

# **NON-PAPER – “Spain's contribution to the Digital Single Market Strategy”**

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## **Exploiting the opportunities of a Digital Europe**

The digital revolution that has accompanied the new millennium is a challenge of major social and economic dimensions. Europe must play a leading role in this revolution and respond to the challenge with a single and distinguished voice. For this aim, the European Union should strength the Digital Single Market as a solid foundation to leverage the benefits of digitization of the economy and society. A digital shared area enables the exchange of goods and services and contributes to increase innovation and competitiveness, and thus to economic growth and employment. We are facing a complex task that requires the participation of the largest possible number of stakeholders. Citizens, businesses and governments should take part in the design and execution of the Digital Single Market. Europe's future depends largely on the outcome of this task.

Strengthening the Digital Single Market requires in the first place a broad regulatory review. The review should take into account the maturity of the telecommunications market and the progress made on competition since the liberalization which started in 1998. The main goals of the review shall be: (i) promoting the investment capacity of the agents of the European digital ecosystem, (ii ) paving the way to consolidation in the mature markets and (iii) ensuring non-discrimination between the actors of the digital value chain. Besides the above goals, the regulatory review should also reinforce the trust and use of digital products and services, enable the development of innovative services, and guarantee the rights of citizens and businesses in the new digital world.

Taking into consideration the conclusions regarding the digital economy of the European Council held on 25 October 2013 and the outcomes of the debate on the mid-term review of the Digital Agenda for Europe of the Council of Telecommunications held on 27 November 2014, and following the request of the European Council of 18 December 2014, Spain considers that the European Commission should submit an ambitious communication on the Digital Single market as soon as possible. The communication should include a description and schedule of the measures to be taken. Among the measures, an updating of electronic communications directives to the current scenario shall be promoted, considering at least the elements set out in the following paragraphs.

## Promoting the development of a digital single market

Europe has already largely experienced the benefits of the existence of a single market. According with the figures provided by the European Parliament, the achievement of a fully digital single market would boost the European economy with 360,000 million euros per year.

Spain considers a right decision the new structure of the European Commission. Not only it is designated a Vice-President responsible for leading the project of completing the Digital Single Market, but new powers are given to the Commissioner responsible for the Digital Economy and Society. The new structure will enable a more coherent handling of the key digital issues, such as the regulation of telecommunications, digital platforms, copyright and networks and information security. It is the role of public institutions to adapt the existing legislation to the evolution of the economic and social conditions, as well as ensuring that all the actors of the digital value chain compete under the same rules. Therefore, Spain welcomes that the 2015 work program of the European Commission includes legislative actions as part of the Digital Single Market strategy.

It is a fact that the growing and innovative service offering, with an undeniable economic and social value, requires more investment in new infrastructures. Spain thinks it is a priority avoiding the discriminatory situations resulting from a regulation which is not adapted to the conditions of the markets. Without taking the right measures, the result will not only be a weakening of the competitive position of Europe and its integration into the global digital world, but also an erosion of its tax bases. Therefore, the European Commission proposal for completing the Digital Single Market should include measures to address:

- **A thorough review of the regulatory framework for electronic communications.** The existing regulation for electronic telecommunications has allowed the development of a highly dynamic and competitive market. However, Europe has lagged behind other economic areas in the modernization of their telecommunications networks and has lost its past leadership in this area. The digital value chain has different actors subject to different regulatory levels and requires for its development large investments in infrastructure, mainly from the telecommunications operators. For ensuring the sustainability of this digital ecosystem, a review of the Telecom Package approved in 2009 is required. The package did not substantially alter the scope or the prospect of legislation approved in 2002. The new regulation shall meet the goals of promoting investment, competition and innovation; establishing a European-wide level playing field for all market players; and ensuring adequate protection for consumers and users in all areas of the digital ecosystem.

- **A pan-European regulation for Internet platforms.** The dynamism of companies in the Internet world and the exponential growth of some of them is one of the characteristics that define the digital world, along with its ability to innovate. As a result, the boundaries between the services provided by these companies and the services provided by other more traditional sectors are blurred. A review and clarification of roles and responsibilities of digital platforms that facilitate the provision of such services is needed.
- Assess in the **mergers and acquisitions proposed within the EU** with the current international context of competition, in which the European telecom companies must operate.
- **A balanced tax system.** The boost of cross-border e-commerce must include a review of tax systems. The aim should be, on one hand, ensuring a balanced taxation among all the actors within the Union, and, on the other hand, preventing offshoring tax planning benefits, and therefore the erosion of the tax base.
- **The integration of Europe in the global digital economy.** The Digital Single Market must be the instrument for the integration of Europe in the new digital landscape that defines the global economy. This integration, fostered through international treaties such as the TTIP, CETA or TISA, should not sacrifice the rights of European citizens or limit the evolution of the EU *acquis* on digital matters. It should be ensured the transparency and an effective participation of the Council of Telecommunications and the European Parliament in the negotiation of the above mentioned treaties.
- **Review of the European audiovisual market.** It is necessary to address the new challenges raised in the audiovisual market with the emergence of digital audiovisual products and services. Among other distortions, it should be prevented that in these new markets discriminatory situations between agents may arise due to its geographical localisation. The regulation must ensure that the conditions of competition in the retail market are the same for all the players.
- **Updating the intellectual property rights to the digital society.** In order to promote new opportunities and the development of new industries, the modernisation of the framework of intellectual property rights in the EU must be completed. The new framework should strike a balance between the protection of copyright, the development of entrepreneurship and freedom of creators to disseminate their work. In the meantime a comprehensive European reform is developed; the Spanish Parliament has approved a partial reform of the national intellectual property law.
- **Completing the regulation for a Telecom Single Market (TSM):** Spain has sponsored the "friends of TSM" group as a framework for dialogue among Member States and is in favour of an agreement within the Council on the TSM.

We understand that the measures included in the proposal may be approved as a regulation on its own or may be incorporated as elements within a broader review of the legal framework in a future digital regulatory package. The position of Spain regarding the open issues still under debate, such as roaming or net neutrality, is the following one:

- **Roaming:** Spain shares the goal of promoting the principle of "Roaming Like At Home" (RLAH). However, it should be considered the differences between the national mobile markets, providing flexibility to the NRAs for a gradual application of RLAH. The ultimate goal should be to prevent the introduction of distortions between the markets of the different Member States, the distribution of the costs of implementation of RLAH in a fair manner and ensuring the viability of investments in the countries visited by roamers. Spain welcomes the preliminary proposal called "RLAH +" that has been presented by the Latvian Presidency.
- **Net Neutrality:** The proposal tabled by Spain aims to reconcile the right of users to an "open internet" and the promotion of innovation. The regulation to be adopted should be flexible enough to foster investment and allow the development of new business models based on a reasonable traffic management. Besides this, as it was highlighted by the European Council in the conclusions of the meeting held on October 2013, the concept of network neutrality has to evolve into a broader interpretation: *"There is also a need to address the bottlenecks in accessing one's "digital life" from different platforms"*.

## Encouraging the digitization of the economy

Economic growth and employment will only be achieved with an increase of competitiveness and innovation of enterprises. Digitization plays a key role in achieving this goal. The European Commission has indicated in its work program for 2015 that the strategy of Digital Single Market will also contain non-legislative initiatives. Spain considers that to achieve the objective of digitising the economy and society, the strategy to be proposed by the European Commission shall contain, at least, initiatives to address:

- **Support the deployment of ultra-fast broadband networks**, in particular for initiatives of public support for the deployment of infrastructures aimed at preventing the digital divide.
- **Boosting the European position to lead innovation in the field of digital cities.** We should take advantage of the European capabilities for legislating, developing standards and boosting innovation and R & D in order to build up the leadership of Europe in the smart cities industry. Promoting the development of guidelines of best practices can help to achieve this leadership. Furthermore, we should facilitate the spread out of digital technologies along all the European cities in order to create dynamic laboratories based on public-private partnerships for a digital Europe.
- **The adoption of ICT by industry.** We should promote mechanisms to accelerate the adoption of ICT by the industry in order to move towards the **Industry 4.0** in Europe.
- Boosting growth and consolidation of an **innovative digital industry**. We must create the conditions to facilitate the growth and consolidation of an innovative digital industry in Europe, promoting innovation and R & D , big data, cloud computing and the Internet of the Things.
- Support the development of new services based on the **shared economy** paradigm within the respect to the current legal framework.
- Development of the **digital skills**. It should be encouraged the study of ICT degrees among youth and the acquisition of the ICT skills required for the digital industry. Furthermore, it should be promoted the learning of digital skills, both for labour and personal purposes.
- The creation of a **friendly environment for entrepreneurship**. We should support entrepreneurship and reduce administrative burdens and other barriers that restrain its development.
- The **development of pan-European public services**. We should facilitate the relationship between citizens and businesses with all European government layers, encouraging the development of electronic public services and cross-border interoperability among all of them.

## Ensuring the rights of citizens and businesses

The rights of citizens and businesses included in the *acquis communautaire* remain in full force in the new digital world. Ensuring the security of data and communications, the protection of personal data and the enjoyment of the freedoms of the Single Market, including artistic production, remain as inalienable rights in this new landscape. In the new complex scenario, we must find ways of enforcing the above mentioned rights while facilitating the development of innovative services. For this purpose, the communication on the Digital Single Market should tackle:

- **Ensuring the security and confidentiality of communications.** In the digital ecosystem we must keep the citizens right to privacy and the requirement to comply with the obligations of the public service for all the players in the digital value chain. As a consequence, Spain welcomes the intention of the European Commission to review the e-privacy Directive.
- **Increasing the security and trust in the digital world and the protection of personal data.** The security of networks and information is critical for the provision of essential services for the development of economy and society, such as cloud computing, big-data or encryption, as well as for the anonymous handling of communications. Therefore, it is necessary to advance in the development of a regulatory framework that gives confidence to citizens and businesses in the use of Internet and the services accessible through the network. An increased security in the digital world must not be inconsistent with greater protection of personal data. Citizens must remain the owners of their personal data. It should be clarified the usage of personal data that is allowed to companies and under which conditions, as well as the mechanisms for the public control of the exploitation of personal data and for ensuring the portability of data between digital platforms.