

31 March 2021

**FEEDBACK ON THE EUROPEAN COMMISSION'S  
PROPOSAL FOR THE DIGITAL SERVICES ACT**

**1. BACKGROUND ON ECIS**

1. The European Committee for Interoperable Systems ("**ECIS**") is an international, non-profit association of information technology companies founded in 1989 which endeavours to promote a favourable environment for interoperable ICT solutions. For three decades ECIS has actively represented its members on issues relating to interoperability and competition before European, international and national fora, including the EU institutions and WIPO. ECIS' members include both large and small information and communications technology hardware and software providers, including IBM, McAfee, Opera, Oracle, and Red Hat.

**2. FEEDBACK ON THE PROPOSAL FOR THE DIGITAL SERVICES ACT**

2. ECIS welcomes the European Commission's ("**Commission**") efforts to eliminate illegal content online and improve information transparency for online users through the proposed Digital Services Act ("**DSA**"). ECIS believes that the DSA has the potential to strengthen trust in technology, improve responsibility, and prevent the significant impact of illegal content on digital users. These issues are increasingly important, particularly following the acceleration of digitisation as a result of the COVID-19 pandemic.

***Scope and limited liability***

3. ECIS supports the scope of the DSA, which proposes tailored obligations for different categories of services. In particular, the DSA clarifies that hosting services which do not store and disseminate information to the public do not fall within the online platform definition, thereby providing greater legal certainty. However, more clarity on the definitions of entities in Recital 27 would be beneficial. In particular, further detail on the differences between mere

conduit and caching services based on whether information is in transit or stored temporarily, would ensure that these service providers enjoy the benefits of increased legal certainty.

4. ECIS maintains that passive intermediaries such as mere conduit, caching or passive hosting services, and in particular, business to business ("**B2B**") services, should continue to benefit from intermediary liability exemptions, and should not be subject to the same enhanced content moderation obligations as online platforms and very large online platforms.

#### ***No general monitoring obligation***

5. Article 7 DSA confirms that providers of intermediary services are not under an obligation to monitor the information they transmit or store, or to actively seek facts or circumstances indicating illegal activity. ECIS supports this provision, particularly as B2B service providers, such as cloud providers, typically do not have access or contractual rights to the information that is processed or stored by them on behalf of their customers. Further, any monitoring obligation would require significant additional resources from these providers and could create privacy issues if they would be obliged to monitor personal data.

#### ***Know Your Business Customer***

6. ECIS welcomes the scope of the traceability or Know Your Business Customer ("**KYBC**") provision in Article 22 DSA. Specifically, ECIS believes that this provision's application should, as drafted, remain limited to online platforms that permit consumers to enter into distance contracts with traders.
7. ECIS supports the Commission's efforts to strengthen traceability. However, we also note that many safeguards are already used in the provision of B2B cloud services through contractual obligations or security services. The Commission should not adopt more onerous KYBC requirements, as these could raise confidentiality and privacy concerns, and could also discourage smaller players from entering or innovating in the cloud services space.

#### ***Enforcement and penalty regime***

8. The Commission proposes that each Member State shall designate a Digital Services Coordinator and the Commission will establish a European Board for Digital Services, which will be an independent advisory group of Digital Services Coordinators (Articles 38-49 DSA). ECIS calls on the Commission to ensure that there is a clear delineation of powers and objectives in the enforcement structure, such that that there is no overlap of accountability or obligations for service providers.
9. Finally, it is important that the penalty regime remains transparent, appropriate, and proportionate to the circumstances on a case-by-case basis.