**Digital Services Act - HOTREC proposals**

*HOTREC represents the hotel, restaurant and café industry at European level, bringing together 44 national associations representing the interest of this industry in 33 different European countries. The sector counts in total around 2 million businesses, being 99,5% small and medium sized. The industry provides almost 12,5 million jobs in the EU alone (2017). Together with the other tourism industries, the sector is the 3rd largest industry in Europe.*

*The COVID-19 pandemic has however led to the temporary closure of many hospitality businesses in Europe and travel restrictions have seriously affected tourism which is a major driver for the hospitality sector. It has experienced an unprecedented crisis since March 2020 to date.*

HOTREC welcomes the Digital Services Act (DSA) proposed by the European Commission in December 2020 and looks forward to contributing to the ongoing debate as the proposals are examined by European Parliament and the EU Member States.

**HOTREC sees the Digital Services Act as an essential move to step up the fight against illegal offers of products and services online.**

* The proposal put forward by the European Commission offers a strong starting point to reach this objective and HOTREC thus **urges EU decision makers to ensure that a strong framework is maintained**.
* Furthermore, HOTREC considers that **some improvements can be made to the proposal in order to ensure that illegal offers of short-term rental (STR) accommodation can be rapidly taken down**. Illegal offers of STR accommodation cause unfair competition with the highly regulated hotel sector and impact local policies and well-being. Local authorities typically establish specific rules for STR rentals (registration requirements, annual thresholds, social housing policies) and should therefore be [empowered by the DSA](https://twitter.com/HOTREC_EUROPE/status/1338523592691212305) and the provision of relevant data by STR platforms and hosts to address illegal rentals effectively and swiftly.
* HOTREC also believes that here may be scope to **ensure that online platforms share more and better data with their business users** and **address the issue of online brand bidding for advertising keywords**.
* HOTREC will support intentions, if voiced by some key policy decision makers, to introduce an **EU authority to oversee the implementation and correct functioning of the DSA**.

***HOTREC’s views are reflected hereunder with concrete proposals and justifications to improve the Digital Services Act and meet the above-mentioned objectives.***

**Article 7 – No general monitoring or active fact-finding obligations**

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| No general obligation to monitor the information which providers of intermediary services transmit or store, nor actively to seek facts or circumstances indicating illegal activity shall be imposed on those providers | No general obligation to monitor the information which providers of intermediary services transmit or store, nor actively to seek facts or circumstances indicating illegal activity shall be imposed on those providers, ***unless the information society service plays an active role in approving, modifying or editing the information issued by the recipient of the service.***  |
| *Justification: While the no general monitoring obligation is an important aspect of the Digital Services Act, platforms which have the capacity to shape content provided by a recipient of the service before its publication should be required to pre-emptively ensure that approved content does not break any laws.*  |

**Article 8 §2 – Orders to act against illegal content**

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| Member States shall ensure that the orders referred to in paragraph 1 meet the following conditions:(a) the orders contains the following elements:– a statement of reasons explaining why the information is illegal content, by reference to the specific provision of Union or national law infringed;– one or more exact uniform resource locators and, where necessary, additional information enabling the identification of the illegal content concerned;– information about redress available to the provider of the service and to the recipient of the service who provided the content;(b) the territorial scope of the order, on the basis of the applicable rules of Union and national law, including the Charter, and, where relevant, general principles of international law, does not exceed what is strictly necessary to achieve its objective;(c) the order is drafted in the language declared by the provider and is sent to the point of contact, appointed by the provider, in accordance with Article 10. | Member States shall ensure that the orders referred to in paragraph 1 meet the following conditions:(a) the orders contains the following elements:– a statement of reasons explaining why the information is illegal content, by reference to the specific provision of ***~~Union or national~~*** law infringed;– one or more exact uniform resource locators and, where necessary, additional information enabling the identification of the illegal content concerned;– information about redress available to the provider of the service and to the recipient of the service who provided the content;(b) the territorial scope of the order, on the basis of the applicable rules of Union and national law, including the Charter, and, where relevant, general principles of international law, does not exceed what is strictly necessary to achieve its objective;(c) the order is drafted in ***English or*** the language declared by the provider and is sent to the point of contact, appointed by the provider, in accordance with Article 10. |
| *Justification: (a) Any infringement of a law applicable across the Union, nationally, regionally or locally should provide a sufficient basis for a statement of reasons.* *(c) The requirement to draft the order in the language declared by the provider may prove to be a significant burden for the removal of illegal offers of content. It should be possible as an alternative to draft the orders in English as this is the most widely spoken language in the Union.*  |

**Article 19 – Trusted flaggers**

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|  | ***8. Notices submitted by local, regional and national authorities should be processed and decided upon with an equivalent degree of priority and delay as the notices provided by entities which have been awarded a trusted flagger status*** |
| *Justification: While the introduction of the trusted flaggers scheme is welcome, notices provided by public authorities should be treated at the very least the same way as those provided by designated trusted flaggers. The contrary would potentially award private entities with superior law oversight powers as public authorities.*  |

**Article 22 (new §8) – Traceability of traders**

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|  | ***8. An online platform will systematically require consumers to provide their consent in order to transmit navigation data, for traceability purposes and in line with the requirements of Directive 2002/58/EC, to the trader covered by such navigation. Data for which consent has been provided by consumers should be provided to the trader concerned on a regular basis or upon request, in line with data protection rules and not subject to any conditions by the online platform.*** |
| *Justification: Recipients of the service do not have systematic access to anonymised user data regarding visits to webpages presenting their products, services, company or brand. Such access would enable recipients of the service to improve their online marketing approach and strategy and offer better offers to consumers.*  |

**Article 22 (new §9) – Traceability of traders**

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|  | ***9. An online platform will systematically transmit relevant information and the coordinates of users to traders, where such data is necessary for the realisation, in the best possible conditions, of the transaction or the provision of the service by the trader. This transmission of data shall occur as soon as the transaction is concluded by the consumer, or that the service is provided. The transmission of such data shall be in line with data protection rules and not subject to any conditions by the online platform.***  |
| *Justification: Client-related coordinates and information represent data which enable the recipient of the service to offer a more personalised and well-adapted service that better responds to expectations. However, many online platforms do not transmit transaction-generated data to the recipient of the service, which undermines the latter’s capacity to optimise the experience for the consumer. This is often the reason why clients find that the quality of a service acquired via an online platform is degraded compared to a service acquired directly with the recipient of the service.*  |

**Article 25 (new) – Prevention of brand bidding in online advertising via search engines**

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|  | ***Traders may restrict the use of their brand names and trademarks as keywords in search engine advertising by online platforms.***  |
| *Justification: The DSA should clarify that in general a trademark owner can lawfully prevent use that constitutes “free riding” on the owner’s investment, that dilutes the character of its mark, or that tarnishes its reputation. Such harms can readily occur through massive pre-emptive advertising/SEA bidding by online intermediaries that diverts consumer searches for a particular brand. In the online distribution of hotel rooms, platform use of businesses’ trademarks frustrate the basic workings of the information/online economy, because large platforms can overwhelm others in online marketing spending* |

**Article 45 – Cross-border cooperation among Digital Services Coordinators (§1)**

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| 1. Where a Digital Services Coordinator has reasons to suspect that a provider of an intermediary service, not under the jurisdiction of the Member State concerned, infringed this Regulation, it shall request the Digital Services Coordinator of establishment to assess the matter and take the necessary investigatory and enforcement measures to ensure compliance with this Regulation. | 1. Where a Digital Services Coordinator has reasons to suspect that a provider of an intermediary service, not under the jurisdiction of the Member State concerned, infringed this Regulation, it shall request the Digital Services Coordinator of establishment to assess the matter ***urgently*** and take the necessary investigatory and enforcement measures to ensure compliance with this Regulation. |
| *Justification: Cooperation between Digital Service Coordinators must be treated with utmost urgency to ensure smooth implementation of this Regulation.*  |

**Article 45 – Cross-border cooperation among Digital Services Coordinators (§4)**

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| 4. The Digital Services Coordinator of establishment shall, without undue delay and in any event not later than two months following receipt of the request or recommendation, communicate to the Digital Services Coordinator that sent the request, or the Board, its assessment of the suspected infringement, or that of any other competent authority pursuant to national law where relevant, and an explanation of any investigatory or enforcement measures taken or envisaged in relation thereto to ensure compliance with this Regulation. | 4. The Digital Services Coordinator of establishment shall, without undue delay and in any event not later than ***~~two months~~ one month*** following receipt of the request or recommendation, communicate to the Digital Services Coordinator that sent the request, or the Board, its assessment of the suspected infringement, or that of any other competent authority pursuant to national law where relevant, and an explanation of any investigatory or enforcement measures taken or envisaged in relation thereto to ensure compliance with this Regulation. |
| *Justification: Cooperation between Digital Service Coordinators must be treated with utmost urgency to ensure smooth implementation of this Regulation.*  |

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