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**Subject: Notification 2025/22/IT**

**Draft annual law on small and medium-sized enterprises – Chapter IV (Articles 12 to 17) on ‘Countering false reviews’**

**Delivery of a detailed opinion pursuant to Article 6(2) of Directive (EU) 2015/1535 of 9 September 2015**

**Delivery of comments pursuant to Article 5(2) of Directive (EU) 2015/1535 of 9 September 2015**

Sir,

As part of the notification procedure provided for in Directive (EU) 2015/1535 <sup>(1)</sup>, the Italian authorities notified to the Commission on 17 January 2025 the draft “*Draft annual law on small and medium-sized enterprises – Chapter IV (Articles 12 to 17) on ‘Countering false reviews’*” (hereinafter referred to as “the notified draft”).

According to the notification message, Chapter IV of the notified draft introduces provisions aimed at combating false reviews and protecting consumers from the risks and influences arising from them. The notified draft targets online reviews relating to products, performances, and services offered by catering companies and tourist facilities located in Italy, including those of an accommodation and thermal type, as well as relating to any form of tourist attraction offered on Italian territory.

As described below in more detail, the notified draft lays down the requirements for reviews, the rights and prohibitions of the reviewed entities. Moreover, the notified draft moreover entrusts the Italian Competition and Markets Authority (Autorità Garante della Concorrenza e del Mercato, hereinafter “AGCM”) with the exercise of investigative and sanctioning powers; and the Italian Communications Regulatory Authority (Autorità per le Garanzie nelle Comunicazioni, hereinafter “AGCOM”), which is also the Digital

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<sup>1</sup>) Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and rules on Information Society services, OJ L 241 dated 17.9.2015, p. 1.

Services Coordinator designated under Article 49(3) of Regulation (EU) 2022/2065, with the facilitation of codes of conduct to be adopted by intermediaries and entities active in the dissemination of online reviews. AGCOM is also entrusted, under the notified draft, with the issuance of non-binding guidelines for the promotion of those codes of conduct and will monitor the adoption by AGCM's of guidelines providing orientations for compliance with the notified draft.

In relation to the notified draft, the Commission addressed to the Italian authorities, on 31 January 2025 and on 11 February 2025, requests for supplementary information to obtain clarifications on the measures of the notified draft. The answers provided by the Italian authorities on their reply to the requests for supplementary information of 18 February 2025 are taken into account in the following assessment to the extent that they clarified the purpose of the draft.

The examination of the relevant notified provisions led the Commission to issue the following detailed opinion and comments.

## **1. Introduction**

According to the notification message and impact assessment accompanying the notification, and as confirmed by the Italian authorities in their reply to the request for supplementary information, the notified draft aims at protecting consumers from the risks and influences of false online reviews.

The Commission shares this objective, which is aligned with those of the Union legal framework governing the provision of online services, in particular, Regulation (EU) 2022/2065 (the Digital Services Act, hereinafter “the DSA”) <sup>(2)</sup> and Directive 2000/31/EC (Directive on Electronic Commerce) <sup>(3)</sup>; and the Union consumer protection legislation, in particular, Directive 2005/29/EC concerning unfair business-to-consumer commercial practices in the internal market <sup>(4)</sup> (hereinafter “the UCPD”), which applies to the extent that the notified draft regulates business-to-consumer practices concerning reviews. In this regard, the Commission stresses that the DSA provides an effective Union-wide regulatory solution to address some of the objectives pursued by the notified draft. The DSA provides for a common set of Union rules that impose a wide range of obligations on providers of intermediary services to combat the spread of illegal content online, while aiming to safeguard and improve the functioning of the internal market. In addition, as set out in its Article 1, consumer protection is one of the guiding principles of the DSA <sup>(5)</sup>. Furthermore, the UCPD provides both general rules addressing misleading commercial practices and several specific requirements regarding consumer reviews applicable in business to consumer practices.

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<sup>2</sup>) Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a single market for digital services and amending Directive 2000/31/EC (DSA), OJ L 277, 27.10.2022, p. 1-102.

<sup>3</sup>) Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce), OJ L 178, 17.7.2000, p. 1-16.

<sup>4</sup>) Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council (‘Unfair Commercial Practices Directive’).

<sup>5</sup>) Case 40/69, Bollmann, EU:C:1970:12, para 4; Case 74/69, Krohn, EU:C:1970:58, paras 4 and 6; and joined Cases C-539/10 P & C-550/10 P, Stichting Al-Aqsa, EU:C:2012:711, para 87 (on the risk of divergent definitions under EU and national law).

The Commission takes note of the notification message and its accompanying documents, and of the reply of the Italian authorities to the requests of supplementary information sent by the Commission services. While it shares the objective of the notified draft to protect consumers from illegal and harmful content online, such as false reviews, the examination of the relevant provisions of the notified draft has led the Commission to issue the following detailed opinion and comments.

## **2. Detailed opinion**

### **2.1. Assessment in light of the Digital Services Act**

#### **2.1.1. Applicability of the Digital Services Act**

Certain provisions of the notified draft, and Articles 12 to 17 of Chapter IV thereof, in particular, fall within the scope of the DSA.

##### **A) Obligations of the notified draft applicable to providers of intermediary services**

Firstly, concerning the personal scope of application of the notified draft, the latter regulates the publication of online reviews relating to products, benefits and services offered in the territory of Italy. The notified draft does so by laying down a set of obligations which, in accordance with its Article 12, shall apply to online intermediary services as defined in Article 3 of the DSA. As such, the notified draft imposes requirements on the content and the conditions for the provision of online intermediation services. As derived from Article 12 of the notified draft, such activities are required to be performed by providers of “intermediary services” under Article 3 of the DSA. The fact that the notified draft would apply to the providers of such services has been confirmed by the Italian authorities in their reply to the requests for supplementary information sent by the Commission services.

Secondly, concerning the material scope of application of the notified draft, the latter introduces certain obligations and conditions for the publication of online reviews. Such obligations would be applicable to the providers of intermediary services online. Article 13 of the notified draft lays down an obligation on providers of intermediary services to ensure that the recipients of the services are able to identify the user submitting the review and verify that the review is reliable and comes from a user who has actually used or purchased the product, benefit or service. Article 13 of the notified draft also regulates the possibilities for the reviewed entity to contest the review or request its removal.

By regulating the above aspects, the notified draft lays down rules imposing obligations on providers of intermediary services over the content intermediated on their services with the aim of protecting consumers. The Commission observes that, in as much as the notified draft pursues the same objective as the DSA concerning the protection of consumers and that it does so by laying down obligations on the provision of intermediary services online, it falls within the material scope of application of the DSA.

##### **B) Obligations of the notified draft applicable to national competent authorities**

Concerning the scope of application of the additional set of obligations laid down in Chapter IV of the notified draft, Article 15 of the latter empowers the Italian Digital Service Coordinator, i.e. AGCOM, to facilitate the adoption of codes of conduct by intermediaries and entities active in the dissemination of online reviews. Said codes of

conduct would be aimed at identifying measures to effectively reduce, including by technologically appropriate means, the distortion of information provided to consumers through non-genuine reviews and, in any case, 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;
- where the possibility of issuing a review is foreseen, ensure compliance with Article 13 of the notified draft;
- ensure transparency and impartiality in the management of reviews;
- ensure that the reviews are sufficiently detailed to allow for the adversarial process and the reply of the interested parties;
- ensure the correctness and completeness of the information, while also preventing the association of reviews with undeclared promotional content;
- regulate the removal of reviews, preventing their unjustified removal;
- enable or facilitate the detection of fraudulent activities;
- prevent the use of scores based on unclear or unexplained criteria, or which, in any case, may mislead consumers.

Additionally, Article 15 of the notified draft empowers the AGCM to issue non-binding guidelines for the promotion of those codes of conduct and provide orientations for compliance with the notified draft. The AGCM is also empowered, under Article 15 of the notified draft, to adopt guidelines providing recommendations to companies on how to ensure that online reviews are genuine.

The Commission observes that, in as much as the above-mentioned provisions of the notified draft empower and require Italian authorities to facilitate the adoption of codes of conduct and to issue guidelines to comply with Chapter IV of the notified draft, which falls within the scope of application of the DSA, they also fall within the scope of application of the DSA.

### 2.1.2. Full harmonisation effect of the DSA

In the first place, the Commission recalls that the DSA is a horizontal legislative instrument that fully harmonises the rules for the provision of intermediary services in the Union <sup>(6)</sup> containing rules to address some of the problems that Chapter IV of the notified draft aims to solve. In particular, the DSA provides for a set of fully harmonised Union rules that impose a wide range of obligations on providers of intermediary services concerning the accountability and responsibilities of such providers, to combat the spread of illegal content online, while safeguarding and improving the functioning of the internal market. In addition, as set out in its Article 1, consumer protection is one of the guiding principles of the DSA. Ensuring a safe, trustworthy and transparent online environment for consumers is also among the main objectives of the DSA, as clarified *inter alia* in its recitals 24, 40 and 72 to 74, for which it foresees a set of provisions applicable to providers of online platforms.

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<sup>6</sup>() See Recital 9 of Regulation (EU) 2022/2065.

Being a regulation, the DSA does not allow for national implementing measures.<sup>(7)</sup> This is because, pursuant to Article 288 TFEU, regulations are directly applicable throughout the Union and, therefore, in all of the Member States. Unlike in the case of directives, national implementing measures are not permitted in relation to regulations, unless the regulation itself leaves it to the Member States to adopt the necessary legislative, regulatory, administrative and financial measures to ensure the effective application of the provisions of that regulation <sup>(8)</sup>. It is thus essential for the Member States to avoid enacting national legislation that may potentially overlap with the provisions of the DSA. Any such overlap would lead to fragmentation of the internal market, which is precisely what the harmonised rules of the DSA are meant to avoid, and lead to substantial legal uncertainty for both providers of intermediary services and the recipients of such services.

#### A) Obligations of the notified draft applicable to providers of intermediary services

The Commission notes the explanations from the Italian authorities in their reply to the requests for supplementary information sent by the Commission services, according to which the notified draft would not add any obligations to providers of intermediary services to the ones already laid down in Articles 6, 14, 16, 17, 20 and 34 and 35 of the DSA (as applicable to each provider of intermediary services) and would, therefore, not overlap with the harmonized framework laid down under that Regulation. However, this remains unclear based on the following reasons.

In the first place, the Italian authorities state in their reply to the request for supplementary information that the providers of online platforms are merely expected to apply their obligations under those provisions of the DSA in relation to reviews that do not comply with the requirements of the notified draft by, for example, removing non-compliant reviews pursuant to Article 6 of the DSA. The Commission recalls that, while Article 6 of the DSA harmonizes the limited liability exemption for hosting services, it does not impose a removal obligation. Therefore, the obligation under Articles 13 and 14 of the notified draft would entail additional obligations for providers of intermediary services, other than those foreseen under the DSA.

In the second place, based on the information made available to the Commission services by the Italian authorities, it is unclear how providers of intermediary services under the scope of application of the notified draft are expected to comply with the requirements on the identification of the user submitting the review and the verification of the reliability and authenticity of the reviews. Even if the Italian authorities have explained that the notified draft does not introduce any *ex-ante* monitoring obligation on the relevant providers, they claim that the identification of the author of the review is a requirement to ensure transparency and authenticity of the review. It remains uncertain how the affected providers of intermediary services are expected to verify that, i.e. whether they are only to rely on the information provided by the user or if they are required to perform additional general fact-finding exercises or to monitor the content available on their services in order to check if the user has provided information concerning its identity and if the reviews are reliable and authentic. Therefore, on the basis of the information made available, the Commission cannot exclude that the relevant provisions of the notified draft would not result in obligations for providers of intermediary services other than

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<sup>7</sup>) Case 40/69, Bollmann, EU:C:1970:12, para 4; Case 74/69, Krohn, EU:C:1970:58, paras 4 and 6; and joined Cases C-539/10 P & C-550/10 P, Stichting Al-Aqsa, EU:C:2012:711, para 87 (on the risk of divergent definitions under EU and national law).

<sup>8</sup>) Case C-606/10, ANAFE, EU:C:2012:348, para 72.

those foreseen under the DSA and which would entail performing general fact-finding exercises and monitoring the content available of their services, contrary to Article 8 of the DSA.

Additionally, it derives from the information provided by the Italian authorities that the notified draft seeks to establish conditions under which reviews would constitute illegal content under national law. While it is true that the DSA does not regulate what illegal and/or harmful content is, as this shall be regulated by other applicable Union or national laws in compliance with Union law, the Commission encourages the Italian authorities to clarify this aspect in the final version of the notified draft.

#### B) Obligations on the notified draft applicable to national competent authorities

The Commission notes that Article 45 of the DSA requires the Commission and the Board, i.e. the independent advisory group of the Digital Services Coordinators established under Article 61(1) of the DSA, to encourage and facilitate the drawing up of voluntary codes of conduct at Union level. These codes of conduct should contribute to the proper application of the DSA, taking into account specific challenges of tackling different types of illegal content and systemic risks concerning VLOPs and VLOSEs, including the risks to consumer protection. Following the full harmonisation rationale of the DSA, these codes of conduct are also envisaged as Union-wide instruments enabling the proper and consistent application of the DSA throughout the whole Union. In as much as the notified draft provides for the adoption of such codes of conduct covering the DSA subject matter by the Italian authorities on their own, it overlaps with the fully harmonising rationale of the DSA.

Further, when it comes to the provision of intermediary services by very large online platforms and very large online search engines, Article 35(3) of the DSA empowers the Commission to, in cooperation with the Digital Services Coordinators, issue guidelines on the application of the obligation to put in place reasonable, proportionate and effective measures targeted to the systemic risks identified pursuant to Article 34 of the DSA by the providers of such services. As such, this empowerment contained in the DSA includes the measures aimed at mitigating the systemic risks consisting of the dissemination of illegal content and the negative impacts to a high level of consumer protection, thus overlapping with the obligations laid down by Article 15 the notified draft vis-à-vis Italian authorities.

Lastly, in as much as the codes of conduct and guidelines adopted pursuant to Article 15 of the notified draft would cover matters covered by the DSA and would apply to providers of online intermediary services that do not have their main establishment in Italy, or have appointed their legal representative in Italy in the absence of an establishment, they would encroach upon the obligations set out and the competences provided for in the DSA vis-à-vis the Digital Services Coordinators designated under its Article 49(3), and the cooperation principles between the Commission and those national competent authorities established by the DSA. Similarly, when it comes in particular to providers of VLOPs and VLOSEs, in as much as Article 15 of the notified draft covers matters regulated by the DSA, it overlaps with the empowerments set out in Articles 45 and 35(3) of the DSA. Based on the remarks contained in the above sections, the Commission considers that the notified draft overlaps with and supplements the fully harmonised regime set out in the DSA, thus interfering with it. For these reasons, the notified draft is deemed incompatible with the maximum harmonisation effect of the DSA.

### 2.1.3. Monitoring and enforcement system

To ensure that the DSA is fully effective in the pursuit of our shared objectives such as the protection of consumers, which is also pursued by the notified draft, it is essential to preserve the harmonising effect of the DSA and also its supervision and enforcement system.

In accordance with Chapter IV of the DSA, the supervision and enforcement of the DSA shall be undertaken by the Member States and the Commission working in close cooperation. For this purpose, Article 49 of the DSA requires Member States to designate one or more competent authorities to be responsible for the supervision and enforcement of that regulation, one of which shall be designated as their Digital Services Coordinator. The designated competent authorities shall carry out their tasks in full compliance with the supervision and enforcement system laid down under the DSA and, as stated in Articles 56 and 57 of the DSA, through close cooperation and mutual assistance, on the one hand, between the appointed national digital services coordinators (and other competent authorities) and, on the other hand, between these national authorities and the Commission.

Pursuant to the notified draft, the ACGM is entrusted with the exercise of investigative and sanctioning powers for the obligations set therein. In as much as such empowerment would fall within the fields regulated by the DSA, as described in this detailed opinion and comments, the Commission therefore calls on the Italian authorities to ensure that the notified draft does not endanger the supervision and enforcement architecture of the DSA.

For the reasons set out above, the Commission hereby issues a detailed opinion in accordance with Article 6(2) of Directive (EU) 2015/1535.

The Commission reminds the Italian authorities that, in accordance with that provision, the issuing of a detailed opinion requires the Member State that is the author of the notified draft technical regulation concerned to postpone its adoption by 4 months from the date of its notification. This deadline therefore ends on 20 May 2025.

Furthermore, the Commission draws the attention of the Italian authorities to the fact that, under the same provision, the Member State to which a detailed opinion is addressed is required to inform the Commission of the action it intends to take on such an opinion.

If the Italian authorities fail to comply with the obligations laid down in Directive (EU) 2015/1535 or if the text of the notified draft under consideration is adopted without taking account of the objections raised or is otherwise contrary to Union law, the Commission is ready to initiate proceedings against Italy in accordance with Article 258 of the TFEU.

## **3. Comments**

### **3.1 Assessment in light of the Directive on electronic commerce**

The Commission notes that the Italian authorities have not sufficiently addressed the request for supplementary information on Directive on electronic commerce, in particular its Article 3.

The Commission calls on the Italian authorities to clarify the obligations for information society services and territorial scope of the notified draft, which should be in line with Article 3(4) of the Directive on electronic commerce as interpreted by the CJEU (<sup>9</sup>). In particular, Article 3(4) of the Directive on electronic commerce lays down the circumstances and procedures under which a Member state of destination, i.e. the Member State in which information society services are provided by a provider established in another Member State, may derogate from the home State control principle, where necessary, for the reasons exhaustively listed in Article 3(4)(a) of that Directive and in compliance with the substantive and procedural requirements set out in its Article 3(4)(a) and (b). The Commission draws the attention of the Italian authorities to the recent case law of the Court of justice in this respect, which recalls the limits of relying on Article 3(4) of the Directive on electronic commerce for this purpose. As confirmed by that case law, the requirements to providers established in other Member States must not be applicable to a “*category of given information society services described in general terms and applying without distinction to any provider of that category*” [emphasis added]. On the contrary, any application to cross-border providers established in other Member States needs to precisely identify the concerned service providers, as well as the Member State of establishment, and fulfil the requirements established in Article 3(4) of the Directive on electronic commerce to be able to benefit from the exemption provided by such provision.

### **3.2 Assessment in the light of Directive 2005/29/EC concerning unfair business-to-consumer commercial practices in the internal market (“UCPD”) and General Data Protection Regulation (EU) 2016/679 (“GDPR”)**

The Commission notes that the notified draft refers, in its Article 12, to the objective of consumer protection (<sup>10</sup>).

In this context, the Commission highlights that Directive 2005/29/EC concerning unfair business-to-consumer commercial practices in the internal market (“UCPD”) provides for full harmonisation of Member States' rules on unfair commercial practices having as their objective protecting the economic interests of consumers.

The UCPD prohibits misleading practices and also includes specific provisions in the area of consumer reviews. Member States may not adopt stricter rules than those provided for in the Directive, even in order to achieve a higher level of consumer protection unless so permitted by the Directive itself. Specifically:

- Point 23b of Annex I UCPD prohibits traders from stating that reviews of a product are submitted by consumers who have actually used or purchased the product without taking reasonable steps to check that they originate from such consumers;
- Point 23c of Annex I UCPD prohibits submitting or commissioning another legal or natural person to submit false consumer reviews in order to promote products. It also prohibits misrepresenting consumer reviews in order to promote products;

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<sup>9</sup>) Judgment of 9 November 2023 in Case C-376/22, ECLI:EU:C:2023:835, paragraphs 59 and 60.

<sup>10</sup>) This Chapter, in compliance with point (e) of the second paragraph of Article 117 of the Constitution and the principles of the European Union in the field of competition and with the aim of protecting consumers from the influence of false reviews, governs the publication of online reviews relating to products, benefits and services offered by catering companies and tourist facilities located in Italy, including those of a receptive and thermal nature, as well as relating to any form of tourist attraction offered on the Italian territory, in order to identify the user submitting the review and verify that the review is reliable and comes from a consumer who has actually used or purchased the product, benefit or service



- Finally, traders giving access to reviews must inform consumers about whether and how they ensure that the published reviews originate from consumers in accordance with Article 7(6) UCPD.

In the request for supplementary information sent on 11 February 2025, the Commission services asked the Italian authorities to clarify the interplay between the notified draft and the current rules regarding reviews transposing the UCPD. Questions concerned the addressees of the obligations provided in the draft measure and whether it imposes additional obligations on traders, such as review platforms, that collect and make available reviews concerning the Italian hospitality businesses.

The Commission takes note of the explanations provided by the Italian authorities that the draft law does not go beyond the fully harmonised provisions of the UCPD regarding user reviews and that it does not introduce additional obligations on traders, such as the review platforms that collect and make available reviews concerning Italian hospitality businesses.

The Commission also takes note of the explanation that the purpose of the prohibition of “the promotion and conditioning of the content of reviews by means of incentives” (provided in Article 14 of the draft law) is to prohibit incentives that pre-determine the content of reviews, i.e., the Commission understands that it aims at preventing the submission of false reviews prohibited by point 23c of Annex I of the UCPD.

As concerns specifically the obligation of identification of the reviewers (Article 13), the Commission takes note of the explanation that the draft law does not introduce any obligation of prior (ex ante) monitoring, nor does it require the adoption of specific technical measures aimed at the prior verification of reviewer’s personal information or limiting the users’ access to the reviews on the grounds that the trader does not hold personal information identifying the respective reviewer.

Nevertheless, the Commission would like to recall that the conformity with the UCPD – that fully harmonises rules relating to consumer reviews – would become relevant if the draft law also entailed obligations on the relevant traders (review platforms), for example, by imposing obligations on these traders to reject or remove the reviews because the reviewer submits them outside the prescribed time-frame of 15 days or solely because the trader does not hold the personal information identifying the reviewer, beyond the information necessary for the trader to ascertain that the reviewer has actually used or purchased the hospitality service in question.

The Commission also asked for clarifications regarding the obligation to identify the reviewers in view of the General Data Protection Regulation (EU) 2016/679 (“GDPR”) <sup>(11)</sup>. In this context, the reply from the Italian authorities is not sufficient to ascertain if the envisaged legislative measure meets the requirements of GDPR. In particular, it is not clear if the proposed measure would be necessary and proportionate for the aim, i.e. verifying that the person leaving the review has used or purchased the hospitality service in question.

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<sup>11</sup>) Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), OJ L 119, 4.5.2016, p. 1–88

Finally, the Commission would like to draw the attention of the Italian authorities that the Commission is currently promoting a non-legislative initiative on a “Code of Conduct for online reviews and ratings for tourism accommodation” based on stakeholder engagement from online platforms, accommodation providers and consumer protection representatives. The Code aims to achieve greater transparency and reliability of online reviews for consumers and businesses in the tourism and accommodation sector. The Code will also enable greater cooperation and cohesion in the tourism accommodation industry’s digital space.

The Commission invites the Italian authorities to take into account the above comments in the final text of the notified draft and its implementation.

The Commission furthermore reminds the Italian authorities that once the definitive text has been adopted, they are required to communicate it to the Commission in accordance with Article 5(3) of Directive (EU) 2015/1535.

Yours faithfully,

For the Commission

Stéphane Séjourné  
Executive Vice-President