

Policy Recommendations for a European Tech Agenda

Europe's opportunity to preserve an enabling environment for innovation and ensure its global competitiveness and security

The Information Technology Industry Council (ITI) is the premier advocate and thought leader for the global technology industry. ITI's membership comprises 70 of the leading technology and innovation companies from all corners of the information and communications technology (ICT) sector, including hardware, software, digital services, semiconductor, network equipment, cybersecurity, and Internet companies.

The technological innovations of ITI's members, and the digitalisation of the economy more broadly, bring innumerable benefits to European industry and society. The tech sector empowers European companies of all sizes and across industries – from agriculture to education, financial services to manufacturing, healthcare to energy and transportation – to leverage frontier innovations towards competition and success in the global marketplace. Whether it is sensors that detect health and safety hazards for workers in real time, or artificial intelligence that allows doctors to analyse complex medical data faster than ever, technology allows us to address some of the most challenging issues of our time and improve the quality of everyday life for Europeans. The tech sector is also already taking significant steps to help prepare the workforce of the future for the shifting skills and competencies that are required in the 21st century.

Tech policy is a crucial priority in the 2019-2024 EU term, one on which Europe has an opportunity to play an international leadership role on policy issues that are increasingly global. ITI and its members believe that building trust and fostering the public interest in the era of digital transformation are essential. Our companies have made great strides in bringing the positive societal benefits of transformative technologies to fruition and remain committed to upholding the fundamental principles of privacy, inclusivity, transparency, and democracy that underpin European society. We believe in the importance of preserving an enabling environment for innovation to ensure Europe's global competitiveness and security. Europe's digital infrastructure is the foundation for that. 5G is a core element to support digital transformations in industry and society, estimated to enable more than €2.2 trillion worth of economic output in Europe by 2030.

ITI has developed recommendations outlining concrete steps that policymakers can take, in partnership with industry, academia, civil society, and other stakeholders, to effectively implement the ambitious agenda for **"Shaping Europe's Digital Future"** launched by the European Commission in February 2020. Our recommendations address the economic and social implications of technology and the role of our industry, in a manner that supports innovation, while recognising the public interests at stake.

Read ITI's full EU Policy Recommendations [here](#).

Digital Services

Policies for internet intermediaries should encourage innovation and resolve proven market failures

The internet has greatly incentivised the development and deployment of a wide variety of innovative content, applications, and services. Online platforms play an indispensable role in driving innovation and growth in the economy, creating market opportunities and access for businesses of all sizes. In parallel, policymakers around the world are grappling with real challenges caused by the scale, speed, and complexity of platforms and their ability to shape public opinion. At ITI, representing the tech industry as a whole, we understand and recognise our shared responsibility to maintain a safe, inclusive, and innovative online environment. As in every public space, harmful and illegal content may be found on platforms. Policymakers in Europe and around the world have rightfully committed to ensuring the safety of their citizens and economies and to respecting fundamental rights. Our companies are aware of their transformative role in society and are committed to take responsibility that the Internet stays a safe and open place for all. It is also paramount that all relevant players work together to ensure a functioning online market and sufficient protections for users, consumers, smaller businesses and brands.

We understand one of the central goals of the Digital Services Act is to increase **legal certainty**, including by updating the 2000 e-Commerce Directive (ECD) to clarify roles and responsibilities for all actors in the online context. We support this objective and are committed to work with the European Institutions to forge a **balanced framework** for a well-functioning online ecosystem.

Recently, there have been efforts around the world to develop regulatory frameworks for platforms. These have come in the form of EU platform-to-business regulations, content moderation efforts in Europe, the U.S., and Southeast Asia, and initiatives involving anti-piracy or anti-sex trafficking in the U.S.. Because of the complex and dynamic nature of platforms, setting comprehensive regulation is complex – this is why ITI encourages the EU to scope its initiatives on resolving proven market failures and gather robust stakeholder input to develop well-tailored solutions for specifically identified challenges. Under the previous European Commission, new regulations affecting platforms such as the platform-to-business Regulation and the Copyright Directive have been adopted. A careful review of the impact of these laws as they come into force will be critical in understanding which additional aspects need additional horizontal or sector specific regulatory approaches.

Our Recommendations

1. **Differentiating between illegal and harmful content is important.** Regulatory efforts should focus on illegal content as defined by existing laws governing the offline world. Harmful, but not illegal, content should continue to be addressed separately through voluntary or co-regulatory approaches. The decision as to whether content is harmful and /or should be removed is greatly influenced by regional or national cultural context, and assessments of what content is appropriate may vary based on company type or services provided. Policymakers should collaborate with companies to develop solutions that fit specific societal contexts through self-regulatory or co-regulatory approaches that promote trust between companies, policymakers and users, and support innovation.
2. **Content moderation should be led by digital economy players best suited to do so.** The digital economy allows consumers to increasingly benefit from fully integrated products and services, but it also creates complex relations between suppliers. Removal of content in such a complex system affects more than one business in the majority of cases. Any future initiative on content moderation should focus on the relevant activity and a company's interaction with content, identifying those

companies best placed to moderate content while relieving others whose role makes them ill-suited to do so.

3. **Types of platforms and services rather than size should matter.** A new regulatory approach should factor in the vast landscape of platforms, activities, interactions with users and user content, and technical capabilities. Any initiative should carefully define the scope to clarify what activities, rather than what companies, would be subject to the guidelines. It is important to consider where companies may have the ability to moderate content as opposed to merely technical control.
4. **Legal fragmentation in the European Single Market needs to be avoided.** National governments have surged ahead with legislative approaches to online content moderation (such as NetzDG in Germany). Further, new collaborative economy services struggle to set foot in many European markets, due to diverging national and at times even municipal rules. Legal fragmentation hinders the ability of start-ups to scale up and compete globally. Europe is well placed to lead discussions around challenges that policymakers, industry, and civil society need to address head on. A thoughtful approach should take account of existing legislation when identifying needs for horizontal or sector-specific approaches. Any reform of the ECD should take the opportunity to harmonise the horizontal aspects via a Regulation, to ensure the avoidance of fragmented national approaches.
5. **Update the ECD to reflect new business models.** There are countless types of digital platforms, and definitions in the ECD could be updated to reflect this new, constantly changing landscape. A new approach to the current active and passive host differentiation could provide additional legal certainty needed to promote innovation. The transition between active and passive hosting can also change over the course of businesses' lifespan. Potential new legislation should take into account the difference between various business models and the degree of knowledge or control a service has over the content. Online service providers who act as a mere conduit, caching or hosting service like cloud infrastructure would have different responsibilities from more specific applications that involved those services, such as social media, online marketplaces, or sharing economy services for example, given the different degrees of involvement in the activities concerned. A more principle-based approach would provide the needed flexibility to better determine a company's role in content moderation. Similarly, activities such as actively taking down content that is either harmful or illegal, should be incentivised through provisions such as a 'Good Samaritan' clause, that protects and supports work that companies are doing to advance online safety.
6. **The Commission should retain proven instruments under the ECD.** Notably, the country-of-origin principle ensures that providers of online services are subject to the law of the Member State in which they are established. This is a fundamental principle that has helped spur the uptake of online services by reducing regulatory barriers and addressing fragmentation. Efficient notice and takedown (N&T) processes are further key to advancing this debate. We strongly urge policymakers to retain these key principles in the upcoming legislative overhaul.
7. **Intermediary liability needs to be clear, stimulate innovation and protect citizens.** The liability regime is central to the effectiveness of the legal framework. Yet questions around the existing liability regime for internet intermediaries are creating uncertainty. Attempts to advance technological solutions to facilitate content moderation online could be developed at a faster pace than they are currently. A roadblock here is uncertainty about the interplay between proactive monitoring and intermediary liability. Tackling the proliferation of illegal content must be a shared responsibility of the entire eco-system (e.g. platforms, authorities, users on- and offline) including ensuring an effective N&T process is equally important. Whilst platforms have the responsibility to make N&T processes efficient, accessible and transparent, notifiers must be willing and able to use the tools

provided responsibly. Frivolous, unsubstantiated or vague notices are counterproductive, and the framework should not incentive these behaviors.

8. **User trust is central to the interests of our members and drives industry commitments to address content issues.** Our members want to maintain trustful relations with all of their stakeholders. In order to do so, Internet companies have an interest in providing information to users and governments in a transparent manner regarding their content moderation tools and measures. However, consideration of potential reporting obligations should take into account the significant burden on the companies of all sizes involved. Existing self-regulatory and co-regulatory efforts and memoranda of understanding have shown success and should be part of the ongoing dialogue between Internet companies and policymakers.
9. **The EU can play a central role for global policy leadership on content moderation.** Moving beyond the EU level, we also observe a heightened risk of fragmentation at global level that we need to address and avoid. The EU is in a prime position to inspire other jurisdictions and their approaches towards regulating content and setting up intermediary liability protections. This is an area where global regulatory convergence would make sense, as it would help protect citizens around the world more evenly, while allowing companies to deploy consistent actions addressing these challenges worldwide. As the EU debate moves ahead, it should aspire to lead a global-by-design approach, taking into account the importance of the final result to attract international convergence.