

STEERING BRIEF – MEETING BETWEEN ROBERTO VIOLA AND [REDACTED], [REDACTED], AMAZON WEB SERVICES ON 28/11/2018

Context of the meeting

This meeting was requested by [REDACTED], [REDACTED] at Amazon Web Services (AWS), to discuss in particular the evolution of the European digital economy, with a focus on cloud related policies, and the Regulation on terrorist content online.

Cloud related policies

- AWS is the largest cloud service provider globally. Together with Microsoft, they own more than half of the market for Infrastructure-as-a-Service cloud services. Gartner predicts that this will become a joint market dominance of 90% in 2020.
- The Regulation on the free flow of non-personal data has been adopted on 14 November 2018. The DSM self-regulatory working groups on data porting and switching of providers (SWIPO) and on cloud security certification (CSPCERT) are working on full steam.
 - SWIPO has been working on two Codes of Conduct: one for Infrastructure-as-a-Service (IaaS) and one for Software-as-a-Service (SaaS) cloud services. Work on the Platform-as-a-Service (PaaS) will start at a later stage.
 - CSPCERT is developing technical criteria for an EU-level cloud security certification scheme under the new EU cybersecurity certification framework (still under negotiation). Once the Cybersecurity Act is adopted, the European Commission should request the development of a cloud scheme to ENISA, taking into account this preparatory work done by the industry.
 - These working groups will meet again in Vienna on 6/7 December 2018.
- AWS is a member of SWIPO but not CSPCERT. AWS is supporting SWIPO's work and its participation has been more substantial as regards IaaS as this is its core business.

- [REDACTED]
- [REDACTED]

Decision
making
process -
Article 4(3),
subpara. 2

The Regulation on terrorist content online

- Negotiations ongoing in the Council on the proposal for a Regulation on preventing the dissemination of terrorist content online. Overall support by MS for the objectives of the text. Parliament to vote on their report in late January or February.
- [REDACTED] The proposal for this Regulation provides for the uptake of duties of care by hosting service providers (HSP) that can include the implementation of proactive measures (including by using automated tools). HSP also have to respond

to removal orders (within one hour) and assess referrals (swiftly) to delete or disable access to terrorist content online.

- [REDACTED]
- [REDACTED]

The P2B Proposal

- The negotiations on the P2B proposal are progressing smoothly. On 16 November the Coreper agreed on a text of a General Approach to be adopted by the Competitiveness Council on 29 November. The EP IMCO report is expected to be adopted on 6 December. The adoption of the proposal is expected in the 1st quarter of 2019.
- [REDACTED]
- Given the service-based scope of the P2B initiative Amazon falls under the scope of the P2B initiative for some of its activities (e.g. Amazon market place, Amazon Appstore). [REDACTED]

Copyright Directive.

- Amazon's marketplace is not directly impacted by the draft copyright Directive. Online marketplaces are explicitly excluded from the scope of services covered by Article 13 in the Council's general mandate and in the EP's report. [REDACTED]

*Protection of
commercial
interests -
Article 4(2),
first indent*

Objectives of the meeting

- Thank AWS for its participation in SWIPO and encourage continuous support on cloud related policies; Discuss AWS's position on Green Cloud [REDACTED]
- Address AWS' concerns regarding the proposal on terrorist content online;
- Make AWS aware of the state of play of the P2B proposal and the Observatory for the Online Platform Economy.

Suggested line to take (aligned with most recent LTT)

Cloud related policies

- The drafting of the codes of conduct on cloud switching and data portability, (SWIPO) for IaaS and for the SaaS are progressing well. These codes have to be completed by mid-2020. The members of SWIPO are entering the final stages of negotiating a governance approach for this working group.
- New forms of cloud computing, such as fog and edge computing, are energy intensive, making up already 40-80% of all energy used by datacenters. [REDACTED]

[REDACTED] It could be asked whether AWS is considering new approaches to energy efficiency.

- On the Supervision of cloud use by the financial sector: There is a dialogue between the Commission (FISMA/CNECT) and EBA, but EBA is an independent authority with the mandate to decide on the right supervisory framework. To add legal certainty for cloud use by the financial sector, the Commission has committed to actions in the Fintech Action Plan, notably the development of model contract clauses. The Commission is also in dialogue with many financial stakeholders (i.a. through the EBF cloud banking forum) to see how the legal certainty can further be improved.

Proposed Regulation on terrorist content online

- Discussions are ongoing in Council and further clarifications in the recitals might be necessary.

[REDACTED]

- [REDACTED]

*Decision
making
process -
Article 4(3),
subpara. 2*

The P2B Proposal

- The proposal for a P2B Regulation aims to establish a fair, trusted and innovation-driven ecosystem in the online platform economy in the EU.
- Granting businesses more predictability in their relationships with platforms, as well as giving access to effective means to address problems, will encourage their use of online platforms as a means to grow their business. At the same time, clearer rules at EU level should provide platforms with a predictable regulatory environment and enable them to scale-up in a less fragmented Single Market.
- The Commission's P2B proposal strikes a balance between addressing key issues, and doing so in a light-touch and harmonised manner to maintain the innovation potential of the online platform economy.
- The Observatory on the Online Platform Economy, created by a Decision of 26 April 2018 will play an important role. It will monitor the opportunities and challenges of the online platform economy and contribute to a shared understanding of the issues at stake by putting together existent expertise developed at national, EU or international level.

The knowledge gathered by the Observatory will support the review of the proposed rules indicating whether there is a need for more far-reaching regulation at EU level.

Copyright Directive

- We hope to move forward swiftly with the inter-institutional negotiations in order to adopt the new rules as soon as possible, still during this legislative term.
- Online marketplaces were never targeted by Article 13 and are explicitly excluded from the EP and the Council's texts. We believe that this exclusion is appropriate since online marketplaces are not engaging with cultural content such as music or audiovisual works uploaded by Internet users.

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[REDACTED]

Outcomes/results

- To continue good cooperation with AWS on the self-regulatory work done by the SWIPO WG; To work together with AWS to make cloud computing more energy efficient;

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[REDACTED]

CONNECT Participation:

- [REDACTED], Cloud & Software
- [REDACTED], E-commerce & Online Platforms
- [REDACTED], Cloud & Software, chef de file ([REDACTED])

*Personal
data -
Article
4(1)(b)*