The
Federal Government

Comments by the Government of the Federal Republic of Germany on the European Commission's „Strategy for a Digital Single Market for Europe"

(Communication from the European Commission of 6 May 2015 COM(2015) 192 final)

Please Note:
This English translation of the German original is a courtesy translation; in case of any discrepancies, the German version shall prevail.

Contents

I. Preface

Information and communication technologies (ICT) have fundamentally changed our world. They are already indispensable for the economy, society and private communications.

But the digitisation of economic and social life is only just starting. If we are to make use of the opportunities for Europe and to tackle challenges at an early stage, we will all have to actively participate in shaping the digital transformation.

In the German Digital Agenda presented in August 2014 the German government addressed the political priorities and fields of action in the digital sphere for 2014 to 2017. This Agenda covers the entire range of priority issues which the German government also considers to be priorities for the further development of the Digital Single Market.

Our aim is to press ahead together with digitisation in the European Union and to deploy a digital regulatory policy which sets high standards in terms of competition, security, consumer rights and data protection.

The Juncker Commission has declared the creation of the Digital Single Market to be a priority of its work, and in May 2015 issued a communication presenting its strategy for the European Digital Single Market. This strategy includes a road map for a host of actions with which the European Commission aims to utilise the opportunities and face up to the challenges of the digital transformation. The European Commission will draw up concrete legislative proposals for the individual areas both this year and next.

The German government awaits with considerable interest the proposals announced by the European Commission in its communication and will take an active and constructive approach to the European Commission's strategy.

In light of the foregoing, this paper provides an initial assessment of the European Commission's strategy along with the aspects which the German government considers to be central and decisive for shaping both the Digital Single Market and the announced individual measures of the strategy.

II. Key statements

1. Legislative proposals for simple and effective cross-border contract rules for consumers and businesses (action 1)[1]

The European Commission has announced that it will issue a legislative proposal at the end of 2015 which will contain fully harmonising contract law provisions for contracts on digital content as well as online sales contracts on tangible goods. The aim is to promote cross-border trade by harmonising certain areas of contract law (especially warranty law as well as the law governing general terms and conditions).

The German government is keen to make a constructive contribution to the discussion process at the earliest possible stage. It shares the European Commission's view that a package of actions to promote the Digital Single Market should include an analysis of aspects of contract and consumer protection law. The **greatest need for regulation appears to be in contracts on digital content** between companies and consumers. Due to the very different positions of the Member States on this matter, it is likely to be **difficult** to **harmonise warranty law and the law governing general terms and conditions** for online sales contracts on tangible goods.

2. Review of the Regulation on Consumer Protection Cooperation (action 2)

The European Commission will review the Regulation on Consumer Protection Cooperation (so-called CPC Regulation) in order to draw up more efficient co-operation mechanisms.

The enforcement of European consumer protection rules for online purchases and purchases of digital products is to become easier and rules are to be implemented faster and more effectively in future. The European Commission will submit a proposal to review the CPC Regulation in order to clarify and develop the powers of enforcement authorities and to improve the coordination of their market monitoring activities and alert mechanisms to detect infringements faster.

The **German government welcomes the announced review of the CPC Regulation** and supports the Commission's goal to achieve better legal enforcement in the Digital Single Market. The actions proposed by the European Commission generally appear to be suitable for this purpose. However, **coherence with** existing and generally tried-and-tested **national law enforcement systems must be ensured**.

3. Affordable high-quality cross-border parcel delivery (action 3)

In section 2.2, the European Commission addresses the need to optimise cross-border parcel deliveries already mentioned in 2012 in its Green Paper on the parcel delivery market. The Commission highlights here the considerable difference in parcel delivery prices in the individual Member States which has often been neglected up to now. The Commission sees this as a major obstacle to the development of e-commerce in the single market.

Actions have now been announced to boost price transparency and enhance regulatory oversight of the cross-border parcel delivery sector in addition to measures already pursued by the sector. After a two-year period, the progress achieved is to be assessed along with the need, if any, for additional measures. It is not yet clear how these aspects are to be shaped, however, there are no plans to amend the legal framework for the post or transport sector.

1 The number of actions (action 1 to action 16) refers to the order in which these actions are listed in the "Road map for completing the Digital Single Market" contained in the annex to the communication by the European Commission of 6 May 2015.

The **German government generally supports** the **approach** pursued by the European Commission. That being said, any **unnecessary market regulation** should be avoided. **In particular**, the German government does not see any need for **price regulation**.

4. Wide ranging review to prepare legislative proposals to tackle unjustified geo-blocking (action 4)

The European Commission has announced a wide ranging review of geo-blocking practices for the current year so that legislative proposals to end unjustified geo-blocking will be presented in the first half of 2016. The aim is to reduce fragmentation of the Internal Market and the related consumer dissatisfaction. Consumers and businesses in the EU are to be able to take full advantage of the single market in terms of choice and lower prices.

The **German government welcomes the initiative** by the European Commission. Unjustified geo-blocking could hinder full implementation of the single market. That being said, however, **concrete cases** of geo-blocking must be **identified and analysed**. Only then will it be possible to develop proposals for ending unjustified discrimination by companies on the grounds of place of domicile or nationality, taking into account contractual freedom and competition law.

5. Competition sector inquiry into e-commerce, relating to the online trade of goods and the online provision of services (action 5)

In May 2015, the European Commission launched a **Europe-wide competition sector inquiry into e-commerce (goods and services)**. The preliminary results of this inquiry are expected by mid-2016 and a final report is scheduled for **early 2017**.

With this sector inquiry, the European Commission aims to **identify conduct by companies that could be in violation of competition law** (prohibited agreements, abuse of market dominance) **which constitutes barriers to cross-border e-commerce**. The Commission is focusing this inquiry on goods and services which are already being extensively sold or provided online, for instance, electronics, clothing or digital content.

The German government welcomes the sector inquiry by the European Commission. It expects to see **detailed findings** on how online trade works and on the business practices of these companies. This will be of **benefit to the work by national competition authorities and the European Commission** and will ensure that EU competition rules are observed.

6. Legislative proposals for a reform of the copyright regime (action 6)

The European Commission has announced a legislative proposal for modernising copyright rules for the end of 2015.

The aim is to make it easier to offer copyright protected content across borders. New rules are also planned for the fields of education and science along with clarification (which has not yet been specified in more detail) with regard to activities by intermediaries. Many of the rule approaches are currently unclear.

The move by the European Commission is to be generally welcomed because the **European copyright acquis needs to be reformed** if it is to meet the needs of digitisation and connectivity. Although the **measures announced** up to now are a step in the **right direction**, they should only be a first step towards fundamentally adapting copyright law to the digital age. **The long-term aim should** hence be **stronger harmonisation of the European copyright regime;** the European Commission should launch **research projects** in parallel to the current projects. Apart from this, the German government also sees **further need for regulation** in order to ensure **fair remuneration for creative work** and to enable **innovative license models**.

7. Review of the Satellite and Cable Directive (action 7)

The European Commission announced a review of the satellite and cable directive and initiated the related consultation on 24 August 2015. The focus here is to be on the online transmission of television and radio broadcasts. The **German government supports this review**. At the same time, **interaction with media regulation (media convergence) issues** must also be taken into consideration.

8. Legislative proposals to reduce the administrative burden on businesses arising from different VAT regimes (action 8)

The European Commission has announced legislative proposals for 2016 to reduce the administrative burden on businesses which the Commission believes are due to different VAT regimes in the Member States.

The Commission aims to:

- extend the current electronic registration and payment mechanism which came into effect on 1 January 2015 (mini one-stop shop) to online sales of goods by sellers from EU or third countries;
- introduce a single "VAT threshold" for small start-ups with cross-border activities below which no VAT will be charged;
- allow the home country to also check cross-border businesses with a view to the VAT claims of other Member States;
- remove the VAT exemption for the importation of small consignments from suppliers in third countries.

In the present communication, the Commission also states that it "will also explore how to address the tax treatment of certain e-services, such as digital books and online publications, in the context of the general VAT reform".

The German government supports the move by the European Commission to reduce the administrative burden on businesses with cross-border activities on condition that this does **not distort competition** to the disadvantage of other businesses. Furthermore, the **German government is keen to ensure that the German state budget will not be adversely affected** and that the **responsibility of the Member States** as laid down in the EU Treaty is maintained. The German government supports the possibility to apply the **reduced VAT rate** also to **e-books, e-paper** and other **electronic information media**.

9. Legislative proposals to reform the current telecoms rules (including the review of the e-Privacy Directive) (actions 9 and 12)

Proposals are to be presented in 2016 for an overhaul of the European regulatory framework for electronic communications ("Telecoms review": five directives, one regulation). The European Commission proposes strengthening harmonisation by **adapting the institutional design** and through proposals related to **spectrum policy, spectrum management** as well as **consumer rights**. Furthermore, these proposals are also to include proposals to create a level playing field for **over-the-top providers (OTTs)** and traditional telecoms operators and to promote **investment in high-speed networks**.

The German government believes that harmonisation efforts are useful if they promote the European single market. That being said, however, the characteristics and different preconditions in the Member States must be taken sufficiently into account. **When reviewing the institutional design, the aim should be to streamline the existing, very**

complex and time-consuming procedures and to increase their efficiency. The focus here should be on the economic logic and efficiency of the fulfilment of government tasks. The German government considers differentiated regulation tailored to the concrete market to be the best approach. This applies to both the definition of product/service markets and the definition of geographic markets in need of regulation. Apart from necessary rules to promote and protect the diversity of expression, regulation should only be maintained in effect as long as there are no competitive markets. The German government understands the need to design regulation more investment-friendly. It is expecting ambitious proposals that will limit regulation in the future to the necessary amount and, in particular, reduce and eliminate unnecessary red tape in procedures.

In the field of spectrum policy and spectrum management, harmonised cut-off dates would be conceivable, i.e. deadlines by which frequency bands harmonised throughout Europe would have to be made available. **The Member States should, however, still have as much leeway as possible and first movers (like Germany, for instance, in the bid for the 700 MHz band) should not be held back**. The German government is also open to discussion on the development of common, general principles for a transparent and non-discriminatory allocation process. In order to address the dynamic development of the sector, the German government proposes developing faster procedures for updating the political goals of European spectrum policy through specific meetings of the Digital Agenda High Level Group.

The German government welcomes the Commission's goal to promote the deployment of digital high-speed networks using market-driven investment through effective competition and – where this does not take place via the market – through targeted promotion and support. **The German government is in favour of European initiatives to create investment incentives for the deployment of broadband**. At the same time, additional incentives must be created to support investment in network deployment, irrespective of project size. This could include, for instance, common quality standards for assessing investments in broadband projects or qualification measures to strengthen broadband-specific investment expertise at banks or measures to promote demand for high-speed networks.

However, the German government is critical of the introduction of further universal service obligations in the Universal Service Directive. Before amending the Universal Service Directive, the currently valid universal service concept should be reviewed. An analysis should be carried out to identify how coherence can be warranted with the measures needed to provide high-speed services in rural areas.

The emergence of over-the-top-players (OTTs), who sometimes offer substitutes for traditional telecoms services but who are not subject to sector-specific regulation, must be taken into account in the further development of framework conditions (including the e-Privacy Directive) in order to achieve a single convergent legal framework. **A level playing field** should be created here.

The German government believes that when it comes to the pending reform of current rules for telecoms and Internet services, IT security aspects must be generally taken into account in the interest of citizens, the economy and the state. In particular, it is necessary to identify the extent to which measures are needed to combat malware and criminal infrastructures (for instance, botnets) and to help users to protect their own systems.

Prioritising urgent regulation areas appears to be needed in order to implement certain measures as promptly as possible. Adequate consultation with the general public regarding proposed rules could also help to achieve success.

10. Review the Audiovisual Media Services Directive (AVMS Directive) (action 10)

The AVMS Directive was last reformed in 2007. It provides for graded minimum rules for television and video on-demand with regard to the protection of minors, advertising, the promotion of European works and access to information. The **increasing mixing of linear (TV) and non-linear (video on-demand services) content** is calling to question current media regulation at EU (and also national) level. Media services, which up to now were regulated by the AVMS Directive, are now also coming together on one platform and one screen with telemedia services that are less regulated by the e-Commerce Directive so that under certain circumstances the user may no longer be able to clearly distinguish them.

The European Commission is planning to review the AVMS Directive with a focus on its scope and on the nature of the rules applicable to all market players, in particular, measures for the promotion of European works, and the rules on the protection of minors and advertising rules. The Commission is currently conducting a consultation and evaluation of the AVMS directive (REFIT) in this context.

The German government is committed to a regulatory framework that takes into account the **convergence of media technologies and media markets**, secures and creates **a level playing field** and warrants **technology neutrality**. The German government considers a **review** of the AVMS Directive to be **urgently necessary**.

11. Comprehensive analysis of the role of platforms in the market (action 11)

Before the end of 2015, the European Commission will launch a comprehensive assessment of the role and special importance of online platforms (e.g. search engines, social media, e-commerce platforms, app stores and price comparison websites) for society and the economy.

As part of its overall intention to create suitable conditions and a level playing field for flourishing digital networks and innovative services, the Commission aims to develop a **fit for purpose regulatory environment for online platforms** and intermediaries. This **assessment** is to focus, for instance, on **analysing** the **problems** that result from the way some online platforms exploit their market power, including the question as to what extent they should be subject to new regulation that goes beyond the application of **competition law** in specific cases. It remains to be seen whether or not the European Commission is already considering specific **secondary measures** outside competition law.

The German government expressly **welcomes** the announced assessment which it proposed together with France. The assessment should be conducted quickly but diligently, it should be comprehensive and unbiased when it comes to identifying problems, the need for action that exists in order to solve these problems and the legal areas that may be affected. The topic of platform regulation is also related to the Telecoms review (see No. 9). Platform operators (over-the-top players, OTTs) frequently offer communication services which can be seen as a substitute for traditional telecoms services but which do not fall under sector-specific telecoms regulation. This must be taken into consideration when developing the framework conditions for a uniform, convergent legal framework so that a level playing field can be created for all providers of such services. It hence makes sense to conduct an overall assessment of both topic areas, i.e. Telecoms review and platform regulation.

12. Combatting illegal content on the Internet (action 11)

The legal framework for combatting illegal content on the Internet is largely determined by the e-Commerce Directive (2000/31/EC). According to this Directive, information society service providers are not subject to a general monitoring obligation (Article 15 of Directive 2000/31/EC). This exclusion of a monitoring obligation is also supplemented by liability exemptions for certain service providers (Articles 12 to 14 of Directive 2000/31/EC). When it comes to the infringement of intellectual property, especially the illegal offering of content protected by copyright, the Directive on the enforcement of intellectual property rights (Directive 2004/48/EC) and case law of the European Court of Justice regarding the obligations of platform operators to carry out checks are relevant.

The European Commission includes in the term “illegal content” very different content: information on terrorism, child pornography or content that infringes intellectual property. It states that combatting illegal content today can be slow and complicated. Differences in national practices could also impede enforcement. The European Commission hence considers it to be necessary to analyse how combatting illegal content can be improved.

The German government **generally welcomes the aim of stepping up the fight against illegal content**. The **unbiased analysis of the role of intermediaries** foreseen by the European Commission is an **important first step** towards obtaining an informed basis for decision-making. Based on this, a decision can be made in the next phase as to

whether and in what manner illegal content on the Internet can be better tackled. It should also be clarified to what extent the announcement by the Commission in the field of copyright, i.e. creating clear rules for intermediaries, is related to the planned unbiased analysis. All possible measures here must also be **compliant with the fundamental right to freedom of expression and information as well as entrepreneurial freedom**. Differentiation is also needed here regarding the type of content, e. g. combatting content related to terrorism and child pornography falls more under the policy area of "police and judicial co-operation in criminal matters" than under the Digital Single Market. The German government believes that the **liability system has generally proven its worth**. Therefore, the **liability regime of the e-Commerce Directive should not be challenged** because it enables a reasonable balance between the interests of providers and users of information society services, the interests of rights holders and the interest in effectively combatting online crime.

13. Establishment of a Public-Private Partnership on cybersecurity (action 13)

The European Commission intends to establish a Public-Private Partnership (PPP) in the first half of 2016 on cybersecurity in order to strengthen **Europe in cybersecurity and trusted ICT**. For its part, the German government has many years of experience with PPPs in the field of cybersecurity and is currently in the process of stepping up its efforts in this regard by bundling the strength of government and business in order to counteract the heightened and increasingly more complex cyber threat situation. The **German government generally welcomes a PPP for issues, research and developments related to cybersecurity** and intends to contribute its expertise to the Commission's initiative and to coordinate its own activities at European level. One precondition is the **early involvement of all relevant stakeholders** who must accompany the process of setting up a civil cybersecurity PPP – who are, in particular, the Member States. Generally speaking, the **Member States** should be involved in future at an early point in time, i.e. already when the PPP initiative is being established.

The German government also believes that the concept of a Public Private Partnership on cybersecurity should be rooted in the holistic approach pursued in the European Union's cybersecurity strategy to promote the European ICT security industry. This strategy includes a comprehensive concept to strengthen a trustworthy European ICT and cyber-defence sector and to promote the single market by stimulating research and development.

The German government believes that this also involves examining the Community acquis in order to determine whether it facilitates the promotion and protection of a trustworthy European ICT security industry as envisaged in the EU's cybersecurity strategy. A holistic and, above all, sustainable approach to promote and protect Europe's IT security industry and to maintain technological sovereignty in the field of IT security also calls for a comprehensive concept that should also include foreign trade policy, for instance. In this case, consideration should be given to setting up a European IT security fund.

14. Initiatives on data ownership, free flow of data and on a European Cloud (action 14)

The European Commission has announced "initiatives on data ownership, the free flow of data and a European cloud" for 2016. The aim of the initiatives and measures announced is to help overcome the legal and technical obstacles preventing improved cross-border processing of data, for instance, in conjunction with Big Data applications or Industry 4.0.

The **German government generally welcomes the Commission's move to quickly clarify the legal and technical issues** related to the cross-border processing and use of data. The initiatives mentioned could help to **develop a European data location policy** based on common principles. Like the European Commission, the German government is working to ensure that innovation can keep pace with global competition. The personality rights of the parties concerned must be suitably protected.

Up to now, however, this strategy has only briefly addressed the central suspense curves of the debate. It does not state the specific measures that will resolve these issues. The **German government will play an active role in developing possible solutions** for the issues addressed and in shaping the further course of debate in Brussels. This also includes a sensible differentiation between the free flow of data and a European cloud in general and between IT infrastructures in Member States and their public authorities, in particular.

15. Adoption of a Priority ICT Standards Plan (action 15)

According to No. 4.2 of the communication by the European Commission, a **Priority ICT Standards Plan** is to be set up before the end of this year.

Standardisation has an essential role to play in the development of the Digital Single MarketDigital Single Market and in improving interoperability. In addition to the existing EU Rolling Plan for ICT Standardisation, the European Commission also aims to set up an integrated standardisation plan with priorities for standardisation before the end of 2015. This plan is to address those technologies and domains that are deemed to be indispensable to the Digital Single Market.

The German government welcomes that the European Commission sees **standardisation** as a **key element for the success of the Digital Single Market** and intends to generate stimulus here so that technological development and standardisation can keep pace. However, we are sceptical as to whether this can be achieved through an **integrated Priority ICT Standards Plan**. What is important is to ensure that **current initiatives**, such as the Industry 4.0 platform, which are working on the subject of standardisation, are **not counteracted**.

16. Extension of the European Interoperability Framework for public services (action 15)

The European Commission will revise the European Interoperability Framework (EIF). In its current version, the EIF contains recommendations for establishing interoperability, particularly with a view to cross-border e-government services. Besides the EIF, the underlying strategy, i.e. the European Interoperability Strategy (EIS), is also to be updated.

With the revision and extension of the EIF and EIS, the European Commission aims to further promote co-operation between European public administrations providing cross-border electronic administrative services based on harmonised legal, organisational, semantic and technical standards. The regular review/revision of both documents which already began in 2012 is to be continued.

The German government considers **interoperability and standards** to be e**ssential preconditions for the functioning of the Digital Single Market**. The announced **revision and extension** of the EIF and EIS are hence generally **welcomed**. However, it **must be ensured that neither the EIF nor the EIS result in legal provisions**.

17. New e-Government Action Plan including an initiative on the ‘Once-Only’ principle and an initiative on building up the interconnection of business registers (action 16)

The European Commission has announced the presentation in 2016 of a new e-Government Action Plan for the 2016 to 2020 period. This plan will focus on the i**nterconnection of business registers**, a **pilot project on the application of the Once-Only principle**, the expansion and integration of European and national portals to form a “**single digital gateway”**, as well as the further development of **electronic procurement and tendering** and **digital signatures**. The action plan will, in all likelihood, appear early in 2016 as a communication by the Commission presenting in more detail the measures announced and the manner of their implementation. Unlike its predecessor document, the

e-Government Action Plan is to be regularly updated as a “living document”. The European Commission has announced that it will consult on an ongoing basis with Member States and other stakeholders involving them in the further development of the Action Plan.

The German government essentially supports the measures announced for the e-Government Action Plan, however, to a large extent these measures still need to be laid down in greater detail. Maintaining the c**ompetence of the Member States for e-Government as part of the administration organisation** must be ensured for all of the initiatives announced.

III. Comments by the German government

1. Legislative proposals for simple and effective cross-border contract rules for consumers and businesses (action 1)

It is to be welcomed that the European Commission no longer upholds its original proposal for a Regulation on a Common European Sales Law. A detailed evaluation of contents is currently not possible since a new proposal has not yet been made available. However, Germany is interested in making constructive contributions to the discussion process at the earliest possible stage. The German government shares the European Commission's view that a package of actions to promote the Digital Single Market should include an analysis of aspects of contract and consumer protection law. The German government is of the opinion that the following core issues should be considered in this respect:

- The online trade of goods and trading of digital content create new market access opportunities for businesses and consumers. This potential must be fully exploited. A reasonable balance of business and consumer interests is important in this context.

- The criterion for judging the projects announced by the European Commission will be whether they create real added value for the Digital Single Market and whether they will lead to legal certainty, especially for small and medium-sized enterprises (SMEs), and ensure a high level of consumer protection. That being said, a limitation of the scope to contracts between businesses and consumers appears to be indicated.

- Contracts on digital content are most likely to be in need of regulation. Possible regulations to this effect must be abstract and technology-neutral in order to be able to map even future technical developments. A sensible approach seems to be a focus on a few, yet practically relevant regulation materials and, in particular, on those areas where the special (technical) characteristics of digital content require special regulations – be it because the areas are not at all addressed by current law (at European and national level) or because existing regulations do not lead to useful results.

- The Europe-wide harmonisation of warranty law and of the law on general terms and conditions as aimed at by the European Commission is viewed sceptically. This would first be contingent upon the need for further harmonisation. Furthermore, the negotiations on the original proposal for a Common European Sales Law as well as on the Directive on Consumer Rights (Directive 2011/83/EU) have shown that it is difficult to reach agreement in these areas due to the very different positions of the Member States.

- The German government considers it to be important that no different regulations apply to contracts made online and offline unless different treatment is necessary in exceptional cases due to specific differences between these two forms of trade. Equal treatment of sales contracts made online and offline ensures legal certainty for both consumers and businesses. In this respect, it is also important to set up clear rules for the relationship between the new instrument and the applicable Directive on certain aspects of the sale of consumer goods and associated guarantees (Directive 1999/44/EC) and the provisions regarding sales law in the Directive on Consumer Rights (Directive 2011/83/EU). In this context, the German government specifically regrets that the results of the evaluation (REFIT) which the European Commission is not planning to conduct until 2016 regarding the consumer acquis (concerning Council Directive 1993/13/EEC on unfair terms in consumer contracts, Directive 1999/44/EC on certain aspects of the sale of consumer goods and associated guarantees and the Unfair Commercial Practices Directive 2005/29/EC) cannot be considered in the legislative proposals due to the lack of time.

- Article 6 (1) of Regulation (EC) No. 593/2008 (Rome I) is an important component. Pursuant to Article 6 (1) of the Rome I Regulation, in the absence of a choice of law a consumer contract shall be governed by the law of the country where the consumer has his habitual residence. Article 6 (2) sentence 2 of this Regulation ensures that in the event of a choice of law the consumer will not be deprived of the protection afforded to him by provisions of

consumer protection law that cannot be derogated from by agreement by virtue of the law of his country. In the event that the company chooses the law of "its" country, the provisions of consumer protection law of the country where the consumer has his habitual residence that cannot be derogated from by agreement will therefore continue to apply if the chosen law contains less restrictive provisions.

- The new rules should be reconciled with the existing copyright acquis and the announced reform of European copyright. In the case of contracts on digital content which are subject to the law of obligations, interaction with copyright law is possible (for instance, with regard to the re-distributability of digital goods) which needs to be taken into consideration.

2. Review of the Regulation on Consumer Protection Cooperation (action 2)

- The German government welcomes the announced revision of the CPC Regulation and the aim to define in more detail and expand the rules on cross-border administrative assistance in order to contribute towards more effective law enforcement.

- Effective law enforcement and the protection of collective consumer interests are vital prerequisites for the functioning of the European single market.

- The Member States should continue to be responsible for law enforcement in the field of economic consumer protection; the European Commission should take on a more active role when it comes to coordinating enforcement activities of the Member States in the cross-border area.

- Coherence with existing and generally tried-and-tested national law enforcement systems must be ensured.

- Co-operation between agencies within the scope of so-called "joint enforcement actions" can provide sensible support for classic law enforcement and should be given a sound legal foundation.

- For reasons of legal certainty, the CPC Regulation itself should include a clear-cut provision regarding applicable law, and the German government considers it to be important that the law which applies to the legal relationship between the company and the consumer be ultimately applied. Within the scope of the CPC Regulation, the company may not be subject to requirements which are more restrictive than those applicable to it under private law. This is determined by the rules of private international law.

3. Affordable high-quality cross-border parcel delivery (action 3)

The German government generally supports the approach pursued by the European Commission. The German government specifically believes that any unnecessary market regulation should be avoided. In particular, the German government does not see any need for price regulation.

The following aspects should be considered with regard to the next steps:

- Preparation of understandable comparisons between the price situations for cross-border delivery services in all the Member States. The European Commission apparently generally refers to non-discounted list prices of classic postal services for households and small enterprises (according to the European Commission's estimate, two to five times higher than domestic prices). In individual cases, prices indeed differ very significantly between individual Member States and can hence be an obstacle for both consumers and small enterprises. Pricing for large-volume senders is typically based on different offers and customised contracts. The European Commission's approach therefore only concerns part of the single market anyway.

- Strive to achieve – in dialogue with the companies in the industry – a reasonable and economically sensible reduction of only the most serious price differences (for households and small enterprises) for cross-border deliveries in as far as such differences can be identified in individual Member States.

- Recognition of progress in operative workflows already achieved through initiatives within the industry.

The German government continues to reject more restrictive regulatory rules ("hard" price regulation with a legislative background).

4. Wide ranging review to prepare legislative proposals to tackle unjustified geo-blocking (action 4)

The German government shares the view that unjustified geo-blocking is in contradiction with a Digital Single Market. Also in the interest of consumers, the German government therefore welcomes the fact that the European Commission is addressing this issue in order to examine whether and, if so, which actions are required at EU level.

However, any possible regulatory measure will have to respect the principles of entrepreneurial freedom. Adverse effects on innovative activities, most notably in the digital economy, must be prevented. Any such effects would be in conflict with other aims of the European Digital Agenda, such as the promotion of and support for business establishment and start-up activities.

The German government would not support a revision of the Services Directive (Article 20). It should be considered whether and, if so, how the application of Article 20 of the Services Directive can be practically enforced. However, this would initially require a more detailed analysis of the concrete cases of geo-blocking.

With regard to the e-Commerce Directive, the German government does not see any leeway for actions to restrict unjustified geo-blocking.

With a view to the measures planned by the European Commission for 2015 in order to ensure cross-border access to lawfully acquired, copyright-protected content and the portability thereof, reference is made to the statements regarding legislative proposals for a reform of European copyright law (see No. 6 lit. a on portability/territoriality).

5. Competition sector inquiry into e-commerce, relating to the online trade of goods and the online provision of services (action 5)

The German government welcomes the sector inquiry and supports the European Commission in the determined actions to ensure compliance with EU competition rules. The German government expects the sector inquiry to provide a better picture of the area of online trade. This could enable an evaluation from an antitrust law perspective of those forms of behaviour by companies which impede cross-border electronic trade. It remains to be seen which concrete focal aspects the European Commission will choose in its inquiry and what its conclusions will be.

6. Legislative proposals for a reform of the copyright regime (action 6)

Copyright law has gained central importance in our digital society. Thanks to advanced technologies, such as smartphones, tablets and PCs – and unlike in the "analogue world" –, private users constantly perform activities with copyright relevance in their everyday lives. Copyright law has therefore developed from a specialist discipline to a legal framework which is relevant for everybody and which, far more than ever before, determines the possibility to participate in the opportunities which digitisation has to offer for education, creativity and growth – especially on the Digital Single Market, too.

The German government supports the plan by the European Commission to modernise copyright law against the background of the digital revolution and the resultant change in use practices. At the beginning of his term in office, President Juncker already addressed the urgent need to modernise copyright law. That being said, we consider the European Commission's announcements to be first steps which must, however, be followed by further measures to adapt the copyright law framework.

We would also like to point out that copyright law should not be solely examined with a view to eliminating obstacles to the single market. Copyright law is, first and foremost, the law of the creative community whose interests and moral rights must be taken into consideration in the forthcoming reforms along with the justified interests of users and the interests of exploiters as well as intermediaries. Fair and equitable remuneration for the members of the creative community must still be warranted even in the digital era. Furthermore, copyright law is an important political instrument that warrants cultural diversity.

a) New regulations announced by the European Commission

Portability/territoriality – heterogeneity of copyright law regimes

The cross-border exchange of digital content on the Internet is today a matter of course. Territory-based fragmented copyright rules are therefore increasingly causing problems. In this regard, the European Commission's approach is welcomed to remedy parts of this situation. The new rules are to enable consumers to access content, which they acquired in their own country, even from other Member States and also to simplify the use of offers from other Member States. We support the European Commission in considering the concerns of the audiovisual industry when it comes to the "territoriality" issue in as far as this is necessary to preserve the economic basis for cultural diversity. The aim here is not to protect concrete business models, but to maintain a basis for the creation of audiovisual works in particular.

In the longer term, real harmonisation of the Digital Single Market can only be achieved through the further harmonisation of copyright law in Europe. In the long run, we should hence strive for greater harmonisation of European copyright law which will overcome the heterogeneity of legal systems whilst at the same time protecting and warranting cultural diversity in the European Union. Commonalities with other legal frameworks and international copyright treaties must be considered and issues answered in a coherent manner. Suitable regulation concepts must first be developed for this. Parallel to projects already underway, the European Commission should hence also launch appropriate research projects.

Education and research – harmonisation of limitations and exceptions

In the global knowledge-based society, education, science and research depend on cross-border access to protected information with as few obstacles as possible. There is a need for action especially when it comes to evaluating large text and data stocks (text and data mining) for scientific purposes. Libraries have always organised our knowledge base, and it is a key point of interest for European civil society that they will also be able to do so for digital content in the future.

The German government therefore welcomes the European Commission's initiative to create a clear-cut legal framework especially for new research methods, such as text and data mining, and to harmonise the barrier rules for research and education. This should be carried out as part of the fundamental revision and amendment of the catalogue of limitations and exceptions in Article 5 of the InfoSoc Directive which, rather than being limited to research and education, should also consider the justified interests of authors, the creative sector, intermediaries and users. By no means should a revision restrict the reach and scope of the rules on limitations and exceptions in their current form.

Since the coming into effect of the InfoSoc Directive, many new forms of use have also emerged which are only insufficiently addressed by the current law. In this respect, too, the European legislator should act: In the longer term, it cannot be left to the European Court of Justice and the cases referred to it for its ruling to integrate digital facts and phenomena, such as linking, framing, streaming or e-lending, into an insufficient legal framework.

Intermediaries – disruptive change as the standard case from a copyright law perspective

The digitisation of copyright-protected assets has led to the emergence of new intermediaries: Today, content is made available via Internet platforms rather than through conventional physical distribution channels. Consumers can often choose between different models, ranging from conventional pay offers to flatrate models and advertising-financed offers. Since intermediaries are set to become increasingly important in future, the German government welcomes the European Commission's approach to give more weight to intermediaries in the copyright-related legislation process.

The economic and social backgrounds of many new services still require further analysis. Regulatory "rush actions" must therefore be rejected, and the results of the investigation of the role of online platforms and intermediaries announced by the European Commission should be waited for; once available, these results should then be used to prepare a sound decision-making basis. In the past, too, existing business models were time and again supplemented or even replaced by new forms of use, such as by radio as a new platform for the broadcasting of language and music in the 20th century. It is not the task of copyright law to prevent competition between established and innovative business models. In the past, new technologies have often – at least eventually – contributed towards better access to creative content and at the same time towards the growth of the cultural and creative sector.

Law enforcement – pay rather than ban

Classic copyright law is ultimately based on the concept of granting prohibitory rights (exclusivity rights) in order to permit the controlled use of works against remuneration. The purpose of prohibitory rights is therefore to enable the granting of licenses and to thereby create an economic basis for the creative sector in addition to protecting the authors' morality rights. In the networked and digitised world, the operational fitness of this system is questioned by many: Although it is understandable that greater law enforcement is considered to be a way to counter the loss of control due to digitisation and networking, the past has shown that this approach also has its downsides. Greater law enforcement, especially against private individuals, is difficult to implement and threatens the acceptance of copyright and the respect for the results of creative intellectual activity.

This leads to the question as to whether the possibilities of the Internet as a medium for disseminating digital products can be exploited better for all stakeholders by shifting the focus towards the monetisation of uses. This will help authors in particular to obtain reasonable remuneration. There is a willingness to pay for attractive digital services, and this is an efficient means to keep illegal offers at bay. At the same time, it must be possible to effectively enforce any remaining exclusivity rights.

b) Other need for regulation not yet addressed at EU level

Besides the considerations explained in the foregoing, the German government sees a further need for regulation at EU level especially in the following areas:

Ensuring fair remuneration for the members of the creative community

One key function of copyright law is to ensure remuneration for the members of the creative community in order to strengthen the offer of quality cultural content on the European Single Market.

We therefore need rules with Union-wide validity which guarantee that members of the creative community receive reasonable remuneration if they enter into contracts on the exploitation of their work.

The members of the creative community must also be guaranteed a reasonable share in the proceeds from the collective administration of rights.

Enabling innovative license models

Innovative exploiters should be given the opportunity to use digital distribution channels and to thereby give citizens access to creative products for which they are willing to pay – it is this European wealth which has yet to be made available for online use.

In this context, we should also consider new licensing models in order to mobilise even that content which is not yet available in digital form. The clarification of rights is difficult especially in the case of complex works. The attempt to improve access to Europe-wide online music licenses through Directive 2014/26/EU on collective management of copyright and related rights should hence be followed by further steps. This mobilisation of content should also benefit first and foremost the members of the creative community

Legal framework for statutory remuneration claims

Statutory remuneration claims have an important role to play in the copyright system because they are the basis for users to lawfully access protected content without the need for complex contract solutions. The holders of the rights will then receive financial compensation, for instance, for the private copy. However, case law of the European Court of Justice regarding this "equitable compensation" has led to an extremely unclear legal situation in recent years which should be remedied by the European legislator.

The Member States will require more leeway in order to modernise their legacy remuneration systems.

These remuneration systems are at present still linked to the hardware used and this generates more and more problems because almost every modern technical device – computer, smartphone, etc. – is today able to generate digital copies. The market for these devices is extremely dynamic so that pricing and enforcement of remuneration claims are difficult.

That being said, Union-wide, generalised solutions would be desirable which also respond to the fact that, although the number of copies of protected content is increasing, the reference to the individual copying process is already becoming increasingly difficult from a technical perspective. Furthermore, the necessary research work on innovative remuneration systems should be launched as quickly as possible.

7. Review of the Satellite and Cable Directive (action 7)

We support the review of the Satellite and Cable Directive. The coalition agreement also provides for the examination of the question as to how copyright law can ensure that transitions between different technologies can be avoided for the re-broadcasting of broadcast signals. At the same time, interaction with media regulation (media convergence) issues must also be taken into consideration.

8. Legislative proposals to reduce the administrative burden on businesses arising from different VAT regimes (action 8)

The German government supports the move by the European Commission to reduce the administrative burden on businesses with cross-border activities on condition that this does not distort competition to the disadvantage of other businesses. Furthermore, the German government is keen to ensure that the German state budget will not be adversely affected and that the competences of the Member States as laid down in the EU Treaty are maintained.

Regarding the individual actions:

a) Mini-one-stop-shop

The German government rejects the expansion of the concept of the mini-one-stop-shop. The procedure introduced as of 1 January 2015 must first prove its value before its expansion to other sectors can be considered.

It must also be considered here that within the context of the "future of VAT" the European Commission is aiming at a one-stop-shop that is not limited to registration, filing of the return and forwarding of the value-added tax paid by the company. This would mean a shift in responsibility for value-added tax revenue to the country of domicile (which is not entitled to the tax revenue). However, no country can be expected to allow another country to collect its value-added tax – which is of paramount importance for its budget – and to depend on the effectiveness of another country's tax administration.

b) Common VAT threshold

A regulation would lead to substantial shortfall in tax revenue and would distort competition and is therefore rejected by the German government. It should also be noted that the Council has not yet been able to reach consensus on this concept.

c) Home country controls including a "single audit of cross-border businesses for VAT purposes"

The German government rejects the European Commission's considerations regarding VAT audits. Such a proposal would be incompatible with existing EU treaties and would jeopardise German value-added tax revenues.

Tax enforcement and hence also tax audits are the exclusive responsibility of the Member States and therefore cannot be the subject matter of regulation proposals by the European Commission.

Such a proposal would be neither practical nor conducive. It implies that a tax administration would have to be able to master and apply the applicable laws of the other 27 Member States within the scope of such audits. Furthermore, such a proposal means that German tax revenues would become dependent upon the quality and commitment of other Member States. In view of Germany's experience with insurance tax, it must be expected that a country or Member State will not invest resources in audits of a tax to which it is not entitled.

d) Removing the VAT exemption for small consignments

The proposal is superfluous. Existing law already allows the Member States to waive application of the VAT exemption for small consignments.

e) Tax treatment of certain electronic services

Against the background of the necessary equal treatment with the corresponding print products and in order to maintain the principle of neutrality, the German government asks the European Commission to additionally include in the Digital Single Market Strategy the initiative announced by European Commission President Juncker in May 2015 regarding the introduction of a reduced VAT rate on e-books, e-paper and other electronic information media. The German government hence supports the possibility to apply the reduced VAT rate also to e-books, e-paper and other electronic information media.

9. Legislative proposals to reform the current telecoms rules (actions 9 and 12)

a) Digital Single Market

Digitisation is one of the main challenges of the future. The Europe-wide dynamic development of efficient telecommunication markets and infrastructures is vital for the future digitisation, performance and international competitiveness of the German and European economy.

A central goal of digital policy are highly efficient telecommunication markets which provide an optimum contribution towards growth, innovation, employment as well as diversity of expression and media and which drive the digitisation process. The rapid development of efficient infrastructures calls for diversity of competition and technology. Optimum use must be made of synergies and market potentials, with parallel and supplementary action to be taken whenever such measures fail or are found to be too slow.

Whilst the uniform application of consumer rights and company obligations can generate positive momentum, the German government rejects the full harmonisation of consumer rights in the field of telecommunication law. In Germany, this would probably lead to a downgrading of the national protection level. The Member States must be left a certain degree of flexibility for additional consumer protection measures. This applies most notably to existing national rules. Furthermore, measures should be taken to ensure that the consumer rights provisions are adequately integrated into the Member States' contract law and that they are reconciled with the legal framework for consumer rights that already exist at EU level.

The German government supports harmonisation attempts in as far as these are helpful and conducive to the European Single Market. Special characteristics of the Member States must be adequately considered even in future, all the more so because wage costs and infrastructure conditions – and hence also the market situation – vary in part significantly from one Member State to the next. Measures at Member State level to protect and foster the diversity of expression (for instance, must carry) must still be possible in future.

A balanced approach is a prerequisite for economies of scale to be achieved for network operators and service providers to the benefit of the economy as a whole.

b) Spectrum policy and management

The German government welcomes the European Commission's plan to quickly provide harmonised spectrum ranges for mobile broadband communication throughout the European Union. However, sufficient leeway should be left to Member States. Member States wishing to make certain spectrum ranges available at an early point in time (such as Germany with the 700-Megahertz band) should not be hindered by harmonised rules for the allocation process. That being said, the German government supports, for instance, a common deadline by which a harmonised spectrum range for mobile broadband applications must be made available. However, all-encompassing harmonisation of time schedules, including a common start date for allocation processes, would have to be rejected.

The German government is generally open to a discussion on EU-wide general principles for the spectrum allocation procedure. These principles could, for instance, include standards for transparency or general non-discriminatory access conditions. The possible advantages of provisions under EU law regarding the passing on of spectra and compensation payments should be generally discussed.

Proposed rules should be based on the regulation principles of the Radio Spectrum Policy Programme (RSPP) which is already applicable today as well as Framework Directive 2002/21/EC. Many of the problems identified by the European Commission can be resolved by more efficient enforcement of the existing rules. Harmonisation of conditions and requirements (for instance, concerning license term or coverage) is questionable. These requirements should be decided on a national level. Furthermore, the Member States must continue to have the possibility to take geographic conditions, for instance, and other specific interests (such as the use of wireless microphones and broadcasting) into consideration.

European approval procedures or an ex-ante notification obligation would not be suitable to speed up the EU-wide allocation of radio spectra, and are regarded with great scepticism.

The German government also considers provisions under EU law on issues of cross-border spectrum coordination in the Member States to be conceivable. However, the measures should demonstrably speed up the EU-wide provision of harmonised spectra. The existing structures for negotiations on an international level are tried-and-tested; greater coordination by the European Commission is not considered to be necessary.

As before, the revenue from the auctioning of spectrum rights should be exclusively paid to the Member States.

In order to address the dynamic development of the sector, the German government suggests developing faster procedures for updating the political goals of European spectrum policy. For this purpose, it is suggested that the "Digital Agenda High Level Group", staffed according to the responsibilities of the different departments, set up annual programmes on meetings dedicated exclusively to spectrum policy with such programmes containing political goals and projects to supersede existing multi-year programmes and to monitor fulfilment of such programmes.

c) Regulation/level playing field

The German government considers differentiated regulation tailored to the concrete market to be the best way of ensuring equal competition opportunities and of supporting efficient investment. This applies to both the definition of product/service markets and the definition of geographic markets in need of regulation. Apart from necessary rules to promote and protect the diversity of expression, regulation should only be maintained in effect as long as there are no competitive markets. Therefore, the question must first be answered as to whether structural competition issues exist on the market concerned which general competition law is unable to resolve. Sector-specific regulation should only be implemented if the latter condition is true. The German government understands the need to design the regulation more investment-friendly. It is expecting ambitious proposals that will limit regulation in the future to the necessary amount and, in particular, reduce and eliminate unnecessary red tape in procedures.

A competition-friendly legal framework for the digital economy must foster open and functioning markets along the entire value chain. The framework conditions will have to be orientated even more towards growth and investment than before. The emergence of over-the-top-players (OTTs), who sometimes offer substitutes for traditional telecommunication services but who are not subject to sector-specific regulation, poses questions with relevance for regulation. These must be taken into consideration adequately when further developing the framework conditions in order to achieve a uniform, converging legal framework. This requires intensive and continuous monitoring of the corresponding market and convergence processes and may also call for an adjustment of the legal framework in order to create equal competition conditions. This includes both competition developments as well as consumer and privacy aspects. The enforceability issue is of special relevance in this context with a view to consumer and privacy law which must also be taken into consideration when reviewing the e-Privacy Directive. The e-Privacy Directive should be reviewed as quickly as possible in order to avoid the risk of possible incoherence with a view to the regulatory context of the General Data Protection Regulation which is still to be adopted in 2015.

d) Creation of incentives for investment in high-speed broadband networks (including a review of the Universal Service Directive)

The German government considers the nation-wide coverage with high-performance networks to be a primary task of the private sector. Government support and subsidies are not to replace market investment, but to supplement it in case of market failure.

Besides financial support, the German government sees a need to create additional suitable framework conditions for companies. European initiatives should thereby supplement national actions in a reasonable manner. In particular, more investment incentives for small and medium-sized private and public projects should be created at EU level, for

instance, through common quality standards for assessing investments in broadband projects or further qualification measures to strengthen the broadband-specific investment expertise of banks or measures to foster demand for high-speed networks (for instance, through demonstration projects in application areas). Price regulation for wholesale products of government-supported broadband development projects should be designed to be investment-friendly. Furthermore, specific national and regional features (such as cost structures) must be taken into consideration in this respect.

The German government is sceptical with regard to the introduction of further universal service obligations and supports a more in-depth analysis of the existing universal service mechanism.

In tandem with effective competition, flexible promotional policies will ensure nation-wide network expansion at a high level that will also include supply for rural areas and destinations of public interest. The German government's Digital Agenda for Germany is aimed to implement a nation-wide broadband infrastructure in Germany with a download speed of at least 50 Mbit/s by the year 2018.

By contrast, universal service obligations within the meaning of the Universal Service Directive enable nation-wide basic supply with transmission rates which must already now be available to the majority of end customers. They are therefore a means to warrant a basic supply level that should prevent social exclusion, but whose contribution towards the further development of high-quality networks is rather limited.

An in-depth analysis of the existing universal service mechanism must avoid a situation where the resultant discussions lead to market uncertainty and the risk of investment obstacles. In an environment with open and competition-based markets, any universal service concept must be based on the principle of avoiding distortion of competition and limited to the level which is absolutely necessary. However, it must also be ensured that nation-wide access to high-performance bandwidths is achieved as quickly as possible.

e) Institutional legal framework

Efficient regulation requires the current institutional legal framework to be analysed with a view to optimising the distribution and allocation of competences. Both the consideration and veto procedure as well as the so-called "article-7a procedure" imply considerable effort for the present Regulators Group. The German government considers unbundling of the currently lengthy and unclear group decision processes to be necessary and these should be replaced with a system of clearly distributed tasks and responsibilities. We specifically need to identify the situations in which a regulation task can and should be better addressed at central EU level and the conditions under which such a task should be better addressed at decentralised national level. This analysis should not be limited to further centralisation measures or the reversal thereof. Instead, the economic logic and the efficiency of the fulfilment of government tasks by the existing concepts should be examined and focused on. The aim should be to streamline the existing, very complex and time-consuming procedures and to increase their efficiency.

f) Security aspects

Furthermore, the German government generally asks the European Commission to ensure that forthcoming reforms of the applicable rules for telecommunication and Internet services adequately consider IT security aspects in the interest of citizens, the economy and the government and also to examine in this context to what extent measures against malware and criminal infrastructures as well as measures to support users in protecting their own systems are needed.

10. Review the Audiovisual Media Services Directive (AVMD Directive) (action 10)

- The German government supports a review of the directive which takes convergence of media technologies and media markets into consideration and ensures or creates a level playing field.
- The German government considers a review of the AVMS Directive to be urgently necessary.
- The German government upholds the country of origin principle as a cornerstone of the Directive.
- The current distinction between linear and non-linear services should be reviewed.
- Quantitative restrictions on advertisement should be deregulated to a far-reaching extent.
- The German government supports fair conditions for competition for all media providers.
- The German government attaches great importance to maintaining high standards for youth, data and consumer protection.
- Not only tax, but also duty havens should be tackled in the EU. Clarification is therefore aimed at so that the funding of national film support and promotion systems will not be adversely affected by the AVMS Directive.

11. Comprehensive analysis of the role of platforms in the market (action 11)

The German government expressly welcomes the announced assessment of the role of platforms which it proposed together with France.

The German government is committed to a digital regulatory framework based on clear rules which open up freedom of action for the digital economy so that it can succeed in the international market and make use of the potential for growth and innovation.

Any intervention into entrepreneurial freedom must be justified by aspects of market failure or by other essential matters of public interest, such as protecting diversity of expression and media or consumer protection. That being said, the Internet must remain an area of personal freedom and diversity and both consumers and businesses must be adequately protected against the abuse of market power. The existing competition rules are generally a suitable tool for the latter.

The specific economic and social characteristics and effects of many new services and platforms still require further analysis. This is the case, for instance, when it comes to the effects that result from platforms being two-sided markets.

Their practical importance in the digital environment may call for the application and further development of current findings regarding how two-sided markets work in the digital value chain. Once again, a distinction must be made here between the different platforms. Social networks, micro-blogs, operating systems, app stores, video and music platforms, online trading platforms, search engines and electronic payment systems all have their specific characteristics. Especially when it comes to the so-called sharing economy, the peculiarities of each sector must be taken into account and the existing legal position of the market players (e.g. of holders of copyright and neighbouring rights) must be considered.

The German government believes that there is a need for an in-depth, scientific and interdisciplinary analysis of how online markets work so that based on sound facts appropriate decisions can be made regarding the necessity for and the type of additional rules in a regulatory framework for competition in the digital economy. In view of the

cross-border activities of Internet-based platforms, it appears that a rule at EU level would, when necessary, be generally more suitable than at national level. Irrespective of this, the constitutional mandate to protect diversity of expression and the media may make it necessary to counteract threats through suitable legislative measures should there be concrete signs of such threats.

Before a differentiated analysis – which is ultimately indispensable – has been carried out it will not be possible to answer the question as to whether and, if so, under what conditions competition problems exist or are likely which cannot be adequately counteracted by existing competition rules and whether and in which manner competition and regulatory law must be amended.

The analysis of the role of online platforms and intermediaries as well as the impact not just on users but also on operators should be used to prepare a reliable basis for decisions regarding the need for and the type of additional rules in a regulatory framework for competition in the digital economy.

This analysis must cover all the relevant areas and be conducted without bias in all individual aspects. It is essential that any problems, for instance, market dominance, the essentiality of a facility, abusive character of a conduct, etc., are not just assumed. That is because the German government believes that intervention into the activities of online platform operators who do not dominate the market or who at least do not have a powerful position on the market is generally only justified to a very limited extent, at least with a view to the regulatory framework for competition.

The analysis should be conducted quickly, but with care and unbiased as to the result. The German government believes that if interested parties and players were given the opportunity before the analysis to report from their perspective relevant aspects or questions to the European Commission, this would help to ensure the real success of the analysis. The German government is willing to assist the Commission constructively in setting up the consultation.

The topic of platform regulation should also be regarded together with the Telecoms review. Establishing equal competition opportunities in an increasingly converging market is not just limited to telecommunication services in the narrower sense. The appearance of over-the-top-players (OTTs), who frequently offer substitutes for traditional telecommunication services but who are not subject to sector-specific regulation, poses questions with relevance for regulation. The rules of the game, such as platform digital neutrality, portability, interoperability and openness, should be generally the same for all players on the same playing field. These must be taken into consideration when further developing the framework conditions in order to achieve a level playing field. This requires intensive and continuous monitoring of the related market and convergence processes. The aim should be to create a convergent legal framework for convergent markets. The analysis must hence examine whether uniform rules are needed for access to platforms, to control the corresponding market power, for interoperability, portability of data/users profiles, for transparency, for customer and data protection, as well as to warrant freedom and diversity of expression and information and cybersecurity.

12. Combatting illegal content on the Internet (action 11)

The German government supports the Commission in its goal to step up the fight against illegal content on the Internet. The announced unbiased analysis by the European Commission must be welcomed so that the actual problems can be better identified and a sound basis gained for decision-making. Based on this, a decision can be made in the next phase as to whether and in what manner illegal content on the Internet can be better tackled. All possible measures here must also be compliant with the fundamental rights to freedom of expression and information as well as entrepreneurial freedom. Moreover, sufficient differentiation is also required because combatting terrorism and child pornography primarily falls under the policy area of "police and judicial co-operation in criminal matters". The rule approach of the e-Commerce Directive should also not be questioned. The exclusion of a general supervisory obligation and the liability limits for intermediaries set out in this Directive are essential for the further development of the Internet. This liability regime allows a balanced consideration of the interests of providers and users of services in the information society, of holders of rights and of the state in effectively tackling online crime. Balanced rules for

liability are of paramount importance both for the development of the Internet as an economic area as well as for preserving the Internet as a free area for exchange, communication and the formation of opinion.

In the view of the German government, tackling illegal content can be further improved when co-operation between Member States and between public and private players in this area is made more efficient.

When it comes to protecting children and youths, the structures for receiving (hotlines/Internet complaint sites) and passing on reports on illegal content (notice and take down) must be secured permanently and across borders.

Where co-operation between holders of rights and service providers is concerned, care must be taken to ensure that fundamental rights (privacy, secrecy of telecommunication) are observed.

13. Establishment of a Public-Private Partnership on cybersecurity (action 13)

The German government believes that the successful implementation of the EU's cybersecurity strategy requires the involvement of the private sector. In view of the complexity and wide application range of digital systems and in light of growing threats, neither the Member States with their authorities nor the economy alone can warrant sufficient cybersecurity in the EU. The only way to warrant this is through joint efforts and by bundling the forces of government and the private sector. That being said, action by the private sector that intervenes in the fundamental right to self-determination regarding personal data call for clearer legal powers and such authority to intervene may not be more far-reaching than that of public agencies. In light of the existential importance of cybersecurity for digitisation, co-operation should as much as possible include far-reaching scaling effects . The focus of PPPs should not be restricted to online Internet security, instead, the goal of PPPs should be to stimulate the provision of trusted IT security products and services at a high level for the entire European economy. When it comes to the planned PPP, it must be ensured that the individual actions work in synergy and that information is exchanged. In addition to implementation, aspects of research and development to strengthen cybersecurity in Europe should especially form a central element of the PPP.

The German government has many years of experience and the expertise needed to establish and manage PPPs in the area of cybersecurity. This includes experience in solving both legal and practical issues related to the establishment process and operative management. For a number of years now, the German government has been actively participating in various PPPs, such as the Alliance for Cybersecurity and UP KRITIS. These partnerships serve as up-to-date platforms between the private sector and government agencies for exchanging information and for developing strategies. Early in 2015, the German government also adopted the "Self-determined and secure in the digital world" research project, thus bundling IT security research efforts on a national level.

The German government is offering the European Commission its active support in establishing the planned PPP. In this context, it should be noted that the German government is the majority shareholder in a PPP (ÖPP Deutschland AG) specialising in consultancy services for projects to set up PPPs in the field of ICT. The expertise that exists here could make a valuable contribution to the establishment of a PPP by the European Commission.

On top of that, the German government is currently stepping up its efforts to co-operate with private business in the field of cybersecurity. The German government is hence interested in seeing its own ventures coordinated at European level.

The success of the planned PPP will depend on long-term economic interest on the part of powerful companies as well as political commitment. This is why the PPP initiative should only be launched using funds from Horizon 2020 if the PPP can achieve a multi-billion investment package (leverage effect of at least 1:5) in Europe.

The German government also believes that the concept of a Public Private Partnership on cybersecurity should be rooted in the holistic approach pursued in the European Union's cybersecurity strategy to promote the European ICT

security industry. This strategy foresees a comprehensive concept to strengthen a trustworthy European ICT and cyber-defence sector and to promote the single market by stimulating research and development.

The German government believes that this also involves examining the Community acquis in order to determine whether it facilitates the promotion and protection of a trustworthy European ICT security industry as envisaged in the EU's cybersecurity strategy. A holistic and, above all, sustainable approach to promote and protect Europe's IT security industry and to maintain technological sovereignty in the field of IT security also calls for a comprehensive concept that should also include foreign trade policy, for instance. In this case, consideration should be given to setting up a European IT security fund.

14. Initiatives on data ownership, free flow of data and a European Cloud (action 14)

a) European initiative for "Free flow of data"

Germany's government welcomes the goal set by the European Commission to fully exploit the potential of digital and data technologies in Europe by removing legislative and technical barriers to cross-border use and processing of data. The planned European "Free flow of data" initiative can basically help to eliminate barriers to a Digital Single Market. From the German government's point of view, however, this initiative needs to be specified in greater detail. The following considerations should be taken into account here:

- With a view to the legislative barriers addressed in the strategy, there is still a lack of information regarding which specific Member State rules the European Commission considers to be a barrier to the cross-border flow of data. This is especially important for the restrictions on the location of data for storage and processing purposes. When it comes to personal data, the future uniform Europe-wide regulatory framework will be specified primarily by the General Data Protection Regulation which is currently in trilogue negotiations.

- The German government believes that the promotion of smart anonymising and pseudonymising solutions is an important element of the initiative. Both methods enable data processing in compliance with fundamental rights while allowing companies to analyse existing data and develop new offers.

  When it comes to data processing within the context of Industry 4.0 and Big Data, suitable and practical results could be achieved in this manner. When personal data is involved, the individuals concerned should generally be able to determine for themselves how their data is to be used and to achieve transparency for themselves.

- With a view to the aspect of data ownership as addressed in the strategy, it must first be examined whether intervention into the freedom of competition and information of third parties resulting from the creation of such a right is justified. This examination must show why the existing contractual safeguarding options as well as the existing protection laws are not sufficient and what effect such a rule would have on competition and the exchange of information.

  At any rate, the discussion should not focus on the the matter of data ownership within the meaning of an absolute, exclusive right. Data is a central economic asset and the basis for added value and innovation. The exchange of information is also the basis for social co-existence. Various legal regimes (e.g. data protection law, copyright law, competition law) contain provisions regarding data without a single term being used to describe data.

  However, questions regarding data ownership, especially as to whether or not such a thing can actually exist and how it may be designed, are also important for liability under civil law or responsibility under criminal law. It could be useful to examine this at EU level.

- When specifying the initiatives in more detail, care should be taken to ensure a high level of data security. This also means creating secure access to the services for data users. The free flow of data in the EU must not have the side effect of a "free flow of malware". Suitable action must also be taken at European level so that users can verify the authenticity and integrity of the information they access.

- The initiative should address the reasons for the lack of open and interoperable systems as well as the issue of missing data transmissibility between services. Market stakeholders need to be enticed to develop uniform interoperability standards and to establish these on the market. In order to ensure that the respective standard complies with existing European standards, the interoperability standards drawn up by the European Commission should be put forward to the Multi Stakeholder Platform for ICT Standardisation and should hence be subject to public procurement.

- It has yet to be clarified how the elimination of legislative barriers as aimed at by the European Commission with a view to the location of data storage will affect the rules of individual national procurement procedures. There are both technical (e.g. in the case of high performance requirements) and legal application cases, as well as cases motivated by security interests (for instance, when processing data that may not fall into the area of foreign disclosure obligations and access possibilities) where local data storage may be necessary.

b) Development of a European Cloud initiativee

The German government welcomes the project by the European Commission to develop in a European Cloud initiative the legal framework, especially for contractual arrangements, security and data protection as well as liability issues with cloud applications. Innovation-friendly conditions are particularly important when it comes to making use of the potential of cloud services. The German government believes that the following topics especially require clarification:

- Development of suitable certification mechanisms: Certification can warrant a high level of both data protection and general IT security while also creating an efficient basis for using cloud services. The present legal uncertainty regarding the requirements for certificates is having an adverse impact on the use of cloud services.

- Liability risks: One of the central issues vital for the success of cloud services are the related liability risks. The German government believes that clarification of liability should have a prominent role to play in the Cloud initiative. The findings gained here could be documented in cloud contract templates.

- Interoperability: Clear guidelines for interoperability should form part of the European Cloud initiative. The only way to avoid expensive lock-in situations is to allow data to be freely exchanged between cloud services. This is the only way to ensure that in the event of poor performance by a cloud service provider, for instance, the customer can switch to a different provider.

- Another matter to be clarified is the question as to how the law can ensure that sensitive data processed in the cloud does not fall under foreign disclosure obligations or the in the area of foreign access possibilities.

- For the German government, the use of European Cloud services reaches its limits when it comes to national security data (especially related to operating and business secrets of the German government, the federal states and municipalities, and sensitive data regarding Germany's IT infrastructures) which can often be found in the data stocks of public authorities. If such data is to be processed in the Cloud, it must continue to be possible to demand of the cloud provider that this particularly sensitive data does not leave the territory of the Federal Republic of Germany. The Cloud initiative should hence focus primarily on suitable conditions for cloud use by the private sector.

c) Promotion of access to public data

The German government supports the European Commission in its efforts to promote access to public data. With its Open Data Strategy from 2011, the European Commission has already outlined its policy here. The actions named in this Strategy now have to be brought into context with the establishment of a data economy and, when necessary, certain actions must be specified in more detail in this respect. The aim of supporting innovation through open administration data is also being pursued in the German government's Open Data Action Plan

15. Adoption of a Priority ICT Standards Plan (action 15)

We welcome that the European Commission sees standardisation as a key element for the success of the Digital Single Market and wants to generate stimulus here so that technological development and standardisation can keep pace and interoperability can become firmly established. However, we are sceptical as to whether this can be achieved through an integrated Priority ICT Standards Plan. It is more likely to be achieved by formulating in clear and concise terms the main (legislative and technical) requirements and framework (conditions) rather than stipulating special direct requirements for the contents of standards and hence intervening in the private sector's "freedom of standardisation".

In a worst-case scenario, mistakes made when selecting the focus areas for standardisation could affect Europe's entire ICT industry. This means that it makes a lot of sense to continue to allow stimulus "from the bottom". What's important is to ensure that ongoing initiatives, such as the Platform Industry 4.0, which are working on the subject of standardisation are not counteracted. It is not clear how the planned integrated standards plan is to be drawn up and developed in "realtime", so to speak, and how the Member States are to participate[2]. It is also not clear how binding such a plan will be for industry and how the different interests can be taken into account here. It has not been demonstrated that the existing structures and procedures in European and international standardisation have a negative impact on Europe's capacity for innovation and competition. When it comes to standardisation for mobile communication, for instance, global standards have been indispensable for many years. Standardisation here is already carried out at 3GPP with the involvement of ETSI and European industry. There is no need here to re-identify European standards or focus areas for standardisation. If these are ordered centrally "from the top", this would not speed up developments in 3GPP but could even perhaps delay them. Instead of planning technical focus areas for standardisation in advance, political conditions should be created that support the promotion of European ideas. Many of the areas mentioned do not see any fragmentation or even lack of standards. In areas like the Internet of Things or Industry 4.0, on the other hand, it may be necessary to develop additional standards.

We believe that the following three clusters must be given priority:

- Cyber/network information security/secure email/cloud
- Big data/M2M/Internet of Things
- Digitisation of advanced manufacturing (Industry 4.0)

The prioritisation of standards in "e-health" is viewed critically by the German government.

The government considers positive the fact that the European Commission is also turning its attention to the interoperability of services and devices. However, it appears here as if the standardisation of devices and/or services is being called for with a view to interoperability.

2 All in all, the European Commission has not yet touched on the role of the standardisation committee during the adoption and updating of the integrated standards plan.

Therefore, clarification or a clear distinction is needed here to show that with a view to interoperability it is not the services and/or devices themselves that are to be standardised but the relevant interfaces[3]. Especially in light of free market development and the promotion of innovation, there should, when possible, be no direct influence on the design of services and/or devices from a standards perspective[4] but on the relevant interfaces for the desired functionalities (interaction between services and/or devices). It is also pointed out that the existence of a standard does not automatically mean that interoperability exists, what is decisive here is the implementation. Conformity with a standard does not automatically mean that interoperability exists because conformity with a standard can exist without interoperability, and visa versa, interoperability may exist without (100 %) conformity with a standard.

16. Extension of the European Interoperability Framework for public services (action 15)

The German government welcomes the announced revision and extension of the European Interoperability Strategy and the European Interoperability Framework and supports the aim of promoting exchange and co-operation between Europe's public administrations when it comes to delivering specialist and cross-border electronic administration services based on harmonised standards. However, these standards should be limited to interfaces and data formats.

These efforts should build on the results from the updating process from 2012 and the regular monitoring of the EIF implementation.

Based on the work from 2012, the German government considers the following aspects to be important for the revision:

- *Realistic and measurable goals:* The goals of the EIS should be better measurable than before. This could be achieved by applying the EIS in projects. This is the only way to check whether the EIS goals can be reached and are realistic (reality check).

- *Evaluation of the EIF:* The EIF should be used more than before in projects and be evaluated (e.g. in the EU's (large-scale) eSens project). The findings and experience gained here should be compiled in a structured manner, communicated and included in the further revision of the EIS and EIF.

- *Governance:* The topic of governance is a central issue. Functional structures and processes are essential if interoperability is to be achieved across the board and applied broadly. One important topic, for instance, could be compliance criteria for interoperability projects which make it possible to check whether the project meets the goals of the EIS and implements the requirements of the EIF.

From the German government's point of view, there is currently no need to develop the EIF further in the direction of legal requirements.

3 For the avoidance of doubt, the statements regarding interfaces (in the broader sense: software, hardware, file formats, etc.) refer solely to the aspect of interoperability. There are other areas where standards make sense and are needed (e.g. for limit values, measurement methods, processes), however, there is no direct "responsibility" for interoperability here which is addressed at this point in the EU document.

4 Under certain circumstances, however, legal conditions and/or requirements to fulfil certain practices may make sense and may be necessary with a view to services, devices or procedures. That being said, this must be initially regarded separate from the standard. Standards are by definition voluntary in their application, whereas legal requirements, framework conditions or demands must be fulfilled irrespective of standards.

17. New e-Government Action Plan including an initiative on the 'Once-Only' principle and an initiative on building up the interconnection of business registers (action 16)

The German government generally welcomes the drafting of a new e-Government Action Plan to implement the Digital Single Market. E-Government as part of the administration organisation, however, falls under the jurisdiction of the Member States so that the announced principles could already mean a restriction to Member State competence. This is why the new e-Government Action Plan must contain clear definitions to be drawn up jointly by the European Commission and the Member States.

Moreover, a Digital Single Market in the EU can only be established with strong IT/cybersecurity measures to protect availability, integrity, confidentiality and authenticity in all aspects as an all-encompassing precondition. As a further principle of the EU's e-Government policy, IT/cybersecurity should hence serve as a basis for the new e-Government Action Plan 2016-2020. All in all, the e-Government Action Plan should hence add the principles of "security by default" and "coordinated action with self-responsibility in the multi-level system" as part of its guiding principle.

a) Interconnection of business registers

Directive 2012/17/EU of the European Parliament and of the Council of 13 June 2012 amending Council Directive 89/666/EEC and Directives 2005/56/EC and 2009/101/EC of the European Parliament and of the Council as regards the interconnection of central, commercial and companies registers improves cross-border access to company information via the European e-Justice Portal and establishes clear channels of communication between national Member State registers across a central European platform. At present, technical setup work is underway at Commission level and technical adaptations are being made in the countries and at the operator end of the companies register. Pursuant to Directive 2012/17/EU, realtime operation of the register network with the Member States is to be set up in summer 2017. However, according to the recitals of Directive 2012/17/EU, this interconnection will not lead to the harmonisation of national registration procedures nor will it enable the cross-border establishment of businesses. Issues related to cross-border online establishment are currently mentioned only in a completely different context, i.e. in discussions regarding the proposed directive for limited liability companies with a single shareholder (SUP), COM(2014) 212 final. The discussions on the proposed directive are still underway in the EU bodies. The German government believes that the successful conclusion of the legislative procedure should first be awaited and in the medium term first experience gained with the online-establishment structures found for the SUP can be evaluated. Apart from that, corporate law is a completely different matter than e-Government where the primary aim is to digitise administrative procedures and should therefore not be part of the e-Government Action Plan.

b) Launch in 2016 of an initiative with the Member States to pilot the 'Once-Only' principle

The "Once-Only" principle has yet to be examined in more detail with a view to various technical and legal aspects. The implementation of this principle must be compliant with data protection law in every case of application. IT security must additionally be warranted.

A legal basis is indispensable for the central storage and transfer of personal data. There should be a general ban on the exchange of data and it should only be permitted within clearly defined limits (ban with reservation of permission). The legal basis for processing and transmitting data should also be understandable for the individuals concerned. These individuals should be given the opportunity to influence data processing unless this is not possible for reasons of public interest. Flexibility must be warranted with regard to approval and revocation of data transmission. When setting up central points for data storage, it should also be remembered that this could trigger greed for such data and this in turn could result in the risk of unlawful attempts to access the data (hacker attacks).

The areas where the "Once-Only" principle is to be applied are not yet clear. There is hence still a need for talks with the European Commission and the other Member States.

Mandatory electronic identification should be a precondition for use of the "Once-Only" principle. This could also promote the eID function of the ID card. This security concept in conjunction with existing standards can warrant that also at EU level centrally stored data is securely protected against misuse.

c) Expansion and integration of European and national portals to work towards a "Single Digital Gateway"

The establishment of a "single digital gateway" that integrates European and national portals seems to be very ambitious considering the diversity of existing Internet offers and the many different languages in Europe. Generally speaking, the project does deserve to be supported as it will make it easier to find the offers that exist at European level and in the Member States.

Germany does not have any general "national portal" for electronic administrative services. However, subject and topic-based portal solutions already exist at municipal, federal-state and national level. It benefits both businesses and citizens when these online solutions are offered with a single point of access, making them easy to find, user-friendly and secure. However, differentiated federal responsibilities here must remain intact. The federal IT solutions must be integrated. Co-operation at federal level will be needed in order to implement a single point of administrative access on the web. Respecting the principle of subsidiarity, the different national portal solutions of the EU Member States could be brought together in this way to form a "single digital gateway".

d) Acceleration of Member States' transition towards full e-procurement

The EU legislative package on the reform of public procurement (Directives 2014/23/EU, 2014/24/EU and 2014/25/EU) contains obligations regarding electronic communications in public procurement which must be transposed in national law. The first step of implementation is laid down in the draft bill for the Modernisation of Public Procurement Law (GWB-E) which was passed by the federal cabinet on 8 July 2015. Section 113, sentence 2, No. 4 of this draft bill establishes the power to issue statutory instruments in order to regulate the details for sending, receiving, transmitting and storing data in a public procurement procedure, including communication.

The Public Procurement Regulation will determine the details of the procedure. Efficient electronic public procurement calls for a single point of access to the different electronic tender platforms. At its 17th meeting, the IT Planning Council adopted the national XVergabe [x-Tendering] standard which must now be synchronised with European standardisation activities (especially within the scope of the eSENS large-scale pilot, but also CEN/BII).