

UNOFFICIAL TRANSLATION of Consultation response from PTS to the Swedish Ministry of Finance

- **on the European Commission's proposal for a regulation establishing a framework of measures for strengthening Europe's cloud and AI ecosystem (Cloud and AI Development Act)**

The Swedish Post and Telecom Authority (PTS) hereby submits its comments on the European Commission proposal for a Regulation establishing a framework of measures for strengthening Europe's cloud and AI ecosystem (Cloud and AI Development Act, CADA).

Summary

PTS welcomes the overall ambition of the proposal and fully understands its objective of strengthening Europe's capabilities in cloud computing, data centres and AI, while reducing the EU's dependence on a small number of non-European cloud providers. Reducing dependence on non-European cloud service providers while at the same time strengthening resilience is an important objective that PTS supports. At the same time, PTS considers that certain elements of the proposal may result in increased costs for both public authorities and businesses. PTS suggests that the Government considers assigning preparatory tasks to relevant authorities, including a market analysis and preparations for the recognition of services provided by Swedish cloud service providers.

Introduction

PTS understands the purpose of the proposal and the issues that the European Commission seeks to address through the new legal act. PTS therefore agrees with the overall purpose and objectives of the initiative. The Authority supports the Commission's focus on both increasing the deployment of data centres and reducing dependence on non-European cloud service providers.

Within the scope of this consultation response, PTS was unable to conduct a comprehensive analysis of every individual provision of the proposal. Below, the Authority has focused on those parts of the proposal that fall within the areas of responsibility of PTS and the upcoming Swedish Digitalisation Authority, which are of particular importance to Sweden and the EU, and where the Authority has identified issues and opportunities for improvement.

The Authority is prepared to assist the Government in the forthcoming negotiations by providing more detailed analyses and supporting materials, where requested.

General observations

PTS considers, in general, that due to ambiguities in its current drafting, the proposal risks giving rise to significant administrative costs for both public authorities and businesses in Sweden and throughout the EU. The framework may lead to increased administrative burdens, while PTS also sees challenges regarding its practical implementation.

A central element of CADA is a set of rules requiring Member States to use only recognised providers of cloud computing services and AI systems when procuring cloud computing services and AI systems in the public sector. Article 30(2) proposes that all public authorities must procure services recognised at, at least, Union Assurance Level 1. Such a change would very likely result in significant cost increases across the public sector. If current providers are not recognised under the proposal, there is a substantial risk that authorities may need to terminate existing contracts and procure new suppliers. This would in turn require a number of public bodies across the Union to undertake large-scale IT migration projects. In addition, there are risks relating to operational functionality and continuity that are currently difficult to assess. The potential costs associated with such a transition are difficult to discern from the Commission's impact assessment.

Against the backdrop of the EU's stated ambition of regulatory simplification, PTS considers that these aspects should be given greater weight in the design of CADA. Otherwise, there is a material risk that the proposal will increase rather than reduce administrative burdens, which in turn may weaken Europe's competitiveness and capacity for innovation and growth.

Comments on the proposed text

Priority projects (Article 8)

It should be noted that Article 8(c) requires Member States to allocate resources to support the implementation of projects designated by the Commission. Funds will need to be set aside for this purpose, while Member States will not be able to estimate the costs in advance.

Single Information Point (Article 12)

The proposed Single Information Point is intended to have a very broad task spanning multiple policy areas, authorities and existing procedures. This includes various types of permitting and connection procedures, as well as support and coordination functions relating to other aspects of data centre projects.

PTS notes that Recital 40 points to the possibility of upgrading or integrating a CADA Single Information Point with the Single Information Point established under Regulation (EU) 2024/1309, the Gigabit Infrastructure Act (GIA). Based on PTS's understanding of the GIA Single Information Point, PTS assesses that the Single Information Point envisaged under CADA would encompass a significantly broader range of responsibilities, including entirely new functions, compared to the GIA framework. The synergies implicitly suggested by co-locating the two functions appear relatively limited. PTS therefore considers that Member States should retain discretion regarding which authority is designated as responsible for the Single Information Point, taking account of national circumstances and institutional structures, in order to enable synergies with other existing or future tasks and structures beyond those associated with GIA.

Article 12(2) provides that the Single Information Point may, among other things, coordinate, facilitate, monitor and share information regarding permit procedures and provide information to the public with a view to increasing public acceptance of individual data centre projects. However, it is unclear how active a role the Single Information Point is expected to play in these processes. For example, it is uncertain whether it should primarily function as a common entry point and intermediary service (a passive system) or whether it should also take a more active role in coordinating procedures and supporting interactions between stakeholders. A more active role in carrying out some of these tasks, such as influencing public opinion regarding a privately financed data centre project, does not currently have any equivalence within Swedish public administration, to the best of PTS's knowledge.

Aggregated baseline permits (Article 13)

The provision requires Member States to prepare and issue an aggregated permit which, subject to certain exceptions, is to cover the permits required for data centre projects located within a designated acceleration zone. However, the proposal does not clearly specify which actor is to apply for such a permit, that is, whether the permit is intended to be in place prior to a specific project application and therefore initiated by a public authority, or whether it is to be applied for by the data centre operator itself in connection with a specific data centre project.

PTS notes that a national inquiry may be required to determine which specific permits would be encompassed by an aggregated baseline permit and which authorities would be involved. The aggregated permit can be expected to consist of individual decisions that are currently taken by independent government agencies, County Administrative Boards and municipalities. In addition, a number of authorities exercise supervisory responsibilities that would be relevant in this context. The introduction of aggregated baseline permits may therefore give rise to new issues and challenges that are currently unfamiliar to the Swedish administrative model.

Assessment of Union Assurance Levels for cloud computing services (Article 17 and annexes II and III)

Under the proposed system for the recognition of cloud services, decisions on recognition would primarily be taken by competent authorities at national level. PTS supports this approach.

The proposed framework requires each Member State to establish, within its competent authority, an organisation capable of reviewing the information and documentation submitted by providers pursuant to Article 17(2)–(4). At the same time, it is difficult to predict how many applications for recognition will actually be submitted to the competent authorities of the Member States. With regard to cloud services seeking recognition at Union Assurance Level 3, and particularly Union Assurance Level 4, it is conceivable that only a very limited number of recognition cases will arise across the Union as a whole. Nevertheless, PTS considers it important that the recognition process be managed coherently at national level, so that a cloud service provider interacts with the same national competent authority across all assurance levels. The Commission should, however, be tasked with assisting Member States in particularly complex assessments and with developing guidance for national authorities, as further discussed below in relation to Article 20.

Article 17(5)–(10) proposes that an application for recognition submitted to the competent authority of one Member State should be circulated to the competent authorities of all other Member States. Within short deadlines, those authorities would then be required to review the application and provide opinions. PTS considers that this procedure would impose a substantial administrative burden on both the authorities concerned and the applicant companies. The Authority questions whether the benefits of the proposed system justify the costs and administrative burdens that it would create. A more proportionate approach could be to allow the competent authority of a Member State to decide independently on recognition without prior consultation of the competent authorities of other Member States, while the Commission could challenge the decision within a specified period, where justified.

In this context, PTS would also like to add that one way of reducing the regulatory burden and administrative costs for both companies and authorities would be to extend the possibility provided in the second subparagraph of Article 17(3) and allow services at Union Assurance Level 1 to be recognised solely on the basis of a conformity assessment, without requiring a specific recognition decision by a competent authority.

There remains considerable uncertainty regarding the future market for cloud services at the various assurance levels. Furthermore, as currently proposed, the timeframes for the application of several provisions are relatively short. PTS therefore proposes that the Government consider assigning one or

more preparatory tasks to the appropriate authorities. Such assignments should include conducting a market analysis and preparing for the recognition of services provided by Swedish cloud service providers. A delayed establishment of a Swedish recognition process could place Swedish cloud service providers at a competitive disadvantage, as contracting authorities may instead be directed towards other recognised cloud services in their procurement procedures.

Independent audits (Article 20)

Cloud service providers seeking recognition of a service at Union Assurance Levels 2–4 are required to undergo a third-party audit conducted by an *auditing organisation* (Article 20(1)). Once the audit documentation has been submitted to the national competent authority, the authority has 60 days to evaluate the application and the supporting evidence provided (Article 17(5)).

Article 20(9) empowers the Commission to adopt delegated acts establishing rules for the conduct of audits, including procedural requirements, rules governing auditing organisations and their technical competence, methodologies, and templates for audit reports.

PTS questions whether such an empowerment is sufficient to ensure that the audit process becomes harmonised, legally predictable, and not unnecessarily burdensome for the authorities responsible for assessing the submitted material. At present, there are no established standards governing how auditing organisations should conduct their work, nor are there standards defining which auditing organisations are suitable and trustworthy for this purpose. PTS considers it less than optimal for the competent authorities of each Member State to develop their own methodologies for assessing auditing organisations and evaluating their reports. The Regulation should contain an explicit requirement for, for example, the Commission or ENISA to develop guidance that facilitates and harmonises the way in which auditing organisations are to operate and be assessed. In PTS's view, such guidance does not necessarily need to take the form of a delegated act or even a formal standard, but could instead be issued as a Code of Practice. This would facilitate and accelerate the development of guidance that is essential for the notification and assessment procedures under Articles 17 and 20 to function effectively.

The procedure proposed under Articles 17 and 20 of CADA bears similarities to the notification process established under the eIDAS Regulation, whereby trust service providers submit an application to the competent authority to become qualified service providers following an external audit. In light of these similarities, PTS proposes that the lessons learned from the review and implementation of the eIDAS framework be taken into account in this context and that clear procedural rules governing the audit process be established at an early stage. It is important that such guidance is developed and made available, rather than merely being left as a possibility for the Commission, as is currently the case under Article 20(9).

Migration (Article 29)

Article 29(6) provides that, where the risk assessment requires a public authority to migrate to another cloud service, the migration must be completed within 12 months from the conclusion of the risk assessment. PTS considers this period to be too short and therefore advises against the proposal in its current form. The replacement of business-critical systems is often both costly and time-consuming, as it typically involves the termination of existing contracts, a feasibility study, procurement procedures, and the implementation of new systems. Taken together, these activities generally require significantly more than one year to complete. An excessively short transition period may increase risks to both operational continuity and information security. PTS therefore considers that the period should either be extended or that the Article should be amended to allow for a longer transition period where justified by the complexity of the system concerned, the criticality of the activities involved, or the risk of significant disruption to operations.

Obligation to procure services at specific Union Assurance Levels (Article 30)

PTS understands Article 30(3) to mean that a contracting authority whose activities contribute to the preservation of public order, and which carries out activities falling within Annex I or Annex II to the NIS 2 Directive or within areas such as national security, is required to procure cloud services from cloud service providers recognised at Union Assurance Levels 2, 3 or 4. Based on the wording of the provision, this obligation would appear to apply even where the procured cloud service is intended to be used in parts of the authority's operations that do not carry out such activities. PTS does not consider such an obligation to be proportionate. The provision should therefore be clarified to ensure that the requirement to procure services at Union Assurance Levels 2, 3 or 4 applies only to the specific activities targeted by the provision. Furthermore, the expression "preservation of public order" is difficult to interpret, and PTS requests greater clarity regarding how this assessment is intended to be made.

Union Added Value for innovation (Article 32)

PTS considers that further clarification is needed regarding what is meant by "innovative" cloud services and AI systems, and how a tenderer's contribution to a European cloud and AI ecosystem is to be assessed. It is also necessary to analyse how such award criteria relate to the requirements of public procurement law, under which award criteria must be linked to the subject matter of the contract. The proposed Regulation appears to focus on attributes of the supplier, whereas, under public procurement rules, award criteria should concern the goods or services being procured and delivered. A lack of clarity on these issues risks creating difficulties in the practical application of the provision.