



Digital Single Market Bulletin

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Further Reading: More in-depth updates and commentary on the Digital Single Market agenda is available at:

https://ec.europa.eu/commission/priorities/digital-single-market_en

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Inter-Departmental Committee on the Digital Single Market

Minister Breen hosted the 14th Meeting of the Inter-Departmental Committee on the Digital Single Market (DSM) on 4 September 2019 which focused on the eCommerce Directive and its future. At the meeting, Departmental representatives provided updates on a range of issues, including:

- The ePrivacy proposal which has not progressed and is one of the remaining DSM files yet to be completed. It is expected that the Presidency will provide a new proposal.
- The Platform to Business Regulation was published in the Official Journal of the EU on 12 July after which Member States have 12 months to comply with its provisions. Work is continuing on this.
- Copyright – the process has started on the national implementation. The first of four consultations was published in the last week in September.
- Work has progressed by the European Blockchain Partnership (EBP) on delivering an EU wide public blockchain technology network. During 2018 a major milestone was the selection and agreement of the first set of use cases. Blockchain is being taken seriously by the Commission and it is clear that they want Europe to become a leader in this technology. It is anticipated that funding will become available in the future for Member States for this technology.

- A review of the eCommerce Directive was discussed (see article below) in which the rationale for the review was discussed as well as possible implications for other pieces of EU legislation.
- The Multi-annual Financial Framework (MFF) 2021 – 27 A revised negotiating box has been set out. Efforts are intensifying to table figures by the end of the year during the Finnish Presidency. Additionally, the Commission has opened the consultation on the draft orientations for the Digital Europe Programme, which is a component of the MFF, which ends on the 25 October 2019.

eCommerce Directive / Digital Services Act

The eCommerce Directive 2000/31/EC has created the basic legal framework for online services, including electronic commerce in the Internal Market. It provides rules around how organisations providing services digitally can go about their business.

One of the cornerstones of the Directive is the principle known as “safe harbour” whereby information society service providers are said to be mere conduits for the information that their users place on their platforms and are not obliged to monitor that content.

The Directive is almost 20 years old now and this principle is being whittled away in certain areas by national, and in some cases, European legislation. Case law has also built up which has to be considered in understanding it.

At the same time, there have been enormous advances in eCommerce. New services are being offered by types of organisations that had not been thought of at the time the Directive was introduced.

The purpose of the review based on a preliminary Commission paper is:

- To put in place, for providers of digital services, a clear, uniform, and up-to-date, innovation friendly, regulatory framework in the Single Market;
- To protect, enable, and empower users when accessing digital services; and
- To ensure the necessary cooperation among Member States, together with the

adequate and appropriate oversight of providers of digital services in the EU.

The scope of the review is expected to cover all digital services, including services such as cloud services, social media services and search engines. There have been indications that the principle of “safe harbour” continues to be needed as a foundational principle of the internet.

Most recent suggestions are that new binding rules will be introduced for specific services which will involve the introduction of a form of “duty of care” consistent with rules in the new Copyright Directive and other similar recent legislation.

We can also expect these regulations to include new transparency requirements especially around content moderation and online political advertising.

A dedicated regulatory structure should ensure oversight and enforcement of the rules, in particular for cross-border situations. The nature of the regulatory structure will depend on the specific context, and could involve a central regulator, a decentralised system, or an extension of powers of existing regulatory authorities.

Artificial Intelligence Ethical Guidelines Pilot

In 2018 the EU Commission appointed a High-Level Expert Group (HLEG) on Artificial Intelligence (AI) to complement the work of the Member States Group. Its first task was to draft a set of ethical guidelines to apply to the development of AI. The group launched their “Ethical Guidelines for Trustworthy AI” at Digital Day 9 April 2019.

The Ethical Guidelines adopt a human centric approach which aims to maximise the benefits that AI can provide for individuals and society while minimising the risks that it will create. The goal is to increase human well-being rather than to treat AI as a goal in its own right.

To this end the guidelines are based on trustworthy AI which:

- Respects fundamental rights, applicable regulation and core principles and values, ensuring an “ethical purpose”; and
- Is technically robust and reliable recognising that a lack of technological mastery can cause unintentional harm.

The Guidelines set out a framework for trustworthy AI and in particular:

- They aim to ensure an ethical purpose, by setting out the fundamental rights, principles and values with which AI should comply;
- They provide guidance on the realisation of Trustworthy AI, tackling both ethical purpose and technical robustness. This is done by listing the requirements for Trustworthy AI and offering an overview of technical and non-technical methods that can be used for its implementation; and
- They also show how to operationalise the requirements by providing a concrete but non-exhaustive assessment list for Trustworthy AI that can be adapted to specific use cases.

The Guidelines are addressed to all relevant stakeholders developing, deploying or using AI, encompassing companies, organisations, researchers, public services, institutions, individuals or other entities in a way designed to enable them to easily embed them in their own way of working with AI.

Registration details for the piloting process are available at this link:

<https://ec.europa.eu/futurium/en/ethics-guidelines-trustworthy-ai/register-piloting-process-0>



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The EU Commission, at the HLEG’s request have instituted a piloting process for the Ethical Guidelines through inviting developers and other stakeholders using the assessment list to report back on their experiences and to make suggestions for the improvement of the assessment list.

This feedback will allow for a better understanding of how the assessment list, which is aimed to offer guidance for all AI applications, can be implemented within an organisation. It will also indicate where specific tailoring of the assessment list is needed given AI’s context-specificity.

All interested stakeholders can participate in the piloting process which runs until 1 December 2019.

Based on all feedback received, the High-Level Expert Group on AI will propose a revised version of the assessment list to the Commission in early 2020.

This Bulletin is issued by the EU Digital Single Market and Digital Economy Unit of the Department of Business, Enterprise & Innovation. The Unit supports the Minister of State for Trade, Employment, Business, EU Digital Single Market and Data Protection on DSM issues with the cooperation of the members of the Digital Single Market Inter-Departmental Committee.