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WORKING PAPER

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<th>From:</th>
<th>General Secretariat of the Council</th>
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<td>To:</td>
<td>Working Party on Telecommunications and Information Society</td>
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<tr>
<td>Subject:</td>
<td>eCommerce/Digital Services Act- Presentation (Joint Telecommunications and Information Society/Competitiveness and Growth (Internal Market) WP on 5 November 2019)</td>
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Delegations will find in annex the presentation on eCommerce/Digital Services ACT in view to the Joint Telecommunications and Information Society/Competitiveness and Growth (Internal Market) WP on 5 November.
The E-Commerce Directive and working towards a Digital Services Act

CWP, 5 November 2019
Approach so far

• In the Juncker Commission - problem-specific approach:
  • Regulatory initiatives: Copyright, AVMSD, P2B, New Deal for Consumers, ePrivacy, Digital Services Tax, Terrorist Content Online proposal
  • Non-binding initiatives: Codes of Conduct (Hate Speech, Disinformation, Counterfeit, Better Internet for Kids, ...), Illegal Content Recommendation, Communications on Platforms, Illegal Content, Collaborative Economy, ...

• National legislation emerging, as well as international-level discussions
• The E-Commerce Directive (2000) is the general framework for all digital services in the Union.
« Digital Services Act »

Political Guidelines of the President-elect:

A new Digital Services Act will upgrade our liability and safety rules for digital platforms, services and products, and complete our Digital Single Market.
Intervention logic of the E-Commerce Directive

Instruments in the E-Commerce Directive

- Internal Market Clause: Country of Origin and cooperation across MS
- Freedom of establishment: no prior authorisation
- Liability exemptions for mere conduit and caching services and liability limitations for hosting services
- No general monitoring obligations can be imposed by MS on online intermediaries
- Harmonisation of certain consumer-facing rules: e.g. commercial communications, information obligations
- Encouragement for voluntary and coordinated actions through Codes of Conduct

Objectives followed by the E-Commerce Directive

- Freedom to provide a service
- Freedom of establishment
- Effective enforcement of laws across the Single Market
- Promote innovation
- Ensure effective removal of illegal content online
- Safeguard freedom of expression online
- Ensure consumer protection and address specific policy concerns
- Ensure cross-border digital trade leads to growth and competitiveness in the EU, offering consumers a wide-range of choices and opportunities
- Safe, trustworthy and open Internet
- Ensure the proper functioning of the Single Market for information society services
Preliminary work towards the evaluation of the E-Commerce Directive

**Evaluation of the E-Commerce Directive**

1. Are the measures effective?
2. Are they efficient?
3. Are they relevant, given current needs?
4. Are they coherent?
5. Has the EU added value been achieved?

**Preliminary issues**

- Change of scale in the use of digital services, and much wider diversity of services than in 2000
- Legal fragmentation emerging and lack of clarity impacts the ability of EU start-ups to scale
- Challenges in the enforcement of the law cross-border and the oversight of digital services

**Other areas which need policy attention?**
Process (pending political decision)

**Work ahead:**
- **Evidence base:** robust evidence collection based on completed and forthcoming studies - legal analysis, economic analysis, technology watch
- **Wide consultation:** industry, civil society, national authorities, judges
- **Member States:** E-Commerce Expert Group, Council formations, national-level engagement

**Timeline**

*Pending political decision by new College:*
  - a consultation could be launched in Q1 2020
  - further impact assessment and proposal end 2020
E-Commerce Expert Group, 8 October
Main issues raised by Member States’ representatives (I)

1. Internal market principles:
   - Discussion on how to reinforce the Internal Market for digital services: strengthen cooperation among NRAs
   - Effective tackling different types of illegal content across the Union
   - Discussion on the scope of the services covered: new services emerging; current legal definition need clarity
E-Commerce Expert Group, 8 October
Main issues raised by Member States’ representatives (II)

2. Recommendation & Communication on tackling illegal content online – state of play
- Application of the building blocks in some national regulations and approaches
- Important to take up the measures protecting freedom of expression
- Pending challenges: stronger NRAs + common rules at EU level
E-Commerce Expert Group, 8 October
Main issues raised by Member States’ representatives (III)

3. Cooperation mechanism amongst Member States
- Different experiences with IMI (number of cases)
- Importance of contact points (Art. 19)
- Continuation of mapping exercise

4. Framework for SMEs
- Technical support for SMEs to deal with fragmented rules
- Strong proportionality
Understanding the current and evolving challenges

1. To what extent do Member States share the problem analysis, notably the need after nearly 20 years to update the legal framework to reflect today’s market realities and promote the effective functioning of the digital single market?

2. Are there any other issues which may warrant consideration?

3. How can cross-border administrative cooperation between NRAs best be strengthened?

4. How do you support drawing up and fulfilment of the Codes of Conduct concerning information society services? Can you share practical results (ECD – Art 16) ?

5. What difficulties do you perceive for start-ups and other information society services within your Member State? What digital champions are emerging at national and European level?