cerre — Centre on Regulation in Europe

CERRE 2019-2024 WHITE PAPER

Digital Ambitions

24 September

cerre.eu

Improving network and digital industries regulation

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INTRODUCTION TO THE CERRE 2019-2024 WHITE PAPER

WHY NOW?

Inequality + Digitisation + Climate change threats => distrust
Robust regulation crucial to regain trust in institutions & empower citizens
New EP/EC mandate

REGULATION IS CHANGING

Frontiers of regulation are moving
New roles, governance & principles needed to regulate new realities

CROSS-SECTOR PERSPECTIVE

New business models & market actors active across different sectors
Increased interaction & interdependence between network industries

CLEAR AMBITIONS

Challenge the current regulatory framework
Roadmap 2019-2024 through concrete and strategic ambitions

CERRE 2019-2024 WHITE PAPER STRUCTURE

ENERGY AMBITIONS

DIGITAL AMBITIONS

CROSS SECTOR AMBITIONS

MOBILITY AMBITIONS

CERRE 2019-2024 WHITE PAPER STRUCTURE - DIGITAL

PLATFORMS
Market contestability
Empowering users
Smarter rules

INFRASTRUCTURE
Meeting 2025 targets
5G deployment
Next Gen Internet

DATA & AI
Data portability
Privacy preserving marketplaces
Explainable AI

MEDIA CONTENT
Freedom of expression
European content
Transparency of ownership

Platforms, Data & AI

Jan Krämer
Joint Academic Director, CERRE
Professor, University of Passau

Digital Platforms:
State of play and issues

- Online platforms have been and continue to be powerful engines for growth an innovation

- Large diversity of online platforms` business models requires careful analysis before interventions are made

- Main goal of the EC must be to (continue to) ensure that
  - platform markets remain competitive and contestable for new entry
  - European values, e.g., with respect to privacy, copyright, pluralism, and democracy are actively promoted by online platforms

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Ambition #1: Ensuring innovation and market contestability

- Fostering basic research, digital skills, and availability of venture capital

- Access to indespensible resources (data, computing resources, data analytics and AI skills, capital) for start-ups

- May include access to bottleneck resources controlled by a dominant platform

- One set of rules for Europe and single enforcement (may require EU digital regulator)

Ambition #2: Empowering digital users

- Transparency: Effective enforcement of P2B regulation and reformed EU consumer protection regime

- Facilitate switching and freedom of choice for users through
  - enhanced data portability („at the click of a button")
  - in some cases, interoperability through common standards and interfaces

Ambition #3: Incentivising a safe Internet for all players

- Minimisation of illegal and harmful content
- Burden of enforcement should be shared among private and public actors
- Effects of new Audio-visual Service Directive and DSM Copyright Directive should be closely monitored
- Coherence with liabity regime in eCommerce Directive should be assessed
- Close cooperation with online platforms to design and implement rules is indispensible

Ambition #4: Implementing "smarter" regulation

- Proportionate regulation, based on clearly identified harm
- Regulation should not unduly increase the burden for start-ups. A threshold for "significance" may need to be defined.
- Principles-based and non-discriminatory rules to safeguard fair competition and democratic values
  - general enough to embrace heterogeneity of business models
  - applied across industries in horizontal fashion
  - applied across all layers of consumers` access to content and services (e.g., incl. operating systems, app stores)
- Coherent horizontal rules across sectors

AMBITIONS - PLATFORMS

EMPOWERING USERS

RELY ON SMARTER RULES

ENSURE INNOVATION & MARKET CONTESTABILITY

SAFE INTERNET: INCENTIVISE ALL PLAYERS

Data & AI:
State of play and issues

- Data is a key input for the digital economy

- Access to a constant inflow of a variety of up-to-date (personal) data is highly concentrated

- Data availability is key to fueling the ongoing AI revolution

- Main goal of the EC must be to (continue to) ensure that
  - non-personal data can flow freely
  - consumers have control over the use of personal data, including portability between providers
  - Europe is an innovation-friendly environment for AI-intensive applications preserving European values

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Ambition #1: Stimulating data portability

- Data availability is key for AI
- Data portability rights beyond GDPR (more timely, right to import, standards)
- Encourage and monitor industry-led portability standards
- Effective implementation of recently adopted (personal and non-personal) data mobility provisions

Ambition #2: Creating privacy-preserving data marketplaces

- Provide incentives to create data marketplaces = electronic marketplaces where data is traded as a commodity
- Designed in accordance with
  - data protection by design
  - data protection by default

Ambition #3: Making data protection law fit for AI

- Tensions between GDPR and AI arise, e.g., due to
  - individual rights vs. collective harms
  - data minimisation
  - purpose limitation
  - sensitive vs. non-sensitive data („special categories of data")
  - personal vs. non-personal data

Ambition #4: Supporting algorithmic explainability

- Some trade-off between prediction accuracy and explainability of algorithmic outcomes
- For ethical and legal reasons, AI algorithms need to be explainable to be usable in many applications.
  - GDPR: "logic involved" in data processing
  - Consumer protection / P2BR: ranking factors
- Not confined to „opening up the black-box"
- Alternatives
  - model-of-model explanations
  - subject-centric explanations
  - counterfactual explanations

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AMBITIONS – DATA & AI

**PRIVACY-PRESERVING
DATA MARKETPLACES**

**ALGORITHMIC
EXPLAINABILITY**

**STIMULATE DATA
PORTABILITY**

**DATA PROTECTION
LAW FIT FOR AI**

Media & Content

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Ambition #1: Actively protect freedom of expression in Europe

- FoE is under threat in various ways across Europe.

- Protecting FoE must underpin policy across digital sector.

- The Commission and Parliament should actively use existing early warning systems and work on new policies that can be more forcefully implemented when FoE is undermined.

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Ambition #2: Safeguard the production and dissemination of high quality, European content

- Levies for contribution to national production should be implemented carefully, adequately and in a well-targetted manner.

- Member States should be encouraged to invest in public interest content.

- Commission should facilitate discussions on findability and prominence.

- A holistic approach to assess the balance of power between those investing in content production and those aggregating and distributing it is needed.

Ambition #3: Discourage the economic or political profitability of harmful and illegal content and disinformation

- With protecting FoE in mind, focus should be on ex post mechanisms against such content and on intervening in revenue streams.

- Current regulatory field is quite patchy and inconsistent across the Union.

- Efforts must not only be focused on platforms.

Ambition #4: Enforce transparency of ownership structures beyond media content businesses

- There is a need to continually monitor, especially in small markets.

- Transparency is a crucial concern.

- Mapping of ownership structures of those that impact media content (dissemination and advertising trading platforms, media agencies, rights distributors, etc.) is also needed.

AMBITIONS – MEDIA CONTENT

SAFEGUARD EUROPEAN CONTENT

ENFORCE TRANSPARENCY OF OWNERSHIP
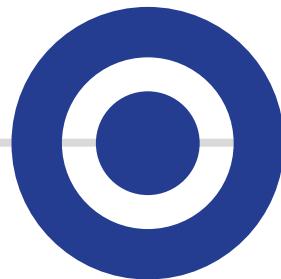
FREEDOOM OF EXPRESSION

DISCOURAGE PROFITABILITY OF ILLEGAL CONTENT

Digital Infrastructure

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Research Fellow, CERRE
Associate Professor, Nyenrode Business Universiteit

Ambition #1: Meeting 2025 targets
ELECTRONIC COMMUNICATIONS INFRASTRUCTURE = CRITICAL INFRASTRUCTURE =

Realization of 2025 ultra-fast *fixed* broadband targets

- Realize attractive investment climate by effective implementation EECC
- Increase through realignment public funding commitments
  - ✓ Revision of Broadband State Aid Guidelines
- Increase the role of demand side policies
  - ✓ Include target for adoption of new technologies
- Provide leadership and coordination across policy and regulatory areas
  - ✓ Smart mobility – smart energy – smart cities – smart everything
  - ✓ Integrated – coordinated approach to optimize outcomes

Ambition #2: Leadership with 5G

= PROVIDING THE CONDITIONS FOR MARKET MOMENTUM TO BUILD AND BE MAINTAINED =

Realization of 2025 ultra-fast *mobile* broadband targets

- Create attractive investment climate, leveraging healthy competition
- Leverage virtualization of networks to counter consolidation forces
  - ✓ Through the use of open APIs creating a wholesale-retail model
- Realize economically efficient allocation of radio spectrum access rights
- Balance exclusive, local-exclusive and non-exclusive access rights
  - ✓ Considering public – private – enterprise domain
- Balancing benefits of 'open internet' with benefits of differentiated services for verticals – Upcoming revision of Net Neutrality rules

Ambition #3: Next Gen Internet

= FIX THE OLD AND ACCOMMODATE THE NEW =

Realization of 2025 ultra-fast broadband targets

- Extend the current EU initiative to "..develop a more human-centric Internet…" to include needs of M2M and Industry 4.0 users
- Balance the need for "open Internet" with "robust and dependable Internet" provide cybersecurity and digital (network) sovereignty
- Create a Next Generation Internet:
  - ✓ Flaws: wrong addressing model, wrong congestion control; no security mechanisms; difficulty to support mobility, multi-homing and QoS
  - ✓ Alternative designs exists (e.g. RINA and SCION)
  - ✓ Upgrades of the current Internet are cumbersome (viz IPv6)
- 5G avoided these flaws: 5G as the Next Generation Internet?

AMBITIONS – INFRASTRUCTURE

MEETING 2025 TARGETS

REALISE NEXT GENERATION INTERNET

CONDITIONS FOR 5G MARKET MOMENTUM
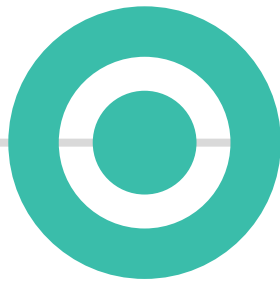
NEXT STEPS

Sharing across EU institutions

2nd Semester 2019

PUBLIC PRESENTATION   **DISSEMINATION**   **REVIEW**
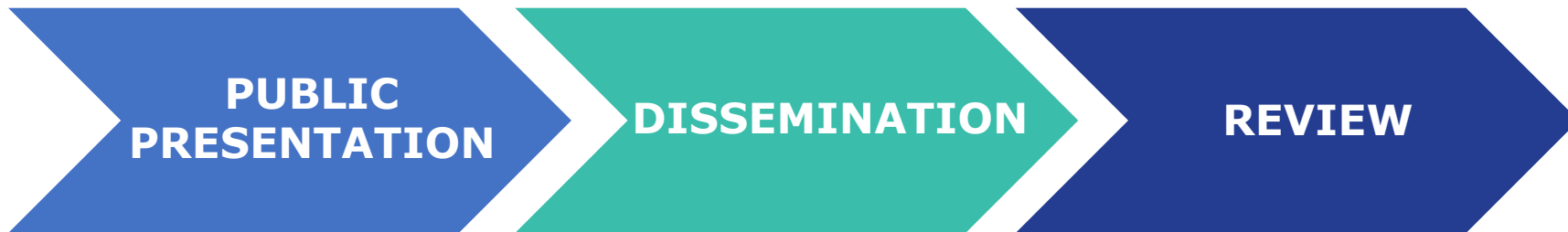
Discuss concrete ideas with stakeholders, incl. EC

24 September, Brussels

Evaluate progress of White Paper ambitions

Mid-2021

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