



## RECOMMENDATIONS TO THE AUSTRIAN EU COUNCIL PRESIDENCY

▶ The Austrian EU Presidency will lead negotiations on important legislative proposals which will impact Europe's increasingly digitised economy for years to come. The recommendations below outline how to achieve a thriving European Digital Single Market.

### **Copyright: Reform for the future and maintain online liability protections**

The EU's e-Commerce Directive remains one of the most important laws for Europe's Internet economy. All platforms hosting third party content benefit from its liability protections. The proposed EU copyright legislation, however, dangerously undermines these protections and mandates filtering technologies. The proposal also creates an additional layer of rights for publishers related to the online usage of news content, undermining media pluralism.

Other businesses, such as cloud infrastructure services and internet service providers, are also unduly captured under the scope of the proposal, and it is not clear how filtering systems would technically be implemented at this level. Furthermore, they would be in direct contradiction to the ePrivacy review as they would entail the processing of all communications data uploaded to their services. This proposal is therefore detrimental to the EU Single Market, to users' fundamental rights and, more generally, to innovation and investments in Europe's digital economy. The Republic of Austria should support a copyright reform fit for the digital age.

### **Tax reform should not target the digital economy**

It is a myth that digital companies don't pay tax – digital companies often pay a higher effective corporate tax rate than traditional companies. The OECD and the Commission's own experts have all warned against targeting the so-called "digital economy". The Commission's proposed 'interim' Directive would only target certain business models within the digital economy while the issue of 'tax fairness' is a much broader one encompassing companies across the whole economy. A revenue, rather than profit-based tax, would in itself have major negative implications for Europe's digital economy. Consumers could be faced with higher prices and EU innovators deterred from taking entrepreneurial risk. We encourage the EU to seek international tax reform through the OECD rather than pursuing problematic, unilateral actions aimed at online platforms.

### **ePrivacy: Protect users and innovation**

The EU's "ePrivacy" review should seek to ensure meaningful privacy protection and confidentiality of communications while minimizing the number of obligations to prevent legal confusion in processing personal data, including communications data.



It should therefore align with the newly approved General Data Protection Regulation and adopt a context- and risk-based approach, taking due consideration of the technical and market realities of modern digital technologies. Restrictions, beyond those in the GDPR, on processing communications data, metadata, and machine-to-machine data risk unintended consequences. Cybersecurity updates may be missed when relying on an affirmative consent regime and third-party advertising revenue for publishers, small and medium-sized enterprises, and app developers might suffer. Finally, the proposal should not introduce backdoors to the encryption of online services, which would create new vulnerabilities and harm customer trust.

### **e-Evidence proposal: Creating legal synergies to facilitate European law enforcement access to data**

The upcoming EU proposal on access to electronic evidence in criminal investigations should serve as a basis to facilitate mutual recognition agreements with foreign governments, including the U.S., so as to improve access by Austrian and European law enforcement authorities to data stored outside their jurisdictions. It should avoid placing extraterritorial obligations on service providers that would conflict with other intra-EU or foreign legislation.

### **Preserve the Single Market in the review of EU audiovisual rules**

The media industry has flourished under the EU's existing audiovisual rules. Unfortunately, the new EU proposal introduces new measures such as levies and European content quotas for media service providers. New rules for video-sharing platforms and social networks would moreover undermine the e-Commerce Directive. These provisions would fragment the EU Single Market and hold back investments and European start-ups. The Republic of Austria should support an audiovisual reform that respects the country of origin principle and the key principles of the e-Commerce Directive.

### **Regulation on Platform-to-Business commercial relations must be workable**

In April the Commission is expected to publish a Regulation on the online platforms' relations with their business users. Because the need for regulation lacks solid evidence, this interference with freedom of contract should be properly scrutinized. It is in online platforms interest to maintain good relations with business users. To make this proposal as workable as possible, a fair degree of flexibility should be given as online platforms run very different business models – it does not make sense to use a one-size-fits-all approach. Evidence-based policymaking should also trump politics: it is not clear why last minute changes expanded the scope from strictly contractual relationships to non-contractual relations.

### **EU Cybersecurity Act: an opportunity to advance Government Vulnerability Review and Disclosure processes in Europe**

Europe can minimize and prevent repeats of WannaCry, Heartbleed and other criminal exploitation of large-scale software vulnerabilities by advancing a norm encouraging governments to establish internal processes to review and share information



which they have obtained about software vulnerabilities. The proposed EU Cybersecurity Act is an ideal place to start, with ENISA, the EU Cybersecurity Agency, supporting Member States in sharing and implementing best practices.

It is vital that ENISA is resourced appropriately so that it may, under its strengthened mandate, continue to fulfil its mission of developing a culture of network and information security and promoting good cyber hygiene, while being responsive to new cyber threats.

Given that the global security market is rapidly evolving, careful research needs to be undertaken before any potential move towards ICT security standards for products and services. In particular, the objective of any EU certification programme should be carefully thought through. Many companies operate at scale and globally, and a patchwork approach to standards is highly problematic and burdensome for SMEs in particular. Any certification scheme should be of a voluntary nature and be adaptable to the dynamic cybersecurity environment, while reflecting international frameworks.

### **E-commerce restrictions hurt Europe's digital economy**

The so-called "platform bans" hamper the development of pan-European e-commerce. Manufacturers often prohibit their authorized resellers from selling tangible goods over platforms such as Amazon or eBay. These bans are often unjustified and hurt consumers, which has led some national competition authorities to take action. More policymaker attention to these restrictions is needed.

### **New VAT rules should reduce bureaucracy for small European businesses**

The new EU Value Added Tax (VAT) framework (adopted in December 2017) introduces new administrative burdens on hundreds of thousands of exporting European micro-businesses. Most worrisome is the adopted pan-European, low 10,000 Euro threshold for applying foreign VAT on cross-border sales. Once a seller has sold 10,001 Euros worth of goods to other EU countries, he or she will have to comply with 28 different national VAT rates for all subsequent sales in the EU. In order to help small businesses deal with this new regulatory burden, EU Member States should agree on a legally binding pan-European VAT database, based on unique product identifiers. Such database would allow small businesses to comply with their VAT obligations without using expensive legal advice in all 27 EU markets.

The Commission is currently working on implementing rules for the new VAT package. As part of that work, it is considering to make third party online marketplaces liable for collecting VAT on behalf of their business users. Such an approach is practically not feasible, as many marketplaces act as mere technical intermediaries connecting buyers and sellers, without necessary product knowledge, control over financial flows, or physical control of the traded products. The Austrian presidency should ensure the new rules work in practice.



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### **Telecommunications: Maintain a Single Market and strong competition**

The new European telecommunications framework should encourage investments, competition, and innovation. The review of the electronic communications code should simplify the current complex regulatory system, ensure greater predictability and increased consistency in spectrum licensing, and remove unnecessary regulation. Changing the threshold for regulatory intervention risks creating uncertainty and discourages investment. EU proposals to extend old rules to emerging interactive apps would fragment the EU single market, raise consumer prices and make market entry harder.

### **Quick adoption of proposal on the free flow of non-personal data in the EU**

Companies, such as Austrian startups, are increasingly hindered from doing business in other EU Member States due to national data localisation requirements. These rules fragment the EU Single Market, increase prices, and lower Europe's competitiveness. We welcome the Council's ambitious position and encourage the Austrian Presidency to conclude negotiations.

### **Trade: The EU Single Market is only be the beginning...**

The Internet enables companies, big and small, to export to the rest of Europe – and the rest of the world. European companies however, face digital trade barriers when trying to do businesses in third markets. The EU should proactively use its ongoing trade negotiations to address barriers related to data flows, data localisation, source code, encryption, intermediary liability protections and discrimination in access to communications networks.

### **We look forward to contributing to a successful Austrian Council Presidency!**

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#### **ABOUT CCIA**

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