

BRIEFING NOTE (*Commission Internal*)

Scene setter/Context of the meeting:

- You are meeting [REDACTED]
Information Technology Industry Council (**ITI**).
- [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
- ITI, based in Washington D.C., is an **advocacy organisation** representing companies from various segments of the **tech-industry**.
- Among ITI's 74 members are **leading tech companies**, mainly from the U.S. (e.g. Amazon, Apple, Google, Facebook, Microsoft, HP, Qualcomm), but also from Europe (e.g. Ericsson, SAP, Schneider Electric) and Asia (e.g. Lenovo, Samsung, Softbank, Toshiba). Some members are **not truly or purely tech-companies** but rely on technology to do business (e.g. Siemens, VISA, MasterCard, Toyota, etc.).
- ITI has requested an exchange of views on the following policy files:
(i) Data Governance Act, (ii) Platform legislation and the DSA-DMA, and (iii) Upcoming artificial intelligence proposals.

Objective of the meeting

- Present the rationale of our tabled and upcoming proposals.

- Identify key interests and concerns of ITI's members regarding the policy files in question.
- Secure support of the technology sector for the Commission proposals in the negotiations with the Council and the Parliament.

KEY messages

- The Commission is determined to make the 2020s Europe's "Digital Decade". Europe wants to lead on digital, setting the right European standards to bring about the Digital Age to the benefit of all.
- The Data Governance Act regulation will facilitate data sharing across sectors and Member States, in order to leverage the potential of data for the economy and society.
- The Digital Services Act and Digital Markets Act provide a comprehensive set of new rules for all digital services, including social media, online market places, and other online platforms.
- This ambitious reform has two main goals: (i) to create a safer digital space where fundamental rights of all users are protected and (ii) to establish a level playing field to foster innovation, growth, and competitiveness.
- To advance Artificial Intelligence in the EU, we want to build on our existing strengths and boost innovation across the EU to create a robust and lively AI ecosystem.
- We will introduce a comprehensive legal framework aligned with European values for creating an ecosystem of trust for AI in Europe, in order to ensure consumers' safety and fundamental rights.

Ongoing
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Background

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Platform legislation

- On 7 September 2020, **ITI submitted input to the open public consultations** for the Digital Services Act (“DSA”) and Digital Markets Act (“DMA”).¹
- On 15 December 2020 **ITI published its initial analysis of the DSA and DMA** and on 17 December 2020 ITI co-organised **panel discussions on the DSA and on the DMA** featuring a.o. (on DMA) MEP Anna Cavazzini, Chair of the

¹ For the DMA under both the open public consultation for “the Digital Services Act package – ex ante regulatory instrument of very large online platforms acting as gatekeepers” and the “New Competition Tool”.

Personal data European Parliament’s Internal Market Committee and (on DSA) [REDACTED]
[REDACTED].²

- ITI has reached out to you for an “**exchange of views on EU policy files relevant to the technology industry**” including the Data Governance Act, platform legislation and the DSA & DMA, and the upcoming artificial intelligence proposals.

Position ITI on DSA

- ITI welcomes the commitment to a **limited liability regime** for platforms. It supports **clearly differentiating between illegal and harmful content** and proposing legislative action only for illegal content while continuing to address harmful content through self- and co-regulatory approaches.
- ITI particularly supports provisions clarifying that voluntary measures to detect illegal content **do not exclude intermediaries from liability exemptions** (Article 6) and welcomes the continued commitment to **avoid general monitoring obligations** (Article 7).
- ITI highlights the following key provisions in the DSA:
 - **Trusted flagger or know-your-customer schemes** to help fight illegal content online are welcome; but these are **complex issues that require further consideration**.
 - **A European Board for Digital Services** for EU-wide coordinated oversight can enhance legal certainty through consistent application but **should also provide guidance and help companies** take reasonable, feasible, and proportionate measures.
 - **Additional obligations for very large platforms:** criteria to determine the active users of a very large online platform should be defined in the law and **not be deferred to delegated acts** by the Commission. New obligations targeting only certain “selected” platform **should be not unduly discriminatory**.

Personal data ² Panel discussions were part of an event co-hosted by ITI with DOT Europe. Other participants on the DMA discussion were [REDACTED] German Economy Ministry; [REDACTED] CERRE and [REDACTED]. Other participants on the DSA discussion were [REDACTED] EURActiv; [REDACTED] eBay; Karen Melchior, MEP Renew Europe Group; [REDACTED] Permanent Representation of Portugal; [REDACTED] Center for Democracy and Technology, [REDACTED] DG DOT Europe.

- The **commitment to risk-mitigation measures** having to be not only effective but also reasonable and proportionate is important.
- Enforcement: the proposed level of **finances seems disproportionate to the type of violations**. In addition, given the seriousness of the sanctions, the companies concerned should be provided with the possibility to contest a decision before a penalty is imposed.

Position ITI on DMA

- ITI underscores the need to **focus on a company's conduct and its interaction with users**, rather than the size of a particular player, users, or the number of services it offers.
- ITI underscores that there should be **no negative implication attached by default** to companies designated as gatekeeper under the DMA criteria.
 - ITI believes that **the label "gatekeeper" is inappropriate** for designated companies. This designation is only a prerequisite to attach more stringent obligations to platforms that play a systemic role in a market. Talking about a "provider of core platform services" would be, according to ITI, more appropriate.
- ITI underscores the **need for international dialogue and cooperation** in developing the new rules for the digital economy in the EU as other markets may draw inspiration from it.
- ITI stresses the importance – **both to the EU and the multilateral trading system** – that the DMA's key features are objective and **non-discriminatory**.
- ITI highlights the following key provisions in the DMA:
 - Gatekeepers should be **designated on the basis of objective criteria**.
 - These criteria should **not be designed to capture or exclude** a priori certain companies.
 - It is not clear **why turnover may be an indicator** of significant impact, while criteria like market shares are not considered.

- Assessing a platform's **user base as a criterion** to define gatekeepers, **requires an unequivocal definition** of what constitutes a user. As is also the case for the DSA, the criteria to determine the active users of a very large online platform should be defined in the law and **not be deferred to delegated acts**.
- The **gatekeeper designation** should only apply to a specific market or service, it should **not apply to an entire corporation**.
- **Due process:** the option for a company to challenge a designation as gatekeeper, either on the merits or in case of changed circumstances **is important** and this process must be smooth and effective.
- **Conduct justifications:** As regards the list of obligations in article 5, a business should always have the **possibility to justify its conduct** based on efficiency or objective justifications, for example protecting the security or integrity of the platform.

Artificial intelligence

- The **White Paper on AI was published in February 2020** and contains proposals to implement the EU's approach to AI. The proposals aim to create **ecosystems of excellence and trust** through an improved regulatory framework on AI. To do so, it proposed to create requirements for AI systems posing high risk to people's safety or fundamental rights.
- Subsequently, the Commission launched a **public consultation on the White Paper** which received over 1,200 responses from all over the world.
 - The results revealed a clear need for regulatory action. 42% of respondents see a need for new legislation while 32.5% say that current legislation may have gaps. Only 3% say that current legislation is sufficient to address concerns raised by AI.
 - 90% of respondents are (very) concerned about AI infringing on fundamental rights and 87% are (very) concerned about discriminatory outcomes in the use of AI.
 - A large majority of respondents agreed to the proposed measures to foster excellence. Strengthening excellence in research (89%) and developing AI skills through adapted training programmes (86%) were considered as the two areas that can benefit most from a coordinated approach by the EU and the Member States.

- A large majority of respondents also considered infrastructure such as world reference testing facilities (76%) and European data spaces (75%) important or very important. The role of Member State coordination in the promotion of AI uptake by business and public sector, as well as the increase in financing for AI start-ups were seen as (very) important by 71% and 68% of respondents respectively.
- **ITI have provided their views** on the AI White Paper and the Inception Impact Assessment (cf. attachments).

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Position ITI

- ITI and its members share the firm belief that building trust in the era of digital transformation is essential. For this reason, they welcome the goal to foster the development and uptake of safe and lawful AI that respects fundamental rights and ensures inclusive societal outcomes, all while preserving an enabling environment for innovation.

- In their view, it is crucial for Europe to not only look at the potential harms of using AI, but also consider the potential economic and social harms of limiting the use of AI, which may decrease its positive impact on our communities.
- ITI urges the Commission to take into consideration the wide array of possible applications of AI technology, and their different use cases and risk factors when approaching the development of policies related to AI. They suggest a context-specific and risk-based approach for policymakers to develop a framework that adequately addresses any unintended risks that AI may pose while simultaneously promoting technological innovation.
- New legislation should be considered only where legislative gaps are clearly identified. ITI welcomes the consideration of risk as the key factor in defining the scope of potential legislation. ITI also urges the Commission to carefully consider the definition of high-risk AI applications and take into account use case, complexity of the AI system, probability of worst-case occurrence, irreversibility, scope of harm in worst case scenario and sector.

Contact:

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CVs of the interlocutors.

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