

Airbnb and the Digital Services Act

June 2021

In December 2020, the European Commission published its long-awaited proposal on a Digital Services Act, an important evolutionary step in making Europe's platform economy stronger, more trusted and more competitive. As the European institutions continue their discussions on this important text, Airbnb would like to take the opportunity to share an update on its policy priorities in relation to the proposal.

The DSA is a significant and welcome opportunity for Europe. Airbnb did not exist when the e-Commerce Directive came into force in 2000, yet we now have around 5.6 million active listings worldwide. And though the COVID-19 pandemic has hit the tourism and accommodation sectors hard, it has also confirmed the importance of digital services and the opportunities they provide in enabling economic recovery and the safe re-opening of tourism across the continent.

With this in mind, we express our strong support for an updated legislative framework that reflects the realities of digital services today, as well as their impact on European citizens and communities. In particular, we welcome that the DSA proposal reaffirms the **principles of country of origin, limited liability regime** and **no general monitoring**, as the backbones of Europe's platform economy, whilst also providing greater legal clarity in support of platforms looking to go above and beyond to ensure the safety of their users via **proactive actions**.

As discussions in the European Parliament and Council gain momentum, we take this opportunity to outline the five key themes most important to Airbnb and our Host community:

1. Achieving a workable and effective DSA **oversight mechanism** for digital players.
2. Greater clarity regarding the **powers of local and national authorities** and the responsibilities of digital platforms when it comes to issues of illegal content.
3. The definition of **Very Large Online Platforms**.
4. Ensuring a proportionate and consistent approach to new **KYBC** obligations.
5. Vertical policy tools to effectively address compliance with **short-term rental rules**.

1. DSA governance and oversight

The European Commission has proposed a new framework of Digital Services Coordinators, convened within a European Board for Digital Services, as an oversight mechanism previously absent under the e-Commerce Directive. Given the degree of regulatory fragmentation faced by Collaborative Economy platforms in the EU, it is crucial that this mechanism works in practice -- for all stakeholders.

We have long [supported](#) the ambition to improve coordination and collaboration between digital authorities across the bloc, and our focus for upcoming discussions is thus on how to ensure the consistent application of new digital rules – underpinned by the country of origin principle as the foundation of the European Single Market.

There are two areas where we feel the current proposal could go further to ensure effective and consistent oversight.

- Firstly, given that the DSA will apply to a whole range of platforms operating in diverse industries - retail, transportation, social media, travel, professional services, to name but a few - it is imperative that national **Digital Services Coordinators (DSCs) are sufficiently informed and equipped to oversee a wide range of issues.**

In today's fragmented legal and regulatory environment, short-term rentals present highly complex - and highly localised - questions distinct from the freedom of expression issues raised by social media. In this context, assessing the validity of an order by the relevant national authority can require knowledge of hyper localised tourism, zoning and housing rules originating from a city on the other side of Europe, further complicated by the fact that local rules can be unclear, disputed or even invalid, and can themselves vary enormously even within any one Member State.

In order to ensure that national DSCs carry out their roles in an informed manner, as outlined in **Art. 38-39** in particular, we suggest the proposal be amended to ensure that:

- DSCs have **all necessary resources** to effectively carry out their tasks and powers as well as regular exchanges with intermediaries to understand sectoral specificities.
 - In the exercise of their tasks, DSCs and the Board should **cooperate with, and seek advice from, relevant authorities, bodies and other stakeholders for matters outside their remit or competence.** In this respect DSCs should be able to seek external support where necessary (including from the intermediary itself), without compromising their independence and neutrality.
 - Further clarification should be included in the proposal on how **national, local and regional authorities should input into the work of the lead DSC**, to make sure there is a consistent approach across Member States.
- Secondly, we believe there is a need to **clarify - and expand - the supervisory role and powers of the European Board for Digital Services**, including the role of the European Commission, to ensure the consistent application of the DSA and to provide expertise on issues of cross-border enforcement (Art. 49). The Board should:
 - Provide support and expertise, in the form of **opinions and recommendations**, in consultation with stakeholders, to any DSC as/when requested, to ensure the effective enforcement of the DSA.

- Have the responsibility for ensuring that the conditions for country-of-origin derogation are **interpreted strictly and narrowly** to ensure consistent application of the DSA.
- Establish an **information sharing system** whereby intermediary services and other stakeholders can effectively share information directly with the Board. Ultimately, the Board should be recognised as a forum for knowledge-sharing and dialogue, including with external stakeholders, with the Commission having a key role to play given its insights vis-a-vis issues across Member States.

2. Clarifying the powers of local and national authorities (Articles 8 & 9, 14)

We welcome the steps taken in this proposal, specifically via Articles 8 and 9 on Orders and Article 14 on Notices, to clarify how local and national authorities and other stakeholders can flag illegal content and request information to a platform that is legally established in another Member State. We understand that this has been a bone of contention for many local authorities in particular, and will help provide clearer legal parameters for local requests when in conformity with EU law.

Given this aim, and to ensure that illegal content is dealt with swiftly and responsibly, **Article 14 should be amended to avoid unrealistic and overly burdensome liability provisions**. The current wording of this Article suggests that a platform will be deemed to have actual knowledge of illegal activity or illegal content simply as a result of a Notice being issued which meets the requirements set out in Art. 14 (2). However, in many instances individuals who provide a Notice will not have (and cannot be expected to have) sufficient understanding of the relevant legal frameworks in order to ascertain the illegality of the content hosted on a platform. This is especially the case in the short-term rental sector, where the determination of whether or not content is compliant with the law straddles a number of legal and jurisdictional frameworks, including local and regional urban planning rules, tourism and short-term rental rules, as well as national and European legal frameworks.

Instead, a platform should only be deemed to have actual knowledge of illegal activity **if it receives a court order, or if the illegality is blatant**: meaning that, based on the information received, a customer support representative – without having a legal background and without needing to rely on a lawyer – would be able to determine that the content is illegal, and would be able to make an accurate assessment as to the appropriate action to be taken by the platform.

3. Very Large Online Platforms (Article 25)

We seek to clarify several aspects concerning the designation of Very Large Online Platforms (VLOP). Whilst the quantitative threshold of 45 million recipients of the service makes sense in that additional due diligence obligations should only apply to the largest of online platforms, it is also important to clarify in the DSA that the way in which this "active recipient of the service" base is calculated and applied will necessarily **vary according to the business model** of the platform.

For a platform generating revenue strictly via transactions, such as Airbnb, an "**active recipient**" should be understood as those **Hosts and Guests actually transacting** (i.e. making a booking) **on the platform**. Individuals merely visiting or searching on the platform should not be considered "active recipients" of the Airbnb service. Ad-based platforms on the other hand generate influence and value as a result of site visits and views, rather than transactions. This distinction should be reflected in the definition of "active recipient" to ensure legal clarity for platforms and a more effective approach to staggered due diligence obligations, depending on the size and actual reach of the platform.

4. Ensuring a proportionate and consistent approach to new KYBC obligations

Article 22 of the Commission proposal requires online platforms to collect, verify and disclose certain information about traders using a platform to offer goods or services to consumers. We support the ambitions of the DSA to make the identity of businesses trading via online platforms more transparent to those consuming online services. Indeed, Airbnb operates its own Payments entity, which ensures that funds can be safely transferred from Guests to Hosts around the world, preventing fraud and facilitating currency transfers. This means we already do a significant amount of checks and verifications for Hosts under applicable anti-money laundering laws. With this in mind, we would like to highlight the following points:

- We urge the institutions to ensure that any new data collection obligations to be adopted as part of the DSA **align as far as possible with existing obligations** (for example in anti-money laundering rules, or in the recently-adopted DAC 7 legislation) to ensure an efficient data collection and verification framework for platforms, and a user-friendly platform experience.
- Data collection requirements under the DSA should remain **limited to traders** active on our platform – as the Commission proposal indicates. Mandating the collection of a range of sensitive data from any and all Hosts (both traders and non-traders) providing services on the platform would place significant burdens on those individuals renting their space on an ad-hoc basis, and may discourage non-professional Hosts from listing or transacting on the platform at all.
- We support the notion that platforms can be expected to conduct limited verification of the information provided to them by their business users and by automated means, to the extent that this obligation **does not confer a general monitoring obligation on the platform** in contradiction to Article 7 of the DSA. To this end, we are concerned by proposals that would oblige platforms to check and verify the self-identification status of a supplier as a trader or non-trader. We believe the legal obligation for correct self-identification should remain with the supplier themselves, as this will depend on individual factors and legal assessments that the platform is unable to make on behalf of the supplier. We are similarly concerned by any obligation to extend traceability requirements to services, where legal frameworks remain much more complex and fragmented than for, say, products, for which there are more harmonised rules at European level.

5. Addressing compliance with local short-term rental regulations

A **holistic approach** to short-term rentals is required that recognises the interlinkages between platform regulation and other legal frameworks, for example the **EU Services Directive**, in regulating the activity of Airbnb Hosts as service providers.

We understand the need for **policy tools to help support compliance** with short-term rental regulations. Host registration schemes are a good example of what can be an effective and proportionate way of regulating short-term rentals, enabling governments to gather the data they need to implement their local rules, with the cooperation of platforms and service providers who may be based in other member states. However, there are also numerous examples of restrictive local rules in place throughout the EU. These local rules can establish disproportionate burdens for both platforms and their users, often in conflict with EU law.

The DSA will represent **an important step forward** for authorities and platforms alike in clarifying the responsibilities of online marketplaces, including STR platforms such as Airbnb. It will not, however, address the fact that **many of the hyper-local rules that authorities are looking to enforce via the DSA are themselves disproportionate**, fragmented, and contravene EU legal frameworks.

For example, proposals to extend Article 22 to reinforce the role of platforms in checking and verifying services offered via an online marketplace - including (Host) registration numbers or related compliance requirements - ignore the uniquely complex and constantly shifting landscape of local short-term rental rules across Europe. Many of these rules also introduce different obligations for different categories of Hosts, making it impossible for short-term rental platforms to check the necessity, validity and authenticity of registration numbers in any kind of automated way, without conferring a broad and burdensome general monitoring obligation on the platform. Such a verification obligation would be impossible to implement in a manner which respects the EU approach to platform regulation, as well as the rights of Hosts as service providers under the Services Directive. The DSA cannot - and should not - solve for everything.

Instead, there is a clear need for a **“vertical” EU policy instrument for short-term rentals** which can sit alongside the DSA, and provide a much-needed framework to reduce fragmentation and clarify what proportionate local rules look like, in line with EU legal frameworks. We understand that the European Commission is considering such a policy instrument. We are fully supportive of this approach and **urge that the Commission accelerates this important work**.

Finally, any vertical EU policy tool could be supported through the DSA with an **STR Code of Conduct (Art. 35)**. This would ensure that fair and proportionate rules for Hosts are supported and bolstered by responsible and proactive actions by platforms, as is the case in Hamburg, Portugal, the [Netherlands](#), [Greece](#) and [France](#) where Airbnb already proactively supports Hosts in meeting their registration obligations. We have also built our own tools to help authorities enforce STR regulations across Europe via the [City Portal](#), our purpose-built tool that provides governments and tourism organisations access to data, insights and industry-first compliance tools, such as viewing listings and providing us with notice of potentially illegal listings, in line with their local registration systems.

We are now in urgent need of an EU initiative on short-term rentals to scale this work, and to ensure that Hosts, platforms and authorities across Europe benefit from clear, consistent and proportionate regulations.

Airbnb looks forward to participating in the ongoing discussions on the DSA. We stand ready to work with policy-makers at all levels to ensure the sustainable development of our services, and short-term rental platforms in general, across Europe in the coming months and years.

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