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Briefing

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Hearings of European Commissioners-designate

Günther Oettinger

Digital Economy and Society

Hearing due to be held on Monday 29 September at 18.30 hours.

Günther Oettinger, Germany.

EP Committees responsible for the Hearing

Industry, Research and Energy (ITRE)

Culture and Education (CULT).

Biography

Born in 1954, Günther Oettinger studied law at the University of Tübingen. He was the leader of the CDU parliamentary group in the Landtag of Baden-Württemberg from 1991 to 2005 and then Minister-President of Baden-Württemberg from 2005 to 2010. He was Commissioner for energy in the outgoing Commission.

This is one of a set of Briefings designed to give Members of the European Parliament an overview of major issues of interest in the context of the hearings of the Commissioners-designate. A full set of such Briefings can be found at:
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Background

Developments in information and communication technologies (ICTs) – including high-speed internet, online shopping, media convergence, mobile devices, social media and cloud computing – are transforming European society and economy and changing the way that businesses and people interact. However many feel that Europe suffers from fragmentation along national lines of the market for digital products and services. The fragmented digital market is a drag on individual companies and a barrier to growth, job creation and innovation in EU Member States. It is also blamed for an innovation and productivity gap compared to the United States: ICT usage is responsible for 0.3 percentage points of the gap between annual growth rates in Europe and the US.

Closing this gap is important. ICT is responsible for half of productivity growth in the EU, and the digital sector is expected to grow seven times faster than the overall EU economy. The European Added Value Unit (EAVU) considers that, taking into account various constraints, the increase in GDP due to a fully realised digital single market over the next five years could be €340 billion per year. With a fully integrated digital market, accompanied by strong global growth, GDP growth in the EU in the next decade could rise from the average rate of 1.3% over the decade 2002-12 to as much as 2.5% annually in the subsequent ten-year period.

Digital issues directly concern a variety of different stakeholders: commercial ICT-based companies, such as telecom operators, internet service providers, and firms providing services based on the internet, such as Amazon and Google; regulators, both national regulatory authorities and the Body of European Regulators for Electronic Communications (BEREC); and a range of civil society organisations and non-governmental organisations concerned with telecommunications, internet and data privacy and protection issues. However all of society is indirectly concerned. According to the McKinsey Global Institute, 75% of the economic value created by the internet comes from traditional companies that use digital technologies to reduce the costs of running their businesses. Therefore the ultimate beneficiaries of a digital single market would include all consumers and businesses which can benefit from wider choice, lower prices, innovative services, increased efficiencies, greater economic growth and more jobs.

Issues related to an information-based society have been concerns of the European Union since the early 1990s, with action plans issued at roughly five-year intervals. The most recent plan is the 2010 'Digital Agenda for Europe', established as one of seven flagship initiatives of the Europe 2020 strategy. It is a five-year plan designed to help citizens and businesses benefit from digital technologies. Specifically it aimed to create a single digital market through better and simplified cross-border trade and licensing, simplified copyright, better electronic payments and more efficient allocation of radio spectrum. In addition, the Digital Agenda set out to improve standard-setting in ICT, increase trust and security in digital services, upgrade access to fast broadband across the EU and increase ICT-related research and development. It also sought to apply technology to realise benefits for society by addressing specific problems such as healthcare and ageing.

While creating a digital single market by 2015 was one of the specific goals of the Digital Agenda, it has proved difficult to achieve. Overall, the European digital market remains fragmented, with 28 separate markets and different regimes for electronic communications regulation, geographically-based content licensing, specific national

consumer protection rules and inconsistent value-added tax regimes. Perhaps as a result of the importance accorded to growth and job creation since the economic and financial crisis, stakeholders have talked in the past few years in more ambitious terms about creating a Digital Single Market, treating it as a distinct major policy initiative.

Treaty base and EP competence
A digital single market is not specifically provided for by the EU Treaties; rather digital issues are cross-cutting and affect a number of areas. The main Treaty articles are those on the single market (e.g. Articles 114, 115 TFEU) with legislation following the ordinary legislative procedure. However, other legal bases and procedures may be invoked for legislation in areas where the digital concerns may also be prominent: for example, personal data protection, industrial policy, trans-European networks, research, culture or trade.

Recent developments

The European Commission expects that 95 of the 101 actions of the Digital Agenda will be complete by 2015. Sample results so far:

- Regular internet usage stands at 72% of citizens (on track to hit a 75% target by 2015).
- Online shopping is used by 47% of citizens (up by more than 10 percentage points since the introduction of the Digital Agenda and likely to meet the 50% target by next year).
- Broadband coverage in the EU (at speeds more than 30 Mbps) reached more than 64% of households (and more than 90% in seven Member States).
- Roaming charges for telecommunications have been reduced substantially.

However, progress has been weak in several key areas:

- The use of e-government services (considered much less effective than commercial services like e-banking) has only increased slightly.
- Only a low percentage (14%) of small and medium-sized enterprises (SMEs) sell online (with no Member State expected to hit the target of one third of SMEs).
- Cross-border shopping (12% of citizens) has increased much less than hoped, and at a rate that is not expected to reach 20% by 2015.
- The level of penetration of broadband in rural areas remains low (only 18% of households).
- After several years of increases, in 2012 there was a 2.5% decline in public funding for research and development in ICT; with previous spending already below the necessary annual growth rate, there is a 20% gap between current levels and the target of doubling funding levels by 2020.

Over the course of the past five years, legislation has been adopted on:

- Reducing the cost of deploying broadband networks by reducing bottlenecks and inefficiencies in granting permits, network deployment and use of existing infrastructure.
- Establishing guidelines for broadband and digital infrastructure projects eligible for funding under the Connecting Europe Facility.
- Reforming the management of copyright in musical use for online works.
- The re-use of public sector information.
- The permitted use of orphan works (where the copyright holders cannot be found).
- Public procurement (including provisions for electronic communication).
- The nature and level of roaming charges in mobile networks.
- Enhanced coordination in the planning and allocation of radio spectrum for wireless

communications.

- Enhancing trust in electronic transactions through mutual recognition and interoperability of electronic identification and trust services.
- An online dispute resolution service to facilitate settling of disputes concerning online transactions between traders and consumers.
- The introduction of clearly labelled push buttons for buying items online and text boxes summarising all the elements of the purchase.
- A ban on the use of so-called 'pre-ticked' boxes.
- A ban on charging extra for online payments by credit card.

However, some significant pieces of legislation have not been finally adopted. For example, a proposed regulation on **a single market for electronic communications**, also known as the Connected Continent regulation, aims to revise existing rules to create greater simplicity for telecom operators, better enable operators to operate in multiple countries, harmonise spectrum policy management and increase consumer protection. The EP adopted amendments at first reading that included the ending of roaming charges in Europe from the end of 2015 and strengthened provisions for net neutrality. It now awaits the results of an 'intensive examination' in Council where the approaches to roaming, net neutrality and spectrum allocations have reportedly been questioned.

Another major piece of legislation that awaits Council's first reading is a proposed regulation and directive on **personal data protection**. The proposal addresses differing approaches in the way data protection has been implemented across the EU and seeks to reduce legal uncertainty and to reassure citizens about the protection of their personal data in an online environment. At first reading, Parliament clarified the principles underlying personal data processing and reinforced the general principles for the rights of data subjects, as well as extending the right to erasure of personal information. Similarly, the eighth parliamentary term may be called on to continue work on other legislation still being considered by Council, including a directive on **network and information security** and a directive that aims to ensure the **accessibility of websites of public sector organisations**.

European Parliament

Over the 2009-14 term, Parliament took a strong interest in the promotion of digital technologies, progress in the Digital Agenda and the completion of a digital single market as a means of increasing economic growth and creating jobs. Two resolutions on completing the digital single market stand out in particular. In a 2012 own-initiative resolution, Parliament called for the rapid deployment of ultra-fast broadband, improvements in cross-border delivery services, and simplified and standardised VAT rules for cross-border purchases (including cultural content). Furthermore, it called for actions to reinforce consumer rights and greater investment in broadband. In a 2013 resolution, Parliament called for the development of the digital single market to be an overarching political priority, noting again the importance of a simplified VAT framework and intellectual property rights, as well as e-payment, e-invoicing and product delivery services. Furthermore, it stressed the importance of greater investment in e-skill development and the need for cyber-security.

The broad range of digital issues means that various Parliamentary Committees may be involved: Industry, Research and Energy (ITRE) for electronic communications, radio spectrum, cyber-security, e-government, industrial policy and digital technology issues; Internal Market and Consumer Protection (IMCO) for single market, product delivery

and consumer aspects; Economic and Monetary Affairs (ECON) for electronic payments; Legal Affairs (JURI) for copyright and data protection; Civil Liberties, Justice and Home Affairs (LIBE) for security issues; Culture and Education (CULT) for digital content and International Trade (INTA) for trade aspects.

Venice declaration

In July 2014, the Italian Presidency of the Council held a 'Digital Venice' meeting, which provided the occasion to present a 'Venice Declaration' setting out three main goals: driving economic recovery through infrastructure, skills development and a digital industrial policy; network and information security to ensure access and freedom for all; and greater emphasis on smart cities. The Declaration outlines ten specific points for action, including the creation of the Digital Single Market. The Venice Declaration was expected to form the basis for conclusions of the October 2014 meeting of the European Council. However the fact that a number of large telecom operators came out with a separate document, and a reportedly tepid reception of the document by the Commission, have cast doubts on this approach.

Priorities and challenges

One challenge is that digital issues affect many different policy areas which have traditionally been dealt with by different Directorates-General within the European Commission, with (according to some commentators) little coordination, no overarching vision and frequently conflicting aims. To ensure better coordination of digital issues, there have also been calls for a new Council configuration to deal exclusively with matters affecting the Digital Single Market.

European Council

In its October 2013 meeting, the European Council (of EU heads of state and government) underlined the importance of a strong digital economy which can boost productivity, create new jobs and stimulate the economy. It pointed particularly to the need to create a framework for big data and cloud computing, to establish consistent tax rates for digital and physical products, and to ensure a high level of consumer protection. In March 2014, the European Council again drew attention to the importance of the digital market, including the updating of digital infrastructure networks.

The Digital Single Market and the new Commission

Commission President-elect Jean-Claude Juncker has indicated that the development of the Digital Single Market will be one of his top priorities. He sees it as a way to find new sources of growth and jobs without creating new debt. He has called for the breaking-down of national barriers, specifically differences related to telecom regulation, management of radio spectrum, the application of competition law, copyright and data protection. He has stated his intention to conclude negotiations on common data protection provisions, to take a more ambitious approach to telecom regulations, to modernise copyright rules and to simplify consumer regulation for online purchases. He also proposes action to increase digital skills and facilitate the creation of innovative start-ups. In terms of the organisation of the Commission's work, he has stated that digital technologies and online services should be a horizontal policy as it affects all areas of the economy.

A number of issues are expected to be prominent in future discussions.

Digital infrastructure and telecommunications regulation

The EU has lagged behind the US in deployment of ultra-fast broadband (in 2013 available to 85% of Americans and 30% of Europeans); broadband investment (US operators have invested almost twice as much as Europeans in recent years); and rollout of new generation mobile technologies (in early 2012, 64% of worldwide fourth generation long-term evolution (LTE) subscriptions were in North America, only 3% in

Europe). This lag is blamed on fragmented telecommunication markets with incompatible technical systems, differences in infrastructure and national legislation, uncertainties created by different levels of regulation and inconsistencies in the application of regulation by national regulators. There are over 200 operators in the EU, as opposed to a handful in the comparable US market. For some observers, consolidation of operators and the encouragement of pan-European firms are needed to lower costs and to achieve the size and scale to be able to compete globally. At the same time, however, authorities must ensure healthy competition and avoid abuse of dominant positions in the market.

One of the European Commission's main priorities is encouraging more investment in ultra-fast broadband. Additional investments of €110 to €170 billion appear to be needed if the EU is to reach its 2020 connectivity goals. Proposals in 2013 for better coordination of spectrum management were welcomed by telecoms firms but caps or bans on roaming and international calls have been seen as discouraging investment in New Generation infrastructure. Independently of the Connected Continent package under consideration, a review of the telecommunications regulatory framework for telecommunications is planned early in this legislative term.

Cloud computing, big data, data protection and security

Cloud computing delivers computing services over the internet; the EVAU estimates it could potentially deliver benefits of €160 billion per year. Big data refers to the use of extremely large data sets generated from a wide range of regular activities. Both cloud computing and big data are new approaches that offer the potential to reduce business costs, increase efficiency, encourage innovation, reduce energy consumption and offer tailored products and services to consumers. However, both technologies (as well as more traditional ICT services) require a clear regulatory framework that ensures both security and data protection without saddling companies (especially SMEs) with excessively high compliance costs. Although data protection standards have been ruled out of the scope of the Transatlantic Trade and Investment Partnership (TIPP) currently being negotiated between the EU and the US, negotiations offer an opportunity for finding some common understanding of these issues, to facilitate cross-border business practices.

Culture, digital content and copyright

To support Europe's creative industries and rich cultural diversity, the cultural and audiovisual sectors need support to adapt to the digital era. Content producers and providers require assurances of adequate protection for their intellectual property (IP) in digital form, but copyright laws are poorly adapted for a digital world, and differences in IP protection across Member States can discourage firms from competing in other parts of the EU. On the other hand, European consumers may be restricted from accessing digital content that is available elsewhere in the EU, due to the complexities of territory-based licensing and copyright, and may be tempted to use unauthorised sources. BEUC, the European consumers' organisation, has called for a legal framework which takes into account both licensing and technology, and which accounts both for fair compensation for creators and fair access to content by consumers. The Commission has promised to release in 2014 a white paper on updating copyright protection provisions to encourage use of digital content.

e-Commerce

European firms that operate cross-border must conform to a patchwork of 28 different contract laws and value added tax systems (a particular burden for SMEs). Digital business could benefit from harmonised regimes and a lighter regulatory framework. Consumers lack information about products available in other Member States, and this prevents the formation of efficient EU-wide markets, which could bring benefits such as wider choice and reduced prices. Consumers also need assurances that they can trust in the security of online transactions and online payments and in dispute resolution mechanisms that are reliable, clear and fair for all. Outgoing Commissioner Neelie Kroes spoke out against local regulations that block innovative internet-based services – most controversially, the online hailing of taxis through applications such as Uber.

eSkills

To ensure the growth of productivity and employment in an increasingly digital economy, more European workers need to have, or develop, better digital skills. The need is most acute in the newer technology areas: a labour shortage of 700 000 ICT professionals is forecast for the EU by 2015. The EU's 'Grand Coalition for Digital Jobs and Training' aims to help businesses and educational institutions attract young people into ICT education.

Public administration and e-government

In 2012, the European Commission estimated that public administrations using e-procurement procedures could save about €100 billion per year and that e-government (online communication between citizens and governments) could reduce costs by 15 to 20%. Nevertheless, take-up of these technologies has fallen well behind the Digital Agenda goals.

European Added Value

According to the EP's European Added Value Unit, a digital single market would increase the efficiency of traditional enterprises and reduce business transaction costs. It would facilitate the transmission of information on which knowledge-based and service industries depend. And it would bring significant gains by shifting the EU economy towards the growing sector of knowledge-based services and away from traditional manufacturing and service sectors where the EU is less competitive. A fully-functional digital single market would also bring welfare improvements to consumers from a higher level of e-commerce.

Economists have estimated the gain in EU GDP due to an ambitious and fully realised Digital Single Market to be about €340 to €656 billion per year. However, taking into account the regulatory complexity of 'decompartmentalising' existing markets, the EAVU considers that the full potential may not be achieved in the coming years; hence their best estimate is a lower figure of €340 billion per year. Major pieces of the digital single market that are missing include e-payments and invoicing; clarifying VAT regulations; generating consumer trust in e-commerce (including through consumer protection); protecting intellectual property while eliminating geographic restrictions; and ensuring data protection and privacy.

Further reading

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