

The Commission's digital agenda – what is the effect of COVID-19 on the timelines?

The European Commission published its Digital Package on 19 February 2020, setting the framework for action over the next five years in the digital sphere. The package included:

- A Communication on 'Shaping Europe's digital future'
- A White Paper on Artificial Intelligence (AI) – A European approach to excellence and trust
- A Communication on European Strategy for Data

The COVID-19 outbreak has, however, forced the European institutions to rapidly switch into crisis management mode; political energy has been drawn towards containing the spread of the virus, with marginal reviews so far of its 2020 Work Programme. At the same time, the Commission is seeking to quell concerns related to a possible slowdown of legislative activity, indicating its intent to move current initiatives forward as planned. While constantly fluid, below is a snapshot of the current Commission's digital agenda, highlighting the main initiatives already postponed or expected to slip over the next days and weeks. These will be reviewed again on 29 April, when the Commission will release an updated programme.

Platforms – delays to the DSA consultation

The European Commission is working on a review of the E-Commerce Directive, which will be included in the upcoming Digital Services Act (DSA). The DSA, which may take the form of a Regulation, will propose new rules for online platforms, and particularly measures aimed at "harmonising the responsibilities of online platforms and information service providers and reinforce the oversight over platforms' content policies in the EU". The Commission however has not explicitly talked about a review of liability rules within the e-Commerce directive.

The **consultation on the DSA has been delayed** for at least a month due to the COVID-19 crisis. The legislative proposal initially planned for Q4 2020, is now expected to slip into 2021 as a result.

Platforms in the audiovisual sector are expecting the Commission to present in Q4 2020 a **Media and Audio-visual Action Plan** that would address the issues of access to online content and media pluralism; it will also present a **European Democracy Action Plan** to support media pluralism and address the threats of external intervention in European elections. Both initiatives are expected to be maintained for Q4 2020.

Competition – consultation deadline and other timings maintained

In its digital strategy the Commission states clearly the intent to re-fit EU competition rules for digital markets. The Commission is expected to explore the need for ex-ante rules in competition that "ensure that markets characterised by large platforms with significant network effects acting as gate-keepers" remain competitive. It will also launch an **inquiry on the tech sector** whose scope however remains yet unclear. Market power imbalances generated by Big Tech companies as well as issues related to data sharing are also expected to be addressed in the Digital Services Act.

The Commission in the meantime has launched a **public consultation on its roadmap for the review of its market definition notice**. The roadmap aims to define the scope of the Commission's public consultation that should be launched in the second quarter of 2020. The latter will include the concepts of 'relevant product market' and 'relevant geographic market' and assess their relevance in digital markets. No extension to the deadline for feedback to the roadmap has been communicated, therefore feedback can be submitted until 15 May 2020. The Commission timeline for adopting a reviewed notice in 2022 remains unchanged.

Artificial Intelligence – White Paper consultation deadline maintained

The White Paper sets out several actions to **boost investments** in AI while proposing some ideas as to how a **regulatory framework** might look like. On the latter, and subject to an assessment of the need of new legislation in the area, the Commission would aim for a risk-based approach, and identify certain requirements and restrictions for 'high-risk' AI applications. 'High-risk' applications could be defined as such because of the sector where they're employed (e.g. healthcare, transport, energy) and because significant risks are likely to arise from their use (e.g. risks of injury, death or significant damage). Requirements to be met by the application could for example refer to the types of data used to train the AI systems, the keeping of records and data, the robustness and accuracy of AI systems, the degree of human oversight, etc.

Following the release of its much-anticipated White Paper, the Commission is now inviting stakeholders' contributions to the document through a public consultation. The **public consultation** remains open as originally planned until 31 May 2020, but the follow up with a legislative horizontal initiative by the Commission – covering safety, liability, fundamental rights – is expected to be delayed to Q1 2021. However, some initiatives related to product safety, namely the delegated acts under the Radio Equipment Directive, could be maintained in 2020.

Access to Data – legislative framework on common European data spaces governance expected in Q4 but unsure, data strategy consultation deadline maintained.

In parallel with seeking to promote the development and deployment of AI in the EU, the Commission has put forward a European Strategy for Data aimed at maximizing the potential of the data economy. The strategy foresees promoting **Business to Business (B2B) data sharing through a 'Data Act'** aimed for 2021. The Data Act will also address issues related to usage rights for co-generated data and allocation of responsibilities, and may also review the data portability principle as established in the GDPR. **The document also seeks to promote "common European data spaces"** in strategic sectors and domains of public interest such as manufacturing industries, mobility, health or finance. The Commission will propose measures to create pools of data available for reuse as well as technical tools and infrastructures to exploit them. A legislative framework on the governance of the common European data spaces was initially expected in Q4 2020, but the calendar remains uncertain after the COVID-19 outbreak. The Data Strategy is open for public consultation as originally planned until 31 May 2020. In addition, and as established in the Open Data Directive, the Commission plans to present an **implementing act on the definition of High Value Data sets** in Q1 2021, with no delay indicated as yet.

Personal Data protection – roadmap feedback on time, but GDPR implementation report delayed to June.

The Commission launched a public consultation on its roadmap for the **GDPR evaluation**. The roadmap defines the scope of the evaluation, which is set to include the issue of international transfer of personal data to third countries and the cooperation and consistency mechanism between national data protection authorities. Comments to the roadmap can be submitted before 29 April, with no extension currently communicated. Following the COVID-19 crisis the Commission has, however, delayed the release of the GDPR implementation report, from April to most likely June.

The outcome of the GDPR evaluation may impact the ongoing negotiation of the '**e-Privacy Directive**' and the Commission's approach on data transfer rules. Pending decisions from the EU Court of Justice concerning the transfer of EU citizens' personal data to the US expected in early 2020, may also affect the outcome of the evaluation.

Cybersecurity – no delays currently foreseen.

Following the [Council's call for a common approach](#) regarding 5G networks' cybersecurity and the [Commission Recommendation](#) of March 2019, the European Commission published the [EU Toolbox of risk mitigating measures](#) on 29 January 2020. The objective of the Toolbox is to provide Member States with a framework for measures to take to ensure adequate cybersecurity of networks. Main recommendations include strengthening security requirements for mobile network operators, assessing the risk profile of suppliers and ensure each operator limits any major dependency. EU Member States are called to enforce recommendations published in the EU Toolbox by 30 April 2020 and to report on its implementation by 30 June 2020. Member States, in cooperation with the Commission, should assess effects of the Commission Recommendation by 1 October 2020 to evaluate if further action is necessary with regards to cybersecurity-related policies. Deadlines are still valid despite the crisis.

The European Commission is also expected to present a **new European cybersecurity strategy** that will include the establishment of a joint Cybersecurity Unit and a Review of the [Security of Network and Information Systems \(NIS\) Directive](#). The schedule for the Review, which was expected during Q4 2020, should not change – although this will depend on the feasibility to have the impact assessment ready in time. Meanwhile, due to the evolving COVID-19 situation, the [Annual Privacy Forum](#) – organised by ENISA, DG CONNECT and the University of Lisbon – has been postponed to October 2020.

Consumer – negotiations postponed because of COVID-19, new date not currently communicated.

Ongoing interinstitutional negotiations on the proposed **Collective Redress Directive** have been postponed to an undetermined date because of the COVID-19 outbreak. Negotiators from both institutions had planned to hold five inter-institutional negotiations in January 2020 to agree on a common text by the summer, but the COVID-19 restrictions have delayed the meetings planned in March and April. This leaves mid-June as a possible date to resume negotiations, just before Germany takes the presidency of the Council of the EU in July. More delays to this flagship consumer legislation could therefore be anticipated.

In parallel, the Commission is working on a new **Consumer Agenda**, in view of empowering consumers to make informed choices and play an active role in the digital transformation. The initiative could be maintained for Q4 2020 provided it remains non legislative. The Commission will likely postpone an **initiative on common chargers for mobile phones** and similar devices, from Q3 2020 to 2021. The **Review of the Roaming Regulation** could also be possibly postponed, but currently remains on schedule for Q4 2020.

Taxation and financial services – Fintech Action Plan and Strategy in Integrated payments delayed.

The negotiations of an **international tax on digital services** that were taking place in the frame of the OECD have come to a halt due to the COVID-19 epidemic. However, EU Commissioner for the Economy, Paolo Gentiloni, recently pointed out that the COVID crisis underlines the importance of such digital tax. Gentiloni hoped for a multilateral agreement on the current proposal but highlighted it would propose EU-wide solutions should international negotiations prove unfruitful by end 2020. Talks are expected to continue at international level at a G20/OECD plenary session scheduled for 1-2 July in Berlin.

The Commission also announced it would prepare an **Action Plan on FinTech and a Strategy on an Integrated EU Payments Market**. Both the Action Plan and the Strategy are expected to be delayed by several months up to the end of 2020. Conversely, announced legislative proposals on Crypto Assets and the cross-sectoral financial services act on operational and cyber resilience are confirmed for the third quarter of 2020.

'Digital for Planet' – still expected for 2021

The digital strategy also envisages several actions to ensure the green and digital transitions go hand in hand – as the digital component will also be key in reaching the ambitions of the European Green Deal. Initiatives will be taken to make **data centres climate neutral by 2030**. A **circular electronics initiative** expected in 2021 – including a right to repair – should also promote the reuse and recycling of electronic components of technological devices.

What's next

The Commission is currently planning the exit and recovery strategy from COVID-19. The first will outline gradual steps for lifting the existing containment measures adopted across the EU, in a coordinated way; the second – part of an ongoing debate among EU Heads of State and Governments and Ministers of Finance – will look at ways to finance the EU's way out of the economic and financial downturn. The recovery strategy is expected to result in an updated Multiannual Financial Framework for the period 2021-2027 that the Commission will release on 29 April 2020. On the same day, the Commission will also release an updated version of its 2020 Work Programme.

While the impact of COVID on the EU digital policy has primarily resulted in a lack of political capacity and resources, and reduced stakeholders engagement to drive the agenda forwards – with new possible delays in the horizon – the crisis may produce a more substantial effect on the EU political landscape and priorities in the medium term. Big Tech have established a critical role for themselves as data aggregators and infrastructure providers during the COVID-19 crisis, which may lead to a policy and regulatory change: the idea, for example, of considering tech giants as public utilities – thereby subjecting them to stronger regulatory oversight and competition rules – has resurfaced. Equally, the burden placed on public finances by the significant recovery plans already announced across the EU may reignite the arguments for a digital tax as a way to ease the pressure on public deficits. In parallel, issues such as the ties between privacy and security or the spread of illegal/harmful content on digital platforms will likely gain even more prominence in the public debate, as the EU prepares to overhaul the way it regulates in these areas.

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