

# eu travel tech

Digital Services Act : upgrading the rules applicable to digital platforms

## Position Paper

In this paper eu travel tech presents its views on the aspects of the Digital Services Act relating solely with the e-Commerce Directive review. 20 years following the enactment of the eCommerce Directive<sup>1</sup>, eu travel tech is committed to engage in the on-going reflections around the reappraisal of the rules applicable to digital platforms. eu travel tech strongly defends the key cornerstones of the existing E-Commerce Directive, namely the limited liability and country of origin principles. A review of the legislation should take into account the evolution of the European economy, now widely digitalised, but also acknowledge the key role of the existing rules in the boom of the European e-commerce sector. Limiting the current fragmentation process of e-commerce rules, with differing applications at national level (especially visible for instance in the short-term rental sector) should be a key objective of this new initiative.

### THE DIGITAL SERVICES ACT SHOULD MAINTAIN THE KEY PRINCIPLES OF THE ECOMMERCE DIRECTIVE

- ✓ The Country of Origin Principle, cornerstone of the Digital Single Market, is essential for the seamless provision of online services, ensuring that platforms are not subject to 27 different legal regimes.
- ✓ The Liability exemptions for platforms ("**safe harbour**" principle), has been hugely important in enabling the growth and innovation of platforms: without actual knowledge of illegal activity or content, they should not be held liable for such content.
- ✓ The absence of a general obligation to monitor facts or circumstances indicating illegal activity has to be maintained, as any move toward such an obligation would prove impossible to implement.
- ✓ A clear identification of advertising messages by platform users remain very much needed, as shown by the discussions on the P2B Regulation. Transparency on platforms, especially in view of self-preferencing practices whereby a platform holds a dual role as a platform and competitor to other businesses within that platform and thereby has the ability and incentive to tilt the playing field in its favour, are key to protect consumers, especially in a mobile environment.

### HOWEVER, THEY SHOULD BE COMPLETED BY CLEARER OBLIGATIONS FOR PLATFORMS TO INCREASE LEGAL CERTAINTY

- ✓ **Establishing a "duty of care" for platforms, with specific obligations for sectors such as short-term rental.**

Eu travel tech welcomes the creation of a duty for platforms to take reasonable steps to avoid illegal contents to be hosted on their website without affecting the liability exemption for ISSPs. It is in the best interest of eu travel tech members to ensure customers have full confidence in the lawfulness of the contents they host on their platforms and to take any reasonable action in this regard. They are therefore already implementing a certain number of measures,

---

<sup>1</sup> Copyright Directive, Geoblocking Regulation, Platform to business Regulation Regulation

especially in the short term rental sector, which would fall within the scope of a duty of care. Such measures include:

- Mandatory display of registration numbers (where such registration schemes exist at national level) for all properties listed (example of the Portuguese registration scheme).
- Restrictions on the content fields of each listing

A well-defined duty of care would provide eu travel tech members with legal certainty for compliance purposes. Such provisions shall include a parallel obligation for suppliers to provide adequate and accurate information to platforms so as to allow them to perform their duty of care.

It is important when designing such obligations to avoid a “one size fits all” approach. Any obligations defined in a duty of care should differentiate between the different types of illegal activity and the different risk exposure linked to them. The contents on a short-term rental platform are, for instance, radically different from those to be found on a social media platform (hate speech, political messages...). Indeed, the main type of illegal activity that eu travel tech members’ deal with is ‘illegal’ short term rentals, whereby the providers of short term rental accommodations have not registered with authorities in line with local, regional or national requirements. The user-generated content found on our members’ platforms is purpose-limited (fraudulent properties, fake reviews and hate speech) and does not lend itself easily to illegal activity when compared to other types of platforms.

We believe that there is room to adopt specific solutions for specific sectors, and therefore call for the adoption, within the duty of care discussion, of specific obligations for the short-term rental sector. One option could be that the specific obligations take the form of an annex to the legislation (annex to be modified over time) in order to address efficiently the challenges it may raise in certain cities. The overriding objective of the duty of care framework should be to create a level playing field for all actors subject to the limited liability provision.

✓ Definition of clear responsibilities for all players

**Under today’s framework platforms are automatically held liable if they take any proactive measures to tackle illegal activity.** We believe this is counter-productive to platforms tackling illegal activity and therefore support a revised legal framework which would clarify **intermediaries’ responsibilities and that is also complemented by a well-defined duty of care principle.** We strongly support that the primary responsibility for illegal content should remain with the professional user to ensure they are compliant and not with the platform through which they intermediate their good or service. It would create perverse incentives if professional users did not have the responsibility to ensure their own legal compliance.

✓ Clarifying the notice and take down procedures

A clear and harmonised legal framework is needed for platforms to act efficiently against illegal contents (once they are made aware of them) while providing the best service for their customers, as opposed to the current fragmentation of rules across the Single Market. Notifications must be thorough and adapted for each sector: type of content to be removed shall be very specific with deadlines for takedown depending on gravity while being proportionate and feasible.

Eu travel tech would like to see more clarification on when it is assumed online platforms have actual knowledge and what does it mean to act expeditiously. The same way different business models and sectors have very different types of content, they also have different capacities to act expeditiously. We believe that an update to the notice and action procedures could be useful to clarify.

At present the e-Commerce Directive includes the obligation for platforms to take down illegal contents found on their platforms once they are made aware of its existence, in order to prevent

or terminate any infringement. However, the very general nature of the existing provision has for consequence a wide variety of interpretation of the Directive across Member States.

We believe that the type of content to be removed must be specific without any room for interpretation, and information on notifications must be thorough and contain as much detail as possible. The objective is to enable authorities to enforce the law instead of leading to a situation where ISSPs are expected to enforce the law.

In this regard, here too we support specific solutions for each sector, as such procedures would address very different types and scales of illegal activity/content. Therefore, different timeframes for takedown may be considered depending on gravity, and deadlines for takedown should be proportionate and feasible. Sector-specific rules would help tackle the current difficulties stemming from Member States implementing horizontal legislation differently, with additional obligations being imposed on platforms at national level, fragmenting further the digital single market.

#### ✓ Proportionate data sharing obligations

Under Article 15 of the e-Commerce Directive, Member States may establish obligations for online intermediation services providers to share data enabling those authorities to identify the persons responsible for illegal contents. It is of key importance to maintain and even precise further the legal framework for such a data-sharing obligation, to ensure a positive cooperation between platforms and authorities and avoid impractical and unreasonable requests.

Eu travel tech is not against increased data sharing but we believe any additional requests for data-sharing should be purpose limited, in line with the legal framework on data privacy and be proportionate.

Short-term rental platforms have agreed to share data on occupancy rates and guest numbers (in an aggregated format), allowing for more complete statistics on tourist accommodation around Europe, and for public authorities to better understand the development of the short-term rental market and support evidence based policies.

Where public authorities request data for tax purposes, the proposed new Directive on Administrative Cooperation in the field of Taxation (Directive 2011/16/EU) will establish a framework, formalising the exchange of information between online platforms and tax authorities.

### THE DSA IT IS ALSO AN OPPORTUNITY TO IMPROVE ENFORCEMENT OF THE EXISTING RULES

#### ✓ Emerging issues in the space of online advertising

Regulation and lack of enforcement today allows the biggest advertising companies in the world to blur the lines between advertisements and information to the final detriment of online users.

Recent independent researches in key European markets confirm that European consumers are not able to identify the nature of commercial links in search results. As an example, Mobile searchers who thought Google Flights was a generic search result (or were uncertain) occurred at high rates of 73% in Italy, 67% in Spain, 52% in France and 46% in Germany. Desktop searchers mistakenly believing Google Flights was a generic search result show similar findings.

The principle set forth in the eCommerce directive (Article 6 a), that each commercial communication should be clearly identifiable as such is not respected on the search engines. This lack of transparency not only affects fair competition but also undermines pluralism and unbiased access to information.

We recommend that policy makers consider limiting the placement and density of advertising displayed by search engines. This is already the case for television with the Audiovisual Media Services Directive (AVMSD) preventing consumers being exposed to more than 20% of advertising per day on television. Similar rules, duly adapted to the specificities of page results

display on, search engines, would give consumers better default access to organic search results and increased awareness of what constitutes an advertisement.

✓ Creating a EU regulatory oversight body to ensure harmonised approach across the EU  
As for any EU regulation, it is key to ensure the adequate enforcement of the new text across all EU Member States, which has proven to be a challenge for the eCommerce Directive. A solution could be to create an EU Regulatory Oversight body, independent from the Commission. Amongst other tasks, such an organisation would be responsible for the handling of the notification procedure, checking beforehand all the new national regulations having an impact on ecommerce cross border services. It would also ensure a coherent and consistent approach to a beefed-up duty of care. It would greatly contribute to ensure a harmonised implementation of EU law and to tackle the fragmentation of the digital single market. Such body shall have the adequate resources to fulfil its missions.

About eu travel tech

[eu.travel.tech](#) represents the interests of travel technology companies. eu travel tech uses its position at the centre of the travel and tourism sector to promote a consumer-driven, innovative and competitive industry that is transparent and sustainable. Our membership<sup>2</sup> spans Global Distribution Systems (GDSs), Online Travel Agencies (OTA), Travel Management Companies in business travel (TMCs) and metasearch sites.

---

<sup>2</sup> eu travel tech's members include Amadeus, Booking.com, eDreams Odigeo, Expedia Group and Travelport. Associate members include SkyScanner, and American Express GBT. Strategic Partners include Lastminute.com, etraveli, Trainline, Travix, Travelgenio, Hitrail, OAG and CWT.