



EDRi comments on the DRAFT REPORT on Towards a Digital Single Market Act (2015/2147(INI))

In view of the draft report 'Towards a Digital Market Act', and in line with [our analysis](#) of the Digital Single Market (DSM) Communication¹, we would like to make some comments on selected proposed paragraphs below and suggest amendments to the text.

For ease of reading, the left column represents the original draft and the right column represents EDRi's suggestion. Our proposals for amendments are justified for each case.

Amendment 1

(new)

- Having regard to Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data,

Comments: Data protection needs to be explicitly considered in connection with e-government and other topics, such as big data.

Amendment 2

D. whereas a high level of consumer protection and satisfaction necessarily entails choice, flexibility, information and trust in a secure online environment;

D. whereas a high level of consumer protection and satisfaction necessarily entails choice, flexibility, **transparency**, information, **interoperability** and trust in a secure online environment;

Comments: The added wording is more comprehensive.

(...)

¹<https://edri.org/overview-of-dsm-communication/>.

3. CREATING THE RIGHT CONDITIONS AND A LEVEL PLAYING FIELD FOR ADVANCED DIGITAL NETWORKS AND INNOVATIVE SERVICES

Amendment 3

<p>22. Stresses that uniform enforcement of the Connected Continent package, including the end of roaming surcharges and the net neutrality principle, requires the establishment of a single European telecommunications regulator;</p>	<p>22. Stresses that uniform enforcement of the Connected Continent package, including the end of roaming surcharges and rigorously defend the net neutrality principle, requires the establishment of a strong and independent European telecommunications regulator;</p>
<p>Comments: The original paragraph contains an essential linguistic problem, since it asks for "uniform enforcement of the Connected Continent package including the end of roaming charges and the net neutrality principle...", which could be read as asking for the end of the principle of net neutrality. Also, should the European telecommunications be established, it should be independent.</p>	

Amendment 4

<p>23. Urges the Commission to develop an innovation-friendly policy that fosters competition between, and innovation in, online platforms; considers that the priorities should be transparency, facilitation of switching between platforms or online services, access to platforms, and identifying and addressing barriers to the emergence and scale-up of platforms;</p>	<p>23. Urges the Commission to develop an innovation-friendly policy that fosters competition between, and innovation in, online platforms; considers that the priorities should be transparency, facilitation of switching between platforms or online services, including through open standards, interoperability, data protection by design and by default, access to platforms, and identifying and addressing barriers to the emergence and scale-up of platforms;</p>
<p>Comments: The concept of data protection by design by default will add an additional layer of security. On the other hand, interoperability adds the option for more businesses to compete the Digital Single Market since users would not be not locked-in in concrete services.</p>	

3.3. A fit-for-purpose regulatory environment for platforms and intermediaries

Amendment 5

<p>24. Appreciates the Commission’s initiative to analyse the role of platforms in the Digital Economy as part of the upcoming Internal Market Strategy;</p>	<p>24. Appreciates the Commission’s initiative to analyse the role of platforms in the Digital Economy as part of the upcoming Internal Market Strategy; Urges the Commission and Member States not to undermine legal certainty, the digital single market and freedom of expression by encouraging or coercing intermediaries to interfere arbitrarily with online communications for public policy goals.</p>
<p>Comments: There are far too many initiatives to introduce “voluntary measures” dealt under the “duty of care” of intermediaries. These initiatives present risks for the rule of law since it</p>	

undermines due process of the law by making private companies the police and judiciary of the Internet. More information on privatised enforcement of the law can be found at https://edri.org/wp-content/uploads/2014/02/EDRi_HumanRights_and_PrivLaw_web.pdf.

4. MAXIMISING THE GROWTH POTENTIAL OF THE DIGITAL ECONOMY

4.1. Building a data economy	4.1. Building a data economy, with the citizen at the centre
Comments: The amendment is self-explanatory.	

Amendment 6

28.Emphasises the opportunities that new ICT technologies such as big data, cloud computing, the Internet of things and other data-driven technologies can offer to the economy and society, especially if integrated with other sectors such as energy, logistics, or health;	28.Emphasises both the opportunities and risks that new ICT technologies such as big data, cloud computing, the Internet of things and other data-driven technologies can offer to the economy and society, especially if integrated with other sectors such as energy, logistics, or health; Stresses that the essence of data protection is control over personal data and the generation of new personal data through profiling is one of the biggest challenges for privacy and trust in the digital economy.
Comments: The added wording improves the text by including mentions to control of personal data and prevention of profiling.	

Amendment 7

30.Calls for the development of a European approach and further integration of the single market related to the Internet of things, with a standard-setting strategy, the reinforcement of trust in these technologies through security and transparency, and through the ‘free flow of data’ initiative, clarification of the rules on the use, access to and ownership of data, and the facilitation of switching between data service providers to prevent lock-in;	30. Calls for the development of a European approach and further integration of the single market related to the Internet of things, with a standard-setting strategy, the reinforcement of trust in these technologies through security and transparency, data protection by design and by default , and through the ‘free flow of data’ initiative, clarification of the rules on the use, access to and control over data, and the facilitation of switching between data service providers to prevent lock-in;
Comments: Same comments than for AM for recital 23.	

Amendment 8

32. Acknowledges the growing concern of EU consumers about the use of personal data by online service providers; underlines the important role active consumers play in fostering competition; urges the Commission to **clarify data ownership** and data portability rules in accordance with the key principle that citizens should be in control of their data;

32. Acknowledges the growing concern of EU consumers about the use of personal data by online service providers; underlines the important role active consumers play in fostering competition; urges the Commission to **ensure that the fundamental rights to data protection and privacy must be rigorously defended** and that data portability rules **are ensured** in accordance with the key principle that citizens should be in control of their data;

Comments: The added wording reinforces fundamental principles.

Amendment 9

(new)

34a. Acknowledges that while the 'once only principle' offers convenience to citizens, there is an inherent danger that more personal data about citizens will be processed without consent or based on implied consent;

Comments: Citizens are often not aware about what kind of data a specific public authority (data controller) processes about them. Moreover, requiring consent from the citizen in order for public authority A to fetch data from the database of public authority B will not always solve this problem, since consent statements are often too vague.

Amendment 10

(new)

34b. Emphasises the importance of data protection as a fundamental right, and more precisely the purpose limitation principle, in any e-government action plan that includes 'once only principles'; is concerned that a widespread adoption of 'once only principles' could make it easier for member state governments to process personal data for other purposes, including profiling of citizens without their explicit consent using the existing public interest exception in European data protection law;

Comments: In order to support 'once only' in e-government, different public sector databases will have to be directly linkable through a common citizen ID. This will also make it easier for member states governments to process personal data for any other purposes and to combine different databases for profiling of citizens, which could be a risk from the fundamental rights point of view if it is not done with the adequate guarantees.

Amendment 11

(new)

34c. Emphasises that an e-government action plan relying on 'once only principles' for increased efficiency and cost reduction in the public sector should also consider the potential increase in the cost of protecting personal data in the systems infrastructure needed to support 'once only', and the implications of 'once only' for the new privacy and security by design requirements in the proposed General Data Protection Regulation;

Comments: When public sector databases are directly linkable with a common citizen ID, they are more attractive targets for IT-criminals (“cybercriminals”). Identity theft perpetrators want to build a profile of their victims in order to steal their identity. Indeed this becomes easier if various data pieces obtained from separate systems can be linked together. The value of system decentralisation is diminished if databases can be linked together and this increases the costs of data protection.