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COMMISSION STAFF WORKING DOCUMENT

Progress Report on the Communication on "Internet Policy and Governance - Europe's role in shaping the future of Internet Governance"

I. Introduction

The 2014 Commission Communication on Internet Policy and Governance ("the Communication")¹ proposed a basis for a common European vision on Internet Governance and to report in 2015 on progress in achieving its key actions (each of which is identified in italics in the boxes below). This Staff Working Document reports on progress and addresses new challenges that have emerged since early 2014.

The European Union has continued to experience the tremendous benefits of the Internet as a driver of economic growth, innovation, trade, democracy and human rights. The European Union is also one of the leading regions in terms of quality, accessibility and affordability of Internet services. The Digital Agenda target of 75% of the population using the Internet regularly in 2015 was reached in 2014. The proportion of internet users who go online on a daily basis was high in all Member States and 65% used the internet every day or almost every day.

In May 2015 the Commission adopted the Digital Single Market Strategy², one of its key policy priorities, which includes a commitment to work to develop a sustainable approach to Internet Governance through the multi-stakeholder model with the aim of keeping the Internet free and open.

Internet Governance has seen important developments since the adoption of the Communication. In March 2014, the US Government announced its intention to transition the core Internet function (IANA³) to the multistakeholder community, which has worked tirelessly to that end. The NetMundial meeting in April 2014 adopted principles for Internet Governance based on rough global consensus. At the United Nations, the World Summit for Information Society (WSIS+10) review process (and the future of the Internet Governance Forum) will conclude with a High Level Meeting in New York in December 2015.

II. Progress

1) Fixing Principles:

Actions from Communication 2014:

The Commission supports establishing a coherent set of global Internet governance principles, consistent with fundamental rights and democratic values, with all stakeholders.

The Commission will facilitate discussions among stakeholders, including via multistakeholder platforms and the High Level Group on Internet Governance.

¹ COM (2014)72 12.02.2014

² COM(2015)192 final 6.5.2015

³ The Internet Assigned Numbers Authority (IANA) is responsible for the global coordination of the Domain Name System (DSN) Root, Internet Protocol (IP) addressing, and other Internet protocol resources

The Commission invites the Council and the European Parliament to contribute to a common European position in all appropriate venues.

The Global Multistakeholder Meeting on the Future of Internet Governance ("NETmundial") took place on 23-24 April 2014 in Sao Paulo (Brazil) and resulted in the adoption of the "NETmundial Multistakeholder Statement of Sao Paulo"⁴ with a set of principles and a roadmap endorsed by stakeholders. The Commission contributed substantially to the design of the principles and the roadmap and was represented at high level by then Vice-President Neelie Kroes.

The World Economic Forum and ICANN then proposed a NETmundial initiative ("NMI") to support implementation of the principles. Commission Vice President Ansip is a member of the NMI Coordination Council, thus reaffirming the Commission's commitment to follow through on implementation of the NETmundial principles.

The High Level Group on Internet Governance ("HLIG")⁵ meets several times a year in Brussels under the chairmanship of the Commission to coordinate and exchange views on EU positions and encourages participation from other stakeholders, as appropriate.

The Commission has been working in close cooperation with the European External Action Service, the European Parliament and the Council, European civil society and industry stakeholders, and international partners⁶, to promote a common vision of a unified Internet based on the respect of human rights and fundamental freedoms. This feeds into policies promoted by the EU, for instance in the EU Guidelines on Freedom of Expression Online and Offline, in the application of the European Action Plan on Human Rights and Democracy, and through Council Conclusions on Cyber Diplomacy.⁷

Political interest has risen, and there has been an increasingly clear EU vision of Internet Governance. Following the Commission's Communication, the Council adopted Conclusions on Internet Governance⁸ and Conclusions on IANA transition and ICANN accountability⁹. The European Parliament adopted a Resolution on the renewal of the IGF mandate¹⁰.

Coordination in the United Nations and other fora, has ensured that the EU and its Member States present a unified position on Internet Governance. Preparation for the WSIS+10 review has taken place in various UN fora and will conclude with an outcome document and UN General Assembly High-level Meeting, 15-16 December 2015. During the entire process

⁴ <http://netmundial.br/>

⁵ A European Commission Expert Group composed of Member State representatives

⁶ Including through strategic dialogues with third countries such as USA, Japan, China, Brazil, India, and Republic of Korea.

⁷ ST-6122-2015-INIT

⁸ ST-16200/14-INIT

⁹ ST-9855/15-INIT

¹⁰ 2015/2526(RSP)

the Commission and the European External Action Service played an active role in developing an EU common position for the review process. Guidelines on the lines to take for WSIS+10 were adopted by COREPER in June 2015.

2) **The Multistakeholder Model**

The multistakeholder model has considerably evolved. Netmundial showed how it can successfully reach consensus on important principles. The ITU¹¹ input to the WSIS+10 review was developed with contributions from all stakeholders, and the UN CSTD¹² report as input to that review was also based on contributions from all. The multistakeholder community has also made a tremendous collaborative effort to design proposals for the transition of the IANA stewardship function and related improvements in ICANN accountability. A number of non-EU countries that were rather opposed to the model have now recognised its benefits and embraced it.

Nonetheless it is clear that still many stakeholders do not have the resources or information necessary to make their voices heard. Hence for the multistakeholder model to work at its full potential it needs to continue to improve and become even more representative. The Commission has made efforts to address capacity building with its Global Internet Policy Observatory (GIPO)¹³, which should be fully functional in 2016.

i. **Reaching out to stakeholders:**

Action from Communication 2014: The Commission will engage with stakeholders to clearly define the role of public authorities in the multistakeholder context, consistent with an open and free Internet.

The Commission engaged to work with stakeholders to more clearly define the role of public authorities in the multistakeholder context. The European Union and its Member States worked together with other stakeholders in the enhanced cooperation group set up by WSIS¹⁴. This group was charged with defining a role for governments to act "on an equal footing to carry out their roles and responsibilities, in international public policy issues pertaining to the Internet, but not in the day-to-day technical and operational matters, that do not impact on international public policy issues". While significant efforts have been made, no conclusions have been agreed (partly because some countries insist on greater governmental input and responsibility for areas that are primarily technical) and the framework for enhanced cooperation continues to be debated.

¹¹ International Telecommunications Union (ITU) which has been active in establishment and follow-up of the WSIS process

¹² United Nations Committee on Science and Technology for Development

¹³ See the special section on GIPO on page 5

¹⁴ Working Group to examine the mandate of WSIS regarding enhanced cooperation as contained in the Tunis Agenda (Working Group on Enhanced Cooperation (WGEC))

Actions from Communication 2014:

The Commission will engage with stakeholders to facilitate issues-based multistakeholder dialogue and decision-making across organisational boundaries.

The Commission will work with stakeholders on the exchange of best practices in the multi-stakeholder process.

The Commission has included representatives of the European technical community, industry, and civil society in HLIG meetings, in EU coordination meetings during ICANN and other related meetings, with a view to facilitating and maintaining an open and constructive dialogue and mutual understanding.

The Commission engages with a diverse set of European Internet stakeholders, to foster improvements to the outcomes of the Internet Governance Forum (IGF) and the European dialogue on Internet Governance (EuroDIG), for better exchanges of best practices, as well as in the context of its discussions with global partners on Internet Governance.

Action from Communication 2014: The Commission will engage with stakeholders to strengthen the Internet Governance Forum, taking account of the Recommendations of the Working Group on Improvements to the IGF.

The Commission has provided an annual direct grant of approximately € 110 000 to the IGF secretariat since the IGF's establishment and encourages other European stakeholders to more actively participate in funding the IGF secretariat. Although the absolute value of the EC annual contribution has remained the same since its inception, the share of EC funding has diminished over time because of contributions from new partners. High-level Commission participation in IGF meetings has been assured (usually at Vice President level) and the Commission is a member of the Multistakeholder Advisory Group (MAG) of the IGF, which prepares each IGF meeting.

The Commission supports a stronger IGF that should improve and evolve to meet expectations of the global multistakeholder community, and has actively encouraged continuous improvements, including implementation of the recommendations of the UN Working Group on Improvements to the IGF. The most promising of its innovations are being gradually introduced and the Commission is engaged in means to further advance progress.

The expected renewal of the mandate of the IGF beyond 2015 (to be decided by the United Nations General Assembly at the WSIS+10 meeting in December 2015) will help focus further improvements in the IGF's work. All EU Member States support the extension of the IGF mandate for 10 years until 2025.¹⁵

¹⁵ Council of Europe Decl-03.06.2015_1E / 03 June 2015 and EU common position agreed in the WSIS+10 preparations

The Commission actively supports EuroDIG, and its annual event, which enables dialogue with a wide and expanding range of European stakeholders, and helps to bring together national IGFs from European countries. EuroDIG provides a valuable European input to the global IGF. The Commission provided financial support¹⁶ to the June 2015 EuroDIG event, in order to further improve Europe's contribution to the global Internet Governance Forum in November 2015. The Commission also facilitates and participates in exchanges between many stakeholder groups (industry, civil society, EU MS, European Parliament etc.) to develop clear European positions and contributions to the IGF. The 2016 EuroDIG event will take place in June in Brussels, and the Commission is working to involve more stakeholders in the debate, seeking to raise the level of inclusiveness, and trying to mobilise and further strengthen national IGFs in Europe¹⁷ with a view to increasing their input to the global IGF.

Action from Communication 2014: The Commission proposes to launch the technical development of the Global Internet Policy Observatory (GIPO) in 2014 as a resource for the global community.

GIPO will be an innovative online platform for monitoring Internet-related policy, regulatory and technological developments across the world, to help to increase expertise and understanding among more actors, particularly from underrepresented countries, NGOs and interest groups that may not have sufficient resources or information to participate effectively in Internet Governance debates and decisions. GIPO is being developed under a Commission procurement contract. A core group of countries and NGOs involved in Internet Governance is participating in the GIPO advisory board to ensure it gets support from future users and meets their needs and expectations.

A discussion platform has been set up to inform and engage stakeholders (www.giponet.org). The initial deployment of the technical platform is available at the following link: <http://ka2.fundacionctic.org/gipo>. The Commission also ensures periodic outreach to inform and consult stakeholders through webinars, social campaigning, ad-hoc events and presentations. An advocacy package has been developed for distribution to interested partners. The GIPO tool should be fully operational by 2016.

Action from Communication 2014: The Commission, together with recipients, will continue in 2014 to strengthen its development assistance programmes in support of media development and freedom of expression, as well as technological, policy and regulatory capacity-building related to the Internet.

Projects related to capacity building

¹⁶ The European Commission 2015 financial contribution helped to develop EuroDIG results and present them at the international IGF in Brazil in November 2015.

¹⁷ Currently national IGFs are held in many EU countries, for example, Germany, Italy, Netherlands and by bringing their results together and exchanging information at EuroDIG both the European and the national IGFs are strengthened and can advance together.

Several projects were continued or extended. Under the AfricaConnect project (2011-2015), funded under the 10th European Development Fund (EDF), the EU supported the establishment of broadband network infrastructures to interconnect National Research and Education Networks (NRENs) in Eastern and Southern Africa and improve their connectivity to GEANT¹⁸. The programme is being extended to more NRENs in West, Central and North Africa.

The Commission, the African Union Commission and the International Telecommunication Union are negotiating a new five year project on Harmonisation of ICT Policies, Legal and Regulatory framework in Africa under the Pan-African Programme. The project is foreseen to include an Internet Governance Capacity Building action line to deliver know-how to African stakeholders.

The EU promotes legal frameworks that incorporate the due process safeguards to allow for the open, free and secure use of the Internet, in line with the Cybersecurity Strategy of the EU.¹⁹ The EU plays a leading role in providing capacity building to third countries in the fight against cybercrime.

EU cyber capacity building initiatives include enhancing the ability of third countries to better address cybercrime and enhance cyber resilience. The Instrument contributing to Stability and Peace (IcSP) supports global and trans-regional actions potentially involving different countries (i.e. fragile, developing, emerging, in-transition, industrialized, candidate or potential candidate countries). The IcSP is coordinated with relevant bilateral cooperation of EU Member States as well as with that of other major bilateral contributors and multilateral organisations, consistent with the EU external action and the security policies.

Specifically on cybersecurity, the IcSP strategy shares responsibility to increase reliable and interoperable access to the Internet as well as to counter cyber threats jeopardising ICT growth worldwide, amongst all stakeholders: private sector, governments, civil society, international and regional organisations, and end-users. While, there are a range of good capacity building initiatives underway, overall there is a growing imbalance between increasing demand and limited supply – the skills and knowledge of leading cybersecurity practices are not being shared fast enough and wide enough.

Projects to support media development and freedom of expression

The Commission supports the fight against cyber-censorship, promotion of secure digital communication, and digital security support (financial as well as technical) to journalists and human rights defenders in line with the European Instrument for Democracy and human

¹⁸ GEANT is the European research and education network that connects over 50 million users at 10,000 institutions. It is the most advanced research network in the world and extends to users in many parts of the globe, using very high speed interconnections.

¹⁹ JOIN(2013) 1 final

Rights (EIDHR), and in line with the EU Human Rights Guidelines on Freedom of Expression Online and Offline. Apart from project support, the EIDHR Emergency Fund for Human Rights Defenders at Risk also provides support and protection to journalists and bloggers at risk by temporary relocations outside their countries, financial grants, and legal and medical assistance.

The Commission has followed up on related pilot projects proposed by the European Parliament. The European Centre for Press and Media Freedom (ECPMF), for example, addresses violations of media freedom and pluralism by providing practical solutions and guidance to journalists in EU and certain neighbouring countries²⁰. A mapping media freedom platform, providing assistance to journalists and disseminating knowledge about media freedom in Europe is also included²¹. The platform monitors and reports violations to media freedom. This action includes digital training, analytical reports based on data submitted into the platform, and campaign actions to address acute cases of media freedom violations. Further, the Media Pluralism Monitor (MPM) tool was established by the Commission and based at the European University Institute in Florence (Centre for Media Pluralism and Media Freedom) to identify potential risks to media pluralism in EU Member States. The first phase of the project – based on a sample of nine Member States – has showed that risks of limitations to media pluralism exist. The tool is currently being applied to the remaining Member States²² and the MPM indicators will be updated reflecting the growing importance of the Internet in media pluralism.

3) **Globalisation of the core Internet functions**

Actions from Communication 2014:

The Commission will work with all stakeholders to identify how to globalise the IANA functions, whilst safeguarding the continued stability and security of the domain-name system.

The Commission will work with all stakeholders to establish a clear timeline for the globalisation of ICANN, including its Affirmation of Commitments.

i. IANA Transition

Shortly after adoption of the Communication on Internet Policy and Governance, the US Government announced that it would release its supervisory role of the IANA function to the multistakeholder community subject to four main prerequisites²³. This announcement

²⁰ <https://ec.europa.eu/digital-agenda/en/media-freedom-pilot-projects>

²¹ <https://mappingmediafreedom.org>

²² <https://ec.europa.eu/digital-agenda/en/media-pluralism-monitor-mpm>

²³ The prerequisites are that the transition proposal must have broad community support and address the following four principles:

- Support and enhance the multistakeholder model;
- Maintain the security, stability, and resiliency of the Internet DNS;
- Meet the needs and expectation of the global customers and partners of the IANA services; and,
- Maintain the openness of the Internet.

responded to the call made by the Commission and EU Member States, amongst others, to globalise the management of these core Internet functions.

The IANA function is governed by a contract between the US government and ICANN that expired on 30 September 2015, and was renewed for one year in order to give adequate time to the multistakeholder community to finalise their proposals, go through US internal procedures, and implement the new approach²⁴.

The Commission has been actively participating and supporting the work on transition of the IANA functions and associated improvements in ICANN accountability. The Commission, together with Members of the HLI²⁵, is working to ensure that this transition maintains the stability, security and resiliency of the Internet domain name system and the openness of the Internet. The Commission has played an active role in ensuring coordination of EU MS positions in line with the Council Conclusions. EU Member States have had extensive and important roles to play in all aspects of the IANA transition process. The Commission will continue to participate actively and contribute to the process.

ii. ICANN Accountability

Improvements in ICANN accountability have been discussed and implemented for some years, however some additional measures became prerequisites to the successful transition of the IANA function. Other improvements can continue to be implemented post-transition but it will be important to ensure binding commitment to their implementation.

Denmark represents the ICANN Government Advisory Committee in the Cross Community Working Group on ICANN accountability. The Commission plays an active role in ensuring EU coordination in line with the Council Conclusions on Internet Governance of 27 November 2014 and will continue to participate actively and contribute to this process, as well as ensuring continuous further improvements particularly to consumer trust, protection and competition in line with the Affirmation of Commitments²⁶ requirements.

4) Building Confidence

<i>Action from Communication 2014:</i>

and the US government role cannot be replaced with a government-led or an inter-governmental organization solution.

²⁴ About the time of that recent contract renewal, the US government also announced that it would look into how its administrative role in the management of the root zone could be removed. This is another important element for full transition to the multistakeholder community.

²⁵ Norway, which is a Member of HLI, is represented in the IANA naming functions working group, the European Commission is represented in the oversight committee, and Denmark is represented in the ICANN accountability working group.

²⁶ The Affirmation of Commitments (AoC) is an agreement between the US government and ICANN to ensure that a number of fundamental principles are upheld by ICANN. One aspect of the ICANN accountability improvements is to enshrine many of these principles into the revised ICANN bylaws.

The Commission will work with the Council and Parliament to achieve rapid adoption and implementation of key legislation, including the reform of the data protection framework and the proposed Directive on network and information security, in order to strengthen trust online.

The Commission is committed to working with partners to rebuild trust in the Internet, including through the strengthening of its global governance, which is an essential prerequisite for a sustainable future for an open Internet.

Proposals for data protection reform²⁷ and the Network Information Security Directive are, at the time of drafting, being discussed between the European Parliament, Council and Commission as part of the legislative process. The Commission is working intensively with the co-legislators for their adoption, as these are also key enablers of the Digital Single Market (DSM) strategy. In this context, the EU Cybersecurity Strategy adopted in 2013, accompanied by Member States' national strategies, should help to enhance network security. The Commission proposal for a Regulation including provisions on "net neutrality" to protect the right of every European to access Internet content without discrimination was adopted by the European Parliament and Council on 25/11/2015 (Regulation (EU) 2015/2120, OJEU L 310, 26 November 2015).

Within ICANN, the Commission is actively engaged in current discussions on the new generation of WHOIS policy, human rights and public safety for which special working groups of the Government Advisory Committee (GAC) to ICANN have been set up. The Commission is actively advocating a comprehensive set of safeguards in new gTLDs to limit their potential misuse (e.g. for spreading malware, spam, counterfeiting, cybersquatting), and to increase consumer protection. Related to this, the Commission has arduously advocated for the introduction of appropriate safeguards prior to the delegation of the dot.wine and dot.vin domain names, in order to protect both wine producers and consumers. The Commission, along with EU MS and consumer and producer representatives, oversaw a satisfactory agreement reached by the parties. The success of these discussions shows how active cooperation between all stakeholders can help to strengthen trust in the Internet.

5) Cross Border Jurisdiction Issues and Normative Frameworks

²⁷ COM(2012)11 and COM(2012)10

Actions from Communication 2014:

The European Commission will launch an in-depth review of the risks, at international level, of conflicts of laws and jurisdictions arising on the Internet and assess all mechanisms, processes and tools available and necessary to solve such conflicts. All options for action at the Union or international level will subsequently be carefully considered, including possible legislative initiatives or additional guidelines as needed, subject to appropriate impact assessments. This work will build on existing policies.

The Commission, together with interested parties, including the European Internet industry, proposes to convene a series of workshops with international experts in law, ethics, social sciences, economics, international relations and technology. This expected output will be concrete and actionable recommendations to ensure coherence between existing normative frameworks and new forms of Internet-enabled norm-setting.

The conflicts of laws and jurisdictions cover a vast array of areas such as taxation, public regulatory law, criminal law, civil law, data protection, etc. Work on several of these areas is being carried forward in addition to the above mentioned ongoing reform of the EU data protection legal framework, concerning *inter alia* territorial scope and investigatory and enforcement provisions.

In private international law, the Union participates in "Judgments Project" where preparatory work on matters of jurisdiction and the recognition and enforcement of judgments in private law matters will conclude in March 2016. Its results will be submitted to the General Affairs and Policy Council of the Hague Conference on Private International Law for a policy decision to open negotiations. The Union participates in this project in the exercise of exclusive external competence.

The conflict between national jurisdictions and the borderless Internet are particularly striking when it comes to investigating criminal incidents, as law enforcement powers are territorial in nature. Therefore the Commission has announced its plans to carefully review such obstacles, notably on issues of competent jurisdiction and rules on access to evidence and information, by 2017.²⁸

Within the Digital Single Market Strategy (DSM), the Commission has tabled on 9 December 2015 legislative proposals for contract law improvements to tackle contractual law barriers in online commerce, harmonising rules on certain aspects concerning contracts for the supply of digital content, and further harmonising rules on certain aspects concerning contracts for online sales of tangible goods. By fully harmonizing the key mandatory provisions for consumer protection, traders will no longer face 28 different regimes, but will be able to sell cross-border by taking into account only one set of EU-wide mandatory consumer protection rules. Full harmonisation of these rules greatly reduces the impact of the trader's choice of applying national sales law to the contract and the burden of complying with mandatory consumer protection rules since certain key consumer rights will be the same across the EU. The Digital Single Market Strategy will also address initiatives related to contractual

²⁸ European Agenda on Security COM (2015) 185 final

restrictions in the context of Free Flow of Data and to the European Cloud initiative in 2016. In the context of the latter an Expert Group²⁹ set up by the Commission discussed contractual practices between cloud providers on one side and consumer or SME users on the other, but also issues of applicable law and jurisdiction.

Finally, work in other areas will be followed up by workshops financed by the Commission, to address matters such as the Internet and jurisdiction in the public law sphere, the role of public authorities in Internet governance, the role of ICT in development, and the impact of technical norms on public policy issues in the Internet.

III. Remaining and New Challenges

Action from Communication 2014: The Commission will launch a broad consultation, of civil society, the technical and academic communities and European industry, as well as the European Parliament and Member States, on how to ensure adequate and transparent multi-stakeholder involvement in the formulation of future European Internet governance policies.

The challenges linked to the success of the Internet are closely intertwined with the evolution of the economic and social developments in the EU and around the world. The launch of the Digital Single Market strategy has raised the bar in the ambition of reaping the benefits of the digital market while increasing security of the network, reducing cybercrime, improving consumer trust and protection, and expanding and improving data protection and human rights online.

Europe should continue to press further for improvements in enabling legal and regulatory environments for expanding internet penetration and use in all countries in the world, ensuring that its best practices are better known (including with respect to multilingualism, multiculturalism, and web accessibility), support improved access to information, communications and thus increase knowledge and democratic principles and participation, and help to bridge digital skills/literacy divides both within and beyond Europe.

Further detailed work on jurisdiction, conflicts of laws and application of law to the online environment should be carried out.

The Commission has been actively consulting all stakeholders on many aspects relating to Internet Governance and is reflecting on how to best carry out an even broader consultation of civil society, the technical and academic communities and European industry, as well as the European Parliament and Member States, on how to ensure adequate and transparent multi-stakeholder involvement in the formulation of future European Internet governance policies. EU Stakeholders have increased in numbers and interest in Internet-related policies but even wider participation of industry, civil society and technical community could be encouraged.

²⁹ http://ec.europa.eu/justice/contract/cloud-computing/expert-group/index_en.htm