

Position Paper

UEAPME¹'s Position on the Digital Single Market Strategy for Europe

UEAPME welcomes the Digital Single Market Strategy and the European Commission's proposals to simplify the free movement of goods, persons, services and capital in the Digital Single Market and enhance opportunities for innovation, growth and jobs in the digital economy.

A digitalised economy and society are key to market competitiveness. Therefore, the EU should create favourable framework conditions as soon as possible in order to stimulate the potential of modern technologies and analysis methods. Digitalisation provides a nearly limitless array of opportunities to reform current products and services and to develop new ones. Digital revolution is fast and thus flexibility in legislation is needed. The progress of digital technology is so fast that regulation could turn out obsolete in regard to technology when it comes to effect and therefore it needs to be future proofed.

Therefore, any regulation for digital business and digital economy should only be created in response to a real need. Careful monitoring should be carried out so that regulation does not create new obstacles but instead targets such measures that impede companies benefiting from digitalisation. In other words, regulation should create appropriate legal framework for digital business. Furthermore, UEAPME underlines that any new legislation needs to respect the "Think Small First" principle. Rights and obligations of a trader must be equal, irrespective of how his/her business is conducted.

The DSM Strategy sets out important priorities which have to be translated into concrete actions to achieve tangible improvements of the legislative framework related to the digital economy. The strategy sets out 16 ambitious priorities which have the aim to open up the opportunities for people and businesses and enhance Europe's position in the Digital Economy.

In particular, the EU should support measures that provide traders with the opportunity to benefit from the Digital Single Market. The digital era has already changed traditional business models and SMEs are introducing more and more digital solutions. In the future, the competitiveness – especially of SMEs – will strongly depend on how the enterprise can adapt to ongoing technological developments. The impact of digitalisation therefore extends horizontally to nearly all spheres and activities.

In addition to positive opportunities, digitalisation may also sometimes facilitate misleading and unfair practices. In order to create a reliable and trustworthy digital market, ensuring that misleading marketing is addressed is necessary, also between traders. Interference of the misleading marketing practices in an effective way can be seen as an extremely important act when building a reliable and trustworthy digital market inside the EU.

As a general remark, it is important to overcome national barriers on the Single Market by updating copyright laws, harmonising regulation where possible and desirable, and scrapping barriers to online trade. However, harmonisation should never lead to more complexity and higher burdens for enterprises.

This document summarises UEAPME's position on most of the actions and initiatives planned by the European Commission by the end of next year.

¹UEAPME subscribes to the European Commission's Register of Interest Representatives and to the related code of conduct as requested by the European Transparency Initiative. Our ID number is [55820581197-35](#).

Pillar I: Better Access for consumers and business to online goods and services across Europe

- Legislative proposals for simple and effective cross-border contract rules for consumers and businesses

E-commerce gets more and more important especially for consumers. The opportunities internet and online shops offer are growing. Therefore there is a need for a working legal frame within the European single market. Concerning tangible goods and services, practice has proven the existing rules and only minor amendments are needed. UEAPME would like to underline that the current European legislation regarding consumer protection is extremely complicated and not easy to understand, both for consumers and traders. The information obligations are especially complex and burdensome and not always relevant. If contract law for online sale of tangible goods is fully harmonised, new legislation could lead to fragmentation of the law of obligations systems.

Despite UEAPME's concerns on the effects for traders of full harmonisation in contract law for the online sale of tangible goods, harmonisation can only be an effective solution for cross-border purchases when it covers all possible aspects of the contractual relationship. If not, initiatives on harmonisation only provide for a new set of rules, which have proved over the last years to entail less transparency in applicable law.

In contrast with the above, there are still not enough rules concerning digital products. At national level, as well as at European level, there are no appropriate rules to cover digital content such as online-streams or downloads. Therefore, it is really worth introducing legal security concerning the goods in the cross-border context, as well as in national business relations. However, UEAPME wants to point out that regulation regarding digital content products should also be in principle the same as applied to other consumers' products. As a general rule, consumer rules should be similar and not differentiate according to the kind of product being sold.

Any new rules have to be simple and clear for all parties without adding new burdens to SMEs.

UEAPME's position on the public consultation on Contract rules for online purchases of digital content and tangible goods, is available on our [website](#).

- Review the Regulation on Consumer Protection Cooperation

Any revision of the Consumer Protection Cooperation should not lead to more burdensome rules for businesses, in particular SMEs. Any development and clarification of the powers of enforcement authorities should also take into consideration SME needs.

- Measures in the area of parcel delivery

In order to increase transparency, there is a need for more information, accessible services, reduction of the cost of cross-border flows and increase of the reliability and quality of service delivery. However, adequate pay and working conditions for parcel delivery are necessary as a prerequisite for good quality parcel delivery services. It is important to be aware of the fact that a lot of subcontractors are working for one of the oligopolistic players. These subcontractors are often very small companies with little bargaining power and they are often forced to work together with big players that are able to impose a great deal of terms and conditions for the business relationship. Therefore, a close monitoring of competition in the sector is desirable.

To know more about UEAPME's position on parcel delivery, please see our [reply](#) to the Public Consultation on cross-border parcel delivery.

- A wide ranging review to prepare legislative proposals to tackle unjustified Geo-blocking

Online traders must have freedom of contracts as do all traders. There are many objectively justified reasons for a cross-border sale to be blocked, not necessarily of legal nature, such as the very high compliance costs, copyright, or even non-viable or feasible business models. It therefore appears necessary to maintain the possibility for companies to make the choice to distribute where they wish to. If harmonisation of laws in Europe should allow to lift certain barriers hindering companies in their conquest of new cross-border markets, it should not be forgotten some blocking results from certain legal obligations or the cost of work. Overall, UEAPME is against regulating geo-blocking because this would restrict contractual freedom of businesses and we do not see evidence of unjustified geo-blocking.

- Legislative proposals for a reform of the copyright regime

The copyright systems in the EU member states are fragmented, which decreases legal security. Fragmented copyright laws are a major problem in the digital world. Actions are needed, as copyright underpins creativity and cultural history in Europe. This is a problem for copyright-based businesses. In copyright regulation, licensing of works should be facilitated in a cost-effective way both in cross-border and domestic situations. The question on transferability of legally acquired contents should be solved on a market-conform basis. Allowing and not restricting different business activities should be the purpose of the digital single market.

The DSM Strategy foresees a harmonised and revised European copyright framework describing digital content as one of the main drivers for growth of the digital economy. The reform should serve to speed-up the use of media content and to achieve a greater scope of business activities built around the increased availability of attractive and diverse content to European audiences.

- Review of the Satellite and Cable Directive

The Satellite and Cable Directive of 1993 should be revised, taking into account new technological developments. Such innovations are needed to allow European operators to stay competitive. Greater legal certainty, and simpler and exhaustive rights-clearance mechanisms will contribute to an increased offer and speedier provision of attractive content.

- Legislative proposals to reduce the administrative burden on businesses arising from different VAT regimes

The importance of cross-border e-commerce is growing. The associated costs and risks certainly discourage many SMEs from offering their services in other EU Member States. They are deterred by 28 different rules on value added tax as well as by language difficulties when dealing with the authorities and forms in other Member States. Reducing VAT related burdens is crucial to encourage SMEs selling cross-border. A uniform VAT form within the EU would have an alleviating effect and would simplify the procedure. However, the current proposal negotiated by the ECOFIN Council will not achieve such a simplification and will end-up with another 28 different declarations. Furthermore, the so-called 'one-stop shop' would be required in the long run in order to allow all cross-border services providers to declare VAT in their home country in a simple and practical manner.

Pillar II: Creating the right conditions for digital networks and services to flourish

A fast internet connection is the prerequisite for further innovation, growth and employment and has to be at the top of the agenda for creating a European digital single market. This applies both to a small online shop and a supplier with a global customer base. However, not all SMEs are equipped with a sufficiently fast internet connection to face these challenges. Furthermore, Europe is behind other regions of the world concerning the expansion of broadband fibre networks. Whilst during the funding period 2014-2020, 9.2 billion Euro were still planned inter alia for the investment into fast or very fast broadband networks, this amounts to merely 1 billion Euro now, which is a major setback for the digital agenda. Thus, more European funds are urgently needed in order to still reach the broadband targets for 2020. The expansion of the broad band infrastructure must account for a significant part of the investment package of the EU Commission.

As regards the expansion of broadband, it is necessary to also deal with: equipment of all new buildings or buildings to be renovated with a high speed broadband infrastructure; access to the necessary infrastructure subject to reasonable terms, conditions and prices; better coordination of tasks; cutting down of procedures for processing and approval – also for the use of terrestrial technical systems.

- Legislative proposals to reform the current telecoms rules

The overhaul of the current telecoms rules has to result in a future proof common framework for all digital services, taking into account dramatic changes in the market, evolving consumer habits and new positions of market power in the digital economy. Common issues such as portability, interoperability, openness and transparency should be addressed in a common manner for all levels of the value chain. The Internet needs to be an open, secure and trusted environment in which all stakeholders can operate in confidence.

The current telecoms regulatory framework as well as regulatory practice have to be adapted through smart short-term measures focused on improving the investment conditions by a simplification of access regulation and the application of the same rules to similar services to address current asymmetries in the regulatory treatment of Over-the-Top (OTT) players and telecoms network operators.

SMEs need to rely on cross-border communication without additional roaming fees. Any additional costs when doing business abroad keep SMEs from offering their services in other EU Member States. The abolition of roaming fees in the EU by mid-2017 within a “fair-use policy” is a step into the right direction. Net neutrality is a key factor in this context, with the non-discriminatory transmission of data needing to be set forth in legislation in all Member States. All services publicly available on the Internet must have the same degree of accessibility.

In order to realise a well-functioning internal market, the necessary infrastructure has to be created.

There is a general concern about guaranteed internet access / access to broadband, as crucial documentation and enterprise resources cannot be put online unless they can be guaranteed to be accessible. The alternative is to build costly redundancies into the business’ systems, which would cancel out all the benefits of cloud adoption. Public authorities should refrain from obliging the telecom providers to use the same routes and tranches in order to avoid that, for example, due to roadworks, all cables are cut.

Responsible public authorities, at European, national and local level should tackle the problem of the international interconnectivity urgently. 4G communication should become less expensive and, for business use, should be combined with the classical cable connectivity in order to ensure that there are fallback positions. It should be ensured that, for business lines telecom providers offer an SLA automatically giving the business user the right to use 4G in case the business lines do not function. The telecom providers should be obliged to guarantee that there is the necessary capacity to absorb this.

- Review the Audiovisual Media Services Directive

There is a need for a modernisation of the Audiovisual Media Services (AVMS) Directive and for levelling the playing field: regulations should become applicable to all linear and non-linear audiovisual services, irrespective of the provider's place of residence, preferably via cutting-down overly-prescriptive rules.

Furthermore, enabling more room for manoeuvre for content providers should be go alongside refraining from introducing new burdens on platform operators in the field of audio-visual media service regulation; in view of the existing highly competitive landscape new burdens would put at risk operators' ability to contribute to media diversity and offer attractive services to users.

- Comprehensive analysis of the role of platforms in the market including illegal content on the internet

Online platforms and "sharing economy" have the potential to make an effective contribution to the efficiency-enhancing consolidation and dissemination of market-based division of labour. It is however essential to develop an adequate antitrust control program for the approaches and instruments yet to be developed. Furthermore, it has to be secured that the goods and services distributed via a platform must meet the same legal requirements as goods and services provided locally.

On regulatory framework for platforms, UEAPME would like to give some comments on the vehicle telematics platforms in particular, and industrial equipment in general, using 'digital' repair. The competitive role of vehicle telematics platforms and, by corollary, the rights of independent service providers to directly access and use vehicle data and information, need to be included in the Digital Single Market Strategy assessment.

The automotive aftermarket, with advanced value chains providing a highly competitive service to European consumers and businesses, is highly affected by the Digital Single Market. It must be ensured that the new in-vehicle remote connectivity technology – platforms – respects the principles of fair competition for independent service operators and continues to support open choices for consumers. This is crucial to not only ensure that all automotive aftermarket market operators continue to have the ability to innovate and compete in a Digital Vehicle Repair and Service Market, but also that new innovative vehicle-related convenience services and products can be developed.

In this context, the automotive aftermarket is an example of several sectors facing similar challenges in the digital era, regarding 'digital repair'. Wherever a product, typically industrial equipment or investment goods, costs a certain amount, such that it is more economic to service and repair it rather than purchase a new one, and where it is connected to the internet, the same principles apply. Examples of such products include for example industrial 3-D printers, industrial PCs and equipment (e.g. refrigeration), lifts, house applications (e.g. home heating) or construction equipment.

Faced with a monopolistic control over data and information needed to carry out repair and maintenance by the original manufacturer of the primary product, independent repair service providers will be forced out of the market. Businesses will be forced to sign restrictive contracts with the respective original manufacturers to allow repair access to these products.

UEAPME suggests creating a regulatory framework for the remote communication of 'intermediaries' (independent service providers) with the product in question to maintain their ability to innovate and also compete in the digital era and to allow the development of 'connected' services and products.

- Review the e-Privacy Directive

A reliable European framework is essential for the growth of the digital, increasingly mutually networked added value and last but not least the online trade. The non-discriminatory access to data flows is an essential element for small and medium-sized companies to take advantage of the opportunities from the outset (example 'smart home'). For this purpose a uniform level of protection for data protection throughout Europe is guaranteed, as it should be achieved through the Proposal for a Regulation on the protection of individuals with regard to the processing of personal data and on the free movement of such data (the so-called EU General Data Protection Regulation) submitted by the European Commission. The applicable data protection in Europe is still based on the 1995 Data Protection Directive. But this Directive does neither take account of the technologically advanced changes that have taken place in the meantime nor does it contribute to the EU-wide uniform data protection rules. Uniform data protection rules are basically welcome for SMEs. Nevertheless the specific requirements of micro and small enterprises should be taken into account. These should not be burdened with overly strict bureaucratic obligations on the provision of information and documentation and authorisation requirements. For this reason the application of the “Think Small First principle” is essential for SMEs.

A data protection officer (DPO) should only be compulsory if the companies' core business is data processing. Once in force, the GDPR will ensure that processing of personal data of citizens residing in the EU is taking place according to EU law, irrespective of where they are processed, in- or outside the EU. A harmonised approach ensuring equal application and enforcement of this regulation is crucial for creating a level-playing-field with Over-The-Top (OTT) players, which so far often circumvent strict data protection rules in the EU.

Furthermore, once the GDPR is adopted, the Commission should review the e-Privacy Directive. This review is overdue and should lead to a repeal of at least all provisions on aspects covered in the GDPR as well as avoid any double regulation. The co-existence of both of legislations would otherwise lead to legal uncertainty and dual compliance requirements.

To know more about UEAPME's Position and actions on data protection, please visit our [website](#).

- Establishment of a Cybersecurity contractual Public-Private Partnership

Priority has to be given to cyber security. Awareness raising campaigns and support measures for SMEs have to be set up. Malware attacks do not stop at national borders so that the cooperation of individual safety authorities within the EU must be expanded without the need for setting up a new authority or organisation. To ensure a high-level of Cyber Security in the EU, the Directive on Network and Information Security (NIS-Directive) should be adopted without delay and ensure a high-level all across the digital value.

Although most company owners use virus protection for their internet access, in many cases even additional firewalls, the ever increasing and more skilfully performed phishing attacks, Trojans or password thefts cause uncertainty amongst them. Public and private partnerships are needed in robotics, big data, 5G, high performance computing and industrial internet. Questionable is whether a Public Private Partnership with the industry can pay particular attention on the special needs of SMEs in the field of cybersecurity.

Pillar III: Maximising the growth potential of our European Digital Economy

- Initiatives on data ownership, free flow of data and on a European Cloud.

UEAPME warmly welcomes the announced European Cloud initiative. This initiative should build on the findings and tools provided by the CloudingSMEs project (www.cloudingsmes.eu). The project has shown that the intermediary organisations also need to be correctly informed of the barriers and opportunities of cloud computing. Additionally, these organisations have the same concerns as SMEs in general. If one wants to accelerate the adoption of cloud computing by SMEs, capacity building activities have to be developed and awareness has to be raised also amongst representative SME organisations and other intermediaries.

Entrepreneurs are more and more confronted with “digital natives”: young people raised in an environment with internet and electronic communication. This needs a certain adjustment. Digital technology has become an essential part of the entrepreneurial world and should be part of an entrepreneur’s curriculum. Taking into account the growing digitalisation of our society, it will of course be important to develop the e-skills of the owner/managers as well as of the employees.

Any initiative aimed at increasing the SME use of cloud solutions must actively involve the advisory community, if a critical mass is going to be reached.

Raising awareness activities should take into account not only the sector of the target SMEs but also the size, the profile and the lifecycle of the enterprise (start-up, established enterprise, etc.). CloudingSMEs has discovered that SMEs in different sectors exhibit radically different levels of awareness about cloud computing. Another key finding is the need among SMEs for neutral and objective information and assessments about the cloud providers’ services in the broad sense (different services, technical possibilities, content of the SLAs). The most important points in cloud computing contracts SMEs are concerned about are quality of services in general, followed by physical and network security and support or management incidents. The top areas where SMEs need support are technical knowledge, security and data privacy issues, ROI Analysis, understanding and negotiating SLAs and contract issues, and on how to find the right provider.

An SME needs, first off, expert answers to their general ICT/Cloud computing questions. This should be offered through first-line advice in their own language. An SME owner needs careful consideration of the kind of services the enterprise is able to buy, the interoperability of these with the current software, the pricing of bolt-on services, the differences between providers and the risk attached to each option. This audit should give the entrepreneur a clear picture of the ICT needs.

It has to be ensured that SMEs are able to make informed choices and have access to objective, comparable and relevant information when choosing services and providers. The big players should be encouraged to install an information line for customers having questions on the effective cost calculation. The cost calculation provided by the suppliers could then be checked against the rules of unfair competition and misleading publicity. If this does not function in the short term, one should think about the introduction at European level of a real information obligation for the big players towards the business clients, to allow the customer to make the choice he/she really wants to make. It is now common knowledge that SMEs suffer from a lack of transparency on the part of Cloud service providers regarding the conditions for provision of the services, particularly in terms of security and knowing whether their data are transferred abroad, and more precisely to which country. In addition, cloud computing generates new risks not known by SMEs.

SMEs need support and accompaniment in understanding security, privacy and data protection risks in cloud computing along with related solutions. In order to provide SMEs legal certainty, the public authorities at national level should provide the SMEs with clear, easily understandable guidelines and tools to assess the risks of cloud computing in the field of data protection and privacy and on how to manage data.

This should be accompanied by awareness raising activities in cooperation with the representative SME organisations. While there is already now an urgent need, these kinds of actions need to be done also on the occasion of the upcoming adoption of the new Regulation on Data Protection.

Balanced and SME friendly contract terms have to be ensured at European level. Conflicts between a provider and an SME should be dealt with quickly and efficiently through an ADR system. National bankruptcy legislations should ensure that cloud customers should have guaranteed access to their data in case of bankruptcy of the cloud provider.

- Adoption of a Priority ICT Standards Plan and extending the European Interoperability Framework for public services

Strict observance of the principle of interoperability is essential if a digital single market is to be a success in Europe. The EU has the task of coordinating interoperability, not of standardising it. Although national authentication and transport systems (secure e-mail traffic) contribute to the secure transmission of data, different authentication and transport systems in the individual countries of the European Union are likely to prove to be an obstacle in transnational electronic commerce. While the introduction of a standard European authentication and/or transport system (e-mail traffic) is not seen as the right way, interfaces facilitating secure cross-border network traffic need to be defined.

- New e-Government Action Plan including an initiative on the 'Once-Only' principle and an initiative on building up the interconnection of business registers.

The various efforts of the EU countries in the field of eGovernment should be continued and expanded. Public services also need to be usable digitally. eGovernment initiatives in the single EU Member States should be created so as to be implementable by citizens of another EU Member State.

Furthermore, the EU Commission should pay more attention to the fact that digitalisation is giving the required educational significance in all EU Member States. The strategy should also further stress the human capital and the digital skills of entrepreneurs. To create a European Digital Economy and Society with growth potential, we should strengthen digital skills to a bigger extent while respecting educational activities in the Member States to reach the robust human capital and world-class expertise needed in an inclusive e-society. It is absolutely necessary to strengthen the resources for continuous and profession education to e-skills. Indeed, only this can help to tackle the problem of the mismatch between supply and demand, by developing a supply of training of short or medium duration sufficiently operational and updated compared to the needs of the market.

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