

eu travel tech

Digital Services Act: upgrading the rules applicable to digital platforms

Position Paper

Eu travel tech welcomes the proposal for a Digital Services Act, which paves the way for a more responsible online environment, **in particular the European Commission's approach to keep the core principles of the eCommerce Directive with a proven track-record - such as the Country of Origin principle and the absence of a general obligation to monitor.** Many of the provisions go in the direction of increasing transparency, accountability and legal certainty

EU Travel Tech members consist of digital travel companies selling or advertising travel products and services to businesses and/or **consumers. Our members' content tends to pose very different risks compared to other types of digital business models, notably social media platforms or advertising-funded business models, where the incentives are very different.**

The content displayed by our members tends to be purpose limited and does not lend itself easily to illegal activity. Fraudulent properties, hate speech in consumer reviews and illegal short term holiday rentals are examples of the types of illegal content that our members come across in their businesses.

The current lack of legal clarity around illegal short term rentals has created a very antagonistic debate and eu travel tech looks to the DSA to provide much needed clarity in terms of how platforms should address and remove this type of illegal content.

In view of the horizontal nature of the DSA, which by and large treats all illegal content in the same way, we believe that it is important to bear in mind the very different types and risk profiles of illegal content that are covered by the proposed regulation.

Going forward, we see an opportunity to further enhance a risk-based approach that would support a thriving environment for all sectors present in the digital economy - beyond social media platforms - which ultimately will allow consumers to benefit from a more responsible digital market, consistent with the overall objectives of the proposal.

THE PROPOSAL SETS THE RIGHT TONE BY COMPLEMENTING THE E-COMMERCE DIRECTIVE WITH NEW RULES THAT WILL CREATE A SAFER AND MORE TRUSTED ONLINE SPACE, SUCH AS:

- ✓ The introduction of certain obligations to improve accountability and transparency, in particular the Good Samaritan clause (Article 6) and traceability of traders clause (Article 22). The balance attained between the Good Samaritan and the liability exemptions for platforms - which are vital for the growth and innovation of platforms – is especially welcomed.
- ✓ The harmonization of the Notice and action mechanism (Recital 41), necessary to address the current fragmentation of rules across the Single Market and to provide legal certainty around the removal of illegal content.
- ✓ Clarity on information- and data- sharing obligations. The text clarifies the data that authorities or Member States can request from digital platforms, making such requests more targeted and in line with the legal framework on data privacy. For instance, recital 32

clarifies that orders related to a group of users (service recipients) or order to provide aggregate information are not covered by the orders to act against illegal content or orders to provide information (Articles 8 and 9).

In addition, the proposal specifies that when issuing an order to provide information, authorities can only request data relating to specific individual recipients (Article 9 §1) as well as data already collected by the online platforms (Article 9 §2 (b)). The alignment with upcoming legislation is also contemplated, such as with the proposed new Directive on Administrative Cooperation in the field of Taxation (Directive 2011/16/EU), an important framework which will formalise the exchange of information between online platforms and tax authorities.

HOWEVER, THERE ARE OPPORTUNITIES TO INCREASE LEGAL CERTAINTY BY CLARIFYING CERTAIN PROVISIONS OF THE TEXT:

1. The definition of Very Large Online Platforms (VLOP) should distinguish between the different business models and their risk profiles.

The distinction made between online platforms and very large online platforms is purely based **on the size, through the number of “active users”**. We believe this definition shall be based on the type of business model, the related content hosted and the risk induced for the users. For instance, the way users interact on social media platforms and the risk exposure to illegal content (such as hate speech or terrorist content, just to name a few) are substantially different from the content that visitors find on an online travel platform, which, in essence, aggregates and displays data from business users based on contracts. The nature of this interaction and the difference in content is present regardless of the number of users on the platform.

While we see the over-all benefit of aligning the Digital Service Act and the Digital Markets Act proposals, it is important not to lose sight that they have different objectives and regulate different practices, therefore it is only natural for the scope to reflect those same differences.

2. The adoption of sectoral Codes of Conduct could improve the applicability of the rules. There is an opportunity to use the Code of Conduct instrument foreseen in the proposal (Article 35) to adopt specific solutions for specific sectors, without endangering the horizontal nature of the DSA. We propose establishing a Code of Conduct that details how specific obligations would apply to online accommodation platforms / short-term rental sector (STR).

As mentioned above, the contents on travel platforms, and in particular on a short-term rental platform, are radically different from other types of platforms. 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 or complied with other 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.

A Code of Conduct further defining specific provisions for the short-term rental sector and to support the proper application of the regulation would provide eu travel tech members and authorities with much needed legal certainty for compliance purposes. We propose in particular that the Code of Conduct for STR provides further guidance on the interpretation of the below concepts for accommodation platforms, allowing them to take reasonable and proportionate

steps to avoid illegal contents being hosted on their websites without affecting the liability exemption, always considering the limited risk of exposure to illegal content on their platforms.

- ✓ Clarifications to the liability framework for hosting services (Article 5) in particular the **definition of 'actual knowledge'**: The liability framework for hosting services refers to the **limited liability for platforms with 'no actual knowledge'** of the existence of illegal contents (Article 5, §1, (a)). In the same spirit, according to the Notice and action mechanism, a notice **applies when it is assumed platforms have 'actual knowledge or awareness' of illegal content**. We welcome more granularity about when it is considered that a STR platform has **'actual knowledge'**.
- ✓ Definition of clear responsibilities for all players: 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.

3. The territorial scope of orders against illegal content shall be further defined. The rules on orders against illegal content (Article 8) do not specify how the territorial scope of orders would apply, leaving room to interpret the dynamic between the country issuing the order and the country in which the service provider is established. It is crucial to clarify when, in which circumstances and who determines that content deemed illegal in one member state can also be made illegal in another member state or even across the EU.

4. The definition of online advertising shall not cover all marketplaces listings. The proposed definition is too broad, including all "information designed to promote the message of a legal or natural person [...] displayed against remuneration". As a consequence, it would cover almost all the contents displayed on online platforms with commission-based business models, such as marketplaces. For online travel distribution, this would mean that all the products/services displayed on online travel platform websites – be it hotels, flights, trains or rental cars, etc - would be considered advertising. We believe the online advertisement definition should focus on paid placements. As a result, only genuine ads displayed on websites, i.e., those that are paid to be viewed and not transacted, would be covered by this definition. Finally, the proposed transparency requirements for online advertising already exist for platform listings, covered either by Platform-to Business regulation (Regulation (EU) 2019/1150) or existing consumer law (Directive (EU) 2019/2161).

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 membership¹ spans Global Distribution Systems (GDSs), Online Travel Agencies (OTA), Travel Management Companies in business travel (TMCs) and metasearch sites.

¹ eu travel tech's members include Amadeus, Booking.com, eDreams Odigeo, Expedia Group, Skyscanner and Travelport. Associate members include American Express GBT, etravels and Tripadvisor. Strategic Partners include Lastminute.com, Trainline, Travix, Travelgenio and CWT.