

# THE FUTURE OF THE DIGITAL SINGLE MARKET

## REMARKS FOR THE D9+ MEETING - 15 APRIL 2019, AMSTERDAM\*

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The Juncker Commission should be praised for its ambitious programme to stimulate the Digital Single Market which led to the adoption of many legislative acts. Now, those acts need to be transposed and implemented in an effective and harmonised manner across the EU.

Given the importance of digital technologies for Europe's economy and society, the rapid pace of evolution of those technologies and the increasing global competition for digital leadership, the pace of reform should remain important for the forthcoming Commission.

## 1. WHAT TO DO NEXT?

### **From digital single market to digitised single market**

Some of the impediments to digital business developing and scaling up is the regulatory heterogeneity in non-digital industries. Indeed, the OECD Product Market Regulation Index and the OECD Service Trade Restrictiveness Index show important regulatory heterogeneity between Member States for non-digital goods and services.

Of course, such heterogeneity may be justified by different national preferences or endowment, but it also impacts the possibility of establishing and operating cross-border digital business. Moreover, as new digital technologies are general-purpose technologies which permeate all sectors of the economy and society, it is appropriate to digitise the four freedoms and all sectors of the single market instead of developing a specific strategy for digital sectors.

In addition, this single market strategy should focus on integrating markets relying on the country of origin principle rather than regulating business at the EU and national levels.

### **Making Europe a technological powerhouse and adopting an ambitious cyber-security and AI industrial policy**

Before being a regulatory powerhouse, the EU should first and foremost be a technology powerhouse. Its policies should stimulate the development of emerging and important technologies for tomorrow such as quantum computing, very fast micro-processing, different AI tech-

niques, secure data exchanges and secure Internet of Things and AI-enabled tools.

Europe should also ensure that those technologies are designed and developed according to the values enshrined in the Treaties and in the Charter of Fundamental Rights. This requires smart innovation policies based on close dialogue between public and private bodies.

### **Regulation should accompany the development of online platforms in Europe**

Online platforms are playing an increasing role in the economy and society. They are powerful engines for growth and innovation. They allow small professional users to reach out to millions of customers at very low cost, increase customers and traders' information and, in the end, allow the development of new and disruptive business models.

However, their increasing role raises concerns regarding their economic, societal and political power. Big platforms monopolise markets and may buy any potential disruptive innovator. They capture a big share of the economic surplus they generate and value may be shifted from creators and prosumers to platforms. They disrupt labour relationships and may threaten social security systems. They influence elections and may threaten democracy as we know it.

While some concerns are valid and others are exaggerated, it remains the case that online platforms are destabilising some of our past governance models and governments (being the EU or national institutions) should adapt their policies while keeping control of the public sphere.

\*The D9+ is an informal group of Digital Ministers from nine EU Member States (Denmark, Finland, Sweden, The Netherlands, Luxembourg, Belgium, UK, Ireland and Estonia), who share high ambitions for the Digital Single Market. Together they build on their strengths to confront the challenges associated with the digital transformation.

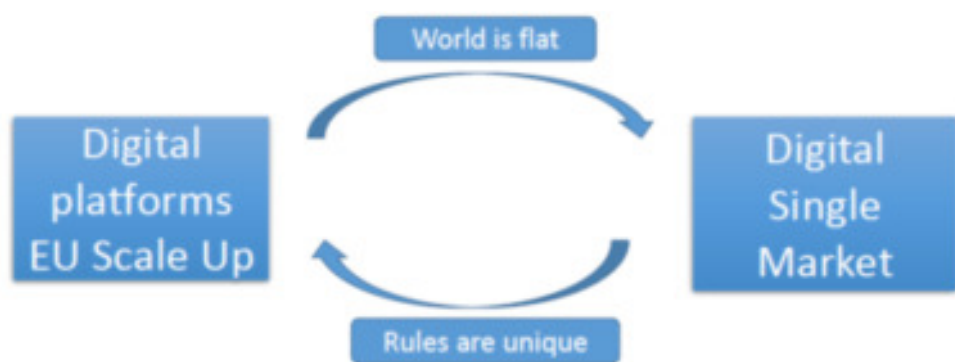
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Different actions are needed to stimulate the start-up, and subsequent scale-up, of platforms, and to ensure a sufficient duty of care by the most significant platforms.

First, EU policies should stimulate the emergence and the take-up of new platforms – in particular in Europe – and ensure that digital markets remain contestable and contested. This requires smart innovation policy and regulation that ensure access to the main capabilities for digital innovation, in particular access to data, skills, computing power and risky and patient capital.

Second, EU policies should stimulate the scale-up of digital platforms, which is one of the main weaknesses of Europe compared to the US or China. There is a positive feedback loop between the single market and platforms' scale up as (i) the scale-up makes the world flatter and allows business and consumers to more easily reach their counterparts all over Europe, thereby contributing to the single market, while (ii) the single market rules facilitate business operations and consumer trust all over Europe.

### Feedback loops between platforms' scale-up and single market



For this feedback loop to work, online platforms should be subject to one set of rules. This can be achieved with the mutual recognition of national rules (country of origin principle) or with the full harmonisation of national rules. Those rules should then be subject to one enforcement, either at the national level in case of mutual recognition or identically in all Member States in case of full harmonisation.

Third, when an online platform has scaled up and becomes significant, it may raise systemic risks to the economy and society (to paraphrase what has been said about big banks, big platforms may be too big to rule). In this case, EU policies and regulation should ensure an appropriate duty of care.

This implies (i) transparency on the practices vis-à-vis regulators and platforms customers (business and consumers), (ii) loyalty of the platforms, which should provide their services for the benefit of their customers and not their own benefit and (iii) increased responsibility for a safer Internet, as 'with power comes responsibility'.

To do that, the eCommerce Directive could be revised or complemented to ensure that significant platforms do their best effort to detect and remove illegal and harmful online content, in line with the Commission Recommendation of March 2018 on measures to effectively tackle illegal content online.

### Developing E-government everywhere at all levels

E-government is a national competence. However, given the importance of the public sector as an enabler of the digitisation of the economy and society, the EU should continue to incentivise the digitisation of public services within each Member State as well as across the Member States.

The measures included in the e-Government Action Plan 2016-2020 and the best practices of the 2017 Tallinn Declaration on e-Government provide a good basis and should be developed further by the next legislature.



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### 2. HOW TO DO IT? SMART POLICY AND REGULATORY TECHNIQUES

To achieve those objectives in the most effective manner, the EU should rely on the most adapted policy and regulatory techniques.

#### **Smart regulation in dynamic and uncertain environments**

Given the very high rapidity and uncertainty of market evolutions, regulation should be principle-based to adapt easily to technologies and market evolutions. Detailed and prescriptive rules should be avoided, as they quickly become outdated and miss their objectives while possibly stifling innovation.

As principle-based rules often lead to uncertainty that, in turn, may increase regulatory costs and reduce regulatory effectiveness, those rules need to be complemented by soft-law instruments and codes of conducts. Those should be agreed between authorities and digital players on the basis of the regulatory principles, closely monitored and adapted when necessary.

The different codes of conducts which have been adopted to reduce some illegal or harmful content online could serve as best practices.

#### **Smart enforcement in global and digital markets**

It is not enough to have good rules; they need to be enforced effectively. As shown by the recent review of the EU consumer acquis, this is often the weak point of the EU regulatory framework as rules remain enforced at the national level.

As many digital markets and firms are global and the digital services of the most significant online platforms are offered across Member States, it is imperative that EU rules are enforced in the same manner in all Member States.

Moreover, given the imbalance between some digital platforms and national regulatory authorities, EU enforcement could increase the effectiveness of EU rules.

Therefore, the different coordination networks between national regulatory authorities should continue to be strengthened. Perhaps an EU regulator for significant digital platforms should be created, similar to what has been done in the financial and banking sector with the recent establishment of an EU regulator (the Single Supervisory Mechanism within the European Central Bank) for significant banks in Europe.

In addition, regulators, as with every other player in our society, should rely on digital technologies to improve their operations and, as a side-effect, improve their understanding of the new technologies they may need to regulate.

Regulators could rely on big data and AI techniques to improve the detection rule violations and/or improve the predictability of such violations (RegTech). Going one step further, in some cases, the regulator could be replaced by computer code when regulatory compliance is enshrined in the design of the digital technologies (compliance by design).

In that case, compliance will be automated (e.g. as in smart contracts), and the role of regulator is hence bypassed or at least reduced. The development of RegTech and compliance by design raise a series of ethical and legal issues that will need to be addressed during the next parliamentary legislature.