitalization. The members of the EAEP are pioneers in providing digital solutions that continuously improve the quality, safety and efficiency of healthcare for Europeans. We combine our members’ voices in position papers and encourage interaction and knowledge sharing.

More information: <https://www.eaep.com>