



September 8th, 2020

Position of the Digital Coalition of Central Eastern Europe countries on the Digital Services Act (DSA)

As the Digital Coalition of the countries from Central Eastern Europe (Bulgaria, Croatia, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia and Slovenia), represented by the organisations signed below, we would like to share our position in regard to the Digital Services Act. As entities directly affected by currently binding regulations of the twenty-years-old Directive on electronic commerce (2000/31/EC) and other legal acts, including national and often conflicting legislation, we are well aware of the necessity of updating the legal framework due to the technological development, which has taken place over the past two decades. We have been closely monitoring the evolution of regulations concerning digital services, modern business models and technological solutions, including the currently debated Digital Services Act. As an industry we share the common goal of strengthening the idea of a Digital Single Market in our region and across the European Union and strive to create a policy environment supporting innovation and digitisation in Central Eastern Europe. We also recognize the vast technological progress over the past two decade and the benefits as well as the challenges that it has created, many of which do indeed need to be addressed. In the spirit of constant support for novel business models and services, we wish to appeal for the upcoming regulations to answer the needs of the digital market and remain grounded in the fundamental principles essential to the current Directive on electronic commerce.

In this context, we outline below a number of key principles that we believe the Digital Services Act should embody.

First, the DSA must guarantee continued protection of fundamental rights. Citizens are increasingly participating in political life through online tools and services, thus when debating regulation of online services, we need to take into account the fundamental rights of access to information, freedom of speech online, etc. At the same time, the spread of illegal content and disinformation is increasing. Therefore, it is equally vital for the planned regulations to find an equilibrium between digital security and freedom of data flow as well as the development of new services, while also staying true to the requirements of modern digital market and keeping its future in mind.

Second, in line with the above, the new legislation should maintain a clear liability framework for intermediaries focused on illegal content. Providers of digital services cannot be burdened with the duty of proactively and preventively analysing and blocking all of the content shared in the scope of any given service. It is as non-viable for small and medium enterprises operating online, which often do not possess the resources necessary for such an obligation as this is highly risky for the safety of the fundamental rights of European citizens, whose freedom of speech and expression would be handed over to providers of services, high-handedly deciding on removing any content uploaded. We believe that it is the obligation of the state to rule in a deliberative and democratic process on what is to be banned or allowed. It's not for private companies to play such a role. Thus, the future DSA should deal only with illegal content based on transparency principle, clear definitions on "content", "services", "products" and not regulate issues as nebulous as harmful content. Regulations leading to such limitations must not be allowed and every instance of liability placed on service providers should be taken into deep consideration, so as not to result in a harm done to the growth of innovative solutions in the European Union.

Third, the regulators should carefully consider the impact on SME and their continued ability to innovate. We appeal for the legal regulation of digital services to be developed in a way, which does not allow for excessive strain on the sector of small and medium enterprises and startups and takes into due account the diversity of the digital ecosystem. While developing the Digital Services Act, it is necessary to keep in mind the role and capabilities of small and medium enterprise in fueling innovation. These small and creative companies put competitive pressure on multinational platforms and offer more services and diversity for consumers. For their sake, the introduction of a new law must not lead to a burden of costly legal management, which is only affordable to the largest players in the digital services' industry, and which excludes the smaller entities from the market, harming their competitiveness. Because, in fact, they are the source of European innovation, of the development of new services and technology, as well as an extraordinary element of the aspiring digital economies of the Central Eastern European countries. Therefore, the importance of preserving the fundamental country of origin principle, present in the currently effective Directive, cannot be overstated, as it allows entrepreneurs to operate in the EU according to the law of the state, they reside in. This very principle provides an opportunity for newly developed European innovative products and services to enter new markets and dynamically expand.

Fourth, we call for the new regulation to adopt a principle-based approach and avoid creating an unfair advantage based on policy-makers' influence. A true Digital Single Market should provide companies competing in it with equal opportunities based solely on consumers' choices and the quality of services. The success of new digital services cannot depend on political agenda of the moment. Otherwise, we are at risk of facing a growing inequality between member states of the European Union and thus an internal fracture of the digital community. The Digital Services Act should strive to deepen the integration, strengthen the Digital Single Market and harmonise the law. Indeed, the regulation must not be used in pursuit of political objectives and/or the growth of specific industries in one part of Europe while being to the detriment of smaller economies, especially in the countries of Central and Eastern Europe. Citizens and enterprises could risk losing access to the latest technological advances and chances for economic development. Thus, regulations which put the rising, export-oriented, less diversified economies of Europe at risk of harm must be avoided. We must also make sure that growing costs resulting from the change of regulations will not lead to a situation in which non-EU companies' investments, currently located in the countries of CEE, are pushed outside of the EU. Moreover, competition law must guarantee that the success of digital enterprises depends solely on their business prowess on a just, unified market. Rights and obligations resulting from the new regulations of the Act should be of a universal nature, uniformly affecting all of the economies across the EU. We must aim for a future proof regulatory framework built on solid principles applicable to all players, regardless of size.

Finally, the community of European consumers stands to gain the most from a responsible and inclusive legislation, rooted in the principles of a Digital Single Market, which boosts innovativeness and fair competition. Citizens, being at the very heart of any digital service developed, as its designated users, will profit from a healthy legal framework, allowing for a growing number of bold, European digital projects. Already, European citizens constantly benefit from a vast array of available advanced services and business models and make use of them with great enthusiasm. **We must not allow the operational costs and financial burden resulting from required legal service to translate into higher prices of services and products, leading to limited access of European citizens to digital services.**

The digital services and products market needs a clear, transparent and uniform legal framework. A general shape for such a framework is already provided by the e-Commerce Directive. Newly developed law should be created with the mindset of respecting a great diversity of digital services and be built knowing both that there are no one-size-fits-all solutions for such a huge number of different ventures and that a great deal of flexibility is required from the regulations. We are of the opinion that work on the Digital Services Act must result in the creation of regulations capable of standing up to the challenges of dynamic digitisation, newly rising business models and services of the future, while adhering to the fundamental principles of the European community and tearing down inequality and barriers standing in the way of development in Central Eastern Europe. It is crucial for the Act to be as appropriate to current technological reality and resilient to the passage of time and universal as possible in order to provide Europe with a just legal environment for the business and citizens.

As the Digital Coalition of Central Eastern Europe countries, we present the European Commission with our postulates and hope they are recognised. At the same time, we declare our willingness and readiness to participate in the upcoming stages of legislative works and offer our substantive support based on our extensive market experience.

Signed by:

- √ ASE - Consumer Electronics Association of the Czech Republic
- √ APDETIC - Association of Producers and Distributors of IT&C Equipment
- √ ANIS - Employers' Association of the Software and Services Industry in Romania
- √ Croatian Employers Association (HUP)
- √ Digital Coalition of Slovenia
- √ Digital Poland Association (ZIPSEE)
- √ INFOBALT Lithuania
- √ ITAS - IT Asociácia Slovenska
- √ ITL - Estonian Association of Information Technology and Telecommunications
- √ IVSZ - ICT Association of Hungary
- √ LIKTA - Latvian Information and Communications Technology Association
- √ National Digital Alliance (DNA)
- √ SPCR - The Confederation of Industry of the Czech Republic
- √ SAPIE - Slovak Alliance for Innovation Economy