

ADVANCING ESTONIA'S ROLE AS A DIGITAL FRONTRUNNER

AMCHAM DIGITAL SOCIETY COMMITTEE POSITION PAPER

1. Geopolitical crisis calling for policies that are secure by design

Russia's invasion of Ukraine is a tragedy and a humanitarian disaster. We stand with the people of Ukraine as they face incredible suffering and violence. Russia's actions are threatening the fundamental values upon which our societies are based and we are cognizant of the importance of this war, both for the people of Ukraine, for broader geopolitical dynamics and cybersecurity. Last year, the Munich Security Conference published their [discussion paper](#)¹ "Security proofing the European & Transatlantic Tech Agendas" which deals with the question of whether current technology policy making across the transatlantic alliance takes key issues of national and international security sufficiently into account. It draws attention to the importance of assessing all technology policy initiatives and regulations for unintended effects on security and alliance cohesion. To that end, it proposes the creation of a dedicated mechanism at the European level. Additionally, the paper argues that "we must also ensure that legitimate considerations about taxation or competition do not crowd out equally legitimate concerns about security or geopolitics" but "Currently, potentially deleterious unintended consequences are still too often underappreciated – or worse, negative consequences are knowingly disregarded in pursuit of other aims." We support these points. EU policies should be secure by design, we should further the cohesion of the Transatlantic alliance and we believe that Estonia has an important role to play at EU level.

2. R&D and Intellectual Property

Last year, the government approved the state budget strategy for 2022–2025 which included a decision to increase R&D funding to at least 1% of the GDP. We would like to commend the government for prioritizing this and it will remain vital to keep this level and ensure that universities have skilled staff and equipment to attract businesses into research partnerships and thereby increase private sector funding. Only then can Estonia

compete for large-scale scientific projects and take part in international knowledge transfer. This would bring along brain gain, patentable innovations and creation of additional money into R&D by commercialisation of those innovations. Members of AmCham's Digital Society Committee (DSC) that invest into R&D and collaborate with academia, are ready to share their experience and lessons learned with policy makers. We also support the idea of introducing tax incentives that would make Estonia more attractive as a home country for the IP. Introducing the patent box regime, super deductions or cash-backs for R&D costs, or other similar incentives would make Estonia a more attractive destination for commercializing the IP.

3. 5G

Estonia has always had the goal to be a frontrunner in innovation and to build an advanced digital society. We consider 5G as a fundamental change that enables the provision of innovative solutions for both business and consumers and we believe that it will enable Estonia to build a truly digital society if right choices are made by the relevant decision makers. The deployment of 5G will also contribute to the EU Green Deal as new technology leaves a smaller environmental footprint.

We hope that in 2022 both planned 5G frequency auctions (3500 MHz and 700 MHz) will take place and that Estonian operators and society can start to explore in wider scale the opportunities that 5G technology brings along.

Lastly, we believe it's important that the government simplifies the process around the deployment of telecom networks in Estonia. Building 5G networks and other telecom networks is in practice too complex and burdensome in certain cases due to lack of supportive regulatory background and limited support from state and municipalities

¹ <https://securityconference.org/en/news/full/discussion-paper-security-proofing-the-european-transatlantic-tech-agendas/>

4. Digital Single Market

Estonia is a Digital Frontrunner and it is in the interest of Estonia to further deepen the Single Market and avoid fragmentation on digital policies or regulation among EU Member States. Estonia should build on its position as a Frontrunner to take the lead and push for a positive EU agenda on open economy, free trade, digital, innovation and transatlantic relations and against protectionism and harmful regulation.

A number of European regulations have been instrumental in enabling the sort of online services and business models we have today. The core principles of the e-Commerce Directive have been the cornerstone of the internal market for digital services. The Directive has allowed innovation to flourish and led to the growth of a variety of online services and business models.

DSC would like to commend the Estonian government for its efforts on both the Digital Markets Act (DMA) and the Digital Services Acts (DSA) during the last few years advocating for workable regulation that will make the in-

ternet more transparent, safer and accountable, while making that users, creators and businesses in Europe continue to thrive and benefit from the open internet.

The EU institutions reached a political agreement on both proposals in Spring 2022 and we await clarity in the final rules agreed. While the broad principles have been established we expect many details to be finalized during additional technical discussions in the coming months where the Estonian government can play an important role to ensure a workable set of rules. On the DMA, for example, it will be important to ensure that the European Commission is incentivised to enter into a regulatory dialogue with the gatekeepers before obligations come into force. Meanwhile on the DSA, further work will need to be undertaken to ensure clarity on rules regarding data access, appeals and user notifications, trader identification, risk assessment and the compliance period (the reported six months is significantly shorter than the Council position) and we look forward to engaging with the Estonian government about these important details.

DATA ACT

In February, the EU Commission presented its proposal for a new [Data Act](#) which will introduce requirements on cloud portability and data sharing. The Data Act aims to “ensure fairness in the allocation of economic value among actors of the data economy”. This includes some problematic measures, including mandates on B2B/B2G data sharing and cloud portability.

It’s unclear how the proposal aligns with other laws, current and under construction, in overlapping areas such as DSA, DMA (and general competition standards), AI, e-evidence, Privacy Shield & CLOUD Act negotiations, e-Privacy, NIS2, cloud rulebook, Data Governance Act and even with data protection rules. There’s a need for further harmonization.

Additionally, the data sharing proposals are vague and don’t seem to take into account different business models (consumer IoT devices, virtual assistants vs B2B cloud computing providers) and any unintended consequences - requirements to share data continuously and in real-time represent significantly more than present sharing. The current definition of ‘data’ is too broad and may cause legal concerns especially in respect to GDPR. Thus, a clear definition of its content and boundaries, having in mind non-personal data, is needed.

We welcome the intention to harmonize the legal framework on B2G data sharing but the current text could lead to unintended consequences. The proposal doesn’t seem to take into account fairness, transparency, reason-

ableness, and non-discrimination and doesn’t include safeguards for privacy, security, protection of business secrets and IP. Government entities would be allowed to request access to data with relatively light justifications - i.e. not being able to access the data through other means - and with no limitations or safeguards in place. We think the B2G provisions need to be more balanced and take into account the potential risks of data sharing for all the players involved.

Lastly, we support the Commission’s ambition to make portability and switching easier. However, some of the rules seem difficult to implement. For example, the proposal suggests an unrealistic 30-day deadline (extendable to max 6 months) for switching, regardless of the volume and specifications of the workloads at hand. In practice, moving large amounts of workloads sitting across multiple hosting servers can easily be multi-year projects for the larger contracts. It is also unclear what is meant with “functional equivalence” and how that would be provided, including which provider carries the responsibility to ensure it. We think these measures need to include more nuance and take into account the reality of the provision of cloud services.

At a broader level, we take note of the European debate on “Digital Sovereignty”. For us, it’s about strengthening the digital ecosystem, through partnerships and investments. A protectionist tech agenda is not in Estonia’s interest and it is essential that Estonia - as a Digital

Frontrunner and an export driven economy - promotes openness, data flows, innovation friendly policies, and transatlantic relationships. A well functioning Transatlantic approach to security and sovereignty would empower Europe's own security and sovereignty.

4. International transfers of personal data

We welcome that the US government and the EU Commission announced a new political agreement on the EU-US data transfers framework. This long-awaited framework stems from the Court of Justice of the European Union's 2020 decision that invalidated the EU-U.S. Privacy Shield, a legal framework regulating transfers of personal data from the EU to the US.

Organizations of all sectors within the European Union (EU), including Estonia, whether public or private, big EU multinationals or smaller organizations, heavily rely on the possibility to transfer personal data to third countries in order to provide their services in the EU and around the world.

We are in a moment of global recession and economic crisis and without a new agreement the 2020 ruling would have the potential to further devastate the [US/EU] and global economy. It is imperative that data flows continue from the EU to the U.S. to support the \$7.1 trillion in transatlantic trade and investment.

The political agreement will have to be officially adopted by the European Commission through a qualified majority of Member States. We encourage the Estonian government to actively push for a successful adoption of the agreement as otherwise the data transfer hindrance between US and Europe will be not solved in practice.

5. International tax reform

In October, members of the OECD Inclusive Framework reached a political agreement to create a formulaic approach to reallocate taxing rights targeted at the world's largest companies (Pillar 1) and new standards around global minimum taxation (Pillar 2). The agreement also includes a 2-year moratorium on new digital services taxes (DSTs). This agreement was driven by strong support from the G20 countries. We remain supportive of the OECD process. We are hopeful that governments stick to a robust, multilateral framework that doesn't discriminate against products and services, and we hope that harmful targeted taxes such as DSTs will be removed. Digital services taxes are problematic in that they narrowly target certain activities and companies and are designed to operate outside the principled framework of business taxation. They create concerns around tax and legal certainty and the legitimacy of an international tax

system that has been built around multilateral coordination. This is the system that underpins all global trade and cross-border investment and the reason why it's important that Estonia supports the OECD framework.

6. AI use in society

The Covid-19 crisis demonstrated the crucial role of digital technologies for businesses and society. As one of Europe's digital frontrunners, Estonia and Estonian businesses are in a good position to build on the learnings from the last few years and to further advance the application of digital. Estonia should seize the opportunity to build the world's most digital nation and to lead the way in Europe via positive examples, innovation-friendly policies, and partnerships.

Artificial Intelligence (AI) represents one of the biggest technological opportunities for innovation and productivity growth. DSC supports the proposals included in Estonia's *Kratikava 2022-2023* (AI action plan 2022-2023) which recognize the necessity of AI in general digital development for both public and private sector, as well as in the education and R&D, including that this should be based on a human-centric mindset and trustworthy AI principles.

DSC member-companies take part in public tenders and offer their AI systems for better governance. DSC acts as an additional forum for businesses and policymakers to discuss the difficulties and solutions in implementing AI systems. This is important as public-private partnerships in IT integrations in Estonia are low (place 50 out of 64 countries, [IMD World Digital Competitiveness Ranking 2021](#)). AI positively impacts the broader European economy by advancing innovation and global competitiveness for SMEs, startups, and European businesses of all sizes.

As a priority, policymakers should encourage the broad adoption of AI while avoiding regulatory measures that limit the ability of European businesses to realize AI's full potential. There is no 'one size fits all' AI regulation because of the enormous diversity of applications across industries and society as a whole. For example, using AI for medical diagnosis is very different from using AI to help translate a language, or to solve traffic problems. So any potential legislative measures should avoid overarching horizontal rules — a sectoral and application-specific approach for crafting rules is best to realize the full extent of AI's social and economic benefits. In doing so it is important to be pragmatic and focus on specific concrete problems, identifying targeted practical solutions built on principles-based rules rather than overly prescriptive designs. We recommend focusing on a risk-based approach for the specific subset of AI applications that are most likely to raise serious adverse effects.

The EU Commission has presented its proposal to regulate AI via the so-called AI Act (AIA). We believe that the European Commission has struck a good balance between protecting citizens and retaining scope for innovation by adopting a proportional, risk-based approach for the imposition of mandatory requirements. Overall, AIA is helpful in providing a clear legal framework for high risk uses of AI but some fine-tuning and clarification is needed, in particular regarding the balance of responsibilities between AI actors in the value chain and some

legal requirements. AIA does not distinguish sufficiently between the responsibilities of AI users when in a deployer role, and the responsibilities of providers to their customers and unless this is clarified in a way that is reasonable, it risks having a chilling effect on the publication of open source models and APIs, which is so important for AI innovation and adoption by industry.



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