

## Steering brief

### Scene setter

On 30 March, you will have a 45-minute meeting with [redacted] Google and Alphabet (*CV in your file*). You met [redacted] twice last year, on 25 January and 17 November 2021. Your discussion is likely to focus on key digital regulation files, such as the Digital Services Act, the Data Act, as well as artificial intelligence liability and the Product Liability Directive. *NB. A separate briefing on the Digital Markets Act and other competition matters will be provided directly by DG COMP.*

### **Digital Services Act**

Google believes that the cornerstone principles established in the e-Commerce Directive should be maintained, such as the country-of-origin principle, the guarantee of the freedom of establishment and of the freedom to provide digital services.

[redacted]

### **Data Act**

The Data Act proposal introduces, among others, a shielding provision for EU data processed in the cloud, in order to prevent unlawful access to data by foreign authorities. In this regard, we have noted Google's activities in providing more secure and EU-based services, e.g. by means of partnerships with EU-headquartered businesses.

The Data Act proposal also includes obligations to enable cloud switching. This poses concrete regulatory requirements of contractual, commercial and technical nature and goes further than the scope of self-regulatory codes of conduct, on which Google has cooperated.

Google has not explained its position on legislative proposals adopted under the data strategy in writing or orally, or during the open public consultation prior to the Data Act. In their earlier position papers, Google pointed to its support of consumer data portability. In this regard, only the position of DIGITALEUROPE, the umbrella organisation for national industry associations, is available. They argue:

- [redacted]
- [redacted]
- [redacted]
- [redacted]

Google is a business member of Gaia-X, working towards interoperability of cloud services. Google is not a member of the European Alliance for Industrial Data, Edge and Cloud, in line with its strict European membership eligibility criteria. Google has initiated partnerships with European players ([redacted]) to offer services on EU markets that comply with national sovereignty criteria (such as the French national cloud strategy and the Data Act). Those partnerships offer the possibility to run Google technology within strictly nationally-based (unconnected) processing environments.

### ***Product Liability Directive & AI liability***

#### ***Other points that could be raised***

Your file contains concise defensives on data protection, in case your interlocutor raises this issue.

You might also use this meeting to invite Google to re-consider whether their Google Store or the Shop/Ads could be part of the Product Safety Pledge. The Product Safety Pledge was initially signed in June 2018 by four online marketplaces. Since then 11 companies have joined the initiative (Allegro, AliExpress, Amazon, bol.com, CDiscount, eBay, EMAG, Etsy, JOOM, Rakuten and Wish.com). It consists of twelve commitments relevant for product safety and going beyond the legal requirements. Signatories of this pledge report twice a year on their commitments.

### **Key messages**

#### ***Digital Services Act***

- The Digital Services Act (DSA) is almost in the final phase of negotiation. I would expect Google to be ready to comply with all the due diligence obligations, possibly even earlier than the given date of application.
- The DSA will set rules on content moderation practices of online platforms, and its interaction with freedom of speech and healthy and well-informed public debate.
- Platforms would also have to apply measures against misuse of their systems and transparency mechanisms. Users will have the right to be informed about the moderation policies and decisions by the platform, contest them and have redress options.
- Very large platforms will need to assess and address risks that their systems pose to freedom of expression and other fundamental rights, to ensure that those 'public spaces' are open and fair.

#### ***Data Act***

- The aim of the EU data strategy is to unleash the potential of use and re-use of data and to build open, competitive and human-centric ecosystems around data in Europe.
- Voluntary data-sharing partnerships are supported by investments in common European data spaces and legislative rules on data intermediaries via the Data Governance Act. Such intermediaries would only be a facilitator of exchange (no own use of the data).
- The Data Act aims to make the markets more dynamic by giving users a right to access and use the data that connected objects create. This would lead to a fairer distribution of the economic value of data. Any sharing of personal data must comply with the General Data Protection Regulation.

#### ***Product Liability Directive & AI liability***

- People, who are injured or whose property is damaged by defective products, should be adequately compensated by the producer, whether the product is equipped with digital technologies or not. To achieve this, the Product Liability Directive needs updating.

- Besides, the opacity and increasing autonomy of certain AI-systems challenge existing civil liability rules. Certain adaptations to national liability rules could be necessary to create the right conditions for the development and use of AI in Europe. The objective is to promote the rollout of trustworthy AI to harvest the full benefits of AI and avoid legal uncertainty.

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