From the Right to be Forgotten to a Grand Economic Revival: The EU and Big Data

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The “digital agenda” is the top priority of EU Commission President-elect Jean-Claude Juncker, who sees a “vibrant” knowledge-based society generating “500 billion Euros of additional growth in Europe” and “thereby creating hundreds of thousands of new jobs.” This is a very ambitious program. Juncker knows the obstacles that need to be overcome: “to do so, we will need to have the courage to break down national silos in telecom regulation, in copyright and data protection legislation, in the management of radio waves and in competition law.”

But why is the Commission President-elect choosing words such as “obstacles” and “courage?”

The creation of a single telecom market “of all sectors,” spearheaded by Digital Agenda Commissioner Neelie Kroes, is receiving stiff opposition from wireless operators. After negotiations and delays in the EU Parliament, the Commission won a small battle: the phasing out of roaming charges.

EU statistics show that, when visiting other EU countries, 25% of travelers shut their cell phones off all together, and 47% never use mobile Internet. In 2012, pan-EU roaming charges were capped at €0.70 per megabyte; the cap was lowered to €0.45 as of July 2013 and at €0.20 as of July 2014. Roaming charges will be completely removed by 2016.

To eliminate fragmentation in the telecom sector, the EU Commission seeks to establish a single EU regulator instead of 28 national ones. It is highly unlikely that national governments will agree to that.

The EU has over one hundred wireless operators for a population of 500 million. By comparison, the US has 6 mobile operators, and China 3. As a result, investments into the infrastructure of wireless technologies are lagging in the EU.

The Right To Be Forgotten

The European Court of Justice made headlines in May with the “right to be forgotten” ruling that forced Google to remove links to outdated information about a Spanish national. The “right to be forgotten” is at the center of EU’s data protection reform, an attempt to simplify regulation for businesses and strengthen consumer’s trust.
Citizens:
- Right to be forgotten – with limitations (only outdated links for search engines can be removed; actual content cannot)
- “Privacy by default” – products and services designed with the assumption of privacy; [apps] will need to request the user’s consent for data processing (versus assuming consent by default and having an opt-out possibility for the user).

Businesses:
- Single law, replacing 28 national laws
- “One-stop-shop” for businesses – single regulatory authority (still, 28 national regulators applying a single law)
- Same rule applies for all companies that target European customers, regardless of their global location (California tech companies are subjected to the law as well).

Exemptions for SMEs:
- No obligation to appoint data protection officers if data processing is not at the core of the activity
- No more notifications to supervisory authorities
- Ability to charge fees for data access requests
- No need to carry out impact assessments unless there are specific risks
- Obligations and rules calibrated to the size of business and data being processed (the app of the corner bakery will not be subjected to same rules as Google).

EU regulators attempted to strike a balance between the citizen’s “right to be forgotten” and the freedom of speech for individuals and the press. The new law puts the power to delete links (upon request) in the hands of tech companies. Following the May decision, Google received 91,000 requests to remove a total of 328,000 search results links: it removed 50%.

**British Resistance**

The law is receiving resistance from British politicians led by justice minister Simon Hughes, who is committed to prevent the ruling from becoming law: “There is no unfettered right. There is no right to be forgotten. Not in the law of the UK, not in directives, not in the judgments of the court ... The government is concerned. We would not want what is currently in the draft. We think it’s the wrong position.”

Hughes is using the narrative of freedom of the press and freedom of information to attack the law: “if politicians think they can delete findings about their expenses, that’s not going to ... [happen]. If people think they can delete their criminal history, it won’t occur. It’s not in the public interest.” Hughes believes complaints and appeals will find their ways to tribunals and eventually to the Information Commissioner’s Office; furthermore, he states that the law is unenforceable: “it’s a phenomenal task. It’s not technically possible ... You can’t exercise the right to be forgotten.”

The UK delayed the previous data protection directive from 1995 for five years. Eventually, and to avoid further delays, Chancellor Kohl and President Mitterand gave in to all British demands.

**Trouble Uber Uber**

Diginomica sees strong anti-US tech industry undercurrents in EU’s data protection position. They may be right. The law has harsh penalties for companies breaching the law. The Commission proposed a fine of up to 2% in the first draft for businesses that fail to comply with the law. The EU Parliament increased that fine to 5%.

Google is not the only tech giant targeted by Europeans. Local taxi operators and legislators found a common ground to keep profits from going away to overseas corporations, in this case, to the smartphone based car service called “Uber.”

A court in Brussels banned Uber in April 2014, leading the Digital Agenda Commissioner Neelie Kores to lash out at the Belgian Regional Minister for “protecting a local cartel.”

In June 2014, Taxi drivers across the EU paralyzed Paris, London, Madrid, Milan, and Berlin in a demonstration against Uber. The city of Berlin announced a ban on Uber in August citing safety concerns; the company won a first court battle against the city, and Uber service has been temporarily restored.

The EU Commission is working on “socially responsible” apps such as the @FoodLoopApp, which will show products discounted at the local supermarket when the “best before” date is coming up.

**EuroPoint:** The EU is afraid of socially disruptive technologies. It is looking at new technologies with both high hopes and suspicion. Eurobureaucrats want to manage digital creativity to spur economic growth, yet many new technologies resist bureaucratic domestication.