



EK VIEWS ON THE DIGITAL SINGLE MARKET STRATEGY

The Commission published on 6 May 'A Digital Single Market Strategy for Europe'. The strategy sets out 16 key actions under three pillars which the Commission considers will help make the single market fit for a digital age. The Commission will deliver the actions by the end of 2016.

EK underlines that digitalization can offer significant opportunities for Europeans and European companies. The EU needs to grasp the opportunities and pursue the following objectives:

- ✓ **Ensure good conditions to enable digital development and innovation in all economic sectors.** For example Internet of Things realizes through investments and strategic decisions made by companies. The EU actions should be targeted to create favourable conditions for maximising the growth potential of the digital economy and tackle such barriers and burdens that prevent European companies from exploiting opportunities created by digitalization and enlarging their business in the single market.
- ✓ **Focus more on the opportunities than the threats and avoid backward-looking approaches.** Rules affecting digitalization, if needed, must be technology-neutral, flexible and focused on principles and objectives rather than on means how to achieve the objectives. Furthermore, any regulative EU action must aim to reduce regulative burdens on companies and establish a level playing field amongst players that offer the same services.
- ✓ **Ensure that all EU actions take fully into account the global nature of digital economy** and enhance European companies' competitiveness in the global markets.
- ✓ **Allow data-driven innovation and encourage European companies to build their competitive advantage by processing data, including personal data, efficiently in addition to ensuring the appropriateness and safety of the processing.** It is essential to strike the right balance when reforming the EU data protection rules. It is also important to ensure the EU Member States and the EU's trading partners refrain from limiting cross-border data flows e.g. through local server or data storage requirements.
- ✓ **Ensure that competition and European companies' possibilities to invest in digital infrastructure are not hampered e.g. when reforming the EU telecom rules.** Well-functioning infrastructure is a prerequisite for a competitive digital economy.
- ✓ **Improve consumers' cross-border online access to goods and services, including content services, by ensuring that the EU provides European companies a competitive business environment that encourages to grow and engage in cross-border online business** but do not punish or burden companies whose business strategy is to bring customers added-value only in the local or national markets.
- ✓ **Develop the European copyright system gradually so that it fits better in the digital environment.** Efficient use of copyrights should be promoted. This can be achieved especially by promoting transfer of copyrights as well as facilitating cross-border and direct licensing schemes. Any further harmonization of exceptions to copyright to facilitate cross-border use of content should be considered only if the licensing markets are unable to deliver contractual solutions and if there is clear evidence of a need for regulatory changes.

The EU needs to support data-driven innovation and effective processing of data

As underlined in the Digital Single Market Strategy, efficient processing and utilization of data is a critical component of digital innovation and competitiveness for companies both in business-to-business and business-to-consumer businesses.

Analysing data means better results, processes and decisions. It also helps European companies to build better products and services that adapt and adjust according to the customers' needs and preferences. For example, manufacturers can collect and process data to optimise the flow of materials and goods, and customer data can be utilized in support of innovation and development of customized, user-friendly services.

The European parliament and the Council are currently negotiating on the reform of the EU data protection rules that apply e.g. to big data and influence possibilities to benefit from solutions such as cloud computing if collected and processed data is personal data.

If the institutions want to ensure that European companies and Europeans can benefit from these opportunities, it is crucial that the institutions agree only on a set of data protection rules that encourage European companies to build their competitive advantage by processing data efficiently in addition to ensuring the appropriateness and safety of the processing. This requires that e.g. rules on lawfulness of data processing and purpose limitation are not tightened from the current as that would have a negative impact on possibilities to utilize data efficiently.

Accordingly, the reform should not be viewed only as a means to enhance trust in digital environment and ensure an adequate level of protection of personal data but also as a way to provide companies with the appropriate conditions to make the most of efficient processing of data.

As digitalization evolves quickly, rules on data protection need to be future-proof and define only the principles and objectives, not the means for reaching those objectives.

Furthermore, in order not to undermine European companies' abilities to compete in the digital markets, especially with globally operating companies, unnecessary administrative burdens and costs for companies must be avoided. Only obligations that are necessary to achieve an appropriate level of protection of personal data should be accepted when revising the rules. This means e.g. that data controllers should not be obliged to appoint a Data Protection Officer or to transmit personal data from an automated processing system into another one (*data portability*).

In addition, rules on liabilities must be balanced and sanctions for not complying with the rules proportionate.

It is also essential that the regulatory framework on data protection supports free, secure and transparent cross-border movement of data, i.e. cross border data flows. Movement of data is vital to the global trade and the operation of global value chains.

Cross-border data transfers are not only a part of negotiations on reform of the EU data protection rules. It is important to include them in all free trade agreements between the EU and third countries.

Furthermore, EK underlines that the EU Member States and the EU's trading partners should refrain from limiting data flows e.g. through local server or data storage requirements as such actions would have significant negative impacts on European companies.

The EU needs to support innovations in cybersecurity

Trust to security of digital environment is a key factor to success in digital markets. Private sector leads the innovation in a fast evolving area of cybersecurity, and the EU should enhance utilization of new innovations and create new opportunities for European companies in the global digital economy.

At the same time it is essential to ensure that the regulatory framework in the EU does not impose restrictive obligations or unnecessary burdens on companies.

As regards the Commission's aim to initiate the establishment of a Public-Private Partnership on cybersecurity, EK fully agrees that partnership and co-operation of the public and private sectors play an important role in advancing security in the digital environment. EK underlines that the EU should support flexible cooperation and confidential exchange of information between public and private actors, mainly on voluntary basis.

Investments in infrastructure must be encouraged

Well-functioning infrastructure, especially high speed communication networks, is a prerequisite for a competitive digital economy. The regulatory environment in the EU must be predictable and encourage competition as well as investments in digital infrastructure. Accordingly, it is essential that the EU avoids any measure which could have a detrimental impact on infrastructure investment.

EK has had doubts about the ongoing reform of the EU telecom rules. EK can, however, accept the Council position on the proposal which covers only net neutrality and roaming.

If the European Parliament and the Council agree on rules on net neutrality, the rules should be in line with and ensure the fulfillment of the general principle of net neutrality. It is important to guarantee the equal, transparent and non-discriminatory treatment to all lawful content and services of the communication network and allow users to choose freely the options of content and services through the internet access which best match their needs. The rules should also allow companies and consumers to innovate with services that require a specific level of quality. Furthermore, it should be possible to conduct traffic management measures to make sure that networks can handle increasing traffic efficiently and to avoid network congestion.

As regards the Commission's aim to present proposals for an overhaul of the telecoms regulatory framework in 2016, EK underlines that instead of rushing to prepare an overhaul reform, the Commission should focus on conducting a comprehensive review of the current telecom rules in the spirit of the Commission's REFIT programme. EK believes that the telecoms market has reached a state where there is a possibility to commence the shift from heavy and detailed regulation towards less intrusive regulation practice in order to provide more flexibility and better position for companies to develop new services and concepts.

The primary approach to enhance investments to high-speed broadband networks should be the commercial one. The Universal Service Directive plays a certain role as a safeguard for basic communications services on commercially challenging areas. However, the scope of these provisions should not be widened in a way that slows down commercial investments.

As regards spectrum policy, EK considers that an EU level co-ordination is needed. It should, however, cover only the purposes and targets but leave the terms and conditions of operating licenses and their conditions to be decided by national authorities at the Member State level.

All in all, EK underlines that the goal of harmonization of the EU telecom rules has to be balanced with the need to understand circumstances in the national markets.

EK welcomes the Commission's intention to review the Audiovisual Media Services Directive. The audiovisual media landscape is changing at a rapid pace, and convergence of traditional broadcast services and the internet has been gradually proceeding for years.

Requirements of the current directive are not in line with the fast development, and in order to improve the availability and accessibility of audio visual media services the regulatory initiative should concentrate on dismantling the existing television regulation and enabling flexibility and new innovations in the sector.

The Commission has stated in the Digital Single Market Strategy that it will launch a comprehensive assessment of the role of platforms and online intermediaries.

EK considers that a comprehensive analysis is a reasonable way forward to understand the role of platforms in a thriving internet enabled economy and underlines that it is important to foster interoperability, transparency and non-discrimination as paramount design principles for the digital economy.

However, as technical developments cannot be foreseen, it is important that new legal concepts, such as digital platforms, and heavy handed sector specific ex ante rules are avoided. Many of the possible challenges can be tackled by enforcement of the competition rules.

Definition of standards and interoperability must remain within industry stakeholders

Technological standards and interoperability are important in order to reap all benefits in digital development both in manufacturing and services sectors. **It is crucial to identify and define key priorities for standardisation from the perspective where European companies and technologies can gain competitive advantages in global competition.**

However, definition of such standards must remain within industry stakeholders and should be developed with 'bottom-up' approach. Utilisation of European Technology Platforms and Public-Private-Partnerships is essential.

Online access to goods and services should be improved by facilitating legal cross-border offer

Many factors impede legal cross-border offer of goods and services to consumers in the digital single market – and thus consumers' online access to goods and services.

National taxation, in particular VAT, is a clear example of a legal barrier for cross-border online offer of goods and services, including electronic services. Another example of a regulatory barrier is the cost of ensuring that consumer customers are not deprived of the protection afforded to them

by their national consumer protection rules, including product safety and labelling requirements for products.

Non-regulatory barriers include for example language barriers – although language can also be a legal barrier and a cause of costs if national authorities e.g. require that pre-contractual information or instructions have to be translated into national language so that the information is comprehensible for consumers.

Even though companies would be interested in enlarging their business to other markets where conditions make it possible and profitable, they may choose not to take the risk and do it because of these barriers. **Accordingly, consumers' online access to goods and services should be improved by ensuring that the EU provides European companies a business environment that encourages companies to grow and engage in cross-border business.**

At the same time EK underlines that companies must not be obliged to engage in cross-border business.

Based on freedom to run a business, companies have different kinds of business strategies: some companies' strategy is to build competitive advantage only in the national or local markets and e.g. for start-ups it is natural to test the business idea first in the national market. These companies must not be punished for that choice by imposing on them an obligation to contract or other additional obligations (e.g. an obligation to explain why they operate only in the national market and do not deliver for example their service in other Member States).

The Commission has stated in the Single Market Strategy that it launches a Competition Sector Inquiry focusing on the application of competition law in the e-commerce area. EK underlines that possible unlawful restrictive business practices in the EU market, such as agreements among competitors to share the market, should be tackled by high quality competition law enforcement and no regulatory EU actions should be initiated before e.g. outcome of the Sector Inquiry has been analyzed.

European copyright system needs to be improved gradually to fit better in the digital environment

The copyright market is currently fragmented and the situation needs to be remedied by improving gradually the European copyright system.

However, EK does not support an idea of a new copyright regulation or an overhaul reform of the current copyright legislation as size and complexity of such a huge legislative reform would most likely slow down development of the copyright market and create significant uncertainty. Instead, barriers in the digital single market should be tackled by step by step renewals of the copyright rules.

Instead, EK finds it is essential e.g. to promote cost-efficient transfer of copyrights and tools to facilitate cross-border licensing and considers that the EU actions aiming to implement the Digital Single Market Strategy should be targeted especially to achieve these objectives. It is also important to reform the private copying levy system in a way that reduces administrative burden, promotes technological neutrality, and facilitates future innovation.

When developing the European licensing market it is important to take into account different types of content and interests of companies operating in different geographical markets – and to find a right balance between different actors in the value chains of copyright economy.

It is essential to support direct licensing as a primary means to agree on the use of copyrights. Collective licensing models could be considered in cases where direct licensing is not possible (e.g. in mass use of works) or clearly cost-effective.

Furthermore, collective licensing should be developed in order to make it more transparent, efficient and fairer for the contracting parties, e.g. through high-quality implementation of the recently adopted Directive on Collective Management of Copyrights¹.

It is also important to promote the transfer of copyrights, including works created by employees. Assignments of copyright should follow the same general principles of contract law as assignments and transfer of any other intellectual property rights. From the business point of view copyrights and industrial property rights belong to the same IPR portfolio and they need to be managed by the same means.

Due to fast technical development, new content service models and changes in consumer behaviour, the ultimate need for private copying and therefore also compensation for private copying based on actual proven harm is likely to decline. Consequently, the private copying levy system should be reformed via transitional means which are suitable for the digital environment, cause less administrative costs and take into account new content services and impact of consumer behaviour².

The new system needs to also promote the use of licensed content and not require consumers to pay multifold for the same content. Furthermore, the reform should also include the definition of harm and the means how to measure the actual harm caused to the right owner from private copying in a fair and consistent way across the EU.

The Commission has stated in the Digital Single Market Strategy that it aims to ensure cross-border access to legally purchased online services while respecting the value of rights in the audiovisual sector.

EK underlines that an idea of obliging companies to provide copyright-protected content such as subscription services and consequently to purchase copyright licences for the whole EU area even though their business strategy is to operate only in the national market is not acceptable.

Copyright licences are awarded for national territories, and at the moment, based on freedom to run a business, locally or nationally operating content service companies usually acquire licences for high-value content like sports programs and films only for their markets.

Obligation to provide e.g. subscription services in all EU Member States would not be possible to comply with without acquiring pan-European copyright licences. In practice this would mean that especially smaller European companies that operate only in national markets would not be able to receive returns on such costly investments and would, as a result, have less resources to invest in local content in national or local languages. Consequently, the total ban of geo-blocking would destroy the existing financing structure of the production of copyright protected content – and this

¹ This need is clearly stated also in the Finnish Competition and Consumer Authority's report on collective management organisations and the functioning of the copyrighted works market.

² Finland decided to replace a levy system with state budget funding. The new system, which came into force at the beginning of 2015, is simpler, more cost-efficient and technology-neutral than the former system and fits better to the digital age.

would have severe negative impacts not only on European companies' operational preconditions but also on versatility of content and consumers' choice.

Accordingly, it is important to ensure that all European companies have a possibility to acquire premium content for their market and consumers also in future.

The Commission aims also to enable portability of legally acquired and licenced content which means a possibility for a consumer to access to their subscription services when they travel or move temporarily within the single market. **EK underlines that portability is already developing in a market-based manner, and the market-driven development should not be hampered by regulatory initiatives.**

EK has doubts about the Commission's aim to harmonise copyright exceptions for certain specific purposes in order to facilitate greater cross-border use of copyright protected content. Any further harmonization of exceptions to copyright to facilitate cross-border use of content should be considered only if the licensing markets are unable to deliver contractual solutions and if there is clear evidence of a need for regulatory changes. National room for manoeuvre in copyright exceptions is important for the industry to invest in content and run commercial business based on the content, create jobs and offer also national content to consumers.

As for greater legal certainty on the use of text and data mining, EK finds it necessary to define and clarify the meaning of the concepts of text and data mining before considering any further steps.

As a way to improve copyright enforcement, the Commission aims to clarify the rules on activities of intermediaries in relation to copyright protected content, modernize enforcement of intellectual property rights focusing on commercial-scale infringements as well as its cross-border applicability and find measures on tackling illegal content on the internet platforms.

EK supports the enhancement of copyright enforcement. Market based solutions should be used as primary means to increase legal supply but the current rules should be reviewed as a last resort if commercial scale infringements of copyright cannot be combated otherwise. Measures to achieve an effective and balanced enforcement system need to safeguard the industry's possibilities to invest in innovation and job creation and take into account the fundamental right to freedom of expression and information. They must also create basic uniform rules that all the stakeholders in the copyright value chain need to comply with.

Furthermore, the Commission will consider measures to safeguard fair remuneration of creators. EK underlines that remuneration of creators should be defined by contracts between creators and companies also in the future. The freedom of contract needs to be respected in the digital single market, not hindered through legislation.

VAT related burdens on companies must be reduced

The VAT system has the possibility of either spurring or preventing growth in Europe. **Therefore it is crucial to ensure a simple, robust, less burdensome and above all easier system for companies that trade within the EU.**

New VAT rules of supplying telecommunications, broadcasting and electronic services to consumers came into force in January 2015. According to the new provisions the supplies are subject to the VAT in the country of the customer. This means that the supplying company has to

know and apply the VAT provisions of the country of the customer as well as the different VAT rates.

The regulatory change has provided a level playing field through the elimination of VAT rate distortions but at the same time it implies significant additional administrative costs for companies. At least for the smallest companies the changes can create a significant barrier for the sale of services directly to consumers in other EU countries.

Accordingly, the Commission and Member States should closely monitor that the new provisions are implemented and interpreted in a uniform way in each Member State. Furthermore, **the Commission and Member States should ensure that the new so-called mini one stop shop for electronic services created for companies is easy to use in practice. Through these activities it is possible to partially restrain the additional administrative costs arising from the new rules.**

EK supports the Commission's aim to extend the so-called mini one stop shop. The mini one stop shop should cover all business-to-consumer distant sales of goods and services, regardless if the transaction was initiated in an online or offline environment.

Furthermore, EK underlines that wider application of the destination principle in case of cross-border business-to-consumer provision of goods and services needs an easy to apply collection process, one single audit process and an EU VAT web information portal, containing all the necessary information for the supplier to easily comply with.

Finally, there is no robust digital single market without European content and services. **To ensure versatile flow of European content, certain e-services, such as digital books and online publications, should be subject to reduced VAT rates in Europe.** To support investments in new professional European content in the future the Commission and the Member States should request respective changes to VAT Directive and its Annex.

Effects of the new rules on consumer rights need to be carefully assessed

As stated in the Digital Single Market Strategy, divergences in consumer protection rules create barriers for companies to conduct cross border business-to-consumer e-commerce in the form of increased compliance costs and legal uncertainty.

Directive on Consumer Rights which came into force on June 2014 is an important step in tackling the legal barriers linked to consumer protection in the single market: it harmonises certain rules on business-to-consumer online purchases of goods, services and content such as pre-contractual information requirements and provisions on right to withdraw.

There remain divergences e.g. in Member States' rules on sale of goods which together with the rules on law applicable on contractual obligations create regulatory complexity for companies. **EK considers that the best way to address these differences is through well targeted full harmonisation of the main consumer protection rules.** That would both simplify the regulatory framework in the EU and ensure a level playing field.

At the same time EK underlines that full harmonisation can bring added value for companies only if the harmonised rules strike a right balance between the interests of companies and those of consumers while avoiding additional burdens on companies. Furthermore, it is important to ensure that the rules on consumer protection are flexible enough to allow digital transformation and innovation.

However, before considering any further EU actions, it is important that implementation and effects of the Consumer Rights Directive as well as problems encountered by the companies are carefully assessed. At this stage EK does not see a need for specific rules for online purchases of digital content.

As regards enforcement of the consumer protection rules, EK underlines that enforcement starts with ensuring a clear and understandable regulatory environment. High quality enforcement requires also accurate data on how the markets are delivering as well as good co-operation and exchange of information amongst national authorities.

Payment methods and practices need to be allowed to develop in a market-based and competitively neutral manner

Integrated SEPA payment services form a good foundation for **cross-border payment services** through utilizing the uniform credit transfer and direct debit. These basic services enable simple and reliable way of transferring funds in cross-border payments. They also form a good basis for development of payment methods and practices and more advanced payment services.

Accordingly, the payment methods and practices should be able to evolve in a market-driven, demand-led and competitive manner.

The EU should drive the digitalization of government services

Driving the transformation of public authority activities and services into the digital realm can create major net savings in public spending. It can also create opportunities for piloting new services in Europe which can be further marketed on a global scale.

EK welcomes the Commission's the 'Once-Only' initiative. Moreover, it is important to assess service processes and administrative burden with a systematic approach so that new digital services are not only created to overlap with old traditional processes.

EK encourages the Commission to follow the development of eGovernment services in the Member States and to identify potential forerunners and best practices. It is also important to strike a balance between potential gains – e.g. with national contact points and portals or business registers – and potential costs of setting up eGovernment services in European scale. However, activities should not hinder or prevent the development of market-based services in the public-private interface.

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