

KEY RECOMMENDATIONS TO THE SPANISH EU PRESIDENCY

How Spain Can Lead on EU Tech & Digital Policy

Spain holds the Presidency of the Council of the European Union during the second half of 2023, leading negotiations on important issues in the field of EU tech and digital policy. The Computer & Communications Industry Association (CCIA Europe) respectfully offers these recommendations, and looks forward to supporting the Spanish Council Presidency.

I Removing barriers to digital trade and data flows

The volatile geopolitical landscape, global rise of authoritarianism, and further erosion of the rule-based world order are just some of the global challenges that Europe cannot face alone. That is why the EU needs to take a leadership role in enhancing cooperation with its key international partners.

Recommendations

1. Cooperate with like-minded partners to advance shared interests
2. Ensure safe international data flows
3. Keep access to the cloud market open and non-discriminatory
4. Support proportionate data sharing rules
5. Lead on implementation of global tax reform, replace unilateral measures

II Embracing innovation for Europe to prosper

Consumer habits and needs are changing fast, that is why the EU should take a user-focused approach in its digital policies in order to deliver the innovation, openness, and flexibility that Europeans expect and demand.

Recommendations

6. Protect the open internet, reject network fees
7. Reap the benefits of AI through a risk-based approach
8. Adapt social and work policies to a changing world
9. Ensure effective enforcement of the Digital Markets Act
10. Adopt pro-innovation rules for open banking and open finance

III Ensuring that new rules protect and benefit Europeans

Harmonised EU rules are important to businesses and consumers alike. Europe should now focus on the effective implementation and enforcement of its many recently-adopted landmark digital rules. Europeans need to see tangible results and benefits.

Recommendations

11. Protect the privacy and safety of users, and children in particular
12. Increase transparency of political ads with clear responsibilities
13. Maintain a balanced relationship between media and online platforms
14. Ensure the EU liability framework is fit for purpose and aligned with existing rules

I Removing barriers to digital trade and data flows

1. Cooperate with like-minded partners to advance shared interests

Now more than ever, transatlantic partners need to step up their commitment to protecting shared values and the rule-based international trading system. In its pursuit of digital sovereignty, Europe must not neglect common principles such as non-discrimination, mutual consultation, and dialogue. The EU-US Trade and Technology Council (TTC) should serve as a forum to identify and structurally address transatlantic issues, with a view to ensuring closer alignment. The EU, and its partners, should remove global barriers to digital trade and the free flow of information. Likewise, Europe needs to provide more legal certainty to attract investments that can resolve supply-chain issues and secure access to critical (raw) materials and components.

2. Ensure safe international data flows

Commercial data flows underpin Europe's economic success around the world. To that end, the EU should promote safe international data transfers, while avoiding the creation of new barriers. CCIA Europe believes that the new binding safeguards and independent redress mechanisms under US law provide the foundations for a robust and durable EU-US Data Privacy Framework enabling transatlantic data flows. In this respect, adoption of the new EU adequacy decision by Member States will strengthen data protection and provide legal clarity for all companies transferring data between the EU and the United States.

3. Keep access to the cloud market open and non-discriminatory

A thriving data-driven economy requires a competitive European market for cloud computing services. Certification, standards, or other specifications that exclude global and EU cloud vendors subject to foreign laws from the market steer Europe towards digital isolationism. This would significantly reduce cloud competition and resilience in the EU. If Europe is serious about wanting 75% of EU enterprises to take up "cloud computing services, big data, and artificial intelligence" by 2030, it should seek to expand – not decrease – the offer of cloud technologies in Europe. Where there are concerns about government access to non-personal data, the EU should seek convergence with like-minded partners, including through a transatlantic agreement on law enforcement access to electronic evidence.

4. Support proportionate data sharing rules

The EU Data Act should provide meaningful incentives to increase supply and demand for data and data-driven solutions in Europe. Undue restrictions and prohibitions – for example, new data transfer restrictions, prescriptive data-sharing conditions, and rules conflicting with other EU laws such as the GDPR and DMA – risk hampering the EU's aspiration to become a global leader in the data economy. Instead, the Data Act should remain technology-neutral and non-discriminatory, while also respecting trade secrets, contractual freedom, and the protection of personal data and security. And the same principles should apply for any future sector-specific EU proposals on data sharing.

5. Lead on implementation of global tax reform, replace unilateral measures

Europe should lead efforts towards the coordinated and consistent implementation of global tax reform, replacing today's jumble of unilateral tax measures. CCIA has been a long-time supporter of the OECD/G20-led tax agreement. The technical implementation of this tax reform should be profit-based, administrable, and respect the US global intangible low-taxed income regime. The EU should refrain from introducing any new discriminatory digital taxes or levies to avoid derailing global tax reform.

II Embracing innovation for Europe to prosper

6. Protect the open internet, reject network fees

Big telecom operators want the EU to introduce network fees, which content and application providers would have to pay to telcos whenever they respond to users' requests for data. If turned into legislation, European consumers and businesses would have to pay more for cloud and streaming services, and Europe's digital economy would be hit by new barriers to innovation and growth. Network fees also pose a fundamental threat to the net neutrality principles underpinning the open internet. The body of European telecom regulators (BEREC) recently [concluded](#) there is "no evidence that such mechanism is justified" and warned of its "significant harm to the internet ecosystem." [Digital rights groups](#), [academics](#), [internet experts](#), [consumer organisations](#), and [mobile virtual network operators](#) have voiced similar, strong concerns. EU policy and decision makers accordingly should reject network usage fees.

7. Reap the benefits of AI through a risk-based approach

Artificial intelligence (AI) can help solve many of the major challenges that Europe faces today, such as fighting climate change and improving road safety. CCIA supports the risk-based, targeted approach of the EU AI Act proposal. Nevertheless, the proposal would greatly benefit from clearer definitions, as well as more narrow classifications of "high-risk" AI systems and bans based on clear methodology. Moreover, the proposed distribution of responsibilities across the AI value chain requires a better balance between service providers and other actors. Any blanket imposition of obligations on all general-purpose AI systems, including open-source ones, should also be avoided. These general-purpose building blocks, similar to a brick in a building, have no intended use yet and can just as well be used for low- or no-risk applications.

8. Adapt social and work policies to a changing world

CCIA Europe encourages an EU regulatory approach preserving independent work that is flexible, accessible, and high-quality in nature. Allowing platforms to provide insurance and protection to improve working conditions, while maintaining quality and price protections for consumers, requires a forward-looking approach to platform work. Policymakers should avoid overly-prescriptive or presumptive rules that risk affecting millions of genuinely self-employed Europeans instead of combatting bogus self-employment. Preserving the freedom and flexibility that platform workers value will create jobs and strengthen Europe's economic resilience.

9. Ensure effective enforcement of the Digital Markets Act

Compliance with the Digital Markets Act (DMA) demands far-reaching and structural changes to the way digital services are designed and delivered in Europe. The European Commission should have sufficient resources at its disposal to engage in a meaningful regulatory dialogue and clarify any ambiguities surrounding the DMA's implementation in a timely fashion. Implementation of the DMA should not sacrifice proportionate enforcement for expediency of proceedings, which could harm the user experience. Furthermore, core platform services (CPS) that meet the designation criteria should be treated without discrimination based on country of origin.

10. Adopt pro-innovation rules for open banking and open finance

The review of the Payment Services Directive (PSD2) and the creation of a regulatory framework for open finance are opportunities to accelerate the deployment of new digital services for European consumers and small businesses. We encourage the development of market-driven rules which are truly conducive of innovation, competition, and which promote consumer trust in the sharing of financial data.

III Ensuring that new rules protect and benefit Europeans

11. Protect the privacy and safety of users, and children in particular

CCIA Europe reiterates its steadfast commitment to the fight against online child sexual abuse (CSA). The proposed CSA Regulation that is currently being debated should strive for harmonisation across the EU, providing greater legal clarity and bringing a halt to the growing compliance complexity created by divergence among Member States. Tackling CSA is of paramount importance, and all digital service providers are committed to it. At the same time, the new rules should strike a better balance between safety and other fundamental rights, by respecting the EU ban on general monitoring, rejecting privacy-invasive mandatory detection for interpersonal communication services, and safeguarding secure end-to-end encryption. CCIA also encourages the Council to ensure consistency with the broader legislative framework – such as the Digital Services Act (DSA) – and to provide the necessary legal basis for data processing that would allow providers of private communication services to develop and deploy effective risk-mitigation measures (including both voluntary prevention and detection efforts).

12. Increase transparency of political ads with clear responsibilities

Political advertising helps to promote pluralism and citizen engagement in electoral processes. CCIA Europe supports the proposal to create a modern EU-wide framework that provides more transparency in political advertising. However, in order to further increase transparency, lawmakers should narrow the definitions of “political advertising” and “political actors,” recognise the role and responsibilities of the sponsors behind ads, and align data-access obligations with the existing EU data protection framework.

13. Maintain a balanced relationship between media and online platforms

The introduction of new rules to safeguard the independence and pluralism of Europe’s media has the support of CCIA. Yet, to truly foster a healthy and balanced information ecosystem, the European Media Freedom Act has to be improved and clarify how self-declaration of media service providers would work in practice. The special treatment of media content should be limited to legitimate actors and accompanied by robust safeguards against abuse by rogue actors who are trying to spread disinformation or illegal content. Only those very large online platforms carrying a significant amount of news information or media services should have to implement this special treatment requirement.

14. Ensure the EU liability framework is fit for purpose and aligned with existing rules

CCIA Europe appreciates the Commission’s efforts to update the EU product liability regime to better protect consumers in the digital era. The proposal for a new Artificial Intelligence (AI) Liability Directive requires further improvements in order to enhance legal certainty and reflect the progress made on the AI Act. The draft Product Liability Directive (PLD), on the other hand, introduces an easing of the burden of proof without proper safeguards for evidence disclosure, a wider definition of the notion of “product,” and an extended list of damages. This risks hampering research and development, innovation, and ultimately Europe’s digitalisation – all to the detriment of consumers. What is more, EU policymakers should also carefully consider the consequences of the text treating standalone software as a tangible product when it comes to strict liability, the inclusion of data loss and psychological harm in the scope of damages, and disproportionate alleviations of the burden of proof.

About CCIA Europe

- The Computer & Communications Industry Association (CCIA) is an international, not-for-profit association representing a broad cross section of computer, communications, and internet industry firms.
 - As an advocate for a thriving European digital economy, CCIA Europe has been actively contributing to EU policy making since 2009.
 - CCIA's Brussels-based team seeks to improve understanding of our industry and share the tech sector's collective expertise, with a view to fostering balanced and well-informed policy making in Europe.
- For more information, visit: twitter.com/CCIAEurope or ccianet.org

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