

# Client Alert

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## Technology, Media and Telecoms: What to Expect from the EU in 2015

By Alistair Maughan and Sarah Wells

**The European Commission has published its planned Work Programme for 2015. We look at what's in store in the Technology, Media and Telecoms sectors from a European legal and regulatory perspective.**

It is often said that with a new year comes a new start and, for the European Commission (the Commission), 2015 is no exception. Each year, the Commission sets out its Work Programme which presents the major political priorities of the European Union (EU) and identifies both legislative and non-legislative actions that are intended to translate these priorities into operational and regulatory reality.

The Commission's Work Programme for 2015 was adopted on 16 December 2014. With the new Commission, headed by ex-prime minister of Luxembourg Jean-Claude Juncker, coming into power on 1 November 2014, this Work Programme is the first that this Commission has presented.

The Work Programme sets out the actions that the Commission intends to take over the next 12 months in the form of 23 new initiatives and 80 existing proposals to be withdrawn or amended. A variety of areas are covered by the intended actions, including across the Technology, Media and Telecoms (TMT) sectors. Given the increasing effect of new technology on individuals' day-to-day lives, it is hardly surprising that the TMT sectors are a particular focus of the 2015 Work Programme.

### REFIT

As previously reported, the Commission launched its Regulatory Fitness and Performance Programme (REFIT) in December 2012, with the aim to review EU legislation and provide for a simpler, clearer, more stable and predictable regulatory framework.

In the TMT sectors, the Commission announced that it will review the Audiovisual Media Services (AVMS) Directive (2010/13/EU) in 2015. The AVMS Directive regulates audiovisual media services regardless of how they are transmitted, defining an "audiovisual media service" as one under the editorial responsibility of a media service provider, the principal purpose of which is the provision of programmes to inform, entertain or educate the general public by electronic communications networks. Audiovisual media services are either "television broadcasts" or "on-demand services".

The forthcoming review is set to encompass:

- (i) whether rules on audiovisual commercial communication for alcoholic beverages have afforded minors the level of protection required;

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- (ii) the extent to which co- and self-regulation aspects in promoting effective implementation of the AVMS Directive can reduce regulatory complexity; and
- (iii) a general evaluation of the AVMS Directive (although this more general review is not expected to end until 2016).

The Commission also announced that it will continue to review:

- the E-Privacy Directive (2002/58/EC) – which specifically addresses the requirements of new digital technologies and was originally designed to accelerate the growth of electronic communications services. The E-Privacy Directive complements the Data Protection Directive (95/46/EC), which deals with the regulation of a number of issues such as confidentiality of information, treatment of traffic data, cookies and spam; and
- the 2009 Telecoms Package – the review which updated the EU's 2002 telecommunications framework and created a common set of regulations for the telecoms industry across all EU member states, spawning separate directives addressing the regulation of service provision, access, interconnection, users' contractual rights and users' privacy,

with results from such reviews expected to be published in 2016.

More broadly, the Commission's REFIT programme will also address other legislative packages that affect the TMT sectors, including the Commercial Agents Directive (86/653/EEC), the Late Payment Directive (2011/7/EU) and the Comparative Advertising Directive (2006/114/EC).

The Commission has also announced that, as part of the REFIT programme, it will issue a Business Marketing Directive designed to simplify the law on misleading and comparative advertising.

### DIGITAL SINGLE MARKET STRATEGY

One of the main areas on which the Commission is set to focus in 2015 relates to the digital single market strategy. Back in 2011, the Commission adopted the Single Market Act, which set out 12 priority areas for work to re-launch and strengthen the EU single market. The Commission identified 12 so-called “levers” that it believed would boost growth and enhance confidence in the single market. Creating a digital single market was one of these levers.

The Commission's plan for a digital single market builds on a concept integral to the EU itself – a single market where barriers to trade between Member States are eliminated. Currently, each EU country has its own rules for telecommunications services, copyright, data protection and so forth. Since digital technologies are essentially borderless, the Commission aims to ensure that there is greater harmonisation between the Member States in relation to such technologies. The digital single market essentially, therefore, aims to be a removal of national barriers to transactions that take place online.

The Commission believes that the digital single market holds “one of the main keys to a new dynamic across the European economy as a whole, fostering jobs, growth, innovation and social progress”. Indeed, the European

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Parliament estimates that potential efficiency gains of €260 billion per year could be created as a result, and, given that the world is increasingly dependent on digital technology for all sorts of economic and social activities, one can see why.

The digital market strategy being prepared in 2015 is set to focus on the following six strands:

- building trust and confidence;
- removing restrictions;
- ensuring access and connectivity;
- building the digital economy;
- promoting e-society; and
- investing in world-class ICT research and innovation.

Some elements have already been launched, such as the completion of Regulation 910/2014 on electronic identification (eID) and trust services for electronic transactions in the internal market (eIDAS Regulation) in August 2014. The eIDAS Regulation was one of the first tangible results of the digital single market initiative: a new legislative framework to ensure confidence in electronic transactions and replace the previous directive on electronic signatures in order to clarify its concepts, simplify the use of e-signature and remove interoperability barriers, and provide for the mutual recognition across the EU of electronic identification and authentication services.

The Commission remains focussed on issues such as making online and cross-border transactions more straightforward and more secure, and on building confidence in digital transactions – both of which are clearly supported by increased use of eID services.

As part of the digital single market strategy, in 2015 the Commission plans to conclude negotiations on a common European data protection reform and a Regulation on a Connected Continent (relating to matters such as roaming charges and net neutrality).

## COPYRIGHT

The Commission also plans to modernise the laws on copyright in the EU. The year 2014 saw a number of legislative changes in the copyright field, including the introduction of a parody exception for the use of copyright works and the permitting of format shifting, *i.e.*, making personal copies of copyrighted works for private use. These updates to the law of copyright made actions legal that, due to new technologies, had actually been commonly undertaken by consumers for a significant length of time, but had previously been illegal.

The Commission considers that the law on copyright needs modernising to reflect these new technologies, and one of the Commission's main actions therefore focuses on such modernisation bringing the law in line with current technology.

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However, the Commission has not set out exactly what it proposes to do in relation to the copyright rules. What is known is that, as part of the digital single market strategy, the Commission aims to achieve better harmonisation between Member States, including providing EU citizens with both greater choice and access to copyright works across the EU as well as in relation to enforcement of rights, *i.e.*, access to justice, sanctions and remedies regarding infringements. It will be interesting to see how these aims are achieved by the Commission throughout the course of 2015.

## PAYMENT SERVICES

As we have previously reported, the EU has been slowly progressing revision of the regime on payment services to reflect the developing nature of the payment services market. The Commission's proposed revised Payment Services Directive (PSD2) will cover a wide range of payments-related services and businesses, including in the TMT sector.

In its current form, PSD2 will impact (as one might expect) payment institutions, e-money institutions and their agents and technology providers. But it will also affect operators of e-commerce marketplaces, gift card and loyalty programs, public communication network operators, and digital wallet providers.

PSD2 is expected to be adopted in 2015 and requires implementation by member states two years after EU adoption.

## LEGISLATIVE CHANGES

As expected, some previously-enacted legislation will also be come into force in 2015. In the TMT sectors, relevant legislation includes Directive 2008/8/EC (amending Directive 2006/112/EC regarding the place of supply of services), which aims to ensure that VAT on services accrues to the country where consumption occurs. Council Directive 2008/8/EC was adopted on 12 February 2008, but it was recognised that implementation could not immediately occur in all cases due, in part, to administrative burdens. The amendments to ensure this change takes place have therefore been occurring in stages, and in 2015, the service industries affected by this Directive are the telecoms, broadcasting and e-services industries.

As of 1 January 2015 (under Article 5 of Directive 2008/8/EC), VAT payable on the supply of digital services (telecommunications, broadcasting and electronics) is determined by the location of the customer, rather than the supplier, and hence is now due at the rate applying in that particular customer's country. The reasoning behind this change is to attempt to prevent suppliers from basing themselves in low-VAT jurisdictions, given that the supplier's location will no longer be relevant for VAT purposes. Further, it also aims to create fairness between EU and non-EU suppliers, as both will then be accounting for VAT at the customer's point of location.

Another TMT-related legislative item, Directive 2013/40/EU (on attacks against information systems) is also expected to be implemented across the EU by September 2015. This Directive is designed to introduce measures to tackle large-scale information systems attacks. Given the widespread news reports of cyber-attacks, such as the recent attack on Sony, in which private data was released online, some would argue that this Directive's introduction can't come too soon.

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## CONCLUSION

The European Parliament and the European Council are yet to consider the 2015 Work Programme. The European Parliament has, however, stated that it will deliver its opinion on the 2015 Work Programme from 12 to 15 January 2015. Furthermore, the Commission will publish roadmaps for each of the 23 new proposals set out in the Work Programme that, when published, will provide further details on timing.

As the Commission has acknowledged, EU citizens prefer less EU interference in their daily lives and want the EU to be more open about what it does and how it does it. The publication of a Work Programme is the Commission's way of offering transparency of what the EU intends (or at least purports to intend) to do in 2015. However, it remains to be seen whether the items set forth in the Work Programme are ultimately achieved: for example, conclusion of the process of European data protection reform has been an aim for many years with, as yet, no definite date for its commencement.

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