

WE ARE SHAPING THE INTERNET.
YESTERDAY.TODAY.BEYOND TOMORROW.



Position Paper on the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – Shaping Europe’s Digital Future (COM(2020)67final)

Berlin, 15 May 2020

The new Commission, which came into office on 1 December 2019, has fostered high hopes for the further development of European digital policy. Even before the appointment of the Commissioners, the (designated) President Ursula von der Leyen announced that she intended to address central issues of digitalisation during her term of office. Notable pathways singled out by her were the handling of artificial intelligence and the future design of the liability structure within the framework of the planned Digital Service Act. On 19 February 2020, the Commission presented its digital strategy “Shaping Europe’s Digital Future”, which provides a synthesis of the Commission’s key projects for the current legislative term.

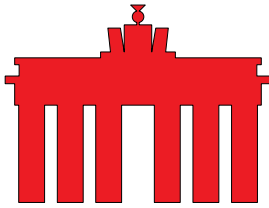
eco – Association of the Internet Industry welcomes the Commission’s efforts to promote a concerted and coordinated policy to further support digitalisation. The objectives of “technology that works for people”, “a fair and competitive economy”, and “an open, democratic and sustainable society” embedded in the strategy show that the Commission has adopted a holistic approach to its digital strategy, going beyond mere technology regulation or specific industry sectors to integrate civil society.

I. General remarks

In addition to the objectives identified by the Commission, eco would like to draw attention to a number of general aspects discussed below:

▪ **On technology that works for people**

The EU Commission rightfully recognizes that the expansion of digital infrastructures is a central factor for the successful deployment of associated technologies. In this light, it is positive to note that the Commission not only wishes to expand mobile networks with the 5G standard and gigabit-capable networks, but also wants to promote central technologies such as high-performance computers, quantum technology and blockchain as base technologies for further developments. It is also to be welcomed that the Commission regards security and trust as being central cornerstones of a European digital policy and that it intends to promote digitalisation through education and the development of skills for the entire population. eco also welcomes the fact that the Commission wants to support change in the world of work. It remains to be seen what steps the Commission will strive for in the area of the platform economy for employees.



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▪ **On a fair and competitive economy**

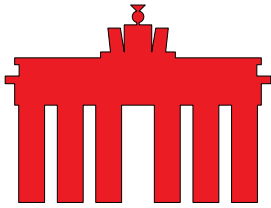
Successful digitalisation can be achieved first and foremost on the basis of a strong Internet and digital industry. For this, what is required is an economy that embraces and deploys digital technologies in business, in state affairs, and in society. To date in Europe, this has yet to occur to any great extent. The digitalisation gap in Europe must therefore be bridged. It is thus logical that the European Commission should focus its digital strategy on small and medium-sized enterprises and their requirements. It is encouraging to note that a Commission Data Strategy is envisaged to improve the economy's access to data. What remains to be clarified here is to what extent the Data Strategy can actually contribute to a better development of digital services and products. Criticism must be levelled at the approach to the developing platform economy. Digitalisation has transformed value chains and also created new players. From eco's perspective, a cautious approach to digital platforms would therefore be welcome. Competition which is fair and which allows for equal opportunities should be ensured. However, this must not lead to digital business models being discriminated against in comparison to analogue ones. Against this background, additional points of criticism concern the planned Digital Services Act, which is intended to replace the e-Commerce Directive with its established liability structure, and the deliberations on special taxes for digital services.

▪ **On an open, democratic and sustainable society**

The Commission's considerations on an open, democratic and sustainable society place the aspect of citizens' trust in digital services in the foreground. In this context, data protection is an essential factor. The General Data Protection Regulation (GDPR) already provides a solid regulatory framework upon which citizens, politicians and industry can build, a point which the Commission also emphasizes. It is therefore not entirely clear what is meant here by the continued development of innovative and proportionate rules. A more critical point, however, is the plans for citizens' interaction in social networks, which the Commission intends to target more closely as part of the Digital Services Act package. Here, in an area where fundamental rights are at stake, it is important that appropriate rules for digital interaction are devised so that appropriate account is taken of the individual players' responsibility for their actions. The EU Commission's plans for the ecological shaping of digitalisation present additional discussion points for further debate.

II. On the Commission's plans in detail

In addition to the conceptual objectives, the Commission has provided central, so-called key actions for the purpose of realizing these objectives. These key actions are the subject of eco's following discussion.



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▪ **Key actions for technology that works for people**

The White Paper on Artificial Intelligence, published in parallel with the Digital Strategy, sets out the Commission's plans in the field of AI, particularly in terms of regulation. These plans must be viewed with a level of ambivalence. While it is clear that rules have to be identified, especially for critical infrastructures and other areas of particular sensitivity, the matrix regulation, with a very wide scope of application set out in the White Paper, is subject to criticism. eco has analysed and commented on the White Paper in a separate position paper.

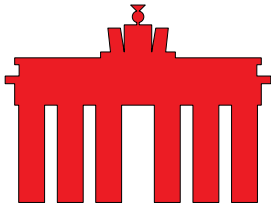
What can be regarded positively in principle is the plan for the development and deployment of common digital key capacities. The creation of flagship projects and central infrastructures is an important first step towards a successful digital economy. However, it is crucial that the outcomes of these efforts be transferred to and implemented in applications and services for society and the economy. The accelerated expansion of gigabit infrastructures in Europe, as planned by the Commission, is central to the success of the Digital Strategy as a whole. eco welcomes the Commission's initiative and hopes that the proposed action plans will give further concrete form to the plans in the near-term.

A further aspect to be perceived in a positive light is the strengthening of IT security based on the European Cybersecurity Strategy and with the involvement of ENISA. It would be desirable to see a stronger integration of users and consumers in the further development of the European Cybersecurity Strategy. IT security can only be strengthened in the long-term if all players are involved in the Cybersecurity Strategy. In this context, the Digital Education Action Plan and Skills Agenda for strengthening digital skills throughout society are to be welcomed. eco hopes that all people in Europe, regardless of age and educational goal or qualification, will have the opportunity to acquire IT, data and media skills. It remains unclear what the Commission's intentions are regarding its plans for employees of online platforms. What eco views as problematic are any prospects of imposing separate requirements on employees of digital-economy companies alongside the generally applicable regulations of labour law and security of employment.

Finally, although it may not have a direct impact on the digitalisation of the economy and society, the strengthening of interoperability between EU authorities is an action which can nevertheless be seen in a positive light, as it is likely to have a generally beneficial effect on the development of open standards.

▪ **Key actions for a fair and competitive economy**

The European Data Strategy is an important building block for the success of digital business models, with such models requiring access to high-quality data in order to develop products and services. Society, administration and policy-makers can also make better decisions and work more efficiently on the basis of high-quality data. The Data Strategy presents possible approaches to allow for this to happen. At the



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YESTERDAY.TODAY.BEYOND TOMORROW.



same time, however, it lacks the necessary consistency to achieve the shift away from rigid bureaucratic approaches. A detailed commentary on the Data Strategy has been provided by eco in a separate position paper.

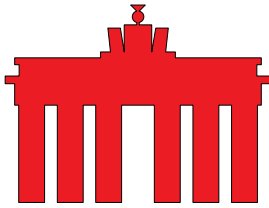
The current EU competition rules have proven to be fundamentally sound and are also applicable in the digital world. At the same time, further adaptations are needed to better respond to specific questions and challenges of digitalisation. This includes improving the opportunities for cooperation between companies and standardising European competition law. eco sees ex-ante regulatory measures as being critical factors in an innovation-driven and dynamically developing digital economy. The further development will show to what extent these measures will prove to be useful. The shaping of the Digital Service Act, which is to replace the tried-and-tested e-Commerce directive, will be decisive for the success of the Internet industry and further digitalisation in Europe as a whole. eco calls for competition rules to be fair, proportionate and appropriate, and for digital business models in particular not to be discriminated against in comparison to analogue ones.

Interlinking the digital industry with other sectors and fields is key to the success of the digitalisation of the European economy. Against this background, the plans for an SME and Industrial Strategy specifically geared to digital needs are to be seen as positive, as are the considerations for further digitalisation of the financial sector and the inclusion of crypto systems. By contrast, the considerations for a special taxation of the digital economy are to be viewed critically. eco has repeatedly spoken out against a digital tax and has instead called for clarification of taxation measures. This has little to do with improving the position of digital companies; rather, it is all about preventing a degradation of their position.

eco sees the development of a European Consumer Agenda as an opportunity to further standardise consumer law in Europe, which is currently still fragmented in many areas, and to thereby create improved framework conditions and legal clarity for business and consumers.

▪ **Key actions for an open, democratic and sustainable society**

While the standardisation of obligations for information service providers and online platforms envisaged by the Commission may seem to make sense in principle, the debates and developments of recent years have shown that politicians often revert to making sweeping demands for more responsibility from the operators of digital services and to shifting the responsibility to them. In some cases, this expectation goes well beyond the normal level of general due diligence obligations. The e-Commerce Directive has created a fundamentally appropriate legal framework for digital infrastructures and their services. Weakening this well-balanced liability structure would be detrimental to the further development of the Internet industry and in turn damaging to the digitalisation of the economy and



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society in Europe. Depending on how strict obligations become, there is an additional risk that democratic values such as freedom of expression will be undermined. This must be averted.

It is not possible to definitively assess the actions proposed under the guise of required protection of the media in the print and audio-visual sectors. It remains to be seen whether these are actually actions for promoting media pluralism or whether they are further one-sided distortions of competition in favour of the likes of press publishers in the case of ancillary copyright for press publishers.

The European Democracy Action Plan is a welcome step towards meeting the current challenges posed by the dissemination of misinformation and the publication of criminal activities on the Internet. However, in the area of disinformation, action should also be taken with a sense of proportion and should entail a collective effort involving all stakeholders and relevant actors, such as civil society and academia. Last but not least, it must be borne in mind that SMEs also only have limited options available to them.

Strengthening the circular economy and promoting scientific and industry excellence to improve environmental conditions are positive signals that will be decisive for sustainable technology and resource efficiency. It is safe to assume that these topics will also be central for the IT industry in the future.

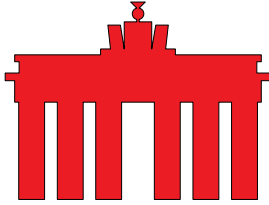
The revision of the eIDAS Regulation to make trusted digital identities available to more people is to be viewed favourably. Furthermore, electronic patient records can contribute to the digitalisation of the health care system and the provision of digital services for better health care. eco welcomes these initiatives.

▪ **On the international dimension**

In addition to the goals mentioned above, the EU Commission also intends to promote international aspects of its digital policy. eco welcomes this approach. Central issues of Internet policy can only be dealt with globally and in an international context. In eco's view, the aspects of strengthening technical interoperable standards and the plans for dealing with subsidies, which are particularly important for the Internet industry, are to be viewed in a positive light. The Global Digital Cooperation Strategy planned alongside this can also provide important impetus for a further fusion of the digital world.

III. Summary and conclusion

With the current Digital Strategy, the European Commission has presented its approaches for further advances in the shaping of digital policy. The approaches in the area of international cooperation are to be viewed with particular favour. eco



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also welcomes the proposed efforts to improve data access. A stronger integration of the digital industry in recycling systems and the targeted use of AI to improve environmental protection is to be assessed positively.

However, these positive approaches are at odds with considerations of a far-reaching and strict matrix regulation of artificial intelligence, as well as plans for stricter regulation of digital business models. If digitalisation is to be seen as an opportunity, its technologies and channels must not be placed at a disadvantage vis-à-vis other models. These negative trends and developments are overcast by plans for a legal Digital Services Act. In addition to the problems mentioned above, this could pose a long-term threat to the well-balanced liability structure of the e-Commerce Directive. While it is still too early for detailed assessments, the papers published thus far point to a clear tendency towards strict regulation, which could have a significant impact on putting the brakes on the Internet industry in Europe.

About eco

With more than 1,100 member companies, eco is the largest Internet industry association in Europe. Since 1995 eco has been instrumental in shaping the Internet, fostering new technologies, forming framework conditions, and representing the interests of members in politics and international committees. The focal points of the association are the reliability and strengthening of digital infrastructure, IT security, trust, and ethically-oriented digitalization. That is why eco advocates for a free, technology-neutral, and high-performance Internet.