

DIGITAL SINGLE MARKET

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Trade winds buffet Digital Single Market

A raft of new rules designed to launch the Digital Single Market (DSM) set to be adopted or proposed this year are threatened by trade spats with the US.

The European Commission faces an uphill battle implementing its keystone objective whilst finding its feet on existing digital policies, such as the Grand Coalition on Growth and Jobs – a proposal designed to capitalise on the digital economy launched last year, which is yet to be allotted to a Commissioner in the new executive.

New rules covering copyright, data protection and telecommunications are set to be announced this year, whilst a raft of existing measures are set to be beefed up.

“By creating a connected digital single market, we can generate up to €250 billion of additional growth,” Commission President Jean-Claude Juncker said when unveiling the priority strategy last year (December 17).

Juncker pledged “ambitious legislative steps towards a connected digital single market” within the first six months of his mandate, to give “more ambition” to reforms of the telecoms and copyright rules.

The EU executive's desire “rapidly to conclude negotiations on common EU data protection rules” is likely to pose the greatest challenge to the DSM, however.



Gunther Oettinger [Wikimedia]

Data protection and data flows

German Green MEP Jan Philipp Albrecht – the vice-chairman of the Parliament's civil liberties committee and the rapporteur on the Data Protection Regulation (DPR) – last week (7 January) warned that serious differences between the European Parliament and the 28 member states cast doubts over whether the new rules can be agreed before the end of the year.

Issues surrounding informed consent for the use of data, sanctions, privacy by design and red tape remain sources of friction between Parliament and EU member states represented at the Council of the European Union, according to Albrecht.

But Albrecht also revealed that the EU is coming under pressure from US tech firms to include data flows as part of negotiations over the Transatlantic Trade and Investment Partnership, or TTIP.

Various clauses within the proposed regulation would effect the larger US companies offering so-called “over-the-top” data services, such as Google and Amazon,

and more significantly the burgeoning cloud computing sector.

US-based cloud computing service providers currently account for around 85% of global markets.

“In the end, data flows will have to come onto the table. The TTIP cannot be agreed before that happens,” one senior negotiator close to the TTIP talks told EurActiv last November on condition of anonymity.

If Albrecht's fears of a delay to the DPR prove correct, the DPR negotiations could become entangled with the push by US industry to put data on the table in the TTIP.

Similarly rules affecting copyright raise sensitive transatlantic trade issues.

The EU executive wants to overhaul European copyright rules to enable simpler cross-border online access to digital services throughout and between member states.

Commissioner for Digital Economy and Society Günther Oettinger has begun working with the European Parliament on the reforms – setting up a working group

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on the issue – and is expected to complete a plan of action by the Autumn.

Last month (11 December). Finland announced it is to scrap levies on digital devices, following similar moves in Spain and the UK.

Copyright change could be waylaid

The Finnish Parliament voted to replace a copyright levy system that has existed since 1984, with a new government fund designed to compensate artists for private copying of content such as music and movies.

However it is not clear whether Oettinger's review will look to simplify the existing system or focus instead on formulating a new means of taxing US companies such as Google.

In an interview with German newspaper Handelsblatt in September, Oettinger floated the idea of making Google pay a levy in compensation for using copyrighted

content to draw traffic and generate revenue.

“If Google takes intellectual property from the EU and makes use of it, the EU can protect this property and demand that Google pay for it,” said Oettinger.

With Germany and France – and new Digital Affairs Commissioner Günther Oettinger – notably hardening their stance on Google in recent weeks, and calling for a stronger EU response to perceived competition abuse by the US giant, the scope for this to colour copyright reform remains broad.

Grand Coalition organisation still in pipeline

Whilst these key legislative proposals are vulnerable to buffering from the broader trade and political debate, the Commission is still occupied with organising its existing initiatives.

The DSM is designed to harness a data sector growing annually by 40%, and in which big data is already revolutionising

public service provision such as transport and health and agriculture.

The job-creation capacity of big data technology is the prime reason for the Grand Coalition on Growth and Jobs, an initiative launched last year by former digital affairs commissioner Neelie Kroes Commission to address the shortage of Europeans with the requisite digital skills.

Europe will suffer from an estimated shortage of almost 900,000 ICT practitioners by 2020 in Europe according to the EU executive's own calculations.

But Commission spokesmen confirmed that the decision as to which Commissioner – Oettinger and the Vice-President for the Digital Single Market are obvious candidates Andrus Ansip – will continue the work, has yet to be taken.

The DSM is a key priority for Juncker's Commission, and has been strongly endorsed by member states. But by the end of the year, it will represent a crucial test for how far its actions can match its rhetoric.

Artists fight Internet users over Europe's copyright future

The European Commission will need to referee a tussle between creators and users of online content before launching a proposal to reform copyright law next year.

The initiative – set to be proposed by Günther Oettinger, the Commissioner for Digital Economy and Society, forms part of the priority Digital Single Market strategy.

Under current European rules (Directive 2001/29/EC on the harmonisation of certain aspects of

copyright and related rights in the information society), individual member states can lay down limitations and exceptions in their national legislation in order to define the appropriate balance between remunerating authors (including publishers) for their work, and exploiting the potential of content.

In practise, that means that online behaviour including links to newspaper articles and blog posts, or web sites including footage embedded from existing on-line video material, can all be illegal under current interpretations.



Online copyrights [Shutterstock]

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EU member states adopt differing approaches to exceptions to copyright, making for a confusing mix offering little certainty to companies wishing to roll out pan-EU services. Instead these are left to deal individually in each member state with relevant copyright collecting societies.

Consultation points up the lines of dispute

The Commission wants the copyright rules to fit the new digital reality, so that citizens and businesses will have online access to digital services between and across the EU's own borders.

How that is going to pan out exactly remains to be seen. Günther Oettinger is working with a special committee of the European Parliament on the issue.

"We need to bring the copyright legislation to the 21st century," said Pavel Svoboda, a Czech centre-right MEP (European People's Party) who is the chairman of the legal affairs committee. "Our aim is to anticipate the copyright reform and ensure we hear all the interested parties," he said after the first meeting of the special group held with Oettinger in Strasbourg last year (17 December).

The working group will start its work in earnest this month and aims to take hearings from "all the actors of the creative industry" over the next half year.

"We intend to present concrete and innovative proposals to the Commission, ensuring the right balance between the right holders protection and easy access for consumers," according to the group's coordinator, Jean-Marie Cavada a French MEP from the Alliance of Liberals and Democrats for Europe (ALDE).

The EU executive already realises that the issues see a clear division of sentiment and objectives between internet users and artists contributing to content.

A consultation on the review of the rules completed last year saw battlelines formed.

Consumers told the EU executive that

when seeking to view a video online on YouTube, they were blocked by national collective management organisations for copyrighted content, such as Germany's GEMA.

Others signaled the lack of access to popular video on demand services such as Netflix and the BBC iPlayer, which are currently only available to the residents of some member states.

Music services such as iTunes and Spotify were also panned by users for either not being accessible in certain countries, or only featuring a limited online catalogue compared to offers in other member states.

"The experience is all the more frustrating, some say, when it happens to people seeking to view or listen to content from their home country when in another EU country," according to the Commission's own summary of the findings.

By contrast, authors and performers argued there is no demand for cross-border services, and therefore no business case for it.

Whilst the issue is less relevant to the music sector – in which publishers commonly grant multi-territory licences – the majority of broadcasters claimed there was little incentive to provide services across borders.

Consumer viewing habits, demand, language, the ability to provide consumer support in more than one language, and the cost of marketing were all cited as reasons.

Collective rights – a third factor

Collective rights management organisations (or CMOs) active in the audiovisual sector, told the EU executive that it would be impossible for them to offer multi-territory licences, unless a framework to remunerate audiovisual authors is established.

Many member states are watching the debate uneasily from the sidelines, hoping that new reforms can emerge by a magical combination of market forces and consensus between the different parties.

Another thorny issue to be determined relates to internet hyperlinks, where the vast majority of consumers told the European Commission that links to protected subject matter should not be subject to authorisation by the rightholders of that material.

Some authors and performers, by contrast, believe that authorisation should be required for embedded links within websites.

Here member states disagree. Most consider that hyperlinking does not amount to an act of communication to the public and therefore rightholders' authorisation is generally not needed.

Other member states, however, consider that a hyperlink constitutes an act of communication to the public which should be subject to rightholders' authorisation when it enables direct and immediate access to content.

The idea of creating a copyright registration system at EU level represents another key user/author fault line in the debate, with the former in favour and the latter opposed.

Authors and performers are concerned about the quality of data that would be collected for the purposes of registration, and in general the additional registration costs that might be involved.

Collective management organisations (CMOs) CMOs generally consider that an EU registration system would be unnecessary, complex and an administrative burden.

Member states agendas differ

Pressure for reform is now coming in different forms from the member states.

The UK last year passed a law that legalised private copying by individuals without any requirement for additional compensation to artists. Two years ago Spain replaced copyright levies with a government compensation fund.

Last December, Finland joined these states in determining to scrap levies on

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digital devices. The Finnish Parliament voted in December to replace a levies system that has existed since 1984 with the creation of a government fund designed to compensate artists for private copying of content such as music and movies.

Finnish MEP Henna Virkkunen, a member of the European Parliament committee on industry research and energy, described the new compensation system as “fairer to consumers and better for artists because they will get more compensation this way.”

For its part the Commission is watching developments in the member states.

“We will monitor the implementation of the law to see whether it delivers the objectives set by the Spanish government,” a spokeswoman told EurActiv in relation to the Spanish law change.

Proposal next year will see two sides refereed by Commission

“President Juncker has asked Vice-President Ansip and Commissioner Oettinger to take ambitious legislative steps towards a connected Digital Single Market, notably by modernising copyright rules in the light of the ongoing digital revolution, so it is of interest for the Commission to follow national developments in this area,” the spokeswoman said.

Meanwhile a joint Franco-German government initiative is seeking to clip the wings of over-the-top internet providers such as Google, arguing that their share of that market is uncompetitive.

It is not clear whether that will feed into the copyright review, but some officials believe that a special tax for such companies might account for copyrighted content linked to in web searches.

The Commission has not yet decided whether the proposal will come in the form of a directive or regulation, but its bigger decisions will come in deciding how to arbitrate the dispute between the two sides of the internet generation.

Commission seeks unity on radio spectrum ahead of UN conference



The European Commission this week (12 January) launched a consultation on radio spectrum in a bid to unify member states and stakeholders behind a common EU position on radio spectrum liberalisation ahead of a key UN conference in November.

The EU executive will have to deal with conflicting interests of broadcast and telecommunications industries in addition to member states keen to protect national interests on spectrum.

The World Radiocommunication Conference (WRC) – conducted by the International Telecommunications Unions (ITU), a Geneva-based UN agency – will review and revise global spectrum rules, which are needed to prevent interference between broadcast and telecommunications users in different countries.

The EU executive has asked stakeholders to give their views on the options proposed in a report on the issue presented by former

Commissioner Pascal Lamy in September 2014.

700 MHz band

The Lamy Report sets out a strategy to resolve broadcasters and mobile operators rival claims for the Ultra High Frequency (UHF) spectrum, which is a finite resource. It is mostly used for broadcasting, mobile broadband and wireless microphones.

While the two industries have agreed that the 700 MHz band, currently used by TV broadcasters, should be given over to wireless broadband, they cannot agree how and when.

The location of the 700 MHz band gives it excellent propagation characteristics, according to America’s Federal Communications Commission (FCC). This allows the 700 MHz signals to penetrate buildings and walls easily, and to cover larger geographic areas with relatively less infrastructure.

The European Commission consultation on how to allocate the prized band will run until 12 April 2015 and will help the Commission define a common position in the area of spectrum management.

Lamy’s report recommended that broadband should have exclusive use of the 700 MHz band of the European Union’s Ultra High Frequency spectrum by 2020.

In return, terrestrial broadcasters should be guaranteed the remaining UHF spectrum below 700 MHz (470-694 MHz) until 2030, Lamy suggested.

Lamy report - a pathfinder for Geneva conference

EU, national and international regulatory stability for broadcasters must be safeguarded, the report said.

Europe should reject any international plans at 2015’s World Radiocommunication Conference to give the 470-694 MHz band over to mobile, it added.

Lamy also backed a review by 2025, so the EU executive can take any new technology or market developments into account.

The former EU Trade Commissioner and

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World Trade Organisation chief, Lamy spent six months discussing the issue with a group of broadcasters, network operators, mobile companies and tech associations before making his recommendations.

Broadcasters and telecoms operators remain divided on the issue however.

Reacting to the Commission's consultation launch, a statement from Broadcast Network Europe (BNE) – a federation representing the interests of terrestrial broadcast network operators – supported Lamy's recommendation that the frequency band 470-694 MHz should remain available for terrestrial broadcasters.

But BNE's members "remain concerned by their possible displacement from the 700 MHz band," the statement continued, citing as reasons "the complexity and challenges associated with reorganising the networks across Europe to accommodate today's services in less spectrum than is currently utilised".

Debate pitches terrestrial broadcast against telecommunications industries

By contrast, Erzsébet Fitori, the director of the European Competitive Telecommunication Association (ECTA), a group representing the telecoms sector, welcomed the report.

"More harmonisation and coordination at the European level would be particularly useful as new spectrum is being freed up for mobile communications, provided that European rules foster competition," Fitori said.

"Competition is the best driver of investments and innovation, which is why spectrum decisions should be pro-competitive and avoid squeezing viable challenger operators out of the market," according to Fitori.

Mobile phone operators do not use the spectrum they already have allotted and forcing broadcasters to change the radio frequencies they currently use could imperil coverage of key sporting events and major spectacles such as the FIFA Football World Cup and Eurovision Song Contest, one member of Lamy's own group told EurActiv last summer (23 July).

"The mobile industry has a great deal more spectrum to play with. About 1000

MHz has already been identified for the mobile service in Europe, where they have the capacity to do more. I don't actually think they have made full use of what they have already got," Simon Fell, the director of technology and innovation for the European Broadcasting Union (EBU), told EurActiv in an interview.

Even if a common position can be agreed the EU executive will not be able to guarantee that the bloc speaks with one voice on the issue at the WRC.

The European Commission provides guidance for regulators who attend such meetings. The actual administrations of the countries still decide what is happening within their borders. If they choose to use the entire spectrum they've got for TV or mobiles, they can do so.

Houlin Zhao, the ITU's new secretary general, told EurActiv in an interview that the organisation would stage preparatory meetings in Geneva to pave the way for the November conference.

Zhao acknowledged however that the ITU was preparing several compromise fall-back plans in case a bold unified position cannot not be agreed among the ITU's 193 member states.

Ansip: 'Digital Single Market strategy will be ready in May'

Andrus Ansip, the European Commission Vice-President for the Digital Single Market, says he will launch a new digital strategy this Spring, including milestones and methods for monitoring progress effectively in the member states.

Before his appointment to the European Commission, Andrus Ansip served as Estonian finance minister, prime minister

and as an MEP for the Alliance of Liberals and Democrats for Europe (ALDE). He answered questions from EurActiv's Jeremy Fleming.



Vice-President Andrus Ansip
[Flickr/Algimantas Balezentis/BDF]

How are you aiming to give focus to the organisation behind the Digital Single Market strategy, given that there are so many strands, including areas such as copyright, where you will not be taking the lead?

My role is to steer and coordinate the work of the Digital Single Market team. More than 10 Commissioners are involved. We had a first meeting in November and another one will take place later this month. Digital is everywhere, stretching into all aspects of our lives, so cooperation across DGs and avoiding "silos" is essential.

We are focusing on the real problems and obstacles, and looking at different policy options. Our work is divided into six themed areas, each involving

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the input and participation of several Commissioners.

As an example, one area of work will be about building trust and confidence. Both of these are vital if a Digital Single Market is to exist in Europe and function properly. Everyone needs to be at ease about problem-free accessing of services across borders, and as much at ease about doing this online as they are offline. In policy terms, this means moving further on consumer rights, data protection and cyber-security: a very wide range of cross-cutting issues.

Another relates to removing restrictions (and preventing new ones) and particularly to stop blocking of online consumers based on their location or residence. This will be about reforming copyright rules and getting rid of unjustified curbs on transfer and access to digital assets. I work very closely with Commissioner Oettinger on the modernisation of copyright rules.

Our team will come up with a fully developed strategy by May 2015, to be then implemented over the following months. We'll be listening carefully along the way, consulting and discussing all the time to make sure that we get it right.

The Commission is not directly involved in the next stages of the data protection regulation which is now in the ambit of the parliament and member states until a general agreement can be reached clearing the way for trilogues. Can and should you be applying pressure for speeding up the process in the meantime?

The Data Protection regulation discussions can and should be finalised in 2015. This is one of the Commission's top priorities. The European Council has also committed to the 2015 target. My colleague, Commissioner Jourová, is actively working towards this goal by engaging with the Council and the European Parliament.

There is now a positive dynamic

in the Council and we hope for further progress under the Latvian Presidency, which has also announced the completion of the Data Protection Regulation as one of their main objectives. We believe a general approach can be reached in the Council during their Presidency. The Parliament has already voted on the Data Protection Regulation last March, supporting the Commission's proposal, and is also waiting for the trilogues to start.

Is the terrorist atrocity at Charlie Hebdo likely to have any ramifications for the data protection regulation? Or on Passenger rights information?

As President Juncker said, our actions will be guided by reason and not by fear.

The proposed Data Protection Regulation does not cover the exchange of data for the purpose of counter-terrorism, therefore I do not expect any impact. The Commission has proposed a specific Data Protection Directive - for the police and criminal justice field, to take account of the specific needs and characteristics of this area.

Regarding Passenger Name Records or PNR, we are determined to work very closely with the European Parliament and the Member States to move ahead in 2015 on the proposal currently on the table since 2011.

We are not starting from zero. We already have PNR agreements with the US, Australia and Canada in place.

Has it yet been decided how the Grand Coalition for Jobs and Growth which Neelie Kroes started last year might be continued, and if so, from which department of the Commission?

The Grand Coalition for Digital Jobs continues. As this is about new technologies, jobs, education, SMEs and industry, different actors within the European Commission join their forces with the national and regional level.

We need to get more young people,

especially women, interested in digital careers and show them they can be challenging, creative and rewarding – and fun. Learning how to code at school is a great way to start. And this is essential for our economy: businesses face a critical shortfall of talented ICT experts.

There are key spectrum negotiations under way within the ambit of the International Telecommunications Union in Geneva this year with scoping exercises in the spring and to be followed by an attempt to get countries to free up spectrum later in the year. Will the EU be able to negotiate with one voice in that debate?

Yes, we need to speak with one voice. There is an ongoing process, with the help of the Radio Spectrum Policy Group, to prepare the conference.

Spectrum is not just a technical issue. It is the key raw material for the Digital Single Market. It can't work properly without connectivity that is high quality, high speed and decently priced. Open spectrum is the basis for a digitally-enabled society and digital demand.

But the more this natural resource is divided, the less efficient it is. Ideally, EU countries should be working together much more on allocating spectrum. After all, radio waves know no borders!

How will you judge whether your Digital Single Market strategy is on track by the end of this year?

This will be part of the strategy itself: we will define milestones and how we can monitor progress effectively. We need to be ambitious and move swiftly. And we want to hear from the public whether we are on track; we will need a lot of support.

The strategy will be presented in May. I am confident that we will already achieve a lot in 2015 to create the functioning Digital Single Market that Europe needs.

EU could legislate to make cloud and office servers greener

European Commission officials are considering whether to regulate to enforce energy efficiency standards on enterprise servers, technology vital for cloud computing.

But that decision will have to be balanced against the demands of the Commission's own strategy to boost and speed up the use of cloud computing, as part of a wider digital investment push to help get Europe's economy moving again.

That strategy sets out actions that, the Commission claims, will deliver a net gain of 2.5 million new European jobs. The 2012 plan should also bring an annual boost of €160 billion to the European Union GDP (about 1%), by 2020.

A 2011 Commission survey showed that the adoption of cloud computing would help 80% of organisations reduce their costs by 10-20%.

The unprecedented increase of data flow over the Internet has had a significant environment impact through energy and water consumption, and greenhouse gas emissions.

"Cloud computing can help mitigate these problems thanks to more efficient use of hardware as well as, more specifically, by building data centres to use low-energy servers and green energy," the strategy said.

Some estimates state that large companies in the US could save \$12.3 billion annually in energy consumption by adopting cloud computing.

Rather than keeping their data on office premises in data centres, the



Google data centre in Groningen, the Netherlands. [Erwin Boogert/Flickr]

information is stored on the Internet – the cloud. But cloud computing needs larger data centres to handle that information.

The EU executive could regulate the energy efficiency of enterprise servers, the technology used for the cloud and for storing business data.

Any change to the legislation would take place in the context of the Ecodesign Directive, which sets requirements for all energy-related products in both residential and industrial sectors.

The aim of the directive is that manufactures of the energy-using products should, at the design stage, be obliged to reduce the energy consumption and other environmental impacts of products.

No decision has yet been made and the executive is carrying out a feasibility study on enterprise servers at the moment. Experts believe that the servers should not be too politically sensitive to regulate, despite their relevance to the shift to cloud.

Data centres

Large corporations such as Google and Facebook have already made strenuous efforts to ensure their data centres, where servers are housed, in Finland and Sweden, are as green, and as efficient, as possible.

There is a strong financial incentive for them to be so. Large data centres, needed for cloud computing, use a lot of energy so the less they use, the better.

Companies can also guarantee price stability by buying renewable energy in advance in ten or 20 year blocks. Google, for example, buys direct from windfarms in such blocks.

Both industry and the Commission agree that these large centres use less energy and are more efficient than medium and smaller data centres.

Even the traditional one or two servers

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in office basement tend to be extremely inefficient. These smaller facilities represent more than 70% of such data centres worldwide.

Shifting those office centres to the cloud would deliver energy savings, and by extension cost savings, to Europe's business.

This chart from Google shows how much energy can be saved by shifting an office email system to the cloud.

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