

Digital Single Market: the European Commission Takes Stock and Defines Future Priorities

The Commission's mid-term review assesses the progress of DSM initiatives and sets new goals for on data economy, cybersecurity and online platforms.

On 10 May 2017, the European Commission published its mid-term review (the Review) on the implementation of its Digital Single Market (DSM) strategy. The Commission launched the DSM strategy two years ago, as one of the 10 top priorities of the Juncker Presidency. The strategic objectives are ambitious: creating a free, secure and prosperous digital environment; enabling access to goods and services online across the EU; fostering the growth of digital economy industry; and fostering better services and prices.

With 35 legislative acts and policy initiatives already announced, the Review is an excellent occasion to take stock of the status of the various DSM proposals, and start looking into the new action items announced.

Why does DSM matter and which businesses are affected?

Digital technology has a growing impact on every aspect of business, communications, education, culture and government life — e.g. on how one sells and/or acquires goods and services; how capital circulates; how one creates and accesses content; how one conducts and shares research; and how governments respond to their citizens.

Currently a number of barriers hinder the potential of online commerce and aspects of the digital economy within the EU. To better investigate and address such barriers, the Commission has identified 16 key measures that require action, based on the following three pillars of the DSM strategy:

- Facilitate and improve access to digital goods and services across the EU to customers and businesses
- Improve the conditions and level the playing field necessary for digital networks and innovative services to flourish
- Boost the growth of EU digital economy

The table below describes the main issues the Commission has addressed under each pillar, and indicates which types of businesses are most affected by each initiative:

Pillar	Action	Issues addressed	Most affected businesses
Better Access to Goods and Services	<ul style="list-style-type: none"> Harmonize rules for online cross-border sales 	Reduce regional differences in the rules applicable to contracts for the supply of goods and services online; foster cooperation between national consumer protection authorities	– Retail
	<ul style="list-style-type: none"> End geo-blocking 	End geographic restrictions that result in customers paying different prices or customers being denied access to websites or services due to their location	– Retail
	<ul style="list-style-type: none"> Promote cross-border parcel delivery 	Improve price transparency and regulatory oversight, leading to a more affordable parcel market	– Retail
	<ul style="list-style-type: none"> Reform of EU copyright law 	Measures to harmonize national copyright regimes and to improve access to online cultural content (videos, music, books) across the EU	– Audiovisual – Telecom – Entertainment, Sports and Media – Internet, Digital Media
	<ul style="list-style-type: none"> Update satellite and cable Directive 	Facilitate access to television and radio programs across the EU	– Audiovisual – Telecom – Entertainment, Sports and Media – Internet, Digital Media
	<ul style="list-style-type: none"> Modernize value-added tax (VAT) rules 	Set measures to allow sellers of physical goods to benefit from single electronic registration and payment; introduce a common VAT threshold to help startups get online	– Retail
Level Playing Field	<ul style="list-style-type: none"> Reform telecoms 	Boost investment in high-speed infrastructure and improve regulatory environment	– Telecom – Internet, Digital Media – Audiovisual
	<ul style="list-style-type: none"> Assess the role of online platforms (link to past client alert) 	Assess how online platforms collect and treat data; assess the transparency of their search results and pricing policies	– Retail – Telecom – Internet, Digital Media
	<ul style="list-style-type: none"> Modernize audiovisual media 	Update rules applicable to audiovisual content distribution and to advertising arrangements	– Audiovisual – Telecom – Internet, Digital Media

Pillar	Action	Issues addressed	Most affected businesses
	• Strengthen data protection and e-privacy	Ensure the privacy of electronic communications and of personal data	– Retail – Telecom – Internet, Digital Media
	• Regulate cybersecurity	Improve cybersecurity capabilities, cooperation and risk management across the EU	– Retail – Telecom – Internet, Digital Media
Boost Growth of Digital Economy	• Set interoperability standards	Set standards in core technologies (5G, internet of things (IoT), cloud, etc.) to create conditions for device interoperability in areas such as e-health, transport planning and energy	– Health – Transport – Energy – Internet, Digital Media
	• Foster the flow and use of digital data	Measures to ensure access to and portability of non-personalized (commercial) data	– Any business
	• Launch e-government plan	Boost digitalization of public data and the sharing of data and registers across EU administrations	– Any business
	• Develop European cloud	Create environment for the EU scientific community to store, share and use data	– Science

What is the current status of the DSM initiatives?

Currently, the Commission has adopted 35 proposals to set in motion the different action items identified across the three pillars.

As illustrated below, a significant number of these initiatives correspond to the Commission's legislative proposals that the European Parliament and the Council of the European Union are still debating (represented in the yellow and red boxes). To date, agreement has been reached only regarding the following proposals:

- **Abolishing roaming charges as of 15 June 2017:**¹ Customers will be able to travel around the EU and pay the same price for telephone calls, text and internet surfing that they pay at home.
- **Portability of online content as of early 2018:**² Customers will be able to access their subscriptions to online content (films, e-books, music, video games, sporting events, etc.) while travelling around the EU, and not only from their home country.
- **Applying the General Data Protection Regulation (GDPR) from 25 May 2018:**³ The GDPR strengthens data protection rights for individuals, while providing businesses modernized and unified rules about their data protection duties.

- **Coordinating availability of 700 MHz band across the EU as of 2020:**⁴ This spectrum is required for 5G networks and the new services associated with them (connected cars, remote healthcare, smart cities) to work.

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	Better Access to Goods and Services	Level Playing Field	Boost Growth of Digital Economy
Actions Completed	<ul style="list-style-type: none"> • E-commerce sector report • Guidance on Unfair Commercial Practices Directive SWD • Communication – Copyright I • Communication – Copyright II 	<ul style="list-style-type: none"> • Communication – 5G Action Plan • Communication – Connectivity for competitive DSM • Communication – Online platforms and digital single market • Commission decision approving public-private partnership for cybersecurity, industrial research and innovation • Communication – Strengthening Europe's cyber resilience 	<ul style="list-style-type: none"> • Communication – Europe Cloud Initiative • Communication – Building a European Data Economy • Communication – Digitizing European Industry • ICT Standardization Priorities for the DSM
Actions Completed But Not Yet Effective/In Force		<ul style="list-style-type: none"> • Retail roaming charges abolished as of 15 June 2017 • Use of 470-790 MHz frequency band in the Union effective as of 2017 • EU data protection rules effective as of May 2018 	
Legislative Priorities For 2017	<ul style="list-style-type: none"> • Geoblocking Regulation • Regulation and Directive on permitted uses in copyright for print-disabled persons and implementing the Marrakesh Treaty • Directive on copyright in the Digital Single Market • Regulation on the exercise of copyright and related rights in certain online transmission of broadcasting organizations • Regulation on ensuring cross-border portability of online content services 	<ul style="list-style-type: none"> • Recast European Electronic Communications Code • BEREC Regulation • Review the Audiovisual Media Services Directive • e-Privacy Regulation 	
Proposals Adopted By Commission	<ul style="list-style-type: none"> • Directive on contracts for the supply of digital content • Directive on aspects concerning contracts for online and other distance sales of goods • Review and revision of Regulation on Consumer Protection Cooperation • Legislative measures in the area of parcel delivery • Amendments to Council Directives 2006/112/EC and 2009/132/EC (VAT for E-commerce) 	<ul style="list-style-type: none"> • Legislative measures to promote internet connectivity in local communities (Wi-fi4EU) • Regulation on ensuring cross-border portability of online content services in the internal market 	<ul style="list-style-type: none"> • Regulation establishing a single digital gateway to provide information, procedures, assistance and problem-solving services and amending Regulation (EU) No 1024/2012 • eGovernment Action Plan 2016-2020 Accelerating the digital transformation of government • Revision of the European Interoperability Framework

The Commission has advanced more significantly in a number of non-legislative initiatives (see green boxes above), including the conclusion of its [E-commerce sector inquiry](#), which is meant to guide the Commission's enforcement actions towards ensuring a level playing field in online digital markets.

Next steps

DSM remains at the top of the Commission's agenda for the remainder of its term, and DSM initiatives need to pick up speed for the Commission to deliver meaningful results on its DSM strategy.

To this end, the Commission, the European Parliament and the Council have set a joint goal to finalize DSM-related pending legislative proposals by the end of 2017.⁵

Beyond the initiatives already set in motion, the Commission has now announced further immediate action in three main areas:

- **European Data Economy:** To improve the viability of the free flow of non-personal data within the EU. The Commission intends to prepare legislative initiatives on the cross-border free flow of non-personal data by autumn 2017, and on the accessibility and reuse of public and publicly-funded data by Spring 2018.
- **Cybersecurity:** To improve the response to cross-border cyber-attacks. By September 2017, the Commission intends to develop measures on cyber security standards, certification and labelling, to review the 2013 EU cybersecurity strategy, as well as the mandate of the EU Agency for Network and Information Security.
- **Online platforms:** To ensure a level playing field in platform-to-business trading practices, avoiding situations in which an online platform may favor one business to the detriment of others. By the end of 2017, the Commission intends to improve enforcement mechanisms as well as dialogue involving online platforms, to confront unfair contractual clauses and trading practices, and to handle concerns with online illegal content.

Given the pace of change in the digital economy and the proliferation of the digital culture, the European Commission has made good progress on an ambitious set of goals and priorities. Affected businesses should continue to prepare for compliance with evolving regulations.

If you have questions about this *Client Alert*, please contact one of the authors listed below or the Latham lawyer with whom you normally consult:

[Elisabetta Righini](#)

elisabetta.righini@lw.com
+32.2.788.6238
+32.478.32.47.57
Brussels

[Lars Kjølbye](#)

lars.kjolbye@lw.com
+32.2.788.6252
Brussels

[Jonathan Akinyemi](#)

jonathan.akinyemi@lw.com
+32.2.788.6208
Brussels

[Rita Motta](#)

rita.motta@lw.com
+32.2.788.6315
Brussels

[Lisbeth Savill](#)

lisbeth.savill@lw.com
+44.20.7710.3052
London

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Endnotes

- ¹ Pursuant to Regulation (EU) 2015/2120, adopted by the European Parliament and the Council, which entered into force on 29 November 2015.
- ² Proposal for a Regulation of the European Parliament and of the Council on ensuring the cross-border portability of online content services in the internal market, adopted by the Commission on 9 December 2015 (COM(2015) 627). On 7 February 2017, the Council, the European Parliament and the Commission reached a provisional agreement on this proposal. The regulation is now pending formal adoption by the Council and the European Parliament: http://europa.eu/rapid/press-release_IP-17-225_en.htm.
- ³ Pursuant to Regulation (EU) 2016/679, adopted by the European Parliament and the Council on 27 April 2016, which will apply from 25 May 2018.
- ⁴ Proposal for a Decision on the use of the 470-790 MHz frequency band in the Union, approved by the Council and by the European Parliament on 25 April 2017: http://eur-lex.europa.eu/procedure/EN/2016_27.
- ⁵ Joint Declaration on the EU's legislative priorities for 2017: https://ec.europa.eu/commission/sites/beta-political/files/joint-declaration-legislative-priorities-2017-jan2017_en.pdf.