

## Feedback on the Public Consultation for a Digital Services Act Package

**FOUR PAWS / VIER PFOTEN welcomes the Commission's intention to put forward a Digital Services Act and appreciates the opportunity to provide feedback on the part relevant to the rules governing e-commerce. In view of the challenges brought by the platform economy, we trust the Commission will be ambitious in its plans to provide for better consumer protection through an updated liability framework for online marketplaces.**

### Background

**For nearly a decade, FOUR PAWS / VIER PFOTEN has been investigating the illegal online trade in animals.** Research shows that Europeans increasingly engage in online purchases, including when it comes to pets.<sup>1</sup> Representing a convenient means, both in terms of accessibility and amplitude of options, the internet has become the main channel for pet acquisition and classified platforms and social media are rife with offers, spanning from puppies and kittens to exotic species.<sup>2</sup> Adding to the already compelling volume of evidence seen by competent authorities of Member States and veterinarians, the FOUR PAWS / VIER PFOTEN own investigations demonstrate that the illegal online trade in pets and wildlife has now grown exponentially.

The steady rise in pet ownership seen in the EU has turned the companion animal market into a profitable sector of economic activity, and the market share for cats and dogs is expected to increase following the Covid-19 outbreak.<sup>3</sup> As a result of the growing consumer demand, a large array of actors ranging from legally regulated or legally unregulated – small-scale – breeders and sellers, to illegal breeders and traders are now involved in the pet trade. **Availing themselves of online marketplaces limited regulation and lack of controls over advertisers' identity and content, illegal traders can operate in full anonymity, disguised as legitimate professional or hobby breeders and sellers.** It is now estimated that most animals coming from illegal sources are sold online.<sup>4</sup> The implications are multifaceted: public health components could well present a hazard for the occurrence of zoonoses, since illegally bred animals are often kept in unsanitary conditions to be routinely trafficked from countries where rabies is still endemic.<sup>5</sup> The burden in terms of economic costs relates to the missing tax revenues deriving from the unreported commercial activity, which also creates a competitive disadvantage for responsible breeders. For

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<sup>1</sup> EU Dog & Cat Alliance + Blue Cross (2017). Online Pet Sales in the EU: What's the cost? [https://s3-eu-west-1.amazonaws.com/assets.dogandcatwelfare.eu/live/media/publicationtemp/12195\\_-\\_EU\\_Pet\\_sales\\_report\\_spreads.pdf](https://s3-eu-west-1.amazonaws.com/assets.dogandcatwelfare.eu/live/media/publicationtemp/12195_-_EU_Pet_sales_report_spreads.pdf)

<sup>2</sup> FOUR PAWS (2013) "Puppy trade in Europe" [http://www.carodog.eu/wp-content/uploads/2014/10/REPORT\\_EUROPEAN\\_PUPPY\\_TRADE2.pdf](http://www.carodog.eu/wp-content/uploads/2014/10/REPORT_EUROPEAN_PUPPY_TRADE2.pdf)

<sup>3</sup> <https://www.statista.com/statistics/515192/households-owning-a-pet-europe/>

<sup>4</sup> [https://www.eurogroupforanimals.org/sites/eurogroup/files/2020-06/Report\\_Illegal%20Pet%20Trade\\_%20Game%20Over\\_2020.pdf](https://www.eurogroupforanimals.org/sites/eurogroup/files/2020-06/Report_Illegal%20Pet%20Trade_%20Game%20Over_2020.pdf)

<sup>5</sup> FOUR PAWS (2016) "Identification, vaccination and movement of dogs and cats in the EU: How to improve the PetPassport and TRACES systems?" <http://www.lawyersforanimalprotection.eu/wp-content/uploads/2016/07/INSIDE-1.pdf>

consumers, deception translates to a sick or dying animal, high vet care and training costs and the inability to trace the seller.

Wildlife trafficking has also significantly expanded as a market over the last decade. There has been an increase in demand and supply, alongside which there has been an increase in suppliers, hunters, transportation, and platforms for communications.<sup>6</sup> The online web has become a new forum for interaction between consumers and producers — that would not just be the “dark web,” but regular platforms too, such as Facebook and e-commerce websites. Any wildlife species, even the most threatened and therefore the most protected ones such as tigers can be found for sale online. While it is prohibited to trade Appendix I listed species taken from the wild, it is legal to commercially trade captive bred Appendix I listed species such as tigers.<sup>7</sup> FOUR PAWS / VIER PFOTEN revealed that the legal trade inevitably encourages illegal trade and/or provides an easy cover for illegal activities.<sup>8</sup> For online offers of protected species, it can be very hard to determine the legality thereof. **2020 FOUR PAWS report ‘Europe’s second-class tigers’ documents multiple evidence of illegal online advertisement offering big cats for sale and traders or breeder eager to forge official papers to facilitate the sale.** Tigers are trafficked as live cubs, furs, claws and teeth for amulets and bones to be used in traditional medicine.<sup>9</sup> Depending the country, the trade may be hosted in the dark web, or in publicly accessible platforms. FOUR PAWS has traced advertisements by traders in Germany, Lithuania, Slovakia, Spain and Malta selling endangered species across Europe. For example, a Lithuanian trader offered to change the date of birth of the tiger cubs he kept, to be able to sell them faster. FOUR PAWS / VIER PFOTEN also contacted all EU Member States and eight neighboring countries in an attempt to estimate the volume of the captive- bred tiger population. Unfortunately, most countries were unable to share numbers. Since EU Member States do not have an overview of the number of tigers kept and traded within their borders, the commercial trade thereof should not be allowed to take place at all.<sup>10</sup>

## Context

FOUR PAWS / VIER PFOTEN very much agrees with the Commission statement that “the scale of problems arising from digital services is substantially different from 20 years ago”. To effectively address these challenges the Digital Services Act should focus on closing regulatory gaps and complementing existing legislation. To that end, we welcome the review of the e-Commerce Directive, which, in its role reflecting the reality ensued by the surge of the platform economy should afford the opportunity to set clear responsibilities and obligations for digital service providers to tackle illegal goods, including a special liability status for marketplaces and binding provisions for

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<sup>6</sup> Schaedla, W.H. 2016. Local sociocultural, economic and political facilitators of transnational wildlife crime.

Elliott, L. and Schaedla, W.H. (eds). 2016. Handbook of Transnational Environmental Crime.

<sup>7</sup> <https://www.cites.org/eng/disc/text.php#IV>

<sup>8</sup> FOUR PAWS, protect our tigers - Ban the Commercial Trade, 2018-2019, p.5

<sup>9</sup> FOUR PAWS, Europe’s second-class tigers, revealing the out-of-control captive tiger number and commercial trade, March 2020, FOUR PAWS, p.20

<sup>10</sup> FOUR PAWS, Europe’s second-class tigers, revealing the out-of-control captive tiger number and commercial trade, March 2020, FOUR PAWS, p.21



transparent advertising. Within this scope, we support the application of a clear distinction with respect to the various hosting service providers, in due consideration of their activities (e.g. online marketplaces), which would further allow differentiation of their responsibilities in addressing specific forms of illegal online content. Equally, we encourage a distinction between the activities of private professionals and legal persons and those of private individuals in their capacity as citizens. Finally, the Directive should effectively clarify the responsibilities of service providers established in third countries.

Over the past years, the illegal online pet trade has been coming under increased scrutiny. Negative publicity and the lack of a minimum set of rules incumbent in animal advertising have brought self-regulation measures. Nevertheless, voluntary initiatives to address the appearance or re-emergence of illegal content have fallen short in blocking misleading advertisement. It has become apparent that implementation of self-regulation schemes often lacks sufficient ambition, transparency and monitoring. **Indeed, in 2019, the EU Coordinated Control Plan on Online Sales of dogs and cats brought to the attention of Member States the high level of misconduct in the online pet trade and the urge for closer monitoring and regulation. According to Member States, the multitude of websites and lack of means that would allow to identify both traders and animals are key areas of concern.**<sup>11</sup> Unavoidably contributing to the fragmentation of the legal outlook and internal market, some EU countries and regions (e.g Wallonia in Belgium) have been working towards regulating the online pet trade. Additionally, the European Commission's Platform for Animal Welfare recently endorsed a series of measures, which aim to make trade safer for consumers and animals alike.

## Liability of online marketplaces

FOUR PAWS / VIER PFOTEN supports the Commission's further deliberations in putting forward updated and harmonized liability rules for online marketplaces that go beyond the current limitations applicable to hosting service providers.

**The new e-Commerce Directive should therefore address the concerns raised by the Council for improved welfare for traded dogs and cats.**<sup>12</sup> It should also build on Resolution P9\_TA(2020)0035 of the European Parliament, wherein the Commission is urged to end the misleading animal advertising and to better control the online pet sales by introducing mandatory requirements for online platforms to conduct minimum validation checks on the identity of users advertising pets for sale online.<sup>13</sup>

This is critical, since consumers expect that a product is checked before it is made available on the market and agree that the responsibility to trace the seller should fall onto the platform that granted the market access in the first place. It is now evident that

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<sup>11</sup> [https://ec.europa.eu/food/sites/food/files/animals/docs/aw\\_other\\_euccp\\_dogs-cats-analysis.pdf](https://ec.europa.eu/food/sites/food/files/animals/docs/aw_other_euccp_dogs-cats-analysis.pdf)

<sup>12</sup> <https://www.consilium.europa.eu/media/41863/st14975-en19.pdf>

<sup>13</sup> [https://www.europarl.europa.eu/doceo/document/TA-9-2020-0035\\_EN.pdf](https://www.europarl.europa.eu/doceo/document/TA-9-2020-0035_EN.pdf)



the platform economy requires updated rules to trigger liability duties of intermediaries. Additionally, and in accordance to the principle of “what is illegal offline is also illegal online”, FOUR PAWS / VIER PFOTEN believes it is compelling to establish that the illegal trade in animals falls within the remit of the illegal content definition.

**While the pet trade landscape is becoming increasingly complex, classified sites remain the most convenient and therefore preferred selling channel for illegal traders, which is a standalone reason for targeted content and advertiser-monitoring measures.** Whilst there is no shortage of information with respect to the red flags of the illegal trade, it has become more difficult for consumers to process it and detect fraud. Rogue dealers have demonstrated high adaptability in circumventing the introduced measures, including using elaborate methods to misguide and evade being traced, through various profiles, devices and contact details. More often than not, the measures in place do not go beyond the requirement to fill in mandatory fields of information, the validity of which is rarely certified and usually relies on email verification – ultimately compromising the quality of potential leads available to the authorities. Few platforms have gone as far as to take steps aiming to de-anonymize sellers via identity verification, such as a paywall. Despite this being a good starting point, it does not deter individuals and hobby breeders to sell online on a commercial scale, nor does it ensure efficient data recovery through the transaction code – a process that is complex to pursue, especially when consumers pay in cash and hold no legal sale proof. Turning to investigations on the illegal wildlife trade online, these raise jurisdiction issues of the commission of the crime, including poaching, advertising, transporting, transacting, and possessing the illegal wildlife, as well as perpetrator’s location and the physical location of all the above (which all could be in different countries).

**We urge the Commission to introduce the obligation for online classified platforms to establish GDPR-compliant measures that monitor animal advertising and prevent illegal content from going live, rather than allocating resources on scrutinizing and reacting to content that is already published.** To that end, we strongly recommend that the Commission puts forward binding responsibilities with respect to the information duties of online platforms that should include rule of law measures for the authentication and verification of the identity of advertisers, and of advertised companion animals. This would provide traceability in trade and would allow fair allocation of the responsibility to detect and deter illegal content, the duty of which is currently placed almost solely upon consumers. We therefore invite the Commission to fully use this opportunity to move away from non-binding, voluntary measures that rely on the discretion of online platforms, since this will sustain compromised transparency and safety in trade, while reinforcing the unilateral decision-making competency of online platforms.

[Proposed solution against the illegal advertisement of animals](#)



**The Model Solution is a recommendation against the illegal online trade in companion animals, endorsed by the EU Platform for Animal Welfare.** <sup>1415</sup>

FOUR PAWS / VIER PFOTEN has developed and is funding the technical development of a system that would ensure only registered pets are advertised by traceable sellers. As part of this system, when creating the advertisement, the seller - either the breeder or a third party - should submit the animal's registered microchip number (microchip registration for dogs is mandatory in 21 Member States) or certificate. The classified site forwards this information to Europetnet, which is a database with access to 92 million datafiles from pet registries across 26 EU countries. Through an automated check conducted by an application programming interface currently in development, Europetnet will be able to instantly verify whether the advertised animal is duly registered at a database, and if so, a onetime code is sent to the registered owner's mobile phone, which is needed to set the ad live. **The system focuses on prevention through disincentivizing illegal dealers, guarantees seller traceability and strengthens cooperation between platforms, public authorities and the civil society. It is fully compliant with the GDPR requirements and will be trialed in 2021.**

Additionally, **we believe the European Commission should encourage online platforms to provide clear information to users on international, European and national legislation on the commercial use of protected species.** Wildlife trade legislation is complex and includes a number of exceptions, making it difficult to identify whether the trade is legal or illegal. Therefore, it is essential that clear website policies on wildlife trade are developed and are communicated with information on the permits and internal certificates required for CITES-listed species, especially endangered ones, like tigers. Platforms should consider the use of concise Positive Lists of wildlife species that are allowed to be sold, in order to provide clarity to consumers and facilitate the tracking of illicit advertisements.

Furthermore, FOUR PAWS / VIER PFOTEN considers that **platforms should inform and educate users about the issue of wildlife trafficking in endangered species and engage them to report suspicious ads or listing selling wildlife.** As an example, the Coalition to End Wildlife Trafficking with 21 tech companies put a strong emphasis on empowering users to become online sentinels for wildlife. We strongly encourage online platforms to create a reporting pathway for users to flag prohibited species listings in real-time.

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<sup>14</sup> <https://www.four-paws.org/campaigns-topics/topics/companion-animals/tracing-the-trade>

<sup>15</sup> [https://ec.europa.eu/food/sites/food/files/animals/docs/aw\\_platform\\_plat-conc\\_guide-good-practices\\_dog-seller\\_leaflet.pdf](https://ec.europa.eu/food/sites/food/files/animals/docs/aw_platform_plat-conc_guide-good-practices_dog-seller_leaflet.pdf)