

# eu travel tech

## Digital Services Act:

### Eu travel tech position paper for the inter-institutional negotiations

Eu Travel Tech fully supports the Digital Services Act (DSA) objectives to deliver a more responsible online environment. At the same time, certain provisions in the DSA could have unintended effects as they fail to take into account the very different types of risk profiles presented by online platforms. Such provisions are focused on problems originating from certain types of online platforms, such as goods marketplaces or social networks. Sector-specific consumer platforms, like those focused on travel and represented by EU Travel Tech, are operationally and functionally different than social media platforms and goods marketplaces in ways that largely forestall the harms targeted by the bill's new regime. Some of the provisions also extensively overlap with existing EU legislation, notably around consumer protection laws, raising concerns over duplication with existing laws.

As we move into the next phase of inter-institutional negotiations, eu travel tech urges the EU institutions to agree on rules that:

- 1) take into account the different business models that fall in scope of the DSA
- 2) consider the interplay with existing EU legislation and avoid duplication

With this in mind, we present here our views regarding the refinements that can be brought to the final text:

#### 1. The definition of advertisement (Article 2n and Recital 52)

**Position:** The DSA includes several obligations aimed at promoting greater transparency in online advertising, specifically Articles 24 (for online platforms) and 30 (for very large online platforms).<sup>1</sup> Although EU Travel Tech fully agrees that consumers have a right to know when they are presented with ads online, the DSA's proposed definition of "advertisement" could sweep in a wide range of information that consumers do not normally think of as advertisements. In fact, the proposal could sweep in any listing or other information that online travel intermediaries display to users in response to their travel searches—a result that would be inconsistent with existing EU law.

**To address these concerns, we call on EU policymakers to amend the Council's proposal on recital 52 as per below (proposed changes in red):**

Council's proposal	Eu travel tech proposed amendment
(52) (...)The requirements of this Regulation on the provision of information relating to advertisement is without prejudice to the application of the relevant provisions of Regulation (EU) 2016/679, in particular those regarding the right to object, automated individual decision-making, including profiling	(52) (...)The requirements of this Regulation on the provision of information relating to advertisement is without prejudice to the application of the relevant provisions of Regulation (EU) 2016/679, in particular those regarding the right to object, automated individual decision-making, including profiling

<sup>1</sup> The draft IMCO Report would impose additional obligations relating to online advertisements—see, e.g., Amendments 91 and 92.

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and specifically the need to obtain consent of the data subject prior to the processing of personal data for targeted advertising. Similarly, it is without prejudice to the provisions laid down in Directive 2002/58/EC in particular those regarding the storage of information in terminal equipment and the access to information stored therein. **Finally, this Regulation complements the application of the Directive 2010/13/EU which imposes measures to enable users to declare audiovisual commercial communications in user-generated videos. It also complements the obligations for traders regarding the disclosure of commercial communications deriving from Directive 2005/29/EC.**

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**Justification:** The European Commission [Guidance](#) on the Unfair Commercial Practices Directive (issued in December 2021), expressly endorsed a distinction between “search results” that are presented based on relevancy criteria that apply to results generally very different forms of advertising such as “paid placement” - where the platform receives payment for displaying a message or for ranking it in a specific position— or “paid inclusion” . This distinction shall not be put into question by the DSA.

If the proposed definition of an “advertisement” under the DSA proposal lead to all search results to be treated as “advertisements”, platforms that qualify as a Very large online platform would be required, under Article 30, to establish a separate database that would duplicate every listing included in the platform’s results pages over the prior 12 months. There is no conceivable consumer benefit to this burdensome requirement. Moreover, EU law already requires many online services to provide transparency on the main parameters they use to rank commercial messages.<sup>2</sup>

## 2. Very large online platforms (VLOPs): designation & obligations

### Designation process

**Position:** eu travel tech supports the Council’s approach to have the VLOPs designation process done via the delegated act (Article 25, point 3). Their proposal to adding additional specifications for designating VLOPs, i.e, beyond the number of active end users, and involving the Digital Services Coordinator of the establishment country in the designating of a VLOP is essential to take into account sector-specific differences.

**Justification:** The VLOP definition should incorporate flexibility that allows regulators and enforcers to, in making the VLOP designation, take into account the difference between sector-specific consumer platforms that are operationally and functionally different from

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<sup>2</sup> See, e.g., Regulation EU 2019/1150 (the Platform-to-Business Regulation) and Directive 2019/2161 (the updated Consumer Protection Directive).

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traditional social networks, marketplaces, app stores, and content sharing services, and more conducive to a safer digital environment, despite their user counts.

This flexibility recognises the inherent characteristics of travel and accommodations platforms that have and will continue to forestall the content-based harms targeted by the proposed regime. 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. Massive viral circulation and algorithmic amplification of content are aspects of social media platforms that do not translate to platforms like those that are members of eu travel tech simply because of the business focus and design choices made by eu travel tech members. Furthermore, content appearing on travel websites is, in essence, an aggregation and display of data from business users based on contracts that is otherwise subject to government oversight and scrutiny given its commercial nature.

## Obligations

**Position:** It is important that the VLOP obligations are enforceable, proportionate and adapted to the diverse set of platforms that are in scope. With this in mind eu travel tech believes that in many aspects the Council's text is more practical and implementable. Several of the European Parliament's additions should not be applied across the board to all online platforms, such as:

- Article 26, paragraph 1 - introductory part, stating that a risk assessment should be carried out before launching any new service;
- Article 26 – paragraph 1 – point a), stating that the risk assessment should extend to assess the possibility of content in breach of terms and conditions;
- Article 26, paragraph 2a ( new) and Article 27, paragraph 1a(new), requiring the involvement of representatives of recipients of the service, independent experts and civil society in the risk assessment and risk mitigation phases.
- Article 31, paragraph 2, mandating the extension of access to aggregate data for the total views and view rate of content prior to a removal, to organisations or associations.

**Justification:** All of these added requirements risk creating lengthy and burdensome processes without sufficient evidence of the benefits that they will generate and their impact on a safer online environment. Any risks assessment and risk mitigation processes should be specific to the online platform services' and proportional to the systemic risk they generate.

### **3. Clarification of the application of certain provisions to services marketplaces: traceability of traders, compliance by design and right to information**

**Position:** Certain provisions of the DSA are ill-adapted to services-based sectors, such as travel tech. We ask EU policymakers to amend these articles, either exempting services marketplaces or allowing for a possible waiver for certain platforms upon request. The nuances between the different business models and sectors must be reflected in the regulation in order to support proportionate, clear and enforceable rules.

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**Justification:** Although we support the objective of these provisions, they have been drafted with a view to provide solutions to issues that are specific to goods marketplaces and would not provide any benefit to users of services marketplaces.

Traceability of traders (Article 22, paragraph 6, European Commission proposal): We urge the reconsideration of the obligation on marketplaces to make the email address of the trader or the economic operator available to users, as this could result in disintermediation of the marketplace. In particular eu travel tech opposes Council's text which stipulates that the email address should be provided "at least on the product listing".

It would mandate online travel platforms to make available specific details of the trader or economic operator – such as the email address – to users, burdening consumers with information without adding benefits to their customer-experience. Online travel platforms take care of the customer support, once a hotel or flight has been booked, and including the contact details of the hotel or airline could confuse the consumer.

In addition certain provisions of the Traceability of Traders' Article appear designed for goods marketplaces rather than services. The requirement to obtain a self-certification by the trader committing to only offer products or services that comply with the applicable rules of Union law. Online travel platforms offer services for consumers to consume outside of the EU, services which are subject to the legislation of the country or region where they are used, and hence not subject to EU law.

Right to information (Article 22a Parliament text; Article 24c, Council text): the request to inform consumers about the illegality of a product or service that they have acquired in the last 6 months would carry little value in the case of the accommodation sector and none in the transport sector. The main reason for an accommodation listing to be considered illegal is the lack of registration with local or national authorities. However, this is by no means a sign that the property itself presents a risk for the consumer. Eu travel tech is fully in favour of removing those illegal listings and welcomes the European Commission announcement to tackle short-term rental specific issues in a proposal due in June 2022. However, informing the customers would only add an additional layer of administrative burden whilst harming those property owners who, in the meantime, have regularised their situation.

## 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>3</sup> spans Global Distribution Systems (GDSs), Online Travel Agencies (OTA), Travel Management Companies in business travel (TMCs) and metasearch sites.

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<sup>3</sup> eu travel tech's members include Amadeus, Booking.com, eDreams Odigeo, Expedia Group, Skyscanner and Travelport. Associate members include American Express GBT, etravelli, Trainline and Tripadvisor. Strategic Partners include Travix, Travelgenio and CWT.