CLASSIFIEDS MARKETPLACES EUROPE

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CLASSIFIEDS MARKETPLACES EUROPE'S VIEWS ON THE ECODESIGN FOR SUSTAINABLE PRODUCTS REGULATION

With this paper, Classifieds Marketplaces Europe (CME) aims to provide a constructive contribution to the debate on the Ecodesign for Sustainable Products Regulation (ESPR) proposal, as we embrace its aim to accelerate the transition to a circular economy model.

We welcome the proposed Ecodesign for Sustainable Products Regulation (ESPR) put forward by the Commission that will repeal the Ecodesign Directive. CME believes that the proposal rightly aims to reduce the negative life cycle environmental impacts of products and improve the functioning of the internal market. CME also welcomes the objective of the proposal to boost the supply and demand for sustainable goods.

To ensure that online classifieds marketplaces can continue to play an active role in the green transition by fostering the sale of second-hand goods, we call on the Commission and co-legislators to:

1. Target products that are made available on the EU market for the first time
2. Exclude C2C (but not B2C) transactions from the scope
3. Ensure a harmonized legal framework, including consistent definitions, for online marketplaces and traders
4. Clarify the scope with regards to second-hand products
5. Align the Digital Product Passport with the specificities of second-hand trade to promote the circular economy

Introduction to Online Classifieds Platforms – Local, Personal, Second-hand

CME is a group of EU-headquartered companies operating online classifieds platforms that connect buyers and sellers to safely, easily, and conveniently exchange goods and services **in their local communities**. From furniture to fashion, from cars to collectables, from real estate to jobs. There are two types of online classifieds marketplaces: generalist online marketplaces where there is a wide variety of trade in different goods and services categories and specialist online marketplaces where the trade happens in only one product category.

The origin of classifieds lies in the **resale and reuse of goods** and still today the **majority of trade via our generalist platforms is in second-hand goods between private individuals**. Circular consumption and extending the lifespan of products are our DNA. While at its core we connect consumers to consumers (C2C) to trade with each other, our

platforms are also used by (small) businesses to reach (new) customers (B2C). Despite the online nature of classifieds platforms, most of the exchanges on our generalist classifieds sites still occur at the local and on a personal level.

Our online classifieds platforms provide a service that allows people to connect in a safe and convenient manner. **Sellers are fully in control** of the listing they post (including pricing and product information) and the subsequent transaction (including the relationship with the buyer). They are free to choose how they close the deal, including payment and delivery methods ranging from in-person trading to using an online mechanism of third-party services. Since **our platforms do not sell or hold products, we have limited control over the goods and services listed by our sellers.**

The online classifieds industry, by its nature and size, contributes to the following key EU Policy Objectives:

- **The Green Transition**

  When trading on our platforms, European consumers and businesses are empowered to buy or sell a used item, thus extending the lifespan of the product, giving it a new purpose and avoiding the purchase of new products. This is what we call the **'second-hand effect'**. As a result, our users contribute to the circular economy by enabling savings in energy and natural resources, lower CO_2 emissions, and waste prevention and reduction.[1] Our local dimension enables the transition to circular consumption in local communities throughout Europe.

- **The Digital Transformation**

  Online classifieds promote **economic inclusion for all**, empowering both consumers and (small) business sellers. Private individuals can sell used goods and declutter their houses while certain products become achievable for others, finding unique items and great deals and avoiding buying newly produced items. For small businesses and entrepreneurs, we provide the opportunity to easily get online in the way they choose and we give them the platform and national reach to become successful, fostering economic growth in local communities.

Our views on the Ecodesign For Sustainable Products Regulation

A. Scope

1. A clear focus on products that are being placed on the EU market

CME welcomes the fact that ESPR, like the repealed Ecodesign Directive, continues to focus on regulating those products which are placed on the EU Market (Art. 1 para. 1 and Art. 2 (2), meaning when they are made available for the first time on the Union market[1].

A large part of the trade via CME members' marketplaces takes place between consumers and thus in products they possess. These goods have already been placed on the EU market. Per the EC Blue Guide[2] trade in these products is therefore not in the scope of the ESPR.

2. Ensure a framework that focuses on commercial activities and does not impede consumers to trade second-hand goods with each other

We **welcome the definition of online marketplaces under Article 2(55) which rightfully seeks to solely focus on commercial activities**, meaning transactions from business traders to consumers.

Consumers in existing EU legislation and the DSA proposal are defined as "*any natural person who is acting for purposes which are outside of his or her trade, business or profession*", meaning that they do not conduct commercial activities. We, therefore, welcome that the Commission Proposal clarifies the definition of online marketplaces to ensure that C2C transactions are not included. This will also contribute to further legal certainty with other legislation such as the DSA and the upcoming GPSR (see Article 20.5 of the GPSR proposal).

On top of this, including transactions between individual, occasional sellers, and buyers within the definition of online marketplaces may discourage sellers from listing their second-hand products on classifieds platforms in the first place, ultimately undermining circular consumption benefits. This is also why we welcome the exclusion of consumer-to-consumer (C2C) transactions from the scope.

This is also in line with the references in Art 2(39) and Art. 2(56), which clarifies that the ESPR applies to sellers that act in the course of a 'commercial activity'. Per the Blue Guide (Chapter 2.2, p.19) Commercial activity is understood as: *"providing goods in a business-related context. [...] This can only be appreciated on a case-by-case basis taking into account the regularity of the supplies, the characteristics of the product, the intentions of the supplier, etc. In principle, occasional supplies by charities or hobbyists should not be considered as taking place in a business-related context."*

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[1] See Chapter 2.3, p. 19 of the EU Blue Guide: A product is placed on the market when it is made available for the first time on the Union market.

[2] See Chapter 2.1, p. 15 of the Blue Guide: EU Product legislation applies to '*newly manufactured products but also to used and second-hand products imported from a third country when they enter the Union market for the first time*'

3. Ensure a consistent legal framework among the horizontal and specific legislations on circular economy and online marketplaces obligations

We welcome the ambition of the ESPR to be a product-specific legislation, but we believe **it is key to ensure consistency between the ESPR and the different EU legislative instruments impacting online marketplaces.**

CME welcomes the aim of the ESPR proposal to include in the scope **a wide range of products. However, the proposal should ensure consistency with the** obligations on online marketplaces introduced in the DSA and GPSR. These must be easy to understand and aligned in scope, while simultaneously not duplicating or contradicting the obligations of different initiatives. **A unified scope in legislation that regulates online marketplaces is therefore necessary**.

4. Clarify and ensure consistent definitions across legislations

Providing consistent definitions among different legislative instruments is also key for ensuring legal certainty.

Most notably, the new definition of 'dealer' under Article 2(56) lacks clarity. It is not clear from the text if 'online marketplaces' themselves fall under this definition: *"a retailer or any other natural or legal person who (. . .) displays products to customers in the course of a commercial activity, whether or not in return for payment".*

First, CME would like to emphasize that consumer-to-consumer transactions, which account for an important share of the trade via our businesses, can not be considered an 'economic activity' and the text of the ESPR should ensure that there can not be any confusion about this.[3]

To ensure legal certainty in this matter, we suggest conceptually **aligning this new definition of 'dealer', with the established definition of 'trader', as defined by the DSA in Article 2(f)**:

> Article 2 (f) 'trader' means any natural person, or any legal person irrespective of whether it is privately or publicly owned, who is acting, including through any person acting in his or her name or on his or her behalf, for purposes relating to his or her trade, business, craft or profession;

This alignment would not absolve online marketplaces from taking legal responsibility, but merely ensure that actors such as CME would not have to comply with obligations going beyond those specifically intended for our businesses (which are stipulated in ESPR's Article 29). Following this conceptual alignment, CME also suggests amending ESPR's Article 29(2) such that it would apply the same terminology as in Article 20(5) of the GPSR, which uses the term 'trader' instead of 'dealer'. This amendment would be in the interest of both legislators and businesses since uniform rules on online marketplaces' design and online interface organisation would facilitate compliance.

[3] See Blue Guide 2022, para 2.2., pag. 19

5. Clarify the scope of the ESPR with regard to second-hand products

To promote the uptake in the sale of second-hand goods, it must be easy and safe for consumers to trade used goods. Therefore, **we welcome the introduction of a Digital Product Passport (DPP)**, which could promote easier and safer trade on online marketplaces by facilitating more comprehensive information about sellers' products.

However, we would like to better understand the implications and scope of the DPP as regards second-hand products. We understand the Regulation mainly applies to **products placed on the market for the first time in accordance with definitions of 'placing on the market' (Article 2(40)) and 'putting into service' (Article 2(41))**. However, according to the Blue Guide (Chapter 2.1, p.15), Union harmonisation legislation applies to newly manufactured products ***but also to used and second-hand products imported from a third country when they enter the Union market for the first time.***

In this case, certain requirements for information on economic operators (Article 30) could also be applicable to second-hand trade. It would be important to provide more flexibility for second-hand products, for which the seller may not have all the required information, in order to avoid any undesirable side-effect of losing out on a number of second-hand transactions.

B. Digital Product Passport

1. The Digital Product Passports should not disincentivize consumers from second-hand trade

The **DPPs should take into account second-hand products and trade specificities and should encourage the reuse and resale of goods by consumers**, which is an essential part of the transition to the circular economy. In that sense, the DPP should be easy to use for those businesses and consumers who want to provide the DPP as additional information about the second-hand product they are selling. The draft text emphasizes the importance of second-hand trade in article 5(5)(c), but the text does not specify how the DPP requirements should be taken into account in the context of second-hand trade.

However, **DPPs should not lead to increasing demand for new products with a DPP and high-performance criteria vs second-hand products without a DPP or with lower performance criteria**. Article 57 allows Member States to make incentives related to products with the two highest classes of performance at the Union level, where relevant, with an EU Ecolabel. However, if not carefully crafted, this may encourage the trade of new products with higher performance criteria against the trade of second-hand products with lower performance criteria and may defeat the overall purpose of transitioning to the circular economy by stifling resale and reuse.

2. Consultation with stakeholders on the Digital Product Passports is crucial

The **Commission should consult with all concerned stakeholders including classifieds marketplaces and retailers for second-hand products** for the issuance of specific delegated acts that will develop criteria for Digital Product Passports for the specific types of goods. Consultation with the concerned parties will allow the Commission to draft meaningful

and efficient DPPs built upon the expertise and know-how of the industry. This will both ensure that DPPs will work in practice but also avoid unintended consequences on second-hand trade.

By addressing the issues outlined above and taking the specificities of online marketplaces into account, CME would be able to keep contributing to a greener Europe and empower consumers to be at the forefront and drive the green transition.

About CME

Classifieds Marketplaces Europe is a coalition of industry-leading EU-based tech companies – including Adevinta, OLX Group, Schibsted, Vinted, CustoJusto, and Wallapop – operating online classifieds platforms in 21 European countries. Our aim is to empower citizens to strengthen the circular economy and local communities. By combining our resources, we are raising awareness about the specificities of the online classifieds sector and its positive contribution to key objectives of the EU digital and green agenda.

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