

**On cultural and creative sector and EU support
EU policies as regards platforms like Netflix**

Subtopic 1 –

**Digital services Act Package – Updated regulatory framework
for online platforms**

LTT

Digital Services Act

- The Commission welcomes the debate on the regulatory framework for digital services, which has been prompted by President von der Leyen's announcement in her political guidelines of a **new Digital Services Act package**. The purpose of this package is to **adapt our regulatory framework to the continuously changing landscape of digital services**.
- Digital services have evolved since the adoption of the eCommerce Directive in 2000, and so has the scale of their use as well as online behaviour. We need to make sure that our societies and citizens are not exposed to undue risks emanating from new digital services and technologies.
- Service providers will have to act responsibly, providing us with reasonable reassurance that they mitigate risks such as illegal content (hate speech, terrorist propaganda, or child sexual abuse material) to products placed on our markets that are totally unsafe (i.e. do not respect our product safety and consumer protection rules).
- Any such rules must provide for the appropriate checks and balances to safeguard fundamental rights, such as freedom of expression and information or the freedom to conduct a business.
- We also need to ensure that European rules are properly enforced in Europe. This will require better cooperation between platforms and public authorities, as well as between national authorities.
- Creating a regulatory framework that makes the EU fit for the digital age is one of the main priorities of the new Commission. As such, we are working with an ambitious timeline and are committed to engage in an open debate and discussion with all relevant actors in creating the European approach.
- An important step in the preparatory work towards the Digital Services Act has been the recent publication of the open public consultation, which aims at gathering views on the main issues surrounding digital services offered in the EU. We would very much welcome your contribution.

Market power/significant network effects

- A debate is ongoing around the world on the question whether competition rules are fit for purpose in the digital age and the globalised economy.
- The Commission is of the opinion that the EU competition rules work in general well, as confirmed by various studies and most stakeholders.
- Nevertheless, the Commission is reflecting on how to streamline certain aspects of antitrust and merger control and to improve its effectiveness, also in view of the digitalisation. This also includes the launch of a “digital sector” inquiry in 2020.
- In parallel, the Commission announced in the Digital Single Market Communication from 19 February that it will assess **a need to impose ex ante rules for to ensure that markets characterised by large platforms with significant network effects acting as gate-keepers, remain fair and contestable for innovators, businesses, and new market entrants.**
- It is thus to be clarified that the contemplated **rules on significant network effects will be prepared by the Commission as a proposal separate from the Digital Services Act**, which is rather intended to be a revision of the eCommerce Directive, although they should be published in one package.
- We **welcome contributions from Netflix, in particular to better understand the precise challenges for the company and opportunities emerging on the market**, as well as the company’s views on the potential options to explore.

Digital Services Act / e-Commerce Directive revision

- No new company can scale up in Europe against an increasingly fragmented background. Only the current, big companies (most of which are American) have the resources to offer their services all over Europe. The less clear and harmonised our legal framework, the more the big companies will strive.
- The E-Commerce Directive from 2000 is widely regarded as one of the central pieces of Internet Regulation in the EU. It regulates Treaty Freedoms such as the freedom to provide (digital) services in the Internal Market, as well as the freedom of establishment for providers of these services. It also regulates the liability that intermediaries such as ISPs, Cloud service providers, or online platforms have for third party content, which they transmit or host. The established framework guaranteed a balanced framework helping both innovators while also protecting fundamental rights online.
- Today’s services are dramatically different from 2000 (e.g. social networks, collaborative economy services, online advertising, etc.), they reach much more

deeply into the society than in 2000; and the internal market is refragmenting especially for platforms, e.g. with new online hate speech laws in DE and FR.

- Following these political guidelines, Commission services (under the lead of DG CONNECT) are now carrying out preparatory work, including fact-finding and evidence gathering.

Defensives

What is the timeline for the adoption of the DSA Package?

- The Digital Services Act Package has been identified as a priority for the Commission, both in the President political guidelines and in the Communication on Shaping Europe's Digital Future.
- We are therefore working on an ambitious timeline for the adoption.
- The open public consultation, which was recently published, will run for a period of three months until 8th September. In parallel, we have also published two inception impact assessments for which we welcome feedback until the end of June.
- Taking due account of the feedback and data received via those instruments, the Commission will then work on the preparation of the corresponding Impact Assessments outlining the policy options available to tackle the identified issues.
- The Commission aims at adopting the Digital Services Act Package by the end of the year.

Will the new Digital Services Act maintain the country of origin principle of the eCommerce Directive?

- **By subjecting players to only one set of national rules, the country of origin principle of the eCommerce Directive has helped digital businesses operate, scale up, and compete in the European Union.** At the same time, the cross border nature of these services brings new challenges to the practical application of the country of origin principle: Member States are increasingly looking into regulating online platforms available in their territories.
- In this mandate, the Commission has retained the country of origin principle as the cornerstone of many of its initiatives. This is the case, for instance, for the new rules on video-sharing platforms under the revised Audiovisual Media Services Directive (AVMSD).
- **Our services are carrying out an in depth assessment of the current state of play in order ensure that any new regulation based on the country of origin principle remains effective in practice. In particular, the DSA will aim at providing an appropriate and effective system of cooperation among national regulatory authorities of the relevant Member States when enforcing the rules.**

Will platforms take more responsibility for the content they host? How will this be enforced?

- Our current thinking is to provide for a harmonised set of rules, codifying notice and action measures, as well as responsibilities for making sure legal content is not removed and redress is available to all users. This will provide legal certainty while incentivising platforms to act against illegal content they might host.
- It is key to strengthen the enforcement mechanism: for this to remain effective, the home state control needs to be reinforced with a smooth cooperation mechanism across national authorities so that all issues are resolved consistently across the single market, in the fastest way possible and with the smallest legal complexity and burden on online services and authorities.

Background

Market power/significant network effect

- **The Platform to Business Regulation** was adopted in June 2019 and will be applicable as of July 2020. It was conceived as a first step measure to address certain harmful practices by online platforms and search engines and to ensure a more predictable and transparent trading environment for online business users. It also provides businesses with better redress options in their relationships with online platforms.
- The Regulation notably obliges online intermediaries and search engines to provide information on their main parameters applying to how a product or a website is ranked in search results. The Commission is currently preparing ranking guidelines to help the online platform industry to comply with this obligation. The guidelines will be published before the entry into application of the Regulation.
- As a second step, the Commission set up the Observatory for the Online Platform Economy to monitor the challenges and new developments in the online platform economy. It is supported by a group of independent experts, established by the Decision of 26 April 2018 to assist the Commission in its work.
- So far, the Observatory has focused on the following areas of work: measurement of the online platform economy, differentiated treatment, data access. It will also look into issues related to transparency in online advertising and market power.
- Based on the work of the Observatory, the Commission will reflect on the need to review the current rules and come up (if necessary) with new regulatory measures.
- At the same time, policy reflections are ongoing at international, EU and national level on how to increase and safeguard competition in digital markets and in the wider global digital economy. Several reports pointed to the need **to boost the enforcement of competition law and to consider effective ex-ante regulatory measures to complement competition rules in addressing these challenges.**

- In this regard, the **Commission Communication on Shaping Europe's Digital Future** released on 19 February, also announced that the **Commission will further explore, as part of the Digital Services Act package, ex ante rules**, “complementing competition instruments, to ensure that *markets characterized by large platforms with significant network effects acting as gatekeepers, remain fair and contestable for innovators, businesses, and new market entrants.*”
- It is envisaged that the market power instrument will be part of the DSA package of measures.

Subtopic 2 –

Digital policy supporting cultural heritage in the context of the coronavirus crisis and its consequences

Line to take

- Certain sectors, including in particular the cultural and creative industries and tourism, also rely heavily on cultural heritage. Therefore, supporting the recovery in such key ecosystems also requires support for the cultural heritage sector.
- Through Europeana, Europe's digital platform for cultural heritage, the Commission is promoting European cultural jewels and hidden gems as a way of stimulating safe, local, green, innovative tourism. Other digital platforms, including Netflix (which has actually seen an increase in the number of subscribers because of the lockdowns around the world), could also use cultural heritage content to support the recovery in sectors such as the cultural and creative industries and tourism.
- The Commission is also promoting innovative digital experience of cultural heritage and encouraging the adoption and use of advanced digital technologies such as 3D and virtual reality in order to contribute to resilience, recovery and sustainability in the cultural heritage sector and in ecosystems such as the cultural and creative industries and tourism.

Background

Like so many other sections of our economy and society, the cultural heritage sector has also been heavily affected by the crisis. Museums, for example, have closed, and many have lost most if not all of their revenue, a loss that can reach between 100 000 and 600 000 euros per week for the big ones.

At the same time, many cultural heritage institutions have been very effective in seizing the options offered by digital technologies during the crisis. As a result, they have been able to maintain contact with their audiences and, even more notably, some have even engaged with new audiences that have discovered them only now, in the context of the current crisis and the stay-at-home limitations, and by digital means.

On the [Cultural Heritage @home](#) page, the Commission has been collecting and promoting examples of innovative digital cultural heritage experiences, based on technologies such as 3D and virtual reality, all of which are very impressive and immersive.

On 27 May, the Commission organised, together with researchers, cultural heritage institutions and SMEs from relevant areas, a [European web conference on 3D digital cultural heritage for resilience, recovery and sustainability](#), which explored and highlighted the value of such content in helping the cultural heritage sector and other areas such as tourism and the cultural and creative industries to recover after the crisis and strengthen their resilience and sustainability for the future.

Cultural tourism accounts for 40% of all tourism in the EU, and cultural heritage plays a major role in attracting visitors from Europe and beyond. At the request of the European Commission, on 15 June, Europeana, the European platform for Digital Cultural Heritage, launched a special page and campaign dedicated to Discovering Europe, showcasing European cultural jewels and hidden gems. The objective is to highlight the role of cultural heritage in stimulating safe, local, green, innovative tourism. Europeana has also set up a Tourism Hub on its Europeana pro platform to help heritage professionals connect with tourism.

Background - Cultural and creative sector and EU support/relevant policies

Netflix launched an **Emergency Support** for Workers in the Creative Community (a \$100 million fund): most of the fund will go towards support for the hardest hit workers on their own productions, but \$15 million of the fund will go to third parties and non-profits providing emergency relief to out-of-work crew and cast in the countries where Netflix has a large production base. In Europe, aid packages were granted in Spain, France, Italy and the UK. While these initiatives come across as generous, they are proportionate to the company's strengthened position on the market. In fact, the leading subscription video-on-demand service (SVOD) in the EU (46 % of the market in 2018 according to the Audiovisual Observatory data; this figure has been on the rise over the last few years) is reported to have been boosted by the success of original content released after lockdown measures were adopted across the world and to have benefitted from a turn-over increase by 28 % in the first quarter of the year, with more than 15 million new subscribers.

The increased consumption of films online has not translated into an increase of compensation for creators for their work on the platform, nor has it generated a revenue for those who had to suspend productions. The crisis has shown the need for broader and more sustainable responses from public institutions in support to the cultural and creative sector.

To complement and support Member States' actions, the European Commission has taken a set of **measures at EU level**. They include both cross-cutting measures (e.g. the Temporary Framework for state aid measures to support the economy, which specifically refers to culture as a sector that has been particularly hit and enables Member States to use the full flexibility under state aid rules to support the economy in this difficult time) and those related specifically to Creative Europe, the European Commission's programme to support the culture and audiovisual sectors. The latter has been made more flexible and adapted to the urgent needs. Beyond Creative Europe, other tools available are being mobilised, including the Erasmus+ programme.

The Commission has also put forward its proposals for an ambitious major recovery plan called Next Generation EU in response to the Coronavirus crisis, together with

modern and revamped long-term EU budget. The creative and cultural industries are among the priority intervention areas. Among other measures, the Commission is proposing to strengthen the Creative Europe Programme to further support the sector.

The current and unprecedented crisis requires close collaboration on the EU level between institutions, policy-makers and stakeholders. In this context, the Commission has set up **two platforms to help share challenges and solutions at the EU level** in relation to the COVID-19 impact on the cultural and creative sectors. The platform for EU Member States was launched on 24 April. It allows the representatives of EU culture ministries to exchange good practices. The second platform, "Creatives Unite", shall help people in the cultural and creative sectors share information and solutions more easily. It was launched on 5 May and gives access in one single space to the multitude of existing resources and numerous relevant networks and organisations as well as offers a curated space to co-create and upload contributions towards finding solutions together.

Last but not least, an essential element for the recovery is a **sustainable and forward-looking regulatory environment** which enables and supports European cultural diversity and creators. In this context, the swift implementation of some legislative reforms adopted in recent years are especially relevant in relation to VOD services like Netflix.

In particular, it is essential that the **Directive on copyright in the Digital Single Market** contributes to address some of the challenges arising from the current crisis, including notably the need to ensure appropriate remuneration of creators for the exploitation of their works by VOD platforms¹. It provides in fact for specific rules aimed at strengthening the ability of creators to be properly remunerated for the use of their works. The Commission is committed to working together with the Member States and other interested parties to ensure the effective and timely implementation of the new Directive.

Another important reform is the **revised Audiovisual Media Services Directive**, which imposes a 30% quota for European productions in the catalogues of VOD providers such as Netflix and the obligation to ensure their visibility. Member States are also allowed to impose financial contributions for European productions on VOD services in their jurisdictions, as well as, under certain conditions, to those established in a different Member State but targeting their national audiences. Commission guidelines will be adopted shortly to ensure the implementation of the new rules.

Background

CV



Professor Dr. Madeleine de Cock Buning, Vice President at Netflix

- Working with the EMEA team to ensure Netflix continues to play an active role in supporting the EU institutions and national governments in Europe, Middle-East and Africa on their efforts to promote and champion the creative industries as a catalyst for innovation and

¹ In fact, Netflix's negotiated contracts with creators/rightholders or Netflix's own productions have been reported in the press as often subject to a one-time fee for all, precluding creators from receiving any additional royalties in the future, independently of the number of viewings.

creativity (2020 onwards)

- Chairing the EC High Level Group on fake news and on line disinformation (2018) resulting in multidimensional approach forming the basis of current EU Policy. Getting different interest - including global social media platforms - aligned towards balanced effective solutions to one of the most complex problems in modern digital society.
- Chair AV European Regulators Group (ERGA) (2016-2017).
- Chair Supervisory Authority to the Media (CvdM); heading strategic policy towards future-proof tailor-made compliance & supervision in an innovative context (2009-2019).