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Digital Single Market quarterly update and scrutiny response to the e-commerce package

I am writing to provide an update on recent progress made on the European Commission's Digital Single Market (DSM) Strategy. In late 2016 we committed to sending the House of Lords European Union Committee and the House of Commons European Scrutiny Committee quarterly updates on the DSM; this letter is the first such update.

I would also like to address two questions the House of Commons European Scrutiny Committee raised in response to the release of the DSM e-commerce package last year, on the UK's DSM engagement strategy, pending Brexit.

Progress on DSM files

As you know, the European Commission launched its DSM Strategy in May 2015, with the aim of updating the Single Market to make it fit for the digital age. The DSM Strategy outlined 16 initiatives, which are a mix of regulatory and non-regulatory measures designed to break down barriers to trade. These initiatives cover a range of policy areas including consumer protection and e-commerce, VAT, copyright, portability of digital content, telecommunications and the electronic communications framework, the free flow of data, digitisation of industry, the regulation of audiovisual media services, and how to deal with new and emerging models of business, such as online platforms and the sharing economy.

Notable progress has been made on a number of DSM files in recent months. In particular, a General Approach reached in Council in November 2016 on the Geoblocking Regulation will protect online consumers from discrimination on the basis of nationality or place of residence. In addition, in the last few weeks, trilogue agreement was reached on the portability proposal, which will allow consumers to access their digital content when travelling in the EU, and the

roaming proposal, which will see mobile roaming charges eliminated from the middle of this year. All three of these agreements were supported by the UK Government.

I have outlined specific progress on DSM live files currently under negotiation below.

Geoblocking

The Geoblocking Regulation seeks to prevent traders from unfairly discriminating against consumers in other Member States. Such discrimination can take the form of a trader restricting access to its website or unfairly applying different terms to the contract on the basis of nationality or place of residence. As outlined in the letter from my predecessor on this subject in December 2016, the General Approach agreed by Member States met government objectives to (i) achieve the main policy aims of the proposal; (ii) preserve consumers' rights in relation to choice of law and jurisdiction in cross-border contracts, while avoiding creating legal uncertainty for businesses; and (iii) exempt microbusinesses which fall under the national VAT limit. This agreement is particularly good news for UK consumers, who are the most active in the EU in terms of e-commerce, and have been subject to numerous instances of geoblocking in the past.

Portability

On Wednesday 8 February 2017 a trilogue agreement was reached that will allow EU citizens to view online content to which they subscribe wherever they are in the EU. These new rules will take effect from the beginning of 2018. The UK was a strong supporter of the proposal and the agreement reached last week shows a real momentum for completing DSM files.

Roaming

On Wednesday 1 February 2017 a trilogue agreement was reached that will eliminate roaming charges from the middle of this year, with wholesale roaming prices (the prices telecoms companies can charge each other for use of their networks) capped and reduced incrementally between 2017 and 2022.

Free Flow of Data

A key priority for the UK within the DSM is the Free Flow of Data initiative. On 10 January 2017 the European Commission published a Communication and consultation on "Building the European Data Economy". The Communication discusses two main elements: data localisation and emerging issues.

Data localisation refers to the practice of public authorities requiring that the personal data of citizens of a particular Member State must be stored on servers located in that Member State. This is typically justified on security grounds but can pose a non-tariff barrier to trade, especially for small firms. In that context, this runs counter to Single Market principles.

We support Commission action to tackle unjustified data localisation, and in December 2016 the Prime Minister joined with 15 other EU Heads of Government to sign a joint letter to

European Council President Donald Tusk, calling for a legislative proposal to prevent unjustified data localisation requirements.

Audio-Visual Media Services Directive (AVMSD)

The AVMSD has two main principles – that services (broadcast and on-demand) established in one Member State are free to be received in all other Member States, subject to the rules of the country in which they are established (the 'Country of Origin Principle'); and minimum harmonisation regarding hate speech, protection of minors and commercial communications.

The Commission published a proposal for a new AVMSD on 25 May 2016. The proposal includes clarifying the existing procedures of the 'Country of Origin Principle', changes to the current advertising regime, and extension of scope to include video-sharing platforms such as YouTube, when dealing with illegal content or material deemed harmful to minors.

Working Groups are ongoing on this file and we expect the Directive could be ready for adoption in mid-to-late 2017.

Electronic Communications Code

The current Electronic Communications Framework was adopted in 2002 (revised in 2009) to harmonise regulation across the EU. Its broad scope makes it fundamental to the functioning of the UK's telecoms sector. The Framework has liberalised telecoms markets, stimulated private investment and extended consumer choice by driving competition. It also provides adequate consumer protection and sets the objectives of Ofcom. The Framework contains inbuilt provision for regular review to ensure it remains fit for purpose.

The Commission published proposals on 14 September 2016, which intend to recast the existing Framework into a new 'Electronic Communications Code'. Negotiations in the Council Working Group commenced in November 2016. The Commission's target for completing negotiations is the end of 2017, with implementation into national law by the end of 2019.

In line with DCMS commitments, Matt Hancock, Minister of State for Digital and Culture, wrote to the House of Commons European Scrutiny Committee and House of Lords European Union Committee last month to provide further clarification and information on the contents of the code.

Copyright Directive

The Commission adopted its proposal for a copyright directive as part of a wider copyright package on 14 September 2016. Working Groups have started negotiating other parts of the copyright package, and we expect substantive negotiations on the directive to begin this year.

The Commission's proposed copyright directive covers a wide range of measures including: mandatory exceptions for data mining, preservation and education; measures to enable digitisation of out-of-commerce works; measures to improve licensing of Video On Demand

rights; a transparency obligation and contract adjustment mechanism; the introduction of a new right for press publishers; and new obligations for online content hosting services.

VAT

The VAT strand of the Digital Single Market strategy seeks to modernise and simplify VAT for cross-border e-commerce. Proposals were published in December 2016, and detailed discussions have started under the current Maltese Presidency.

Changes are proposed in two tranches, 2018 and 2021. The 2018 proposals include introducing a common VAT threshold in respect of the place of taxation for cross border supplies; and simplifications to the Mini One Stop Shop single electronic registration and payment mechanism, in order to allow businesses to follow the rules for invoicing and record keeping in the Member State where they are registered, for all their supplies in the EU. The 2021 proposals include the extension of the single electronic registration and payment mechanism (One Stop Shop) from cross-border electronically supplied services to all business-to-consumer cross-border online sales of goods; and removing the VAT exemption for low value goods imported from third country suppliers. These proposals are covered in EM 14820/16, 14821/16, 14822/16 submitted by HM Treasury on 20 December 2016.

Consumer Protection Cooperation (CPC)

The CPC regulation seeks to update the formal framework for cooperation between national enforcement authorities on cross-border infringements of EU consumer law. Since the proposal was introduced in May 2016, the UK has supported the need for a reformed framework, which retains sufficient control for Member States and has powers and procedures fit for the digital age.

Member States agreed a General Approach on the file at Competitiveness Council on 20 February. We sent a full update on the proposal on 1 February in advance of Competitiveness Council, and we wrote again to both Committees after the meeting.

Tangible Goods

The directive on online sales of tangible goods is designed to reduce barriers to, and increase certainty in, the online and other distance selling of physical goods in the Single Market by harmonising after-sale consumer protection rules. The Commission has proposed maximum harmonisation.

Working Group meetings are yet to begin under the Maltese Presidency, although discussions have started in the European Parliament, where MEPs have tabled amendments to the rapporteur's report on the proposal. Like other Member States, we would like to see further evidence from the Commission as part of their ongoing 'Refit' review of consumer law before negotiations formally begin on this dossier.

We will provide an update to both Scrutiny Committees on this file once negotiations commence.

Cross-border Parcel delivery

The Parcel regulation aims to tackle a lack of transparency and regulatory oversight of the parcel delivery market, which acts as a barrier to reasonably priced cross-border parcel delivery services in the EU. Working Groups are continuing under the Maltese Presidency in 2017, where a General Approach is expected to be achieved.

Digital Content Directive

This proposal seeks to extend consumer contractual rights to the supply of digital content (games, streamed films, CDs) and digital services (cloud storage, cloud based apps). While the UK already has domestic rules covering digital content and services generally, currently there is no EU regime covering these rights and obligations. The Commission's proposal is intended to provide comparable rights across the Single Market, to avoid divergence as Member States address the issue individually, and so to better facilitate cross-border trade. The Commission adopted the proposal in December 2015. Council Working Groups were held under the Dutch and Slovak Presidencies.

The Maltese Presidency is continuing to prioritise the file and has indicated that it aims to reach a General Approach this year. It is likely that the Presidency will press for a Partial General Approach at the Justice and Home Affairs Council on 27 March. The Government will provide both Committees with a full update ahead of this Council meeting.

Response to scrutiny questions

In addition to the above, I would also like to address questions the Committee raised last year following the publication of the e-commerce package:

- 1. Will the UK continue to influence negotiations and vote in the Council on DSM proposals pending Brexit, will it abstain from such negotiations as a matter of principle, or will it approach each proposal and vote on a case-by-case basis?*

As the Committee will see from this letter, the UK continues to play an active role in the DSM, influencing negotiations and voting in Council to ensure that the UK's views are heard.

Through developing strong and constructive relationships with likeminded Member States, we have achieved successes on the DSM, both in terms of policy content and the speed at which some key policies have progressed through the EU's legislative process – for example, the recent agreements on geoblocking and portability represent a near record turnaround in EU decision-making. We aim to maintain this momentum and influence across other DSM files, working with our Member State partners and the EU institutions.

The UK has been an active proponent of the DSM since the strategy was launched in May 2015, pushing for an open, flexible market with a framework that reflects the dynamic nature of the digital economy.

2. Which proposals does the Government consider a policy priority and would wish to apply regardless of the withdrawal of the UK from the EU (for example by retaining or adopting them as domestic law or by means of a bilateral agreement with the EU)?

Our EU exit negotiations are yet to begin. It is therefore premature to comment publically on the nature of future agreements with the EU or on potential changes to domestic law following our EU exit.

Whatever the nature of our relationship with the EU, it is in the UK's economic interests to work with international partners on building a fully functioning global digital economy. For this reason, we continue to push for an open, competitive and flexible Digital Single Market. For example, the free flow of data is fundamental to the functioning of the digital economy and realising its full potential. The Government sees global data flows as being of high importance, hence the desire to tackle unjustified data localisation not just at the EU level, but also in data flows between the EU and third countries.

We also recognise the importance of consumer rights in enabling the digital economy. Tackling rogue traders and unscrupulous business practices will remain important to the UK, as our citizens and businesses continue to trade with EU partners.

Next steps

The European Commission will release a 'DSM mid-term review' in May 2017, to take stock of progress made on the DSM Strategy, two years on from its publication. The review will not propose any new legislation but will look forward and suggest potential future areas of work beyond the current DSM Strategy, such as cyber-security or online platforms.

I will continue to update the Committee on the progress of the DSM Strategy on a quarterly basis, and will therefore write to you again shortly after the publication of the mid-term review.

I am writing in similar terms to Sir William Cash, Chair of the House of Commons European Scrutiny Committee and copying this letter to Les Saunders (DEXEU) and Briony Thompson (BEIS).

Yes L. J. du

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