



ANNEX 1 – EUROPE'S DIGITAL ECONOMY

Additional topics to BUSINESSEUROPE December 2014 Priorities (ANNEX 2)

□ DIGITALISATION OF INDUSTRY

The ongoing fourth industrial revolution is digitally transforming European industry, and will help deliver efficiencies to EU industry and services, including SMEs. **By 2025, Europe could see its manufacturing industry add a gross value worth 1.25 trillion euros.** To the contrary, if we fail to turn the digital transformation to our advantage, the potential losses can be up to 600 billion euros by 2025 – this would be like losing over 10% of Europe's industrial base¹.

Also, if we cannot leverage the potential of the digital revolution, the EU's stated aim of increasing manufacturing's share of European GDP to 20 % by 2020 will be simply out of reach. **The upcoming Digital Single Market strategy should address this phenomenon as a matter of priority.**

Europe needs to create the conditions to enable its future, open digital revolution and catch this opportunity. A mainstreamed industrial policy is necessary to facilitate the digital transformation of the economy, starting from manufacturing and services. There are clear disparities in embracing digital across Europe and between large companies and SMEs. Particularly manufacturing SMEs and non-tech industries need assistance in identifying and responding to new market opportunities, for instance by encouraging them to participate in global value chains.

Digitalisation of industry is based on a growing ecosystem of advanced computing, data analytics, low-cost sensing and communication devices, new levels of connectivity and IT applications over the Internet. This makes industrial value chains shorter and more vertically integrated than in the past. Technology advances have blurred the boundaries between the digital and physical worlds. Intelligent, interconnected systems now seamlessly support activities along the entire value chain. This means reduced costs and improved efficiencies, greater speed and scale, smarter products and services. Services appear at any stage in the value chain and across all sectors, including manufacturing. Thanks to digital, manufacturers provide additional services with their products – the so-called “servicification” phenomenon, which can highly benefit European competitiveness.

But there is much more than that. Digital gives companies the possibility to shorten time-to-market, increase flexibility and product customisation and ultimately leads to customer satisfaction, which in turn achieves better commercial results, of both existing and new products.

Another important novelty is the increasing amount of performance data flowing back to machine producers and production equipment manufacturers, which will contain **know-how that was previously contained within factory walls.** This is an area where Europe is strong and can become even stronger.

The policy decisions that will be taken in the upcoming Digital Single Market Strategy will need to ensure that Europe regains its competitive edge vis-à-vis its competitors. The EU must create the right framework to enable this revolution.

¹ *The digital transformation of industry*, Roland Berger and BDI, March 2015, at http://www.rolandberger.com/media/pdf/Roland_Berger_digital_transformation_of_industry_20150315.pdf



This can be achieved by focusing on a number of elements, many of which are paramount not only in this field, but **are also relevant for the digital economy overall**:

- We have to make sure that our regulatory framework, in particular concerning the **collection, use and analytics of data**, is able to fuel the servicification process that will bring growth in Europe. **Legislation must enable data-driven innovation**, with appropriate rules on data protection striking the right balance between protecting EU citizens and facilitating the free movement of data in the digital single market.
- Europe must reconsider its **risk-opportunity balance and follow the innovation principle in the digital economy**. For instance, the European approach to regulating the processing of data does not sufficiently reflect the need of a better data flow, needed for the success of some recent key innovations, such as mass customisation and digital simulation in car-making. This should be matched with **strengthening trust** of businesses and consumers.
- **A robust infrastructure is the backbone of the digital economy** and ensuring the right incentives for **private investment** to take place is a fundamental prerequisite to EU industry's digitalisation. Ubiquitous high speed networks are the key enabling technology for the full realization of an 'Industrial Internet'. **Competition and strong incentives for continued investment in the EU on broadband infrastructure** will be essential to meet the exponential connectivity and quality demands associated to an Industrial Internet. Constant availability, reliable speeds and adequate capabilities of communication infrastructure are crucial elements in order to avoid disruptions and downtime costs in fully automated processes.
- It is essential that Europe invests sufficiently on the **development of the necessary skills** to enable this digital revolution. The growing demand for highly specialised skills, such as Big Data analysts, as well as cyber-security and cloud-computing specialists, is widely recognised.
- Europe must also focus on **research, development and innovation**, especially in the areas where we can face global challenges and regain our leadership on the digital global marketplace – such as the development of 5G networks and Internet of Things for advanced manufacturing.
- **Standards will be another key factor for a successful industrial digitalisation**. International standards must be taken into account when developing European standards. Many European companies develop globally uniform products for worldwide markets, therefore the competitiveness of European industries on global markets relates to the international relevance of the standard. In this context, we could also further promote coordinated European efforts involving interactions with other regions, such as Asia or the US, to create synergies and allow everybody to win in this exercise. Europe has the opportunity of promoting an open cloud-based infrastructure for cost-effective applications and services. This chance, associated to the Internet of Things, gives also an opportunity to focus on leadership in the standardisation process associated to 5G technology. Europe must ensure involvement in setting and deploying ICT standards that are successful in terms of their development and timely deployment. In ICT, the market often tends to massively embrace only one winning concept. For example, there has been a standards battle between Blu-ray disk and HD-DVD. Only Blu-ray disk made it to market volume. In the age of Internet of Things, playing strategically to this phenomenon will be essential for competitiveness.



- **Cloud computing** will be fundamental to enable digitalisation of industry. Any measure in this area must avoid prescribing, mandating or promoting specific rules or business models. It is important to set out the principles and objectives for growth and innovation, leaving markets develop adequate solutions. In particular, introducing mandatory contract terms and Service Level Agreements, as was envisioned in the cloud computing strategy by the Commission, would be premature as business practices and business models are still in development.

□ E-COMMERCE AND ACCESS TO GOODS AND SERVICES ONLINE

Consumer issues

Consumer expenditure accounts for 56% of EU GDP. E-commerce offers huge new opportunities for business, especially SMEs, who can reach more consumers, and more easily. While e-commerce is rapidly taking off at national level, cross-border e-commerce is still lagging behind.

Improving consumer confidence and business opportunities must be a top priority. The unexploited potential of e-commerce is clear when considering that online trade represents only 5% of total retail sales. Also, only 9% of Europeans shop online in another Member State whilst 40% do it in their own Member State. This contrasts with studies showing that buying online is actually as safe as buying in a shop.

Another reason for this is the insufficient consumer and business confidence in cross-border e-commerce, also due to remaining fragmentation of consumer protection rules.

As a way to address in particular the fragmentation of consumer protection rules in cross-border e-commerce, several public debates have highlighted the **possibility for traders to propose to their customers the application of the consumer rules of the Member State where the trader is established.**

BUSINESSEUROPE priority remains further harmonisation of consumer legislation in the single market as that would simplify the regulatory environment for both companies and consumers. In the short-term, we believe that introducing the **option to “sell online like at home”** for traders (“home option”) would encourage businesses – especially SMEs – to take advantage of the opportunities offered by the single market. In the long term, this would help increase crossborder e-commerce while encourage further harmonisation of consumer legislation. At the same, it would provide consumers with lower prices, wider choice and diversified offer through increased competition. This would also in particular facilitate the provision of products that – due to their nature or the way they are distributed - have so far only been available through local traders.

At the same time, those consumers wishing to only buy from traders that apply the rules of their home Member State would still have the opportunity to do so. In this case, they would still benefit from the increasing competition and lower prices deriving from the larger quantity of online traders that decide to make their offer available across-borders thanks to the “home option”. It has been calculated that consumers have 16 times more choice and on average 10% lower prices when buying online.

This could be accompanied by educational campaigns for digital literacy (including for disadvantaged groups) and information on consumer rights across the EU.



Access to goods and services

Access to goods and services online across Europe is a matter that is often rightly addressed as a key issue in relation to the creation of a truly digital single market.

Companies share the interest not to be subjected to unjustified differential treatment in price or other conditions, or unjustified refusal to supply. Furthermore, it is important that consumers and businesses are confident to buy or sell cross-border in the single market.

Geo-blocking is frequently referred to in this context as a technical measure to block or limit access to a certain service, or to redirect and provide alternative treatment in terms of price or conditions based on the consumers' location.

The starting point for BUSINESSEUROPE in this debate is that the fundamental principle of contractual freedom must not deviate into a default obligation to supply. The legislator should not aim to force companies to sell cross-border, but should tackle the root of the problem and analyse the precise reasons that lie behind the decision of a company not to sell to certain markets in the EU. As also the Commission rightly states in its 2012 Staff Working Document towards the establishment of Guidelines for the application of Article 20, "businesses are free to determine the geographic scope to which they target their activities within the EU, even when selling online".

There may be several objectively justified reasons for different treatment or additional costs, due to for example:

- **Diverging legislation**, for example copyright rules in case of digital content, electronic waste disposal rules, lack of IP protection; seasonal sales regulations; labelling requirements in national languages;
- **Different market conditions**, driven by competitive pressures such as higher or lower demand influenced by seasonality, competitor pricing or extra risks linked to different national rules;
- **Economic considerations**, such as additional operational or compliance costs, which would make the provision of the good/service non-viable or the additional costs passed on to consumers.
- **Additional costs due to distance**, linked to delivery or the need to physically go to another Member State to deliver the service purchased online.
- **Different VAT rates**, based on the country of residence of the customer.
- **Payment issues**, often linked to costs for the use of different payment methods; risk of fraud and/or payment security.

These objective and justified reasons for different treatment are a result of remaining barriers in the single market and have been recognised by the Commission.

In many cases the existence of these remaining barriers is not due to companies, but is caused by a lack of harmonisation at EU level, a lack of mutual recognition, diverse national rules or diverse interpretation by Member States of EU legislation.

Targeting geo-blocking as an illegal practice is an incorrect assumption. While we share the principle of non-discrimination, there are often justifications to trade online in a more targeted manner as demonstrated above. In fact, many businesses would be willing to expand into the single market as they do in national markets, where market conditions make it possible and profitable.



In light of the above, BUSINESSEUROPE believes that **possible discriminatory practices must be addressed on a case-by-case basis and are best tackled by enforcing the existing single market *acquis*, or at least based on principles which allow taking the above-mentioned circumstances into consideration.**

□ ACCESS TO CONTENT AND COPYRIGHT

A fit-for-purpose, long-term EU copyright policy should enable the development of the digital single market and should be sufficiently flexible to facilitate the digital evolution. It needs to be based continuity, proportionality and fair competition.

There is a need to facilitate wider availability of legal content at affordable conditions. In this context, geo-blocking allows providers to ensure that content is not accessed from countries where it would be illegal and not compliant with licence terms. Therefore, **geo-blocking often serves various legitimate commercial purposes** and ensures compliance with copyright laws.

Geo-blocking provides a technical solution to different national copyright laws and plays a pivotal role in the territorial functioning of copyright. Contractual freedom in copyright licensing should be maintained also in the future.

Any legislation in this area will need to be evidence-based and strike the right balance amongst equally relevant interests, with the view of fostering investment in creativity and innovation and supporting the new business models. They must also respect cultural diversity and facilitate the production of digital content in Europe. Rules should strike a balance between right holders property rights and the further development and provision of innovative services in the digital economy.

It is important to preserve the current provisions of the 2009 Software Copyright Directive, which underpins much of today's software development in its principles. Looking into the exceptions of the 2001 Copyright in the Information Society Directive should focus on those having an impact on the Single Market. This is essential for legal certainty. Any **further consideration for harmonising exceptions to adapt to technological developments should be evidence-based and only if licensing cannot achieve the same results.** Concerning private copying levies, the cases of private copying requiring compensation by means of levies are likely to decline in the digital environment, because of new business models and changing consumption patterns. It is therefore questionable that private copying levy schemes are still valid for the digital environment, although they may have proven useful in the analogue world. They are now even inefficient and counterproductive and should be replaced by more flexible alternative forms of compensation, following the recommendations of the EU Mediator Antonio Vitorino.

Any planned reform of copyright rules should be tackled with a targeted approach and put in place a climate conducive to the development of a vibrant and thriving market for the distribution of lawful digital content through attractive and innovative services while at the same time promoting European works.

□ DIGITAL PLATFORMS

A public debate is mounting in Europe on digital platforms, such as search engine services, operating systems and social networks. BUSINESSEUROPE notes that there is no common understanding of new concepts such as "digital platforms" or "systemic digital actors". Formulating new legal concepts can create artificial boundaries that do not exist



in reality (as more and more businesses act both in the digital and physical world) and distort emerging value chains.

Under a better regulation approach, the first reflex should be to **decrease regulation that is not needed and where it is not needed, and not to add new rules unless necessary**.

This should also lead to tackle potential regulatory asymmetries in order to ensure a level playing field among all players in the digital value chain. Given the realities of today's digital market dynamics, Europe's digital strategy should allow all businesses to compete effectively and be innovative in a highly competitive market. In other words, rather than adding sector-specific regulation on new sectors, the existing sector-specific regulations on existing market players (such as electronic communication services) should be reviewed.

The world is entering a new revolution powered by technology as manifested in industrial internet and in general billions of devices being connected to the Internet also known as the Internet of Things.

On the one hand, there is the possibility that the large network effects of modern Internet ecosystems diminish consumer choice and effective competition, because the platform's value to each individual user grows with the number of other users, therefore potentially affecting the incentives for switching between platforms. This effect can be reinforced by lack of interoperability, bundling between operating systems, application stores and gatekeeper applications. Also the role of online intermediaries enables them to exert filtering power, which grows exponentially with size due to large network effects. Platform providers can also extend into downstream markets with own applications that compete with other providers. In this context, there is an ongoing debate on whether specific rules are needed to preserve "platform neutrality". Competition law is designed to deal with potential abuses, but that process can take years, which is problematic in the fast-moving Internet world.

On the other hand, there does not seem to be an adequate case about why certain business models need special regulation. As the technical and economic developments cannot be foreseen, it is better to start with a principle and evidence-based approach, rather than a heavy handed, sector specific ex ante regulation. From a regulatory perspective, at this point in time the fast growing and dynamic nature of those markets suggests that a stringent and constraining ex ante regulation would not be advisable. In order to have a more innovative Europe, with a positive impact on growth and jobs, one should avoid creating new rules for every new innovative product or business model. At the same time, it is crucial to ensure that existing rules are effective, fast enough and properly enforced to meet the new challenges.

Interoperability, transparency, non-discrimination and consumer choice should be among the paramount principles for the digital economy of the future. Most issues can be solved with adequate application of existing competition law (ex post). The EU competition regulatory framework has broadly proved its worth – however, when applied to digital markets, a careful analysis is needed, in particular of potential new barriers to effective competition and how to ensure faster intervention where needed, as well as an assessment of the way vertically integrated supply chains and multi-sided markets function in connection with Internet platforms.

When considering actions on digital platforms, it should be kept in mind that targeted regulation can be very problematic, in particular for small companies. The consequences



of new rules designed for targeting specific companies, sectors or business models would in all likelihood have broader and unintended spill-over effects into other companies and sectors, with a negative impact on jobs. This would be particularly the case for smaller European businesses and start-ups, which have fewer resources to face increased regulations and burdens. The same level of regulation that only slows down larger businesses can knock down promising SMEs altogether.

Precisely in light of the importance of the digital economy for the future of Europe, and since some of the relevant markets are evolving rapidly, policy makers should consider how antitrust policy could provide faster interpretation and guidance against the backdrop of new developments to face new challenges, as a result of the way digital markets operate and to ensure timely intervention where needed.

Antitrust authorities must keep up with these developments and adapt their analytical approach to the current characteristics of digital markets, including multi-sided market models where the offering is free for consumers. In particular, competition authorities should consider the principles of **transparency, interoperability, non-discrimination and consumer choice when analysing the exercise of market power**. Secondly, they should examine how much the regulation of other markets and players takes account of the competition pressure exerted by electronic products and how much a digital substitution could lead to developing hybrid markets in which **uniform framework conditions** should apply to ensure a level playing field.

Finally, we believe it is worth spending a few words on the development of the **sharing economy** – i.e. those systems built around the sharing, distribution, trade and consumption of goods and services by different people. Typical examples are Wikipedia, Airbnb or Uber. Very often these models are also based on platforms and any initiative in this field should take into account any consequences for the sharing economy.

□ THE NEW VAT REGIME

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 trading parties to trade with and within the European Union.

Digital technology and e-commerce have allowed consumers to have easy access to retailers located in different countries, leading to an increase pressure on VAT rules. However, many of the challenges faced in online commerce are identical in offline trade, thus the solution needs to address the underlying challenges of today's trade patterns.

The introduction of the new EU VAT rules on electronic services has provided a level playing field - whether businesses are competing in their home market or at EU level - through the elimination of VAT rate distortions (the EU currently has 75 different VAT rates). However, the implementation has posed some challenges mainly to small companies (but on all size of businesses), when it comes to cross border supplies of these electronic services that must be addressed.

The Mini-One-Stop-Shop (MOSS) for electronic services, introduced together with the new EU VAT rules, is an important milestone for cross-border transactions in the single market and is intended to address a number of these challenges. Its use should be made as easy as possible for business in practice and should be extended to all B2C distant sales of goods and services, regardless if the transaction was initiated in an online or offline environment. However, we still believe the introduction of minimum threshold for



registration in the new EU VAT rules is essential to facilitate compliance with the new rules, at least for smaller business.

A wider application of the destination principle in case of cross-border B2C provision of goods and services needs a an **easy to apply collection process, one single audit process** and a **EU VAT web information portal**, containing all the necessary information for the supplier to easily comply. Business needs to gain knowledge and understanding of the VAT rules in different countries. Therefore, such portal should include information on VAT rates; invoicing requirements; declaration requirements; documentation; sanctions; change Enterprise Resource Planning (ERP) systems and internal processes; updated on changes in regulations and jurisprudence and foreign exchange rates issues. The European Commission should provide the necessary assistance to companies, for instance by facilitating the availability of a digital tool that leverages public information about VAT rates in the Member States to enable companies to identify and apply the correct one.

It is also crucial to ensure an easy information exchange process with tax authorities as well as among different tax authorities and by devising a system where audits are carried out only by one Member State and not two (of the trader and the customer). Any failure to apply these principles will lead to disproportionate consequences and substantial compliance costs.

The solutions mentioned above should also apply to distant sales originated outside the EU. However, in order to ensure a level playing field for third country small consignment, there is a need to further study and understand the composition and competition effects of the exemption on the importation VAT of small commercial consignments, in order to find the right balance between importation thresholds and the VAT registration requirements and means of compliance.

As a common final point, BUSINESSEUROPE recommends to the Institutions the introduction of a **digital economy proofing**: the EU should assess how each proposal can impact positively on the digital economy or stand in its way.

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