

EXPLANATORY MEMORANDUM ON EUROPEAN UNION DOCUMENTS

COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS on the Mid-Term Review on the implementation of the Digital Single Market Strategy - A Connected Digital Single Market for All

ADD 1 ANNEX Implementation of the Digital Single Market Strategy to the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the Mid-Term Review on the implementation of the Digital Single Market Strategy - A Connected Digital Single Market for All

ADD 2 COMMISSION STAFF WORKING DOCUMENT Accompanying the document COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS on the Mid-Term Review on the implementation of the Digital Single Market Strategy - A Connected Digital Single Market for All

Submitted by the Department for Business, Energy and Industrial Strategy on 4th July 2017

SUBJECT MATTER

1. The main document is a Commission Communication setting out the Mid-term review of its Digital Single Market (DSM) strategy. Two years after its launch in May 2015, the Commission has released a Mid-term review to assess the progress that has been made on the DSM strategy, identify where more effort is needed, and where changes in the policy landscape call for new action. The Commission reports that it has, to date, delivered a total of 35 legislative proposals and policy initiatives, stemming from 16 measures set out in the original DSM Strategy. This communication calls on the co-legislators to swiftly act on all proposals already presented, and outlines forthcoming actions on online platforms, data economy and cyber security.
2. The annex to the main document is a table giving a comprehensive overview of the implementation efforts made so far. The table sets out completed actions under each initiatives as well as their date of adoption/publication.
3. The supporting document is a Commission Staff Working Document (SWD) accompanying the main communication and setting out more detail on what has

been delivered so far and that challenges have arisen in the context of the DSM strategy.

4. Having made proposals on all the 16 key measures identified in the last two years, the Commission now aims to see the measures adopted and implemented in the following two years. Under the heading **“A call for timely delivery and effective implementation”**, the Commission calls on the co-legislators to finalise key legislative proposals by the end of 2017 in order to ensure the ambitious delivery target.
5. The document identifies several areas that will soon deliver concrete benefits, including what the Commission refers to as its **“triple win”** for consumers. This firstly includes the abolition of roaming charges in the European Economic Area (EEA), which came into force on 15 June 2017. Secondly, the agreement on cross-border portability on online content services, which will enter into force early in 2018 and mean that consumers will be able to use their online subscription to film, sport, events, e-books, video games or music services when travelling in other EU countries. Finally, the document cites the adoption of the proposal to address unjustified geo-blocking, planned for the second half of 2017. This regulation seeks to ensure that customers wishing to purchase certain products and services across borders within the Single Market, (online or in person), are not discriminated against in terms of access to prices, sales or payment conditions on account of their nationality, country of residence or establishment.
6. To effectively support the triple win and develop new services such as 5G networks, connected cars, smart cities and remote health care, the Commission highlights that Member States have decided to enhance coordination to make the high-quality band 700 Mhz available for effective use for wireless broadband as of 2020. The Commission encourages Member States to continue having a coordinated approach to spectrum policy.
7. The Commission calls for a rapid adoption of the Electronic Communications Code and the Body of European Regulators for Electronic Communications (BEREC) Regulation to deliver a modern communications infrastructure that covers the whole of the EU, including rural areas. The document also lists the investment under way in high-speed broadband roll-out such as €6 billion (£5.1 billion) from the European Structural and Investment Funds, €3.2 billion (£2.7 billion) from the European Fund for Strategic Investments as well as the formation of a Connecting Europe Broadband Fund, which will help private investors to trigger up to €1.7 billion (£1.4 billion) to support digital network infrastructures in under-served areas. In addition, once the WiFi4EU initiative is adopted and implemented, up to 8,000 local communities will benefit from a total funding of €120m (£101.4m) to promote Internet connectivity until 2020. In addition, the Commission calls upon all stakeholders to work together to meet the connectivity ambitions for 2025 and to follow up on the 5G Action Plan.
8. On cross-border e-commerce, the Commission pushes for a swift adoption of harmonised contract rules for digital content and calls for enhanced cooperation between national consumer protection authorities. The document points out that the

full harmonisation of digital contract rules will reduce the diversity of national consumer contract laws and thus remove one of the main reasons why businesses geo-block. The Commission identifies affordable cross-border parcel delivery services and simpler VAT declaration procedures as further key points to enable businesses to take up e-commerce opportunities.

9. The Commission also mentions its e-commerce competition sector enquiry, which has already resulted in three investigations into alleged anti-competitive pricing practices for consumer electronics, video games and hotel accommodation. The Commission is also finalising the evaluation of the functioning of the current legal framework for the enforcement of all intellectual property rights, including copyright.
10. The document reiterates the General Data Protection Regulation (GDPR) as an essential tool to safeguard individuals' fundamental right to the protection of personal data in the digital age, and works with all stakeholders to prepare for the application of the regulation from 25 May 2018. The document also calls for a swift adoption of the proposal for a revised ePrivacy Regulation.
11. In relation to the creation and distribution of content, the document recalls that the revision of the Audiovisual Media Services Directive (AVMSD) and the creation of modern copyright rules aim to create a legal framework fit for the digital age. This framework needs to ensure a balance between competitiveness and consumer protection in the context of AVMSD, while on copyright it aims to ensure more cross-border access to content online and create wider opportunities to use copyrighted materials in education, research and cultural heritage.
12. On **Online Platforms**, the Commission proposes two sets of measures to (1) address concerns about unfair trading practices in platform-to-business relationships and (2) improve the removal of illegal content online. Regarding unfair trading practices, the Commission identifies a legislative instrument as a potential measure and specifies that it intends to explore dispute resolution, fair practices criteria and transparency. In the context of illegal content, the Commission will provide guidance on liability rules and give support to platforms on voluntary measures to remove illegal content.
13. In relation to **developing the European Data Economy**, the Commission clearly states the principle of free movement of data within the EU and specifies that it plans to prepare a legislative proposal by autumn 2017, which covers the principle of free flow of data, the principle of porting non-personal data and the principle of availability of certain data for regulatory control purposes when stored in another Member State. In spring 2018, the Commission will also prepare an initiative on accessibility and re-use of public and publicly funded data sets and further explore the issue of privately held data sets which are of public interest.
14. With regard to **cyber security**, the document sets out the Commission's plans to review the 2013 EU Cyber security Strategy to take into account the evolving risk landscape and an increased reliance on networks. Furthermore, the document sets out that the changing cyber security landscape also means that the mandate and tasks of the European Union Agency for Network and Information Security (ENISA) need to be reviewed. To protect future connected products and systems, the

Commission proposes the creation of a European ICT security framework with rules on cyber security standards, certification and labelling.

15. Under the heading “**Managing the digital transformation of our society and economy**”, the Commission sets out the policy areas needing increased efforts to address the challenges and seize the opportunities of digital transformation. The document identifies digital skills, start-ups and the digitisation of industry, digital innovation for public services as well as investing in connectivity and digital technologies as policy areas where actions are needed to engage with the digital transformation process.
16. On **digital skills**, the Commission voices concern about what it sees as a lack of sufficient action taken, and calls upon Member States to rethink how they provide education and training to ensure digital inclusion and improve digital skills. It calls for the swift implementation of the New Skills Agenda for Europe. The Commission also set out the “Digital Opportunity” scheme for 2018, a pilot giving graduates experience through cross-border traineeships in the digital domain.
17. Regarding **start-ups and digitisation of industry**, the document underlines measures that encourage national initiatives on digitising industry, as well as current investment plans, and calls on Member States to fully implement the Digitising European Industry strategy, and to take stock of results by early 2018. The document furthermore sets out the benefits and innovations that start-ups and a digitised industry can bring in areas such as energy, finance and especially transport, on which the Commission will present a comprehensive mobility package in spring 2017. The Commission will also continue to cooperate with Member States to implement the Letter of Intent, signed on 23 March 2017 on connected and automated mobility.
18. In the context of **digital innovation for modernising public services**, the Commission highlights the importance of digital-by-default and once-only principles in terms of savings and simpler administrative procedures. The document sets out a planned initiative on digital solutions throughout a company’s lifecycle, which will allow companies to fulfil administrative requirements such as registering, filing and updating documents online and across borders. The Commission also announces that it will add a set of new actions to its eGovernment Action Plan.
19. The Commission calls on Member States to ensure citizens’ secure access to electronic health records, the possibility to share it across borders and use e-prescriptions to get their medication dispensed, by 2020. The Commission also describes the benefits of a supporting data infrastructure to advance research, disease prevention and personalised health care in key areas such as rare, infectious and complex diseases.
20. On investments in digital technologies and infrastructures, the Commission plans to publish an implementation roadmap for the European Open Science Cloud by autumn 2017 and to provide financial support under the Horizon 2020 work programme for 2018-2020. Furthermore, the Commission announces that it will

propose, by the end of 2017, a legislative instrument that provides a procurement framework for integrated exascale supercomputing and data infrastructure.

21. The document reflects on the **role of Europe and the Digital Single Market in the global digital economy**. The Commission reiterates the principles of the free flow of information and global value chains while grounding the Digital Single Market on fair competition and European core values, fundamental rights and freedoms. The document further identifies Europe's key strengths and priorities in the global digital market, such as a stable and predictable regulatory model and a strong private data protection mechanism. The documents also mentions that the Commission will prioritise discussions on adequacy decisions with Japan and the Republic of Korea, as well as consider other strategic partners such as India, countries in Latin America, in particular Mercosur, and the wider European neighbourhood.
22. The Commission highlights the importance of free trade agreements in ensuring market access, by removing unjustified barriers that distort data flows and investment. The document specifies that trade agreements will be used to set rules for e-commerce and cross-border data flows and tackle new forms of digital protectionism, in full compliance with the EU's data protection rules.

SCRUTINY HISTORY

23. The Department for Business, Innovation and Skills submitted EM 8672/15, regarding a communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a Digital Single Market Strategy for Europe, on 15 June 2015. The House of Commons European Scrutiny Committee considered the EM and cleared it. The House of Lords European Union Committee also considered the EM and cleared it.

POLICY IMPLICATIONS

24. On 23 June, the EU referendum took place and the people of the United Kingdom voted to leave the European Union. The government respected the result and triggered Article 50 of the Treaty on European Union on 29th March 2017 to begin the process of exit. Until exit negotiations are concluded, the UK remains a full member of the European Union and all the rights and obligations of EU membership remain in force. During this period the Government will continue to negotiate, implement and apply EU legislation.
25. The Commission's Communication reviews the progress made so far, identifies issues where more effort is needed and proposes new actions that might affect the DSM in the future, but are not explicitly addressed in the DSM strategy.
26. The Commission's Review has outlined three priorities for the second half of their term; to develop the European Data Economy; promote online platforms as responsible players of a fair internet ecosystem; and protect Europe's assets by tackling cyber security challenges.

27. On the **data economy**, one of the UK's key priorities in the DSM strategy, the Commission has committed (subject to Impact Assessment) to prepare a legislative proposal on the EU free flow of data cooperation framework by autumn 2017. This will take into account: the principle of the free flow of data within the EU; porting non-personal data, including when switching business services like cloud services; and the availability of certain data for regulatory control purposes when that data is stored in another Member State.
28. The Commission also commits (based on an evaluation of existing legislation and an Impact Assessment) in spring 2018, to prepare an initiative on accessibility and re-use of public and publicly funded data, and further explore the issue of privately held data which are of public interest. The Commission also commits to further analyse whether to define principles to determine who is liable in cases of damage caused by data-intensive products, and to continue to assess the need for action concerning the emerging data issues (as identified in the data Communication in January 2017, and including data access rights).
29. The Commission also commits (subject to an evaluation of existing legislation and an Impact Assessment) in Spring 2018, to prepare an initiative on accessibility and re-use of public and publicly funded data, further explore the issue of privately held data which are of public interest, and further analyse whether to define principles to determine who is liable in cases of damage caused by data-intensive products.
30. On **Online Platforms**, the Commission plans to review platform to business trading practices with the intention to introduce measures and to explore dispute resolution, fair practices criteria and transparency. To make sure illegal content online can be easily reported and effectively removed, the Commission will provide guidance on liability rules and give support to platforms on voluntary measures to remove illegal content. Through the E-Commerce Directive and the Audiovisual Media Services Directive, UK regulators are able to place on service providers restrictions in relation to the transmission of illegal content and harmful content respectively.
31. The Government would agree with the Commission's Communication on how 'a one size fits all approach' to online platforms would not work including the importance of creating the right framework allowing platforms to grow and promote the importance of self-regulation by industry.
32. Lastly, on **Cyber security** the Commission intends by September 2017 to review the EU Cyber security Strategy to address the modern risks experienced today, help improve security in Member States, and increase confidence and trust among businesses and people in the digital economy and society. The Commission will also review the mandate of ENISA to consider its new role within the Network and Information Systems Directive, following their ongoing evaluation of ENISA in achieving its objectives; and develop measures on cyber security standards, certification and labelling, to make ICT based systems more cyber-secure.

33. This Government is clear that while we remain a member of the European Union we will continue to play an important role and represent the interests of the British people, including taking an active part in Digital Single Market (DSM) negotiations and promote UK interests when doing so.

MINISTERIAL RESPONSIBILITY

34. The Secretary of State for Business, Energy and Industrial Strategy has primary responsibility for the policy on the Digital Single Market. The Chancellor of the Exchequer and the Secretary of State for Culture, Media and Sport have interests in particular areas that the report covers.

INTEREST OF THE DEVOLVED ADMINISTRATIONS

35. Scottish Government Ministers, Welsh Government Ministers and Northern Ireland Executive Ministers have devolved responsibility for economic development issues, and therefore have an interest in the content of the communication. The Devolved Administrations have been consulted in the preparation of this EM.

LEGAL AND PROCEDURAL ISSUES

36. There are no legal or procedural issues. This is not a proposal for legislation.

APPLICATION TO THE EUROPEAN ECONOMIC AREA

37. Several initiatives within the DSM strategy are of relevance to the EEA. However, the Commission does not touch on this particular aspect in this communication. The document mentions that Switzerland and Norway, along with 27 EU Member States have expressed their readiness to cooperate in an initiative on cooperative, connected and automated mobility. The UK has not signed the Letter of Intent.

SUBSIDIARITY

38. As this is not a proposal for new legislation, there are no subsidiarity issues arising from the Commission's communication.

CONSULTATION

39. This is not a proposal for new legislation and the Government has not conducted a public consultation.

IMPACT ASSESSMENT

40. The Commission communication is not a legislative proposal and will not impose burdens on business. An impact assessment is therefore not required.

FINANCIAL IMPLICATIONS

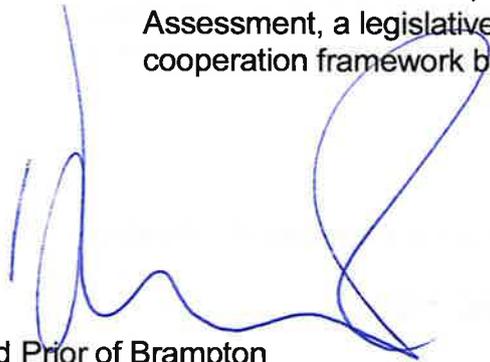
41. There are no direct financial implications for the UK.

TIMETABLE

42. The Commission has called on the European Council and the European Parliament to finalise co-legislation of its existing legislative proposals by the 2018.

43. The Commission has attached timescales to certain policy actions and legislative proposals. The most important are the following:

- Application of the General Data Protection Regulation starts on 25 May 2018;
- On online platforms, the Commission will prepare actions to address the issues of unfair contractual clauses and trading practices as well as ensuring better coordination of platform dialogues providing guidance on liability rules and support to platforms on voluntary measures by the end of 2017;
- On the free flow of data, the Commission will prepare, subject to Impact Assessment, a legislative proposal on the EU free flow of data cooperation framework by autumn 2017.



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