



EUROPEAN COMMISSION

Brussels, 3.12.2015
C(2015) 7825 final

Dear President,

The Commission would like to thank the Bundesrat for its Opinion concerning the Digital Single Market Strategy {COM(2015) 192 final}.

The Commission welcomes the Bundesrat's supportive Opinion which is an important contribution to the debate on the Strategy.

Achieving a Digital Single Market will ensure that Europe maintains its position as a world leader in the digital economy, helping European companies to grow globally. Europe has the capabilities to lead in the global digital economy but we are currently not making the most of them. Fragmentation and barriers that do not exist in the physical Single Market are holding the European Union back. A Digital Single Market will improve citizens' access to goods and services and will create new sources of employment.

In that regard, the Commission shares the Bundesrat's view that in the digital environment, national measures are not sufficient to address new challenges. The Commission therefore welcomes the Bundesrat's support to specific elements of the Digital Single Market Strategy. The Commission is also pleased to provide a number of clarifications in response to the Bundesrat's observations regarding the strategy, as set out in the annex.

The Commission would like to stress that the views of national Parliaments and other key stakeholders are also important in view of the implementation of the Digital Single Market Strategy. In that regard, the Commission has launched a major public consultation exercise on key elements of the Digital Single Market Strategy to gather views and opinions. The consultations on contract rules for online purchases, on cross-border parcel delivery and on the Audiovisual Media Services Directive have been completed and the results are currently being analysed. Other consultations are ongoing at the moment, notably on the Cable and Satellite Directive, the regulatory framework for electronic communications networks & services, Internet speed and quality, Information and Communication Technology (ICT) standards, online platforms, cloud, data and the collaborative economy, unjustified geoblocking and VAT. Consultations on e-government and on public private partnership in the area of cybersecurity are also scheduled for this autumn.

*Mr. Volker BOUFFIER
President of the Bundesrat
Leipziger Strasse 3-4
D-10117 BERLIN*

This year, the Commission will present its first proposals to implement the Digital Single Market Strategy, as regards contract rules for online purchases as well as copyright.

In that regard, the Commission counts on Germany's strong support in delivering the necessary measures to achieve a genuine Digital Single Market.

The Commission hopes that the clarifications provided in this reply address the issues raised by the Bundesrat and looks forward to continuing our political dialogue in the future.

Yours faithfully,

*Frans Timmermans
First Vice-President*

*Andrus Ansip
Vice-President*

Annex

The Commission has considered the Bundesrat's Opinion and is pleased to offer the following clarifications.

Legislative Character of Digital Single Market measures (point 5)

The Commission would like to point out that in a number of areas such as copyright, telecoms, consumer and contract law the Strategy envisages legislative actions. The Commission will decide on the type of legislation to be proposed at a later stage on the basis of the results of the consultation process and impact assessments. In other areas such as online platforms or ICT standards it has not been decided whether legislative action is appropriate.

Electronic Commerce (point 9)

The Commission agrees with the Bundesrat that harmonisation of rules regarding electronic commerce can be useful to increase the attractiveness of the Digital Single Market. This market will provide businesses, particularly entrepreneurs, with new opportunities to scale up across Europe. Immediate action is therefore required to break down barriers to cross-border online activity including differences in contract and copyright law between Member States and reducing VAT related burden. Part of building consumer trust in cross-border online sales, besides well-functioning markets and a high level of consumer protection, requires affordable and high quality cross-border parcel delivery services, which do not exist today. The Commission will aim to define an appropriate e-commerce framework and prevent unfair discrimination against consumers and businesses when they try to access content or buy goods and services online within the EU.

Geoblocking (point 12)

The Commission agrees with the Bundesrat's views on geoblocking. Unjustified geoblocking and other forms of discrimination based on nationality or place of residence are contrary to the principles of the EU Treaty. Such measures limit directly or indirectly consumers' access to cross-border offers and can be the source of economic inefficiencies, resulting in higher prices and a reduced variety of products, services and digital content for consumers and businesses. The Commission will make proposals to end unjustified geo-blocking. Action could include targeted change to the e-Commerce framework and the framework set out by Article 20 of the Services Directive. In this context, the Commission will ensure a proper balance between the contractual freedom and consumers' right not to be discriminated in an unjustified manner.

Copyright (point 14)

The Commission welcomes the Bundesrat's support in the copyright area. Europe needs a more harmonised copyright regime which provides incentives to create and invest while allowing transmission and consumption of content across borders, building on our rich cultural diversity.

Telecoms review (point 17)

The Commission appreciates the Bundesrat's support with regard to a review of the existing legislation and proposals for changes where necessary.

Broadband investment (point 19)

The Commission agrees with the Bundesrat that the insufficient broadband investment in rural areas is also due to a lack of aggregate demand as a result of the low population density in these areas. However, from the public policy perspective certain structural socioeconomic disadvantages of rural areas, such as distance or cost of access to public services (health, education) or cultural activities could be partly compensated by a high-speed Internet network. For this reason, the Commission shares the Bundesrat's view that rural areas need special assistance in the construction of an adequate high-capacity broadband network. The Commission supports broadband deployment in rural areas through policy, regulation (including state aid) and financing. Financial support for broadband infrastructure under the European Structural and Investment Funds in 2014-2020 amounts to around EUR 6 billion, and other investment relevant to the digital developments exceeds EUR 20 billion. To further facilitate public funding in rural areas, the Commission revised the guidelines for the application of EU State aid rules to the broadband sector in January 2013 and published a new Broadband Investment Guide in September 2014. In addition, broadband projects will be eligible for financial instrument support under the European Fund for Strategic Investments (EFSI). The Digital Single Market strategy emphasizes the importance of connectivity for the future success of Europe and the Telecom Review will cover the issue of investment, in particular in rural areas.

Open Internet (point 21)

The political compromise found between the European Parliament, the Council and the Commission on 30 June 2015 enshrines the principle of non-discrimination in the open internet with only three narrowly defined exceptions (compliance with legislation, security and integrity of the network and congestion management). It does not contain any equivalence of open internet and specialised services (managed services): specialised services may only be provided in addition to any internet access services if there is sufficient network capacity so that the availability and quality of internet access services is not affected. Regarding "zero-rating", the co-legislators considered that there is not sufficient evidence to ban such commercial agreements by legislation. However, national regulatory and other competent authorities are obliged to closely monitor the development of such agreements and practices and are granted the necessary powers to intervene if necessary.

Spectrum (point 22)

The Commission welcomes the Bundesrat's strong support to the coordinated release of the 700 MHz band. The Commission is currently working on a proposal for a coordinated release of the band for mobile broadband in the EU, while accommodating the specific needs of audiovisual media distribution and taking into account the needs of Programme Making and Special Events users in general. The aim is not to slow down fast moving countries such as Germany but to create incentives for all Member States to facilitate the transition to mobile broadband use of the 700 MHz band. The Commission believes that a more Europeanised spectrum policy framework, respecting Member States competences, is needed to achieve common goals and address shared problems

such as increased connectivity through mobile coverage and more investments. As radio spectrum is a vital building block for the deployment of broadband services, a more harmonised framework for spectrum is needed.

Media (point 25)

The Commission welcomes the Bundesrat's support regarding the examination of whether the current system of rules applying to broadcast and to on-demand services should be adapted. The Commission will also consider whether the current scope or the rules should be broadened to encompass new services and players that are currently not considered as audiovisual media services under the Directive and providers that fall outside its current geographical scope.

Online Platforms (point 27)

Furthermore, the Commission appreciates the Bundesrat's views as regards the importance of addressing the role of online platforms. Some platforms can control access to online markets and can exercise significant influence over how various players in the market are remunerated. This has led to a number of concerns over the influence that platforms can have over market structures and activity. These concerns are increased when platforms that are set up for business purposes are engaged in commercial practices towards consumers, or act on behalf of other traders, refuse to accept their obligations under the EU consumer acquis. The comprehensive assessment of their role is an essential part of the Strategy.

Data protection (point 29)

The Commission also welcomes the Bundesrat's support to the proposal to review the special rules applying to electronic communications services (the e-Privacy Directive). This review will ensure a high level of protection for data subjects following the outcome of the legislative process regarding the General Data Protection Regulation.

Interoperability (point 31)

Moreover, the Commission appreciates the Bundesrat's views with regard to the importance of interoperability and standardisation, in respect of which the Commission is planning to launch an integrated standardisation plan and revise and extend the European Interoperability Framework.

An inclusive digital society (point 33)

The Commission acknowledges that Member States have the responsibility for their own administrative organisation. At the same time Member States have a common interest in making the Single Market work efficiently and effectively and public services have an increasing role in the functioning of the Single Market and should be available across borders. Studies have shown that the once-only principle has been recognised as a significant enabler for the reduction of administrative burden of citizens and businesses. It is not a comprehensive database containing all the information on citizens but a guiding principle in a wider scenario of interoperable services across Member States. Hence, the once-only principle can be discussed in the broader context of a wider eGovernment policy framework aiming for administrative burden reduction. Data protection, in particular, is an integral part and a basic requirement of any once-only principle implementation. The Member States who apply the principle (e.g. Denmark,

Netherlands, Estonia and the UK) have chosen different technical approaches. The pilot project that the Commission will launch under the Strategy opens the possibility to trial and assess different implementation options.

Digital skills (point 39)

The Commission is fully aware that the responsibility for designing curricula lies with Member States as is clearly stated in the Communication. The Commission intends to support Member States' efforts and will play its role in enhancing the recognition of digital skills and qualifications and increasing the level of ICT professionalism in Europe.