



CONFEDERATION OF INDUSTRY
OF THE CZECH REPUBLIC



Warsaw, December 6th, 2019

Position of the digital and advanced technology industries of Northern, Central and Eastern European countries on the development of the Digital Services Act (DSA)

The European Commission is considering the introduction of a wide-ranging Digital Services Act (DSA). The DSA is currently but a concept, and the European Commission is still yet to present specific proposals, but we understand that it could reform the e-Commerce Directive, upon which all online services in Europe depend. The e-Commerce Directive has led to the growth of a wide variety of online services and business models and has been critical for free expression, media pluralism, educational opportunities, European creativity, culture, and the arts.

We understand that the Polish government is hosting a meeting in Warsaw on December 9th with several governments from Northern, Central, and Eastern Europe where the DSA has been put on the agenda. We would like to offer our general remarks on the topics that may be covered by this regulation and present some principles which we believe should serve as the basis for possible regulation.

On behalf of the undersigned unions and associations representing a wide variety of small, medium and large enterprises of the digital and advanced technologies industries in Northern, Central and Eastern Europe and innovation start-ups, we believe that all prospective regulations of digital services, including electronic commerce, rules regarding accountability – algorithmic accountability included – illegal content and online advertising, should have at their hearts the idea of creating a truly Digital Single Market. This should allow innovative ideas to scale and spread across Europe without undue restrictions and the need to adhere to divergent local rules and regulations, allowing European consumers and enterprises to reap the benefits of digitization. This means that every new obligation and responsibility put on those providing services must be clear, precise and systematic for all of the Member States. Regulatory fragmentation will have a negative impact by e.g. disparity in interpretations and judicature. This being said, the country of origin principle should be maintained.

Differences between specific online services must be considered as well. Their diverse activity and goals must be well understood and reflected in projected regulations. What makes sense for content-sharing

platforms may not be appropriate, nor technically feasible, for a search index, or a platform that hosts other apps. It must also ensure respect for user privacy, and support services engaged in education, gathering information, spreading culture as well as promoting the right to express views and freedom of speech. Online security should also be the paramount goal, so the new regulations protect citizens' data and freedom of speech.

Regulations regarding user-generated online content should focus squarely on content violating the law. Notice and takedown should remain at the core, and there should be no liability without positive knowledge. The e-Commerce Directive's prohibition of general monitoring obligations should remain in force, and 'Good Samaritan' protections should be added to allow platforms to seek and remove potentially harmful content, without risking the loss of liability for occasional failures in that process. "Lawful but potentially harmful" content should not be part of the liability regime; where Member States believe a category of content is sufficiently harmful, the Government may make that content illegal, through democratic processes and in a necessary and proportionate manner.

We support the need for greater transparency, but caution that new transparency requirements don't risk trade secrets, violate user privacy or data disclosure laws, nor allow bad actors to find and exploit weaknesses.

We also share the societal concerns around illegal online activities and abuse of online services. We, however, believe that neither governments nor the private sector can and should solve these problems alone. We therefore support and strongly promote initiatives directed at mitigating such risks and fighting these problems within the setting of private-public partnerships and co-regulation.

The future Digital Services Act must protect values fundamental for the e-Commerce Directive, which has allowed a vast range of online services and novel business models to grow. It is important to prevent any new regulation from hampering innovation and growth of the Union.

All regulations proceeded should be driven by goals of developing a wide variety of online services and business models, European creativity, culture and art, media pluralism and opportunities for extensive education.

To the above end, we urge the governments of the Northern, Central and Eastern European Member States, to reach an agreement to work together in the upcoming process of enacting this fundamental piece of legislation, in order to achieve a forward-looking and future proof regulatory framework for the EU digital economy.