Trustpilot

Trustpilot submission

TRIS notification on Chapter IV ("Combating False Reviews") of the draft Italian Government regulation on small and medium-sized enterprises

21 March 2025

This document sets out Trustpilot's submission to the TRIS process

On behalf of Trustpilot A/S "Trustpilot", we appreciate the opportunity to provide input to the European Commission's TRIS procedure relating to Chapter IV ("Combating False Reviews") of the Italian Government's annual draft law on small and medium-sized enterprises ("Italian Bill"). This response focuses on the potential impact Chapter IV of this proposed law could have in the EU market, with specific regard to the EU Treaties and EU legislation.

Introduction to Trustpilot

Trustpilot was founded in Denmark in 2007, where it is still headquartered to this day. A European tech success story, we are now a global platform with Italy a priority market for our business.

Trustpilot is not a tourism-specific reviews platform. However, we host reviews for businesses across the economy. As such, Trustpilot will be impacted by the proposed Italian Bill with respect to the reviews we host which are related to tourism businesses located in Italy.

Trustpilot began with a simple yet powerful idea that is more relevant today than ever — to be the universal symbol of trust, bringing consumers and businesses together through reviews. Trustpilot is an open, independent, and impartial online reviews service that helps consumers make the right choices, and businesses to build trust, grow and improve.

Genuine, honest and real experiences shared online are invaluable, both to the people who write and read them, and to the businesses who can use them to understand their customers and improve their offerings. In turn, this helps to stimulate competition as consumers can voice their views and discover new businesses, whilst businesses of all sizes can hone their products and services, and attract new customers. In respect to this latter point, review platforms can be used as a source of "free" promotion for businesses, as online reviews surface and amplify word of mouth from their customers to help prospective customers. It is important that the integrity of online reviews is upheld so that the benefits can be fully realised for both consumers and businesses, as well as to the wider economy.

The Italian Government's proposed law

According to the Italian Government, the publication of false online reviews has become an increasing concern, as consumers' purchasing decisions are often influenced by online ratings.

The Italian Bill seeks to address the problem by enacting rules aimed at ensuring the authenticity of the reviews published relating to the tourism sector. These measures are intended to contribute to enhancing the transparency and reliability of the digital market, while safeguarding consumers from misleading influences and providing them with a trustworthy basis for their purchasing decisions. To achieve this objective, Chapter IV of the Italian Bill establishes very strict criteria for publishing tourism related reviews online, which significantly diverge from EU law and principles, as further explained below.

Whilst we strongly agree with the intent of the Italian government to tackle the issue of fake reviews, this Bill creates a number of concerns which both risk unintended consequences for businesses and consumers, as well as creating issues in the EU market given incompatibility with EU general principles and legislative acts.

Our response will focus first on the impact the Italian Bill could have in the EU market, with specific regards to the EU Treaties and EU legislation. After which, we will highlight wider concerns and considerations in relation to the Bill.

Considerations in relation to EU Treaties and EU legislation

A. The Italian Bill negatively affects the freedom to provide services under Article 56 of the TFEU and is also not compatible with the "country-of-origin" principle under the E-Commerce Directive

In our view, the implementation in Italy of specific additional requirements on platforms that host consumers' reviews may ultimately alter the level playing field and diminish competition amongst review hosting providers. The requirements of the Italian Bill could, in reality, result in either (a) preventing small and medium-sized enterprises from entering the market to provide reviews; or even (b) put them out of business if they are not able to bear the additional costs entailed by Articles 12 and 13 of the Italian Bill.

Such aspects would imply a violation of (i) Article 56 of the TFEU; and (ii) of the country-of-origin principle enshrined under Article 3 of the E-Commerce Directive. All these EU legislative instruments are essential to ensure the proper functioning of the EU single market and economic interactions between Member States (see also, B, page 4).

To consider this in more detail - firstly, Article 56 TFUE provides that *"(…)* ***restrictions on freedom to provide services within the Union shall be prohibited*** *in respect of nationals of Member States who are established in a Member State other than that of the person for whom the services are intended."*

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Coherently, Recital 22 of the E-Commerce Directive provides that *"in order to effectively guarantee freedom to provide services and legal certainty for suppliers and recipients of services, such* ***information society services should in principle be subject to the law of the Member State in which the service provider is established****."*

Consistently with Recital 22 of the E-Commerce Directive, Recital 2 of the Digital Services Act (DSA) outlines one of the purposes of the Regulation, which is aimed at countering *"diverging national laws [that] negatively affect the internal market, which […] comprises an area without internal frontiers in which the free movement of goods and services and freedom of establishment are ensured, taking into account the* ***inherently cross-border nature of the internet****, which is generally used to provide those services"* (emphasis added).

The introduction of additional obligations for Italy on platforms hosting tourism related reviews would indeed result in a barrier to entry, or in **an excessive restriction** on the **freedom to provide services** by operators established in other Member States.

Should the Italian Bill become law, review platforms intending to begin operating in Italy or wishing to continue to do so will be forced to comply with more obligations than those applicable in the European Union at large.

As a second point, this scenario also leads to **an infringement of the principle of the *"country of origin."*** According to Article 3 of the E-Commerce Directive, service providers shall only be subject to the laws and jurisdiction of the authorities of the Member State of establishment, and not to the different laws and authorities of other Member States in which they happen to provide their services.

Member States may only take measures to derogate from the *"country of origin"* principle if certain conditions provided for under Article 3, paragraph 4 of the E-Commerce Directive are met.[1]

In particular, any such measure shall be targeted to a specific advisor and be necessary for one of the following reasons: *"public policy, in particular the prevention, investigation, detection and prosecution of criminal offences, including the protection of minors and the fight against any incitement to hatred (…), the protection of public health, public security, (…), the protection of consumers."*

[1] Court of Justice of the European Union, Judgment no. C-376/22, Google Ireland Limited, Meta Platforms Ireland Limited, Tik Tok Technology Limited c. Kommunikationsbehorde Austria (KommAustria), par. 60: "*Article 3(4) of Directive 2000/31 must be interpreted as meaning that general and abstract measures aimed at a category of given information society services described in general terms and applying without distinction to any provider of that category of services do not fall within the concept of measures taken against a 'given information society service' within the meaning of that provision*."

However, any such measure shall also be **necessary** and **proportionate** to the objective(s) pursued. This is yet another foundational pillar of the E-Commerce legislation that has not been affected, but rather reinforced by the DSA.[2]

In this respect we would argue that a number of measures in this Bill are not necessary given existing EU law on reviews. Specifically, the UCP Directive[3], as amended by the EU Directive 2019/2161 (Omnibus Directive), already imposes a transparency obligation on economic operators showing reviews on their platforms and introduces forbidden unfair practices specifically concerning reviews[4].

Consequently, a number of the measures provided by the Bill appear disproportionate to the objectives pursued since the same objectives are already addressed by the content of the UCP Directive - for example:

- **Requiring consumers to leave a review within 15 days of their experience** - this time frame is arbitrary and we would note that many holidays can last longer than 15 days.
- **Requiring consumers to meet ID requirements to submit a review** - increased verification requirements necessitates the need for businesses to process greater amounts of personal data, some of which may be sensitive personal data in the context of verification. This is arguably disproportionate for the purposes of leaving a review about an experience in the tourism sector. Requiring someone to verify and share their ID with a platform to leave a review about, for example, a 60 minute hop-on-hop-off tourist bus in a city, is a significant barrier for consumers. If platforms or third parties are collecting and storing this information, it feels disproportionate to secure and process it for the purpose it was collected for.
- **The fake reviews landscape** - effective laws are already in place at the EU level, the focus should be on the effective enforcement of those. Evidence we have seen suggests that fake reviews are an issue that platforms need to tackle, but many already have safeguards in place which are continually evolving. Voluntary Transparency

[2] See, opinion of the AG Spzunar, in Court of Justice Case N° C-376/22, Google Ireland Limited, Meta Platforms Ireland Limited, Tik Tok Technology Limited c. Kommunikationsbehörde Austria (KommAustria), **par. 8** and **fn. 10**. See also, id., par. [65]: *"the nature of a measure by which a Member State of destination may derogate from the country-of-origin principle can be determined on the basis of the substantive and procedural conditions laid down in Article 3(4)(a) and (b) of Directive 2000/31"*.

[3] Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 on unfair commercial practices, https://eur-lex.europa.eu/eli/dir/2005/29/oj/eng.

[4] See Article 7, paragraph 6, of the UCP Directive: "*Where a trader provides access to consumer reviews of products, information about whether and how the trader ensures that the published reviews originate from consumers who have actually used or purchased the product shall be regarded as material.*"
See also Articles 23(b) and 23(c) of Annex I to the UCP Directive, respectively considering as unfair practices the following ones: "*Stating that reviews of a product are submitted by consumers who have actually used or purchased the product without taking reasonable and proportionate steps to check that they originate from such consumers.*" and "*Submitting or commissioning another legal or natural person to submit false consumer reviews or endorsements, or misrepresenting consumer reviews or social endorsements, in order to promote products.*"

Reporting undertaken by platforms including Trustpilot suggests that the problem of fake reviews is not rapidly increasing.

As a consequence, in our view this Bill is not necessary to achieve the desired end and imposes a burden that is excessive in relation to the objective sought to be achieved that is already covered by other effective EU legislative acts addressing the same purpose.

The Italian Bill would thus be at odds with the *"country-of-origin"* principle set out in Article 3 of the E-Commerce Directive, because it would impose additional general and abstract obligations on service providers that intend to offer their services in Italy or intend to continue to do so. Following the entry into force of the Italian Bill, service providers established in any other Member State would indeed be obliged to abide by their national legislation *and* Italian legislation.

We conclude that the Italian Bill raises extremely high competition barriers within the internal EU market, imposes obligations that contradict the very nature of the legislation under both the E-Commerce Directive and the DSA, and negatively restricts the freedom to provide services under Article 56 TFEU.

B. The Italian Bill conflicts with Articles 8 and 9 of the Digital Services Act (DSA) and violates the principle of proportionality and freedom to conduct business under Article 16 of the Charter of Fundamental Rights of the European Union

A further issue, with respect to Articles 13(2) and 15 of the Italian Bill, is the infringement of both Articles 8 and 9 of the DSA and the principle of proportionality. This is because these Articles in the Italian Bill seek to impose an overarching monitoring obligation, without taking into account express prohibition of imposing such an obligation pursuant to the rules governing hosting providers liability under the DSA. Additionally, the Italian Bill limits the freedom to conduct business resulting from a combined reading of Articles 16 and 52 of the EU Charter of Fundamental Rights.

To explore this in further detail - Article 8 of the DSA stipulates that providers of intermediary services cannot have imposed on them a general obligation to monitor the information they transmit or store, or to actively seek facts or circumstances indicating illegal activities.

Article 8 of the DSA relies upon the interpretation that the Court of Justice of the European Union provided on Article 15, paragraph 1, of E-Commerce Directive (followed by the DSA) in judgement No. 821/2021 of October 3, 2019, in the case *Eva Glawischnig-Piesczek v Facebook* Ireland Limited.[5] In its judgement, the Court of Justice held that Member States cannot impose

[5] Court of Justice of the European Union, Judgement N° 821/2021 of October 3, 2019, in the case *Eva Glawischnig-Piesczek v. Facebook* Ireland Limited.

an oversight obligation on hosting providers, unless "*a **specific case***" occurs (for example, when a court has published an injunction regarding a specific piece of content on the condition that the content itself has already been **identified** and **declared as unlawful**).

Article 8 of the DSA accordingly prevents Member States and public authorities from imposing measures that essentially place **general oversight obligations** on providers of intermediary services.

The DSA was crafted around such a prohibition (*see*, Recital 30) and seeks to ensure the greatest possible **harmonisation** as to the due diligence requirements for providers of intermediary services, including on measures that they should implement to counteract illegal or misleading content. However, **no provision was intended to impose a general oversight obligation**.

Against this backdrop, it becomes clear that, in the Italian Bill, forcing platforms hosting reviews to *"identify the user submitting the review and (to) verify that the review is reliable and comes from a consumer who has actually used or purchased the product, benefit or service"* (at Article 12(1)) is an ex-ante oversight obligation, tantamount to a general obligation to monitor the information hosted.

Indeed, platforms hosting reviews willing to operate in Italy would be required to set up complex identification procedures and verification systems. To this point, the proposed introduction of these additional requirements is likely to prevent new review platforms from entering the market.

It may not be feasible for small and medium enterprises – and all the more for start-ups – to invest significant amounts of time and money into these systems. Such a barrier would favour larger online platforms, which are more equipped financially and (a) have already introduced content moderation policies; (b) have the economic resources to enforce them; and (c) have already sufficient staff to implement their policies and adapt to regulatory changes. This is potentially damaging to the competitive review landscape - risking diminishing consumer and business choice.

Additionally, Article 9 of the DSA establishes that providers of intermediary services are expected to take action upon the receipt of an order to act against one or more specific items of illegal content.

Such an order must include, *inter alia*, (a) a statement of reasons explaining why the information is illegal content, by reference to one or more specific provisions of Union law or national law in compliance with Union law; and (b) clear information enabling the provider of intermediary

services to **identify** and **locate** the illegal content concerned, such as one or more exact URLs and, where necessary, additional information.

The procedure set forth under Article 9 of the DSA is designed to ensure that an independent third party (*i.e.*, a judge or a public authority) assesses the legitimacy of a request for removal and provides accordingly, in strict accordance with the principle of proportionality.

In sharp contrast with Article 9 of the DSA, Article 13(2) of the Italian Bill empowers *"the legal representative of the reviewed facility or their delegate […] to request the removal of reviews concerning them if the author has not used the reviewed good or service, or if the reviews are misleading, untrue or exaggerated."*

Setting aside the vagueness of the wording, this provision does not specify in which circumstances and upon which order, platforms hosting reviews will be required to intervene. If no explanation is provided on how the legal representative of the facility or their delegate are required to present their order to remove the review, or to identify and locate the review itself, this may impose an obligation on the platform to action content without an ad-hoc order from the judge or the public authority.

Furthermore, Article 15(1) of the Italian Bill requires the Italian Communications Authority (AGCOM) – acting as the national coordinator of digital services – to adopt codes of conduct aimed at regulating the role of online intermediaries in the fulfilment of the provisions of the Italian Bill.

Meanwhile Article 15(3), sets out that intermediaries would be obliged to implement technologically appropriate means to *"prove the identity of the consumer for the purpose of submitting the review," "ensure that published reviews come from consumers who have used the service or the product," "ensure reviews are sufficiently detailed," "regulate the removal of reviews"; "enable or facilitate the detection of fraudulent activities."*

These provisions run in opposition to the prohibition against imposing a general monitoring obligation (see Article 8 of the DSA), transfer to a private entity a power that – by operation of law – is exclusively reserved to judges or public authorities (see Article 9 of the DSA) and does so in a manner that is patently disproportionate.

Platforms hosting reviews would be forced to actively monitor the behavior of users online to identify illegal activities, a conduct which, once again, would be in clear infringement of Article 8 of the DSA which precludes the imposition of a general obligation on providers.

The Italian Bill would indeed require platforms hosting reviews to carry out a continuous and expensive monitoring of user activity instead of intervening when required to do so. It would also risk eliminating review ratings and feedback that are shorter in length, but not necessarily any less valid, and increase the level of effort and the amount of friction involved in writing a review, since consumers would have to meet certain requirements regarding detail. Where consumers receive nothing in return for their efforts, they may be deterred from providing their feedback which would be both detrimental to consumers and businesses given the benefits they derive from access to reviews.

Furthermore, as anticipated above, the Italian Bill is also incompatible with the **principle of proportionality**. A restriction to Article 56 TFEU is only justified if it supports one of the grounds listed in Article 52 TFEU (public policy, public security or public health) provided that the measure in question is necessary, proportionate, and adapted to the objective pursued.

Here, as a matter of fact, introducing a general obligation to monitor reviews upon service providers imposes a burden on platforms hosting reviews that is far beyond what is necessary to achieve the desired result and is also excessive in relation to the objective the Italian Bill seeks to achieve. In this respect, while it is true that the purpose of the Italian Bill is not illegitimate in and of itself as the Bill intends to counter *"the phenomenon of false reviews and to protect consumers from the risks and constraints arising from them by enhancing transparency and ensuring a fairer digital ecosystem"* there are better and less burdensome means to this end, such as those specifically provided for in the DSA.

Ultimately this could risk creating an imbalance between consumers and businesses, damaging trust in reviews and deterring consumers from providing honest feedback.

Finally, the Italian Bill would also result in unjustified and disproportionate interference with the freedom to conduct business, as made clear by a combined reading of Articles 16 and 52 of the EU Charter of Fundamental Rights. This interference would specifically impact the business model and investments arising with respect to the provision of the same service in different EU Member States.

Additionally in its application, Article 13(2) of the Italian Bill may also persuade platforms hosting reviews to over censor consumer views by removing any review which the legal representative of the reviewed facility flags as *"misleading, untrue, or exaggerated"* to minimise risk. This assessment would be subjective and may expose the platforms to spurious legal actions brought by the legal representative of the reviewed facility if they are dissatisfied with the decision of the platform not to remove a specific review.

We conclude that the Italian Bill imposes obligations that contradict the very nature of the DSA, are not proportionate to the fulfillment of the desired end and limit the freedom to conduct a business.

C. The Italian Bill is incompatible with EC Directive 2005/29 (Unfair Commercial Practices) as amended by EU Directive 2019/2161 (Omnibus Directive) and in violation of the principles of effectiveness and equal treatment

The Italian Bill violates Articles 1, 3 and 4 of the UCP Directive as it restricts the freedom to provide services in the EU market, introducing different and additional provisions for Italian operators in the catering and tourism sectors.

Article 1 of the UCP Directive states that the purpose of the Directive is to *"contribute to the proper functioning of the internal market and the achievement of a high level of consumer protection by* ***harmonising the laws, regulations and administrative provisions of the Member States*** *concerning unfair commercial practices harming consumers' economic interests."* The Directive is clearly aimed at granting full harmonisation in the EU in the field of unfair commercial practices to grant legal certainty to both consumers and businesses.

The intention to introduce a **common framework** applicable in all Member States for unfair business practices was already apparent from the proposal[6] made by the European Commission in 2004. In this, the European Commission plainly stated that *"the directive contains a general prohibition that will replace the divergent general clauses and principles currently in place in member States, and will establish a common EU-wide framework that will greatly simplify the legal environment in which professionals and consumers operate, as requested by many respondents."*

The European Commission also held that:

> *"[The UCP Directive] contains an internal market clause which provides that traders have to comply only with the requirements of the country of origin and prevents other Member States from imposing additional requirements on those traders who do so (i.e. mutual recognition). This is needed to ensure that traders have the legal certainty they need to deal with consumers crossborder without imposing undue burdens on them.*
>
> ***The Member States will be obliged to ensure that traders established in their territories comply with their national provisions*** *regardless of whether the consumers targeted or reached by their commercial practices reside in their territory.*

[6] Proposal for a Directive of the European Parliament and of the Council concerning unfair business-to-consumer commercial practices, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2003%3A0356%3AFIN.

It fully harmonises EU requirements relating to unfair business-to-consumer commercial practices and provides an appropriately high level of consumer protection.

*This is needed to address the **internal market barriers** caused by divergent national provisions and to provide the necessary support to consumer confidence to make a **mutual recognition** approach workable. **Member States will not be able to use the minimum clauses in other directives to impose additional requirements in the field co-ordinated by this directive.**"*

To ensure the fulfillment of these objectives, Articles 3 and 4 of the UCP Directive, read in conjunction with Recitals 5, 12 and 13, make it clear that Member States may not adopt stricter rules in the field of unfair commercial practices than those provided by the UCP Directive unless so permitted by the UCP Directive itself.[7]

This principle has been confirmed by the Court of Justice of the European Union in several rulings (see, *inter alia*, the ***Total Belgium* case**).[8]

The Italian Bill impinges on such principles of European Union law that have since offered guidance on the implementation of the UCP Directive as it imposes more stringent obligations on economic operators where the UCP Directive prevents Member States from doing so.

Article 3 of the UCP Directive does grant Member States the right to provide stricter requirements on unfair business practices, but only in relation to financial services and immovable property: the Italian Bill would instead introduce additional provisions on those established in the UCP Directive in the field of false reviews, thereby infringing the UCP Directive itself.

Indeed, with regard to the discipline of false reviews, the UCP Directive (as amended by Directive 2019/2161)[9] merely imposes a transparency obligation on economic operators showing reviews on their platforms, qualifying as material to consumers the information about *"**whether and how** the trader ensures that the published reviews [of a product] originate from consumers who have actually used or purchased the product."*

Instead, the Italian Bill would force platforms hosting reviews to *"**verify** that the review […] comes from a consumer who has actually used or purchased the product, benefit or service"*

[7] EU Commission, Commission Notice No. 2021/C 526/01: Guidance on the interpretation and application of Directive 2005/29/EC of the European Parliament and of the Council concerning unfair business-to-consumer commercial practices in the internal market, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=oj:JOC_2021_526_R_0001.
[8] Joined Cases C-261/07 and C-299/07 [2007] VTB-VAB NV v Total Belgium NV and Glatea BVBA v Sanoma Magazines Belgium NV, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:62007CJ0261
[9] Directive (EU) 2019/2161 of the European Parliament and of the Council of 27 November 2019, https://eurlex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32019L216.

and to remove any review that is not compliant with this requirement, thereby violating Articles and 4 of the UCP Directive.

In addition, insofar as the Italian Bill introduces more stringent obligations for Italian operators in the catering and tourism sectors, it will result in a breach of the principles of equal treatment which is one of the fundamental principles of European law. This principle requires that similar situations should not be treated differently and that different situations should not be treated equally, unless such treatment is objectively justified.[10]

Finally, the Italian Bill may lead to a situation of objective uncertainty for economic operators, as they will no longer be able to refer to the provisions contained in the UCP Directive and be confident in their application throughout the single market. Rather, the operators would instead be required to understand and apply the content of diverging provisions in national law applicable in a specific market, as well as any additions and amendments that may affect them over time.

This circumstance is all the more concerning as the Italian Bill requires Italian administrative authorities to implement guidelines and codes of conduct to supplement the Italian Bill: any such guideline or code of conduct will certainly introduce more technical complexities, thereby further distancing Italian law from European Union law.

Further to this, we would also note that the European Commission is already in the process of developing a voluntary Code Of Conduct for Online Ratings and Reviews for Tourism Accommodation. In light of the points made above, we note this as being a more conducive approach that not only builds in flexibility, but also accounts for the diversity of the different services in scope. This has been a highly collaborative piece of work, inviting input from a range of different perspectives - the tourism industry, consumer groups, online review platforms and other stakeholders. Trustpilot has been an active participant in these discussions. The development of this voluntary Code adds a further dimension where the proposed Italian Bill risks fragmenting the approach being taken across the EU market.

In conclusion, we raise our concern that the Italian Bill will work counter to the UCP Directive because it violates the EU harmonisation principle enhanced by the EU with the UCP Directive itself and, as a consequence, with the principles of effectiveness and equal treatment. Indeed, the Bill imposes additional obligations on Italian providers of the catering and tourism sectors in an area where existing European Union law already makes provisions, and outside of the exceptions for financial services and immovable property. Whilst the EU aims to create the

[10] See to this effect CJEU, 8 October 1980, Uberschär, Case C-810/79, paragraph 16 and CJEU, 16 December 2008, Arcelor Atlantique, Case C-127/07, paragraph 23.

same level playing field between economic operators with the UCP Directive and its voluntary Code of Conduct for Online Ratings and Reviews, this Bill runs contrary to this.

D. The Italian Bill infringes Article 11 of the EU Charter of Fundamental Rights and Article 10 of the European Convention on Human Rights

We would also raise that the Bill is incompatible with elements of the EU Charter of Fundamental Rights and the European Convention on Human Rights.

Article 10 of the European Convention on Human Rights (the content of which is identical to that of the EU Charter of Fundamental Rights) provides that *"Everyone has the right to **freedom of expression**. This right shall include freedom to **hold opinions** and to **receive** and **impart information and ideas without interference** by public authority and regardless of frontiers."*

Against this backdrop, Article 13 of the Italian Bill provides that consumers shall *"issue their reasoned review no later than fifteen days from the date of use of the product or service."* This term is both arbitrary and overly restrictive, but also completely unrelated to the EU's general principles of consumers' protection. Requiring consumers to express an opinion on a product, benefit or service within such a restricted timeframe can be regarded as limiting both consumers' freedom to operate online and their freedom of expression.

This is not only contrary to the general principles of EU law at large and with Article 10 of the European Convention on Human Rights aimed at the protection of consumers, but also to Article 11 of the EU Charter of Fundamental Rights, which affords everyone the right to freedom of expression *"without interference by public authority."*

Moreover, as mentioned, the Italian Bill requires that only consumers who demonstrate *"the actual use of services or benefits"* will be allowed to submit a review.

If the Italian Bill is implemented, the risk is that people who have not purchased a product or service (thus cannot provide evidence thereon), but still had a genuine experience with the business and want to voice it (e.g., a couple that went to visit a friend in a hotel, eating at the hotel's restaurant at the friends' expense, or a consumer who discussed a potential booking with a hotel over the phone and then decided not proceed with the booking but still had a genuine experience of the customer service) would not have any possibility to write a review about it. This would seriously hamper freedom of expression as well.

Additionally, the Italian Bill requires the review to *"be sufficiently detailed and responsive to the type of product used or the characteristics of the facility that offers it."* Even in this provision a potential violation of the freedom of expression of the user may be envisaged.

For example, if the consumer is interested in leaving a short comment about either a hotel or a restaurant, without sharing all the details of their experience (for instance, to preserve their privacy), they will risk having the review removed for not being compliant with Article 13 of the Italian Bill.

This may well disincentivise consumers from leaving reviews as they would feel that their freedom of expression has been unduly restricted by such an action. As set out previously, this would also increase the level of effort and the amount of friction involved in writing a review, since consumers would have to meet certain requirements regarding detail.

These concerns become even more serious when an international perspective is adopted. For example, if a Danish or Portuguese consumer who visits a facility in Italy wants to write a review after returning to his/her home country, they may find it especially difficult to do so because of (a) the arbitrary and excessively limited deadline identified by the Italian Bill and (b) the procedures for verifying his/her identity and to prove that he/she has actually made use of the service. This barrier to international consumers could be further heightened if these identity requirements are based around Italian e-identity procedures which could be particular to Italian residents.

Another important aspect in this regard is that it is possible that, if a platform is not able to assess whether a review meets the requirements of the Italian Bill or not, it would simply decide not to allow the review's publication or may remove it outright.

This circumstance would result in obvious detriments to the freedom to *"hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers"* under Article 10 of the European Convention on Human Rights and, although in a non-direct way, would also negatively affect competition among the facilities active in the European Union that users have the opportunity to review.

Reviews are a powerful tool for businesses to learn from direct consumer feedback which they can harness to improve and grow. Additionally, reviews can also help newer and smaller businesses to gain a foothold in the market - giving consumers the confidence to engage with them based on the experiences of others. Should reviews become so restricted in this sector, such benefits could also be reduced.

This element is also related to Article 13(2) of the Italian Bill which provides for the right of the reviewed business to have reviews deleted if they are *"untrue or excessive"*, or if they are no longer relevant after two years.

This provision may contribute to the infringement of the freedom of expression provided for under Article 10 of the European Convention on Human Rights and under Article 11 of the Charter of Fundamental Rights of the European Union alike.

Furthermore in its application, the Italian Bill may also persuade platforms hosting reviews to over censor consumer views by removing any review which the legal representative of the reviewed facility flags as *"misleading, untrue, or exaggerated"* to minimise risk. This significantly biases review platforms, which should sit as a neutral arbiter between consumers and businesses, to be biased towards businesses, at the direct expense of consumers and open competition.

Unfortunately, this element also risks leaving reviews vulnerable to the systemic flagging of negative reviews by businesses as a tool to remove said reviews. Reviews are, inherently, subjective opinions about experiences, thus by their very nature individual opinions can differ and two viewpoints can be held simultaneously. Similarly, judging whether reviews are *"misleading"*, *"untrue"* or *"excessive"* will be extremely difficult to apply in practice, since platforms do not have considerable fact-finding resources available. This could also lead them to over censor genuine consumer experiences, creating a risk of consumer voices being silenced.

Added to this, the removal of reviews which are over two years old will also result in the consumer voice being downgraded. At Trustpilot, we recognise that, over time, reviews may become less pertinent. The formula for our TrustScore calculation accounts for this by incorporating *"recency"* as one of the three factors which comprise it - giving more weight to newer reviews, and less to older ones. This reflects that newer reviews give more insight into current customer satisfaction.

Requiring the removal of reviews altogether after a certain timeframe is therefore excessive. Even more so when one considers that reviews are dated and thus consumers can judge how much weight they wish to put on recency if they look at older reviews.

Finally, removing consumer reviews where *"suitable measures"* have been taken to *"modify or overcome the reasons that had given rise to the judgment"* is also impractical. A business should of course be able to respond to a review and - if they have remedied the issue complained of in a review - reflect this. This in itself demonstrates that the business is responsive to feedback and willing to take action, which is invaluable in building goodwill with consumers. Arguably, removing the review in its entirety is therefore excessive.

If this element were to be adopted, consumers could be discouraged from sharing their experiences if, having taken the time to provide feedback, their review is later removed on the basis of a single element within it being remedied.

What is more, consumers seeking to learn about businesses will have an incomplete and potentially misleading picture of the business, given that at one instance the business righted an issue raised.

For these reasons, we believe that the Italian Bill is incompatible with Article 11 of the EU Charter of Fundamental Rights and Article 10 of the European Convention on Human Rights alike. Its implementation has the potential to lead to arbitrary or excessive removals of reviews while both disrupting the proper functioning of websites hosting reviews and preventing effective competition between economic operators.

E. The banning of the sale and purchase of fake reviews, incentivised reviews, and review hijacking

While Trustpilot has a number of concerns relating to the Bill's compatibility with EU law and how it will function in practice, we do support the underlying principles of addressing the sale and purchase of fake reviews, incentivised reviews, and review hijacking.

Reviews and the important consumer feedback they provide, carry significant value. Many of the actors in this space use them appropriately and in a compliant way, but there will always be bad actors who seek to take advantage. Limiting the ability of bad actors to operate - through targeted legislation - is most welcome. This aligns with similar approaches in other markets, such as the US and UK. We have supported the European Union's previous work in this space and the measures which were introduced via the Better Enforcement and Modernisation Directive (Directive (EU) 2019/2161). Given the existing EU laws in this space, we would underline the importance of effective enforcement to ensure that these issues are fully addressed using already available tools.

In tackling bad actors, we do think there is an opportunity to ensure a holistic approach that addresses the entire review ecosystem. For example, placing requirements on Internet Service Providers (ISPs) and social media sites which host the advertisement, offer and sale of fake reviews. It is widely known and evidenced that review sellers use private groups on social media services to advertise the sale of fake reviews. Given their key role in the amplification and dissemination of fake review sales, it is vital that the onus is put on these sites to ensure that they are responsive to requests made by other parties who identify and request the removal of fake review advertisement, offer and sale groups on their sites, alongside taking

proactive steps themselves to identify and shut down such groups. This would strengthen the clamp down on the activities of bad actors.

Conclusion

Whilst the intent of the Italian government to tackle fake reviews is a motivation that Trustpilot very much aligns with, as this submission sets out, there are a number of areas where we believe that the proposed approach is in conflict with EU treaties and law, and risks a fragmentation of the Single Market.

Furthermore, we also believe that the current drafting of the law risks silencing the consumer voice, damaging the level playing field and reducing competition. All of these factors will negatively impact consumers and businesses in Italy and across the EU.

Trustpilot is committed to working with the European Commission and Italian Government to address these issues and to ensure that such a future law in Italy can be effective and proportionate and targeted to tackling specific issues without creating unintended consequences. If we can provide any further information or clarification with respect to our submission, we would be happy to do so.