

# Position Paper

## Smart Regulation for Digital Platforms

30/09/2019

Page 1

### Introduction

Globalisation, demographic change and trade conflicts have increased pressure on companies and adopting digital solutions has become vital to remain competitive. Platforms play a central role because they stand at the crossroads between markets and sectors: Digital products, services and industrial goods are increasingly integrated and easily accessible through intermediaries. Evidently, platforms have existed in the past, for instance in the shape of traditional market places. More recently, new forms of platforms have emerged: unbound by location, with vast potential to scale, more transparency and selection, easier access for clients and lower transaction costs. The development of digital platforms presents a unique chance for Europe, but also poses new questions, particularly with regard to regulation.

Europe brings the right conditions to emerge as a winner in developing platform economies, if two central factors are fulfilled: Firstly, ensure an innovation-friendly mind-set by policy-makers. Secondly, secure the regulators' support by building an appropriate legal framework. A framework is appropriate if it identifies evident dangers and failures, while enabling innovation and economic cooperation. Taking into account the above, the starting point of this paper is the following: Despite fundamental changes to our economy, challenges and legitimate criticism, the sheer potential of the platform economy needs to be recognised and harnessed by the regulator in order to build efficient instruments that can solve today's problems.

Given changing market structures, rapid technological developments and changes in products, parts of our regulatory framework are no longer fit for purpose, which is characterised by static behaviour, snap-shop investigations and unhelpful comparisons. Regulatory initiatives often seem to block, work against, or compete with each other. In many policy areas, law-making does not seem to reflect the complexity, realities and particularities of the platform economy. As a consequence, the framework does not reflect the dynamics and demands of current economic developments, which hinders

Bitkom  
Bundesverband  
Informationswirtschaft,  
Telekommunikation  
und neue Medien e.V.  
(Federal Association  
for Information Technology,  
Telecommunications and  
New Media)

**Marie Anne Nietan**  
**Media Policy Officer**  
P +49 30 27576-221  
m.nietan@bitkom.org

Albrechtstraße 10  
10117 Berlin  
Germany

President  
Achim Berg

CEO  
Dr. Bernhard Rohleder

## Position Paper Smart Regulation of Digital Platforms

Page 2|6

innovation in the private sector. Moreover, legal uncertainties are particularly damaging for SMEs. Enabling legal compliance without excessive bureaucracy is essential in order to advance innovation and prosperity in Europe.

### Smart regulation in 10 steps

#### 1. *Primate of digital policy*

Digital innovation often does not fit well with legacy regulation. Hence, a deep understanding of the functioning and logic of digital markets in general, and platforms in particular is vital. An institutionalised mechanism in legislative processes, such as an innovation check or the mandatory consultation of experts for the digital economy, can help to build an appropriate and coherent legal framework. The regular exchange with experts from the private sector and academia, as well as a coherent digital policy strategy is necessary to define the corner stones of a new regulatory approach.

As a starting point, focus should be on an optimised application of existing regulation. Inappropriate and excessive regulation is detrimental for growth, employment and innovation. Experiences from the past have shown that Europe has wasted growth opportunities because of unfit legal requirements. Regular legal check-ups should scrutinise where existing regulations is an obstacle and where new rules and/or better enforcement are needed because of evidence-based, structural failures. Synchronisation and enforcement of existing requirements should be at the forefront of creating a level playing field. New regulation can lead to fairer competition and can offer a chance for Europe to engage and lead in global, digital markets. However, it could also restrict competition and erect barriers for market access. This existing ambivalence and the risks associated with it should always be taken into account.

#### 2. *Differentiated consideration of the regulatory objects*

There must be no "one size fits all" approach in regulatory design – also in the platform economy, the fundamental principle of treating the same equally and the different differently applies. The term digital platform is very broad and covers a wide range of different business models – from Bitkom's point of view, however, political discourse currently lacks the necessary degree of differentiation and depth in the perception of these models. A fundamental distinction must be made between Business-to-Consumer (B2C), Business-to-Business (B2B) and Peer-to-Peer (P2P) models. A precise analysis of the markets in which a specific platform is active in and on which business models it relies must be the

## Position Paper Smart Regulation of Digital Platforms

Page 3|6

— foundation of any regulatory examination. Comparisons between platforms and providers, like Airbnb and the hotel industry, or between platforms with vastly different business models and participants, like Airbnb (travel) and Uber (mobility), are not appropriate. Of course, almost all platforms also share fundamental characteristics (e.g. network effects, economies of scale, switching costs etc.), but these must not mask their significant differences in regulatory assessment. This applies in particular to the B2B sector, which is of special importance for the German economy and follows vastly different rules and mechanisms than the B2C sector. For a good overview of German digital industry platforms, please refer to the following paper from the Federation of German Industries (BDI) on [Digitale Industriepattformen](#). The paper uses 24 examples to illustrate what German digital industry platforms do and how they differ from each other.

### *3. Orientation towards opportunities and innovation*

— While legal certainty through a smart regulation is an important condition for the success of the platform economy, it is not sufficient in itself. We also need a cultural and social rethink - in politics as well as in business. Only with a positive attitude towards digital platforms will we be able to exploit their full economic and social potential. Political and digital education must be the starting point for this. We need an education system that prepares people for the digital transformation, whether in school, further education or retraining. Furthermore, the availability of digital infrastructure, consisting for example of 5G, fibre-optic networks and digital transport technology, must be guaranteed, as must practical applications of digital technology in public administration. Without strong digital leadership by the EU and the German government, as well as an attitude shift in companies and the society at large, no political strategy and no smart regulation will be able to succeed. We urgently need a digital roadmap for smart regulation.

### *4. Evidence-based and proportionate*

Regulation is necessary where there are proven gaps in existing law, or where markets develop in an undesirable direction. After thorough review, regulation must be justified through clear-cut evidence of unfair market distortion. Regulation must not be an end in itself - the central question must always be: Is there market failure and, if so, which instrument of regulation is best suited to eliminate it effectively and efficiently? Regulation must first be examined on the basis of empirical data not only with regard to its necessity, but also regarding possible negative consequences and externalities, and whether there are alternative measures available to mitigate them. In order to operationalise this efficiently, the regulator should rely on continuous market observation which, on the basis of

## Position Paper Smart Regulation of Digital Platforms

Page 4|6

rigorous data analysis, should enable rapid identification of market failure and decision on a course of action. Only an evidence-based problem analysis with subsequent empirical justification of the effectiveness and orientation of regulation guarantees the necessary proportionality. Inappropriate regulation, on the other hand, could remain ineffective and have unintended consequences. It also runs the risk of being simply too slow and ineffective against the backdrop of highly dynamic digital platform markets. This entails the risk that participants are squeezed out of the market or that entry barriers for new players are so high that they de facto prevent competition. In this respect, an appropriate intervention instrument should be chosen that ensures the elimination of market imperfections without undermining market mechanisms. To this end, we require a comprehensive definition of (data) markets and platforms, which sufficiently differentiates between user groups, legal form and platform operators.

### *5. Competition as a regulatory instrument*

It is precisely because platforms are so successful that they are often under extremely high competitive pressure vis-à-vis other digital and analogue services. Customer demands for privacy and transparency, for example, are therefore essential for success. Where competition cannot guarantee a functioning market, smart regulation is necessary and justified. The goal is a market in which fair competition prevails and innovation is promoted.

### *6. Incentives for innovation*

The regulator needs to actively implement dynamic incentives for innovation, for example through tax advantages on investments or publicly funded pilot projects. Funding programmes can advance the development and operation of digital platforms "made in Europe" so that they can be used worldwide. More targeted incentives should therefore be offered for cooperation between public and private bodies, as well as facilitation of cooperation in general, e.g. for the creation of data platforms.

### *7. Digital Single Market*

Completion of the Digital Single Market is necessary in order to stimulate sustainable economic growth and to solve existing challenges on the labour market and at the investment level. Here a particular challenge is the wide variety of policy areas that regulate platforms: Competition, fiscal or transport policy, as well as urban development, home affairs or industrial policy are only some of the fields in which the framework conditions for platforms are currently defined.

## Position Paper Smart Regulation of Digital Platforms

Page 5|6

In practice, this means that decision-makers often have the narrow view accorded by a specific policy area. This leads to fragmentation of regulation that contradicts the principles of the Digital Single Market. In addition, platforms are regulated at EU, federal, state and local level. Uncoordinated action at these levels needs to be avoided if it risks leading to regulatory fragmentation. Isolated solutions are counterproductive for the establishment and strengthening of the European platform economy. In order to enable digital innovation, a European-wide innovation strategy is needed. Harmonised regulation at EU level accelerates the development, deployment and improvement of innovative products and services in European markets. The realisation of the Digital Single Market is essential if harmonised regulations are to be fully effective and workable. Policy-makers in non-natively digital policy areas should also pay attention to correlation of their own legislation with other digital regulation. Bitkom stands ready to be the first point of contact for these questions and is always willing to enter into dialogue.

### *8. Better interconnection of areas of supervision*

Previously disconnected areas of supervision such as data protection, consumer protection and competition protection must be coordinated more closely in order to remain effective in the platform economy. At national as well as European level, a uniform, goal-oriented coordination of the supervisory authorities is necessary. Only in this way can a high degree of planning as well as legal certainty be guaranteed for the platform operators.

### *9. Reduced complexity for the benefit of acceptance and intuitive operability*

Whenever regulation is revised or newly created, it is of the utmost importance that it is clearly and comprehensibly formulated. The political language should be simplified and made more citizen-friendly. Innovation should not be slowed down by an unclear regulatory framework. Transparency requirements placed on platforms should also apply to legislators: Regulatory requirements must be comparable and transparent vis-à-vis market participants. Therefore, an evidence-based approach that focuses on relevant areas and enables timely decisions is necessary.

### *10. Future-oriented, flexible regulative framework conditions*

In Europe, we are currently experiencing not only the rapid rise of the platform economy, but also the establishment and development of our own European platform providers, especially in the B2B sector. In order to do justice to the global competition of platform ecosystems, the regulatory framework must be future as well as opportunity-oriented.

## Position Paper Smart Regulation of Digital Platforms

Page 6|6

Regulation must not endanger the competitiveness and market entry of European platform providers. This requires dynamic monitoring of the markets and the establishment of cooperation facilities in the industrial context.

Bitkom represents more than 2,700 companies of the digital economy, including 1,900 direct members. Through IT- and communication services alone, our members generate a domestic annual turnover of 190 billion Euros, including 50 billion Euros in exports. The members of Bitkom employ more than 2 million people in Germany. Among these members are 1,000 small and medium-sized businesses, over 500 startups and almost all global players. They offer a wide range of software technologies, IT-services, and telecommunications or internet services, produce hardware and consumer electronics, operate in the digital media sector or are in other ways affiliated with the digital economy. 80 percent of the members' headquarters are located in Germany with an additional 8 percent both in the EU and the USA, as well as 4 percent in other regions of the world. Bitkom promotes the digital transformation of the German economy, as well as of German society at large, enabling citizens to benefit from digitalisation. A strong European digital policy and a fully integrated digital single market are at the heart of Bitkom's concerns, as well as establishing Germany as a key driver of digital change in Europe and globally.