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Subject: Comments from EU Travel Tech on the TRIS notification 2025/0022/IT of the Italian Annual Draft Law on Small and Medium-Sized Enterprises – Chapter IV (Articles 12 to 17) "Combating False Reviews"

- (1) EU Travel Tech (formerly The European Technology and Travel Services Association - ETTSA), launched in 2009 to represent the interests of global distribution systems and travel distributors, hereby submit comments on the TRIS notification 2025/0022/IT made pursuant to Directive (EU) 2015/1535 ("the TRIS Directive") of the Italian Annual Draft Law on Small and Medium-Sized Enterprises – Chapter IV (Articles 12 to 17) "Combating False Reviews" of 17 January 2025 (hereafter the "Italian Draft Law").
- (2) It must be recalled that the TRIS notification procedure laid down in the "TRIS Directive" aims at promoting the smooth functioning of the internal market, whose purpose is to create an environment that is conducive to the competitiveness of undertakings (Recitals 3 and 7 of the TRIS Directive).

Executive summary

The Italian Draft Law is incompatible with European Union ("EU") law, on the basis of the reasons set out below and developed in the present letter.

The Italian Draft Law:

- **Violates the Unfair Commercial Practices Directive ("UCPD") and the freedom to provide services enacted in Article 56 TFEU in that (i) it applies much lower protection standards for consumers, contrary to the minimum EU standards set out in the UCPD; and (ii) it applies stricter regulatory provisions for traders (online platforms) than the existing provisions under the UCPD, whose Article 4 prevents Member States from restricting the freedom to provide services and enacting stricter rules.**
- **Violates Article 8 of the Digital Services Act and contradicts the Digital Services Act's general objectives.**
- **Violates Article 6 of the General Data Protection Regulation.**
- **Raises concerns regarding its scope.**

1. OVERVIEW OF THE ITALIAN DRAFT LAW

- (3) According to the Republic of Italy's communication message accompanying TRIS notification 2025/0022/IT on the European Commission's website, the Italian Draft Law has the aim of "protecting consumers from the risks and influences" arising from false reviews. The Republic of Italy also explained the desired effects of the Italian Draft Law on competition, such as greater transparency, authenticity and reliability of information concerning catering and tourism services.¹
- (4) The Italian Draft Law governs the publication of online reviews relating to products, benefits and services offered by catering companies and tourist facilities located in Italy, as well as relating to any form of tourist attraction offered on the Italian territory.²
- (5) The Italian Draft Law sets out requirements for the regulation of online reviews, in particular:
- the necessity for consumers to prove their identity and the actual use of the services;³
 - the review must be issued no later than 15 days from the date of use of the product/service;⁴
 - the representative of the reviewed facility has the right to respond and request the removal of reviews, if the author has not used the reviewed product/service, or if the reviews are misleading, untrue or exaggerated;⁵

¹ See the following link: <https://technical-regulation-information-system.ec.europa.eu/en/notification/26584> (last viewed on 14 March 2025).

² Article 12(1) of the Italian Draft Law.

³ Articles 12(1) and 13(1)) of the Italian Draft Law.

⁴ Article 13(1) of the Italian Draft Law.

⁵ Article 13(2) of the Italian Draft Law.

- an "entrepreneur who has a interest in it"⁶ is entitled to obtain the deletion of reviews that are no longer current, due to the lapse of two years from the date of use of the service, or the adoption of measures capable of modifying or overcoming the issue;⁷
- the prohibition of the purchase and sale of reviews, appreciations, or interactions, and of the attribution of consumer reviews to a product or service in relation to a different product or service and the promotion and conditioning of the content of reviews by means of incentives.⁸

(6) The Italian Draft Law has a wide geographical scope:

- It is only applicable to reviews submitted in relation to business or facilities located in Italy⁹;
- However, any person, located anywhere else in the world, whether in or outside of the EU, would be impacted by the Italian Draft Law when submitting a review (e.g. necessity to prove their identity and the actual use¹⁰);
- In addition, some provisions of the Italian Draft Law would necessarily affect online platforms located in other EU Member States, in that they would have to perform the necessary checks (identity, actual use) and review the requests for deletion.

(7) The Italian Draft Law provides a framework on the basis of which two authorities have competences in relation to the implementation of the draft law, namely:

- The Competition and Market Authority (*AGCM – Autorita' Garante della Concorrenza e del Mercato*): it has investigative and sanctioning powers in the context of infringements of Article 14(1)¹¹, including the power to impose pecuniary sanctions; it shall adopt specific guidelines to guide companies in adopting appropriate measures to ensure the authenticity of reviews¹²; and it shall establish a supervisory procedure to assess compliance¹³;
- The Communications Regulatory Authority (*AGCOM – Autorità per le garanzie nelle Comunicazioni*): it regulates the adoption of codes of conduct by intermediaries and entities active in the dissemination of online reviews with the aim of reducing non-

⁶ Since the scope of the Italian Draft Law appears to be limited to products and services offered by catering companies and tourist facilities and attractions (see Article 12(1) of the Italian Draft Law), the reference to an "entrepreneur" raises questions, although it can be assumed that it refers to a person owning a hotel or restaurant for example.

⁷ Article 13(2) of the Italian Draft Law.

⁸ Article 14(1) of the Italian Draft Law.

⁹ Article 12(1) of the Italian Draft Law.

¹⁰ Article 13(1) of the Italian Draft Law.

¹¹ Article 14(2) of the Italian Draft Law.

¹² Article 15(4) of the Italian Draft Law.

¹³ Article 15(4) of the Italian Draft Law.

genuine reviews.¹⁴ Non-compliance with the provisions of the Italian Draft Law can be punished by pecuniary sanctions.¹⁵

2. INCOMPATIBILITY OF THE ITALIAN DRAFT LAW WITH EU LAW

- (8) The Italian Draft Law is incompatible with EU law for reasons emanating from the interplay of EU primary law with EU secondary legislations, in particular the rules on consumer protection and online platforms/content.

2.1. The Italian Draft Law violates Directive 2005/29/EC (Unfair Commercial Practices Directive)

- **The UCPD adopts a full harmonisation approach**

- (9) The Unfair Commercial Practices Directive's ("UCPD") very aim is to harmonize the legislations of the Member States relating to unfair commercial practices to prevent distortions of competition and obstacles to the functioning of the internal market, i.e. to the free movement of goods and services. The purpose of the UCPD is therefore to replace Member States' existing, divergent legal principles – which create uncertainty – and lay down uniform rules at EU level, within a single regulatory framework, thereby establishing a high level of consumer protection.¹⁶

- (10) The UCPD is based on a full harmonisation approach under Article 114 of the Treaty on the Functioning of the European Union ("TFEU"), which itself refers to Article 26 of the TFEU setting out the principle according to which the Union shall adopt measures with the aim of establishing or ensuring the functioning of the internal market.

- (11) Harmonisation on the basis of Article 114 TFEU can amount to a minimum harmonisation, or a **maximum** harmonisation, as is the case for the UCPD, i.e. a full harmonisation of national laws, preventing Member States from enacting stricter rules.

- (12) On that basis, Article 4 of the UCPD explicitly provides:

"Member States shall neither restrict the freedom to provide services nor restrict the free movement of goods for reasons falling within the field approximated by this Directive".

- (13) Article 4 of the UCPD prohibits Member States from restricting "the freedom to provide services", a principle set out in Article 56 of the TFEU.

¹⁴ Article 15(1) of the Italian Draft Law.

¹⁵ Article 15(2) of the Italian Draft Law.

¹⁶ See, in that regard, Recitals 3, 4, 5, 12 and 13 of the UCPD.

- (14) This principle is further elaborated by the case-law of the Court of Justice of the European Union, which confirms that the UCPD "**fully harmonises** the rules relating to unfair business-to-consumer commercial practices" and that "**Member States may not adopt stricter rules** than those provided for in the directive, as expressly provided for in Article 4 thereof, even in order to achieve a higher level of consumer protection" (emphasis added).¹⁷
- (15) To conclude, the UCPD introduces a full harmonisation approach, i.e. a "floor" and a "ceiling" of rules in the area of unfair commercial practices, preventing Member States from laying down both **lower and stricter** rules than those set out in the UCPD, and preventing them from restricting the freedom to provide services.

¹⁷ Judgment C-343/12, 7 March 2013, para. 24; see also judgments C-288/10, 30 June 2011, para. 33; C-261/07 and C-299/07, 23 April 2009, para. 52.

- **The Italian Draft Law aims at regulating an area regulated under the UCPD**

(16) The UCPD in its original version of 2005 has been strengthened by Directive (EU) 2019/2161¹⁸, which introduced specific provisions regulating consumer reviews:

- Consumer reviews of products ("products" being understood as encompassing services¹⁹) are now explicitly referred to in the UCPD: "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" (emphasis added);²⁰
- The UCPD has also been updated to list the following practice as a prohibited practice: "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" (emphasis added);²¹
- The UCPD expressly prohibits submitting or commissioning another (legal or natural) person to submit false consumer reviews, or misrepresenting consumer reviews in order to promote products.²²

(17) The fact that consumer/user reviews fall within the scope of the UCPD is confirmed by and detailed in the UCPD Guidance issued by the European Commission²³, which contains extensive developments on user reviews. The objective is to ensure that consumer reviews reflect real consumers' opinions, findings or experience.²⁴

(18) The UCPD Guidance explicitly mentions that the UCPD applies to the commercial practices of online platforms and other traders that make available or provide access to consumer reviews, and to traders that organise the supply of reviews for the benefit of other traders.²⁵

(19) The UCPD Guidance refers to the "unfair practices" that have been identified in this area, e.g. "some traders organise the posting of **fake positive reviews**", or "they incentivise consumers to test their products in exchange for posting their reviews (sponsored reviews) without

¹⁸ Directive (EU) 2019/2161 of the European Parliament and of the Council of 27 November 2019 amending Council Directive 93/13/EEC and Directives 98/6/EC, 2005/29/EC and 2011/83/EU of the European Parliament and of the Council as regards the better enforcement and modernisation of Union consumer protection rules.

¹⁹ Article 2(c) of the UCPD.

²⁰ Article 7(6) of the UCPD.

²¹ Annex I point No 23b of the UCPD.

²² Annex I point 23c of the UCPD.

²³ Commission Notice – 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, see Section 4.2.4 on "User reviews".

²⁴ See under Section 4.2.4 on "User reviews" of the UCPD Guidance.

²⁵ See under Section 4.2.4 on "User reviews" of the UCPD Guidance.

disclosing the fact of sponsorship". As a result, "the **incentivised/fake reviews** can influence the product's ranking and hence visibility on the platform if the platform's search parameters take into account the review score". This distorts consumers' choices and economic behaviour.²⁶

- (20) The UCPD also prohibits manipulative practices such as the misrepresentation of consumer reviews by publishing only positive reviews and deleting the negative ones.²⁷
- (21) The UCPD Guidance specifies that, while traders must take reasonable and proportionate steps to ensure that the reviews originate from real users, **this cannot amount to a general obligation to monitor or carry out fact-facting**, in line with Article 15(1) of the e-Commerce Directive.²⁸
- (22) The UCPD Guidance also differentiates the steps to be taken depending on the trader's business model: "an online marketplace that presents the reviews of its own customers may have to apply different measures than a specialised review service that invites reviews from the wider public without having a contractual relation". Concretely, "large platforms with a high risk of fraudulent activity and larger resources would be expected to deploy more significant means to counter the fraud with consumer reviews than smaller traders".²⁹
- (23) On that basis, it is clear that the regulation of user reviews on products and services is harmonised by and falls within the scope of the UCPD.
- (24) The Italian Draft Law imposes requirements and prohibitions aimed at regulating the same subject-matter, i.e. user/consumer reviews, as the one already regulated under the UCPD. The UCPD introduces a full harmonisation at EU level which prevents Member States (here the Republic of Italy) from overstepping their competence by adopting either much lower protection standards for consumers than those set out in the UCPD or stricter regulatory provisions than the existing provisions under the UCPD.

²⁶ See under Section 4.2.4 on "User reviews" of the UCPD Guidance.

²⁷ Recital 49 of Directive (EU) 2019/2161.

²⁸ See under Section 4.2.4 on "User reviews" of the UCPD Guidance.

²⁹ See under Section 4.2.4 on "User reviews" of the UCPD Guidance

- **The Italian Draft Law violates EU law and the UCPD in that it applies much lower protection standards for consumers than those set out in the UCPD**
- (25) Directives are binding upon each Member State as to the result to be achieved.³⁰ They set minimum standards, i.e. minimum requirements, that are applicable in a harmonised manner across all Member States.³¹ Member States may not lower the standards set by directives, which lay down a "floor" of common rules.³²
- (26) The UCPD, as a directive, sets out minimum EU standards on unfair commercial practices, constituting the basic set of rules that all Member States' legislations must comply with. In this regard, the UCPD provides for a common EU framework applicable to the regulation of online reviews and sets a certain level of consumer protection.
- (27) In particular, the UCPD tackles false consumer reviews, as well as the misrepresentation and manipulation of consumer reviews,³³ with extensive explanations of the prohibited practices in the UCPD Guidance. This provides consumers with a set level of protection against manipulative practices in the context of online reviews, and an environment that prevents arbitrary practices.
- (28) Against that background, the Italian Draft Law considerably lowers the consumer protection standard harmonised under the UCPD, and introduces a level of bias and arbitrary conduct that is contrary to the UCPD.
- (29) The Italian Draft Law foresees, for the reviewed businesses, a right to request the removal of some reviews. In particular, it provides for:
- The right for the reviewed facility to request the removal of reviews that are **"misleading, untrue, or exaggerated"**; and
 - The right for "entrepreneur[s]" to obtain the deletion of reviews that are **"no longer current, due to the lapse of two years from the date of use of the service by the author or the adoption, after the review, of measures capable of modifying or overcoming the reasons that had given rise to the judgment"** (emphasis added).³⁴
- (30) Under the Italian Draft Law, businesses would be allowed to obtain the deletion of reviews that are "misleading, untrue, or exaggerated".³⁵ Such reviews, when posted by the trader directly, would amount to a misleading action within the meaning of Article 6 of the UCPD. However,

³⁰ Article 288 of the TFEU.

³¹ See <https://eur-lex.europa.eu/EN/legal-content/summary/european-union-directives.html> (last viewed on 14 March 2025).

³² *Room to Move? Minimum harmonization and fundamental rights*, Francesco de Cecco, Common Market Law Review 43: 9–30, 2006.

³³ Recital 49 of Directive (EU) 2019/2161 and Annex I point 23c of the UCPD.

³⁴ Article 13(2) of the Italian Draft Law.

³⁵ Article 13(2) of the Italian Draft Law

misleading, untrue or exaggerated reviews posted by consumers do not fall within the scope of the UCPD.

- (31) It is inevitable that the perception of what a "misleading, untrue, or exaggerated" review is, for the business affected by the review, significantly differs from the perception of what a "misleading, untrue, or exaggerated" review is for the consumer who wrote it. These vague terms, subject to interpretation, introduce a highly subjective element and therefore a significant risk of arbitrary in the deletion of reviews, to the detriment of consumers.
- (32) Similarly, the possibility to obtain the deletion of reviews because measures have been taken "capable of modifying or overcoming the reasons that had given rise to the judgment" introduces a subjective element as well, to the advantage of the business, but contrary to the UCPD's objective of protecting consumers from unfair commercial practices.
- (33) Such subjectivity and the possibility for businesses to apply discretion in the deletion of reviews is the very reason why there are unfair practices in the area of consumer reviews, which the UCPD aims at combating. This provision of the Italian Draft Law gives a large margin of maneuver to businesses, as they appear to be the ones entitled to effectively decide which reviews are untrue, exaggerated or no longer current.
- (34) However, granting a verification role to online platforms would also not be a proportionate and sustainable solution. By way of example, online platforms do not have the means to perform an investigation at a facility (e.g. to check if measures have been taken to address the issues mentioned in the consumer review) every time a request for deletion of review is formulated by a business.
- (35) It must also be noted that the lapse of two years to obtain the right to delete reviews is a particularly short timeframe, which does not seem proportionate in light of the overall objective of the UCPD to protect economic interests from unfair commercial practices, and of the fact that reviews are an important parameter for consumers to take informed purchasing decisions (ahead of booking restaurants, hotels, etc.).
- (36) On that basis, it is expected that businesses would make use of their right to delete reviews only to delete *negative* reviews, when the latter generally bring useful information to consumers. This possibility violates the UCPD, which, as mentioned at para. (20) above, prohibits manipulative practices such as the misrepresentation of consumer reviews by publishing only positive reviews and deleting the negative ones.
- (37) The Italian Draft Law thereby considerably lowers the consumer protection standards set out in the UCPD, in violation of the UCPD and the principle of minimum harmonisation of directives.

The Italian Draft Law, if it were adopted, would inevitably have an impact on the ratio of negative versus positive reviews, hence artificially improving the online ratings and rankings of businesses/facilities. This would also create obstacles to fair competition on the market, since online reviews and the resulting online ratings constitute nowadays the main source of information for consumers looking to compare businesses/facilities.

- **The Italian Draft Law violates Article 4 of the UCPD in that it applies stricter regulatory provisions than the existing provisions under the UCPD and restricts the freedom to provide services**

- (38) As mentioned at para. (12) and (13) above, Article 4 of the UCPD prevents Member States from restricting the freedom to provide services in the EU internal market. This article, read in conjunction with the case-law of the Court of Justice of the European Union, prevents Member States from adopting stricter rules than those already provided for in the UCPD, even to achieve higher consumer protection.
- (39) The Italian Draft Law goes beyond what is required under the UCPD in terms of regulation of online reviews.
- (40) As mentioned at para. (16) above, the UCPD requires traders to take reasonable and proportionate steps to ensure that the reviews originate from real users. Recital 47 to Directive (EU) 2019/2161 which clarifies the UCPD, specifies that "reasonable and proportionate steps" could be taken to verify that the consumer has actually used the service. These could include requiring the reviewer to register, using technical means (e.g. IP address check to verify that the reviewer is actually a consumer, deploying tools to automatically detect fraudulent activity...).³⁶ The UCPD Guidance states that these rules cannot, in any event, amount to a general obligation to monitor or carry out fact-finding and, in that regard, quotes Article 15(1) of the e-Commerce Directive.³⁷
- (41) As mentioned at para. (5) above, the Italian Draft Law lays down an obligation for consumers to prove their identity and actual use of the services in order to submit a review. This means that traders have an obligation to check, for each consumer review, (i) the identity of the person, and (ii) actual use of the services reviewed.³⁸
- (42) Considering the extent of the verification obligation imposed by the Italian Draft Law, which concretely prescribes the monitoring of every single consumer review posted on a platform

³⁶ See Section 4.2.4 on "User reviews" of the UCPD Guidance.

³⁷ See Section 4.2.4 on "User reviews" of the UCPD Guidance; 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.

³⁸ Articles 12(1) and 13(1) of the Italian Draft Law.

through an invasive check, the provisions of the Italian Draft Law amount to a general monitoring obligation, explicitly prohibited under the UCPD.

- (43) Concretely, the general monitoring obligation imposed by the Italian Draft Law goes beyond, i.e. is stricter, than what is required under the UCPD, which does **not** provide for an identity check, but merely for the trader to ensure that the reviews originate from consumers who have actually used or purchased the product/service.³⁹ As mentioned at para. (40), this can be verified with means that are much less invasive than checking someone's identity (e.g. requiring registration from the reviewer, checking their IP address, deploying tools to automatically detected fraudulent activity, having adequate measures and resources to respond to complaints about suspicious reviews, etc.⁴⁰).
- (44) The obligation for the consumer to prove its identity, and for the trader to check it, is also unreasonable and disproportionate: it is manifestly burdensome and costly (one cannot reasonably expect from a trader/platform to perform such an in-depth identity check for every individual review posted), it encourages the unnecessary processing of personal information, and contrary to the UCPD Guidance, it does not differentiate the measures to put in place depending on the platform's business model.
- (45) Similarly, the obligation for the consumer to prove actual use of the service can be considered unreasonable and disproportionate depending on the platform's business model. There are some platforms on which transactions, e.g. a hotel stay, is concluded directly on the platform. Concretely, the verification of actual use of the service (here the hotel) is straightforward for those types of platforms. On the contrary, there are platforms whose business model revolves around consumer reviews, but on which no transaction ever takes place. For those platforms, the requirement to verify, for **each** consumer review posted, if the consumer has actually used the service, would be disproportionate and costly (possibly endangering their very business model).
- (46) It results from the above that the general requirement for online platforms to verify "actual use" of the products⁴¹ is much stricter than what is required under Point 23b of Annex I of the UCPD, which simply prohibits traders from stating that the review has been submitted by consumers who have actually used the service "without taking **reasonable and proportionate steps** to check that they originate from such consumers" (emphasis added).
- (47) In addition, contrary to the UCPD Guidance, performing an identity check for every individual who wishes to post a review would make the posting of reviews "excessively difficult thus

³⁹ Annex I point No 23b of the UCPD.

⁴⁰ See Section 4.2.4 on "User reviews" of the UCPD Guidance.

⁴¹ Article 13(1) of the Italian Draft Law.

discouraging consumers who have actually purchased or used the product from submitting reviews".⁴²

- (48) On that basis, the Italian Draft Law, by imposing more stringent rules for traders (online platforms) than those provided for in the UCPD, necessarily impacts online platforms' freedom to provide services within the EU internal market. As the Italian Draft Law imposes an alternative framework for the regulation of online consumer reviews to the one currently in place and harmonised at EU level, this means that online platforms would have to comply with different rules in Italy than in the rest of the EU.
- (49) The divergence in regulatory framework between Italy and the rest of the EU caused by the Italian Draft Law would make it harder for online platforms affected by the latter to provide their services in Italy, thereby undermining the EU internal market and the freedom to provide services in the EU.
- (50) As a result, the Italian Draft Law infringes EU law in that it applies stricter provisions for the regulation of online consumer reviews than those of the UCPD, in violation of Article 4 of the UCPD, read in conjunction with Article 114 and Article 56 of the TFEU.

⁴² See Section 4.2.4 on "User reviews" of the UCPD Guidance.

3. VIOLATION OF ARTICLE 8 OF THE DIGITAL SERVICES ACT AND OTHER CONCERNS REGARDING THE ITALIAN DRAFT LAW

(51) While the above analysis on the violation of the UCPD by the Italian Draft Law should be sufficient to prevent the Republic of Italy from adopting the latter, passing references can be made to other shortcomings identified in the Italian Draft Law.

3.1. Violation of Article 8 of the Digital Services Act and incompatibility with the Digital Services Act's overall objectives

- **The Digital Services Act adopts a full harmonisation approach**

(52) The Digital Services Act⁴³ ("DSA") regulates the obligations of digital services that act as intermediaries in their role of connecting consumers with goods, services, and content. In particular, the DSA's framework aims at establishing transparency and accountability for online platforms and at countering illegal content online. The Regulation enshrines rules applicable to intermediary services in the internal market with the objective of "addressing the dissemination of illegal content online and the societal risks that the dissemination of disinformation or other content may generate".⁴⁴ Article 1 of the DSA also specifies that it aims at protecting fundamental rights, including the principle of consumer protection.

(53) As a Regulation, the DSA applies directly and supersedes overlapping national laws that follow the same objective.⁴⁵

(54) Similarly to what has been described above at para. (10) in the context of the UCPD, the DSA also introduces a full harmonisation under Article 114 TFEU, read in conjunction with Article 26 TFEU. The DSA therefore provides for an harmonised rulebook applicable throughout the Digital Single Market.

(55) The DSA itself specifies that it "fully harmonises the rules applicable to intermediary services in the internal market" and that "accordingly, Member States should not adopt or maintain additional national requirements relating to the matters falling within the scope of this Regulation, unless explicitly provided for in this Regulation, since this would affect the direct and

⁴³ 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.

⁴⁴ Recital 9 of the DSA.

⁴⁵ See Questions and answers on the Digital Services Act, at the following link: https://ec.europa.eu/commission/presscorner/detail/en/qanda_20_2348 (last viewed on 14 March 2025).

uniform application of the fully harmonised rules applicable to providers of intermediary services in accordance with the objectives of this Regulations".⁴⁶

(56) **The Italian Draft Law violates Article 8 of the DSA and contradicts its general objectives**

- ***Imposition of a general obligation to monitor consumer reviews***

(57) The DSA enshrines liability rules for providers of intermediary services in relation to the hosting, identification and disabling of illegal content, and concerning the steps to be taken upon receipt of orders to act against illegal content online.⁴⁷

(58) "Illegal content" within the meaning of the DSA "means any information that, in itself or in relation to an activity, including the sale of products or the provision of services, is not in compliance with Union law or the law of any Member State which is in compliance with Union law, irrespective of the precise subject matter or nature of that law".⁴⁸

(59) As mentioned at para. (19) above, the UCPD regulates the posting of false reviews and the misrepresentation of reviews online. On that basis, the prohibition of false reviews and the misrepresentation of reviews under the UCPD undoubtedly amounts to "illegal content" within the meaning of the DSA (and we note that the same prohibition imposed by the Italian Draft Law would also amount to "illegal content" under the DSA).

(60) Article 8 of the DSA, similarly to the UCPD, does **not** impose on service providers a general obligation to monitor the information which they transmit or store and to actively seek facts or circumstances indicating illegal activity, e.g. fake reviews.

(61) As the Italian Draft Law imposes, *de facto*, such a general obligation to monitor consumer reviews published by service providers and a requirement to actively seek facts and circumstances indicating illegal activity (i.e. the verification of consumers' identity and of actual use of the products⁴⁹), it appears that such requirements violate not only the UCPD, but also Article 8 of the DSA. Concretely, online platforms would be on a permanent monitoring duty, having to perform various checks before each review is posted.

(62) By imposing such a general monitoring obligation, the Italian Draft Law violates Article 8 of the DSA.

- ***Incompatibility of the Italian Draft Law with the DSA's objectives***

⁴⁶ Recital 9 of the DSA.

⁴⁷ See for example Articles 6, 7 and 9 of the DSA.

⁴⁸ Article 3(h) of the DSA.

⁴⁹ Article 13(1) of the Italian Draft Law.

- (63) The DSA emphasizes the importance of transparency⁵⁰, the freedom of opinion without manipulation⁵¹, as well as the importance for providers of intermediary services to act in a non-arbitrary and non-discriminatory manner⁵². In other words, the rationale behind the DSA, although not explicit, is notably to foster platform neutrality by preventing arbitrary and unequal treatment of content.
- (64) In that regard, the possibility, foreseen in the Italian Draft Law, for businesses to request and obtain the deletion of reviews that are "misleading, untrue, or exaggerated" or "no longer current due to the lapse of two years from the date of use of the service by the author or the adoption, after the review, of measures capable of modifying or overcoming the reasons that had given rise to the judgment"⁵³ poses a serious threat to transparency, to the freedom of opinion without manipulation, and to platform neutrality.
- (65) For the reasons developed under Section 2.1, the possibility to obtain the deletion of negative reviews in such circumstances introduces highly subjective criteria, which would artificially increase the ratio of positive versus negative reviews, and thus manipulate the online rating of the business concerned.
- (66) Overall, the Italian Draft Law will impact online ratings and rankings of businesses by creating a significant risk of manipulation of consumer feedback, thereby undermining transparency and trust in online reviews and online platforms more broadly.
- (67) The provisions of the Italian Draft Law are therefore incompatible with the overall objectives of the DSA.

⁵⁰ Recital 45 of the DSA.

⁵¹ Recital 75 of the DSA and see at the following link under "How will the Digital Services Act protect my fundamental rights?": <https://digital-strategy.ec.europa.eu/en/faqs/digital-services-act-questions-and-answers>

⁵² Recital 47 of the DSA.

⁵³ Article 13(2) of the Italian Draft Law.

3.2. Violation of Article 6 of the General Data Protection Regulation

- (68) Article 13(1) of the Italian Draft Law requires that consumers submitting reviews prove their identity along with the actual use of the service in question. This necessarily implies the processing of personal data by the companies/platforms concerned.
- (69) Article 6(1) of the GDPR sets out the circumstances in which the processing of personal data can be considered lawful. Where the processing is necessary for compliance with a legal obligation, such processing is lawful within the meaning of Article 6(1)(c) of the GDPR. However, Article 6(3), 2nd indent, of the GDPR specifies that: "The Union or the Member State law shall meet an objective of public interest and **be proportionate to the legitimate aim pursued**" (emphasis added).
- (70) The Italian Draft Law sets out a legal obligation – within the meaning of Article 6(1)(c) of the GDPR – for platforms publishing consumer reviews to process personal data in order to verify these reviews. The Italian Draft Law's aim is to protect businesses from consumer reviews that are misleading, untrue, exaggerated, old (2 years) and no longer accurate.
- (71) By requiring the processing of personal data to verify the identity and actual use of the service every time a consumer wishes to post a review, Article 13(1) of the Italian Draft Law is disproportionate to the "legitimate aim pursued" within the meaning of Article 6(3), 2nd indent, of the GDPR. By way of example, the platforms on which the transactions (e.g. bookings of hotel stays) are not taking place, and whose business model is based on making accessible consumer reviews for the benefit of the public, would inevitably have to start processing personal data in order to comply with the Italian Draft Law. The same objective of protecting businesses could be attained with means that are much less intrusive and more proportionate, see e.g. para. (40): requiring the reviewer to register, using technical means such as IP address check to verify that the reviewer is actually a consumer, deploying tools to automatically detect fraudulent activity, etc.
- (72) On that basis, the legal requirement set in Article 13(1) of the Italian Draft Law to process personal data to verify the reviewer's identity and actual use of the service is disproportionate to attain the objective of protecting small and medium-sized enterprises. The Italian Draft Law therefore violates Article 6 of the GDPR.

3.3. Concerns regarding the scope of application of the Italian Draft Law

- (73) From a broader perspective, it must be noted that the inclusion of provisions, including strict prohibition requirements and a sanctioning regime, aimed at protecting consumers – as per the

Republic of Italy's own description of the Italian Draft Law on the European Commission's website⁵⁴ – in a draft law supposedly targeted at small and medium-sized enterprises ("SMEs") is questionable.

- (74) The scope of application of the Italian Draft Law raises questions. While the Italian Draft Law, as per its title, supposedly concerns SMEs, the Italian Draft Law seems to apply more generally to the entire accommodation and catering industry in Italy,⁵⁵ not just to SMEs. It also seems to apply to "entrepreneur[s]".⁵⁶ As mentioned at para. (5) above, the Italian Draft Law sets out possibilities for businesses and entrepreneurs to respond and request the removal or deletion of some reviews in some circumstances.
- (75) The inclusion of provisions of general applications – as it seems – in a draft bill concerning SMEs questions the relevance of the approach.
- (76) In other words: consumer protection, protection of SMEs, or protection of the entire catering and tourism industry – the true objective of the Italian Draft Law is unclear.

4. CONCLUSION

- (77) If the Italian Draft Law were to be adopted, the Republic of Italy would exceed its competence within the meaning of the EU Treaties, specifically Article 114 TFEU read in conjunction with Article 26 TFEU, on the basis of which the UCPD and the DSA have been adopted.
- (78) The Italian Draft Law seeks to regulate an area of EU law that is already fully harmonised under the UCPD at EU level. Its adoption would create barriers to the internal market, particularly the Digital Single Market, lead to a violation of the freedom to provide services, and lead to regulatory inconsistencies among the Member States.
- (79) Moreover, the Italian Draft Law is expected to create barriers to entry for certain service providers and *de facto* prohibit certain business models that are based on consumer reviews. This is due to the Italian Draft Law's unreasonable and disproportionate requirements, especially regarding the identity and use checks prior to the posting of consumer reviews.
- (80) If the Italian Draft Law were to be adopted, it would result in tremendous economic consequences, a fragmentation of the internal market and a restriction to the free movement of services.

⁵⁴ See the following link: <https://technical-regulation-information-system.ec.europa.eu/en/notification/26584> (last viewed on 14 March 2025).

⁵⁵ Article 12 of the Italian Draft Law.

⁵⁶ Articles 13(2) and 14(1) of the Italian Draft Law.

- (81) The European Commission shall therefore take action in the context of the TRIS notification of the Italian Draw Law, especially considering the importance of its role under the TRIS Directive and as guardian of the treaties.
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