



**Computer & Communications
Industry Association**

Tech Advocacy Since 1972

RECOMMENDATIONS TO THE ROMANIAN EU COUNCIL PRESIDENCY

The Romanian EU Presidency will lead negotiations on important legislative proposals which will impact Europe's economy for years to come. The recommendations below outline how Europe can successfully embrace the digital transformation.

Digital and tax: The EU should support international reform rather than pursuing harmful unilateral action

We support the international tax reform efforts currently pursued at OECD/G20 level. We encourage the EU to support global reform rather than pursuing its own unilateral action. The Commission's proposed Digital Services Tax arbitrarily targets certain digital business models, thus ignoring that digital companies already pay a higher effective corporate tax rate on average than traditional companies. An EU Digital Services Tax would slow down Europe's digital transformation and harm European consumers and startups which use platforms.

ePrivacy: Protect users' privacy and innovation

The EU's ePrivacy Regulation should seek to ensure meaningful privacy protection and confidentiality of communications while maintaining and fostering a rich, secure and innovative digital landscape in Europe. A context- and risk-based approach is key to ensure appropriate privacy protection without unduly harming European innovation. In turn, an over-reliance on consent and restrictions on the kind of service providers that are eligible to process end-users' communications and device data may jeopardise the provision of modern communications services, slow down the growth of IoT and machine-learning, undermine the ability for small ad-supported services to scale up, and prevent the necessary data processing activities needed in order to deliver internet security services. We continue supporting the many improvements put forward by the Council.

Copyright proposal: Reform for the future

The EU's e-Commerce Directive remains one of the most important laws for Europe's internet economy. All platforms hosting third party content currently benefit from its liability protections, empowering everything from innovation to freedom of expression. The proposed EU copyright legislation, however, dangerously undermines these protections and effectively mandates filtering technologies. The proposal also creates an additional layer of rights for publishers related to the online usage of news content, thereby undermining media pluralism. The copyright proposal is detrimental to users' fundamental rights and, more generally, to innovation and investments in Europe's digitising economy. We hope the Romanian Presidency will help facilitate an EU copyright reform fit for the digital age.



Terrorist content proposal: Maintain the limited liability protections of the e-Commerce Directive

We support the goal of tackling terrorist content online. The Commission's proposal for a regulation on 'preventing the dissemination of terrorist content online' however undermines the e-Commerce Directive (see above). The proposal for instance authorises Member States to deviate from its article 15 which prohibits general online monitoring. Further, it fails to adequately consider the complexity of different internet services and the operational needs of SMEs. We hope a careful and constructive dialogue on this important issue will build on the existing legislative and non-legislative efforts taken at EU and Member States level.

eEvidence: Creating legal synergies to facilitate European law enforcement access to data

The EU eEvidence proposal should serve as a basis to facilitate mutual recognition agreements with foreign governments, including the U.S., so as to improve access by Romania and European law enforcement authorities to data stored outside their jurisdictions. It is therefore important to have a workable comity review mechanism, ensure that service providers can effectively object to the execution of a production order in cases of manifest violation of the Charter of Fundamental Rights, and shield legitimate service providers from liability in cases where data cannot be provided. We encourage the upcoming Presidency and the Council to consider establishing national single points of contact to facilitate the speedy authentication of, and ultimately the supply of evidence to the requesting authorities. We also encourage the Presidency to reflect on operational obstacles for smaller companies.

The Platform-to-Business Regulation should not regulate business practices

The Commission's proposal on promoting fairness and transparency for business users of online intermediation services is fairly balanced. CCIA welcomes that the original proposal is limited to transparency obligations and does not regulate various business practices. That approach needs to be maintained. Regulating business practices would not only encroach on competition enforcement, but it would also be unworkable in practice because of the horizontal nature of proposal. What may work for one platform business model could well be unworkable for another one. Sufficient flexibility should also be left to online intermediaries. Their business model requires them to balance the interests of consumers with the interests of business users while safeguarding their own interests, e.g. protecting their brand. Overly prescriptive provisions will make it impossible to achieve the right balance.

EU Cybersecurity Act: Promoting voluntary certifications fitting in the global cybersecurity landscape

Given the rapidly evolving global security threat landscape, the EU should continue to embrace international standards, specifications and risk management frameworks to mitigate cyber-attacks. Self-assessment and internal labs remain an effective means to optimise security. Certification risks being overly relied on and creates a false sense of security. We thus recommend that any EU certification scheme be of a voluntary nature and be adaptable to the dynamic cybersecurity environment, while reflecting international frameworks.



Europe can also minimize and prevent repeats of WannaCry, Heartbleed and other criminal exploitation of large-scale software vulnerabilities by advancing a harmonised norm that encourages governments to establish internal processes to review and share information which they have obtained about software vulnerabilities. ENISA should be able to support Member States in sharing and implementing relevant best practices. We call on the Council to consider and endorse the European Parliament text.

It is finally 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 risk management frameworks and promoting cyber hygiene, while being responsive to new cyber threats.

European Cybersecurity Competence Centre: Promote the deployment of open, interoperable and accessible cybersecurity solutions

We support the creation of a new EU cyber platform to boost cyber security capabilities in the EU. As the digital landscape becomes increasingly complex and diversified, it is important to ensure that cybersecurity is deployed across the board through open, interoperable and accessible cybersecurity solutions and information sharing platforms.

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.

eGovernment and the digital transformation of Europe's public sector

The EU's Tallinn Declaration on eGovernment celebrated its first birthday this October. Austria's e-Government week in September showed that important progress is being made but more remains to be done. This provides the upcoming Romanian EU presidency with an opportunity to (i) ensure more effective implementation of existing EU legal and standardisation tools; (ii) encourage greater collaboration by benchmarking important success factors, and, (iii) updating procurement guidance and technical support related to digitisation. The successful rollout of transformative digital government will not only bring government closer to its citizens, it will also provide a boon for jobs and growth which all rely on open digital infrastructures.

VAT E-Commerce rules should reduce bureaucracy for small businesses and ensure a level playing field

In December 2017 the EU Council adopted the VAT e-Commerce package which introduces a specific VAT liability for third-party marketplace sites to collect VAT on certain sales of goods to EU consumers. It also removes the VAT exemption for the import of small value consignments. The Commission is currently working on implementing rules with respect to the scope and operation



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of the VAT liability for third-party marketplace sites. We support the effective collection of VAT. However, the complexity underlying the marketplace liability provision should be fully appreciated and considered. The Romanian Presidency should ensure the implementing rules are channel neutral, proportionate, enforceable, consistent and simple to operate.

BREXIT: A close future relationship is of mutual interest

The EU and the UK have a shared interest in maintaining a close a future relationship. To ensure legal certainty for EU-UK data flows, we encourage the EU to recognise the UK's legal system as "adequate" as early as possible. We also hope that the UK's Information Commissioner's Office (ICO) can continue to work closely with European data protection authorities and that companies' mechanisms for data flows, already approved by the ICO, remain valid post BREXIT. The telecommunications regulator, Ofcom, should similarly remain closely aligned with its EU counterpart, BEREC.

We look forward to contributing to a successful Romanian Council Presidency!

ABOUT CCIA

The Computer & Communications Industry Association is an international, nonprofit association representing a broad cross section of computer, communications and Internet industry firms. CCIA remains dedicated, as it has for over 40 years, to promoting innovation and preserving full, fair and open competition throughout our industry. Our members employ more than 750,000 workers and generate annual revenues in excess of \$540 billion. For more, please go to: www.ccianet.org

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