



BSA's response to the Evaluation Roadmap/ Inception Impact Assessment on the Digital Services Act

Brussels, 30 June 2020

BSA | The Software Alliance (BSA) welcomes the opportunity to provide input to the Commission's evaluation roadmap/inception Impact Assessment on the Digital Services Act. BSA is the leading advocate for the global software industry. Our members are at the forefront of software-enabled innovation that is fueling global economic growth by helping enterprises in every sector of the economy operate more efficiently.

As an organization, BSA supports the development of relevant policy instruments and smart regulation that strengthen the Digital Single Market in Europe. In this respect, we acknowledge the importance that the E-Commerce Directive has played for the DSM, and of the necessity to account for the technological evolution of the ICT sector over the past twenty years, accounting of the different features and layers of the technology industry.

BSA invites the Commission to ensure that the diversity of the digital services ecosystem is recognized in the future legislation: not all digital services have the same societal impact or the same risk profile when it comes to illegal content, therefore the DSA should clearly spell out services not intended to be in scope of the proposed measures. A one-size-fits-all approach that would impose the same rules on all digital services would create disproportionate burden for many businesses that do not have the ability to access and moderate content, or do not disseminate content to the public such as enterprise cloud services. Such an approach would limit the uptake of cloud technologies across businesses and damage the broader data economy.

BSA welcomes the Commission's assertions that the key principles of liability enshrined in the e-commerce directive will be maintained. As a general principle to be upheld from the e-commerce directive, liability should fall on the entity best positioned to mitigate the risk.

Regarding the "Know Your Business Customer" (KYBC) provision, which is listed among the potential regulatory approaches, BSA also recommends addressing any existing shortcomings through a tailored approach. BSA strongly supports rules that will protect consumers by preventing dishonest businesses selling illegal products online, but such rules should avoid applying inappropriate constraints on business-to-business services. Setting stronger consumer protection rules should first take into account the role of digital services that are an active party in the provision of a business-to-consumer good or service, while balancing the need to safeguard the smoothness and speed of online business

operations. As an example, digital services which are directed primarily at consumers, which act as the intermediary between the trader and the consumer or which provide the trading interface/platform for the online sale of consumer goods, could be considered as relevant parties.

On the other hand, the provision of core services to regulated sectors such as operators of essential services entirely depends on the ability to provide robust cloud solutions that are neither designed nor intended to/directed at consumers. Moreover, enterprise cloud-based solutions are largely offered on a “Pay as You Go” principle, contributing to the success of the cloud.

Software suppliers possess a variety of due diligence tools (i.e. contractual obligations in their service contracts) that set strong safeguards. Additional and disproportionate requirements may not only raise privacy and/or business confidentiality concerns, but it could discourage companies, particularly SMEs and start-ups, from moving to the cloud. Consequently, the DSA should seek to clarify which consumer-facing services, sectors or activities require specific transparency criteria with the objective of strengthening consumer protection standards and exclude B2B services which provide the backend infrastructure or that store content or data as part of a service provided to a company or another entity other than a natural person.