

Summary
ECIS Annual event
THE CLOUD: DIGITAL SOVEREIGNTY AND GLOBAL COMPETITIVENESS
9 December 2020

Thomas Vinje
ECIS Chairman

ECIS is a trade association which was established in 1989 to advocate for interoperability in the context of the legislative debate on the software copyright Directive. Since then, ECIS has been involved in a number of legislative initiatives – for example, the adoption of the Information Society Directive, the legislative proposal on the Computer Implemented Inventions Directive, various WIPO-related initiatives and has played central role in the *Microsoft* cases.

ECIS has also undertaken work on:

- The Commission’s adoption of the European Interoperability Framework (which promoted the procurement and the use of open-standard-based IT solutions by the government sector in the EU); and
- The Commission’s research into the impact of a potential Interoperability Directive (requiring IT companies with significant market power to provide interoperability information for their products and services).

More recently, ECIS has been looking into the Commission’s work on initiatives linked to Cloud computing – in particular, in relation to interoperability/portability, which feeds into today's event on digital sovereignty and global competitiveness. As we migrate, globally, towards open standards and Cloud computing, there is a growing concern about digital autonomy and competition concerns.

Lara Natale
Director for Tech, Media, Telecom, CERRE

The traditional year-end ECIS event, virtual for the first time, focused on two related topics:

- The European Federated Cloud initiative and Digital Sovereignty in a first panel; and
- Cloud and Global Competitiveness, implications for Platforms in the second panel.

In each panel, our expert keynote speaker provided their point of view from a research angle, complemented by reactions from industry and other stakeholders.

PANEL 1 – DIGITAL SOVEREIGNTY IN CLOUD, EUROPEAN FEDERATED CLOUD, WHAT IS IT AND HOW WILL IT WORK?

Przemysław Roguski

Lecturer in international law, Jagiellonian University, Poland

Przemysław provided a research perspective on what the challenges are to achieving digital sovereignty.

What does digital sovereignty mean? In Europe, the main proponents are France and Germany. In France, the main area of concern is the ability to set, and enforce, rules with respect to French citizens' data against American assertions of jurisdiction, as well as the ability to retain tax and monetary sovereignty. In contrast, in Germany, there is a greater emphasis on data privacy and the ability of users to decide where their data is stored.

The key legal principle is sovereignty. The main concern is that European private, business and governmental data would be subject to foreign law and thus accessible to foreign law enforcement or intelligence agencies. Even if we overcome the regulatory challenges, we may lack the capability to protect technology, which is reliant on the US and China.

The European Cloud Federation Initiative was announced in October 2020, which aims to resolve interoperability issues, such as data protection. The question remains, however, whether the proposed model will deal with the capability gap in machine learning and data storage.

Andreas Weiss

Head of Digital Business Models, eco Association of the Internet Industry Director, EuroCloud Germany

Andreas addressed the key GAIA-X guiding principles. Regarding infrastructure, Andreas noted that we need to address data flows, interconnection services between players, and high-performance services, in order to create a well-functioning data ecosystem. One way of ensuring this is to create a catalogue of services in terms of region and focusing on security.

Fabian Biegel

Senior Director and Sherpa for Digital Transformation at SAP SE

Fabian focused on data spaces. In relation to infrastructure, how can we maintain value while maintaining data sovereignty? We need to pursue our ultimate goal, which is to build a flourishing data ecosystem. However, close examination and working with data also necessarily involves working with regulators and having various regulatory measures in place. With this in mind, SAP have published a policy rules document and will publish another version in March 2021.

PANEL 2 – CLOUD AND GLOBAL COMPETITIVENESS, IMPLICATIONS FOR PLATFORMS

Lara raised key questions: how can you have both digital sovereignty in Cloud and drive global competitiveness? Is this a contradiction or can both aims be achieved? What about the role of Cloud based platforms and the difference between enterprise Cloud and consumer Cloud platforms, if there is a difference?

Oliver Latham

Vice-President in Charles River Associates' European Competition Practice

The Cloud has reduced entry costs for a range of applications. Infrastructure costs are now variable, and the Cloud can step in to accommodate capacity. However, fixed costs have moved upstream, such that infrastructure costs are very large, raising questions as to whether there is a concentrated market. Further, if devices are increasingly reliant on the Cloud, it is important that they can do so reliably.

Oliver also outlined four competition concerns:

- Tipping – economies of scale and concern about the creation of gatekeeper platforms. At the moment, this is not a key concern as there is multihoming and SWIPO is facilitating data portability.
- Input foreclosure – however, as long as we have competition at infrastructure layer, then this concern should be allayed.
- Bundling/leveraging/moat-building – various players can build incentives to reduce interoperability to raise barriers to entry. Perhaps the Digital Markets Act will catch this, but it seems likely that this will remain the purview of antitrust.
- Data access and data sharing – firms could hoard their data or prevent others from creating competing datasets.

There are also growing concerns around global sovereignty and to data access, and a further concern that Europe has lagged behind on the sovereignty debate. Oliver put forward a few open questions:

- How much of these concerns are really a wish to ensure that the sovereignty is European? Should we not be focusing on connection and interoperability generally?
- How far up the supply chain should we go to sponsor entry?
- If every region decides it needs to be sovereign, do we not create more fragmentation?

Stephen Kinsella

Specialist Partner at Flint Global

We have seen a shift in attitudes of major players but there are perennial issues which have not been resolved. Antitrust authorities sometimes work together, while at other times, they work in conflict. There is a concern that antitrust has been too slow, or if the authorities have acted, the remedies have been inadequate.

The risk of tipping and foreclosure remains low – however, even in the Digital Markets Act proposals, there was originally a concern that the Commission is taking a broad interventionist approach. The final product is still unknown - we could end up with a blacklist and a grey list of practices, but these remain a moving target.

Oliver noted Cloud fragmentation, but we should also be concerned about the fragmentation of regulation. The UK Competition and Markets Authority, for example, is set to gain a dedicated Digital Markets Unit, empowered to enforce a new code of practice on technology companies. Equally, there are also far-reaching proposals foreseen in Germany.

Digital players will, perhaps, now face increased scrutiny, echoing comments made by Andreas Mundt, President of the German Bundeskartellamt (Federal Cartel Office), who has recently referred to

enforcement and Gaia-X. In doing so, he warned that we should not weaken antitrust enforcement in order to champion European initiatives.