Digital Sovereignty: Europe at a Crossroads

Viviane Reding*

ABSTRACT

The EU is the largest economic and trading block in the world but is at risk of losing its digital sovereignty - its capacity to influence the norms and standards of the information technology that play a crucial role in 21st century development. The EU currently suffers from the lack of a common stance on data protection, cross border rules on e-commerce and a regulatory framework for investments in digital infrastructure. As a result the EU is lagging behind in the development of both its digital infrastructure and innovative enterprises, vis-a-vis not only the US but also other advanced economies. Hence it is crucial that Member States refrain from pursuing self-defeating, narrowly defined national objectives and unite in a common effort to adopt a genuine “one market-one rule” policy. A number of proposals are presented here that go in that direction. Unless action is taken – within the next two years – the EU will not only loose its current digital sovereignty but also the sovereignty of the next generation.

***Member of the European Parliament, Former Vice-President of the European Commission**

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Digital sovereignty is crucial to Europe's future. I have been involved in the development of information technology for the last decade and have come to the conclusion that if we do not get things right now – and I mean the next one or two years - we will not only loose our digital sovereignty but also the sovereignty of the next generation.

How do we define sovereignty? "Sovereignty is the capacity to determine one's own actions and norms." It is easy to agree on this general definition. But the deep sense of sovereignty lies in our actions. We can use it to build borders and fences, thereby transforming ourselves into islands. That's what some European politicians risk doing, when they get lost in a maze of motley national prerogatives. If you think small, you stay small, giving up all possibilities to shape globalisation. But you can also use sovereignty in order to share power with others, increasing your capacity to forge the future in a globalised world. That is what political leaders do when they join forces in the European Union. That is what Luxembourg has always done.

The EU is the strongest economic power in the world, with more than 508 million consumers and a €27.300 GDP per capita. The EU is also the world's largest trading block for goods and services: it is the largest trading partner for over 80 countries, compared to only 20 in the case of the US.

Do we take advantage of this strong position now that we still have the power to do so? Because we must be aware that this position will very soon be challenged by demography and economic changes. In 2050 the world population will amount to 9.5bn compared to 7bn people today, with Europe's share shrinking dramatically: in 1950 Europe accounted for approximately 20% of world population, but by 2050 we will be down to only 8%. On the other hand, Western Asia - with exception of Russia- the Middle East and Northern Africa, as well as other regions show an opposite demographic trend. For example, recent statistics suggest that Africa will double its population by 2050.

Economic forecasts show that, despite current economic problems and slower growth rates, China is in the process of becoming the largest economy in the world. The USA and the EU may maintain second and third position for some decades. Thereafter India could be seriously challenging these positions. By then also Indonesia, Mexico and Nigeria could push the United Kingdom and France out of the top ten. Even big European countries are too small to meet future challenges alone. Our only chance to still play a role in the future is to present ourselves as a united European block.

Coming back to today's economy and its powerful players, we should note that the capital of the ten largest US information and communication technology (ICT) companies has the potential to buy up 80 of the biggest European firms. The challenge has already started and the digital revolution is a powerful driver of change. Here again we have to ask the question: are we capable to withstand the pressure this change imposes on us? That is because in face of the ongoing digital revolution Europe is still struggling to assert its digital sovereignty. If we want to be in the game we have to end legal fragmentation and develop our digital infrastructure. Both are building blocks for creating a continent fit for the digital age.

Now that we still have the economic power we should use this potential to determine our own norms. This implies acting together, based on our European values, anticipating future developments by embracing technology and innovation and negotiating with our international partners on a legal level playing field, enabled by a coherent and strong European policy.

End legal fragmentation– the capacity to determine our own norms

In 2014, the then newly elected President of the European Commission, Jean-Claude Juncker, declared to the European Parliament: "*we must make better use of the opportunities of the digital technology which knows no borders. We must break* *down national silos in telecommunication regulations (...) and in data protection standards. We have to break down national silos as far as the management of radio waves is concerned. We must knock down these barriers, these hurdles to growth. Roaming charges in Europe have to disappear and they will disappear. If we are successful in implementing a real digital single market we can generate €250bn of additional growth in Europe.*" He was and he still is right.

Let me first focus on common data protection rules as they are the basis of any data driven economy. Data is at the centre of the digital world. It is the currency of this new market. Like any currency it relies on trust. Only if consumers can 'trust' that their data is well protected will they continue to entrust businesses and authorities with it, buy online and accept new services. Yet citizens' trust in the way in which their data is used is low.

Eurobarometer polls show that 92% of Europeans are concerned about mobile apps collecting data without their consent; 30% of consumers have concerns about personal data misuse when purchasing online; 25% are concerned that payment details could be stolen; and 87% of respondents avoid disclosing personal information online. This lack of trust hinders economic growth. Therefore we need to restore trust in the digital economy by protecting personal data by a strong European regulation. Restoring trust was one of the main objectives when I proposed in 2012 a comprehensive reform of the pre-internet era rules contained in the 1995 directive.

The second goal was to end legal fragmentation and costly administrative burdens. I proposed to scrap 28 sometimes conflicting sets of national rules by introducing one law for the whole continent. The balkanised European data protection rules are suitable neither for future technology developments nor for the needs of the digital single market. Most SMEs and start-ups have difficulties in taking advantage of the entire EU market because we have too many diverging rules. Specialists have calculated that the “one market-one rule”-policy would lead to savings for businesses of around €2.3bn

The European Parliament backed my proposal with a large majority. But the national ministers in the Council dragged their feet until they understood the obvious: without common rules there can be no common market. Due to these stalling tactics we lost two precious years. But let's look at the future: the negotiations between the European Parliament, the Council and the Commission are well on track and could be concluded shortly. The dedicated Luxembourgish civil servants working on this file in the second half of 2015 are, from what I hear, highly efficient and the political will from all sides to finish the negotiation by the end of the year is firm. It is high time indeed that we adopt a modern data protection regulation as the basis for the future digital continent.

At the beginning of October 2015 the judges of the European Court of Justice prodded European decision-makers once more to get real on data protection rules: this time concerning the protection of data transferred to the US. The Court declared the "Safe Harbour decision" invalid for obvious reasons: the Safe Harbour decision had been implemented by the European Commission as an adequacy rule in order to allow data transfers by private companies to the USA, a state with insufficient personal data protection rules. The Court decided that "Safe Harbour" is not safe and has to be stopped. By this judgement the Court confirmed the position of the European Parliament of 2013. That same year, as Commissioner for Justice, I proposed a complete overhaul of the Safe Harbour concept, including 13 recommendations aimed at setting up a more solid framework and clearly defining citizens' rights, the role of governments and companies' duties. After two years of negotiations, which stumbled over US demands for national security exemptions, the European Court of Justice confirmed that EU citizens' rights can not be blocked at the US border.

As the Court showed, building bridges across the Atlantic is urgently needed. In the US, the protection of privacy is reserved for American citizens only. In Europe, all citizens have the same rights, including American citizens. Reciprocity, which is a principle linked to equality and sovereignty, must be ensured. Legal concepts may differ between Europe and the US, but they can be reconciled. A clear example is the timely initialling of the Umbrella Agreement between the EU and the US in

September 2015 - an agreement regulating the data transfers by the police and the judiciary for the purpose of EU- US law enforcement cooperation.

Hence a solid data protection regulation is the basis on which to build a true digital single market. Once this work is completed other measures, such as those proposed by the Digital Single Market (DSM) strategy of the European Commission, will have to follow. Let me just highlight three of them. Firstly, simple and effective cross-border contract rules are needed for consumers and businesses. They could be based on my proposals for a Common European Sales law, aimed at opening e-commerce borders for consumers and sellers alike. Today only 38% of consumers feel confident when buying cross-border and 63% of online sellers have not sold cross-border within the EU, which leads to a definite loss of growth potential.

Secondly, measures are in the pipeline to tackle another concrete problem - the costs of cross-border parcel delivery. The Commission intends to launch in 2016 measures to improve price transparency (not to be confused with harmonisation) and enhance regulatory oversight.

Finally, there is the reform of copyright: this is an extremely complex field with often conflicting interests between authors, publishers, intermediaries and consumers. I don’t believe that there is a simple answer: probably some practical progress will be made on the issue of portability. Bearing his in mind, I am not sure there is a need to deal with this specific issue right now.

Instead, it would be much more efficient to have a serious look at our innovation culture. If we really want to embrace innovation, it is indispensable to favour a risk taking environment and to give a second chance to companies in trouble. In Silicon Valley, €15bn venture capital per year is invested in IT start-ups. If young entrepreneurs need several millions, they have the possibility to find investors easily. In Europe participation in start-up capital is rather timid. The sums involved here are in the tens of thousands of euros rather than millions. The result of this state of affairs can be seen in the development of the so-called Unicorns, i.e. start-ups with a market value of more than USD 1bn. In August 2015 there were already 112 of these worldwide, a 75 % increase compared to a year earlier. The three biggest are: Uber (USD 50bn), Xiaomi (USD 46bn) and Airbnb (USD 25, 5bn). 73 of the Unicorns are in the US, 27 are in Asia and only 10 in Europe. It is high time that we create the regulatory, economic and financial conditions for our start-ups to stay in Europe. This requires a marked change of mentality. We need to stop behaving in a risk-adverse manner.

That is the message I would like to pass to our Ministers of Finance when they prepare the next spectrum auctions.[1] The European Commission went for a European approach in its "connected continent" legislative package of September 2013, pleading for a European-wide management of spectrum. Member States refused to follow. A new proposal should be presented by the Commission in order to replace the balkanised distribution of spectrum by European wide cross-border investments. Member States could preserve the income from auctioning, but allocation should not take place solely on "cow milking" considerations.

As the regulatory framework matters for investments in digital infrastructure - cable, telecoms and satellite - spectrum distribution should be part of an intensive investment drive. If Europe wants to put a solid basis to a sovereign European digital policy, it has to invest in high-speed infrastructure.

High-speed infrastructure – a building block of the digital continent

Improving availability of high-speed broadband internet all over Europe is indeed one of the major challenges of the European digital policy. It supports digital growth both for big firms and for SMEs, especially through the potential provided by the internet

[1] A spectrum auction is a process whereby a government uses an auction system to sell the rights (licences) to transmit signals over specific bands of the electromagnetic spectrum and to assign scarce spectrum resources. In past decade, telecommunications has turned into a highly competitive industry where companies are competing to buy valuable spectrum, particularly in the case of mobile devices and television signals.

of things (M2M)[2], as well as through e-commerce (P2P)[3]. High-speed broadband internet is crucial for new services such as e-learning and e-health, which will deeply impact our societies. Finally, a solid infrastructure is the backbone of ICT based innovation. There is nothing new in this reasoning. I already underlined this during my term as European Commissioner for Information Society and Media (2004-2010) when I regularly pointed out the need to cover "white spots" on the European map (regions without broadband availability). Eight years later the diagnosis is not satisfactory at all. Experts, politicians and citizens all agree that we are lagging behind.

Concerning the infrastructure, coverage with 68 % of so called "next generation access technologies" (= minimum 30 MBit/s) in 2014 was still poor.[4] The situation in rural areas, covered by only 25 %, was dramatically worse. But one shouldn't limit the analysis to the 30 MBit/s speed. Already today especially businesses need the high capacity fibre- to-the-premises (FTTP) can deliver. Here the coverage is only at 19%, and around 5% in rural areas, while it is at 43% in Japan and 58% in South-Korea. The diagnosis can be completed with numbers concerning mobile broadband subscriptions: Europe reaches 72% coverage while others stand at over 100%: Japan (116%), South-Korea (105%) and the US (101%).[5]

The investment gaps in Europe have also been clearly identified. In an optimistic scenario released by the European Commission in May 2015, achieving the 2020 digital agenda target for 30MBit/s requires closing an investment gap of €34bn - including €21bn of public investment. On the other hand, in October 2015 the Boston Consulting Group, in a study commissioned by telecommunication network operators, put this investment shortfall at €106bn: in face of an overall requirement of

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[2] Machine-to-machine.

[3] Peer-to-peer.

[4] Coverage here is defined as share of next generation technologies in total broadband internet connections.

[5] Coverage is defined here as the number of subscriptions per capita. Coverage can exceed 100% as individuals can have more than one subscription.

about €216bn, only €110bn of combined public (€24bn) and private (€86bn) investment are being budgeted for next generation mobile and broadband networks .

The EU should provide €22,65bn broadband investment funding for the period 2014-2020 through the European Structural and Investment Funds, the Connecting Europe Facility and the EIB. The European Fund for Strategic Investments (EFSI) is trying to stimulate further investment in digital infrastructure. Initially, the Vice President of the European Commission for the Digital Single Market, Andrus Ansip, expressed hopes to raise €35bn, which could leverage some €130bn, for digital investments. However, as the EFSI is a market based instrument, no fix sector allocation is foreseen. The Fund will certainly help generate additional investment, but will it be enough to fill the "white spots"? The financing gaps related to the 2020 goals are identified, but we already know that they are underestimated. 2020 is tomorrow: 5G, the internet of things, connected cars and other new developments will need even more investment.

Four ideas must guide our way towards building a satisfactory high-speed broadband internet infrastructure. First, joint public and private efforts are needed: neither the private sector, nor the public sector alone can deliver a solution. The revision of the telecoms regulatory framework could be a window of opportunity for triggering a new drive, Second, public actors must collaborate closely and efficiently in order to avoid overlaps. Multilayer processes must ensure smooth cooperation from the local to regional to national and to the European level. Third, investment backed by public funding must be cost efficient. We know that fibre everywhere is not possible because it is too expensive. The solution on how to bring ultra-speed internet to far-away villages, remote areas, mountains, or islands may lay in hybrid solutions integrating satellites. Finally, our policy must aim at preventing the deepening of the digital divide. Rural and peripheral areas need access to new services like e-health, e-government and e-learning. We cannot afford new inequalities in this domain.

Conclusion: Europe today is at a crossroads.

We must make sure that Europe has its word to say in the setting of laws and standards governing the digital age. It will only be able to do so if it stands united and follows a clear strategy supported by the necessary means. Now is not the time for the politics of piecemeal solutions and self-isolation. Quite to the contrary, it is the time to embrace the digital revolution with the ambition to shape it. We cannot hide from globalisation and technical innovation, but we can use our European sovereignty to set the gold standards of the digital age in the domain of data protection and beyond. The answers given to the challenges discussed in this article will shape the world we hand over to our children. I want it to be a world where European values and decisions still matter.