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# Establishing a Digital Single Market in Europe



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## Introduction

The economic opportunities created by the internet and other forms of electronic communication (the “digital economy”) are considerable and are growing rapidly. They have the potential to both raise Europe’s growth rate and help tackle disparities in wealth between parts of the EU. A major study by Copenhagen Economics in 2010 showed that the digital economy is a significant source of growth already and that even on a narrow definition of the Digital Single Market (DSM), a further four per cent of EU GDP could be added by 2020 by establishing a DSM quickly.<sup>1</sup> An important aspect of the growth of the digital economy is its inter-relationship with the wider economy; for example, better use of information and communications technology (ICT) is proven to raise productivity.

But the growth of the European digital economy is hampered by a number of factors including: potentially protectionist elements in the current draft EU legislation on data protection; a lack of access to fast broadband; complex national intellectual property laws; a failure of SMEs to make full use of the commercial opportunities the internet provides; and a reluctance by consumers to buy online across borders. Put simply, there is no digital single market in the EU now but by removing these types of barriers to trade, one could be created with the potential to lift growth and create jobs in new industries right across Europe.

Plans to establish the digital single market were a key element within the EU’s “Europe 2020” economic strategy for the current decade, (adopted in June 2010) and in June 2014 the European Council reaffirmed the objective of establishing the DSM by the end of 2015; this is an ambitious target. This paper considers the barriers to establishing a DSM and the progress made so far.

## Background

The Commission published a plan in 2010 for radically expanding the digital economy in Europe with 101 policy recommendations: the Digital Agenda (see Annex for list of 13 key targets). This wide-ranging action programme recognised that the regulatory framework for the EU’s single market has not kept pace with changes in the global economy. The rapid development of the digital economy needs a regulatory framework to enable individuals and businesses to trade digitally across national borders in the EU as freely as they trade within Member States. Currently that framework is only partly in place, resulting in 28 different digital markets and not one. For example, a British customer cannot choose a mobile telephone service provider in another Member State, nor can they subscribe to Pay

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<sup>1</sup> Copenhagen Economics, *The Economic Impact of the European Digital Single Market*, European Policy Centre, 16 March 2010

TV or download programmes or films from another Member State. To achieve a DSM, policy changes are required at both EU and Member State level, and increased infrastructure investment is needed in many Member States (including the UK).

Developments in the digital economy cannot be looked at in isolation from the wider question of the EU's economic performance as a whole. The recession and low growth of the period since the financial crisis in 2008 has to be seen against a global economic background in which there has been continuing growth in the emerging economies. Over the period 2008-2013 there was GDP growth (at constant prices) of 38 per cent in India and 54 per cent in China.<sup>2</sup> That would be less a matter of concern if Europe was doing better at developing the digital economy compared to its competitors, but it is not. The digital economy is four per cent of the total economy in the EU compared to six per cent in the US, seven per cent in both China and Japan and it is half of the size of the exceptionally impressive eight per cent share in South Korea.<sup>3</sup>

This relatively poor performance also represents an opportunity: the potential to add four per cent to EU GDP by 2020 is equivalent to €500 billion, or more than €1,000 for every EU citizen. This means that establishing a DSM could have a similar economic impact to the 1992 Single Market programme. It would bring large benefits to innovation in the EU and would boost productivity, and, because DSM facilitates easier cross-border trade, increases competition and broadens choice, it would benefit consumers.

There are potential spin-offs for the public sector too, as more effective use of ICT and digital services could improve efficiency and provide better quality of services, which in turn could lead to financial savings.

Taken as a whole, Copenhagen Economics suggests that at least 30,000 additional jobs would be created every year in the EU with the establishment of a DSM and there are other estimates that suggest that figure could be far higher.<sup>4</sup>

There are specific benefits for the UK economy because the digital sector employs three per cent of the UK workforce and contributes almost £69 billion in gross value added to the UK (7.4 per cent).<sup>5</sup> Employment in the digital sector grew by 5.5 per cent between 2009 and 2012, more than three times employment growth in the broader UK economy. Importantly, the more than one million ICT specialists in work in the UK are likely to be in full-time, permanent employment and over half of all ICT workers are employed in professional level occupations.<sup>6</sup> The digital economy in the UK has been expanding when other parts of the economy have not been growing at the same rate or are contracting. For example, the number of UK jobs in the information and communications sector related to the Single Market almost doubled between 1997 and 2011; by contrast manufacturing jobs declined by 15 per cent.<sup>7</sup>

<sup>2</sup> See International Monetary Fund, *World Economic Outlook October 2014: Legacies, Clouds, Uncertainties*, 10 October 2014

<sup>3</sup> Cited in HM Government, 'British Ambassador on need to strengthen the Single Market', 7 April 2014

<sup>4</sup> Copenhagen Economics, *supra* n. 1, pp. 36-37; estimating the size and value of the digital economy is technically complex, see European Commission, *Working Paper: Digital Economy - Facts & Figures*, Digit/008/2014, 4 March 2014

<sup>5</sup> UK Commission for Employment & Skills, *Technology and skills in the Digital Industries*, Evidence Report 73, 6 September 2013, p. ix

<sup>6</sup> *Ibid.*

<sup>7</sup> Alasdair Cavalla, Scott Corfe & Charles Davis, *UK jobs supported by the exports to the EU: CEBR analysis of UK jobs associated with demand from the European Union*, Centre for Economics and Business Research, 28 March 2014, p. 11

**The Digital Agenda: Progress so Far**

To deliver the DSM action is needed in five areas:

- Legal/regulatory frameworks;
- Infrastructure – such as broadband;
- Skills;
- Confidence;
- Research and development.

These four areas require a combination of action at national and EU level. Issues primarily dealt with at national level are not fully discussed here – e.g. skills, research and development, and infrastructure. The EU does contribute to improving some of these latter areas through its funding of cross-border research and development, through the Trans-European Networks programme to improve infrastructure and through EU-wide education programmes, such as Erasmus. But the EU's main role is in establishing an effective legal and regulatory framework to enable the DSM to operate on a level playing field across the Single Market; this is discussed below.

Towards the end of its last session, the European Parliament gave first reading approval to a series of key DSM-related pieces of draft legislation:

- Connected Continent (CC) – legislation to create an integrated telecoms market across the EU, including simplified regulation through single authorisation for telecoms companies, open access to the internet and the abolition of roaming charges<sup>8</sup>;
- Network and Information Security (NIS) – banks, energy companies and providers of “cloud” computing platforms will have to inform regulators when they have a significant cyber security incident, to replace the current voluntary approach<sup>9</sup>;
- General Data Protection (GDPR) – this regulation would create a single data protection regulation system for all Member States, reducing costs to business by roughly €2.3 billion a year. Companies outside the EU would have to adhere to the same rules as companies based inside the EU and there would be greater rights for EU citizens in respect of the protection of their personal data.<sup>10</sup>

The Commission proposals have not yet been adopted by the Council and there are significant differences between Member States within the Council and between the Council and the Parliament. At first reading the Parliament was supportive of the Connected Continent legislation, but it passed an amended version of the Network & Information Security draft directive to exclude public administrations from the scope of the legislation and to extend its scope to other sectors (including financial services). The Parliament also amended the General Data Protection regulation to significantly expand its scope, particularly in terms of the protection of personal data.<sup>11</sup>

<sup>8</sup> See European Commission, 'Connected Continent legislative package', 20 October 2014

<sup>9</sup> Pinsent Masons, 'European Parliament backs new EU rules on network and information security', 17 March 2014

<sup>10</sup> See European Commission, *Data Protection: Progress on EU reform now irreversible after European Parliament vote*, 12 March 2014

<sup>11</sup> 2015 OJ C 85/1, pp. 42, 192, 210

This data protection legislation, a critical part of the reforms necessary to achieve a DSM, is particularly sensitive and, if anything, concerns have increased since the Parliament agreed its amended text at first reading in March 2014. Mr Juncker has committed himself (in his political guidelines for the new Commission) to “swiftly concluding” the negotiations on this legislation (but this is more a matter for the Council and the Parliament than the Commission).<sup>12</sup>

In order to measure progress towards establishing a DSM, the EU adopted a number of specific targets in 2010 (listed in the Annex); performance against these targets is assessed annually. These targets are a valuable guide but they are indicators of trends rather than specific policy changes of the kind needed to establish a DSM. The report for 2013 showed that:

- on the target of 100 per cent fast broadband for all by 2020, the figure was 62 per cent in 2013, more than double the figure in 2010 but rural areas still lag behind;
- the figure for getting roaming at national prices everywhere by 2015 was 63 per cent;
- 47 per cent of the population are shopping online – close to the 2015 target of 50 per cent;
- the 60 per cent target for disadvantaged people using the internet regularly by 2015 has also nearly been reached at 57 per cent last year;
- but the target of getting 33 per cent of small and medium-sized enterprises (SMEs) selling online by 2015 will be missed as the 2013 figure was just 14 per cent;
- similarly the target of getting 20 per cent of consumers to buy online across borders by 2015 will be missed as it was only 12 per cent in 2013.<sup>13</sup>

The annual scoreboard shows that progress is being made in some important areas but there is a long way to go.

Prior to the adoption of the Digital Agenda, the EU had legislated in a number of ways to assist the development of the digital economy. For example, the Consumer Rights Directive 2011 contains measures to protect consumers against hidden charges and costs when buying over the internet and as long ago as 1999 the EU adopted a regulation to enable the recognition of electronic signatures.

### **Unresolved Issues**

Some of the obstacles to creating the DSM have a spill over into wider trading and political relationships beyond the EU (e.g. over data protection and cyber security with the USA, Russia and China and intellectual property with several countries). There is a danger that EU measures might create a closed DSM with regulatory standards set at a level which would run counter to the EU's open markets approach.

It is also important to realise that many of the impediments to a DSM are not to do with the technology. As the former Chair of the Parliament's Internal Market Committee has put it:

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<sup>12</sup> Jean-Claude Juncker, *A New Start for Europe: My Agenda for Jobs, Growth, Fairness and Democratic Change*, 22 October 2014, p. 5

<sup>13</sup> See European Commission, 'Digital Agenda Scoreboard', 22 October 2014

A number of them are related to softer factors like consumer confidence, lack of trust, worries about being able to have guarantees accepted, return of goods, parcel delivery, all sorts of things.<sup>14</sup>

Building confidence requires more action by digital sellers to improve redress procedures and their own accessibility and responsiveness. Some sectors (clothing is one of the most obvious) are less suited to digital sales than others.

### Intellectual Property

Differences in national regulation of intellectual property (IP) are an obstacle to completing the DSM. Most sellers of digital books, music, films or TV programmes must negotiate national laws on copyright in each market they operate in; for example, the BBC's iPlayer service is not available outside the UK for this reason. A real effort needs to be made to overcome the substantial differences in national laws.<sup>15</sup> The British Government's Hargreaves report on intellectual property and growth recommended that the EU adopt a cross-border licensing scheme that would protect copyright holders whilst making a digital single market far easier to establish.<sup>16</sup> Competition law may also be able to be used to address some of these problems, especially restrictive licensing agreements.

A common European patent is now being created as a result of 25 Member States (including the UK) deciding in 2012 to agree to proceed under the enhanced co-operation procedure.

### Internet Access

As noted above, fast, reliable access to the internet across the EU is not yet achieved. In the UK the target of delivering superfast broadband (that is, at least 30 megabytes per second) to 90 per cent of UK buildings by 2015 is likely to be missed (it was 75 per cent in 2013); critics see the BT monopoly as an obstacle to success. In other EU Member States the performance is often worse, even amongst the most advanced economies: the figure for Italy was no more than 15 per cent and no more than a quarter in France too.<sup>17</sup> More competition amongst telecoms companies across the EU is needed for universal broadband rollout to be achieved.

### Data Protection

The 1995 Data Protection Directive set the framework for EU law in this field but it has been overtaken by developments in technology. In 2012 the European Commission brought forward proposals to modernise the law but passage of the legislation has been slow (see above). The exposure by Edward Snowden in June 2013 of the extent of US (and UK) interception of communications data caused considerable anger in many EU Member States, notably in Germany where there is acute sensitivity about government intrusions into privacy.

These concerns focus around the storage of personal and commercial data as well as its security. The Russian Parliament has already legislated to require that Russian users' data is held within

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<sup>14</sup> Malcolm Harbour, 'How the UK continues to shape the Single Market', in Adam Hug (ed.), *Renegotiation, Reform and Referendum: Does Britain have an EU Future?*, Foreign Policy Centre, 1 April 2014

<sup>15</sup> See, e.g., Ansgar Ohly (ed.), 'Common Principles of European Intellectual Property Law', *Geistiges Eigentum und Wettbewerbsrecht*, 62(8) (2012)

<sup>16</sup> Ian Hargreaves, *Digital Opportunity: A Review of Intellectual Property and Growth*, 17 May 2011

<sup>17</sup> Ofcom figures cited in '75% of UK Homes Can Get 30Mbps Capable Superfast Broadband', Mark Jackson, *ISPReview*, 12 March 2014

Russia and two Canadian provinces have enacted similar laws to ensure that public contractors retain personal data within the province.<sup>18</sup> Similar policies are under discussion in Germany, where Deutsche Telekom has proposed a secure email network based on the servers storing the messages being kept in Germany to prevent foreign agencies scanning the messages of German citizens and companies.<sup>19</sup> Such an approach would have big, and potentially protectionist and restrictive, implications for the way the internet operates today and pushes in the opposite direction to US policy (where many of the internet's host servers are currently located). Both the US Government and major US IT firms want to see current rules on transferring data across borders liberalised rather than tightened.<sup>20</sup>

### Cloud Computing

Apart from an absence of an agreed definition, there are considerable data security issues with cloud computing. This is connected to the question of which jurisdiction should have legal oversight of a particular cloud.

### Legal and consumer protection issues

A European Commission study found that if business invoiced electronically rather than on paper, it could save businesses €40 billion a year – but this cannot happen because of technical obstacles and legal uncertainties.<sup>21</sup> Consumers need to feel safe online; at present many consumers will not buy goods or services online because they do not feel confident enough. There are issues of cyber security for payments, redress if the goods are faulty or are not delivered and language.

### Spectrum

The radio spectrum is controlled by national governments and they have proved unwilling to adopt a joint approach at EU level, primarily because this is a major source of revenue for some Member States. More needs to be done to make granting of access to the spectrum more open and flexible.

### Skills

The question of skills is principally a national and not EU issue but it is crucial. In the UK, for example, a series of reports have highlighted the increase in the number of ICT posts that will need to be filled and the shortage of suitably qualified candidates.<sup>22</sup> This problem is replicated across the EU and while free movement of persons helps to solve it, more investment is needed in training and education to ensure a ready supply of qualified people.

## **Conclusion**

A DSM is overwhelmingly in the interest of the EU Member States (and particularly the UK) but it is not an easy objective to realise. In particular, there need to be hard discussions about copyright law reform and about data protection before the DSM can be effective. It

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<sup>18</sup> Cited in 'Digital trade: Data Protectionism', Shawn Donnan, *Financial Times*, 4 August 2014

<sup>19</sup> 'Can Germany really keep bytes within its border?', Alex Evans, *The Local*, 29 November 2013

<sup>20</sup> Shawn Donnan, *op. cit.*

<sup>21</sup> European Commission, *Reaping the benefits of electronic invoicing for Europe*, COM (2010) 712 final, 2 December 2010

<sup>22</sup> 'Britain faces 'growing shortage' of digital skills', Josie Gurney-Read, *The Telegraph*, 23 July 2014

will be important to look at these issues in the light of the EU's trading relationships with the rest of the world.

As ever in the EU, progress towards a DSM will not be possible without firm political leadership. It could be helpful if the incoming Commission were to table a white paper like that produced in 1984 by Commission President Jacques Delors and the Commissioner for the Internal Market, Arthur Cockfield, on the Single Market, which was then endorsed by the European Council. The nomination of a Vice President for the Digital Single Market in September 2014 (Andrus Ansip) was a welcome step and it indicated a determination at the highest level to ensure that the EU delivers on its digital agenda commitments.<sup>23</sup>

**October 2014**

### **ANNEX: Key Digital Agenda Targets**

- the entire EU to be covered by broadband by 2013
- the entire EU to be covered by broadband above 30 Mbps by 2020
- 50 % of the EU to subscribe to broadband above 100 Mbps by 2020
- 50 % of the population to buy online by 2015
- 20 % of the population to buy online cross-border by 2015
- 33 % of SMEs to make online sales/purchases by 2015
- the difference between roaming and national tariffs to approach zero by 2015
- To increase regular internet usage from 60 % to 75 % by 2015, and from 41 % to 60 % among disadvantaged people
- to halve the proportion of the population that has never used the internet from 30 % to 15 % by 2015
- 50 % of citizens to use e-government by 2015, with more than half returning completed forms
- all key cross-border public services, to be agreed by Member States in 2011, to be available online by 2015
- to double public investment in ICT R&D to €11 bn by 2020
- to reduce energy use of lighting by 20% by 2020

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<sup>23</sup> See Jean-Claude Juncker, *Mission Letter to Andrus Ansip, Vice-President for the Digital Single Market*, European Commission, 1 November 2014



## Senior European Experts

The Senior European Experts Group is an independent body consisting of former high-ranking British diplomats and civil servants, including several former UK ambassadors to the EU, and former officials of the institutions of the EU.

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