

## INTRODUCTION

The European Commission (i.e. the European Union's Executive Body) has started a new 5-year political mandate on 1 December 2019 under the leadership of its new President, the German Ursula von der Leyen. Three overarching priorities are woven into the EC policy agenda until 2024: (1) sustainability/climate neutrality (under the new European Green Deal), (2) digitalization and (3) supporting the European economy. The COVID-19 outbreak in Q1 2020 has inevitably had a strong impact on these policy priorities – but it did not change the planned direction of travel, quite on the contrary: many of the planned policy initiatives now play a major role in the COVID-19 economic recovery efforts. At the forefront of these recovery efforts is the [EU Recovery Instrument](#), (overview available [here](#)) aiming at revitalizing the suffering European economies in the years to come.

In this European Commission, the digital portfolio is led by Executive Vice-President (EVP) Margrethe Vestager (Danish) who is also handling the Competition portfolio, and the Commissioner for Internal Market, Thierry Breton (French), a former CEO of IT company ATOS. EVP Frans Timmermans (Dutch) mainly leads the 'European Green Deal' portfolio. The EC has revised its [work program for 2020](#) on 27 May, and we set out below the revised timelines for the selected policy initiatives.

This overview provides selected EU policy developments in the area of information and communication technology and digital markets – and indicates how SPB can support clients in managing and shaping these policy discussions to their advantage.

SPB has been recognized as one of the [leading public policy law firms in Brussels](#) in 2019 and 2020.

## Recent EU Initiatives in ICT/Data Economy Sector

### A. EU Digital Age Strategy:

On 29 January 2020, the EC published a [Communication](#) outlining the ambition to develop Europe's Digital Age Strategy. This strategy provides an overview of the 5-year policy agenda for the digital sector focusing on four main action areas:

- I. Technology that works for the people
- II. A fair and competitive digital economy
- III. A digital and sustainable society
- IV. International dimension - Europe as a global player

An area the EC has indicated its interest to act is in the **competition/antitrust space**. The Commission is also evaluating the effectiveness of the current regulatory framework regarding the EC's new digital and green priorities. The Communication presents within these action areas a series of initiatives that should be foreseen. Some of these initiatives are:

- EU Strategy on **Quantum** technologies and **Blockchain**;
- Revision of EuroHPC Regulation on **Supercomputing**;
- Revision of the **Broadband** Cost Reduction Directive;
- Action Plan on **5G** and **6G**;
- New Program on **Radio Spectrum** Policy;
- Establishment of a **joint Cybersecurity Unit**;
- Review of the Network and Information Security (**NIS Directive** (Q4 2020);
- **Digital Education** Action Plan (Q3 2020);
- **Data Act** (expected 2021);
- New Consumer Agenda;
- **Data Governance** Framework);
- White Paper on an **instrument of foreign subsidies** (mid-June 2020);
- **Standardization** Strategy;
- Digital for Development Hub; and
- Develop a **Global Digital Cooperation Strategy**.

### B. European Data Strategy

The [Communication](#) on the **European Data Strategy** defines a new strategy centered on creating a policy environment for a true single market for data by 2030, including personal, non-personal and business data, with the overall aim of placing the EU at the forefront of the data economy.

The development of the European Data Space will depend on the capacity of the EU to **invest in next-generation technologies and infrastructure** and to enhance the data literacy and skills. Member States will need to cooperate and work together to reduce fragmentation and develop a genuine single market for data.

However, the EC has identified a **number of barriers** to overcome in order to achieve its vision:

- i. The availability of data, with currently insufficient incentives for data sharing between companies;
- ii. Imbalances in **market power** from large online platforms which accumulate large amounts of data;
- iii. Data **interoperability** and quality differ across the EU;

- iv. Data **governance** needs to be have a structural approach within the existing legal framework;
- v. Investment in **data infrastructure** and technologies to reduce EU's dependency on strategic infrastructure;
- vi. **Harmonize novel data flows** in a way to empower individual to exercise their privacy rights;
- vii. Address the **critical skills shortages** and data literacy, especially related to big data; and
- viii. Ensure a resilient **cybersecurity** framework for citizens, Member States and businesses.

The European Data Strategy sets out possible towards the creation of an EU single market for data focused on four pillars:

- A. **A cross-sectoral governance framework for data access and use:** To support decisions on what data can be used and in which situations and establish standards the EC may put in place a legislative framework for the governance of common European data spaces. The EC will consider which way is best to address the deeper issues related to platforms and data within a future **Digital Services Act (expected by Q4 2020)**. Of note, this will be one of the largest pieces of legislation of the new EC, which will amend among others the 2000 **e-Commerce Directive** and will create a renewed **platform liability regime**.
- B. **Enablers: Investments in data and strengthening Europe's capabilities and infrastructures for hosting, processing and using data, interoperability:** For the period 2021-2027, the EC intends to invest in a High Impact Project on European data spaces and federated cloud infrastructures. By Q2 2022, the EC envisages to present a '**cloud rulebook**' to harmonize the rulebook framework on cloud services. By Q4 2022, a cloud services marketplace for EU users from the private and public sectors may be set-up.
- C. **Competences: Empowering individuals, investing in skills and in SMEs:** Explore the possibility of **enhancing the portability right for individuals** under Article 20 of the GDPR. Thus, the EC plans to explore giving individuals more control over who can access and use machine-generated data.
- D. **Common European data spaces in strategic sectors and domains of public interest:** The EC intends to promote the development of European data spaces in nine strategic economic sectors and domains of interest, such as industrial data, European Green Deal data, common European mobility data, common European health data and common European financial data, among others.

Lastly, the EC envisages creating a **European analytical framework to measure data flows by the end of 2021**. The purpose of this initiative would be to better understand patterns of data flows

and centers of gravity both within the EU, between the Member States and the rest of the world.

The EC recognized the opportunities deriving from the use of data and technology. The **Data Strategy** is set to become the foundation for future policy initiatives deriving from the use of data not only in the digital sector, but also in other sector such as environment, mobility, financial services etc. Thus, the policies stemming from the European Data Strategy can have a horizontal impact across many sectors. **Interested parties can respond to a [public consultation](#) until 31 May 2020.**

### C. Artificial Intelligence White Paper

On 29 January 2020, the Commission published a [White Paper on Artificial Intelligence \(AI\)](#) which aims at creating an "ecosystem of trust" to ensure AI develops in the EU within clearly defined ethical boundaries. The White Paper is setting out the regulatory options the Commission is considering to support the development of AI in the EU and ensure uptake while also guaranteeing the full respect of European values and rights.

The Commission proposes to focus on four key aspects:

- A. **Capitalizing on strengths** to favor development and support the creation of European data pools enabling trustworthy AI.
- B. **Seizing opportunities** of initiatives that can position Europe as a global leader (e.g. low-power electronics a key part of the future AI processors).
- C. **Developing an ecosystem of excellence** by leveraging actions at multiple levels, including with Member States, the R&D community and SMEs. Promoting the Adoption of AI by the Public Sector.
- D. **Developing an ecosystem of trust** by developing an appropriate regulatory framework to ensure legal certainty, protect citizens and create the right investment opportunities.

The future regulatory framework should be focused and proportionate. Any **legislative initiatives** (trustworthy AI and a follow up on safety, liability, fundamental rights and data) have been **postponed to Q1 2021**. It should also build on the work of the [High-Level Expert Group on artificial intelligence](#), in particular the [Ethics Guidelines for Trustworthy AI](#), which were tested by companies in late 2019.

Lastly, concerning the governance, a European structure could help avoid fragmentation of responsibilities, increase Member State capacity and to ensure that Europe can deal with testing and certification of AI-enabled products and services.

Europe envisages becoming the frontrunner by promoting human-centric and privacy protected AI technology. **Interested parties can respond to a [public consultation](#) on the strategy until 14 June 2020.**

## D. Industrial Strategy

On 10 March 2020, the EC published its new [EU Industrial Strategy](#), which outlines the **revised approach to European industrial policy**. The revised strategy includes various elements: (i) [SMEs Strategy](#), (ii) [Report on barriers in the Single Market](#), outlining 13 main barriers most often mentioned barriers to cross-border activity, and (iii) [Enforcement Action Plan on Single Market](#) accompanied by [Commission Staff Working Document](#).

The [Industry Action Plan](#) envisages eight (8) key actions:

1. Creating certainty for industry through a deeper and more digital single market;
2. Upholding a global level playing field;
3. Supporting industry towards climate neutrality
4. Building a more circular economy;
5. Embedding a spirit of industrial innovation;
6. Ensuring skilling and reskilling;
7. Investing and financing the transition; and
8. Reinforcing EU's industrial and strategic autonomy.

In order to ensure that the objectives of the Strategy are delivered it will regularly monitor the progress in delivering on the Strategy. The monitoring can take the form of setting Key Performance Indicators (KPIs). The EC will work closely with an **Industrial Forum**, which will be set up by September 2020. The forum will consist of representatives from industry, Member States and EU institutions. Where needed, experts from different sectors will be invited to share their knowledge.

Lastly, the [Enforcement Action Plan on Single Market](#) stems from the report on barriers in the Single Market, which outlines 13 barriers in cross border activity. It responds to the call for action by Member States and takes the initiative in addressing the existing implementation and enforcement challenges. It sets out 22 actions aimed to tackle a range of different problems covering all phases and areas of possible implementation problems.

The EU Single Market is one of the core pillars of the EU economy. However, a coordinated Industrial Strategy is necessary to reinforce and scale up the industry in the Single Market. The Industrial Strategy is putting forward the necessary measures to be taken towards a green and digital transition of the industry related to products, services, markets and business models.

## E. 5G Security Toolbox

On 29 January the EC presented its [Communication](#) on Secure 5G deployment in the EU - Implementing the EU toolbox, a [Joint EU 5G Security Toolbox](#), prepared by the Network and Information Security (NIS) Cooperation Group. The toolbox was developed following the EC's [recommendation](#) on 5G Security dated 3/2019.

The [Communication](#) highlights the importance of the secure deployment of the 5G networks and focuses on three main parts:

- A. **5G roll-out in the EU:** Member States have assigned 16.5% of the 5G pioneer bands and further consultations are expected to take place in the following months to allow the use of all 5G pioneer bands by the end of 2020. By end 2020, around 138 European cities will benefit from the first 5G services.
- B. **The EU Coordinated Risk Assessment on Cybersecurity in 5G Networks:** The 2019 [5G Risk Assessment Report](#) constitutes the basis of the Toolbox and it highlighted a number of aspects which demonstrate the need for a coordinated approach:
  - (1) Increased exposure to risks related to the reliance of mobile network operators on suppliers will lead to a higher number of attack paths.
  - (2) With 5G networks increasingly based on software, risks related to major security flaws, such as those deriving from poor software development processes within suppliers, are gaining in importance.
  - (3) A major dependency on a single supplier increases the exposure to a potential supply interruption, resulting, for instance, from a commercial failure and its consequences. It also aggravates the potential impact of weaknesses or vulnerabilities.
  - (4) Due to new functionalities of the 5G infrastructure, certain pieces of network equipment or functions are becoming more sensitive, such as base stations or key technical management functions of the networks.
- C. **The EU toolbox on 5G cybersecurity:** The toolbox addresses all the risks identified in the coordinated risk assessment report. It covers strategic measures (increasing regulatory powers of authorities), technical measures (measures to strengthen 5G network equipment) and risk mitigation plans for each of the identified risks.

The [Joint EU 5G Security Toolbox](#) indicates that existing frameworks and measures at the disposal of the Member States (e.g. [European Electronic Communications Code](#), [Network and Information Security \(NIS\) Directive](#) and the [Cybersecurity Act](#)) already provide instruments to use for protecting their electronic communications networks.

The toolbox proposes a set of measures and mitigation plans, identified in strategic, technical and targeted supporting actions:

- i. **Strategic actions:** A broad list of actions are listed such as: (a) **assessing the risk profile of suppliers** and applying restrictions for suppliers considered to be high risk (incl. necessary exclusions to effectively mitigate risks) for key assets; (b) **ensuring the diversity of suppliers** for individual MNOs through appropriate multivendor strategies; (c) **strengthening the resilience** at national level; (d) identifying key assets and fostering a diverse and sustainable 5G ecosystem in

the EU; (e) maintaining and building diversity and EU capacities in future network technologies etc.

- ii. **Technical actions** including: (a) ensuring the application of **baseline security requirements** (secure network design and architecture); (b) evaluating the implementation of security measures in existing 5G standards; (c) increasing the security of virtualized network functions; (d) ensuring **secure 5G network** management, operation and monitoring; (e) using EU certification for 5G network components, customer equipment and/or suppliers' processes etc.
- iii. **Targeted supporting actions:** A broad list of actions are listed such as: (a) Reviewing or **developing guidelines and best practices** on network security; (b) supporting and shaping **5G standardization**; (c) developing guidance on the implementation of security measures in existing 5G standards; (d) ensuring the application of standard technical and organizational security measures through specific EU-wide certification scheme; (e) improving coordination in incident response and crisis management etc.

Regarding the toolbox use and implementation, Member States may be required to adopt specific legislation at national level. However, some additional actions may need to be taken at EU-level. The role of the Commission in the implementation process is to be safeguarding the cybersecurity of 5G networks and value chain. There are **two deadlines** set for Member States:

- Take concrete steps in implementing the set key measures recommended by the toolbox conclusions by 30 April 2020;
- Prepare a report by the NIS Cooperation Group on the state of implementation of the key measures in Member States by 30 June 2020.

However, with the COVID-19 crisis still ongoing, these implementation deadlines are unlikely to be met.

## Outstanding EU Policy Initiatives (Selection)

### Cooperative Intelligent Transport Systems

On 13 March 2019, the EC adopted a [Delegated Regulation](#) supporting the deployment of cooperative intelligent transport systems (C-ITS), the underlying legislation for establishing **connected cars**. This was previously criticized by the industry considering the scope for the development of connected cars was the WiFi technology but excluded LTE-V2X and 5G technologies. Ultimately, both the Council and the European Parliament rejected the Delegated Regulation. Following the rejection the EC announced it will be reviewing the proposal and provide a revised draft. However, on 20 February 2020, the Commissioner for Transport Ioana Velea announced that the EC is not planning to adopt a revised legal measure for the time being.

## ePrivacy Regulation

The contentious proposal on the ePrivacy Regulation has been under negotiation since its publication in January 2017 in the Council of the EU. Due to the COVID-19 outbreak, there has been limited progress recently and the current Council Presidency, led by Croatia. The Telecommunication Council will meet on 5 June to adopt a progress report of the proposal which will specify the issues discussed through the last months. The next Council Presidency, led by Germany is determined to finalize the Council's position in their term until the end of 2020. It appears that the incoming German Presidency is most likely to use the [compromise text](#) proposed by the Finnish Presidency as a basis for the future negotiations incorporating some elements of the latest [compromise text](#) proposed by the Croatian Presidency.

The European Parliament already adopted their [Report](#) on 26 October 2017. The ePrivacy Regulation would replace the [ePrivacy Directive 2002/58/EC](#) and as a Regulation, it would become directly applicable to EU Member States. The ePrivacy Regulation aims to complement the General Data Protection Regulation by providing additional safeguards that will govern the confidentiality of electronic communication.

## How We Can Help Clients

**Despite COVID-19, the EU lawmaking machinery in the ICT/data sector is in full swing.** As is customary in the first year of the new 5-year mandate of the EU Commission, it is putting forward a range of new legislative and non-legislative proposals, which will be the subject of the regulatory debate in the coming years.

**Now is the best time for clients to engage in these discussions,** and SPB has a strong track record of supporting clients in shaping EU legislation and other policy initiatives in their favor.

**Please reach out to us so we can discuss how we can help you manage any of the EU policy initiatives mentioned.**

## Contacts

**Wolfgang A. Maschek**

Partner, Brussels

T +322 627 11 04

E [wolfgang.mascheck@squirepb.com](mailto:wolfgang.mascheck@squirepb.com)

**Matthew Kirk**

International Affairs Advisor, London

T +44 207 655 1389

E [matthew.kirk@squirepb.com](mailto:matthew.kirk@squirepb.com)

**Christina Economides**

Public Policy Advisor, Brussels

T +322 627 11 05

E [christina.economides@squirepb.com](mailto:christina.economides@squirepb.com)