European Union (EU) Policy Update

ICANN Government & Intergovernmental Organization (IGO) Engagement

Elena Plexida
GE-002
3 April 2020

ICANN

TABLE OF CONTENTS

Foreword

This is the first in a series of papers that will provide EU policy updates and analysis on topics, initiatives, and proposed legislation of potential relevance to the ICANN community and to ICANN's technical role in the Internet ecosystem.

What is the European Union?

The European Union (EU) is a political and economic union of 27 member states[1] located in Europe, stretching from Portugal to Romania, and Sweden to Cyprus. The Union does not include some Balkan countries like Serbia, nor the United Kingdom, Norway, and Switzerland.

The EU has a direct mandate from its member states to regulate the 'internal market' across these countries, including the cross-border movement of people, goods and services, but also other policy areas where coordination is necessary, including justice and fundamental rights, climate, fisheries, and foreign policy. The EU also has a budget to support less economically developed regions of the bloc and has direct enforcement powers on competition law and state subsidies. Member states maintain the separate sovereign right to legislate in areas like health, taxation, education, and public services, with some exceptions.

The governance of the EU is carried out by three main institutions, the European Commission, the Council, and the Parliament. The European Commission, which holds the executive power, proposes new legislation and enforces existing EU laws. Legislation proposed by the Commission will be then examined, changed, and approved by the Council, composed of ministers and heads of state, and the European Parliament, the institution elected by EU citizens.

Why is the European Union Relevant to ICANN's community?

The EU passes legislation for the 27 member states but its decisions can also generate effects beyond its borders. This is especially true on legislation regulating the 'digital' space, because of the borderless nature of the Internet. The EU's privacy law General Data Protection Regulation (GDPR)[2], for example, applies to any organization providing services to EU citizens, whether or not the organization is located in the EU, and a similar extraterritorial reach is expected for the 'Digital Services Act' (more below), which will reform the liability rules for platforms and social media.

The Political Structure of the Commission and the Commissioners Relevant to ICANN

The Commission is composed of the College of Commissioners from 27 EU member states. Together, the 27 members of the College are the Commission's political leadership, serving a five-year term. As of December 2019, a new Commission took office for a five-year mandate.

The new Commission, led by Commission President Ursula von der Leyen, is structured into three groups of Commissioners. At its core are three Executive Vice Presidents from the main political groups. The three Vice Presidents have dual roles - to serve as Commissioner leading one of the departments of the EU civil service (Directorates General) and to act as a coordinator for one of the key policy priorities of the Commission (sustainability, digitalization, economy, and growth). The three Vice Presidents are:
- Margrethe Vestager (Denmark, liberal), who is responsible for Digital Industry and Competition.

---

[1] https://europa.eu/european-union/about-eu/countries/member-countries_en
[2] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R0679&from=EN

- ⊙ Frans Timmermans (The Netherlands, centre-left), who leads the European Green Deal and climate.
- ⊙ Valdis Dombrovskis (Latvia, centre-right), who is in charge of economic policy and finance.

There are also five Vice Presidents whose role it is to coordinate work on the other Commission priorities, and eighteen Commissioners, with responsibility for a Directorate-General and specific policy topics. The eighteen Commissioners report to a Vice President.

The Commission members most relevant to ICANN are:
- ⊙ Executive Vice President Margrethe Vestager who leads EU digital policy and
- ⊙ Commissioner Thierry Breton, who leads the European internal market.

Together, they focus on EU digital policy, including cybersecurity, 5G, connectivity, data flows, and Artificial Intelligence (AI).

Other members also important are:
- ⊙ Margaritis Schinas (Greece, centre-right), who is Vice President, *Promoting our European Way of Life.* He is responsible for some aspects of the EU security policy in cyberspace, including disinformation.
- ⊙ Ylva Johansson (Sweden, centre-left), Commissioner of Home Affairs.
- ⊙ Didier Reynders (Belgian, liberal), who is responsible for the Justice portfolio and of the GDPR's implementation.

Priorities of the New Commission

The Commission has three main priorities for the current term:
- ⊙ Ensuring a strong but inclusive European economy.
- ⊙ Reducing CO2 emissions and creating a more sustainable economy and society.
- ⊙ Boosting EU digitalization.

On the latter, the idea is not to try to replicate U.S. and Chinese success on 'hyperscalers' but to secure Europe's sovereignty in the digital economy by strengthening its capacity in key technologies such as blockchain, quantum computing, and algorithms.

More broadly, the Commission intends to play an increased international role, as a counterpart to China, the U.S., and Russia. Building on the success of GDPR for privacy, the EU will seek to export a new technology regulation paradigm, based on 'human-centric' principles and fundamental rights.

Issues such as data protection, cybersecurity, sustainability, ethical and sustainable development, and the use of technology will be cross-sector themes. Each member of the Commission will have to implement the themes in their initiatives.

The Commission recently communicated its vision for "shaping Europe's digital future"[3], by setting out goals and actions to boost EU digitization.

---

[3] https://ec.europa.eu/info/sites/info/files/communication-shaping-europes-digital-future-feb2020_en_3.pdf

Specific Policies Relevant to ICANN

Cybersecurity

Cybersecurity remains a 'top priority' for the EU Commission, which will continue to promote initiatives aimed at improving cooperation among EU countries, as well as securing safe products and infrastructures across the EU.

Stronger cybersecurity contributes to the aim of 'European digital sovereignty', reducing the EU's dependence on foreign technology in strategic sectors, and improving its defence against cyberattacks. Operational coordination among the cybersecurity agencies of member states and a stronger mandate for the EU cybersecurity agency European Union Agency for Cybersecurity (ENISA) are key components of this strategy.

The Commission will propose the following legislation:
- A review of the Directive on security of network and information systems (NIS) Directive[4], aimed at harmonizing the identification of operators of essential services. DNS providers are included in the NIS directive list of entities for which operators of essential services should be identified. In this respect, some EU countries have identified operators of essential services within the Domain Name System (DNS) while others have not. The review will look at ensuring consistency with the criteria on identification of operators of essential services, including assess the need to further harmonize the criteria that allow a DNS provider to qualify as an operator of essential service. The plan is to have the review carried out by Q4 2020, but the timeline may be disrupted because of the COVID-19 pandemic.
- A legislative initiative on strengthening cybersecurity in financial services

In addition, the Commission plans to roll out cybersecurity certification schemes for Internet of Things (IoT) and 5G and is assessing the need to introduce mandatory certification for specific services. The "Union rolling work programme for European Cybersecurity Certification" (to be published by the Commission around June 2020 and preceded by a consultation phase) will identify priority areas for EU-wide certification and providing a list of information and communications technology (ICT) products, services, and processes to be covered by a certification scheme.

Digital Services Act – New Rules for Platforms and Content

Another area that may be relevant to the ICANN community concerns the harmonization of the rules on 'digital services' and Internet platforms. In late 2020, the Commission will propose a 'Digital Services Act' which will replace the current eCommerce Directive[5], the liability regime for Internet services.

The primary goal of the Commission is to harmonize the rules across the different member states, addressing illegal material online and the mechanisms to remove it. To this end, one item policymakers will most likely focus on is an operational mechanism to remove certain content, so called 'notice and action', with the possibility to appeal and restore content wrongly removed.

The scope of the act is still unclear. Initially, the act was set to include the Domain Name Registrars and Registries in its scope, but now it seems that the Commission wants to limit

---

[4] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016L1148&from=EN
[5] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32000L0031&from=EN

the scope of the legislation. It is therefore premature to assume that Registrars and Registries will be included.

Regarding the 'safe harbour' provided by the eCommerce Directive for the content hosted by platforms, it is also unclear if the rules will stay the same or if the Commission will introduce additional responsibilities for larger platforms.

The policy options the Commission will consider are subject to an analysis and impact assessment, following the evaluation of the eCommerce Directive from its entry into force until today. The launch of a three-month public consultation on the Digital Services Act was planned for March 2020. It is now postponed due to the COVID-19 pandemic.

Privacy and Data

Data protection remains a core value of the EU and will inform its policies in the years to come.

The implementation of the GDPR by national authorities in coordination with the Commission is ongoing. The Commission will report on the application of the GDPR, two years after its entry into application. A feedback period is open from 1 April 2020 to 29 April 2020, inviting input from stakeholders. One of the key areas for feedback is the international transfer of personal data to third countries, and the cooperation and consistency mechanism between national data protection authorities.[6]

In addition, the EU will have to conclude the redrafting of the ePrivacy Directive[7], which governs the secrecy of electronic communications and technologies like web cookies.

The legislation has not progressed for several years as lawmakers struggle to agree on a common set of amendments. If stagnation persists, the proposal might be withdrawn, and the Commission will then propose new text. In the meantime, the existing e-Privacy rules will be upgraded to match the provisions of the GDPR.

The Commission may also consider reviewing the rules on data retention. The Court of Justice of the EU (the 'Supreme Court' of the EU) has annulled several national laws on data retention (based on the Data Retention Directive), but EU member states still consider the ability to seize and access retained data held by telecom operators as a necessary tool for law enforcement. Governments have had ongoing discussions for several years to find a lawful way of maintaining data retention provisions, and the Commission may propose legislation in the future.

Finally, on non-personal data, the Commission has recently proposed an initiative to create 'data pools', which will group data belonging to different industries (energy, agriculture, automotive). The aim of the 'Data Strategy' is to exploit the potential of industrial data in order to strengthen and digitalize all EU industry.

Conclusion

---

[6] https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12322-Report-on-the-application-of-the-General-Data-Protection-Regulation

[7] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32002L0058&from=EN, and consolidated version https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02002L0058-20091219&qid=1585059571119&from=EN

ICANN org is monitoring developments at the EU level and will provide periodic updates as relevant policy initiatives progress or others are unveiled.