



Contribution to the public consultation on the Digital Services Act

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1. Introduction

Pearle* - Live Performance Europe is the European employers' federation of live performance organisations. Through our members, we represent more than 10,000 organisations in the sector across Europe, including theatres, theatre production companies, bands and music ensembles, orchestras, opera houses, ballet, dance companies, festivals, concert venues, producers, promoters, agents, comedy, variété, circus, event suppliers and others.

We welcome the opportunity to give input to the draft Digital Services Act to be launched later this year. We share the Commission's analysis that online services have deeply transformed the way we interact, communicate and do businesses.

The proposal builds on key-principles set out in the e-commerce Directive and defines clearer responsibilities and accountability rules for providers of intermediary services, in particular online platforms, such as social media and marketplaces.

Considering new online business models, we agree that certain aspects of current legislation in the field of digital services and online platforms need to be updated and further developed.

In this context, the live performance sector faces serious problems with a growing illicit online secondary ticketing. The secondary ticketing market was estimated worth €1.66bn in 2020, while in the same year, according to estimations of the EY study Rebuilding Europe¹, the performing arts in the EU lost 90% of their turnover, the music sector 76%.

While event organisers are partnering up with online marketplaces for lawful secondary ticketing for live shows and other events, non-authorized platforms and online traders have created a parallel market on which they sell tickets for prices much higher than face-value to the detriment of consumers, artists and event organisers. Increasingly, the market also

¹ <https://www.rebuilding-europe.eu/>



moves to social media networks using the names and the brand of renown concert halls to deceive consumers, advertise faked shows and sell faked tickets.

2. Scope of the text

Pearle supports a wider scope of the text as rules must apply to all platforms, those facilitating transactions between professional traders and consumers and those that facilitate consumer-to-consumer transactions. Regarding illicit secondary ticketing, traders today already use C to C platforms as well as social media platforms to carry out their activity and deceive consumers about their identity. It is therefore key to define social networks as online platforms when they are not used as minor or ancillary feature of another service, as proposed in the draft regulation.

In addition, the proposal excludes small and micro enterprises from certain provisions such as Article 13(1) and Articles 16-24 (Section 3). Pearle is concerned that in the context of illicit secondary ticketing, this exemption creates loopholes for bigger platforms that might consider splitting their business into different parts to avoid falling under the scope of the text.

⇒ Pearle advocates to include small and micro enterprises into the scope of article 22 to ensure that traders using smaller platforms can also be held liable when infringing consumer rights and illicitly selling tickets online.

3. Exemption from liability

It is crystal clear that online platforms illicitly selling tickets on the secondary market do not provide their services neutrally, but instead provide the business model for traders becoming active on their platform. They deliberately create an online selling point that does not comply with consumer protection rules and does not offer sufficient information about the trader. Considering the lacking neutrality and the active role the platform takes in the selling activities, the draft regulation provides important clarifications (such as outlined in recitals 18 and 20) as to the applicability of the exemption from liability.

We also welcome article 5(3) describing the loss of liability exemption of a platform selling online products or services in a way that leads to the assumption they were their own.

However, we regret that no distinction is made in the exemption from liability between online content and information about goods and services for online sales. It can be assumed that in the case of ticket sales, the verification of the seller and whether the information provided is legal, is much easier to control than the verification of online content and would



not impose a disproportionate burden on the online platform. The distinction between online content and the online sale of products/services should therefore be reflected in the Regulation on a Digital Services Act.

- ⇒ Pearle recommends a clear distinction between online content and online sales of products/services in the Regulation, including a provision to make secondary ticketing marketplaces liable when a trader cannot be traced back on the basis of verification details given on the platform.

4. Traceability of traders

It is essential that the online platform allows consumers to conclude distant contracts only if the information about the trader such as outlined in article 22 (1) a-f is provided. The lack of traceability and the repetitive missing of information about the identity of a trader on online platforms should lead to a reassessment of the online platform, in the course of which the exemption from liability can be withdrawn and the platform itself can be taken down.

- ⇒ Pearle supports article 22 (1) a-f and underlines the need to enforce these provisions with secondary ticketing platforms; they should also be applicable to online sales on social media platforms, given problems with faked and unauthorised ticket sales for concerts and other live events.

5. Enforcement of rules and cooperation of national authorities

The enforcement of rules is one of the biggest challenges when tackling the illegal secondary ticketing market in the live performance sector.

It has been observed in recent years that enforcement is a key concern for live event organisers, concert halls and festivals when dealing with secondary ticketing platforms. Secondary ticketing platforms have moved their business outside the EU and as a matter of fact escape from enforcement of European law for companies acting on the territory of the EU. In this way, even in countries in which the resale of tickets above face-value is prohibited², platforms continue selling tickets to EU consumers from a “safe haven”.

Pearle therefore welcomes the obligation for online platforms to establish a point of contact (article 10) and a legal representative (article 11) and to communicate these details on their

² This is the case in Portugal, Spain, France, Belgium, Norway, Denmark, Germany, Poland, Croatia



platform to facilitate direct communication with consumer representatives and Member States' authorities.

To define which platforms have to provide a representative within the EU, the draft proposal establishes the principle of a significant number of users of an online platform; in addition, the rules propose to look into the targeting of activities towards one or several Member States determined on the basis of all relevant circumstances. This principle should be further elaborated by the relevant authorities to prevent online platforms to be active on markets without being held accountable.

It has to be underlined, that within the EU, national consumer protection rules vary and a stepped-up cooperation between Member States is needed to protect consumers buying from an online platform established in another country. We therefore support cross-border cooperation among Digital Service Coordinators as mentioned in article 45.

We also think that the notice and action mechanism (article 14) and the principle of the trusted flaggers (article 19) are helpful instruments to support online platforms in identifying illegal activities. Beside the Digital Services Coordinator, Pearle suggests entrusting national consumer protection organisations with the task of trusted flaggers.

⇒ Pearle stresses the urgent need for enforcement to tackle illicit online secondary ticketing and better cooperation between Member States authorities in case the online platform is established in another country than the consumer and/or the live event.

6. Conclusions

In the context of the proposal for regulation on digital services act, Pearle underlines the particular need to fight illicit secondary ticketing.

In order to fight online secondary ticketing platforms reselling tickets higher than face-value, clear EU legislation, an ambitious strategic and operational framework and stepped-up enforcement measures (including taking down websites) are needed.

Secondary ticketing platforms often operate from a "safe haven" outside the EU on the European market. Pearle therefore welcomes the proposed changes to the e-commerce Directive and urges Member States authorities to step-up their cooperation to address unlawful practices related to cross-border secondary ticketing.



We expect the proposed rules on the Digital Services Act to create a safe online environment for consumers, artists and event organisers in the live performance sector.

On secondary ticketing, Pearle is partnering with FEAT, the Face-Value European Alliance for Ticketing.*

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