

EUROPEAN COUNCIL

Study Guide for Zurich Model United Nations

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WELCOME WORD BY THE CHAIRS

Dear European Leaders,

It is our greatest pleasure to welcome you in the European Council at ZuMUN 2018.

Never before in history was the process of political and economic integration in Europe at such a crucial turning point. Either the way to deeper cooperation and integration is chosen, or stagnation and even roll-back are the alternatives. In a world of increasing instabilities and ever faster globalization, Europe needs to take the right decisions, if it wants to make sure not to fall behind other actors like the United States, China or India. It is your job as leaders representing the member states of the European Union to make your contribution to paving the way to a strong and united Europe in the digital realm.

This guide shall serve as the starting point for your preparation. In the light of the enormous width of the field of the Digital Single Market, we can only provide you with a rough overview without going into the details of every single legislative proposal. In order to allow for high-level debates at ZuMUN, we advise each and every one of you to make use of the extensive references and links provided throughout this guide. And yes, it is a sometimes highly technical and complex matter. However, in a world that gets more complex every day, we believe that there are no easy solutions.

We will do our best to making your ZuMUN experience in the European Council as memorable as possible. Get a first-hand insight of the intricacies of European policymaking and experience what legislative work (in any country) in today's fast-paced world means.

We are looking forward to meeting you at ZuMUN 2018!

Marc Sinner and Sophia Schlosser

Your Chairs, aka Donald Tusk

Marc Sinner



Marc has been doing MUN for almost 10 years since the beginning of his Bachelor studies in Civil Engineering in 2009. Ever since, MUN has been an important part of his life with over 15 conferences attended as delegate or chair. From October 2010 to December 2012, he was part of the ETH MUN board in various positions, including a semester of presidency in fall 2011. Since 2014, he has been part of the Organizing Committee of so far 4 ZuMUN conferences, whilst being Co-Secretary-General of the 2017 edition.

In his real life, Marc is doing a PhD in transportation after having completed his Master in Civil Engineering with majors in transportation and geotechnical engineering in 2015. Marc is also board member of Young European Swiss, the local section of the Young European Federalists (JEF) in Switzerland.

Sophia Schlosser



Originally from Germany and Italy, Sophia Johanna Schlosser moved to Switzerland for her studies at the University of Zurich, where she obtained her BA Degree in Communications and Political last year. Her involvement with the UZH MUN Team started in September 2013 and she has been a member of the MUN UZH executive board for two consecutive years. Moreover, she has been involved in numerous MUN conferences in Brussels, Riga & Stockholm, Washington DC, Seoul, Rome and has also been a member of the Organizing Committee of ZuMUN 2015 and a Chair at ZuMUN 2016 and 2017. Like Marc, she is also engaged in the political youth organization Young European Swiss.

In her spare time she takes every opportunity to travel around the world, enjoys painting and the Mediterranean cuisine. She also has a weak spot for Salsa Cubana and she takes every single chance she gets to dance it.

ABOUT THE EUROPEAN UNION AND ITS INSTITUTIONS

A brief historic outline of the European Union ¹

The process of political and economic integration in Europe begins at the aftermath of World War II. In 1951, 6 countries (France, West-Germany, the Netherlands, Belgium, Luxembourg and Italy) found the European Coal and Steel Community (ECSC). In 1957, the same six countries sign the Treaty of Rome, which establishes the European Economic Community (EEC) and the European Atomic Energy Community (Euratom). In 1967, the three communities are merged under a single set of governing institutions: the European Communities are born. Over the coming decades, several enlargements bring the number of member states from 6 to 12: the United Kingdom, Ireland, Denmark, Greece, Spain and Portugal join the European Communities.

In 1993, the Maastricht Treaty comes into force. It constitutes a major step forward in the process of European integration: the European Union is created. Alongside the so far purely economic integration, it incorporates the Common Foreign and Security Policy as well as Justice and Home Affairs as second and third pillars of the European Union. Furthermore, the European Single Market with its 4 fundamental freedoms of persons, goods, services and capital is created. The introduction of a common currency, the Euro, is formally initiated. With the Treaty on the European Economic Area, the member states of the EFTA get the opportunity to take part in the Single Market on (almost) the same terms as the member states of the European Union, without however enjoying co-decision rights.

In 1995, Austria, Sweden and Finland join the EU. In the subsequent years, several treaty revisions (Amsterdam and Nice) prepare the big enlargement of 2004, when 10 countries of Central and Eastern Europe join the EU (Estonia, Latvia, Lithuania, Poland, Czech Republic, Slovakia, Hungary, Slovenia, Malta, Cyprus). In 2007, Bulgaria and Romania join, while in 2013 Croatia becomes the latest new member.

In 2009, the Treaty of Lisbon comes into force. It is the deepest treaty revision in the history of the European Union. In the following years, it is, however, shaken by a certain number of internal and external crises. First of all, the financial crisis of 2008 and the subsequent economic downturn lead to a rapid increase in sovereign debts all over Europe. Some member states of the Eurozone (first and foremost Greece, but also Ireland, Portugal and Spain) cannot bear this burden and require help by the other member states, although the treaty provisions explicitly exclude bailouts. Between 2010 and 2015, several rounds of so-called rescue programs are initiated by the Heads of State or Government convening in the European Council. The latter develops into a tool of crisis management. Only the most recent phase of economic growth from 2016 onwards has partly alleviated the symptoms, however without providing any solution to the structural nature of the problems.

¹ Recommended reading for further details: https://en.wikipedia.org/wiki/European_Union

During the financial crisis, support for the EU has fallen in many member states, as the former was primarily seen as an advocate of austerity measures in the countries suffering from high public debts. The 2014 European election thus brought a number of euro-sceptical or openly anti-European parties to the European Parliament. The new Commission led by Jean-Claude Juncker, which was formed at the aftermath of the 2014 election, committed to significantly reducing the amount of legislative initiatives and to concentrating on a limited number of major projects where common EU action can bring significant added-value to member states and citizens. The Digital Single Market is one these 10 priorities² fixed by the Commission for the period 2014-2019.

In 2015, Europe was hit by the refugee crisis. A high number of people from the Middle East, mainly Syria and Iraq, were seeking asylum in Europe. The Dublin-system, which foresees that refugees' asylum requests are processed by the first country where they enter the border-control-free Schengen area, proved unsuitable for a situation of high influx, as the countries at the external borders, mainly Greece and Italy, could not adequately handle the situation. A temporary relocation system inside the European Union did not bring the expected results. Most countries are very reluctant to actively engage into the acceptance of more refugees out of a fear from right-wing populist parties, or some others, like Poland or Hungary, do even categorically refuse the admission of any refugees. A major political divide between Western and Eastern European countries persists in this matter.

The following years 2016 and 2017 can be seen as turnaround years. First, the British referendum decision on June 23rd 2016 to leave the European Union (also known as Brexit) was a deep shock for many. But it also led to a serious discussion of which benefits EU-membership actually entails. Secondly, the election of Donald Trump as President of the United States and the subsequent insecurity regarding the future foreign and economic policy of the US convinced many people of the necessity for a unified Europe in the face of an increasingly unstable world. Over the last year, support for the EU has continuously risen. A new dynamic has spread, both among citizens (e.g. Pulse of Europe) and governments. Projects that were unthinkable for many years - like a European army - are now at least openly discussed. The election of Emmanuel Macron as French president is probably the strongest sign of this new dynamic.

The EU institutions

The European Union is governed by a number of institutions which all have their very specific role. Most of them can be assigned to either the executive, legislative or judiciary branch. This section presents a very rough and simplified overview. Some details are left out on purpose.

² https://ec.europa.eu/commission/priorities/digital-single-market_en

European Commission

The Commission is the heart of the **executive branch** of the European Union. It is the **only institution which holds the right of legislative initiative**, i.e. to propose draft legislation. Furthermore, it makes sure that European law is adequately implemented in all member states. If the latter do not do so, the Commission forwards the cases to the European Court of Justice (see below). The European Commission is made up of one commissioner per member state.

They are proposed by their national governments and confirmed *en bloc* by the European Parliament after passing through a number of hearings. The European Commission is based in Brussels. The current president is former Luxembourgish Prime Minister Jean-Claude Juncker.



European Parliament

The European Parliament is the **lower chamber of the European Union's bicameral legislature**. Together with the Council (see below), it passes, amends or rejects legislative initiatives submitted by the Commission. Its members (at the moment 751) are directly elected by the citizens every five years (the next election is in May 2019).

The European Parliament holds its plenary sessions in Strasbourg (each first week of the calendar month). Meetings of its preparatory commissions are held in Brussels. The European Parliament is the only supranational, directly elected parliament in the world. Its current president is Antonio Tajani (from Italy).



Council of the European Union

The Council of the European Union (or Council of Ministers) is the **upper chamber of the European Union's bicameral legislature**. It is formed by ministers of the national governments. In most policy areas, it decides with a qualified majority. Some policy areas, which enjoy a special legislative procedure, require a unanimous vote (e.g. taxation). The presidency rotates among member states every six months. At the moment, the Council is presided by Bulgaria. Its meetings are held in Brussels, except for the months of April, June and October when it convenes in Luxembourg.



European Council

The **European Council**, not to be confounded with the Council of the European Union (although they share a common website <http://www.consilium.europa.eu/>), is the summit of the **Heads of State or Government** together with its own president (at the moment former Polish Prime Minister Donald Tusk) and the president of the European Commission (both non-voting). The president of the European Parliament is usually invited to attend the meetings as an observer and to deliver the opinion of the Parliament on the items on the agenda.

The European Council has a special role which does not make it clearly fit into either one of the three branches of governance. Most of the time, it is, however, counted as part of the executive branch. It has little formal power (primarily organizational matters, like the nomination of a candidate for President of the Commission, and the adoption of mandates for negotiations of international treaties), but holds a high degree of informal influence. In some kind of a way, it acts as the collective presidency of the European Union. The European Council gives impetus on the general policy direction of the European Union. Its meetings close with conclusions being usually passed by consensus. They can include requests to the Commission to propose legislation. The European Council's meetings are normally held in Brussels, although informal meetings happen to be conducted elsewhere.

European Court of Justice

The European Court of Justice is the **supreme court of the European Union**. It makes sure that European law is interpreted and implemented uniformly throughout the member states. It also settles disputes between member states, the Commission as guardian of the treaties, companies and citizens when EU law is touched. A national court may ask the European Court to issue a preliminary ruling on a question the former has been seized of. The European Court of Justice is based in Luxembourg.



Committee of the Regions

It has a **consultative role inside the legislative process**: before a draft proposal by the Commission can be adopted by the Council and the Parliament, the Committee of the Regions has to give its opinion. The Committee of the Regions is made up of representatives of federated states, provinces or regions from all member states. It is based in Brussels.



European Committee of the Regions

European Economic and Social Committee

The European Economic and Social Committee (EESC) has a **similar consultative role** as the Committee of the Regions. It enjoys the right to issue its opinion to draft legislation proposed by the Commission. The EESC is composed of representatives from businesses, trade unions and other interest groups of the civil society. It is based in Brussels.



Court of Auditors

The Court of Auditors is in charge of controlling the correct implementation of the EU budget. It acts as an internal auditing organ. It is based in Luxembourg.



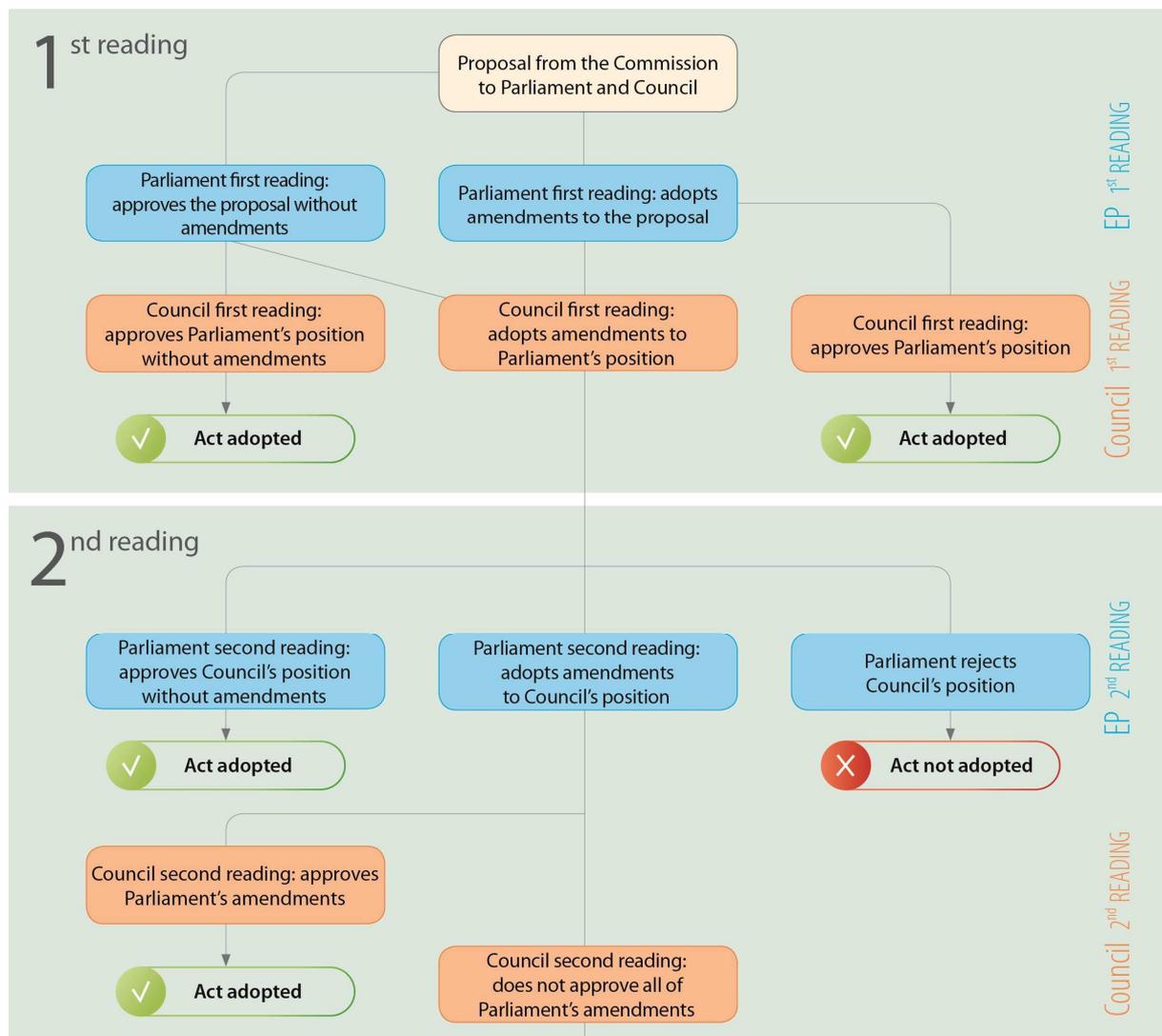
European Central Bank

The ECB is the Central Bank of the countries using the Euro as their currency, i.e. the so-called Eurozone. It holds far-reaching power in the field of monetary policy. It is based in Frankfurt. Its current president is Mario Draghi from Italy.



The legislative process

Figure 1 describes the **ordinary legislative procedure**. It starts off with a proposal by the Commission. Before going to the Parliament and the Council, the Committee of the Regions, the EESC as well as national parliaments have the opportunity to express their opinion in a non-binding statement. Both Parliament and Council have preparatory bodies discussing the proposals by the Commission before they go to the respective plenary.



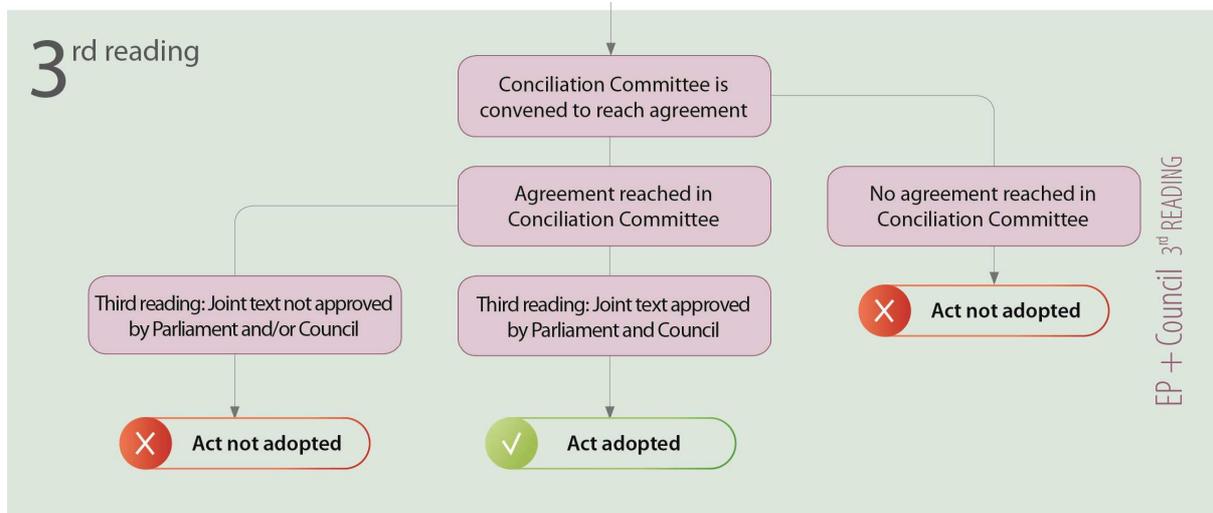


Figure 1: Ordinary legislative procedure, Source: European Parliament, <http://www.europarl.europa.eu/ordinary-legislative-procedure/en/ordinary-legislative-procedure.html>

Besides the ordinary legislative procedure (formerly called co-decision procedure), there is a certain number of special legislative procedures in areas particularly sensitive to member states' national sovereignty (including but not limited to taxation). Different forms with either consent (yes/no) or only consultation of the Parliament exist.

The European Council, which will be simulated at ZuMUN, is not represented in this graph, since it does not hold any formal legislative power. In general, it would be located at the very top even before the proposal from the Commission.

However, if a legislative matter is blocked at the Council of the European Union because of diverging opinions among member states, it also happens that the matter is discussed at the highest political level among the Heads of State or Government. This way, a compromise can be reached, so that discussions may progress when the matter then returns to the Council. One should not forget that the Council is made up of ministers of the national governments which usually do follow the policy agreed by their respective leader.

Directives and Regulations

The European Union has two different kinds of legislative acts:

- **Regulations** are directly applicable after approval by the two legislative chambers and subsequent publication in the official journal of the EU. Regulations do not need a transposition into national law. Hence, they are applied in the exact same way throughout all member states.
- **Directives** only fix the targets to achieve. Member states are required to transpose them into national law within a specified time frame (carefully controlled by the Commission). Hence, member states enjoy a certain margin of flexibility to take into account national specificities. The application of a directive may thus diverge in certain aspects from one member state to the other.

THE DIGITAL SINGLE MARKET

Introduction to the Single Market ³

The Single Market (also called internal market) has been created through the Treaty of Maastricht. It involves four fundamental freedoms:

- **Freedom of goods:** physical goods produced and certified in one country can be commercialized throughout the entire European Union. So further procedures to license products in other EU countries are needed.
- **Freedom of services:** companies from one country may sell their services and post their workers throughout the European Union. In regards to the latter point, there are still a certain number of restrictions in order to avoid an unfair race to the bottom in terms of social rights.
- **Freedom of capital:** any company or citizen from an EU member state may invest their capital in financial products or businesses in other member states. No restrictions of capital flows or rules of ownership may be applied. Banks based in an EU country may sell their services throughout the EU (so-called passporting rights).
- **Freedom of persons:** any citizen holding the nationality of an EU member state may choose to live and work wherever in the EU he/she wants. Citizens from other EU countries may not be treated differently than the own citizens (except political rights).

For all four freedoms, the rule of non-discrimination is essential: a member state may not adopt any law which places its own nationals, companies or products in a better situation than those from another EU member state.

Economically speaking, the entire EU shall work as if it were a single country by allowing fully frictionless trade between its member states. This especially entails that regulations, such as but not limited to product standardization and certification, consumer protection, etc., need to be uniform throughout the entire Single Market in order to provide a level playing for businesses and to avoid unfair advantages of the one at the expense of the other.

With the Digital Single Market, the achievements of the borderless Single Market shall finally be brought to the digital realm. Today, regulation in the digital sector is still highly national, which Europe is at a disadvantage compared to the US, China or India, where companies can serve a much larger market under one single legislation.

The Digital Single Market as one of the Commission's priorities

The political guidelines of the current Commission, as defined in July 2014 by President Juncker, explicitly list the Digital Single Market as one of its 10 strategic priorities for the period 2014 – 2019 ⁴:

³ Recommended reading for further details: https://en.wikipedia.org/wiki/European_Single_Market

I believe that we must make much better use of the great opportunities offered by digital technologies, which know no borders. To do so, we will need to have the courage to break down national silos in telecoms regulation, in copyright and data protection legislation, in the management of radio waves and in the application of competition law.

If we do this, we can ensure that European citizens will soon be able to use their mobile phones across Europe without having to pay roaming charges. We can ensure that consumers can access services, music, movies and sports events on their electronic devices wherever they are in Europe and regardless of borders. We can create a fair level playing field where all companies offering their goods or services in the European Union are subject to the same data protection and consumer rules, regardless of where their server is based. By creating a connected digital single market, we can generate up to € 250 billion of additional growth in Europe in the course of the mandate of the next Commission, thereby creating hundreds of thousands of new jobs, notably for younger job-seekers, and a vibrant knowledge-based society.

To achieve this, I intend to take, within the first six months of my mandate, ambitious legislative steps towards a connected digital single market, notably by swiftly concluding negotiations on common European data protection rules; by adding more ambition to the ongoing reform of our telecoms rules; by modernising copyright rules in the light of the digital revolution and changed consumer behaviour; and by modernising and simplifying consumer rules for online and digital purchases. This should go hand-in-hand with efforts to boost digital skills and learning across society and to facilitate the creation of innovative start-ups. Enhancing the use of digital technologies and online services should become a horizontal policy, covering all sectors of the economy and of the public sector.

The importance given to the topic of the Digital Single Market is also reflected by the portfolio distribution inside the Commission college: Vice-President Andrus Ansip is solely in charge of the transversal coordination of all efforts in this field.

In a speech addressing the European Parliament in February 2016, the then President of Estonia Toomas Hendrik Ilves outlines in a striking way the necessity for increased efforts in the field of digitalization and in particular the urgent need for a Digital Single Market⁴. In fact, Estonia can be seen as a precursor in many aspects touching digital technologies: its government allows citizens and businesses to do almost every administrative step online and its economy heavily relies on digital services. Toomas Hendrik Ilves proposes to add a fifth freedom to the four existing ones of the Single Market: **freedom of data**. Moreover, he draws attention to the – somehow ironic – fact that physical goods can circulate easier inside the single market than digital products which do not need any physical transport.

⁴ https://ec.europa.eu/commission/sites/beta-political/files/juncker-political-guidelines-speech_en.pdf

⁵ <https://www.youtube.com/watch?v=jY-naeljiEk>

Commission Vice-President Andrus Ansip reiterated this idea by stating that “What is possible to do offline needs to be possible to do online.”

Objectives

The Commission has identified three pillars ⁶ as key overarching policy areas:

- **Access:** *better access for consumers and businesses to digital goods and services across Europe;*
 - o <https://ec.europa.eu/digital-single-market/en/better-access-consumers-and-business-online-goods>
- **Environment:** *creating the right conditions and a level playing field for digital networks and innovative services to flourish;*
 - o <https://ec.europa.eu/digital-single-market/en/right-environment-digital-networks-and-services>
- **Economy & Society:** *maximising the growth potential of the digital economy.*
 - o <https://ec.europa.eu/digital-single-market/en/economy-society>

The main objectives of the Digital Single Market have been declared by the Commission as given in the Table 1. While some belonging to one specific policy area of the three named above, others have a more transversal character.

Table 1: Objectives of the Digital Single Market ⁷

	Pillar 1	Pillar 2	Pillar 3
Boosting e-commerce by tackling geo-blocking, making cross-border parcel delivery more affordable and efficient ⁸	✓		
Modernising the EU copyright rules to fit the digital age ⁹	✓	(✓)	
Updating EU audiovisual rules ¹⁰	(✓)	✓	
Working with platforms to create a fairer environment for everyone, promote European films, protect children and tackle hate speech ¹¹		✓	

⁶ <https://ec.europa.eu/digital-single-market/en/policies/shaping-digital-single-market>
http://europa.eu/rapid/press-release_SPEECH-15-4926_en.htm

⁷ https://ec.europa.eu/commission/priorities/digital-single-market_en

⁸ <https://ec.europa.eu/digital-single-market/en/boosting-e-commerce-eu>

⁹ <https://ec.europa.eu/digital-single-market/en/modernisation-eu-copyright-rules>

¹⁰ <https://ec.europa.eu/digital-single-market/en/revision-audiovisual-media-services-directive-avmsd>

¹¹ <https://ec.europa.eu/digital-single-market/en/online-platforms-digital-single-market>

Scaling up Europe's response to cyber-attacks by strengthening ENISA, the EU cybersecurity agency, and creating an effective EU cyber deterrence and criminal law response to better protect Europe's citizens, businesses and public institutions ¹²		✓	(✓)
Unlocking the potential of a European data economy with a framework for the free flow of non-personal data in the EU ¹³		✓	✓
Ensuring everyone in the EU has the best possible internet connection, so they can fully engage in the digital economy, the so-called "connectivity for a European gigabit society" ¹⁴		✓	
Adapting ePrivacy rules to the new digital environment ¹⁵		✓	
Helping large and small companies, researchers, citizens and public authorities to make the most of new technologies by ensuring that everyone has the necessary digital skills, and by funding EU research in health and high performance computing ¹⁶			✓

Besides the objectives listed in Table 1, the issue of taxation is of paramount importance. On the one hand, digital services have increased the number of cross-border transactions, which especially requires a simpler clearing procedure for VAT. On the other hand, the very basic question of what shall be taxed, and where it shall be taxed, needs to be addressed¹⁷. Different initiatives by the EU commission in those two fields are underway (see subsequent sections of this guide).

The Tallinn Digital Summit

On September 28th and 29th, the European Council convened for an informal session in the Estonian capital Tallinn ¹⁸. The meeting was jointly organized by the Estonian presidency of the Council of the European Union and the president of the European Council Donald Tusk. The advancement of the Digital Single Market was a major item on the agenda of the Heads of State or Government, alongside other key policy areas of the EU.

¹² <https://ec.europa.eu/digital-single-market/en/cyber-security>

¹³ <https://ec.europa.eu/digital-single-market/en/policies/building-european-data-economy>

¹⁴ <https://ec.europa.eu/digital-single-market/en/policies/improving-connectivity-and-access>

¹⁵ <https://ec.europa.eu/digital-single-market/en/proposal-eprivacy-regulation>

¹⁶ <https://ec.europa.eu/digital-single-market/en/policies/digital-skills>

¹⁷ https://ec.europa.eu/commission/sites/beta-political/files/digital-taxation-factsheet-tallinn_en.pdf

¹⁸ Website of the Estonian presidency of the Council of the European Union regarding this event: <https://www.eu2017.ee/political-meetings/tallinn-digital-summit>

A number of documents providing a good overview of completed and pending initiatives in the Digital Single market can be found here:

https://ec.europa.eu/commission/publications/tallinn-digital-summit-factsheets_en

The following documents are highly recommended to delegates:

- **Timeline of completed and pending legislative initiatives:**
https://ec.europa.eu/commission/sites/beta-political/files/digital-summit-timeline-factsheet_en.pdf
- **Summary of Digital Single Market initiatives:**
https://ec.europa.eu/commission/sites/beta-political/files/making-most-digital-factsheet-tallinn_en.pdf
- **Factsheet regarding taxation, digital skills and cybersecurity:**
 - o https://ec.europa.eu/commission/sites/beta-political/files/digital-taxation-factsheet-tallinn_en.pdf
 - o https://ec.europa.eu/commission/sites/beta-political/files/digital-skills-factsheet-tallinn_en.pdf
 - o https://ec.europa.eu/commission/sites/beta-political/files/building-strong-cybersecurity-factsheet-tallinn_en.pdf

Recently adopted legislation

The following list provides only a very rough overview of the most important legislative initiatives completed in the previous years. The above documents from the Tallinn Digital Summit list several others which might also be of interest for the discussions in the European Council at ZuMUN and which delegates are thus advised to consult.

Abolition of roaming charges

Since June 2017, holders of an EU mobile phone number do not pay any (retail) roaming charges when travelling to another EU country (Regulation (EU) 2015/2120¹⁹). Flat rates and contract plans with a defined amount of included telephone minutes or data traffic stay equally valid abroad at the same terms than in the home country. Wholesale roaming fees, charged among the mobile phone providers for services delivered to the clients of another provider, have been capped by Regulation (EU) 2017/920²⁰ amending Regulation (EU) 2012/531²¹.

¹⁹ <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1519757298012&uri=CELEX:32015R2120>

²⁰ <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1519756380232&uri=CELEX:32017R0920>

²¹ <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1519758152815&uri=CELEX:32012R0531>

Cross-border portability of online content services

From April 2018 onwards, paid subscriptions to streaming services, e-books or other online services can be used throughout the European Union when travelling (Regulation (EU) 2017/1128²²). Providers may not block content anymore. However, this regulation does not yet automatically allow every citizen throughout the Union to purchase contents from anywhere. National fragmentation of copyrights still persists.

Data protection

In May 2018, the new General Data Protection Regulation (EU) 2016/679²³ will come into force. It forces all businesses interacting with EU citizens to comply with this regulation, even if the company itself is based outside the EU (e.g. in the United States). Hence, the data protection regulation also has an extraterritorial character. This regulation guarantees free flow of personal data throughout the EU in exchange for uniformly strict rules of data protection in all member states. ePrivacy rules need to be adapted to the new regulatory basis. In January 2017, the Commission passed a proposal for a regulation addressing this issue (2017/0003 (COD)²⁴).

Geo-blocking²⁵

On February 6th, respectively February 27th, the European Parliament and the Council²⁶ approved the Regulation *“addressing geo-blocking and other forms of discrimination based on customers' nationality, place of residence or place of establishment within the internal market”* (legislative procedure 2016/0152 (COD)). It forbids any discrimination of customers based on either of the aforementioned criteria. However, *“electronically supplied services the main feature of which is the provision of access to and use of copyright protected works or other protected subject matter”* are not covered by this regulation. For instance, streaming of videos or music falls under this category. In the first phase, the regulation thus applies principally to e-commerce and online services which do not involve intellectual property (e.g. webhosting). Furthermore, some people claim that the regulation is missing the necessary simplification and clarity in regards to which laws to apply in cross-border e-commerce. A certain level of legal uncertainty thus persists and it remains to be seen which

²² <https://ec.europa.eu/digital-single-market/en/cross-border-portability-online-content-services>
<http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1519759058787&uri=CELEX:32017R1128>

²³ <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1519760525367&uri=CELEX:32016R0679>

²⁴ <https://ec.europa.eu/digital-single-market/en/proposal-eprivacy-regulation>
http://eur-lex.europa.eu/procedure/EN/2017_3?qid=1520092228284&rid=1

²⁵ http://eur-lex.europa.eu/procedure/EN/2016_152?qid=1519752366246&rid=1
http://europa.eu/rapid/press-release_IP-17-4781_en.htm
http://europa.eu/rapid/press-release_STATEMENT-18-667_en.htm
<https://ec.europa.eu/digital-single-market/en/geo-blocking-digital-single-market>

²⁶ <http://www.consilium.europa.eu/en/press/press-releases/2018/02/27/geo-blocking-council-adopts-regulation-to-remove-barriers-to-e-commerce/>

concrete effects it will eventually have on the market. An evaluation of this regulation by the Commission is foreseen every two years of which the first one shall especially assess the necessity of the previously mentioned exception of electronic services involving copyright protected content.

VAT

Since 2015, a new system of VAT collection is in place. Before that, VAT in business-to-consumer transactions was charged by the country where the reseller was based. Thus, many e-commerce companies chose to establish themselves in the member state with the lowest VAT rate, in this case Luxembourg. While this old system was designed at a time when e-commerce was not yet a noticeable share of the overall economy, pressure to change it grew steadily over time. Remember that the adoption of legislation in the field of taxation requires unanimity among member states! In the end, the system change became effective on January 1st 2015 with VAT now being paid in the country of residence of the final consumer.

Further initiatives to update VAT processing in general and for e-commerce in particular are underway. A first draft regulation proposed by the Commission in December 2016 targets the modernization of *“VAT for cross-border B2C e-commerce”*. It has been adopted by the Council (under a special legislative procedure) in December 2017 (Council Regulation (EU) 2017/2454 ²⁷).

Legislative proposals in the pipeline

The European Commission’s Work Programme for 2018 ²⁸ (dated September 2017) lists the following legislative proposals which have been adopted by the former and wait for deliberation by the Parliament and/or the Council.

Again, the subsequent list only provides a very rough overview of the most important legislative initiatives pending at the moment. Several others, which might also be of interest for the discussions in the European Council and which delegates are thus advised to consult, are indicated in the documents of the Tallinn Digital Summit and the work programme of the Commission for 2018. Furthermore, the list of intended Commission initiatives for end 2017 (dated September 2017) ²⁹ is worth to be considered, as it provides the most updated list of pending proposals. Delegates are further reminded that the subsequent matters might have advanced between the redaction of the present study guide (end of February 2018) and the date of the conference.

²⁷ <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1519762440605&uri=CELEX:32017R2454>
http://europa.eu/rapid/press-release_IP-17-4404_en.htm

²⁸ https://ec.europa.eu/info/sites/info/files/cwp_2018_annex_iii_en.pdf

²⁹ https://ec.europa.eu/commission/sites/beta-political/files/initiatives-post-state-union-2017_en.pdf

Cross-border parcel delivery services

At the moment, the prices of international parcel delivery inside the European Union are significantly higher than for domestic shipping. Furthermore, it can happen that sending a parcel from country A to country B costs 10 €, while in the opposite direction it costs 30 €. This complexity of international parcel delivery is a major impediment to cross-border e-commerce inside the EU. The draft regulation (2016/0149 (COD)³⁰) from May 2016 shall bring improvements in this respect. Informal negotiations³¹ between the Council and the Parliament have been finished. After translation into all official languages, the modified draft goes to Parliament and Council for formal approval to be expected in spring 2018.

Digital contracts

Two directives (2015/0287 (COD)³² and 2015/0288 (COD)³³) proposed in December 2015 shall make the necessary steps to harmonize contract laws throughout the EU, such that companies doing cross-border business do not need to cope with several different legislations. Furthermore, legal security as to which country's laws apply shall be enhanced.

Telecoms Reform

Two legislative proposals (draft directive 2016/0288 (COD)³⁴ and draft regulation 2016/0286 (COD)³⁵) presented in September 2016 shall create the adequate environment for investments into high quality telecoms infrastructure.

Copyright

A draft directive addressing the issue of copyrights in the Digital Single Market in general (2016/0280 (COD)³⁶), as well as a draft regulation more specifically about copyrights in broadcasting (2016/0284 (COD)³⁷) have been adopted by the Commission in September 2016. Uniform copyright regulations are a key element to the Digital Single Market as they provide the basis for the free flow of goods of intellectual property.

³⁰ http://eur-lex.europa.eu/procedure/EN/2016_149?qid=1519763259441&rid=1
http://europa.eu/rapid/press-release_IP-17-5203_en.htm

³¹ <http://www.consilium.europa.eu/en/press/press-releases/2017/12/20/council-endorses-deal-on-cross-border-parcel-delivery-services/>

³² http://eur-lex.europa.eu/procedure/EN/2015_287?qid=1519764824810&rid=1

³³ http://eur-lex.europa.eu/procedure/EN/2015_288?qid=1519764881145&rid=1

³⁴ http://eur-lex.europa.eu/procedure/EN/2016_288?qid=1519765266092&rid=1

³⁵ http://eur-lex.europa.eu/procedure/EN/2016_286?qid=1519765190259&rid=1

³⁶ http://eur-lex.europa.eu/procedure/EN/2016_280?qid=1519765684328&rid=1

³⁷ http://eur-lex.europa.eu/procedure/EN/2016_284?qid=1519765810459&rid=1

Free flow of non-personal data

A draft regulation (2017/0228 (COD) ³⁸) establishing a framework for the free flow and storage of non-personal data has been submitted by the Commission in September 2017. It is a key to unlocking the opportunities provided by big data applications ³⁹. In December, the Council decided on its so-called “General Approach” ⁴⁰ on this draft legislation which allows the Council presidency to start negotiations with the Parliament in order to agree on a common text.

EU Cybersecurity Agency

A draft regulation to establish an EU Cybersecurity Agency (2017/0225 (COD) ⁴¹) has been proposed by the Commission in September 2017. This agency shall assist member states and businesses in dealing with cyber-attacks and help them implement adequate preventive measures.

Audiovisual media rules

The current directive (2010/13/EU) on the provision of audiovisual media content (TV, video on demand (VOD), etc.) shall be updated to reflect the changed behaviour of citizens and to include recently fast growing new business models such as video on demand streaming services (e.g. Netflix) or online sharing platforms. A level playing field for all actors, regardless of how they provide their services, shall be achieved. The proposal for revision (2016/0151 (COD) ⁴²) has been adopted by the Commission in May 2016. The proposal includes a wide range of issues such as the promotion of European audiovisual content or the combat against hate speech.

VAT

In the wide field of VAT, two legislative proposals (under a special legislative procedure) are currently in the pipeline: the one addressing the VAT rate to be applied to e-publications (2016/0374 (CNS) ⁴³) by aligning their rate to the one applied to conventional printed products. In the past, this issue repeatedly led to disagreements between member states and the Commission. The other one (2017/0251 (CNS) ⁴⁴) foresees a more in-depth reform of the

³⁸ http://eur-lex.europa.eu/procedure/EN/2017_228?qid=1519766233990&rid=1

³⁹ <https://ec.europa.eu/digital-single-market/en/policies/building-european-data-economy>
<https://ec.europa.eu/digital-single-market/en/big-data>

⁴⁰ <http://www.consilium.europa.eu/en/press/press-releases/2017/12/20/removing-barriers-to-free-flow-of-data-council-agrees-its-position/>

⁴¹ http://eur-lex.europa.eu/procedure/EN/2017_225?qid=1519766389947&rid=1

⁴² http://eur-lex.europa.eu/procedure/EN/2016_151?qid=1520095230522&rid=1
<https://ec.europa.eu/digital-single-market/en/revision-audiovisual-media-services-directive-avmsd>

⁴³ http://eur-lex.europa.eu/procedure/EN/2016_374?qid=1519767494684&rid=1

⁴⁴ http://eur-lex.europa.eu/procedure/EN/2017_251?qid=1519767693146&rid=1

entire VAT system in the Single Market (not only the digital one). It is the end of a long-term process to establish a consolidated VAT system inside the entire Single Market. The rules of VAT clearing in business-to-business cross-border transactions shall be simplified and the system shall be made more fraud-proof ⁴⁵.

Single Digital Gateway

This is a fairly ambitious project which aims at simplifying the way governments and other public authorities collect data from citizens or business. The final intention is to avoid that people need to enter the same data several times in different member states. For instance business registers across the EU shall be interconnected to save money to companies doing cross-border business. A first draft regulation has been proposed by the Commission in May 2017 (2017/0086 (COD) ⁴⁶).

Projects at an earlier stage

Revision of the e-Commerce Directive ⁴⁷

A revision of the current e-Commerce directive (2000/31/EC ⁴⁸) dating back to 2000 is at the moment being prepared by the Commission. Public consultations with relevant stakeholders have been carried out in 2015.

Other policy areas with a connection to the Digital Single Market

Consumer Protection

A revision of the Regulation on Consumer Protection Cooperation was initiated by the Commission in May 2016. In the meantime the proposal made its way through Parliament and Council. It was passed in December 2017 (Regulation (EU) 2017/2394 ⁴⁹).

Illegal content on online platforms

The regulation of online platforms such as Facebook or Youtube is a crucial element of the fight against illegal content. The reason for illegality can be very diverse and range from copyright infringement to openly racist propaganda. On March 1st 2018, the Commission

⁴⁵ http://europa.eu/rapid/press-release_IP-16-1022_en.htm
http://europa.eu/rapid/press-release_IP-17-3443_en.htm
http://europa.eu/rapid/press-release_MEMO-17-3444_en.htm

⁴⁶ http://eur-lex.europa.eu/procedure/EN/2017_86?qid=1520197498345&rid=1

⁴⁷ <https://ec.europa.eu/digital-single-market/en/e-commerce-directive>

⁴⁸ <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32000L0031>

⁴⁹ <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1520094509543&uri=CELEX:32017R2394>

presented a set of recommendations for measures⁵⁰ to tackle this problem. In this context the German Network Enforcement Law (Netzwerkdurchsetzungsgesetz), enacted on January 1st 2018, is worth mentioning. It obliges social media providers to delete “obviously unlawful content” within 24 hours after a complaint has been filed. Companies who repeatedly do not respect the law may be subject to high fines. There was a lot of controversy around this new law, as social media providers might also block legal content out of a fear of incurring fines. Some people claim that the law opens the door to censorship by social media providers.

Taxation of the digital economy

The growth of the digital economy is raising fundamental questions regarding taxation, both in terms of VAT but also in terms of corporate profit taxes. In the meantime, it has gained such an importance that member states are becoming increasingly worried about the long-term preservation of their tax base. Recent advances by some member states to tax digital companies on their turnover rather than their profit is a sign of this problem. At the moment, member states are highly divided on this proposal. While some argue that it is necessary to generate sufficient taxes for public budgets, others advocate that such a move would heavily impede Europe’s competitiveness in a crucial sector for future economic development.

In October 2016, the Commission passed two directive proposals (2016/0336 (CNS) and 2016/0337 (CNS)⁵¹) aiming at better coordination of corporate taxation in all member states. Works on the specific question of taxation of the digital economy are still underway with a proposal expected to be presented by the Commission in March 2018 (after redaction of the present guide).⁵² Delegates are thus advised to follow the news in this regard.

THE EUROPEAN COUNCIL @ ZUMUN

Points the European Council should address

At one year ahead of the European election, and one year after the presentation of the Commission’s midterm review⁵³, the Heads of State or Government gathering in the Euro-

⁵⁰ <https://ec.europa.eu/digital-single-market/en/illegal-content-online-platforms>
<https://ec.europa.eu/digital-single-market/en/news/commission-recommendation-measures-effectively-tackle-illegal-content-online>
http://europa.eu/rapid/press-release_IP-18-761_en.htm
http://europa.eu/rapid/press-release_IP-18-1169_en.htm
http://europa.eu/rapid/press-release_MEMO-18-1170_en.htm

⁵¹ http://eur-lex.europa.eu/procedure/EN/2016_336?qid=1520101533515&rid=1
http://eur-lex.europa.eu/procedure/EN/2016_337?qid=1520101546105&rid=1

⁵² http://europa.eu/rapid/press-release_SPEECH-18-981_en.htm

⁵³ <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1496330315823&uri=CELEX:52017DC0228>

pean Council should make a re-evaluation of the current status, the latest advances and the pending issues regarding the implementation of the Digital Single Market strategy.

In particular, the European Council should answer the following questions:

1. Do member states support the Commission's proposals currently being debated in the two legislative chambers? Where would the Heads of State or Government like to see changes, and if so, which ones?
2. Which legislative actions does the European Council see on the top of the priority list for the remaining year until the European election and the subsequent installation of a new Commission?
3. How do the Heads of State or Government view the mid-term agenda beyond the European election? Which concrete projects in the field of the Digital Single Market should the next Commission put on top of its work programme? If new projects shall be addressed, which general direction does the European Council want them to take?
4. Which additional steps are necessary for Europe in order to close the digital gap to the world's leading powers in the digital realm?

Document output

Unlike the other committees at ZuMUN, the European Council does not pass a resolution. Like in its real counterpart, conclusions shall be adopted. They do not require the rigid format of an MUN resolution, but can be formulated freely.

Position Paper

Delegates are expected to hand in a position paper by April 15th to ec@zumun.ch. It shall address in particular the following points:

- Which specific interests does your country (or institution) have regarding the Digital Single Market and the related issues like taxation, etc.?
- Which are the key issues your country wants to see tackled, both in the short-term until the European election as well as in the mid- and long-term beyond 2019?

Rules of Procedure

The European Council will use a special set of Rules of Procedure distinct from those of the other committees at ZuMUN. They will be published through the website www.zumun.ch in due time.

FURTHER READING

Besides the documents and websites referenced throughout this guide, delegates are advised to consult the following sources in order to allow for an informed debate at ZuMUN.

The Commission's and Council's respective websites on the Digital Single Market:

- https://ec.europa.eu/commission/priorities/digital-single-market_en
- <http://www.consilium.europa.eu/en/policies/digital-single-market/>

The Commission's news centre with all press releases:

- https://ec.europa.eu/commission/news_en

Commission Staff Working Document on Analysis and Evidence behind the Digital Single Market strategy (dated May 2015):

- <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1447773803386&uri=CELEX:52015SC0100>

Commission's Midterm Review of the Digital Single Market of May 2017:

- <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1496330315823&uri=CELEX:52017DC0228>

All legislative texts of the EU can be accessed through the following links:

- EU law in force: <http://eur-lex.europa.eu/collection/eu-law/legislation/recent.html>
- Legislative procedures: <http://eur-lex.europa.eu/collection/legislative-procedures.html>

Legislative Observatory of the European Parliament:

- <http://www.europarl.europa.eu/oeil/search/search.do?searchTab=y>

The Conclusions of the previous European Council meetings can be found here:

- <http://www.consilium.europa.eu/en/european-council/>
- <http://www.consilium.europa.eu/en/european-council/conclusions/>

Country fact sheets: a series of documents regarding usage of digital services and technology by citizens and businesses in all member states of the EU:

- https://ec.europa.eu/commission/publications/country-factsheets-digital-single-market_en

Statements and position papers by BusinessEurope, the roof organization of national business federation, on the Digital Single Market:

- <https://www.besnesseurope.eu/policies/digital-economy/eu-digital-single-market>

Study Guide of ZuMUN 2017 ECOSOC on Regulation and Taxation of the Sharing Economy and Social Protection in the Digital Age:

- <http://zumun.ch/wp-content/uploads/2017/04/ECOSOC-StudyGuide.pdf>