



European Economic and Social Committee

TEN/601

Online Platforms and the Digital Single Market

OPINION

European Economic and Social Committee

Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions:

Online Platforms and the Digital Single Market - Opportunities and Challenges for Europe

[COM(2016) 288 final]

Rapporteur: **Thomas McDONOGH**

Consultation	European Commission, 25/05/2016
Legal basis	Article 304 of the Treaty on the Functioning of the European Union
Section responsible	Section for Transport, Energy, Infrastructure and the Information Society
Adopted in section	15/11/2016
Adopted at plenary	14/12/2016
Plenary session No	521
Outcome of vote (for/against/abstentions)	175/0/3

1. **Conclusions and recommendations**

- 1.1 The Committee welcomes the action plan presented by the Commission, which includes a review of the telecom and e-privacy directives with regard to the position of OTT online communications services, a mapping exercise relating to platforms' voluntary measures, which may lead to a guidance document, a fact-finding exercise on B2B practices, the funding of open data projects, and eventually a strategy to facilitate and support the emergence of competitive EU-based platforms.
- 1.2 The EESC underlines that many online platforms are important elements of the collaborative economy and reaffirms its findings on the collaborative economy, especially on consumer protection, workers and self-employed people.
- 1.3 However, the EESC is concerned that the speed at which developments in the digital markets occur cannot be matched by the pace at which EU regulations and strategies are developed, to say nothing of their implementation at Member State level. The EESC would like to see how the coordination between the different parties in the Commission and the Member States could be enhanced and what kind of mechanisms would be helpful.
- 1.4 The Committee stresses the need to tackle the risk of fragmentation and the necessity of a coherent EU approach. Otherwise different national rules will create uncertainty, make scaling-up more difficult for startups and potentially limit the availability of digital services. This is all the more pressing in light of the fact that some Member States are already in the process of, or considering the introduction of specific measures to counter unfair trading practices, risking fragmentation of the Digital Single Market.
- 1.5 The communication does not contain specific proposals, and it sets out few tidy solutions. While some solutions are outlined, answers to the truly major questions on whether platforms harm their suppliers in some markets are deferred.
- 1.6 The diffusion of online platforms has produced huge benefits to suppliers, consumers, and to the economy and lifestyles in general. Nevertheless issues do and will occur and because of this the EESC recommends defining the most critical damage to businesses and consumers more precisely, and then efficiently and accurately addressing the extent to which these concerns are common to all online platforms, are sector-specific, or are specific to individual firms. The EESC also calls for cross-sectoral cooperation and monitoring of online platforms' development in order to address issues that occur over time.
- 1.7 The Committee welcomes the fact that the Commission intends to explore measures to facilitate switching and portability of data among different online platform and cloud computing services, both for business and private users.
- 1.8 The EESC calls for programmes to raise awareness and provide greater digital literacy for all citizens of all ages, among whom the youngest and the oldest are the most vulnerable. The EESC would welcome the introduction of systematic education on this as a European standard.

- 1.9 The EESC calls on the Commission to study the need for platforms to display user-friendly summaries, to make clear when personalised pricing is taking place and the basis on which they rank results, and also to enable unconditional and administratively easy exercise of the right to be forgotten.
- 1.10 The EESC welcomes the Commission's indication that it is working with online platforms on a code of conduct designed to combat online hate speech and content harming minors. However, the Committee thinks that some kind of sanctions also need to be introduced for those negligent in removing such content when they are aware of it.
- 1.11 The Committee is disappointed that the Commission has once again overlooked the social dimension of online platforms. The EESC stresses that platforms' social responsibility towards their workers, both those regularly employed and employees working in new forms of employment, needs to be more precisely defined. Special attention should be paid to the latter, and fair working conditions, adequate social protection, occupational health and safety, training, collective bargaining and union rights¹ should be provided to all platforms' workers, recognising the challenges brought forth by online platforms in the collaborative economy.
- 1.12 Contrary to the Commission's assessment that the existing legal framework is largely sufficient, the Committee calls for an EU framework on crowd working to prevent the undermining or circumventing of minimum pay rates, working time regulations and social security regulations.
- 1.13 The EESC urges the Commission to study the fiscal aspects related to the activity of online platforms, counteracting practices that run counter to a level playing field.

2. Gist of the Commission communication

- 2.1 Through its recent communication and staff working paper, and its Digital Single Market strategy more generally, the Commission is seeking to encourage innovation by, and effective competition between, online platforms while also protecting consumers' rights and privacy.
- 2.2 The communication outlines the key issues identified in its assessment of online platforms and sets out its approach to online platforms in the future.
- 2.3 The communication does not propose an overarching set of new EU regulations on platforms.
- 2.4 The Commission proposes only introducing regulatory measures that address clearly identified problems relating to a specific category or activity of online platforms, as opposed to pre-emptive rules that might stifle innovation.
- 2.5 The Commission recognises that online platforms take various forms and are different in size, and are constantly evolving, meaning that there is no consensus on a single definition of online platforms.

¹ [OJ C 71, 24.2.2016, p. 65.](#)

- 2.6 In the Commission's view, adopting a "one-size-fits-all" approach to platform regulation would not be an appropriate way to meet the different challenges posed by the various types of online platform.
- 2.7 The Commission recognises that the existing legal framework is largely sufficient to regulate platforms, although this legal framework does not neatly come under the jurisdiction of a single regulator.
- 2.8 The communication provides a roadmap and principles for future intervention:
- **a level playing field for comparable digital services;**
 - **responsible behaviour of online platforms to protect core values;**
 - **transparency and fairness to maintain user trust and safeguard innovation;**
 - **open and non-discriminatory markets in a data-driven economy.**
- 2.9 The Commission will seek to level the regulatory playing field in the **telecoms** sector through, potentially, deregulation and specific rules for over-the-top communication service providers.
- 2.10 The Commission will consider extending the **e-privacy directive** to online communication services.
- 2.11 The Commission proposes, under a new **audiovisual media services (AVMS) directive**, that video-sharing platforms should have new obligations to tackle harmful content.
- 2.12 The Commission will assess the **liability** regime of online intermediaries including:
- the need for guidance on liability when putting in place voluntary measures to tackle illegal content online; and
 - the need for formal notice-and-action procedures.
- 2.13 The Commission will further encourage (and regularly review the effectiveness of) coordinated EU-wide **self-regulatory** efforts by online platforms in terms of tackling illegal content online.
- 2.14 Online platforms will be encouraged to combat fake and misleading reviews.
- 2.15 The Commission will issue principles and guidance on e-ID interoperability in 2017.
- 2.16 New **copyright** proposals, recently adopted by the Commission, aim to achieve a fairer allocation of value generated by the online distribution of copyright-protected content by online platforms providing access to such content.
- 2.17 The **regulation on consumer protection cooperation** is presented together with this communication, to facilitate more efficient enforcement of EU consumer law in cross-border situations.

- 2.18 The Commission has reviewed the guidance on the **unfair commercial practices directive** to be adopted together with this communication. It will further assess any additional need to update existing consumer protection rules in relation to platforms as part of the regulatory fitness check of EU consumer and marketing law in 2017.
- 2.19 The Commission intends to carry out a targeted fact-finding exercise into the **business-to-business** practices that occur within the online platforms environment in order to "determine whether additional EU action is needed" by spring 2017.
- 2.20 The Commission plans to examine the potential barriers to a single EU data market that may arise from legal uncertainties regarding the ownership and usability of, or access to, data and – as part of the **free flow of data initiative** scheduled for the end of 2016 – to explore measures to facilitate switching and portability of data.

3. **General comments**

- 3.1 If Europe is to break the 1.5% annual GDP growth barrier over the next decade, a vibrant digital economy will be critical (see Report of the World Economic Forum's Global Agenda Council on Europe).
- 3.2 Online platform businesses have become some of the most valuable and influential in the world and their role in the global economy will continue to grow.
- 3.3 The EU represents only 4% of the total market capitalisation of online platforms².
- 3.4 The 50 or so major EU e-commerce operators are subject to 28 different national regulatory frameworks, whereas the six biggest operators in the American market and the three giants of the Chinese market are governed by a single regulatory framework³.
- 3.5 Issues relating to online platforms have created pressure to act at Member State level and have increased fragmentation.
- 3.6 Harmonisation of contract law and consumer protection are critically important to the sustainable development and scaling-up of online platforms.
- 3.7 The EESC urges a sharp focus on the legislative and non-legislative initiatives to be tabled by the end of 2016 to create a fully integrated Digital Single Market (DSM). The years 2016 and 2017 will determine whether Europe creates a digital roadmap to support competitiveness and growth, or slips into digital mediocrity.
- 3.8 The communication identifies a number of areas where the Commission is aware a problem exists but lacks evidence to decide what action – if any – is needed. Chief among these are

² [COM\(2016\) 288 final](#).

³ [OJ C 71, 24.2.2016, p. 65](#).

B2B issues. It proposes six months of further study before making a decision in the spring of 2017.

- 3.9 The Committee awaits another important debate when the Commission presents the conclusions of its research into this area early next year.
- 3.10 Excessive or inflexible regulation would undermine the positive contribution of online platforms to the EU digital economy and changes in regulation should not be made at the expense of consumers and workers protection.
- 3.11 A level playing field for comparable digital services in a Digital Single Market must not have a negative impact on tax revenues and must not facilitate a further erosion of the corporate tax base by allowing companies to pay tax in one jurisdiction, even when value is created in another. Tax on profits must be paid where the corresponding economic activity takes place.

4. **Specific comments**

- 4.1 The Commission describes platforms as being generally known as two-sided or multi-sided markets where users are brought together by a platform operator to facilitate an interaction.
- 4.2 However, the Commission's own list, covering social media and search engines to payment systems and advertising platforms, excludes traditional platform businesses that now operate online, yet includes some digital platforms that are not multi-sided.
- 4.3 In addition, the Commission's own list excludes the growing number of platforms where labour is provided. Hence it fails to address the specific problems of these platforms, especially regarding fair work and adequate social protection. In order to ensure that workers' rights and labour standards are not circumvented, and that those standards are guaranteed, the EESC calls for legislative action on employment rights and protection for online/platform workers, particularly those working in new forms of employment⁴. It should define workers engaged in work on online platforms as workers, presume their employment relationship, guarantee their right to equal treatment compared to regular employment and ensure effective enforcement of these provisions (for example, AppJobber, Applause, Clickworker, content.de, Crowd Guru, Designenlassen.de, Freelancer, greatcontent, Jovoto, Local Motors, Microworkers, MyLittleJob, Streetspotr, Testbirds, testIO, Textbroker, Twago, Upwork, 99designs).
- 4.4 There is strong first-mover advantage and platforms that are successful in exploiting network effects can become difficult to compete with as well as an unavoidable trading partner for businesses.
- 4.5 The online dispute resolution platform could be used for alternative dispute resolution for business to business disputes but first effective implementation of the online dispute mechanism for business to consumer disputes should be ensured.

⁴ [OJ C 303, 19.8.2016, p. 54.](#)

- 4.6 Fear of commercial retaliation by the online platforms on which they depend may prevent complainants from approaching competition authorities. The EESC recommends new measures to protect complainants in these markets.
- 4.7 Those behind websites and ISPs which give them access often operate outside Europe or conceal their identity. Originally developed to target internet service providers hosting websites with pirated content, injunctions against ISPs to block infringing content can be a valuable tool for rights holders and website blocking orders can and have been applied in the fight to protect brands and customers from the sale of counterfeit goods online.
- 4.8 The strength of the US venture capital market relative to the EU is another incentive for emerging companies to move to the US.
- 4.9 The acquisition of companies with low turnover is not covered under the current notification requirements, even in cases where the acquired company holds commercially valuable data or has considerable market potential. The existing merger control regime could be modified by complementing thresholds based on turnover by means of additional notification requirements based on transactional volume.
- 4.10 Competition authorities could make greater use of interim measures and time limits to speed up enforcement activities in fast-moving markets.
- 4.11 Online platforms often request various information from their users which is not directly relevant to the platforms' content, and require them to accept terms and conditions they would not accept under normal circumstances but must in order to be able to use the platform service.
- 4.12 Personal data is the currency of today's digital market but many consumers seem to be unaware that they trade their personal data in exchange for access to many of the so called free services and that their data may be sold or shared with third parties. In addition, irrespective of all existing and planned consumer protection measures, using the internet and attaining privacy is, in a technical sense, a contradiction, as there is always the possibility of highly skilled specialists gaining access to practically any data. It is therefore necessary to make all citizens of all ages – among whom the youngest and the oldest are the most vulnerable – also aware of such threats.

Brussels, 14 December 2016

Georges Dassis
The President of the European Economic and Social Committee
