

## Joint statement to D9+ Ministerial meeting, Prague, March 29, 2022:

Business in D9+ (B9+) share ambition to lower barriers to further digital innovation, entrepreneurship, and trade

D9+ ambitions matter to further opportunities, well-being, and resilience for a Digital Decade

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We, as key industry representatives in the D9+ countries, consider it crucial to express our deepest concerns regarding military aggression by the Russian federation against Ukraine. Russia's actions, which are in direct conflict with international law, pose a serious threat to international security and have a major impact not only on the digital economy but also on the entire EU.

We agree with the conclusions of the informal meeting of telecoms ministers of 9 March 2022 that it is essential for Europe and its closest allies, the US, the UK, Canada to work closely together to be able to effectively respond to the cyber and infrastructure security challenges associated with this unprecedented situation. At the same time, this war in Europe shows us the importance of cooperation with allies, who share the same values, to address our common current and future challenges.

In embarking on a digital decade, the Digital 9+ group of governments (D9+) has rightly stressed the importance of Europe pursuing trusted digital and data innovation, while supporting *'technological and digital openness through regulatory cooperation with international partners and ambitious rules in trade agreements in order to secure our businesses' and citizens' fair and secure access to frontier technologies, services and new markets'*.

As the leading business federations in the D9+ Member States (B9+) we welcome the valuable contributions that D9+ forum has made to date on topics such as artificial intelligence (AI), the Digital Decade, and the twinned green and digital transitions<sup>1</sup>. We continue to support the D9+ expressed ambition for Europe's digital decade and stand ready to support that ambition further.

Halfway into the life of the current EU institution cycle and after 22 months of living with the COVID-19 pandemic, the EU, the D9+, its people, and businesses must embrace further digital innovation in creating a reimagined and more resilient Europe that addresses generational challenges including health and sustainability. As new digital regulatory models are developed globally, there is a pressing need for greater dialogue and collaboration to support the sharing of best practice. Embarking on a digital decade presents both opportunities and challenges across several economic and social domains. However, trusted digital and data innovation and international co-operation have proven critical to our economic and societal well-being throughout the pandemic and will be essential to the EU's future success and resilience.

Leveraging further secure data innovation and data-enabled trade, while protecting rights, is also critical if the EU and D9+ are to achieve their shared ambitions. The OECD recognise Europe as an important global hub for the import and export of digitally deliverable services<sup>2</sup>. Data flows underpin modern economic activity. Data indicates 90% of EU-based companies from all economic sectors transfer data outside Europe, often to multiple countries, and that these transfers are predominantly used for business-to-business purposes<sup>3</sup>. Recent research indicates that the EU would

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<sup>1</sup> See the B9+ Joint statement to D9+ Ministerial meeting, Luxembourg, October 27, 2021 [here](#).

<sup>2</sup> [OECD](#) (2020)

<sup>3</sup> Business Europe joint research (2020) [here](#)

be better off by €2 trillion by 2030 by safeguarding data flows. However, in a potentially negative scenario, where EU data governance and major trading partners somehow restrict data flows, Europe would potentially lose out on €1.3 trillion growth by 2030, potentially impacting all EU countries, and reducing exports by 4% on average<sup>4</sup>. These impacts would be cross-sectoral, affecting both large and small firms.

As key industry representatives in the D9+ countries, the following national business associations (B9+) support the shared ambitions of trusted digital innovation and digital openness. The shape of Europe's digital future matters. We welcome and encourage the ongoing joint efforts by our national government Ministers, as the D9+, to proactively promote and enable trusted digital innovation and openness both at home, across the EU and with likeminded partners, strengthening our collective economic recovery, resilience, and well-being. We acknowledge the European Commission proposal establishing the 2030 Policy Programme, "Path to the Digital Decade"; and several legislative proposals aimed at enabling this digital transition including proposed Data and AI regulation. We welcome the European Council Conclusions of 21-22 October 2021, which underline the EU's goal to enable digital transformation to drive economic growth, job creation and competitiveness.

We fully support the establishment of the EU-US Trade and Technology Council (TTC) last June. As noted by Executive Vice-President Dombrovskis in a letter to BusinessEurope (7 March) the TTC has a fundamental role to play to coordinate approaches to key global trade, economic, and technology issues and business has a crucial role to play in this regard. It is essential that both the EU and the US accelerate collaboration efforts in this framework. The TTC should be rooted in the principles of values-based democracy, trust, and sustainability, in order to position the transatlantic bloc as a global technology leader and standard-setter for the digital age. To ensure the TTC delivers on its objectives, the EU and the US should come up with concrete deliverables to enhance transatlantic research, economic and cybersecurity cooperation, specifically aiming at agreeing on common approaches and protocols around the development and use of emerging technologies, which are at the heart of current and future strategic challenges in trade and technology.

Finally, we encourage the EU and the US to swiftly conclude their negotiations to reach an agreement for EU-US data transfers. Such an agreement would be positive in supporting further EU-US dialogue and collaboration on technology.

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<sup>4</sup> Digital Europe (2021) [Data Flows and the Digital Decade](#)

## Recommendations to D9+

1. **Intensify the momentum on Europe's Digital Decade initiative** and on national digital agendas.
  - a. **Ensure the value of the EU Recovery and Resilience funds to digital spending are maximised.** Prioritise support for the necessary infrastructure, skills, digital adoption, and connectivity that will enable further digital inclusion and opportunity. Ensure that policy and regulatory conditions support and accelerate further investment in digital infrastructure, innovation, and services. Ensure strong governance to monitor spending and momentum in both promoting and realising Europe's ambitions to the 2030. Ensure the rising [digital] tide raises all boats in enhancing the collective digital performance and value across the EU
  - b. **Enable further digital opportunities by deepening commitments from Member States, coupled with an integrated EU framework.** EU digital frontrunners should intensify the pace and level of Europe's collective digital performance by further demonstrating their success stories, building trust in further digital transformation and deepening collaboration with weaker performers in building a shared and inclusive agenda.
  - c. **Maintain support for an outward looking, dynamic, and successful EU,** that provides the conditions for organisations and individuals to adapt to technological and environmental change and reach their full potential.
2. **Work with, not against, further digital and data innovation in governance and regulation.** Safeguard trust in further digital opportunities and lead this digital decade.
  - a. **Support a proportionate, human-centred approach to the governance and regulation of AI development and adoption, based on evidence and risk.** Reassess potential administrative and compliance burdens, particularly for SMEs, or unwanted consequences in the proposed AI Act which could discourage investment in the development and deployment of AI systems and consequently hurt Europe's twin digital and green transitions and its competitiveness. Specifically:
    - i. **Clarify that the focus is on where most widespread and significant societal damage is likely to arise,** particularly in proposals around the definition of AI systems, the allocation of responsibilities between different actors in the AI value chain, criteria for determining prohibited practices and the classification of high-risk systems.
    - ii. **Focus the proposed definition of AI,** concentrating on AI systems that display intelligent behaviour and take actions with some degree of autonomy. The current proposed definition of "AI systems" is too broad and would include most contemporary software and applications that use pure statistical and knowledge-based approaches for conventional Data analysis that have little impact on individuals.
    - iii. **Regulate high-risk AI applications in areas where a clear regulatory gap has been demonstrated.** Refine the proposed classification rules for high-risk AI to ensure consistency with sectoral legislation in Annex II.

- iv. **Reassess and clarify responsibilities of different actors in the AI value chain to ensure obligations are allocated to the actors that can ensure compliance.** Ensure the proposed compliance framework is proportionate and flexible.
  - v. **Support and enable efficient co-operation between relevant regulators at national and EU level.** Support regulators, avoid fragmentation in the internal market.
  - vi. **Support and embed the use of sandboxes schemes,** with well-established criteria to ensure an effective access to businesses, particularly SMEs. Support controlled experimentation by our innovators and regulators to assess (yet unforeseeable) risks, locate potential legal barriers and inconsistencies and develop solutions.
  - vii. **Maintain legal certainty for business on liability around emerging technologies.** The current framework, including the Product Liability Directive (PLD), may offer certainty for the delivery of AI applications in the B2C context. Physical products should remain the basis for the application of the Directive and clarity on the coverage of embedded software could be enhanced through clearer guidance. The PLD should remain technology neutral and be consistent with the proposed Artificial Intelligence Act. Any proposals to introduce separate and new liability rules for AI should rely on solid evidence and be limited to specific and high-risk use-cases, to avoid creating unnecessary overlaps and stifling innovation.
- b. **Foster and safeguard our data economy** for quality jobs, better services, health, and our environment.
- i. **Untap the potential of Europe's Data economy by safeguarding trust.** Support further investment and beneficial data innovation.
    - *Develop a sustainable and responsible data-sharing environment which prioritises trust and maintains an inbuilt voluntary framework.* This should be subject to fair incentives, which safeguards privacy, security, and commercially sensitive information avoiding mandatory business-to-government (B2G) requirements.
    - *Support B2B sharing,* develop data spaces that facilitate easy data sharing and standard fairness B2B data sharing contracts while maintaining contractual freedom as a guiding principle.
    - *Avoid mandatory technical specifications for data portability* which risks global fragmentation, reduce customer choice and slow innovation. Enable researchers and innovators to lead Europe's path to a more connected future and ensure a European approach to data is about breaking down digital borders and improving the conditions for data mobility.

- ii. **Work with likeminded international partners to safeguard international data flows.** Support further investment, beneficial innovation and trade.
    - *Support ongoing EU-US work to swiftly conclude negotiations on a revised and resilient overarching framework for EU-US data exchange, addressing privacy issues as well as the needs of modern digitalised business.*
    - *Work with OECD partners to deliver policy guidance on trusted Government access to personal data held by the private sector. Safeguard international data transfers and enable further economic opportunity in Europe.*
3. **Work with likeminded partners to lower global barriers to further digital trade and innovation.** Safeguard an open strategic autonomy approach to fulfil the vision set out in Europe's Digital Decade. Deepen Europe's digital leadership while maintaining market openness, access, innovation, and choice.
- a. **Leverage the EU-US Trade and Technology Council (TTC) and engage enterprise,** including SMES and start-ups. Work with likeminded partners internationally to enable shared recovery and resilience through further secure digital innovation and adoption. For example:
    - i. **Strengthen collaboration, research cooperation and develop standards in both cybersecurity and emerging technologies,** including AI, Internet of Things and 6G etc. Foster innovation and market-driven standardisation in line with WTO/TBT principles. Strive for interoperability in frameworks. Clarify common regulatory requirements for EU-US health data exchange and deepen co-operation in digital health innovation. Promote a principled development of international standards.
    - ii. **Support a green and digital transition.** Explore common actions that leverage digital and data innovation in enabling a green transition.
    - iii. **Encourage capabilities and capacities in our semiconductor ecosystem based on identified points of weakness and market demand.** Strengthen RDI and encourage further private investment. Leveraging the TTC, to improve research and supply chain resilience.
    - iv. **Deepen digital skills.** Promote the necessary skills pathways to support further opportunity and success in a digital decade. Share best practices on approaches and methods.
    - v. **Safeguard international data flows.** Explore common approaches to data governance, data portability and interoperability. Complement ongoing EU-US negotiations on a revised and resilient overarching framework for EU-US data exchange. Deepen bilateral and multilateral co-operation that safeguard international data flows for enhanced growth, innovation, jobs, and well-being.
    - vi. **Facilitate common approaches to the regulation of digital markets and online safety.** Support contestability and fairness while ensuring non-discrimination, proportionality, predictability, considering innovation. Consider flexibility in addressing the different needs and purposes of distinct sectors.

- vii. **Align on criteria for what technologies require export controls and promote multilateral solutions.**
- viii. **Exchange best practices on implementation of FDI screening.** Address concerns over expanding definition of national security and the potential use of economic criteria in investment screening. Work with likeminded partners to reaffirm an openness to investment.
- ix. **Promote further SME access to, and use of digital technologies.** Incentivise further digital adoption and increase skills. Promote the uptake of digital tools in custom procedures including documentation and controls, and reduce costs for companies, especially SMEs, whenever possible.
- x. **Champion further digital collaboration, innovation and trade** with likeminded partners in the WTO.

We support the ambition to lower barriers to trusted digital innovation, entrepreneurship, and trade for small and large businesses across the EU and hope these recommendations help you and your colleagues in your discussions on March 29. We are open to discussing this further and hope to collaborate with the D9+ on future initiatives that support further beneficial digital and data innovation and trade.

