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DRAFT REPORT

on online platforms and the digital single market
(2016/2276(INI))

Committee on Industry, Research and Energy
Committee on the Internal Market and Consumer Protection

Rapporteurs: Henna Virkkunen, Philippe Juvin

(Joint Committee procedure – Rule 55 of the Rules of Procedure)

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The European Parliament,

- having regard to the Commission communication of 25 May 2016 on ‘Online Platforms and the Digital Single Market – Opportunities and Challenges for Europe’ (COM(2016)0288) and the accompanying Commission staff working document (SWD(2016)0172),
- having regard to the Commission communication of 2 June 2016 on ‘A European agenda for the collaborative economy’ (COM(2016)0356) and the accompanying Commission staff working document (SWD(2016)0184),
- having regard to the Commission communication of 19 April 2016 on ‘EU eGovernment Action Plan 2016-2020 – Accelerating the digital transformation of government’ (COM(2016)0179) and the accompanying Commission staff working documents SWD(2016)0108) and SWD(2016)0109),
- having regard to the Commission communication of 19 April 2016 on ‘Digitising European Industry – Reaping the full benefits of a Digital Single Market’ (COM(2016)0180) and the accompanying Commission staff working document (SWD(2016)0110),
- having regard to the Commission communication of 6 May 2015 on ‘A Digital Single Market Strategy for Europe’ (COM(2015)0192) and the accompanying Commission staff working document (SWD(2015)0100),
- having regard to the Commission communication of 19 April 2016 on ‘European Cloud Initiative – Building a competitive data and knowledge economy in Europe’ (COM(2016)0178) and the accompanying Commission staff working document (SWD(2016)0106),
- having regard to its resolution of 16 February 2017 on the European Cloud Initiative¹,
- having regard to its resolution of 19 January 2016 on Towards a Digital Single Market Act²,
- having regard to the proposal for a directive of the European Parliament and of the Council establishing the European Electronic Communications Code (COM(2016)0590),
- having regard to the proposal for a directive of the European Parliament and of the Council on copyright in the Digital Single Market (COM(2016)0593),
- having regard to Directive 2000/31/EC of the European Parliament and of the Council

¹ Texts adopted, P8_TA(2017)0052.

² Texts adopted, P8_TA(2016)0009.

of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (e-Commerce Directive)¹,

- having regard to Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation)²,
 - having regard to Directive (EU) 2016/1148 of the European Parliament and of the Council of 6 July 2016 concerning measures for a high common level of security of network and information systems across the Union (Network and Information Security Directive)³,
 - having regard to the proposal for a directive of the European Parliament and of the Council amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services in view of changing market realities (AVMS Directive) (COM(2016)0287),
 - having regard to the proposal for a regulation of the European Parliament and of the Council on cooperation between national authorities responsible for the enforcement of consumer protection laws (Consumer Protection Cooperation) (COM(2016)0283),
 - having regard to the proposal for a directive of the European Parliament and of the Council on certain aspects concerning contracts for the supply of digital content (COM(2015)0634),
 - having regard to the Commission staff working document of 25 May 2016 on ‘Guidance on the implementation/application of Directive 2005/29/EC on unfair commercial practices (SWD(2016)0163),
 - having regard to the Commission staff working document of 15 September 2016 entitled ‘Preliminary Report on the E-commerce Sector Inquiry’ (SWD(2016)0312),
 - having regard to Rule 52 of its Rules of Procedure,
 - having regard to the joint deliberations of the Committee on Industry, Research and Energy and the Committee on the Internal Market and Consumer Protection under Rule 55 of its Rules of Procedure,
 - having regard to the report of the Committee on Industry, Research and Energy and the Committee on the Internal Market and Consumer Protection and the opinion of the Committee on Legal Affairs (A8-0000/2017),
- A. whereas digitalisation and new technologies have changed forms of communication and the behaviour of consumers and companies;

¹ OJ L 178, 17.7.2000, p. 1.

² OJ L 119, 4.5.2016, p. 1.

³ OJ L 194, 19.7.2016, p. 1.

- B. whereas the evolving use of internet and mobile devices has created new business opportunities and business models;
- C. whereas the evolving development and use of internet platforms for a wide set of activities, including commercial activities and sharing goods and services, have changed the ways in which consumers and other users interact with content providers;
- D. whereas the e-Commerce Directive exempts intermediaries from liability for content only if they play a neutral, merely technical and passive role in relation to the hosted content;
- E. whereas numerous online platforms not only provide access to goods and services, but also play a more active role in relation to consumers and other actors;
- F. whereas the Commission is carrying out a number of assessments of consumer protection rules and B2B practices;

General introduction

1. Welcomes the communication on ‘Online Platforms and the Digital Single Market - Opportunities and Challenges for Europe’;
2. Welcomes the different initiatives already proposed under the Digital Single Market Strategy for Europe; considers that achieving a digital single market is essential for fostering the EU’s competitiveness and the growth of the digital economy in Europe;
3. Acknowledges that online platforms benefit today’s digital economy and society by increasing the choices available to consumers and creating and shaping new markets; points out, however, that online platforms present new policy and regulatory challenges;
4. Recalls that, although many pieces of EU legislation apply to online platforms, it is frequently the case that they are not enforced properly or have not been adapted to the online world;

Definition of platforms

5. Notes that there is currently no consensus on the definition of online platforms due to the multitude of different types of platforms, which may lead to fragmentation of the EU’s internal market;
6. Welcomes the Commission’s ongoing work on online platforms, including consultations of stakeholders and carrying out an impact assessment;
7. Believes that, although online platforms operate within a highly diverse range of activities, such as e-commerce, the media, search engines, the distribution of cultural content, the collaborative economy and social networks, certain common features which can be used to identify these entities exist nevertheless;
8. Notes that certain features often characterise online platforms, such as operating in multi-sided markets, enabling parties belonging to two or more distinct user groups to

enter into direct contact by electronic means, offering online services based on the classification or referencing of content, goods or services proposed or put on-line by third parties, the bringing together of several parties with a view to the sale of a good, the provision of a service or the exchange or sharing of content, goods or services;

Facilitating the sustainable growth of European online platforms

9. Notes that online platforms use the internet as a means of interaction and act as facilitators between the demand and supply sides;
10. Notes that online platforms take advantage of the enormous and ever-increasing number of mobile devices;
11. Underlines that the increasingly widespread use of smartphones and tablets has further extended access to online platforms, thereby enhancing their role in the economy and society, particularly among young people;
12. Draws attention to rapidly developing online platform markets, which offer a new outlet for products and services; recognises the global nature of online platform markets; points out that global online platform markets offer consumers a wide variety of choices and effective price competition;
13. Urges the Commission to continue to promote the growth of European online platforms and strengthen their ability to compete globally; regrets the EU's low share of market capitalisation on online platforms; stresses the importance of removing obstacles that hamper the smooth operation of online platforms across borders and disrupt the functioning of the European digital internal market;
14. Recognises the benefits that online platforms offer for SMEs; notes that online platforms allow SMEs to access global markets without excessive investments in costly digital infrastructure;
15. Urges the Commission to prioritise actions that allow European start-ups and new European online platforms to emerge and to scale up; stresses that facilitating investments in start-ups is vital to the development of online platforms in Europe;
16. Notes that some online platforms realise the collaborative economy; welcomes the Commission communication on the collaborative economy, which supports the development of new business models; stresses that these new business models offer new services and greater choice for consumers as well as provide flexibility for employees;

Clarifying the liability of intermediaries

17. Notes that intermediary liability is one of the main concerns in the ongoing debate on online platforms;
18. Believes that a clear-cut and level playing field is needed in order to allow online platforms to comply with their responsibilities and the rules on liability;
19. Notes that certain stakeholders are dissatisfied with the current rules on liability and

welcomes the Commission's undertaking to publish guidelines on intermediary liability; calls on the Commission to draw attention to the differences between the online and offline world and to create a level playing field for comparable services online and offline;

20. Welcomes the update of the AVMS Directive and the Commission's intention to propose measures for video-sharing platforms concerning their liability in terms of the protection of minors and the prevention of hate speech; regrets, however, the absence of references to content relating to the incitement of terrorism;
21. Considers that the liability rules for online platforms should allow the tackling of issues related to illegal and harmful content in an efficient manner, for instance by respecting the duty of care, while maintaining a balanced and business-friendly approach;
22. Stresses the need for online platforms to prevent illegal and inappropriate content and unfair practices through regulatory, effective self-regulatory or hybrid measures; stresses the importance of online platforms playing a proactive role in tackling illegal and inappropriate content and taking immediate action to remove illegal or inappropriate content if such content slips through preventive monitoring;
23. Considers that online platforms should develop more effective voluntary measures and technical means of identifying and eliminating harmful content;

Creating a level playing field

24. Urges the Commission to ensure a level playing field for online platforms; stresses that regulatory certainty is essential to creating a thriving digital economy; notes that competitive pressures vary between different sectors and therefore 'one-size-fits-all' solutions are rarely appropriate;
25. Draws attention to the fact that the size of online platforms varies from global giants to micro-enterprises; stresses the importance of fair and effective competition between online platforms to avoid the creation of monopolies that distort the markets; stresses that facilitating the switching between online platforms or online services is an essential measure in preventing market failures;
26. Underlines that possible reforms of the existing regulatory framework should concentrate on the harmonisation of rules and reducing regulatory fragmentation; emphasises the need to avoid over-regulation; stresses the importance of technology neutrality and having the same rules apply online and offline;
27. Underlines the importance of investments in infrastructure; stresses that reliable high-speed networks are the precondition of offering and using online platform services; stresses the need for net neutrality and fair and non-discriminatory access to online platforms;

Informing and empowering citizens and consumers

28. Underlines that the Internet of the future cannot succeed without users' trust in online platforms, greater transparency, better control of ranking systems and advertising, and

online platforms respecting all applicable legislation;

29. Stresses the importance of transparency in relation to data collection and considers that online platforms must respond to users' concerns by informing them more effectively about what personal data is collected and how it is shared and used;
30. Underlines that the cross-border nature of online platforms represents a huge advantage in developing the Digital Single Market, but also requires better cooperation between national public authorities; asks the Commission to make better use of existing consumer protection services, which could provide identical and efficient consumer protection in relation to online platforms activities;
31. Encourages online platforms to provide clear, comprehensive and user-friendly ways of presenting their terms and conditions in order to enhance consumer protection and bolster trust;
32. Calls for an assessment of current legislation and self-regulation mechanisms to determine whether they provide adequate protection to consumers against the backdrop of the increasing number of complaints against and investigations opened by the Commission into several platforms;
33. Calls on the Commission to evaluate platforms' review systems and to put an end to certain practices, such as fake reviews and the deletion of negative reviews in order to make platforms comply with existing obligations;
34. Calls on the Commission to assess the need for and the principles in relation to criteria, which could set the conditions under which online platforms may be made subject to further monitoring and assisted in order for them to comply with existing obligations and guidelines in a timely manner, in particular in the realm of consumer protection,;
35. Calls on the Commission to assess the current Intellectual Property Rights (IPR) Enforcement Directive¹, in order to ascertain how to contribute more effectively to the fight against counterfeiting by adopting proactive, proportionate and effective measures;

Increasing online trust and fostering innovation

36. Underlines that the effective enforcement of data protection and consumer rights in online markets are priority actions when it comes to increasing trust; stresses that consumer and data protection consist of a variety of measures in the fields of online privacy, and internet and cyber security; underlines the importance of transparency in relation to data collection and the security of payments;
37. Notes that online payments offer a level of transparency that helps to protect the rights of consumers and entrepreneurs and could be applied to the collection of data for taxation purposes, for example; notes that transparency facilitates the comparison of prices and transaction costs and increases the traceability of economic transactions;
38. Stresses that a fair and innovation-friendly environment as well as investments in

¹ OJ L 195, 2.6.2004, p. 16.

research and development are vital for generating new ideas and innovations; underlines the importance of open data for the development of new online platforms;

Respecting B2B relations and EU competition law

39. Stresses that, in relation to this specific business model, the traditional reasoning inherent in EU competition law may no longer be fit for purpose;
40. Is concerned about problematic B2B practices by online platforms, such as a lack of transparency (e.g. in search results) and possible abuses of the dual role of platforms as intermediaries and competitors;
41. Underlines that EU competition law and authorities need to guarantee a level playing field where appropriate, including in respect of consumer protection and tax issues;
42. Welcomes the efforts made by the Commission to fight tax avoidance and harmful competition and calls on the Member States and the Commission to propose further reforms to prevent tax avoidance practices in the EU;
43. Points to the differences in the legal landscape in the 28 Member States and the specificities of the digital sector in which the physical presence of a company in the country of the market is often not needed and calls on the Member States to adjust the value-added tax (VAT) system according to the country-of-destination principle¹;

The EU's place in the world

44. Regrets that the EU's presence in the world market is barely felt, in particular due to the current fragmentation of the digital market, legal uncertainty and the lack of financing and capacity to market technological innovations, which make it difficult for European companies to become world leaders in this new economy;
45. Calls for the European institutions to ensure a level playing field between European and non-European operators, in respect of taxation and similar questions, for example;

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46. Instructs its President to forward this resolution to the Commission, the Council, the European Council and the governments and parliaments of the Member States.

¹ European Parliament resolution of 24 November 2016 on towards a definitive VAT system and fighting VAT fraud, P8_TA(2016)0453.