

The Commission's Communication on platforms – a welcomed improvement but proceed with caution

EDiMA*, the European association representing European and global online platforms and innovation technology companies operating in the EU, read and assessed the European Commission's "Communication on Online Platforms and the Digital Single Market – Opportunities and challenges for Europe" with interest. Whereas EDiMA continues to support efforts to create an innovative framework and environment to grow and foster new online platforms and is encouraged by the European Commission's pragmatism on some issues e.g. the emphasis on seeking to solve problems and the reinforcement of the importance of co- and self-regulation, some areas of the communication remain slightly ambiguous and some initiatives referenced are still concerning.

Pragmatic approach welcome, but more evidence needed

EDiMA supports the European Commission's intention to solve existing problems instead of adding unnecessary regulatory instruments. However, we caution for the need to focus on those areas where there is strong objective evidence of a problem that is specific to online platforms. An example that was mentioned extensively in the Communication pertains to apparent concerns regarding business-to-business relationships with online platforms, yet no clear definition is given as to what the real problems are or indeed if these are specific to relationships with online platforms. Furthermore, it is essential that the freedom to conduct business in Europe is upheld as long as companies comply with trading regulations that are in place, such as the Unfair Commercial Practices Directive.

Ensuring the safe harbour principles in the e-commerce Directive remain in tact

The Communication also reveals a continuing desire to define problems – and solutions – for all platforms, rather than taking a case-by-case approach. The paper recognises that there are benefits to different approaches and ways of implementing policy direction, but then focuses on one method of approach.

EDiMA is encouraged that the European Commission recognises the strength of the e-commerce Directive as an essential pillar of the continued growth and success of e-commerce in the Digital Single Market. We welcome its intentions to craft guidance for companies regarding the way platforms' limited liability will be respected in instances where self-regulatory measures are undertaken. However, some ambiguity remains as to some of the more intrusive activities platforms may be asked to perform regarding e.g. the use of copyright-protected works in the context of user-generated content or regarding some of the monitoring obligations that may result as some of the aspirations under what is called the platforms' 'Duty of Care'.

EDiMA also acknowledges the European Commission's intentions to bolster co- and self- regulation processes and recognises such efforts already in place today, namely:

- EU Internet Forum addressing concerns around hate speech and terrorist content online;
- INHOPE dealing with illegal content online and committed to stamping out child sexual abuse from the Internet;
- EUIPO discussions with rights holders on how to address counterfeit goods and IPR infringements online;
- EC follow-the-money expert stakeholder groups on how to address counterfeit goods and IPR infringements online.

While we support and are active participants in an array of self- and co- regulatory dialogues, we stress that any such initiatives should establish a clear problem definition, should not obscure legal certainty, nor circumvent the limited liability provisions established in the e-commerce Directive.

Targeted, thoughtful approach needed for Contract Rules and Tangible Goods

EDiMA is deeply concerned that a similarly superficial approach on upcoming initiatives like that taken in the Directive proposals on Contract Rules for Digital Content and Tangible Goods. The two proposals launched at the end of 2015 risk completely fragmenting the European internal market not only between Member States but also between the online and offline worlds. Furthermore, the proposal on digital content is being used as a vehicle to introduce concepts that reach far beyond the remit of consumer protection or contract law: namely issues pertaining to the definition of data as opposed to digital content, the way in which data is considered a counter performance, the issue of data ownership and data usage based on a rather superficial understanding of these concepts. Last but not least, the timing of the launch of these proposals appear odd in light of the ongoing REFIT exercise. EDiMA remains deeply concern that the proposals help to foster e-commerce in Europe.

Taking this into account, EDiMA seriously questions how the proposed Regulation on geoblocking contributes to achieving this goal. Whereas EDiMA understands the high level objective of this legislative piece we believe that the draft Regulation practically discourages companies from actively seeking to provide e-commerce services across borders in Europe if they want to avoid unnecessary complexities from a compliance perspective. The Commission proposal unfortunately fails to acknowledge the wide, legitimate reasons for justified geoblocking. Many startups, for example, only aim to test their products in certain national markets before scaling up across Europe. In that respect, requirements to provide access to “online interfaces” and allow the purchase of products regardless of borders can be a huge challenge to control the environment and value-chain.

EDiMA continues to be a strong advocate of the Digital Single Market in principle and will therefore continue to be a constructive partner in discussions that the Commission would like to have regarding platforms and the way they work. We look forward to working towards a welcoming digital landscape for online businesses to prosper in Europe and offer the best services to the European consumer as a result.

**EDiMA is the European association representing European and global online platforms and innovation technology companies operating in the EU. Members include: Airbnb, Allegro Group, Amazon EU, Apple, eBay, Expedia, Facebook, Google, King, LinkedIn, Microsoft, Mozilla, PayPal, Tripadvisor, Twitter, Yahoo! Europe, Yelp.*